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Subject : Preparation of the Competitiveness Council on 30 September 2002
- Proposal for a Directive of the European Parliament and of the Council on the coordinating the procurement procedures of entities operating in the water, energy and transport sectors ("utilities directive")

Delegations will find attached a Presidency compromise text on the "utilities directive" in preparation of the meeting of the Competitiveness Council on 30 September 2002.

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

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission ¹,

Having regard to the Opinion of the Economic and Social Committee ²,

Having regard to the Opinion of the Committee of the Regions ³,

Acting in accordance with the procedure set out in Article 251 of the Treaty ⁴,

Whereas:

- (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 ⁵ was last amended by Directive 98/4/EC of the European Parliament and of the Council ⁶. On the occasion of new amendments, which are necessary to respond to requests for simplification and modernisation made by contracting entities and economic operators alike in their responses to the Green Paper adopted by the Commission on 27 November 1996 ⁷, the Directive should therefore, in the interests of clarity, be recast.
- (2) The procedures for the award of contracts which are applied by entities operating in the water, energy, transport and postal services sectors call for coordination based on the requirements inferable from Articles 14, 28 and 49 of the EC Treaty and from Article 97 of the Euratom Treaty, namely the principles of equality of treatment, of which the principle of non-discrimination is no more than a specific expression, mutual recognition, proportionality, transparency and the opening-up of public procurement to competition. While safeguarding the application of those principles, this coordination should establish a framework for sound commercial practice and should allow a maximum of flexibility.

¹ OJ C [...],[...], p. [...].

² OJ C [...],[...], p. [...].

³ OJ C [...],[...], p. [...].

⁴ OJ C [...],[...], p. [...].

⁵ OJ L 199, 9.8.1993, p. 84.

⁶ OJ L 101, 1.4.1998, p. 1.

⁷ COM(96) 583 final.

- (2a) Taking into account the further opening of Community postal services to competition and the fact that such services are provided through a network by contracting authorities, public undertakings and other undertakings, contracts awarded by contracting entities offering postal services should be subject to the rules of this Directive, including those in Article 29 thereof, which, safeguarding the application of the principles referred to in recital 2, create a framework for sound commercial practice and allow greater flexibility than is offered by Directive 2002/000/EC of the European Parliament and of the Council of ... [title of the works Directive, etc.]. For a definition of the activities in question, it is necessary to take into account, [...]the definitions of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service⁸, as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services⁹.

Whatever their legal status, entities supplying postal services are not currently subject to the rules set out in Directive 93/38/EEC. The adjustment of contracting procedures to this Directive could therefore take longer to implement for such entities than for entities already subject to those rules which will merely have to adapt their procedures to the amendments made by this Directive. It must therefore be permissible to defer application of the Directive to meet the time constraints necessary for adjustment. In view of the variety of situations in such entities, Member States must have the option of providing for a transitional period for the application of this Directive to contracting entities operating in the postal services sector.

- (2b) Under Article 6 of the Treaty establishing the European Community, environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3 of that Treaty, in particular with a view to promoting sustainable development.

This Directive therefore clarifies how the contracting entities may contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring that the contracting authorities are in a position to obtain best value for money for those contracts.

- (2c) Nothing in this Directive shall prevent the imposition or enforcement of measures necessary to protect public morality, public policy, public security health, and human and animal life or the preservation of plant life, in particular with a view to sustainable development, provided that these measures are in conformity with the Treaty.
- (2d) Member States must ensure that the participation of a body governed by public law as a tenderer in a procedure for the award of a public contract does not cause any distortion of competition in relation to private tenderers.

⁸ OJ L 15, 21.1.1998, p. 14.

⁹ OJ L 176 of 5.7.2002, p.21.

- (3) Community legislation, and in particular Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector¹⁰ and Regulation (EEC) No 3976/87 of 14 December 1987 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector¹¹ are designed to introduce more competition between entities offering air transport services to the public. It is therefore not appropriate to include such entities in the scope of this Directive. In view of the competitive position of Community shipping, it would also be inappropriate to make the contracts awarded in this sector subject to the rules of this Directive.
- (4) The scope of Directive 98/38/EEC covers, at present, certain contracts awarded by contracting entities operating in the telecommunications sector. A legislative framework, as mentioned in the fourth report on the implementation of the telecommunications regulations of 25 November 1998¹², has been adopted to open the telecommunications sector. One of its consequences has been the introduction of effective competition, both *de jure* and *de facto*, in this sector. For information purposes, and in the light of this situation, the Commission has published a list of telecommunications services¹³ which may already be excluded from the scope of that Directive by virtue of Article 8 thereof. Further progress has been confirmed in the seventh report on the implementation of telecommunications regulations of 26 November 2001¹⁴. It is therefore no longer necessary to regulate purchases by entities operating in this sector.
- (5) It is therefore no longer appropriate to maintain the Advisory Committee on Telecommunications Procurement, set up by Council Directive 90/531/EEC¹⁵.
- (6) Nevertheless, it is appropriate to continue to monitor developments on the telecommunications market and to reconsider the situation if it is established that there is no longer effective competition in that sector.
- (7) Directive 93/38/EEC excludes from its scope purchases of voice telephony, telex, mobile telephone, paging and satellite services. Those exclusions were introduced to take account of the fact that the services in question could frequently be provided only by one service provider in a given geographical area because of the absence of effective competition and the existence of special or exclusive rights. The introduction of effective competition in the telecommunications sector removes the justification for these exclusions. It is therefore necessary to include the procurement of such telecommunications services in the scope of this Directive.

¹⁰ OJ L 374, 31.12.1987, p. 1. Regulation as last amended by Regulation (EEC) No 2410/92 (OJ L 240, 28.4.1992, p. 18).

¹¹ OJ L 374, 31.12.1987, p. 9. Regulation as last amended by the Act of Accession of Austria, Finland and Sweden.

¹² COM (1998) 594 final.

¹³ OJ L 156, 3.6.1999, p. 3.

¹⁴ COM(1999) 537 final.

¹⁵ OJ L 297, 29.10.1990, p. 1.

- (8) The need to ensure a real opening-up of the market and a fair balance in the application of procurement rules in the water, energy, and transport and postal services sectors requires that the entities covered be identified on a basis other than by reference to their legal status. It has to be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 295 of the Treaty, that the rules governing the system of property ownership in Member States are not prejudiced.
- (9) One major reason for the introduction of rules coordinating procedures for the award of contracts in these areas is the variety of ways in which national authorities can influence the behaviour of these entities, including participation in their capital and representation in the entities' administrative, managerial or supervisory bodies.
- (10) Another main reason why it is necessary to coordinate procurement procedures applied by the entities operating in these sectors is the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the national authorities concerning the supply to, provision or operation of networks for providing the service concerned.
- (11) There has to be an appropriate definition of the concept of special and exclusive rights. The consequence of the definition is that the fact that, for the purpose of constructing the networks or the port or airport facilities, an entity may take advantage of a procedure for the expropriation of property, or for its bearing a right of way, or may place network equipment on, under or over the public highway shall not in itself constitute exclusive or special rights within the meaning of this Directive. Nor does the fact that an entity supplies with drinking water, electricity, gas or heat a network which is itself operated by an entity enjoying special or exclusive rights granted by a competent authority of the Member State concerned constitute in itself an exclusive or special right within the meaning of this Directive. Nor may rights granted by a Member State to a limited number of undertakings on the basis of objective, proportionate and non-discriminatory criteria that allow any interested party fulfilling those criteria to enjoy those rights be considered exclusive or special rights.
- (12) This Directive should apply neither to contracts intended to permit the performance of an activity referred to by Articles 3 to 6 of this Directive nor to design contests organised for the pursuit of such an activity if, in the Member State in which this activity is carried out, it is directly exposed to competition on markets to which access is not limited. It is therefore appropriate to introduce a procedure, applicable to all sectors covered by this Directive, that will enable the effects of current or future opening to competition to be taken into account. Such a procedure must provide legal certainty for the entities concerned, as well as an appropriate decision-making process, ensuring, within short deadlines, uniform application of Community law in this area.
- (13) Direct exposure to competition must be assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned. The implementation and application of appropriate Community legislation opening a given sector, or a part of it, will be considered to provide sufficient grounds for assuming there is free access to the market in question. Such appropriate legislation should be identified in an annex which can be updated by the Commission. Where free access to a given market does not result from Community legislation, it must be demonstrated that de jure and de facto, such access is free. For this purpose, application by a Member State of a Directive, such as Directive 94/22/EC of

the European Parliament and of the council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons, opening a given sector to competition, to another sector, such as the coal sector, is a circumstance to be taken into account for the purposes of Article 29.

- (14) [...]
- (15) To forestall the existence of a multitude of specific arrangements applicable to certain sectors only, the current special arrangements created by Article 3 of Directive 93/38/EEC and Article 12 of European Parliament and Council Directive 94/22/EC¹⁷ governing entities exploiting a geographical area for the purpose of exploring for or extracting oil, gas, coal or other solid fuels should be replaced by the general procedure allowing for exemption of sectors directly exposed to competition. It has to be ensured, however, that this will be without prejudice¹⁸ to Commission Decision 93/676/EEC of 10 December 1993 establishing that the exploitation of geographical areas for the purpose of exploring for or extracting oil or gas does not constitute in the Netherlands an activity defined by Article 2(2)(b)(i) of Council Directive 90/531/EEC and that entities carrying on such an activity are not to be considered in the Netherlands as operating under special or exclusive rights within the meaning of Article 2(3)(b) of the Directive¹⁹, Commission Decision 97/367/EC of 30 May 1997 establishing that the exploitation of geographical areas for the purpose of exploring for or extracting oil or gas does not constitute in the United Kingdom an activity defined by Article 2(2)(b)(i) of Council Directive 93/38/EEC and that entities carrying on such an activity are not to be considered in the United Kingdom as operating under special or exclusive rights within the meaning of Article 2(3)(b) of the Directive²⁰ and Commission Decision 2002/205/EC of 4 March 2002 following a request by Austria applying for the special regime provided for in Article 3 of Directive 93/38/EEC²¹.
- (16) Certain entities providing bus transport services to the public, were already excluded from the scope of Directive 93/38/EEC; such entities should also be excluded from the scope of this Directive. In order to forestall the existence of a multitude of specific arrangements applying to certain sectors only, the general procedure must, if it is to take the effects of opening-up to competition into account, also apply to all entities providing bus transport services that are not already excluded from the scope of Directive 93/38/EEC pursuant to Article 2(4) thereof.

¹⁷ OJ L 164, 30.6.1994, p. 3.

¹⁸ **Aide-mémoire:** References will have to be adjusted when the Decision concerning Germany has been adopted.

¹⁹ OJ L 316, 17.12.1993, p. 41.

²⁰ OJ L 156, 13.6.1997, p. 55.

²¹ OJ L 68, 12.3.2002, p. 31.

- (17) It is appropriate that the contracting entities apply common procurement procedures in respect of their activities relating to water and that these rules also apply where contracting authorities within the meaning of this Directive award contracts in respect of their projects in the field of hydraulic engineering, irrigation, land drainage or the disposal and treatment of sewage. However, procurement rules of the type proposed for supplies of goods are inappropriate for purchases of water, given the need to procure water from sources near the area in which it will be used
- (17a) Contracts may be awarded for the purpose of meeting the needs of several activities, possibly subject to different legal regimes. It should be clarified that the legal regime applicable to a single contract intended to cover several activities shall be subject to the rules applicable to the activity for which it is principally intended. Establishing for which activity the contract is principally intended may be based on the analysis of needs, to which the specific contract must respond,²³ carried out by the contracting entity for the purposes of estimating the contract value and establishing the tender documents. In certain cases, such as, for instance, the purchase of a single piece of equipment for the pursuit of activities for which information allowing an estimation of the respective rates of use would be lacking, it might be objectively impossible to determine which activity the contract is principally intended for. It should be foreseen which rules apply to such cases.
- (18) Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the Agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994)²⁴, approved in particular the Agreement on Government Procurement, referred to hereinafter as the "Agreement", the aim of which is to establish a multilateral framework of balanced rights and obligations relating to public contracts with the aim of achieving the liberalisation and expansion of world trade. In view of the international rights and commitments devolving on the Community as a result of the acceptance of the Agreement, the arrangements to be applied to tenderers and products from signatory third countries are those defined by the Agreement. This Agreement does not have direct effect. The contracting entities covered by the Agreement which comply with this Directive and which apply the same provisions as regards economic operators of third countries which are signatories to the Agreement must therefore be in conformity with the Agreement. It is also appropriate that this Directive should guarantee for Community economic operators conditions for participation in public procurement which are just as favourable as those reserved for economic operators of third countries which are signatories to the Agreement.
- (19) Without prejudice to the international commitments of the Community, it is necessary to simplify the implementation of this Directive, particularly simplifying the thresholds and by rendering applicable to all contracting entities, regardless of the sector in which they operate, the provisions regarding the information to be given to participants concerning decisions taken in relation to contract award procedures and the results thereof. Furthermore, in view of

²³ The German text should read here: "...Analyse der Bedürfnisse, zu deren Deckung der betreffende Auftrag vergeben werden soll".

²⁴ OJ L 336, 23.12.1994, p. 1.

Monetary Union, it is appropriate to set thresholds expressed in euro. Consequently, thresholds should be set, in euro, in such a way as to simplify the application of these provisions while at the same time ensuring compliance with the thresholds laid down in the Agreement, which are expressed in Special Drawing Rights. To this end, the thresholds expressed in euro should be periodically revised in order to adjust them, where necessary, in line with possible negative variations in the value of the euro in relation to the Special Drawing Right. In addition, the thresholds applicable to design contests should be identical to those applicable to service contracts.

(20) Provisions should be made for cases where this Directive may not necessarily be applied on grounds of State security or secrecy or due to the applicability of specific procurement rules such as those pursuant to international agreements, those concerning the stationing of troops, or rules of international organisations.

(20a) In view of the diversity of works contracts, contracting entities must be able to make provision for contracts for the design and execution of work to be awarded either separately or jointly. It is not the intention of this Directive to prescribe either joint or separate contract awards. The decision to award contracts separately or jointly should be determined by qualitative and economic criteria, which may be defined by national law.

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

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

(21) Obstacles to the free provision of services need to be avoided. Therefore, service providers may be either natural or legal persons. This Directive should not, however, prejudice the application, at national level, of rules concerning the conditions for the pursuit of an activity or a profession, provided that they are compatible with Community law.

(22) This Directive should cover the provision of services only where based on contracts: provision of services on other bases, such as law or regulations, or employment contracts, is therefore not covered.²⁵

²⁵ Reservation by the Commission.

- (23) Pursuant to Article 163 of the Treaty, the encouragement of research and development is a means of strengthening the scientific and technological basis of European industry, and the opening-up of public procurement contributes to this end. This Directive should not cover the cofinancing of research and development programmes: research and development contracts other than those where the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting entity, are not therefore covered by this Directive.
- (24) In the context of services, contracts for the acquisition or rental of land, existing buildings or other immovable property or rights to such property have particular characteristics which make the application of procurement rules inappropriate.
- (25) Arbitration and conciliation services are usually provided by bodies or individuals designated or selected in a manner which cannot be governed by procurement rules.
- (26) In accordance with the WTO Agreement on Government Procurement the financial services covered by this Directive do not include contracts relating to the issue, purchase, sale or transfer of securities or other financial instruments; in particular, transactions by the contracting entities to raise money or capital are not covered.²⁶
- (27) [...]
- (28) It is appropriate to exclude certain service, supply and works contracts awarded to an affiliated undertaking having as its principal activity, the provision of such services, supply or works to the group of which it is part, rather than offering them on the market. It is also appropriate to exclude certain service, supply and works contracts awarded by a contracting entity to a joint venture which is formed by a number of contracting entities for the purpose of carrying on activities covered by this Directive and of which that entity is part. However, it is appropriate to avoid that this exclusion does provoke possible distortions of competition to the benefit of the undertaking or joint ventures that are affiliated with the contracting entities; it is appropriate to provide a suitable set of rules, in particular as regards the maximum limits within which the undertakings may obtain part of their turnover from the market and above which they would lose the possibility of being awarded contracts without calls for competition, the composition of joint ventures and the stability of reports between these joint ventures and the contracting entities of which they are composed.
- (29) [...]
- (30) The field of services is best delineated, for the purpose of applying the procedural rules of this Directive and for monitoring purposes, by subdividing it into categories corresponding to particular headings of a common classification and by bringing them together in two Annexes, XVIA and XVIB, according to the regime to which they are subject. As regards services in Annex XVIB, the applicable provisions of this Directive should be without prejudice to the application of Community rules specific to the services in question.

²⁶ Reservation by the Commission.

