



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 14 July 1999
(OR. en)**

9753/99

**Interinstitutional File:
99/0108 (AVC)**

LIMITE

**AELE 67
MAP 12**

Subject: Consolidated version of the Agreement between the European Community and the Swiss Confederation on certain aspects of government procurement and the Final Act thereto, including all corrigenda.

AGREEMENT

BETWEEN

THE EUROPEAN COMMUNITY AND

THE SWISS CONFEDERATION

ON CERTAIN ASPECTS OF

GOVERNMENT PROCUREMENT

The EUROPEAN COMMUNITY (hereinafter “the Community”),

of the one part, and

The SWISS CONFEDERATION (hereinafter “Switzerland”),

of the other part,

hereinafter referred to as "the Parties",

CONSIDERING the Parties' efforts and commitments to liberalise their respective public procurement markets, notably through the Government Procurement Agreement (GPA) concluded in Marrakesh on 15 April 1994, which entered into force on 1 January 1996, and through the adoption of national rules providing for effective market opening in the field of government procurement through progressive liberalisation,

CONSIDERING the exchange of letters of 25 March and 5 May 1994 between the European Commission and the Swiss Federal Office for Foreign Economic Affairs,

CONSIDERING the Agreement concluded on 22 July 1972 between Switzerland and the Community,

DESIROUS to improve and broaden the scope of their respective Annexes to Appendix I of the GPA,

DESIROUS also to pursue liberalisation efforts among themselves by granting access to procurement of products, works and services by their respective telecommunications and railway operators, entities active in the field of energy other than electricity, and private utilities which operate on the basis of special or exclusive rights granted by a competent state authority and are active in the sectors of drinking water, electricity, urban transport, airports and maritime or inland ports,

HAVE AGREED AS FOLLOWS:

CHAPTER 1

BROADENING THE SCOPE OF THE GOVERNMENT PROCUREMENT AGREEMENT CONCLUDED WITHIN THE FRAMEWORK OF THE WORLD TRADE ORGANISATION

Article 1

Obligations of the Community

1. In order to supplement and broaden the scope of its commitments *vis-à-vis* Switzerland under the Government Procurement Agreement (GPA) signed on 15 April 1994 within the framework of the World Trade Organisation (WTO), the Community undertakes to amend its Annexes and General Notes to Appendix I of the GPA as follows:

delete the reference to "Switzerland" in the first indent of General Note No 2, so as to allow Swiss suppliers and service providers to challenge, pursuant to Article XX, the award of contracts by Community entities listed in Annex 2, paragraph 2.
2. The Community shall notify the WTO Secretariat of this amendment within one month after the entry into force of this Agreement.

Article 2

Obligations of Switzerland

1. In order to supplement and broaden the scope of its commitments *vis-à-vis* the Community under the GPA, Switzerland undertakes to amend its Annexes and General Notes to Appendix I of the GPA as follows:

insert in Annex 2, under "List of entities", the following new point after point 2:
"3. Authorities and public bodies at district and municipality level".
2. Switzerland shall notify the WTO Secretariat of this amendment within one month from the entry into force of this Agreement.

CHAPTER II

PROCUREMENT BY TELECOMMUNICATIONS AND RAILWAY OPERATORS AND BY CERTAIN UTILITIES

Article 3

Objectives, definitions and scope

1. The aim of this Agreement is to secure reciprocal, transparent and non-discriminatory access of the Parties' suppliers and service providers to purchases of products and services, including construction services, by telecommunications operators, railway operators, entities active in the field of energy other than electricity and private utilities of both Parties.
2. For the purposes of this Chapter:
 - (a) "telecommunications operators" (hereinafter referred to as "TOs") shall mean entities which provide or operate public telecommunications networks or provide one or more public telecommunications services and which either are public authorities or public undertakings or operate on the basis of special or exclusive rights granted by a competent authority of one of the Parties;
 - (b) "public telecommunications network" shall mean the telecommunications infrastructure available to the public which enables signals to be conveyed between defined network termination points by wire, microwave, optical means or other electromagnetic means;
 - (c) "public telecommunications services" shall mean services the provision of which consists wholly or partly in the transmission and routing of signals on the public telecommunications network by means of telecommunications processes, with the exception of radio broadcasting and television;
 - (d) "railway operators" (hereinafter referred to as "ROs") shall mean contracting entities which either are public authorities or public undertakings or operate on the basis of special or exclusive rights granted by a competent authority of one of the Parties and which have as one of their activities the operation of networks providing a service to the public in the field of transport by railway;
 - (e) "entities active in the field of energy other than electricity" shall mean contracting entities which either are public authorities or public undertakings or operate on the basis of special or exclusive rights granted by a competent authority of one of the Parties and which have as one of their activities any of those referred to in (i) and (ii) below or any combination thereof:
 - (i) 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 the supply of gas or heat to such networks; or

- (ii) the exploitation of a geographical area for the purpose of exploring for or extracting oil, gas, coal or other solid fuels;
- (f) "private utilities" shall mean contracting entities which are not covered by the GPA but operate on the basis of special or exclusive rights granted by a competent authority of one of the Parties and which have as one of their activities any of those referred to in (i) to (v) below or any combination thereof:
 - (i) 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 the supply of drinking water to such networks;
 - (ii) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity or the supply of electricity to such networks;
 - (iii) the provision of airport or other terminal facilities to carriers by air;
 - (iv) the provision of maritime or inland port or other terminal facilities to carriers by sea or inland waterway;
 - (v) the operation of networks providing a service to the public in the field of transport by urban railway, automated systems, tramway, trolley bus, bus or cable.
- 3. This Agreement applies to any law, regulation or practice regarding procurement by the Parties' TOs, ROs, entities active in the field of energy other than electricity and private utilities (hereinafter referred to as "Covered Entities") as defined in this Article and specified in Annexes I to IV and to the award of all procurement contracts by such Covered Entities.
- 4. Articles 5 and 6 shall apply to contracts, or series of contracts, the estimated value of which, excluding VAT, is not less than:
 - (a) when awarded by TOs:
 - (i) EUR 600 000 or its equivalent in SDRs, as regards supplies and services;
 - (ii) EUR 5 000 000 or its equivalent in SDRs, as regards works;

- (b) when awarded by ROs and entities active in the field of energy other than electricity:
 - (i) EUR 400 000 or its equivalent in SDRs, as regards supplies and services;
 - (ii) EUR 5 000 000 or its equivalent in SDRs, as regards works;
- (c) when awarded by private utilities:
 - (i) SDR 400 000 or its equivalent in euro, as regards supplies and services;
 - (ii) SDR 5 000 000 or its equivalent in euro, as regards works.

The conversion of euro in SDRs shall be in accordance with the procedures established in the Government Procurement Agreement (GPA).

- 5. This Chapter shall not apply to contracts, awarded by TOs, for purchases intended exclusively to enable them to provide one or more telecommunications services where other entities are free to offer the same services in the same geographical area and under substantially the same conditions. Each Party shall promptly inform the other Party about such contracts. This provision shall apply under the same conditions also to contracts awarded by ROs, entities active in the field of energy other than electricity and private utilities as soon as these sectors have been liberalised.
- 6. With regard to services, including construction services, this Agreement shall apply to those listed in Annexes VI and VII to this Agreement.
- 7. This Agreement shall not apply to Covered Entities where they fulfil the conditions laid down in Articles 2(4), 2(5), 3, 6(1), 7(1), 9(1), 10, 11, 12 and 13(1) of Directive 93/38/EEC, as last amended by Directive 98/4/EC of 16 February 1998 (OJ L 101, 4 April 1998, p. 1) for the Community and in Annexes VI and VIII for Switzerland.

This Agreement shall not apply to contracts awarded by ROs where such contracts concern the purchase or lease of products in order to re-finance supply contracts awarded in accordance with the provisions of this Agreement.

Article 4

Procurement procedures

1. The parties shall ensure that the procurement procedures and practices for the award of contracts followed by their Covered Entities comply with the principles of non-discrimination, transparency and fairness. Such procedures and practices shall at least meet the following conditions:
 - (a) calls for competition shall be made by publication of a tender notice, an indicative notice or a notice on the existence of a qualification system. These notices, or a summary of the important elements thereof, shall be published in at least one of the official languages of the GPA at national level in the case of Switzerland, on the one hand, and at Community level, on the other hand. They shall contain all necessary information about the intended procurement, including where applicable the type of award procedure being followed;
 - (b) time-limits shall be adequate to allow suppliers or service providers to prepare and submit tenders;
 - (c) tender documentation shall contain all information necessary, notably technical specifications and selection and award criteria, to enable tenderers to submit eligible tenders. Tender documentation shall be forwarded to suppliers or service providers upon request;
 - (d) selection criteria shall be non-discriminatory. Qualification system applied by Covered Entities must be based on pre-defined and non-discriminatory criteria and the procedure and conditions for participation shall be made available upon request;
 - (e) award criteria may be either the most economically advantageous tender, involving specific evaluation criteria such as delivery or completion date, cost-effectiveness, quality, technical merit, after-sales service, commitments with regard to spare parts, price, etc., or the lowest price only.
2. The Parties shall also ensure that their Covered Entities define the technical specifications set out in the tender documentation in terms of performance rather than design or descriptive characteristics. Such specifications shall be based on international standards, where they exist, otherwise on national technical regulations, recognised national standards or recognised building codes. Any technical specifications adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to procurement by a Party's Covered Entity of products or services from the other Party and to related trade between the Parties shall be prohibited.

Article 5
Challenge procedures

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

CHAPTER III

GENERAL AND FINAL PROVISIONS

Article 6

Non-discrimination

1. The Parties shall ensure that, in their procedures and practices for the award of procurement contracts above the value thresholds laid down in Article 3(4), Covered Entities established in their respective territories do not:
 - (a) treat products, services, suppliers and service providers of the other Party less favourably than
 - (i) domestic products, services, suppliers and service providers; or
 - (ii) third-country products, services, suppliers and service providers;
 - (b) treat a locally-established supplier or service provider less favourably than another locally-established supplier or service provider on the basis of the degree of affiliation to, ownership of or control by natural or legal persons from the other Party;
 - (c) discriminate against a locally-established supplier or service provider on the basis of the fact that the product or service being supplied originates from the other Party;
 - (d) prescribe offsets in the qualification and selection of products, services, suppliers or service providers, or in the evaluation of tenders and award of contracts.

2. The Parties undertake to refrain from requiring either the competent authorities or the Covered Entities to act in a discriminatory manner, either directly or indirectly. An illustrative list of areas where such discrimination is possible is set out in Annex X.
3. In their procedures and practices for the award of procurement contracts below the value thresholds laid down in Article 3(4), the Parties undertake to encourage their Covered Entities to treat the suppliers and service providers of the other Party in accordance with the provisions of paragraph 1. The Parties agree that, not later than five years after the entry into force of this Agreement, the conditions and implementation of this provision will be reviewed in the light of experience acquired in their mutual relations. To that end, the Joint Committee will draw up lists of situations in which the principle established in this Article 6 is applied.
4. The principles set out in paragraph 1, notably in (a)(i), and in paragraphs 2 and 3 shall be without prejudice to measures made necessary by the particular integration process of the Community and the establishment and functioning of its internal market, as well as by the development of the Swiss domestic market. Likewise, these principles, notably those set out in (a)(ii), shall be without prejudice to preferential treatment granted under existing or future regional economic integration agreements. However, the application of this provision must not jeopardise the administration of this Agreement. The measures to which this paragraph applies are listed in Annex IX; either Party may notify other measures covered by this paragraph. Consultations by the Joint Committee shall take place at the request of either Party with a view to ensuring that this Agreement continues to be implemented satisfactorily.