- (31) As regards service contracts, full application of this Directive must be limited, for a transitional period, to contracts where its provisions will permit the full potential for increased cross-frontier trade to be realised. Contracts for other services need to be monitored during this transitional period before a decision is taken on the full application of this Directive. In this respect, the mechanism for such monitoring needs to be defined. This mechanism must, at the same time, enable interested parties to have access to the relevant information.
- (32) Contract performance conditions are compatible with the Directive provided that they are not directly or indirectly discriminatory and are indicated in the notice used to make the call for competition, or in the specifications. They may in particular be designed to favour on-site vocational training, employment of people experiencing particular difficulty in integration, to combat unemployment or to protect the environment. For example, mention may be made, *inter alia*, of the requirement – applicable to the performance of contracts – to recruit the long-term unemployed or to implement training measures for the unemployed or for young people, to comply in substance with the provisions of the basic ILO Conventions, assuming that such provisions have not been implemented in national law, and to recruit more disabled persons than are required under national legislation.
- (32a) National and Community laws, regulations and collective agreements in force on social protection and social security apply throughout the performance of a contract provided the rules concerned, and also their implementation, comply with Community law. For cross-border situations where, for the performance of a contract, workers from one Member State provide services in another Member State, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services²⁷ sets out the minimum conditions to be complied with in the host country *vis-à-vis* posted workers.
- If national law contains provisions to this effect, non-compliance with those obligations may be considered to be grave misconduct or an offence concerning the professional conduct of the economic operator concerned liable to lead to the exclusion of that economic operator from the procedure for the award of a contract.
- (33) Before launching a procurement procedure, contracting entities may, using a technical dialogue, seek or accept advice which may be used in the preparation of the specifications, provided that such advice does not have the effect of precluding competition.
- (34) The technical specifications drawn up by purchasers need to allow public procurement to be opened up to competition. To this end, it must be possible to submit tenders which reflect the diversity of technical solutions. Accordingly, it must be possible to draw up the technical specifications in terms of functional performance and requirements and, where reference is made to the European standard or, in the absence thereof, to the national standard, tenders based on other equivalent solutions which meet the requirements of the contracting entities and are equivalent in terms of safety must be considered by the contracting entities. To demonstrate equivalence, tenderers should be permitted to use any form of evidence. Contracting entities must be able to provide a reason for any decision that equivalence does not exist in a given case.

²⁷ OJ L 18, 21.1.1997, pp. 1 to 6.

Contracting entities that wish to define environmental requirements for the technical specifications of a given contract may lay down the environmental characteristics and/or specific environmental effects of product groups or services. They can, but are not obliged to, use appropriate specifications that are defined in eco—labels, such as the European Eco-label, (multi—)national eco—labels or any other eco-label providing the requirements for the label are drawn up and adopted on the basis of scientific information using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, retail and environmental organisations can participate, and providing the label is accessible and available to all interested parties.

- (35) Taking account of new information and telecommunications technologies and the simplifications they can bring about with regard to the advertising of contracts and in terms of the efficiency and transparency of award procedures, it is appropriate to put the use of electronic means on an equal footing with conventional means of communicating and exchanging information. Where at all possible, the means and the technology chosen must be compatible with the technologies used in the other Member States.
- (35a) Certain new electronic purchasing techniques are continuously being developed. Such techniques will help increase competition and streamline public purchasing, particularly in terms of the savings in time and money which their use will allow. Contracting entities may make use of electronic purchasing techniques, providing such use complies with the rules drawn up under this Directive and the principles of equal treatment, non-discrimination and transparency.

To that extent, a tender submitted by a tenderer, in particular under a framework agreement or for the implementation of a dynamic purchasing system, may take the form of that tenderer's electronic catalogue if the latter uses the means of communication chosen by the contracting entity in accordance with Article 47.

- (35b) In view of the rapid expansion of electronic purchasing systems, appropriate rules should now be introduced to enable contracting entities to take full advantage of the possibilities afforded by these systems. Against this background, it is necessary to define a completely electronic dynamic purchasing system for common purchases, and lay down specific rules for setting up and operating such a system in order to ensure the fair treatment of any economic operator who wishes to take part therein. Any economic operator which submits an indicative tender in accordance with the specification and meets the selection criteria must be allowed to join such a system. This purchasing technique allows the contracting entity, through the establishment of a list of tenderers already selected and the opportunity given to new tenderers to take part, to have a particularly broad range of tenders as a result of the electronic facilities available, and hence to ensure optimum use of public funds through broad competition.
- (35c) Since use of the technique of electronic auctions is likely to increase, such auctions should be given a Community definition and governed by specific rules in order to ensure that they operate in full accordance with the principles of equal treatment, non-discrimination and transparency; to that end, provision should be made for such electronic auctions to deal only with contracts for works, supplies or services of which the specifications can be determined with precision. With the same objective, it ought also to be possible to establish the respective ranking of the tenderers at any stage of the electronic auction. Recourse to electronic auctions enables contracting authorities to ask tenderers to submit new prices, revised downwards, and when the contract is awarded to the most economically advantageous

tender, also to improve elements of the tenders other than prices. However, in order to guarantee compliance with the principle of transparency, only the elements suitable for automatic evaluation by electronic means, without any intervention by the contracting entity, may be improved. To this end, such elements must be quantifiable so that they can be expressed in figures or percentages.

- (35d) Certain centralised purchasing techniques have been developed in Member States. Several contracting authorities are responsible for making acquisitions or awarding public contracts/framework agreements for other contracting entities. In view of the large volumes purchased, those techniques help increase competition and streamline public purchasing. Provision should therefore be made for a Community definition of central purchasing bodies dedicated to contracting entities. A definition should also be given of the conditions under which, in accordance with the principles of non-discrimination and equal treatment, contracting entities purchasing works, supplies and/or services through a central purchasing body may be deemed to have complied with the provisions of this Directive.
- (35e) In order to take account of the different circumstances obtaining in Member States, Member States should be allowed to choose whether contracting entities may use central purchasing bodies, dynamic purchasing systems or electronic auctions, as defined and regulated by this Directive.
- (36) The use of electronic means leads to savings in time. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject however to the condition that they are compatible with the specific mode of transmission envisaged at Community level. However, it has to be ensured that the cumulative effect of reductions of time-limits does not lead to excessively short deadlines.
- (37) Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures²⁸ and Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market²⁹ must, in the context of this Directive, apply to the transmission of information by electronic means. The public procurement procedures and the rules applicable to competitions for services demand a level of security and confidentiality higher than that required by those Directives. The devices for the electronic receipt of tenders, requests to participate, applications for qualification as well as plans and projects, must therefore comply with specific additional requirements. On the other hand, the existence of voluntary accreditation schemes can constitute a favourable framework for enhancing the level of certification service provision for such devices.
- (38) Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time-limits³⁰ will apply to the calculation of the time-limits contained in this Directive.

²⁸ OJ L 13, 19.1.2000, p. 12

²⁹ OJ L

³⁰ OJ L 124, 8.6.1971, p. 1.

(39) It needs to be clarified that contracting entities which establish selection criteria in an open procedure must do so in accordance with objective rules and criteria, just as the selection criteria in restricted and negotiated procedures have to be objective. These objective rules and criteria just as the selection criteria do not necessarily imply weightings.

(39a) It is important to take into account Court of Justice case law in cases where an economic operator claims the economic, financial or technical capabilities of other entities, whatever the legal nature of the connection between itself and those entities, in order to meet the selection criteria or, in the context of qualification systems, in support of its application for qualification. In the latter case, it is for the economic operator to prove that those resources will actually be available to it throughout the period of validity of the qualification. For the purposes of that qualification, a contracting entity may therefore determine the level of requirements to be met and in particular, for example where the operator lays claim to the financial standing of another entity, it may require that that entity be held liable, if necessary jointly and severally.

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

(39b) The award of public contracts to economic operators who have participated in a criminal organisation or who have been found guilty of corruption or of fraud to detriment of the financial interests of the European Communities or of money laundering must be avoided. However, given that contracting entities, which are not contracting authorities, might not have access to indisputable proof on the matter, it is appropriate to leave the choice whether or not to apply the exclusion criteria listed in Article 46 (1) of Directive/EC [on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts] to these contracting entities. The obligation to apply these provision should therefore be limited only to contracting entities that are contracting authorities.

Where appropriate, the contracting authorities must ask applicant for qualification, candidates or tenderers to supply relevant documents and, where they have doubts concerning the personal situation of these economic operators, they may seek the cooperation of the competent authorities of the Member State concerned. The exclusion of such economic operators should take place as soon as the contracting authority has knowledge of a judgement concerning such offences rendered in accordance with national law that has the force of *res judicata*.

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

- (39c) In appropriate cases, in which the nature of the works and/or services justifies applying environmental management measures or schemes during the performance of a public contract, the application of such measures or schemes may be required. Environmental management schemes, whether or not they are registered under Community instruments (EMAS Regulation), can demonstrate that the economic operator has the technical capability to perform the contract. Moreover, a description of the measures implemented by the economic operator to ensure the same level of environmental protection must be accepted as an alternative to environmental management registration schemes as a form of evidence.
- (40) The contract must be awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non-discrimination and equality of treatment and which guarantee that tenders are assessed in conditions of effective competition. As a result, it is appropriate to allow the application of two award criteria, i.e. "the lowest price" and "the most economically advantageous tender".

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

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

- (42) The award criteria should not affect the application of national provisions on the remuneration of certain services, such as, for example, the services performed by architects, engineers or lawyers.

- (43) The relevant Community rules on mutual recognition of diplomas, certificates or other evidence of formal qualifications apply when evidence of a particular qualification is required for participation in a procurement procedure or a competition for services.
- (43a) It is appropriate that the participants in an award procedure are informed of decisions to conclude a framework agreement or to award a contract or to abandon the procedure within time limits that are sufficiently short so as not to render the introduction of requests for review impossible; this information should therefore be given as swiftly as possible and in general within 15 days following the decision.
- (44) Certain technical conditions, and in particular those concerning notices and statistical reports, as well as the nomenclature used and the conditions of reference to that nomenclature will need to be adopted and amended in the light of changing technical requirements. The lists of contracting entities mentioned in the annexes will also need to be updated. It is, therefore, appropriate to put in place a flexible and rapid adoption procedure for this purpose. In accordance with Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission³², the measures necessary for implementation of this Directive should be taken in accordance with the advisory procedure in Article 3 of the Decision.
- (45) In order to favour the access of small and medium-sized undertakings to the public procurement market, it is advisable to include provisions on sub-contracting.
- (46) This Directive should be without prejudice to the existing international obligations of the Community or of the Member States and should not prejudice the application of the provisions of the Treaty, in particular Articles 81 and 86 thereof.
- (47) This Directive should not prejudice the time-limits set out in Annex XXIII, within which Member States are required to transpose and apply Directive 93/38/EEC,

³² OJ L 184, 17.7.1999, p. 23.

HAVE ADOPTED THIS DIRECTIVE:

TITLE I
GENERAL PROVISIONS APPLICABLE TO CONTRACTS AND DESIGN CONTESTS

CHAPTER I
DEFINITIONS

Article 1
Definitions

1. For the purposes of this Directive, the definitions set out in paragraphs 2 to 9 shall apply.
2. (a) "Supply, works and service contracts" means contracts for pecuniary interest concluded in writing between one or more of the contracting entities referred to in Article 2(2), and one or more contractors, suppliers, or service providers.

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

(c) "supply contracts" means contracts other than those referred to in (b) above having as their object the purchase, lease, rental or hire-purchase of products, with or without the option to buy.

A contract having as its object the delivery of products and which also incidentally covers siting and installation operations shall be deemed to be a "supply contract";

- (d) "service contracts" means public contracts other than works or supply contracts having as their object the provision of services referred to in Annex XVI.

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

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

3. (a) "Works concession" means a contract of the same type as a works contract except for the fact that the consideration for the works to be carried out consists either in the sole right to exploit the work or in that right together with payment.

(b) "Service concession" means a contract of the same type as a public service contract except for the fact that the consideration for the provision of services consists either in the sole right to exploit the service or in that right together with payment.

4. "Framework agreement" is an agreement between one or more contracting entities referred to in Article 2(2) and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantities envisaged .
- 4a. A "dynamic purchasing system" is a completely electronic process for making common purchases, the characteristics of which as generally available on the market meet the requirements of the contracting entity, limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification.
- 4b. An "electronic auction" is a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders enabling them to be ranked using automatic evaluation methods.
5. "Contractor", "supplier" or "service provider" means either a natural or legal person, or a contracting entity within the meaning of Article 2(2)(a) or (b), or a group of such persons and/or entities which offers on the market, respectively, products, services or the execution of works and/or projects .

"Economic operator" as used in this Directive shall cover equally the concepts of contractor, supplier and service provider. It is used merely in the interests of simplification.

"Tenderer" means an economic operator who submits a tender, and "candidate" means one who has sought an invitation to take part in a restricted or negotiated procedure.

- 5a. A "central purchasing body" is a contracting authority within the meaning of Article 2(1)(a) or a contracting authority within the meaning of Article 1(7) of Directive 2002/000/EC [on coordination of procedures for the award of public contracts, public services contracts and public works contracts] which:
- acquires supplies and/or services intended for contracting entities or
 - awards public contracts or concludes framework agreements for works, supplies or services intended for contracting entities.
6. "Open, restricted and negotiated procedures" means the procurement procedures applied by contracting entities, whereby:
- (a) in the case of open procedures, any economic operator may submit a tender;
 - (b) in the case of restricted procedures, any economic operator may request to participate and only candidates invited by the contracting entity may submit a tender;
 - (c) in the case of negotiated procedures, the contracting entity consults the economic operators of its choice and negotiates the terms of the contract with one or more of these.

- (d) "Design contests" means those procedures which enable the contracting entity to acquire, mainly in the fields of town and country planning, architecture, engineering or data processing, a plan or design selected by a jury after having been put out to competition with or without the award of prizes.
7. "(In) writing" means any combination of words or figures that can be read, reproduced and subsequently communicated. Such combination may include information transmitted and stored by electronic means.
8. "Electronic means" means the use of electronic equipment for the processing (including digital compression) and storage of data transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.
9. "Common Procurement Vocabulary (CPV)" means the reference nomenclature applicable to public contracts as adopted by Regulation .../..., while ensuring equivalence with the other existing nomenclatures.

Should there be differences of interpretation as to the scope of this Directive, owing to inconsistencies between the CPV and NACE nomenclatures listed in Annex XI or between the CPV and CPC (provisional version) nomenclatures listed in Annex XVI, the NACE and CPC nomenclatures shall be the ones applicable in the respective cases.

CHAPTER II

SCOPE: DEFINITION OF THE ACTIVITIES AND ENTITIES COVERED

Section 1 *Entities covered*

Article 2 *Contracting entities*

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

"A body governed by public law" shall be understood to mean any body which:

- is established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character,
 - has legal personality, and
 - is financed for the most part by the State, or regional or local authorities, or other bodies governed by public law, or is subject to management supervision by those bodies, or has an administrative, managerial or supervisory board more than half of whose members are appointed by the State, regional or local authorities, or other bodies governed by public law;
- (b) "public undertaking" means any undertaking over which the contracting authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it.

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

- hold the majority of the undertaking's subscribed capital, or
 - control the majority of the votes attaching to shares issued by the undertaking, or
 - can appoint more than half of the undertaking's administrative, management or supervisory body.
2. This Directive shall apply to contracting entities:
 - (a) which are contracting authorities or public undertakings and which pursue one of the activities referred to in Articles 3 to 6;

- (b) which, when they are not contracting authorities or public undertakings, have as one of their activities any of the activities referred to in Articles 3 to 6, or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of a Member State.
3. For the purposes of this Directive, special or exclusive rights mean rights which arise from a grant made by the competent authorities of a Member State by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of activities defined in Articles 3 to 6 to one or more entities, and which substantially affects the ability of other entities to carry out such activity³³.

Section 2
Activities referred to

Article 3
Provisions relating to gas, heat and electricity

1. As far as gas and heat are concerned, this Directive shall apply to the following activities:
- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat; or
 - (b) the supply of gas or heat to such networks.
2. The supply of gas or heat to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where:
- (a) the production of gas or heat by the entity concerned is the unavoidable consequence of carrying on an activity other than those referred to in paragraphs 1 or 3 of this Article or in Articles 4, 5 and 6; and
 - (b) supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20% of the entity's turnover having regard to the average for the preceding three years, including the current year.
3. As far as electricity is concerned, this Directive shall apply to the following activities:
- (a) the provision or operation of fixed networks serving to provide a service to the public in connection with the production, transport or distribution of electricity; or
 - (b) the supply of electricity to such networks.

³³ The D delegation favours established law and has entered a reservation. Reservation by the GR delegation supporting the D request or, alternatively, its own suggestion presented in a room document in the Working Party meeting on 18 September 2002.

4. The supply of electricity to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 3 where:
 - (a) the production of electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in paragraphs 1 or 3 of this Article or in Articles 4, 5 and 6; and
 - (b) supply to the public network depends only on the entity's own consumption and has not exceeded 30% of the entity's total production of energy, having regard to the average for the preceding three years, including the current year.

Article 4
Provisions relating to water

1. This Directive shall apply to the following activities:
 - (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water; or
 - (b) the supply of drinking water to such networks.
2. This Directive shall also apply to contracts or design contests awarded or organised by entities which pursue an activity referred to in paragraph 1 and which:
 - (a) are connected with hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20% of the total volume of water made available by such projects or irrigation or drainage installations, or
 - (b) are connected with the disposal or treatment of sewage.
3. The supply of drinking water to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where:
 - (a) the production of drinking water by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in Articles 3, 4, 5 and 6; and
 - (b) supply to the public network depends only on the entity's own consumption and has not exceeded 30% of the entity's total production of drinking water, having regard to the average for the last three years, including the current year.

Article 5
Provisions relating to transport services

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

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

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

Article 5a
Provisions relating to postal services

1. This Directive shall apply to activities relating to the provision of reserved postal services, other postal services or, on the conditions set out in paragraph 2(d), ancillary postal services.
2. For the purpose of this Directive and without prejudice to Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service³⁴, as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services³⁵;
 - (a) "postal item" means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight;
 - (b) "reserved postal services" means services consisting of the clearance sorting transport and delivery of postal items which are or may be reserved on the basis of Article 7 of Directive 97/67/EC;

³⁴ OJ L 15, 21.1.1998, p. 14

³⁵ OJ L

- (c) "other postal services" means services other than those listed in (b) consisting of the clearance, sorting, transport and delivery of postal items³⁶; and
- (d) "ancillary postal services" means services provided in the following areas:
- mail service management services (services both preceding and subsequent to despatch, such as "mailroom management services");
 - added-value services linked to and provided entirely by electronic means (including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail);
 - services concerning postal items not included in point (a) above, such as direct mail bearing no address;
 - financial services, as defined in category 6 of Annex XVI A and in Article 24 (c) and including in particular postal money orders and postal giro transfers; [...]
 - philatelic services; and
 - logistics services (services combining physical delivery and/or warehousing with other non-postal functions),

where such services are provided by an entity which also provides postal services within the meaning of (b) or (c) and the conditions provided for in Article 29 (1) are not satisfied in respect of the services falling within those subparagraphs.