Article 7

Information exchange

1. To the extent necessary to ensure effective implementation of Chapter II, the Parties shall inform each other of planned changes to their relevant legislation falling or likely to fall within the scope of this Agreement (proposals for directives, draft laws and orders and draft amendments to the *Concordat intercantonal*).
2. The Parties shall also inform each other about any other issue relevant to the interpretation and application of this Agreement.
3. The Parties shall communicate to each other the names and addresses of “contact points” responsible for providing information on the rules of law falling within the scope of this Agreement and of the GPA, including at local level.

Article 8

Monitoring authority

1. The implementation of this Agreement shall be monitored, within each Party, by an independent authority. This authority shall be competent to receive any complaint or grievance concerning the application of this Agreement and shall act promptly and effectively.
2. Not later than two years after the entry into force of this Agreement, the authority shall also be competent to initiate proceedings or take administrative or judicial action against Covered Entities in the event of a breach of this Agreement in the context of a procurement procedure.

Article 9

Urgent measures

1. If a Party considers that the other Party has failed to comply with its obligations under this Agreement or that a law, regulation or practice of the other Party substantially reduces or threatens to reduce substantially the benefits accruing to it under this Agreement, and the Parties are unable to agree promptly on appropriate compensation or other remedial action, the adversely affected Party may, without prejudice to its other rights and obligations under international law, suspend partly or completely, as appropriate, the application of this Agreement. It shall immediately notify the other Party of any such suspension. The adversely affected Party may also terminate the Agreement in accordance with Article 18(3).
2. The scope and duration of such measures shall be limited to what is necessary in order to remedy the situation and to secure, if necessary, a fair balance of rights and obligations under this Agreement.

Article 10

Settlement of disputes

Each Contracting Party may bring a matter under dispute which concerns the interpretation or application of this Agreement to the Joint Committee, which shall endeavour to settle the dispute. The Joint Committee shall be provided with all relevant information for an in depth examination of the situation with a view to finding an acceptable solution. To that end, the Joint Committee shall be required to examine all possibilities for maintaining the good functioning of this Agreement.

Article 11

Joint Committee

1. A Joint Committee is hereby established. It shall ensure the effective implementation and operation of this Agreement. To that end, it shall carry out exchanges of views and information and constitute the forum for consultations between the Parties.
2. The Joint Committee shall consist of representatives of the Parties and shall act by mutual consent. It shall adopt its rules of procedure and may establish working groups to assist it in carrying out its tasks.
3. In order to ensure the effective operation of this Agreement, the Joint Committee shall meet at least once a year or at the request of either Party.
4. The Joint Committee shall regularly examine the Annexes to this Agreement. The Joint Committee may amend them at the request of either Party.

Article 12

Information technology

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

Article 13

Implementation

1. The Parties shall take all the necessary measures, whether general or specific, to ensure that they fulfil their obligations under this Agreement.
2. They shall refrain from any action that could jeopardise attainment of the objectives of this Agreement.

Article 14

Revision

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

Article 15

Relationship with WTO agreements

This Agreement does not affect the rights and obligations of the Parties under agreements concluded under the auspices of the WTO.

Article 16

Scope of territorial application

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other, to the territory of Switzerland.

Article 17

Annexes

The annexes to this Agreement shall form an integral part thereof.

Article 18

Entry into force and duration

1. This Agreement shall be ratified or approved by the Parties according to the procedures applicable to them. It shall enter into force on the first day of the second month following the last notification of deposit of the instruments of ratification or approval of all seven of the following agreements:
 - agreement on certain aspects of government procurement;
 - agreement on the free movement of persons;
 - agreement on air transport;
 - agreement on the carriage of goods and passengers by rail and road;
 - agreement on trade in agricultural products ;
 - agreement on mutual recognition in relation to conformity assessment;
 - agreement on scientific and technological cooperation.
2. This Agreement is concluded for an initial period of seven years. It shall be renewed for an indefinite period unless the Community or Switzerland notifies the other Party to the contrary before the expiry of the initial period. In the event of such notification, the provisions of paragraph 4 shall apply.
3. The Community or Switzerland may terminate this Agreement by notifying the other Party of its decision. In the event of such notification, the provisions of paragraph 4 shall apply.
4. The seven agreements referred to in paragraph 1 shall cease to apply six months after the receipt of notification of non-renewal referred to in paragraph 2 or of termination referred to in paragraph 3.

This Agreement is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, each of these texts being equally authentic.

ANNEXES

Annex I

(referred to in Article 3(1) and 2(a) to (c) and 5 of the Agreement)

Telecommunications operators covered

Annex I A - Community

BELGIUM	<i>Belgacom</i>
DENMARK	<i>Tele Danmark A/S and subsidiaries</i>
GERMANY	<i>Deutsche Bundespost Telekom</i>
GREECE	<i>OTE/Hellenic Telecom Organisation</i>
SPAIN	<i>Telefónica de Spain S.A</i>
FRANCE	<i>France Telecom</i>
IRELAND	<i>Telecom Eireann</i>
ITALY	<i>Telecom Italia</i>
LUXEMBOURG	<i>Administration des postes et télécommunications</i>
NETHERLANDS	<i>Koninklijke PTT Netherlands NV and subsidiaries, except PTT Post BV</i>
AUSTRIA	<i>Österreichische Post und Telekommunikation (PTT)</i>
PORTUGAL	<i>Portugal Telecom and subsidiaries</i>
FINLAND	<i>Sonera</i>
SWEDEN	<i>Telia</i>
UNITED KINGDOM	<i>British Telecommunications (BT) City of Kingston upon Hull</i>

These telecommunications operators are covered inasmuch as they come under the scope of application of Directive 93/38, as amended by Directive 98/4 of 16 February 1998 (OJ L 101 of 4 April 1998, p. 1).