Article 6

Provisions relating to the exploration for, or extraction of, oil, gas, coal or other solid fuels, as well as ports and airports

This Directive shall apply to activities seeking to exploit a geographical area for the purpose of:

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

³⁶ Reservation by the F delegation which had tabled the following proposal at Coreper on 11 September and the Working Party meeting on 18 September 2002:

Para 2 (c):

“Other postal services” means services other than those listed in (b) consisting of the clearance, sorting, transport and delivery of postal items, where such services are provided by an entity which also provides postal services within the meaning of (b) unless article 29(1) is satisfied in respect of the services falling within this subparagraph.

Article 7
Lists of contracting entities

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

Article 8
Contracts covering several activities

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

However, the choice between awarding a single contract and awarding a number of separate contracts may not be carried out with the objective of excluding it from the scope of this Directive or, where applicable, Directive 200.../EC on the coordination of the procedures for the award of public works contracts, public supply contracts and public service contracts.

2. If one of the activities for which the contract is intended is subject to this Directive and the other to Directive /.../EC [on the coordination of the procedures for the award of public works contracts, public supply contracts and public service contracts], and if it is objectively impossible to determine which activity the contract is principally intended for, the contract shall be awarded in accordance with Directive /.../EC [on the coordination of the procedures for the award of public works contracts, public supply contracts and public service contracts].
3. If one of the activities for which the contract is intended is subject to this Directive and the other is not subject to either this Directive or Directive /.../EC [on the coordination of the procedures for the award of public works contracts, public supply contracts and public service contracts], and if it is objectively impossible to determine which activity the contract is principally intended for, the contract shall be awarded in accordance with this Directive.

CHAPTER III
GENERAL PRINCIPLES

Article 9

Principles of awarding contracts

Contracting entities shall treat economic operators equally, without discrimination and shall act in a transparent manner.

TITLE II
RULES APPLICABLE TO CONTRACTS

CHAPTER I
GENERAL PROVISIONS

Article 10

Economic operators

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

However, for service and works contracts as well as supply contracts also comprising services and/or siting and installation operations, legal persons may be required to indicate, in the tender or the request for participation, the names and relevant professional qualifications of the staff to be responsible for the performance of the service concerned.

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

Article 11

Conditions relating to Agreements concluded within the World Trade Organisation

For the purposes of the award of contracts by contracting entities, Member States shall apply in their relations conditions as favourable as those which they grant to economic operators of third countries in implementation of the Agreement on government procurement, concluded in the framework of the Uruguay Round multilateral negotiations, hereinafter referred to as "the Agreement". The Member States shall to this end consult each other within the Advisory Committee for Public Contracts on the measures to be taken pursuant to the Agreement.

Article 12

Confidentiality

1. During the phase for the provision of technical specifications to interested economic operators, and during the phase for the qualification and selection of economic operators and for the award of contracts, contracting entities may impose requirements with a view to protecting the confidential nature of information which they make available.
2. This Directive shall not limit the right of economic operators to require a contracting entity, in accordance with the national law to which it is subject, to respect the confidential nature of information which they make available; such information may include, in particular, technical or trade secrets and the confidential aspects of tenders.

Article 13

Framework agreements

1. Contracting entities may regard a framework agreement as a contract within the meaning of Article 1(2) and award it in accordance with this Directive.
2. Where contracting entities have awarded a framework agreement in accordance with this Directive, they may avail themselves of point (i) of Article 39(3) when awarding contracts based on that framework agreement.
3. Where a framework agreement has not been awarded in accordance with this Directive, contracting entities may not avail themselves of point (i) of Article 39(3).
4. Contracting entities may not misuse framework agreements in order to hinder, limit or distort competition.

Article 13a

Dynamic purchasing systems

1. Member States may stipulate that contracting entities may use dynamic purchasing systems.
2. In order to set up a dynamic purchasing system, contracting entities shall follow the rules of the procedure opened in all its phases up to the award of the contracts to be concluded under this system. All the tenderers satisfying the selection criteria and having submitted an indicative tender which complies with the specification and any additional documents shall be admitted to the system; indicative tenders may be improved at any time provided that they continue to comply with the specification. With a view to setting up the system and to the award of contracts under that system, contracting entities shall use solely electronic means in accordance with Article 47(2) to (5).
3. For the purposes of setting up the dynamic purchasing system, contracting entities shall:
 - (a) publish a contract notice making it clear that a dynamic purchasing system is involved;
 - (b) indicate in the specification, inter alia, the nature of the purchases envisaged under that system, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications;
 - (c) offer by electronic means, on publication of the notice and up to the expiry of the system, free, direct and full access to the specification and to any additional document and shall indicate in the notice the internet address at which such documents may be consulted.
4. Contracting entities shall give any economic operator, throughout the entire period of the dynamic purchasing system, the possibility of submitting an indicative tender and of being admitted to the system under the conditions referred to in the first subparagraph of paragraph 2. They shall complete evaluation within a maximum of 15 days from the date of submission of the indicative tender. However, they may extend evaluation provided that no invitation to tender is issued in the meantime.

The contracting entity shall inform the tenderer referred to in the first subparagraph at the earliest possible opportunity of its admittance to the dynamic purchasing system or of the rejection of its indicative tender.

5. Each specific contract must be the subject of an invitation to tender. Before issuing the invitation to tender, contracting entities shall publish a simplified contract notice inviting all interested economic operators to submit an indicative tender, in accordance with paragraph 4, within a time limit that may not be less than 15 days from the date on which the simplified notice was sent. Contracting entities may not proceed with tendering until they have completed evaluation of all the indicative tenders received by that deadline.

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

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

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

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

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

CHAPTER II

SCOPE: THRESHOLDS AND EXCLUSION PROVISIONS

Section 1: Thresholds

Article 15

Contract thresholds

Save where they are ruled out by the exclusions in Articles 20 to 27 or by a decision pursuant to Article 29 concerning the pursuit of the activity in question, this Directive shall apply to contracts which have a value excluding value-added tax (VAT) estimated to be no less than the following thresholds:

- (a) EUR 499 000 in the case of supply and service contracts;
- (b) EUR 6 242 000 in the case of works contracts.

Article 16

Methods of calculating the estimated value of contracts, framework agreements and dynamic systems

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

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

2. Contracting entities may not circumvent this Directive by splitting works projects or proposed purchases of a certain quantity of supplies and/or services or by using special methods for calculating the value of contracts
3. With regard to framework agreements and dynamic purchasing systems, the value to be taken into consideration shall be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the agreement or system.
4. For the purposes of Article 15, contracting entities shall include in the estimated value of a works contract both the cost of the works and the value of any supplies or services necessary for the execution of the works which they make available to the contractor.
5. The value of supplies or services which are not necessary for the execution of a particular works contract may not be added to that of the works contract when doing so would result in removing the procurement of those supplies or services from the scope of this Directive.
6. (a) Where a proposed work or purchase of services may result in contracts being awarded at the same time in the form of separate lots, account must be taken of the total estimated value of all such lots.

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 15, the Directive shall apply to the awarding of each lot.

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

- (b) Where a proposal for the acquisition of similar supplies may result in contracts being awarded at the same time in the form of separate lots, account must be taken of the total estimated value of all such lots when applying Article 15.

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 15, the Directive shall apply to the awarding of each lot.

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

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

- (a) either the total actual value of the successive contracts of the same type awarded during the preceding twelve months or financial year, if possible adjusted to take account of the changes in quantity or value which would occur in the course of the twelve months following the initial contract;
 - (b) or the total estimated value of the successive contracts awarded during the twelve months following the first delivery, or during the financial year if that is longer than twelve months.
8. The basis for calculating the estimated value of a contract including both supplies and services shall be the total value of the supplies and services, regardless of their respective shares. The calculation shall include the value of the siting and installation operations.
9. With regard to supply contracts relating to the leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:
 - (a) in the case of fixed-term contracts, if that term is less than or equal to twelve months, the total estimated value for the term of the contract or, if the term of the contract is greater than twelve months, the total value including the estimated residual value;
 - (b) in the case of contracts without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.
10. For the purposes of calculating the estimated contract value of service contracts, the following amounts shall, where appropriate, be taken into account:
 - (a) the premium payable, and other forms of remuneration, in the case of insurance services;
 - (b) fees, commissions, interest and other modes of remuneration, in the case of banking and other financial services;
 - (c) fees, commissions and other forms of remuneration, in the case of contracts involving design tasks.
11. In the case of service contracts which do not indicate a total cost, the value to be used as the basis for calculating the estimated contract value shall be:
 - (a) in the case of fixed-term contracts, if that term is less than or equal to forty-eight months: the total value for their full term;
 - (b) in the case of contracts without a fixed term or with a term greater than forty-eight months: the monthly value multiplied by 48.

Section 2

Contracts and concessions and contracts subject to special arrangements

Subsection 1

Article 19a

Works and service concessions

This Directive shall not apply to works and service concessions as defined in Article 1(3) which are awarded by contracting entities exercising one or more of the activities referred to in Articles 3 to 6, where those concessions are awarded for carrying out those activities.

Subsection 2

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

Article 20

Contracts awarded for purposes of resale or lease to third parties

1. This Directive shall not apply to contracts awarded for purposes of resale or lease to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or lease the subject of such contracts, and other entities are free to sell or lease it under the same conditions as the contracting entity.
2. The contracting entities shall notify the Commission at its request of all the categories of products or activities which they regard as excluded under paragraph 1. The Commission may periodically publish, for information purposes, lists of the categories of products and activities which it considers to be covered by this exclusion in the Official Journal of the European Communities. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding information.

Article 21

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

1. This Directive shall not apply to contracts which the contracting entities award for purposes other than the pursuit of their activities as described in Articles 3 to 6 or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Community.

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

Article 22

Contracts which are secret or require particular security measures

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

Article 23

Contracts awarded pursuant to international rules

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

- (a) pursuant to an international agreement concluded in accordance with the Treaty between a Member State and one or more third countries and covering supplies, works, services or design contests intended for the joint implementation or exploitation of a project³⁷ by the signatory States; every agreement shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts ;
- (b) to undertakings in a Member State or a third country pursuant to an international agreement relating to the stationing of troops;
- (c) pursuant to the particular procedure of an international organisation.

Article 23 a³⁸

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

1. For the purposes of this Article, "affiliated undertaking" means any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the Seventh Council Directive 83/349/EEC³⁹, or, in the case of entities not subject to that Directive, any undertaking over which the contracting entity may

³⁷ The German text should read here "gemeinsam zu verwirklichendes oder zu nutzendes Vorhaben".

³⁸ The Commission entered a reservation concerning the extension to supplies and works.

³⁹ OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 90/605/EEC (OJ L 317, 16.11.1990, p. 60).

exercise, directly or indirectly, a dominant influence within the meaning of Article 2(1)(b) or which may exercise a dominant influence over the contracting entity or which, in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.

2. On the conditions provided for in paragraph 3, this Directive shall not apply to contracts awarded:

- (a) by a contracting entity to an affiliated undertaking, or
- (b) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying on activities within the meaning of Articles 3 to 6, to an undertaking which is affiliated with one of these contracting entities;

3. Paragraph 2 is applicable:

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

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

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

4. This Directive shall not apply to contracts awarded:

- (a) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying on activities within the meaning of Articles 3 to 6, to one of these contracting entities, or
- (b) by a contracting entity to such a joint venture of which it forms part,

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

5. The contracting entities shall notify to the Commission, at its request, the following information regarding the application of the provisions of paragraphs 2, 3 and 4
- (a) the names of the undertakings or joint ventures concerned,
 - (b) the nature and value of the contracts involved,
 - (c) such proof as may be deemed necessary by the Commission that the relationship between the undertaking or joint venture to which the contracts are awarded and the contracting entity complies with the requirements of this Article.

Subsection 3

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

Article 24

Contracts relating to certain services excluded from the scope

This Directive shall not apply to service contracts for:

- (a) the acquisition or rental, by whatever means, of land, existing buildings or other immovable property or concerning rights thereon; nevertheless, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;
- (b) arbitration and conciliation services;
- (c) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions by the contracting entities to raise money or capital;⁴⁰
- (d) employment contracts;
- (e) research and development service contracts other than those where the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting entity.

⁴⁰ Reservation on 24 lit. (c) by the Commission.

Article 25

Service contracts awarded on the basis of an exclusive right

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

[...]⁴¹

Subsection 4

Exclusions applicable to certain contracting entities only

Article 27

Contracts awarded by certain contracting entities for the purchase of water and for the supply of energy or of fuels for the production of energy

This Directive shall not apply

- (a) to contracts for the purchase of water if awarded by contracting entities engaged in the activity referred to in Article 4.
- (b) to contracts for the supply of energy or of fuels for the production of energy, if awarded by contracting entities engaged in an activity referred to in Article 3(1), Article 3(3) or Article 6(a).

Subsection 5

Contracts subject to special arrangements, provisions concerning central purchasing bodies and the general mechanism

Article 28

*Contracts subject to special arrangements*⁴²

Without prejudice to Article 29 the Kingdom of the Netherlands, the United Kingdom and the Republic of Austria shall ensure, by way of the conditions of authorisation or other appropriate measures, that any entity operating in the sectors mentioned in Decisions 93/676/EEC, 97/367/EEC and 2002/205/EC:

⁴¹ Former Article 26 has been moved to subsection 2 and has become Article 23 (a)

⁴² This Article will have to be supplemented after the decision concerning Germany will have been adopted.

- (a) observes the principles of non-discrimination and competitive procurement in respect of the award of supplies, works and service contracts, in particular as regards the information which the entity makes available to economic operators concerning its procurement intentions;
- (b) communicates to the Commission, under the conditions defined in Commission Decision 93/327/EEC⁴³, information relating to the award of contracts.

Article 28a

Reserved contracts

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

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

Article 28b

Contracts and framework agreements awarded by central purchasing bodies

1. Member States may stipulate that contracting entities may purchase works, supplies and/or services from or through a central purchasing body.
2. Contracting entities which purchase works, supplies and/or services from or through a central purchasing body in the cases set out in Article 1(5a) shall be deemed to have complied with the provisions of this Directive insofar as the central purchasing body has complied with them or, where appropriate, with the provisions of Directive 2002/.../EC of the European Parliament and of the Council of ... [title of the works Directive, etc.]

Article 29

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

1. Contracts intended to permit the performance of an activity mentioned in Articles 3 to 6 shall not be subject to this Directive if, in the Member State in which the activity is performed, it is directly exposed to competition on markets to which access is not restricted.
2. For the purposes of paragraph 1, the question of whether an activity is directly exposed to competition shall be decided on the basis of criteria, which are in conformity with the Treaty provisions on competition, such as the characteristics of the goods or services concerned, the existence of alternative goods or services, prices and the actual or potential presence of more than one supplier of the goods or services in question.

⁴³ OJ L 129, 27.5.1993, p. 25.

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

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

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

Contracts intended to permit the performance of the given activity are no longer subject to the present Directive:

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

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

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

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

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

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

6. For the adoption of a decision under this Article, in accordance with the procedure under Article 65(2), the Commission shall be allowed a period of three months commencing on the first working day following the date on which it receives the notification or the request. However, this deadline may be extended once by a maximum of three months in duly justified cases, in particular if the information contained in the notification or the request or in the documents annexed thereto is incomplete or inexact or if the facts as reported undergo any substantive changes. This extension is limited to one month where an independent national authority that is competent in the activity concerned has established the applicability of paragraph 1 in the cases provided for under paragraph 4, third indent.

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

The Commission shall adopt detailed rules for applying paragraphs 4, 5 and 6 in accordance with the procedure under Article 65(2).

These rules shall at least include:

- (a) The publication in the Official Journal, for information, of the date on which the three-month period referred to in the first subparagraph begins, and, in case this period is prolonged, the date of prolongation and the period by which it is prolonged;
- (b) publication of the possible applicability of paragraph 1 in accordance with the second or third subparagraph of paragraph 4 or in accordance with the fourth subparagraph of paragraph 5, and
- (c) the arrangements for forwarding positions adopted by an independent authority that is competent in the activity concerned, regarding questions relevant to paragraphs 1 and 2.

CHAPTER III

ARRANGEMENTS APPLICABLE TO SERVICE CONTRACTS

Article 30

Service contracts included in Annex XVI A

Contracts which have as their subject-matter services listed in Annex XVI A shall be awarded in accordance with the provisions of Articles 34 to 57.

Article 31

Service contracts listed in Annex XVI B

Contracts which have as their subject-matter services listed in Annex XVI B shall be governed only by Articles 34 and 42.

Article 32

Mixed service contracts listed in Annex XVI A and in Annex XVI B

Contracts which have as their subject-matter services listed both in Annex XVI A and in Annex XVI B shall be awarded in accordance with the provisions of Articles 34 to 57 where the value of the services listed in Annex XVI A is greater than the value of the services listed in Annex XVI B. In other cases, contracts shall be awarded in accordance with Articles 34 and 42.