Annexe I B - Switzerland

Specification of the entities active in the field of telecommunications as referred to in Article 3(1) and (2)(a) to (c) of the Agreement

Entities providing a public telecommunications service under a concession within the meaning of Article 66, first indent, of the Federal Law on Telecommunications of 30 April 1997.

For example: Swisscom.

Annexe II

(referred to in Article 3(1) and (2)(d) and 5 of the Agreement)

Railway operators covered

Annex II A - Community

BELGIUM	<i>Société nationale des chemins de fer belges / Nationale Maatschappij der Belgische Spoorwegen.</i>
DENMARK	<i>Danske Statsbaner (DSB)</i> Entities operating/set up pursuant to <i>Lov nr. 295 om privatbanerne</i> of 6 June 1984, <i>jf. lov nr. 245</i> of 6 August 1977.
GERMANY	<i>Deutsche Bundesbahn</i> Other entities providing railway services to the public as defined in paragraph 2 Abs. 1 of the <i>Allgemeines Eisenbahngesetz</i> of 29 March 1951.
GREECE	Organisation of Railways in Greece (OSE)/ <i>Οργανισμός Σιδηροδρόμων Ελλάδος (ΟΣΕ)</i> .
SPAIN	<i>Red Nacional de los Ferrocarriles Españoles (RENFE)</i> . <i>Ferrocarriles de Vía Estrecha (FEVE)</i> . <i>Ferrocarrils de la Generalitat de Catalunya (FGC)</i> . <i>Eusko Trenbideak (Bilbao)</i> . <i>Ferrocarriles de la Generalitat Valenciana (FGV)</i> .
FRANCE	<i>Société nationale des chemins de fer français</i> and other railway networks open to the public referred to in the <i>Loi d'orientation des transports intérieurs</i> of 30 December 1982, Title II, Chapter 1, rail transport.
IRELAND	<i>Iarnrod Éireann (Irish Rail)</i> .
ITALY	<i>Ferrovie dello Stato</i> Entities providing railway services on the basis of a concession pursuant to Article 10 of <i>Regio Decreto n. 1447</i> of 9 May 1912 approving the Consolidated Text of the legal provisions concerning railways operating as private concessions, mechanical tramways and automobiles. Entities operating on the basis of a concession granted by the State pursuant to special laws, see Title XI, Chapter II, Section Ia of <i>Regio Decreto n. 1447</i> of 9 May 1912 approving the Consolidated Text of the legal provisions concerning railways operating as private concessions, mechanical tramways and automobiles.

	Entities providing railway services to the public on the basis of a concession pursuant to Article 4 of <i>Legge n. 410 - Concorso dello Stato per la riattivazione dei pubblici servizi di trasporto in concessione</i> of 14 June 1949.
	Entities or local authorities providing railway services on the basis of a concession pursuant to Article 14 <i>Legge n. 1221 - Provvedimenti per l'esercizio ed il potenziamento di ferrovie e di altre linee di trasporto in regime di concessione</i> of 2 August 1952.
LUXEMBOURG	<i>Chemins de fer luxembourgeois (CFL)</i> .
NETHERLANDS	<i>Nederlandse Spoorwegen NV</i> .
AUSTRIA	Entities providing railway services to the public pursuant to the <i>Eisenbahngesetz 1957 (BGBl. Nr. 60/1957)</i> .
PORTUGAL	<i>Caminhos de Ferro Portugueses</i> .
FINLAND	<i>Valtionrautatiet/Statsjärnvägarna</i>
SWEDEN	Public entities operating railway services in accordance with <i>förordningen (1988:1379) om statens spåranläggningar</i> and <i>lagen (1990:1157) om järnvägssäkerhet</i> . Regional and local public entities operating regional or local railway communications pursuant to <i>lagen (1978:438) om huvudmannaskap foer viss kollektiv persontrafik</i> . Private entities operating railway services pursuant to permission under <i>foerordningen (1988:1379) om statens spaaranlaegningar</i> where such permission complies with Article 2(3) of the directive.
UNITED KINGDOM	<i>British Railways Boards</i> . <i>Northern Ireland Railways</i> .

Annexe II B - Switzerland

Specification of railway operators as referred to in Article 3(1) and 2(d) of the Agreement

Chemins de fer fédéraux (CFF)¹

Entities within the meaning of Articles 1(2) and 2(1) of the *Loi fédérale sur les chemins de fer* of 20 December 1957, where they operate public transport services by standard- or narrow-gauge railway².

For example: BLS, MthB, Chemin de fer du Jura, RhB, FO, GFM.

¹ Except for holdings and undertakings which are not directly active in the transport sector.

² Except for holdings and undertakings which are not directly active in the transport sector.

Annex III

(referred to in Article 3(1) and 2(e) and 5 of the Agreement)

Entities active in the field of energy

Annex III A - Community

a) Transport or distribution of gas or heat

- BELGIUM *Distrigaz SA* operating pursuant to the Law of 29 July 1983.
- Entities transporting gas on the basis of an authorisation or concession pursuant to the Law of 12 April 1965, as amended by the Law of 28 July 1987.
- Entities distributing gas and operating pursuant to the *Loi relative aux intercommunales* of 22 December 1986.
- Local authorities, or associations of local authorities, distributing heat.
- DENMARK *Dansk Olie og Naturgas A/S* operating on the basis of an exclusive right granted pursuant to *bekendtgoerelse nr. 869 om eneretsbevilling til indfoersel, forhandling, transport og oplagring af naturgas* of 18 June 1979.
- Entities operating pursuant to *lov nr. 249 af 7. Juni 1972 om naturgasforsyning*.
- Entities distributing gas or heat on the basis of an approval pursuant to Chapter IV of *lov om varmforsyning, jf. lovbekendtgoerelse nr. 330 af 29. Juni 1983*.
- Entities transporting gas on the basis of an authorisation pursuant to *bekendtgoerelse nr. 141 af 13. marts 1974 om rørledningsanlaeg paa dansk kontinentalsokkelomraade til transport af kulbrinter* (installation of pipelines on the continental shelf for the transport of hydrocarbons).
- GERMANY Entities transporting or distributing gas as defined in paragraph 2 Abs. 2 of the *Gesetz zur Förderung der Energiewirtschaft (Energiewirtschaftsgesetz)* of 13 December 1935, as last amended by the law of 19 December 1977.

	Local authorities, or associations of local authorities, distributing heat.
GREECE	<i>DEP</i> transporting or distributing gas pursuant to Ministerial Decision 2583/1987 (<i>Anathesi sti Dimosia Epicheirisi Petrelaiou armodiotiton schetikon me to fysiko aerio</i>) <i>Systasi tis DEPA AE (Dimosia Epicheirisi Aerioy, Anonymos Etaireia)</i> . Athens Municipal Gasworks S.A. <i>DEFA</i> transporting or distributing gas.
SPAIN	Entities operating pursuant to <i>Ley no 10</i> of 15 June 1987.
FRANCE	<i>Société nationale des gaz du Sud-Ouest</i> transporting gas. <i>Gaz de France</i> , set up and operating pursuant to <i>Loi 46/6288 sur la nationalisation de l'électricité et du gaz</i> of 8 April 1946. Entities (<i>sociétés d'économie mixte</i> or <i>régies</i>) distributing electricity and referred to in Article 23 of <i>Loi 48/1260 portant modification des Lois 46/6288 du 8 avril 1946 et 46/2298 du 21 octobre 1946 sur la nationalisation de l'électricité et du gaz</i> of 12 August 1948. <i>Compagnie française du méthane</i> transporting gas. Local authorities, or associations of local authorities, distributing heat.
IRELAND	Irish Gas Board operating pursuant to the <i>Gas Act 1976 to 1987</i> and other entities governed by <i>Statute. Dublin Corporation</i> , distributing heat.
ITALY	<i>SNAM</i> and <i>SGM e Montedison</i> transporting gas. Entities distributing gas pursuant to the Consolidated Text of <i>Leggi sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province approvato con Regio Decreto n. 2578</i> of 15 October 1925 and to <i>Decreto del PR n. 902</i> of 4 October 1986. Entities distributing heat to the public referred to in Article 10 of <i>Legge n. 308 - Norme sul contenimento dei consumi energetici, lo sviluppo delle fonti rinnovabili di energia, l'esercizio di centrali elettriche alimentate con combustibili diversi dagli idrocarburi</i> of 29 May 1982. Local authorities, or associations of local authorities, distributing heat.
LUXEMBOURG	<i>Société de transport de gaz SOTEG SA</i> .

Gaswierk Esch-Uelzecht SA.

Service industriel de la commune de Dudelange.

Service industriel de la commune de Luxembourg.

Local authorities, or associations of local authorities, distributing heat.

NETHERLANDS

NV Nederlandse Gasunie.

Entities transporting or distributing gas on the basis of a licence (*vergunning*) granted by the local authorities pursuant to the *Gemeentewet*.

Local or provincial entities transporting or distributing gas to the public pursuant to the *Gemeentewet* and the *Provinciewet*.

Local authorities, or associations of local authorities, distributing heat.

AUSTRIA

Gas: contracting entities transporting or distributing gas pursuant to the *Energiewirtschaftsgesetz 1935, dRGBl. I S 1451/1935* as amended by *dRGBl. I S 467/1941*.

Heat: contracting entities transporting or distributing heat licensed pursuant to the Austrian Trade, Commerce and Industry Regulation Act (*Gewerbeordnung BGBl. Nr. 50/1974*).

PORTUGAL

Petroquímica e Gás de Portugal (EP) pursuant to *Decreto-Lei no 346-A/88* of 29 September 1988.

FINLAND

Municipal energy boards, or associations thereof, or other entities distributing gas or heat on the basis of a concession granted by the municipal authorities.

SWEDEN

Entities which transport or distribute gas or heat on the basis of a concession pursuant to *lagen (1978:160) om vissa rörledning*.

UNITED KINGDOM

British Gas plc and other entities operating pursuant to the *Gas Act 1986*.

Local authorities, or associations of local authorities, distributing heat pursuant to the *Local Government (Miscellaneous Provisions) Act 1976*.
Electricity Boards distributing heat pursuant to the *Electricity Act 1947*.

b) Exploration for and extraction of oil or gas

The entities granted an authorisation, permit, licence or concession to explore for or extract oil and gas pursuant to the following legal provisions:

BELGIUM	Law of 1 May 1939 supplemented by <i>Arrêté royal no 83 sur l'exploration et l'exploitation du pétrole et du gaz</i> of 28 November 1939. <i>Arrêté royal</i> of 15 November 1919. <i>Arrêté royal</i> of 7 April 1953. <i>Arrêté royal</i> of 15 March 1960 (<i>Loi au sujet de la plate-forme continentale</i> of 15 June 1969). <i>Arrêté de l'exécutif régional wallon</i> of 29 September 1982. <i>Arrêté de l'exécutif flamand</i> of 30 May 1984.
DENMARK	<i>Lov nr. 293 om anvendelse af Danmarks undergrund</i> of 10 June 1981. <i>Lov om kontinentalsoklen, jf. Lovbekendtgørelse nr. 182</i> of 1 May 1979.
GERMANY	<i>Bundesberggesetz</i> of 13 August 1980, as last amended on 12 February 1990.
GREECE	Law 87/1975 setting up <i>DEP-EKY (Peri idryseos Dimosias Epicheiriseos Petrelaioy)</i> .
SPAIN	<i>Ley sobre Investigación y Explotación de Hidrocarburos</i> of 27 June 1974 and its implementing decrees.
FRANCE	<i>Code minier (Décret 56-838</i> of 16 August 1956) amended by <i>Loi 56-1327</i> of 29 December 1956, <i>Ordonnance 58-1186</i> of 10 December 1958, <i>Décret 60-800</i> of 2 August 1960, <i>Loi 77-620</i> of 16 June 1977, <i>Décret 80-204</i> of 11 March 1980.
IRELAND	<i>Continental Shelf Act 1960</i> . <i>Petroleum and Other Minerals Development Act 1960</i> . <i>Ireland Exclusive licensing terms 1975</i> . <i>Revised licensing terms 1987</i> . <i>Petroleum (Production) Act (NI) 1964</i> .
ITALY	<i>Legge n. 136</i> of 19 February 1953. <i>Legge n. 6</i> of 11 January 1957, as amended by <i>Legge n. 613</i> of 21 July 1967.
LUXEMBOURG	-
NETHERLANDS	<i>Mijnwet nr. 285</i> of 21 April 1810. <i>Wet opsporing delfstoffen nr. 258</i> of 3 May 1967. <i>Mijnwet continentaal plat 1965, nr. 428</i> of 23 September 1965.
AUSTRIA	Entities created pursuant to the <i>Berggesetz 1975 (BGBl. Nr. 259/1975</i> , as last amended by <i>BGBl. Nr. 193/1993)</i> .