CHAPTER IV

SPECIFIC RULES GOVERNING SPECIFICATIONS AND CONTRACT DOCUMENTS

Article 34

Technical specifications

1. The technical specifications as defined in point 1 of Annex XX shall be set out in the contract documents, such as the contract notices, the set of specifications or the supplementary documents.
2. The technical specifications shall afford equal access to tenderers and shall not have the effect of creating unjustified obstacles to the opening of public procurement to competition.
3. Without prejudice to the legally binding technical rules, insofar as they are compatible with Community law, the technical specifications shall be formulated:
 - (a) either with reference to specifications defined in Annex XX in order of preference to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or, when these do not exist, national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and implementation of the products. Each reference shall be accompanied by the words "or equivalent";
 - (b) or in terms of performance or functional requirements; the latter may include environmental characteristics. They must, however be sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting entities to award the contract;
 - (c) or in terms of performance or functional requirements as defined in subparagraph (b), with reference to the specifications mentioned in subparagraph (a) as a means of presuming conformity with such requirements or performance;
 - (d) or by referring to the specifications mentioned in subparagraph (a) for certain characteristics, and by referring to the functional performance or requirements mentioned in subparagraph (b) for other characteristics.

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

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

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

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

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

- 5a** Where contracting entities lay down environmental characteristics in terms of performance or functional requirements as referred to in paragraph 3(b) they may use detailed specifications, or, if necessary, parts thereof, as defined by European or (multi-) national eco-labels, or by any other eco-label, providing that :

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

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

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

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

7. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or to a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject matter of the contract pursuant to paragraphs 3 and 4 is not possible; such reference shall be accompanied by the words "or equivalent".

Article 35

Communication of technical specifications

1. Contracting entities shall make available on request to economic operators interested in obtaining a contract, and who so request, the technical specifications regularly referred to in their supply, works or service contracts, or the technical specifications which they intend to apply to contracts covered by periodic indicative notices within the meaning of Article 40(1).
2. Where the technical specifications are based on documents available to interested economic operators, the inclusion of a reference to those documents shall be sufficient.

Article 36

Variants

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

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

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

Article 37

Subcontracting

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

Article 37a

Conditions for performance of contracts

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

Article 38

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

1. The contracting entity may state in the contract documents, or be obliged by a Member State to do so, the body or bodies from which a candidate or tenderer may obtain the relevant information on the obligations relating to taxes, environmental protection, the employment protection provisions and the working conditions which are in force in the Member State, region or locality in which the services are to be provided and which are to be applicable to the works carried out or the services provided on site during performance of the contract.
2. A contracting entity which supplies the information referred to in paragraph 1 shall request the tenderers or candidates in the contract procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to safety at work and working conditions which are in force in the place where the service is to be provided.

The first subparagraph shall be without prejudice to the application of Article 55 concerning the examination of abnormally low tenders.

CHAPTER V

PROCEDURES

Article 39

Use of open, restricted and negotiated procedures

1. When awarding supply, works or service contracts, contracting entities shall apply the procedures adjusted for the purposes of this Directive.
2. Contracting entities may choose any of the procedures described in Article 1(6)(a), (b) or (c), provided that, subject to paragraph 3, a call for competition has been made in accordance with Article 41.
3. Contracting entities may use a procedure without prior call for competition in the following cases:
 - (a) when no tenders or no suitable tenders or no applications have been submitted in response to a procedure with a prior call for competition, provided that the initial conditions of contract are not substantially altered;
 - (b) where a contract is purely for the purpose of research, experiment, study or development, and not for the purpose of securing a profit or of recovering research and development costs, and in so far as the award of such contract does not prejudice the competitive award of subsequent contracts which do seek, in particular, those ends;
 - (c) when, for special technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the performance of the contract can be entrusted only to a particular economic operator;
 - (d) when in so far as is strictly necessary, for reasons of extreme urgency brought about by events unforeseeable by the contracting entities, the time-limits laid down for open and restricted procedures cannot be adhered to;
 - (e) in the case of supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting entity to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;
 - (f) for additional works or services not included in the project initially awarded or in the contract first concluded but which have, through unforeseen circumstances, become necessary to the performance of the contract, on condition that the award is made to the contractor or service provider executing the original contract:

- when such additional works or services cannot be technically or economically separated from the main contract without great inconvenience to the contracting entities; or
 - when such additional works or services, although separable from the performance of the original contract, are strictly necessary to its later stages;
- (g) in the case of works contracts, for new works consisting in the repetition of similar works assigned to the contractor to which the same contracting entities awarded an earlier contract, provided that such works conform to a basic project for which a first contract was awarded after a call for competition: as soon as the first project is put up for tender, notice must be given that this procedure may be adopted and the total estimated cost of subsequent works shall be taken into consideration by the contracting entities when they apply the provisions of Articles 15 and 16;
- (h) for supplies quoted and purchased on a commodity market;
- (i) for contracts to be awarded on the basis of a framework agreement, provided that the condition referred to in Article 13(2) is fulfilled;
- (j) for bargain purchases, where it is possible to procure supplies by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices;
- (k) for purchases of supplies under particularly advantageous conditions from either a supplier definitively winding up his business or the receivers or liquidators of a bankruptcy, an arrangement with creditors or a similar procedure under national laws or regulations;
- (l) when the service contract concerned is part of the follow-up to a design contest organised in accordance with the provisions of this Directive and must, in accordance with the relevant rules, be awarded to the winner or to one of the winners of that contest: in this latter case, all the winners shall be invited to participate in the negotiations.

CHAPTER VI
Rules on publication and transparency

SECTION 1
PUBLICATION OF NOTICES

Article 40

Periodic indicative notices and notices on the existence of a system of qualification

1. Contracting entities shall make known, at least once a year, by means of a periodic indicative notice as referred to in Annex XIV A, published by the Commission or by themselves on their "buyer profile", as described in Annex XIX, paragraph 2(b):
 - (a) where supplies are concerned, the estimated total value of the contracts or the framework agreements by product area which they intend to award over the following twelve months, where the total estimated value, taking into account the provisions of Articles 15 and 16, is equal to or greater than EUR 750 000.

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

- (b) where services are concerned, the estimated total value of the contracts or the framework agreements in each of the categories of services listed in Annex XVI A which they intend to award over the following twelve months, where such estimated total value, taking into account the provisions of Articles 15 and 16, is equal to or greater than EUR 750 000;
 - (c) where works are concerned, the essential characteristics of the works contracts or the framework agreements which they intend to award over the 12 coming months, whose estimated value is equal to or greater than the threshold specified in Article 15, taking into account the provisions of Article 16.

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

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

Contracting entities who publish the periodic indicative notice on their buyer profiles shall send the Commission, electronically, a notice of the publication of the periodic indicative notice on a buyer profile, in accordance with the format and modalities for sending notices indicated in Annex XIX, paragraph 3.

The publication of the notices referred to in (a), (b) and (c) shall be compulsory only where the contracting entities take the option of shortening the time-limits for the receipt of tenders as laid down in Article 44(4).

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

2. Contracting entities may, in particular, publish or arrange for the Commission to publish periodic indicative notices relating to major projects without repeating information previously included in a periodic indicative notice, provided that it is clearly pointed out that these notices are additional ones.
3. Where contracting entities choose to set up a qualification system in accordance with Article 52, the system shall be the subject of a notice as referred to in Annex XIII, indicating the purpose of the qualification system and how to have access to the rules concerning its operation. Where the system is of a duration greater than three years, the notice shall be published annually. Where the system is of a shorter duration, an initial notice shall suffice.

Article 41

Notices used as a means of calling for competition

1. In the case of supply, works or service contracts, the call for competition may be made:
 - (a) by means of a periodic indicative notice as referred to in Annex XIV A or
 - (b) by means of a notice on the existence of a qualification system as referred to in Annex XIII; or
 - (c) by means of a contract notice as referred to in Annex XII A, B or C.
- 1a. In the case of dynamic purchasing systems, the system's call for competition shall be by contract notice as referred to in paragraph 1(c), whereas calls for competition for contracts based on such systems shall be by simplified contract notice as referred to in Annex XII,D.
2. When a call for competition is made by means of a periodic indicative notice, the notice shall:
 - (a) refer specifically to the supplies, works or services which will be the subject of the contract to be awarded;
 - (b) indicate that the contract will be awarded by restricted or negotiated procedure without further publication of a notice of a call for competition and invite interested economic operators to express their interest in writing; and
 - (c) have been published in accordance with Annex XIX not more than 12 months prior to the date on which the invitation referred to in Article 46(3) is sent. Moreover, the contracting entity shall meet the deadlines laid down in Article 44.

Article 42

Contract award notices

1. Contracting entities which have awarded a public contract or a framework agreement shall, within two months of the award of the contract or framework agreement, send a notice on contracts awarded as referred to in Annex XV under conditions to be laid down by the Commission in accordance with the procedure referred to in Article 65(2).

In the case of contracts awarded under a framework agreement within the meaning of Article 13(2), the contracting entities shall not be bound to send a notice of the results of the award procedure for each contract based on that agreement.

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

2. The information supplied in accordance with Annex XV and intended for publication shall be published in accordance with Annex XIX. In this connection, the Commission shall respect any sensitive commercial aspects which the contracting entities may point out when forwarding this information, concerning the number of tenders received, the identity of economic operators, or prices.
3. Where contracting entities award a research-and-development ("R&D") service contract by way of a procedure without a call for competition in accordance with Article 39(3)(b), they may limit the information to be provided in accordance with Annex XV concerning the nature and quantity of the services provided, to the reference "research and development services".

Where contracting entities award an R&D contract which cannot be awarded by way of a procedure without a call for competition in accordance with Article 39(3)(b), they may, on grounds of commercial confidentiality, limit the information to be provided in accordance with Annex XV concerning the nature and quantity of the services supplied.

In such cases, contracting entities shall ensure that any information published under this point is no less detailed than that contained in the notice of the call for competition published in accordance with Article 41(1).

If they use a qualification system, contracting entities shall ensure in such cases that such information is no less detailed than the category referred to in the list of qualified service providers drawn up in accordance with Article 52(4).

4. In the case of contracts awarded for services listed in Annex XVI B, the contracting entities shall indicate in the notice whether they agree to publication.
5. Information provided in accordance with Annex XV and marked as not being intended for publication shall be published only in simplified form and in accordance with Annex XIX for statistical purposes.

Article 43
Form and manner of publication of notices

1. The notices shall include the information mentioned in Annexes XII, XIII, XIV A , XIV B and XV and, where appropriate, any other information deemed useful by the contracting entity in the format of standard forms adopted by the Commission in accordance with the procedure referred to in Article 65(2).
2. Notices sent by contracting entities to the Commission shall be sent either by electronic means in accordance with the format and modalities of transmission indicated in Annex XIX, paragraph 3, or by other means.

The notices referred to in Articles 40, 41 and 42 shall be published in accordance with the technical characteristics for publication set out in Annex XIX, paragraph 1(a) and (b).

3. Notices drawn up and transmitted by electronic means in accordance with the format and modalities of transmission indicated in Annex XIX, paragraph 3, shall be published not later than five days after they are sent.

Notices which are not transmitted by electronic means in accordance with the format and modalities of transmission indicated in Annex XIX, paragraph 3, shall be published not later than 12 days after they are sent. However, in exceptional cases, the contract notices referred to in Article 41(1)(c) shall be published within five days in response to a request by the contracting entity, provided that the notice has been sent by fax .

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

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

5. Notices and their contents shall not be made public before the date on which they are sent to the Commission.

Notices published at national level shall not contain information other than that contained in the notices dispatched to the Commission or published on a buyer profile in accordance with the first subparagraph of Article 40(1), but shall mention the date of dispatch of the notice to the Commission or its publication on the buyer profile.

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

6. Contracting entities shall be able to prove the date of dispatch of notices.

6. The Commission shall give the contracting entity confirmation of the publication of the information sent, mentioning the date of that publication. Such confirmation shall constitute proof of publication.
8. Contracting entities may publish in accordance with paragraphs 1 to 7 contract notices which are not subject to the publication requirement laid down in this Directive.

SECTION 2

TIME-LIMITS

Article 44

Time limits for receipt of requests to participate and for receipt of tenders

1. When fixing the time-limits for the receipt of tenders and requests to participate, entities shall take particular account of the complexity of the contract and the time required for drawing-up tenders, without prejudice to the minimum time-limits set by this Article.
2. In the case of open procedures, the minimum time-limit for receipt of tenders shall be 52 days from the date on which the contract notice was sent.
3. In restricted procedures and in negotiated procedures with a prior call for competition, the following arrangements shall apply:
 - (a) the time-limit for the receipt of requests to participate, in response to a notice published under Article 41(1)(c), or in response to an invitation by the contracting entities under Article 46(3), shall, as a general rule, be fixed at no less than 37 days from the date on which the notice or invitation was sent and may in no case be less than 22 days if the notice is sent for publication by means other than electronic means or fax, and at 15 days if the notice is sent by such means;
 - (b) the time-limit for receipt of tenders may be set by mutual agreement between the contracting entity and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders;
 - (c) where it is not possible to reach agreement on the time-limit for receipt of tenders, the contracting entity shall fix a time-limit which shall, as a general rule, be at least 24 days and which shall in no case be less than ten days from the date of the invitation to tender.
4. If the contracting entities have published a periodic indicative notice as referred to in Article 40(1) in accordance with Annex XIX, the minimum time-limit for receipt of tenders in open procedures shall, as a general rule, not be less than 36 days, but shall in no case be less than 22 days from the date on which the notice was sent.

These shortened time-limits are permitted, provided that the periodic indicative notice has, besides the information required by Annex XIV A, part I, included all the information required by Annex XIV A, part II, insofar as the latter information is available at the time the notice is published and that the notice has been sent for publication between no less than 52 days and no more than 12 months before the date on which the contract notice referred to in Article 41(1)(c) was sent.

5. Where notices are drawn up and transmitted by electronic means in accordance with the format and modalities of transmission indicated in Annex XIX, paragraph 3, the time-limits for receipt of requests to participate in restricted and negotiated procedures, and for receipt of tenders in open procedures, may be shortened by seven days.
6. Except in the case of a time-limit set by mutual agreement in accordance with paragraph 3(b), time-limits for receipt of tenders in open, restricted and negotiated procedures may be further reduced by five days where the contracting entity offers free and full direct access to the contract documents and any supporting document by electronic means as from the date on which the notice used as a means of calling for competition is sent, in accordance with Annex XIX. The notice must specify the internet address at which this documentation is accessible.
7. In open procedures, the cumulative effect of the reductions provided for in paragraphs 4, 5 and 6 may in no case result in a time-limit for receipt of tenders of less than 15 days from the date on which the contract notice was sent.

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

8. The cumulative effect of the reductions provided for in paragraphs 4, 5 and 6 may in no case result in a time-limit for receipt of requests to participate, in response to a notice published under Article 41(1)(c), or in response to an invitation by the contracting entities under Article 46(3), of less than 15 days from the date on which the contract notice or invitation was sent.

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

9. If, for whatever reason, the contract documents and the supporting documents or additional information, although requested in good time, have not been supplied within the time-limits set in Article 45, or where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time-limits for receipt of tenders shall be extended accordingly, except in the case of a time-limit set by mutual agreement in accordance with paragraph 3(b), so that all economic operators concerned may be aware of all the information needed for the preparation of a tender.

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

Article 45

Open procedures: specifications, additional documents and information

1. In open procedures, where contracting entities do not offer free and full direct access to the specifications and any supporting documents by electronic means in accordance with Article 44(6), the specifications and supporting documents shall be sent to economic operators within six days of receipt of the request, provided that the request was made in good time before the deadline for submission of bids.
2. Provided that it has been requested in good time, additional information relating to the specifications shall be supplied by the contracting entities or competent departments not later than six days before the final date fixed for receipt of tenders.

Article 46

Invitations to submit a tender or to negotiate

1. In restricted procedures and negotiated procedures, contracting entities shall simultaneously and in writing invite the selected candidates to submit their tenders or to negotiate. The invitation to the candidates shall include:
 - either a copy of the specifications and any supporting documents, or
 - a reference to accessing the specifications and the (other) documents indicated in the first indent, when they are made directly available by electronic means in accordance with Article 44(6).
- 1a. Where the specifications and/or any supporting documents are held by an entity other than the contracting entity responsible for the award procedure, the invitation shall state the address from which those specifications and documents may be requested and, if appropriate, the closing date for requesting such documents, the sum payable for obtaining them and any payment procedures. The competent department shall send that documentation to the economic operator immediately upon receipt of the request.
- 1b. The additional information on the specifications or the supporting documents shall be sent by the contracting entity or the competent department not less than six days before the final date fixed for the receipt of tenders, provided that they were requested in good time.

2. In addition, the invitation shall include at least the following:
 - (a) where appropriate, the time-limit for requesting additional documents, as well as the amount and terms of payment of any sum to be paid for such documents;
 - (b) the final date for receipt of tenders, the address to which they shall be sent, and the language or languages in which they shall be drawn up;
 - (c) a reference to any published contract notice;
 - (d) an indication of any documents to be attached;
 - (e) the criteria for the award of the contract, where they are not indicated in the notice on the existence of a qualification system used as a means of calling for competition;
 - (f) the relative weighting of criteria for the award of the contract or, where appropriate, the order of importance of such criteria, if this information is not given in the contract notice, the notice on the existence of a qualification system or the specifications.

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

This invitation shall include at least the following information:

- (a) nature and quantity, including all options concerning complementary contracts and, if possible, the estimated time available for exercising these options; for renewable contracts, the nature and quantity and, if possible, the estimated publication dates of future notices of competition for works, supplies or services to be put out to tender;
- (b) type of procedure: restricted or negotiated;
- (c) where appropriate, the date on which the delivery of supplies or the execution of works or services is to commence or terminate;
- (d) the address and closing date for the submission of requests for tender documents and the language or languages in which they are to be drawn up;
- (e) the address of the entity which is to award the contract and supply the information necessary for obtaining the specifications and other documents;
- (f) economic and technical conditions, financial guarantees and information required from economic operators;

- (g) the amount and payment procedures for any sum payable for obtaining the documentation on the procurement procedure;
- (h) form of the contract which is the subject of the invitation to tender: purchase, lease, hire or hire-purchase, or any combination of these; and
- (i) the award criteria and their weighting or, where appropriate, the order of importance of such criteria, if this information is not given in the indicative notice or the specifications.