PORTUGAL Surface area: *Decreto-Lei no 543/74* of 16 October 1974, *no 168/77* of 23 April 1977, *no 266/80* of 7 August 1980, *no 174/85* of 21 May 1985 and *Despacho no 22* of 15 March 1979.

Submerged area: *Decreto-Lei no 47973* of 30 September 1967, *no 49369* of 11 November 1969, *no 97/71* of 24 March 1971, *no 96/74* of 13 March 1974, *no 266/80* of 7 August 1980, *no 2/81* of 7 January 1981 and *no 245/82* of 22 June 1982.

FINLAND -

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

UNITED KINGDOM *Petroleum Production Act 1934*, as extended by the *Continental Shelf Act 1964*.

Petroleum (Production) Act (Northern Ireland) 1964.

c) Exploration for and extraction of coal or other solid fuels

BELGIUM Entities exploring for or extracting coal or other solid fuels pursuant to the *Arrêté du Régent* of 22 August 1948 and the Law of 22 April 1980.

DENMARK Entities exploring for or extracting coal or other solid fuels pursuant to the *lovbekendtgoerelse nr. 531* of 10 October 1984.

GERMANY Entities exploring for or extracting coal or other solid fuels pursuant to the *Bundesberggesetz* of 13 August 1980, as last amended on 12 February 1980.

GREECE Public Power Corporation *Dimosia Epicheirisi Ilektrismoy* exploring for or extracting coal or other solid fuels pursuant to the *Mining Code of 1973*, as amended by the law of 27 April 1976.

SPAIN Entities exploring for or extracting coal or other solid fuels pursuant to *Ley 22/1973 de Minas* of 21 July, as amended by *Ley 54/1980* of 5 November and *Real Decreto Legislativo 1303/1986* of 28 June.

FRANCE Entities exploring for or extracting coal or other solid fuels pursuant to the *Code minier* (*Décret 58-863* of 16 August 1956), as amended by *Loi 77-620* of 16 June 1977, *Décret 80-204* and the *Arrêté* of 11 March 1980.

IRELAND *Bord na Mona.*

Entities prospecting for or extracting coal pursuant to the *Minerals Development Acts, 1940 to 1970.*

ITALY *Carbo Sulcis SpA*

LUXEMBOURG -

NETHERLANDS -

AUSTRIA Entities exploring for or extracting coal or other solid fuels pursuant to the *Berggesetz 1975 (BGBl. Nr. 259/1975).*

PORTUGAL *Empresa Carbonífera do Douro.*

Empresa Nacional de Urânio.

FINLAND Entities exploring for or extracting coal or other solid fuels and operating on the basis of an exclusive right pursuant to Articles 1 and 2 of *Laki oikeudesta luovuttaa valtion maaomaisuutta ja tuloatuottavia oikeuksia (687/78).*

SWEDEN Entities exploring for or extracting coal or other solid fuels on the basis of a concession pursuant to *minerallagen (1991:45)* or *lagen (1985:620) om vissa torvfyndigheter* or which have been granted an authorisation pursuant to *lagen (1966:314) om kontinentalsockeln.*

UNITED KINGDOM *British Coal Corporation (BCC)* set up pursuant to the *Coal Industry Nationalisation Act 1946.*

Entities benefiting from a licence granted by the BCC pursuant to the *Coal Industry Nationalisation Act 1946.*

Entities exploring for or extracting solid fuels pursuant to the *Mineral Development Act (Northern Ireland) 1969.*

Annex III B - Switzerland

a) Transport or distribution of gas or heat

Entities transporting or distributing gas pursuant to Article 2 of the *Loi fédérale sur les installations de transport par conduits de combustibles ou carburants liquides ou gazeux* of 4 October 1963.

Entities transporting or distributing heat on the basis of a cantonal concession.

For example: SWISSGAS AG, Gaznat SA, Gasverbund Ostschweiz AG, REFUNA AG, Cadbar SA.

b) Exploration for and extraction of oil or gas

Entities exploring for and extracting oil or gas in accordance with the *Concordat Intercantonal concernant la prospection et l'exploitaiton du pétrole entre les cantons de Zurich, Schwyz, Glaris, Zoug, Schaffhouse, Appenzell Rh.-Ext., Appenzell Rh.-Int., Saint-Gall, Argovie et Thurgovie* of 24 September 1955.

For example: Seag AG.

c) Exploration for and extraction of coal or other solid fuels

No entities in Switzerland.

Annex IV

(referred to in Article 3(1) and 2(f) and 5 of the Agreement)

Private utilities covered

Annex IV A - Community

a) Production, transport or distribution of drinking water

- BELGIUM
- Entity set up pursuant to the *Décret de la région wallonne érigeant en entreprise régionale de production et d'adduction d'eau le service du ministère de la région chargé de la production et du grand transport d'eau* of 2 July 1987.
- Entity set up pursuant to the *Arrêté portant constitution d'une société wallonne de distribution d'eau* of 23 April 1986.
- Entity set up pursuant to the *Arrêté de l'exécutif flamand portant fixation des statuts de la société flamande de distribution d'eau* of 17 July 1985.
- Entities producing or distributing water and set up pursuant to the *Loi relative aux intercommunales* of 22 December 1986.
- Entities producing or distributing water and set up pursuant to the *Code communal, article 147 bis, ter et quater sur les régies communales*.
- DENMARK
- Entities producing or distributing water referred to in Article 3(3) *lovbekendtgørelse om vandforsyning m.v.* of 4 July 1985.
- GERMANY
- Entities producing or distributing water pursuant to the *Eigenbetriebsverordnungen* or *Eigenbetriebsgesetze* of the *Länder* (*Kommunale Eigenbetriebe*).
- Entities producing or distributing water pursuant to the *Gesetze über die Kommunale Gemeinschaftsarbeit oder Zusammenarbeit* of the *Länder*.
- Entities producing water pursuant to the *Gesetz über Wasser- und Bodenverbände* of 10 February 1937 and the *erste Verordnung über Wasser- und Bodenverbände* of 3 September 1937.
- (*Regiebetriebe*) producing or distributing water pursuant to the *Kommunalgesetze* and notably the *Gemeindeordnungen* of the *Länder*.

- Entities set up pursuant to the *Aktiengesetz* of 6 September 1965, as last amended on 19 December 1985, or the *GmbH-Gesetz* of 20 May 1898, as last amended on 15 May 1986, or having the legal status of a *Kommanditgesellschaft*, producing or distributing water on the basis of a special contract with regional or local authorities.
- GREECE
 The Water Company of Athens (*Etaireia Ydrefseos - Apochetefseos Protevoysis*) set up pursuant to Law 1068/80 of 23 August 1980.
 The Water Company of Thessaloniki (*Organismos Ydrefseos Thessalonikis*) operating pursuant to Presidential Decree 61/1988.
 The Water Company of Volos (*Etaireia Ydrefseos Voloy*) operating pursuant to Law 890/1979.
 Municipal companies (*Dimotikes Epicheiriseis ydrefsis-apochetefsis*) producing or distributing water and set up pursuant to Law 1069/80 of 23 August 1980.
 Associations of local authorities (*Syndesmoi ydrefsis*) operating pursuant to the Code of local authorities (*Kodikas Dimon kai Koinotiton*) implemented by Presidential Decree 76/1985.
- SPAIN
 Entities producing or distributing water pursuant to *Ley no 7/1985* of 2 April 1985, *Reguladora de las Bases del Régimen local* and *Decreto Real no 781/1986 Texto Refundido Régimen local*.
Canal de Isabel II. Ley de la Comunidad Autónoma de Madrid of 20 December 1984.
Mancomunidad de los Canales de Taibilla, Law of 27 April 1946.
- FRANCE
 Entities producing or distributing water pursuant to the:
- *dispositions générales sur les régies, code des communes L 323-1 à L 328-8, R 323-1 à R 323-6 (dispositions générales sur les régies);*
 - *Code des communes L 323-8, R 323-4 [régies directes (ou de fait)];*
 - *Décret-loi* of 28 December 1926, *Règlement d'administration publique* of 17 February 1930,
 - *Code des communes L 323-10 à L 323-13, R 323-75 à 323-132 (régies à simple autonomie financière);*
 - *Code des communes L 323-9, R 323-7 à R 323-74, Décret* of 19 October 1959 (*régies à personnalité morale et à autonomie financière*);
 - *Code des communes L 324-1 à L 324-6, R 324-1 à R 324-13 (gestion déléguée, concession et affermage);*

- *jurisprudence administrative, circulaire intérieure (gérance)* of 13 December 1975; or
 - *Code des communes R 324-6, circulaire intérieure (régie intéressée)* of 13 December 1975;
 - *Circulaire intérieure (exploitation aux risques et périls)* of 13 December 1975;
 - *Décret* of 20 May 1955, *Loi sur les sociétés d'économie mixte (participation à une société d'économie mixte)* of 7 July 1983;
 - *Code des communes L 322-1 à L 322-6, R 322-1 à R 322-4 (dispositions communes aux régies, concessions et affermages)*.
- IRELAND
Entities producing or distributing water pursuant to the *Local Government (Sanitary Services) Act 1878 to 1964*.
- ITALY
Entities producing or distributing water pursuant to the Consolidated Text of *Leggi sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province approvato con Regio Decreto n. 2578* of 15 October 1925 and *Decreto del P.R. n. 902* of 4 October 1986.
Ente Autonomo Acquedotto Pugliese set up pursuant to *RDL n. 2060* of 19 October 1919.
Ente Acquedotti Siciliani set up pursuant to *Leggi regionali n. 2/2* of 4 September 1979 and *n. 81* of 9 August 1980.
Ente Sardo Acquedotti e Fognatur set up pursuant to *Legge n. 9* of 5 June 1963.
- LUXEMBOURG
Local authorities distributing water.
Associations of local authorities producing or distributing water set up pursuant to the *Loi concernant la création des syndicats de communes* of 14 February 1900, as amended and supplemented by the Law of 23 December 1958 and the Law of 29 July 1981 and pursuant to the *Loi ayant pour objet le renforcement de l'alimentation en eau potable du grand-duché de Luxembourg à partir du réservoir d'Esch-sur-Sûre* of 31 July 1962.
- NETHERLANDS
Entities producing or distributing water pursuant to the *Waterleidingwet* of 6 April 1957, as amended by the Laws of 30 June 1967, 10 September 1975, 23 June 1976, 30 September 1981, 25 January 1984 and 29 January 1986.
- AUSTRIA
Entities of local authorities (*Gemeinden*) and associations of local authorities (*Gemeindevverbände*) producing, transporting or distributing water pursuant to the *Wasserversorgungsgesetze* of the nine *Länder*.