SECTION 3

COMMUNICATION AND INFORMATION

Article 47

Rules applicable to communication

1. All communication and information exchange mentioned in this Title may be performed by letter, by fax, by electronic means in accordance with paragraphs 4 and 5, by telephone in the cases and circumstances referred to in paragraph 6, or by a combination of those means, according to the choice of the contracting entity.
2. The means of communication chosen must be generally available and thus not restrict economic operators' access to the tendering procedure.
3. Communication and the exchange and storage of information shall be carried out in such a way as to ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved, and that the contracting entities examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.
4. The tools to be used for communicating by electronic means, as well as their technical characteristics, must be non-discriminatory, generally available and interoperable with the information and communication technology products in general use.
5. The following rules shall apply to equipment for the electronic receipt of tenders and requests to participate:
 - (a) information regarding the specifications which is necessary for the electronic submission of tenders and requests to participate, including encryption, shall be available to interested parties. In addition, the equipment for the electronic receipt of tenders and requests to participate shall comply with the requirements of Annex XXII;

- (b) the Member States may introduce or maintain voluntary accreditation schemes aiming at enhanced levels of certification service provision for this equipment;
 - (c) tenderers or candidates shall undertake to submit, before expiry of the time-limit laid down for submission of tenders or requests to participate, the documents, certificates, attestations and declarations mentioned in Articles 51(2), 51(3), 52 and 53 if they do not exist in electronic format.
6. Rules applicable to the transmission of requests to participate:
- (a) requests to participate in procedures for the award of public contracts may be made in writing or by telephone;
 - (b) where requests to participate are made by telephone, a written confirmation must be sent before expiry of the time limit set for their receipt;
 - (c) contracting entities may require that requests for participation made by fax must be confirmed by post or by electronic means, where this is necessary for the purposes of legal proof. Any such requirement, together with the deadline for sending confirmation by post or electronic means, must be stated by the contracting entity in the notice used as a means of calling for competition or in the invitation referred to in Article 46(3).

Article 48

Information to applicants for qualification, candidates and tenderers

1. Contracting entities shall as swiftly as possible, inform the economic operators involved of decisions reached concerning the conclusion of a framework agreement, the award of the contract, or admission to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement or award a contract for which there has been a call for competition or to recommence the procedure, or not to implement a dynamic purchasing system; this information shall be provided in writing if the contracting entities are requested to do so.
2. Contracting entities shall, as swiftly as possible, inform any unsuccessful candidate or tenderer so requesting of the reasons for the rejection of his application or his tender and shall inform any tenderer who has made an admissible tender of the characteristics and relative advantages of the tender selected, as well as the name of the successful tenderer or the parties to the framework agreement. Those time limits may under no circumstances exceed fifteen days from receipt of the written enquiry.

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

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

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

4. Applicants whose qualification is refused shall be informed of this decision and the reasons for refusal as swiftly as possible and under no circumstances more than fifteen days later. The reasons must be based on the criteria for qualification referred to in Article 52(2).
5. Contracting entities which establish and operate a system of qualification may bring the qualification of an economic operator to an end only for reasons based on the criteria referred to in Article 52(2). The intention to bring qualification to an end must be notified in writing to the economic operator beforehand, at least fifteen days before the date on which qualification is due to end, together with the reason or reasons justifying the proposed action.

Article 49

Information to be stored concerning awards

1. Contracting entities shall keep appropriate information on each contract which shall be sufficient to permit them at a later date to justify decisions taken in connection with:
 - (a) the qualification and selection of economic operators and award of contracts;
 - (b) the use of procedures without a prior call for competition by virtue of Article 39(3);
 - (c) the non-application of Chapters III to VI of this Title by virtue of the derogations provided for in Chapter II of Title I and in Chapter II of this Title.

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

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

CHAPTER VII

CONDUCT OF THE PROCEDURE

Article 50

General provisions

1. For the purpose of selecting participants in their award procedures:
 - (a) contracting entities having provided rules and criteria for the exclusion of tenderers or candidates in accordance with Article 53,(1), (2) or (4) shall exclude economic operators meeting such rules and criteria;
 - (b) they shall select tenderers and candidates in accordance with the objective rules and criteria laid down pursuant to Article 53;
 - (c) in restricted procedures and in negotiated procedures with a call for competition, they shall where appropriate reduce in accordance with Article 53 the number of candidates selected pursuant to subparagraphs (a) and (b).
2. When a call for competition is made by means of a notice on the existence of a qualification system and for the purpose of selecting participants in award procedures for the specific contracts which are the subject of the call for competition, contracting entities shall:
 - (a) qualify economic operators in accordance with the provisions of Article 52;
 - (b) apply those provisions of paragraph 1, which are relevant to restricted or negotiated procedures, to such qualified economic operators.
3. Contracting entities shall check that the tenders submitted by the selected tenderers comply with the rules and requirements applicable to tenders and award the contract on the basis of the criteria laid down in Articles 54 and 55.

SECTION 1

QUALIFICATION AND QUALITATIVE SELECTION

Article 51

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

1. When choosing participants for a restricted or negotiated procedure, contracting entities shall not, when taking their decision on qualification or when updating the criteria and rules for qualification:
 - (a) impose administrative, technical or financial conditions on certain economic operators which would not have been imposed on others;
 - (b) require tests or evidence which would duplicate objective evidence already available.
2. Where they request production of certificates produced by independent bodies, certifying that the economic operator satisfies certain quality guarantee standards, contracting entities shall refer to quality assurance systems based on the series of European standards on the subject and certified by bodies meeting European standards of certification.

Contracting entities shall recognise certificates of bodies established in other Member States. They shall also accept other evidence of equivalent quality guarantees produced by economic operators.

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

They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators.

Article 52

Qualification systems

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

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

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

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

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

- 2a The criteria and rules for qualification referred to in paragraph 2 may, include the exclusion criteria listed in Article 46 of Directive/EC [on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts] on the terms and conditions set out therein.

Where the contracting entity is a contracting authority within the meaning of Article 2(1)(a), those criteria and rules shall include the exclusion criteria listed in Article 46(1) of Directive/EC.

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

In the same circumstances, a group of economic operators as referred to in Article 10 may cite the capacities of participants in the group or other entities.

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

In the same circumstances, a group of economic operators referred to in Article 10 may cite the capacities of participants in the group or other entities.

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

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

4. A written record of qualified economic operators shall be kept; it may be divided into categories according to the type of contract for which the qualification is valid.
- 4a. When establishing and operating a qualification system, contracting entities shall in particular observe the provisions of Article 40 (3) concerning notices on the existence of a system of qualification, Article 48 (3), (4) and (5) concerning the information to be delivered to economic operators having applied for qualification, of Article 50 (2) concerning the selection of participants when a call for competition is made by means of a notice on the existence of a qualification system as well as the provisions of Article 51 on mutual recognition concerning administrative, technical or financial conditions, and certificates, tests and evidence.
5. When a call for competition is made by means of a notice on the existence of a qualification system, tenderers in a restricted procedure or participants in a negotiated procedure shall be selected from the qualified candidates in accordance with such a system.

Article 53

Criteria for qualitative selection

1. Contracting entities which establish selection criteria in an open procedure shall do so in accordance with objective rules and criteria which are available to interested economic operators.
2. Contracting entities which select candidates for restricted or negotiated procedures shall do so according to objective criteria and rules which they have laid down and which are available to interested economic operators.
3. In restricted or negotiated procedures, the criteria may be based on the objective need of the contracting entity to reduce the number of candidates to a level which is justified by the need to balance the particular characteristics of the procurement procedure with the resources required to conduct it. The number of candidates selected shall, however, take account of the need to ensure adequate competition.

4. The criteria set out in paragraphs 1 and 2 may include the exclusion criteria listed in Article 46 of Directive 2000/./EC [on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts] on the terms and conditions set out therein.

Where the contracting entity is a contracting authority within the meaning of Article 2(1)(a), the criteria and rules referred to in paragraphs 1 and 2 of this Article shall include the exclusion criteria listed in Article 46(1) of Directive ././EC.

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

In the same circumstances, a group of economic operators as referred to in Article 10 may cite the capacities of participants in the group or other entities.

6. Where the criteria referred to in paragraphs 1 and 2 include requirements relating to the technical and/or professional capacity of the economic operator, the latter may where necessary and for a particular contract cite the capacity of other entities, whatever the legal nature of the connection between itself and those entities. In this case the economic operator must prove to the contracting entity that for the execution of that contract those resources will be available to it, for example by producing the agreement of those entities to make the necessary resources available to the economic operator.

In the same circumstances, a group of economic operators as referred to in Article 10 may cite the capacities of participants in the group or other entities.

SECTION 2

AWARDS

Article 54⁴⁵

Contract award criteria

1. Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, the criteria on which the contracting entities shall base the award of contracts shall be:
 - (a) where the contract is awarded on the basis of the most economically advantageous tender for the contracting entities, involving various criteria justified by the subject-matter of the contract in question, such as delivery or completion date, running costs, cost-effectiveness, quality, aesthetic and functional characteristics, environmental characteristics, technical merit, after-sales service and technical assistance, commitments with regard to spare parts, security of supply, and price; or
 - (b) the lowest price only.
2. Without prejudice to the provisions of the third subparagraph, in the case referred to in paragraph 1(a), the contracting entity shall specify the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.

This weighting can be expressed by providing for a range with an appropriate maximum spread.

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

The relative weighting or order of importance shall be specified, as appropriate, in the notice used as a means of calling for competition, in the invitation to confirm the interest referred to in Article 46(3), in the invitation to submit a tender or to negotiate, or in the specifications.

⁴⁵ The German language version should read: « Kann nach Ansicht des Auftraggebers die Gewichtung aus nachvollziehbaren Gründen nicht angegeben werden, so gibt der Auftraggeber die Kriterien in der absteigenden Reihenfolge ihrer Bedeutung an. » Note: The German text of the classical directive should refer to « öffentlicher Auftraggeber » instead of « Auftraggeber ».

Article 54a
Use of electronic auctions

1. Member States may stipulate that contracting entities may use electronic auctions.
2. In open, restricted or negotiated procedures without prior call for competition the contracting entities may decide that the award of a public contract shall be preceded by an electronic auction when the contract specifications can be established with precision.

In the same circumstances, an electronic auction may be held on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 13a.

The electronic auction shall be based:

- either solely on prices when the contract is awarded to the lowest price;
 - or on prices and/or on the new values of the features of the tenders indicated in the specification when the contract is awarded to the most economically advantageous tender.
3. Contracting entities which decide to hold an electronic auction shall state that fact in the notice used as a means of calling for competition.

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

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

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

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

5. When the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied by the outcome of the full evaluation of the recipient's tender, carried out in accordance with the weighting provided for in the first subparagraph of Article 54(2).

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

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

6. Throughout each phase of an electronic auction the contracting entities shall instantly communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment; they may also communicate other information concerning other prices or values submitted, provided that that is stated in the specifications; they may also at any time announce the number of participants in that phase of the auction; in no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.
7. The contracting entities shall close an electronic auction in one or more of the following manners:
 - (a) in the invitation to take part in the auction they shall indicate the date and time fixed in advance;
 - (b) when they receive no more new prices or new values which meet the requirements concerning minimum differences. In that event, the contracting entities shall state in the invitation to take part in the auction the time which they will allow to elapse after receiving the last submission before they close the electronic auction;
 - (c) when the number of phases in the auction, fixed in the invitation to take part in the auction, has been completed.

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

8. When they have closed an electronic auction the contracting entities shall award the contract in accordance with Article 54 on the basis of the results of the electronic auction.
9. The contracting entities may not have improper recourse to electronic auctions nor may they use them in such a way as to prevent, restrict or distort competition or to change the subject of the contract, as defined in the notice used as a means of calling for competition and in the specification.

Article 55

Abnormally low tenders

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

Those details may relate in particular to:

- (a) the economics of the manufacturing process, of the services provided and of the construction method;
 - (b) the technical solutions chosen and/or the exceptionally favourable conditions available to the tenderer for the supply of the goods or services or for the execution of the work;
 - (c) the originality of the supplies, services or work proposed by the tenderer;
 - (c)a compliance with the provisions relating to employment protection and working conditions in force at the place where the work or service is to be performed.
 - (d) the possibility of the tenderer obtaining State aid.
2. The contracting entity shall verify those constituent elements by consulting the tenderer, taking account of the evidence supplied.
 3. Where a contracting entity establishes that a tender is abnormally low because the tendered has been granted a State aid, the tender can only be rejected on such grounds alone after consultation with the tenderer where the latter is unable to prove, within a sufficient timeframe fixed by the contracting entity, that the aid in question was granted legally. Where the contracting entity rejects a tender in these circumstances, it shall inform the Commission accordingly.

SECTION 3

TENDERS COMPRISING PRODUCTS ORIGINATING IN THIRD COUNTRIES AND RELATIONS WITH THOSE COUNTRIES

Article 56

Tenders comprising products originating in third countries

1. This Article shall apply to tenders covering products originating in third countries with which the Community has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for Community undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Community or its Member States in respect of third countries.
2. Any tender made for the award of a supply contract may be rejected where the proportion of the products originating in third countries, as determined in accordance with Council Regulation (EEC) No 2913/92 ⁴⁶, exceeds 50% of the total value of the products constituting the tender. For the purposes of this Article, software used in telecommunications network equipment shall be regarded as products.
3. Subject to the second subparagraph, where two or more tenders are equivalent in the light of the award criteria defined in Article 54, preference shall be given to those tenders which may not be rejected pursuant to paragraph 2. The prices of those tenders shall be considered equivalent for the purposes of this Article, if the price difference does not exceed 3%.

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

4. For the purposes of this Article, those third countries to which the benefit of the provisions of this Directive has been extended by a Council decision in accordance with paragraph 1 shall not be taken into account for determining the proportion, referred to in paragraph 2, of products originating in third countries.
5. The Commission shall submit an annual report to the Council, commencing in the second half of the first year following the entry into force of this Directive, on progress made in multilateral or bilateral negotiations regarding access for Community undertakings to the markets of third countries in the fields covered by this Directive, on any result which such negotiations may have achieved, and on the implementation in practice of all the agreements which have been concluded.

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

⁴⁶ OJ L 302, 19.10.1992, p. 1. Regulation as last amended by European Parliament and Council Regulation (EC) No 955/1999 (OJ L 119, 7.5.1999, p. 1).

Article 57

Relations with third countries as regards service contracts

1. Member States shall inform the Commission of any general difficulties encountered, in law or in fact, by their undertakings in securing the award of service contracts in third countries.
2. The Commission shall report to the Council before 31 December, and periodically thereafter, on the opening-up of service contracts in third countries and on progress in negotiations with these countries on this subject, particularly within the framework of the WTO.
3. The Commission shall endeavour, by approaching the third country concerned, to remedy any situation whereby it finds, on the basis either of the reports referred to in paragraph 2 or of other information, that, in the context of the award of service contracts, a third country:
 - (a) does not grant Community undertakings effective access comparable to that granted by the Community to undertakings from that country; or
 - (b) does not grant Community undertakings national treatment or the same competitive opportunities as are available to national undertakings; or
 - (c) grants undertakings from other third countries more favourable treatment than Community undertakings.
4. In the circumstances referred to in paragraph 3, the Commission may at any time propose that the Council decide to suspend or restrict, over a period to be laid down in the decision, the award of service contracts to:
 - (a) undertakings governed by the law of the third country in question;
 - (b) undertakings affiliated to the undertakings specified in point (a) and having their registered office in the Community but having no direct and effective link with the economy of a Member State;
 - (c) undertakings submitting tenders which have as their subject-matter services originating in the third country in question.

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

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

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

TITLE III

Rules governing service design contests

Article 58

General provision

1. The rules for the organisation of a design contest shall be in conformity with paragraph 2 of this Article and with Articles 59 and 61 to 63a and shall be made available to those interested in participating in the contest.
2. The admission of participants to design contests shall not be limited:
 - (a) by reference to the territory or part of the territory of a Member State;
 - (b) on the grounds that, under the law of the Member State in which the contest is organised, they would have been required to be either natural or legal persons.

Article 59

Thresholds

1. This Title shall apply to design contests organised as part of a procurement procedure for services whose estimated value, net of VAT, is equal to or greater than EUR 499 000.

For the purposes of this paragraph, "threshold" means the estimated value net of VAT of the service contract, including any prizes and/or payments to participants.

2. This Title shall apply to all design contests where the total amount of contest prizes and payments to participants is equal to or greater than EUR 499 000.

For the purposes of this paragraph, "threshold" means the total amount of the prizes and payments, including the estimated value net of VAT of the service contract which might subsequently be concluded under Article 39(3) if the contracting entity does not exclude such an award in the contest notice.

Article 60

Design contests excluded

This Title shall not apply to:

- (1) contests which are organised in the same cases as referred to in Articles 21, 22 and 23 for service contracts;

- (2) design contests organised for the pursuit, in the Member State concerned, of an activity to which the applicability of paragraph 1 of Article 29 has been established by a Commission decision or has been deemed applicable pursuant to its paragraph 4, second sub-paragraph, or its paragraph 5, fourth sub-paragraph.

Article 61

Rules on advertising and transparency

1. Contracting entities which wish to organise a design contest shall call for competition by means of a contest notice. Contracting entities which have held a design contest shall make the results known by means of a notice. The call for competition shall contain the information referred to in Annex XVII and the notice on the results of a design contest shall contain the information referred to in Annex XVIII in accordance with the format of standard forms adopted by the Commission in accordance with the procedure in Article 65(2).

The notice on the results of a design contest shall be forwarded to the Commission, within two months of the closure of the design contest and under conditions to be laid down by the Commission in accordance with the procedure referred to in Article 65(2). In this connection, the Commission shall respect any sensitive commercial aspects which the contracting entities may point out when forwarding this information, concerning the number of projects or plans received, the identity of the economic operators and the prices tendered.

2. Article 43(2) to (8) shall also apply to notices relating to design contests.

Article 62

Means of communication

1. Article 47(1), (2) and (4) shall apply to all communications relating to contests.
2. Communication and the exchange and storage of information shall be such as to ensure that the integrity and the confidentiality of all information communicated by the participants in a contest are preserved and that the jury ascertains the contents of plans and projects only after the expiry of the time limit for their submission.
3. The following rules shall apply to equipment for the electronic receipt of plans and projects:
 - (a) information regarding to the specifications which is necessary for the electronic submission of plans and projects, including encryption, shall be available to interested parties. In addition, the equipment for the electronic receipt of plans and projects shall comply with the requirements of Annex XXII;
 - (b) the Member States may introduce or maintain voluntary accreditation schemes aiming at enhanced levels of certification service provision for such equipment.

Article 63

Rules on the organisation of design contests, the selection of participants and the jury

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

Article 63a⁴⁷

Decisions of the jury

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

⁴⁷ The A delegation will enter a statement, similar to the one entered on the classical directive, concerning this article (see annex to doc. 11935/02).

TITLE IV

STATISTICAL OBLIGATIONS, IMPLEMENTING POWERS AND FINAL PROVISIONS

Article 64

Statistical obligations

1. Member States shall ensure, in accordance with the arrangements to be laid down under the procedure provided for in Article 65(2), that the Commission receives every year a statistical report concerning the total value, broken down by Member State and by category of activity to which Annexes I to IX refer, of the contracts awarded below the thresholds set out in Article 15 but which would be covered by this Directive were it not for those thresholds.
2. As regards the categories of activity to which Annexes I, II, VII, VIII and IX refer, Member States shall ensure that the Commission receives a statistical report on contracts awarded no later than 31 October [...] for the previous year, and before 31 October of each year, in accordance with arrangements to be laid down under the procedure referred to in Article 65(2). The statistical report shall contain the information required to verify the proper application of the Agreement.

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

3. The arrangements under paragraphs 1 and 2 shall be fixed in such a way as to ensure that:
 - (a) in the interests of administrative simplification, contracts of lesser value may be excluded, provided that the usefulness of the statistics is not jeopardised;
 - (b) the confidential nature of the information provided is respected.

Article 65

Advisory Committee

1. The Commission shall be assisted by the Advisory Committee for Public Contracts instituted by Article 1 of Council Decision 71/306/EEC⁴⁸ (hereinafter referred to as "the Committee").
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, in compliance with Article 8 thereof.

⁴⁸ OJ L 185, 16.8.1971, p. 15. Decision as amended by Decision 77/63/EEC (OJ L 13, 15.1.1977, p. 15).

3. The Committee shall adopt its rules of procedure.

Article 66

Revision of thresholds

1. The Commission shall verify the thresholds established in Article 15 every two years from the entry into force of this Directive, and shall, if necessary with regard to the second subparagraph, revise them in accordance with the procedure laid down in Article 65(2).

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

2. At the same time as performing the revision under paragraph 1, the Commission shall, in accordance with the procedure under Article 65(2), align the thresholds laid down in Article 59 (design contests) on the revised threshold applicable to service contracts.

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

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

Article 67

Amendments

1. The Commission may amend, in accordance with the procedure referred to in Article 65(2):
 - (a) the list of contracting entities in Annexes I to IX so that they fulfil the criteria set out in Articles 2 to 6;
 - (b) the procedures for the drawing-up, transmission, receipt, translation, collection and distribution of the notices referred to in Articles 36, 37, 38 and 58;
 - (c) the [...] procedures for special references to specific positions of the CPV nomenclature in the notices;

- (d) the reference numbers in the nomenclature set out in Annexes XVI A and XVI B, in so far as this does not change the material scope of the Directive, and the procedures for reference in the notices to particular positions in this nomenclature within the categories of services listed in the said Annexes;
- (e) the reference numbers in the nomenclature set out in Annex XI, insofar as this does not change the material scope of the Directive, and the procedures for reference to particular positions of this nomenclature in the notices;
- (f) Annex X;
- (g) the procedure for sending and publishing data referred to in Annex XIX, on grounds of technical progress or for administrative reasons;
- (h) the technical details and characteristics of the equipment for electronic receipt referred to in points (a), (f) and (g) of Annex XXII;
- (i) in the interests of administrative simplification as provided for in Article 64(3), the procedures for the use, drawing-up, transmission, receipt, translation, collection and distribution of the statistical reports referred to in Article 64(1) and (2);
- (j) the technical procedures for the calculation methods set out in Article 66(1), and (2), second subparagraph.

Article 68

Implementation of the Directive

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 21 months after its entry into force at the latest. They shall immediately inform the Commission thereof.

Member States may avail themselves of an additional period of up to X months⁴⁹ after expiry of the deadline provided for in the first indent for the application of the provisions necessary to comply with Article 5a of this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

The provisions of Article 29 are applicable from the date of adoption of this Directive.

⁴⁹ Number of months to be calculated at the adoption of this Directive so that the deadline will expire 1.1.2009. Thus, if the Directive is adopted on 1.7.2003 the deadline provided for in the first indent expires on 1.4.2005 and the additional deadline would be 45 months.

Article 69

Repeal

Directive 93/38/EEC is hereby repealed, without prejudice to the obligations of the Member States concerning the time-limits for transposition into national law set out in Annex XXIII. References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex XXIV.

Article 70

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

Annexes I to IX are not included in this document because they are unchanged from existing law and cannot be altered until agreement is reached, in particular on the definition of special or exclusive rights.

ANNEX Va

CONTRACTING ENTITIES IN THE POSTAL SERVICES SECTOR

BELGIUM

De Post/La Poste

DENMARK

Post Danmark

GERMANY

Deutsche Post AG

GREECE

ELTA

SPAIN

Correos y Telégrafos, S.A.

FRANCE

La Poste

IRELAND

An Post

ITALY

Poste Italiane SpA

LUXEMBOURG

Entreprise des Postes et Télécommunications Luxembourg

NETHERLANDS

TNT Post Groep (TPG)

AUSTRIA

Österreichische Post AG

PORTUGAL

CTT – Correios de Portugal

FINLAND

Suomen Posti Oyj

SWEDEN

Posten Sverige AB

Posten Logistik AB

UNITED KINGDOM

Consignia plc

(List to be checked/completed)

ANNEX X

List of legislation referred to in Article 29(3)

A PRODUCTION, TRANSPORT OR DISTRIBUTION OF DRINKING WATER

–

B PRODUCTION, TRANSMISSION OR DISTRIBUTION OF ELECTRICITY

Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity ⁵⁰

C TRANSPORT OR DISTRIBUTION OF GAS OR HEAT

Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas ⁵¹

D EXPLORATION FOR AND EXTRACTION OF OIL OR GAS

Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons ⁵²

E EXPLORATION FOR AND EXTRACTION OF COAL OR OTHER SOLID FUELS

–

F CONTRACTING ENTITIES IN THE FIELD OF RAIL SERVICES

–

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

⁵⁰ OJ L 27, 30.1.1997, p. 20.

⁵¹ OJ L 204, 21.7.1998, p. 1.

⁵² OJ L 164, 30.6.1994, p. 3.

G(a) CONTRACTING ENTITIES IN THE FIELD OF POSTAL SERVICES

Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service⁵³

H CONTRACTING ENTITIES IN THE FIELD OF AIRPORT INSTALLATIONS

—

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

⁵³ OJ L 15, 21.1.1998, p. 14. Directive last amended by *Directive of the European Parliament and of the Council .../.../EC of ... amending Directive 97/67/EC with regard to the further opening to competition of Community postal services (OJ L ...)*.

ANNEX XI

LIST OF PROFESSIONAL ACTIVITIES AS SET OUT IN ARTICLE 1(2), POINT B ⁵⁴

| NACE ⁵⁵ | | | | | |
|--------------------|-------|-------|--|--|----------|
| SECTION F | | | CONSTRUCTION | | CPV Code |
| Division | Group | Class | Subject | Notes | |
| 45 | | | Construction | This division includes: construction of new buildings and works, restoring and common repairs | 45000000 |
| | 45.1 | | Site preparation | | 45100000 |
| | | 45.11 | Demolition and wrecking of buildings; earth moving | This class includes: – demolition of buildings and other structures – clearing of building sites – earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc. – site preparation for mining: overburden removal and other development and preparation of mineral properties and sites This class also includes: – building site drainage – drainage of agricultural or forestry land | 45110000 |

⁵⁴ In the event of any difference of interpretation between the CPV and the NACE, the NACE nomenclature will apply.

⁵⁵ Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1), as amended by Commission Regulation No 761/93 of 24 March 1993 (OJ L 83, 3.3.1993, p. 1).

| | | | | | |
|--|------|-------|--|---|----------|
| | | 45.12 | Test drilling and boring | <p>This class includes:</p> <ul style="list-style-type: none"> – test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes <p><i>This class excludes:</i></p> <ul style="list-style-type: none"> – drilling of production oil or gas wells, see 11.20 – water well drilling, see 45.25 – shaft sinking, see 45.25 – oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20 | 45120000 |
| | 45.2 | | Building of complete constructions or parts thereof; civil engineering | | 45200000 |

| | | | | | |
|--|--|-------|---|--|----------|
| | | 45.21 | General construction of buildings and civil engineering works | <p>This class includes: construction of all types of buildings construction of civil engineering constructions bridges, including those for elevated highways, viaducts, tunnels and subways long-distance pipelines, communication and power lines urban pipelines, urban communication and powerlines; ancillary urban works assembly and erection of prefabricated constructions on the site</p> <p><i>This class excludes:</i> service activities incidental to oil and gas extraction, see 11.20 erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28 construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23 building installation, see 45.3 building completion, see 45.4 architectural and engineering activities, see 74.20</p> | 45210000 |
|--|--|-------|---|--|----------|

| | | | | | |
|--|--|-------|---|---|----------|
| | | 45.22 | Erection of roof covering and frames | This class includes: erection of roofs roof covering waterproofing | 45220000 |
| | | 45.23 | Construction of highways, roads, airfields and sport facilities | This class includes: construction of highways, streets, roads, other vehicular and pedestrian ways construction of railways construction of airfield runways construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations painting of markings on road surfaces and car parks <i>This class excludes:</i> preliminary earth moving, see 45.11 | 45230000 |
| | | 45.24 | Construction of water projects | This class includes: construction of: waterways, harbour and river works, pleasure ports (marinas), locks, etc. dams and dykes dredging subsurface work | 45240000 |

| | | | | | |
|--|------|-------|--|---|----------|
| | | 45.25 | Other construction work involving special trades | <p>This class includes: construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment: construction of foundations, including pile driving water well drilling and construction, shaft sinking erection of non-self-manufactured steel elements steel bending bricklaying and stone setting scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms erection of chimneys and industrial ovens <i>This class excludes:</i> renting of scaffolds without erection and dismantling, see 71.32</p> | 45250000 |
| | 45.3 | | Building installation | | 45300000 |
| | | 45.31 | Installation of electrical wiring and fittings | <p>This class includes: installation in buildings or other construction projects of: electrical wiring and fittings telecommunications systems electrical heating systems residential antennas and aerials fire alarms burglar alarm systems lifts and escalators lightning conductors, etc.</p> | 45310000 |

| | | | | | |
|--|------|-------|-----------------------------|---|----------|
| | | 45.32 | Insulation work activities | This class includes: installation in buildings or other construction projects of thermal, sound or vibration insulation <i>This class excludes:</i> waterproofing, see 45.22 | 45320000 |
| | | 45.33 | Plumbing | This class includes: installation in buildings or other construction projects of: plumbing and sanitary equipment gas fittings heating, ventilation, refrigeration or air-conditioning equipment and ducts sprinkler systems <i>This class excludes:</i> installation of electrical heating systems, see 45.31 | 45330000 |
| | | 45.34 | Other building installation | This class includes: installation of illumination and signalling systems for roads, railways, airports and harbours installation in buildings or other construction projects of fittings and fixtures n.e.c. | 45340000 |
| | 45.4 | | Building completion | | 45400000 |
| | | 45.41 | Plastering | This class includes: application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials | 45410000 |

| | | | | | |
|--|--|-------|-------------------------|---|----------|
| | | 45.42 | Joinery installation | <p>This class includes: installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials interior completion such as ceilings, wooden wall coverings, movable partitions, etc. <i>This class excludes:</i> laying of parquet and other wood floor coverings, see 45.43</p> | 45420000 |
| | | 45.43 | Floor and wall covering | <p>This class includes: laying, tiling, hanging or fitting in buildings or other construction projects of: ceramic, concrete or cut stone wall or floor tiles parquet and other wood floor coverings carpets and linoleum floor coverings, including of rubber or plastic terrazzo, marble, granite or slate floor or wall coverings wallpaper</p> | 45430000 |
| | | 45.44 | Painting and glazing | <p>This class includes: interior and exterior painting of buildings painting of civil engineering structures installation of glass, mirrors, etc <i>This class excludes:</i> installation of windows, see 45.42</p> | 45440000 |

| | | | | | |
|--|------|-------|---|---|----------|
| | | 45.45 | Other building completion | This class includes: installation of private swimming pools steam cleaning, sand blasting and similar activities for building exteriors other building completion and finishing work n.e.c <i>This class excludes:</i> interior cleaning of buildings and other structures, see 74.70 | 45450000 |
| | 45.5 | | Renting of construction or demolition equipment with operator | | 45500000 |
| | | 45.50 | Renting of construction or demolition equipment with operator | <i>This class excludes:</i> renting of construction or demolition machinery and equipment without operators, see 71.32 | 45500000 |

ANNEX XII

INFORMATION TO BE INCLUDED IN CONTRACT NOTICES

A. OPEN PROCEDURES

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

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

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

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 (nomenclature reference No(s)), including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work (nomenclature reference No(s)).
 - (b) indication of whether the suppliers 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) The 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 as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured.
 - (b) Indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.
 - (c) Reference of the law, regulation or administrative provision;
 - (d) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service.
 - (e) service providers can tender for a part of the services concerned.
6. Where known, indication of whether authorisation to submit variants exists or not.
7. Time limits for delivery or completion or duration of service contract and, as far as possible, the starting date.
8.
 - (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.
9.
 - (a) Final date for receipt of tenders or indicative tenders where a dynamic purchasing system is introduced.
 - (b) Address to which they must be sent.
 - (c) Language or languages in which they must be drawn up.
10.
 - (a) Where applicable, the 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 provisions in which these are contained.

13. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.
14. Minimum economic and technical conditions required of the economic operator to whom the contract is awarded.
15. Period during which the tenderer is bound to keep open his tender.
16. Where appropriate, particular conditions to which performance of the contract is subject.
17. Criteria referred to in Article 54 to be used for award of the contract: "lowest price" or "most economically advantageous tender". Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned where they do not appear in the specifications or will not be indicated in the invitation to submit a tender.
18. Other information.
19. Where appropriate, the reference to publication in the Official Journal of the European Communities of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.
- 19a. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals, or if need be the name, address, telephone number, fax number and e-mail address of the department from which this information may be obtained.
20. Date of dispatch of the notice by the contracting entity.
21. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).

B. RESTRICTED PROCEDURES

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

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

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

3. Place of delivery, site or place of performance of service.
4. For supplies and works:
 - (a) The nature and quantity of the goods to be supplied (nomenclature reference No(s)), including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work (nomenclature reference No(s)).

- (b) Indication of whether the suppliers 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) Information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.
5. For services:
 - (a) The 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 as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured.

- (b) Indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.
 - (c) Reference of the law, regulation or administrative provision;
 - (d) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service.
 - (e) Indication of whether service providers can tender for a part of the services concerned.
6. Where known, indication of whether authorisation to submit variants exists or not.
 7. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.
 8. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.
 9.
 - (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.
 10. Final date for dispatch of invitations to tender.
 11. Where applicable, any deposits and guarantees required.
 12. Main terms concerning financing and payment and/or references to the provisions in which these are contained.
 13. Information concerning the economic operator's position and the minimum economic and technical conditions required of him.
 14. Criteria referred to in Article 54 to be used for award of the contract: "lowest price" or "most economically advantageous tender". Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned where they do not appear in the specifications or will not be indicated in the invitation to submit a tender.
 15. Other information.
 16. Where appropriate, particular conditions to which performance of the contract is subject

17. Where appropriate, the reference to publication in the Official Journal of the European Communities of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.
- 17a. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals , or if need be the name, address, telephone number, fax number and e-mail address of the department from which this information may be obtained.
18. Date of dispatch of the notice by the contracting entities.
19. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).

C. NEGOTIATED PROCEDURES

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

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

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

3. Place of delivery, site or place of performance of service.
4. For supplies and works:
 - (a) The nature and quantity of the goods to be supplied (nomenclature reference No(s)), including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work (nomenclature reference No(s)).

- (b) Indication of whether the suppliers 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) The 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 as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured.

- (b) Indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.
 - (c) Reference of the law, regulation or administrative provision;
 - (d) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service.
 - (e) Indication of whether service providers can tender for a part of the services concerned.
6. Where known, indication of whether authorisation to submit variants exists or not.
 7. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.
 8. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.
 9.
 - (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.
 10. Where appropriate, any deposits and guarantees required.
 11. Main terms concerning financing and payment and/or references to the provisions in which these are contained.
 12. Information concerning the economic operator's position and the minimum economic and technical conditions required of him.
 13. Criteria referred to in Article 54 to be used for award of the contract: "lowest price" or "most economically advantageous tender". Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned where they do not appear in the specifications or will not be indicated in the invitation to negotiate.
 14. Where appropriate, the names and addresses of the economic operators already selected by the contracting entity.
 15. Where applicable, date(s) of previous publications in the Official Journal of the European Communities.

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

**D. SIMPLIFIED CONTRACT NOTICE FOR USE IN A
DYNAMIC PURCHASING SYSTEM**⁵⁶

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

⁵⁶ With a view to admission to the system in order to be able subsequently to participate in the invitation to tender for the specific contract.

ANNEX XIII

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

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax number of the contracting entity.
2. Purpose of the qualification system (description of the goods, services or works or categories thereof to be procured through the system – nomenclature reference No(s)).
3. Conditions to be fulfilled by the economic operators in view of their qualification pursuant to the system and the methods according to which each of those conditions will be verified. Where the description of such conditions and verification methods is voluminous and based on documents available to interested economic operators, a summary of the main conditions and methods and a reference to those documents shall be sufficient.
4. Period of validity of the qualification system and the formalities for its renewal.
5. Reference to the fact that the notice acts as the call for competition.
6. Address where further information and documentation concerning the qualification system can be obtained (if different from the address mentioned under 1).
- 6a. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals, or if need be the name, address, telephone number, fax number and e-mail address of the department from which this information may be obtained.
7. Where known, criteria referred to in Article 54 to be used for award of the contract: "lowest price" or "most economically advantageous tender". Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned where they do not appear in the specifications or will not be indicated in the invitation to submit a tender or to negotiate.
8. Any other relevant information.

ANNEX XIV A

INFORMATION TO BE INCLUDED IN THE PERIODIC NOTICE

I. HEADINGS TO BE COMPLETED IN ANY CASE

1. Name, address, telegraphic address, , electronic address, telephone number, telex and fax number of the contracting entity or the service from which additional information may be obtained.
2. (a) For supply contracts: nature and quantity or value of the services or products to be supplied (nomenclature reference No(s)).

(b) For works contracts: nature and extent of the services to be provided, the general characteristics of the work or of the lots by reference to the work (nomenclature reference No(s)).

(c) For service contracts: intended total procurement in each of the service categories listed in Annex XVI A (nomenclature reference No(s)).
3. Date of dispatch of the notice or of dispatch of the notice of the publication of this notice on the buyer profile.
4. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).
5. Any other relevant information.

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

6. A reference to the fact that interested suppliers must advise the entity of their interest in the contract or contracts.
7. Deadline for the receipt of applications for an invitation to submit a tender or to negotiate.
8. Nature and quantity of the goods to be supplied or general nature of the work or category of service within the meaning of Annex XVI A and description, stating if framework agreement(s) are envisaged, including any options for further procurement and an estimate of the timing when such options may be exercised as well as the number of renewals, if any. In the case of recurring contracts, also, an estimate of the timing of the subsequent calls for competition.
9. State whether purchase, lease, rental or hire-purchase or any combination of these is involved.
10. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.

11. Address to which interested undertakings should send their expressions of interest in writing.
Final date for receipt of expressions of interest.
Language or languages authorised for the presentation of candidatures or tenders.
12. Economic and technical conditions, and financial and technical guarantees required of suppliers.
13.
 - (a) Estimated date for initiating the award procedures in respect of the contract or contracts (if known).
 - (b) Type of award procedure (restricted or negotiated).
 - (c) The amount of and payment details for any sum to be paid to obtain documents concerning the consultation.
14. Where appropriate, particular conditions to which performance of the contract is subject.
- 14a. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals, or if need be the name, address, telephone number, fax number and e-mail address of the department from which this information may be obtained.
15. Where known, criteria referred to in Article 54 to be used for award of the contract: "lowest price" or "most economically advantageous tender". Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned where they do not appear in the specifications or will not be indicated in the invitation to confirm interest referred to in Article 46(3) or in the invitation to submit a tender or to negotiate.

ANNEX XIV B

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

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

ANNEX XV

INFORMATION TO BE INCLUDED IN THE CONTRACT AWARD NOTICE

- I. Information for publication in the Official Journal of the European Communities ⁵⁷
 1. Name and address of the contracting entity.
 2. Nature of the contract (supplies, works or services and nomenclature reference No(s); where appropriate state if it is a framework agreement).
 3. At least a summary indication of the nature and quantity of the products, works or services provided.
 4.
 - (a) Form of the call for competition (notice on the existence of a system of qualification; periodic notice; call for tenders).
 - (b) Reference of publication of the notice in the Official Journal of the European Communities.
 - (c) In the case of contracts awarded without a prior call for competition, indication of the relevant provision of Article 39(3) or Article 31.
 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 39(3)(j).
 9. Name and address of the economic operator(s).
 10. State, where appropriate, whether the contract has been, or may be, subcontracted.
 11. Price paid or the prices of the highest and lowest bids taken into account in the award of the contract.
 - 11a. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the deadline for lodging appeals, or if need be the name, address, telephone number, fax number and e-mail address of the department from which this information may be obtained.

⁵⁷ Information in headings 6, 9 and 11 is deemed information not intended for publication where the awarding entity considers that publication thereof might be detrimental to a sensitive commercial interest.

12. Optional information:

- value and share of the contract which has been or may be subcontracted to third parties,
- award criteria.

II. Information not intended for publication

13. Number of contracts awarded (where an award has been split between several suppliers).
14. Value of each contract awarded.
15. Country of origin of the product or service (Community origin or non-Community origin; if the latter, broken down by third country).
16. Which award criteria were used (most economically advantageous; lowest price).
17. Was the contract awarded to a bidder who submitted a variant, in accordance with Article 36(1)?
18. Were any tenders excluded on the grounds that they were abnormally low, in accordance with Article 55?
19. Date of transmission of the notice by the contracting entity.
20. In the case of contracts for services listed in Annex XVI B, agreement by the contracting entity to publication of the notice (Article 42(4)).

ANNEX XVI A ⁵⁸

SERVICES WITHIN THE MEANING OF ARTICLE 30

| Category No | Subject | CPC ⁵⁹ reference No | CPV reference numbers |
|-------------|---------------------------------|--------------------------------|---|
| 1 | Maintenance and repair services | 6112, 6122, 633, 886 | 50000000, 50100000, 50110000, 50111110, 50112000, 50112100, 50112110, 50112111, 50112120, 50112200, 50112300, 50113000, 50113100, 50113200, 50114000, 50114100, 50114200, 50115000, 50115100, 50115200, 50116000, 50116100, 50116200, 50116300, 50116400, 50116500, 50116510, 50116600, 50117000, 50117100, 50117200, 50117300, 50118000, 50118100, 50118110, 50118200, 50118300, 50118400, 50118500, 50200000, 50210000, 50211000, 50211100, 50211200, 50211210, 50211211, 50211212, 50211300, 50211310, 50212000, 50220000, 50221000, 50221100, 50221200, 50221300, 50221400, 50222000, 50222100, 50223000, 50224000, 50224100, 50224200, 50225000, 50230000, 50231000, 50231100, 50232000, 50232100, 50232200, 50240000, 50241000, 50241100, 50241200, 50242000, 50243000, 50244000, 50245000, 50246000, 50246100, 50246200, 50246300, 50246400, 50314000, 50315000, 50330000, 50331000, 50332000, 50333000, 50333100, 50333200, 50334000, 50334100, 50334110, 50334120, 50334130, 50334140, 50334200, 50334300, 50334400, 50340000, 50341000, 50341100, 50341200, 50342000, 50343000, 50344000, 50344100, 50344200, 50400000, 50410000, 50411000, 50411100, 50411200, 50411300, 50411400, 50411500, 50412000, 50413000, 50413100, 50413200, 50420000, 50421000, 50421100, 50421200, 50422000, 50430000, 50431000, 50432000, 50433000, 50510000, 50511000, 50511100, 50511200, 50512000, 50513000, 50514000, 50514100, 50514200, 50530000, 50531000, 50531100, 50531200, 50531300, 50531400, 50531600, 50532000, 50532100, 50532200, 50532300, 50532400, 50800000, 50810000, 50820000, 50821000, 50822000, 50830000, 50840000, 50841000, 50842000, 50850000, 50860000, 50870000, 50880000, 50881000, 50882000, 50883000, 50884000, 50911000, 50911100, 50911110, 50911120, 50911130, 50911200, 50911210, 50911220, 50912100, 50913100, 50913300, 50913310, 50913400, 50913500, 50913510, 50914000, 50914100, 50914200, 50914300, 50914400, 50914500, |

⁵⁸ **In the event of any difference of interpretation between the CPV and the CPC, the CPC nomenclature will apply.**

⁵⁹ **CPC nomenclature (provisional version) is used to define the scope of Directive 93/38/EEC as regards service contracts.**

| | | | |
|---|---|-----------------------------------|--|
| | | | 50914600, 50920000, 50921000, 50921100, 50922000, 50923000, 50924000, 50930000, 50931000, 50931100, 50931200, 50931300, 50931400, 50932000, 50932100, 50932200, 50933000, 50934000, 50935000, 50940000, 50941000, 50942000, 50951000, 50952000, 50952100, 50952110, 50952200, 50952400, 50952500, 50960000, 50961000, 50961100, 50961110, 50961200, 50962000, 50970000, 50971000, 50971100, 50971200, 50972000, 50973000, 50973100, 50973200, 50973300, 50973400, 50974000, 50974100, 50974200, 50974300, 50975000, 50975100, 50975200, 50975300, 50976000, 50976100, 50976200, 74732000, 74732100, 74741000, 74742000, 74743000 |
| 2 | Land transport services ⁶⁰ , including armoured car services, and courier services, except transport of mail | 712 (except 71235) 7512, 87304 | 55521200, 60110000, 60112000, 60112100, 60112200, 60112300, 60113000, 60113100, 60113310, 60113400, 60114000, 60115000, 60115100, 60115110, 60116000, 60116100, 60116200, 60116300, 60122110, 60122120, 60122130, 60122140, 60122150, 60122160, 60122161, 60122170, 60123100, 60123200, 60123300, 60123400, 60123500, 60123600, 64120000, 64121000, 64122000, 74612000 |
| 3 | Air transport services of passengers and freight, except transport of mail | 73 (except 7321) | 62110000, 62122000, 62210000, 62230000, 62300000 |
| 4 | Transport of mail by land ⁶¹ and by air | 71235, 7321 | 62121000 |
| 5 | Telecommunications services | 752 | 64200000, 64210000, 64211000, 64212000, 64213000, 64214000, 64214200, 64216000, 64216100, 64216110, 64216120, 64216130, 64216140, 64216200, 64216210, 64216300, 64221000, 64222000, 64223000, 64224000, 64225000, 64226000, 72315000, 72318000, 72511100 |
| 6 | Financial services: (a) insurance services (b) banking and investment services ⁶² | ex 81, 812, 814 | 66000000, 66100000, 66110000, 66120000, 66130000, 66140000, 66200000, 66300000, 66310000, 66311000, 66312000, 66313000, 66314000, 6315000, 66316000, 66317000, 66320000, 66321000, 66330000, 66331000, 66332000, 66333000, 66334000, 66335000, |

⁶⁰ Except for rail transport services covered by category 18.

⁶¹ Except for rail transport services covered by category 18.

⁶² Except financial services relating to the issue, sale, purchase or transfer of securities or other financial instruments. Also excluded: contracts involving the acquisition or rental, by whatever means, of land, existing buildings or other immovable property or concerning rights thereon; nevertheless, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive.

| | | | |
|----|---|-----|--|
| | | | 66340000, 66341000, 66342000, 66343000, 66343100, 66343200, 66350000, 66360000, 66370000, 66371000, 66372000, 66373000, 66374000, 66380000, 66381000, 66382000, 66383000, 66384000, 67200000, 67210000, 67211000, 67212000, 67220000, 67221000, 67230000, 67240000, 67250000, 67251000, 67260000 |
| 7 | Computer services and related services | 84 | 50310000, 50311000, 50311400, 50312000, 50312100, 50312110, 50312120, 50312200, 50312210, 50312220, 50312300, 50312310, 50312320, 50312400, 50312410, 50312420, 50312500, 50312510, 50312520, 50312600, 50312610, 50312620, 50313000, 50313100, 50313200, 50316000, 50317000, 50320000, 50321000, 50322000, 50323000, 50323100, 50323200, 50324000, 50324100, 50324200, 72000000, 72100000, 72110000, 72120000, 72130000, 72140000, 72150000, 72200000, 72210000, 72211000, 72212000, 72220000, 72221000, 72222000, 72222100, 72222200, 72222300, 72223000, 72224000, 72224100, 72224200, 72225000, 72226000, 72227000, 72228000, 72230000, 72231000, 72232000, 72240000, 72241000, 72243000, 72245000, 72246000, 72250000, 72251000, 72252000, 72253000, 72253100, 72253200, 72254000, 72254100, 72260000, 72261000, 72262000, 72263000, 72264000, 72265000, 72266000, 72267000, 72268000, 72300000, 72310000, 72311000, 72311100, 72311200, 72311300, 72312000, 72312100, 72312200, 72313000, 72314000, 72315100, 72316000, 72317000, 72319000, 72320000, 72321000, 72510000, 72511000, 72511110, 72512000, 72514000, 72514100, 72514200, 72514300, 72520000, 72521000, 72521100, 72540000, 72541000, 72541100, 72550000, 72560000, 72570000, 72580000, 72590000, 72591000 |
| 8 | R&D services ⁶³ | 85 | 63368000, 73000000, 73100000, 73110000, 73111000, 73112000 |
| 9 | Accounting, auditing and bookkeeping services | 862 | 74121000, 74121100, 74121110, 74121112, 74121113, 74121120, 74121200, 74121210, 74121220, 74121230, 74121240, 74121250, 74541000 |
| 10 | Market research and public opinion polling services | 864 | 74130000, 74131000, 74131100, 74131110, 74131120, 74131121, 74131130, 74131200, 74131300, 74131400, 74131500, 74131600, 74132000, 74133000, 74423100, 74423110 |

⁶³ Except research and development services other than those where the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs on condition that the service provided is wholly remunerated by the contracting entity.

| | | | |
|----|--|---------------------|--|
| 11 | Management consulting services ⁶⁴ and related services | 865, 866 | 73200000, 73210000, 73220000, 73300000, 74121111, 74141000, 74141100, 74141110, 74141200, 74141300, 74141400, 74141500, 74141510, 74141600, 74141610, 74141620, 74141700, 74141800, 74141900, 74142200, 74150000, 74871000, 90311000, 93620000 |
| 12 | Architectural services; engineering services and integrated engineering services; urban planning and landscape engineering services; related scientific and technical consulting services; technical testing and analysis services | 867 | 72242000, 72244000, 74142300, 74142310, 74220000, 74221000, 74222000, 74223000, 74224000, 74225000, 74225100, 74230000, 74231100, 74231110, 74231120, 74231130, 74231200, 74231300, 74231310, 74231320, 74231400, 74231500, 74231510, 74231520, 74231521, 74231530, 74231540, 74231600, 74231700, 74231710, 74231720, 74231721, 74231800, 74231900, 74232000, 74232100, 74232110, 74232120, 74232200, 74232210, 74232220, 74232230, 74232240, 74232300, 74232310, 74232320, 74232400, 74232500, 74232600, 74233000, 74233100, 74233200, 74233300, 74233400, 74233500, 74233600, 74233700, 74240000, 74250000, 74251000, 74252000, 74252100, 74260000, 74261000, 74262000, 74262100, 74263000, 74270000, 74271000, 74271100, 74271200, 74271210, 74271220, 74271300, 74271400, 74271500, 74271700, 74271710, 74271720, 74271800, 74272000, 74272100, 74272110, 74272111, 74272112, 74272113, 74272300, 74273000, 74273100, 74273200, 74274000, 74274100, 74274200, 74274300, 74274400, 74274500, 74275000, 74275100, 74275200, 74276000, 74276100, 74276200, 74276300, 74276400, 74300000, 74310000, 74311000, 74312000, 74312100, 74313000, 74313100, 74313110, 74313120, 74313130, 74313140, 74313141, 74313142, 74313143, 74313144, 74313145, 74313146, 74313147, 74313200, 74313210, 74313220, 74874000 |
| 13 | Advertising services | 871 | 74410000, 74411000, 74412000, 78225000 |
| 14 | Building-cleaning services and property management services | 874, 82201 to 82206 | 70300000, 70310000, 70311000, 70320000, 70321000, 70322000, 70330000, 70331000, 70331100, 70332000, 70332100, 70332200, 70332300, 74710000, 74720000, 74721000, 74721100, 74721210, 74721300, 74722000, 74724000, 74730000, 74731000, 74744000, 74750000, 74760000, 93411200, 93411300, 93411400 |

⁶⁴ Except arbitration and conciliation services.

| | | | |
|----|--|-------|--|
| 15 | Publishing and printing services on a fee or contract basis | 88442 | 74831530, 78000000, 78100000, 78110000, 78111000, 78112000, 78113000, 78113100, 78114000, 78114100, 78114200, 78114300, 78114400, 78115000, 78115100, 78116000, 78117000, 78118000, 78119000, 78120000, 78121000, 78122000, 78122100, 78123000, 78124000, 78125000, 78130000, 78131000, 78132000, 78133000, 78134000, 78135000, 78135100, 78136000, 78140000, 78141000, 78142000, 78150000, 78151000, 78152000, 78153000, 78160000, 78170000, 78180000, 78200000, 78210000, 78220000, 78221000, 78222000, 78223000, 78224000, 78230000, 78240000, 78300000, 78310000, 78311000, 78312000 |
| 16 | Sewage and refuse disposal services; sanitation and similar services | 94 | 71221110, 74734000, 74735000, 85142200, 90000000, 90100000, 90110000, 90111000, 90111100, 90111200, 90111300, 90112000, 90112100, 90112200, 90112210, 90112300, 90113000, 90114000, 90120000, 90121000, 90121100, 90121110, 90121120, 90121130, 90121140, 90121200, 90121300, 90121310, 90121320, 90121330, 90121340, 90121400, 90122000, 90122100, 90122110, 90122111, 90122112, 90122113, 90122120, 90122121, 90122122, 90122123, 90122124, 90122130, 90122131, 90122200, 90122210, 90122220, 90122230, 90122240, 90122300, 90122310, 90122320, 90122330, 90122340, 90200000, 90210000, 90211000, 90212000, 90213000, 90220000, 90221000, 90240000, 90300000, 90310000, 90312000, 90313000, 90313100, 90313110, 90313120, 90314000, 90315000, 90315100, 90315200, 90315300, 90320000 |

ANNEX XVI B
SERVICES WITHIN THE MEANING OF ARTICLE 31

| Category No | Subject | CPC reference No | CPV reference numbers |
|-------------|-------------------------------|------------------|--|
| 17 | Hotel and restaurant services | 64 | 55000000, 55100000, 55200000, 55210000, 55220000, 55221000, 55240000, 55241000, 55242000, 55243000, 55250000, 55260000, 55270000, 55300000, 55310000, 55311000, 55312000, 55320000, 55321000, 55322000, 55330000, 55400000, 55410000, 55500000, 55510000, 55511000, 55512000, 55520000, 55521000, 55521100, 55522000, 55523000, 55523100, 55524000, 93410000, 93411000 |

| | | | |
|----|---|--------------------|--|
| 18 | Transport services by rail | 711 | 60111000, 60121000, 60121100, 60121200, 60121300, 60121400, 60121500, 60121600 |
| 19 | Water transport services | 72 | 61000000, 61100000, 61110000, 61200000, 61210000, 61220000, 61230000, 61240000, 61250000, 61400000, 63370000, 63371000, 63372000, 71221120, 71221130 |
| 20 | Supporting and auxiliary transport services | 74 | 62224000, 62224100, 62226000, 63000000, 63100000, 63110000, 63111000, 63112000, 63112100, 63112110, 63120000, 63121000, 63121100, 63121110, 63122000, 63200000, 63210000, 63220000, 63221000, 63222000, 63222100, 63223000, 63223100, 63223110, 63223200, 63223210, 63224000, 63225000, 63226000, 63300000, 63310000, 63311000, 63313000, 63314000, 63315000, 63320000, 63330000, 63340000, 63341000, 63341100, 63342000, 63343000, 63343100, 63344000, 63350000, 63351000, 63352000, 63353000, 63360000, 63361000, 63362000, 63363000, 63364000, 63365000, 63366000, 63366100, 63369000, 63400000, 63410000, 63420000, 63430000, 63500000, 63510000, 63511000, 63512000, 63514000, 63515000, 63516000, 63520000, 63521000, 63522000, 63523000, 63524000, 63600000, 71221140, 74322000, 93600000 |
| 21 | Legal services | 861 | 74110000, 74111000, 74111100, 74111200, 74112000, 74112100, 74112110, 74113000, 74113100, 74113200, 74113210, 74114000 |
| 22 | Personnel placement and supply services ⁶⁵ | 872 | 74512000, 74522000, 95100000, 95110000, 95120000, 95130000, 95131000, 95132000, 95133000 |
| 23 | Investigation and security services, except armoured car services | 873 (except 87304) | 74611000, 74613000, 74614000, 74614100, 74614110, 74615000, 74620000 |
| 24 | Education and vocational education services | 92 | 80000000, 80100000, 80110000, 80200000, 80210000, 80211000, 80212000, 80220000, 80300000, 80310000, 80320000, 80330000, 80340000, 80400000, 80411000, 80411100, 80411200, 80412000, 80421000, 80422000, 80422100, 80423000, 80423100, 80423110, 80423120, 80423200, 80423300, 80423320, 80424000, 80425000, 80426000, 80426100, 80426200, 80427000, 80428000, 80430000, 92312212, 92312213 |

⁶⁵ Except employment contracts.

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|----|--|----|--|
| 25 | Health and social services | 93 | 60113300, 74511000, 85000000, 85100000, 85110000, 85111000, 85111100, 85111200, 85111300, 85111320, 85111400, 85111500, 85111600, 85111700, 85111800, 85112000, 85112100, 85120000, 85121000, 85121100, 85121200, 85121300, 85130000, 85131000, 85131100, 85131110, 85140000, 85141000, 85141100, 85141200, 85141210, 85141211, 85141212, 85141220, 85142000, 85142100, 85142200, 85142300, 85142400, 85143000, 85144000, 85144100, 85145000, 85146000, 85146100, 85146200, 85147000, 85148000, 85149000, 85200000, 85300000, 85310000, 85311000, 85311100, 85311200, 85311300, 85312000, 85312100, 85312200, 85312300, 85312310, 85312320, 85312330, 85312400, 85320000, 85323000 |
| 26 | Recreational, cultural and sporting services | 96 | 74875000, 74875100, 74875200, 77310000, 77311000, 77313000, 77400000, 80413000, 80414000, 80415000, 92000000, 92100000, 92110000, 92111000, 92111100, 92111200, 92111210, 92111220, 92111230, 92111240, 92111250, 92111260, 92111300, 92111310, 92111320, 92112000, 92120000, 92121000, 92122000, 92130000, 92140000, 92200000, 92210000, 92211000, 92220000, 92221000, 92300000, 92310000, 92311000, 92312000, 92312100, 92312110, 92312120, 92312130, 92312140, 92312200, 92312210, 92312220, 92312230, 92312240, 92312250, 92320000, 92330000, 92331000, 92331100, 92331200, 92332000, 92340000, 92341000, 92342000, 92342100, 92342200, 92350000, 92351000, 92351100, 92351200, 92352000, 92352100, 92352200, 92360000, 92400000, 92500000, 92510000, 92511000, 92512000, 92520000, 92521000, 92521100, 92521200, 92521210, 92521220, 92522000, 92522100, 92522200, 92530000, 92531000, 92532000, 92533000, 92534000, 92600000, 92610000, 92620000, 92621000, 92622000 |
| 27 | Other services | | 50111100, 50232110, 50246500, 50520000, 50521000, 50522000, 50523000, 50531500, 50531510, 50700000, 50710000, 50711000, 50712000, 50720000, 50730000, 50731000, 50732000, 50732100, 50740000, 50760000, 50761000, 50762000, 50911230, 50912200, 50913200, 50915000, 50915100, 50915200, 50952300, 50977000, 52000000, 52100000, 52200000, 52300000, 52400000, 52500000, 52600000, 52700000, 52800000, 52900000, 60113200, 60200000, 60210000, 60220000, 61300000, 62221000, 62222000, 62223000, 63367000, 64110000, 64111000, 64112000, 64113000, 64114000, 64115000, 64116000, 64214100, 64214400, 65000000, 65100000, 65110000, 65120000, 65130000, 65200000, |

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|--|--|--|---|
| | | | 65210000, 65300000, 65310000, 65320000, 65400000, 65410000, 65500000, 67100000, 67110000, 67120000, 67121000, 67122000, 67130000, 67140000, 67300000, 70100000, 70110000, 70111000, 70112000, 70120000, 70121000, 70121100, 70121200, 70122000, 70122100, 70122110, 70122200, 70122210, 70123000, 70123100, 70123200, 70130000, 70311000, 70311200, 70333000, 71000000, 71100000, 71110000, 71120000, 71130000, 71140000, 71150000, 71160000, 71170000, 71180000, 71181000, 71211300, 71211310, 71211320, 71211400, 71211600, 71211900, 71300000, 71310000, 71311000, 71320000, 71321000, 71321100, 71321200, 71321300, 71321400, 71330000, 71331000, 71332000, 71332100, 71332200, 71333000, 71340000, 71350000, 71360000, 71380000, 74122000, 74122100, 74122200, 74271600, 74271900, 74321000, 74321100, 74420000, 74421000, 74422000, 74423000, 74423200, 74423210, 74542000, 74543000, 74731100, 74810000, 74811000, 74811100, 74811200, 74811300, 74811310, 74811320, 74811330, 74811340, 74812000, 74813000, 74820000, 74821000, 74830000, 74831000, 74831100, 74831110, 74831200, 74831210, 74831300, 74831400, 74831500, 74831510, 74831520, 74831600, 74832000, 74832100, 74841000, 74842000, 74844000, 74850000, 74851000, 74860000, 74861000, 74870000, 74872000, 74873100, 74876000, 74877000, 75000000, 75100000, 75110000, 75111000, 75111100, 75111200, 75112000, 75112100, 75120000, 75121000, 75122000, 75123000, 75124000, 75125000, 75130000, 75131000, 75131100, 75200000, 75210000, 75211000, 75211100, 75211110, 75211200, 75211300, 75220000, 75221000, 75222000, 75230000, 75231000, 75231100, 75231200, 75231210, 75231220, 75231230, 75231240, 75240000, 75241000, 75241100, 75242000, 75242100, 75242110, 75250000, 75251000, 75251100, 75251110, 75251120, 75252000, 75300000, 75310000, 75311000, 75312000, 75313000, 75313100, 75314000, 75320000, 75330000, 75340000, 76000000, 76100000, 76110000, 76111000, 76120000, 76200000, 76210000, 76211000, 76211100, 76211200, 76300000, 76310000, 76320000, 76330000, 76340000, 76400000, 76410000, 76411000, 76420000, 76430000, 76431000, 76440000, 76450000, 76460000, 76470000, 76480000, 76490000, 76491000, 76492000, 76500000, 76510000, 76520000, 76521000, 76522000, 76530000, 76531000, 77000000, 77100000, 77110000, 77120000, 77210000, 77211000, 77211100, 77211300, 77220000, 77230000, 77330000, 77500000, 77510000, 77600000, 77610000, 77700000, 78400000, |
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|--|--|--|--|
| | | | 85321000, 85322000, 90114100, 90115000, 90122132, 90123000, 90123100, 90123200, 90123300, 90230000, 91000000, 91100000, 91110000, 91120000, 91130000, 91131000, 91200000, 91300000, 91310000, 91320000, 91330000, 91331000, 91331100, 92230000, 92312211, 93100000, 93110000, 93111000, 93112000, 93120000, 93121000, 93130000, 93140000, 93150000, 93160000, 93200000, 93210000, 93211000, 93220000, 93221000, 93221100, 93221200, 93221300, 93300000, 93310000, 93320000, 93330000, 93411100, 93500000, 93510000, 93511000, 93511100, 93621000, 93700000, 93710000, 93711000, 93711100, 93711110, 93711200, 93712000, 93910000, 93930000, 93940000, 93950000, 95000000, 99000000, 99100000 |
|--|--|--|--|

ANNEX XVII

INFORMATION TO BE INCLUDED IN THE DESIGN CONTEST NOTICE

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

ANNEX XVIII

INFORMATION TO BE INCLUDED IN THE RESULTS OF DESIGN CONTEST NOTICES

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

FEATURES CONCERNING PUBLICATION

1. Publication of notices

- (a) Notices referred to in Articles 40, 41, 42 and 61 are sent by the contracting entities to the Office for Official Publications of the European Communities in the format required by Commission Directive 2001/.../EC on the use of standard forms for the publication of notices (replacing Annex IV to Directive 93/63/EEC, Annexes IV, V and VI to Directive 93/37/EEC, Annexes III and IV to Directive 92/50/EEC, as amended by Directive 97/52/EC, and also Annexes XII to XV, XVII and XVIII to Directive 93/38/EEC, as amended by Directive 98/4/EC). The prior information notices referred to in Article 40(1), first subparagraph, published on a buyer profile as described in paragraph 2(b), must also use that format, as must the notice of such publication.
- (b) Notices referred to in Articles 40, 41, 42 and 61 are published by the Office for Official Publications of the European Communities or by the contracting entities in the event of a periodic notice published on a buyer profile in accordance with Article 40(1), first subparagraph.

In addition, contracting authorities may publish this information on the Internet on a "buyer profile" as referred to in paragraph 2(b).

- (c) The Office for Official Publications of the European Communities will give the contracting authority the confirmation referred to in Article 43(8).

2. Publication of complementary or additional information

- (a) Contracting entities are encouraged to publish the specifications and the additional documents in their entirety on the Internet.
- (b) The buyer profile may include periodic notices as referred to in Article 40(1), first subparagraph, information on ongoing invitations to tender, scheduled purchases, contracts concluded, procedures cancelled and any useful general information, such as a contact point, a telephone and a fax number, a postal address and an e-mail address.

3. Format and modalities for sending notices electronically

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

ANNEX XX

DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS

For the purposes of this Directive,

1.
 - (a) "technical specification", in the case of public service or supply contracts, means a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods and conformity assessment procedures;
 - (b) "technical specification", in the case of public works contracts, means the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a material, product or supply, which permits a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting entity. These characteristics shall include levels of environmental performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, and production processes and methods. They shall also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;
2. "standard" means a technical specification approved by a recognised standardisation body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:
 - international standard: a standard adopted by an international standards organisation and made available to the general public;
 - European standard: a standard adopted by a European standards organisation and made available to the general public;

- national standard: a standard adopted by a national standards organisation and made available to the general public;
- 3. "European technical approval" means a favourable technical assessment of the fitness for use of a product, based on fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. European approval shall be issued by an approval body designated for this purpose by the Member State;
- 4. "common technical specifications" means technical specifications drawn up in accordance with a procedure recognised by the Member States and published in the Official Journal of the European Communities;
- 5. "technical reference": any product produced by European standardisation bodies, other than official standards, according to procedures adopted for market development.

ANNEX XXI

Summary table of the deadlines laid down in Article 44

Open procedures

| Deadline for receipt of bids – without a periodic indicative notice | | | | | |
|--|--|--|---|--|---|
| Deadline | Electronic dispatch of the notice | Contract documents available electronically | Electronic dispatch plus "electronic" contract documents | Effect on first subparagraph of paragraph 7 | Effect on second subparagraph of paragraph 7 |
| 52 | 45 | 47 | 40 | none | none |
| With publication of a periodic indicative notice | | | | | |
| A: Deadline in general | Electronic dispatch of the notice | Contract documents available electronically | Electronic dispatch plus "electronic" contract documents | Effect on first subparagraph of paragraph 7 | Effect on second subparagraph of paragraph 7 |
| 36 | 29 | 31 | 24 | none | none |
| B: Minimum deadline | Electronic dispatch of the notice | Contract documents available electronically | Electronic dispatch plus "electronic" contract documents | Effect on first subparagraph of paragraph 7 | Effect on second subparagraph of paragraph 7 |
| 22 | 15 | 17 | 10 | The period of 10 days is extended to 15 days | The period of 17 days is extended to 22 days |

Restricted and negotiated procedures

| Deadline for the receipt of requests to participate: | | | | | |
|---|--|--|---|--|---|
| General deadline | Electronic dispatch of the notice | Contract documents available electronically | Electronic dispatch plus "electronic" contract documents | Effect on first subparagraph of paragraph 8 | Effect on second subparagraph of paragraph 8 |
| 37 | 30 | Not applicable (n.a.) | n.a. | none | n.a. |
| Minimum deadline | Electronic dispatch of the notice | Contract documents available electronically | Electronic dispatch plus "electronic" contract documents | Effect on first subparagraph of paragraph 8 | Effect on second subparagraph of paragraph 8 |
| 22 | 15 | n.a. | n.a. | none | n.a. |
| Minimum deadline | Electronic dispatch of the notice | Contract documents available electronically | Electronic dispatch plus "electronic" contract documents | Effect on first subparagraph of paragraph 8 | Effect on second subparagraph of paragraph 8 |
| 15 | 8 | n.a. | n.a. | The period of 8 days is extended to 15 days | n.a. |
| Deadline for the receipt of tenders | | | | | |
| A: Deadline in general | Electronic dispatch of the notice | Contract documents available electronically | Electronic dispatch plus "electronic" contract documents | Effect on first subparagraph of paragraph 8 | Effect on second subparagraph of paragraph 8 |
| 24 | n.a. | 19 | n.a. | n.a. | none |
| B: Minimum deadline | Electronic dispatch of the notice | Contract documents available electronically | Electronic dispatch plus "electronic" contract documents | Effect on first subparagraph of paragraph 8 | Effect on second subparagraph of paragraph 8 |
| 10 | n.a. | 5 | n.a. | n.a. | The period of 5 days is extended to 10 days |

| C: Deadline set by agreement | Electronic dispatch of the notice | Contract documents available electronically | Electronic dispatch plus "electronic" contract documents | Effect on first subparagraph of paragraph 8 | Effect on second subparagraph of paragraph 8 |
|-------------------------------------|--|--|---|--|---|
| | n.a. | n.a. | n.a. | n.a. | n.a. |

ANNEX XXII

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

1. Equipment for the electronic receipt of tenders, requests to participate, applications for qualification as well as plans and projects in contests must at least guarantee, through technical means and appropriate procedures, that:
 - (a) electronic signatures relating to tenders, requests to participate and applications for qualification as well as to the forwarding of plans and projects comply with national provisions adopted pursuant to Directive 1999/93/EC of the European Parliament and of the Council ⁶⁶;
 - (b) the exact time and date of the receipt of tenders, requests to participate, applications for qualification as well as plans and projects can be determined precisely;
 - (c) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under these requirements;
 - (d) if that access prohibition is infringed, it may be reasonably ensured that the infringement is clearly detectable;
 - (e) only authorised persons may set or change the dates for opening data received;
 - (f) during the various stages of the qualification procedure, the contract award procedure or contest access to all data submitted, or to part thereof, must be possible only through simultaneous action by authorised persons;
 - (g) simultaneous action by authorised persons must give access to data transmitted only after the prescribed date;
 - (h) data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith.

⁶⁶ Directive 1999/93/EC of the European Parliament and of the Council on a Community framework for electronic signatures (OJ L 13, 19.1.2000, p. 12).

ANNEX XXIII

Deadlines for transposition and implementation

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ANNEX XXIV

Correlation table

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