PORTUGAL	<i>Empresa Pública das Águas Livres</i> producing or distributing water pursuant to the <i>Decreto-Lei no 190/81</i> of 4 July 1981.
FINLAND	Local authorities producing or distributing water. Entities producing, transporting or distributing water pursuant to Article 1 of <i>Laki yleisistä vesija viemärlaitoksista</i> (982/77) of 23 December 1977.
SWEDEN	Local authorities and municipal companies which produce, transport or distribute drinking water pursuant to <i>lagen (1970:244) om allmänna vatten- och avloppsanläggningar</i> .
UNITED KINGDOM	<i>Water companies</i> producing or distributing water pursuant to the <i>Water Acts 1945 and 1989</i> . The <i>Central Scotland Water Development Board</i> producing or distributing water and the water authorities producing or distributing water pursuant to the <i>Water (Scotland) Act 1980</i> . The <i>Department of the Environment for Northern Ireland</i> responsible for producing and distributing water pursuant to the <i>Water and Sewerage (Northern Ireland) Order 1973</i> .

b) Production, transport or distribution of electricity

BELGIUM	Entities producing, transporting or distributing electricity pursuant to Article 5: <i>Des régions communales et intercommunales</i> of the <i>Loi sur les distributions d'énergie électrique</i> of 10 March 1925. Entities producing or distributing electricity pursuant to the <i>Loi relative aux intercommunales</i> of 22 December 1986. <i>Ebes, Intercom, Unerg</i> and other entities producing, transporting or distributing electricity and granted a concession for distribution pursuant to Article 8: <i>Les concessions communales et intercommunales</i> of the <i>Loi sur les distributions d'énergie électrique</i> of 10 March 1925. The <i>Société publique de production d'électricité (SPE)</i> .
DENMARK	Entities producing or transporting electricity on the basis of a licence pursuant to § 3, <i>stk 1</i> , of <i>Lov. nr. 54</i> of 25 February 1976 <i>om elforsyning, jf. bekendtgoerelse nr. 607</i> of 17 December 1976 <i>om elforsyningslovens anvendelsesomraade</i> .

- Entities distributing electricity as defined in § 3, stk 2, of Lov nr. 54 of 25 February 1976 om elforsyning, jf. bekendtgoerelse nr. 607 of 17 December 1976 om elforsyningslovens anvendelsesomraade and on the basis of authorisations for expropriation pursuant to Articles 10 to 15 of Lov om elektriske staerkstroemsanlaeg, jf. Lovbekendtgørelse nr. 669 of 28 December 1977.
- GERMANY Entities producing, transporting or distributing electricity as defined in § 2 Absatz 2 of the Gesetz zur Förderung der Energiewirtschaft (Energiewirtschaftsgesetz) of 13 December 1935, as last amended by the Gesetz of 19 December 1977, and auto-production of electricity so far as this is covered by the field of application of the Directive pursuant to Article 2(5).
- GREECE Dimosia Epicheirisi Ilektrismoy (Public Power Corporation) set up pursuant to Law 1468 of 2 August 1950: Peri idryseos Dimosias Epicheiriseos Ilektrismoy, and operating pursuant to Law 57/85: Domi, rolos kai tropos dioikisis kai leitoyrgias tis koinonikopoiimenis Dimosias Epicheirisis Ilektrismoy.
- SPAIN Entities producing, transporting or distributing electricity pursuant to Article 1 of the Decreto of 12 March 1954 approving the Reglamento de verificaciones eléctricas y regularidad en el suministro de energía and pursuant to Decreto 2617/1966 of 20 October sobre autorización administrativa en materia de instalaciones eléctricas.
Red Eléctrica de España SA, set up pursuant to Real Decreto 91/1985 of 23 January.
- FRANCE Électricité de France, set up and operating pursuant to Loi 46/6288 sur la nationalisation de l'électricité et du gaz of 8 April 1946.
Entities (sociétés d'économie mixte or régies) distributing electricity and referred to in Article 23 of Loi 48/1260 portant modification des lois 46/6288 du 8 avril 1946 et 46/2298 du 21 octobre 1946 sur la nationalisation de l'électricité et du gaz of 12 August 1948.
Compagnie nationale du Rhône.
- IRELAND The Electricity Supply Board (ESB) set up and operating pursuant to the Electricity Supply Act 1927.
- ITALY Ente nazionale per l'energia elettrica (ENEL) set up pursuant to Legge n. 1643 of 6 December 1962, approvato by Decreto n. 1720 of 21 December 1965.

Entities operating on the basis of a concession pursuant to Article 4, n. 5 or 8 of *Legge n. 1643 - Istituzione dell'Ente nazionale per la energia elettrica e trasferimento ad esso delle imprese esercenti le industrie elettriche* of 6 December 1962.

Entities operating on the basis of a concession pursuant to Article 20 of *Decreto del Presidente della Repubblica n. 342 - Norme integrative della legge del 6 dicembre 1962, n. 1643 e norme relative al coordinamento e all'esercizio delle attività elettriche esercitate da enti ed imprese diverse dell'Ente nazionale per l'energia Elettrica* of 18 March 1965.

LUXEMBOURG *Compagnie grand-ducale d'électricité de Luxembourg*, producing or distributing electricity pursuant to the Convention of 11 November 1927 *concernant l'établissement et l'exploitation des réseaux de distribution d'énergie électrique dans le grand-duché de Luxembourg*, approved by the Law of 4 January 1928. *Société électrique de l'Our (SEO)*. *Syndicat de communes SIDOR*.

NETHERLANDS *Elektriciteitsproduktie Oost-Nederland*. *Elektriciteitsbedrijf Utrecht-Noord-Holland-Amsterdam (UNA)*. *Elektriciteitsbedrijf Zuid-Holland (EZH)*. *Elektriciteitsproduktiemaatschappij Zuid-Nederland (EPZ)*. *Provinciale Zeeuwse Energie Maatschappij (PZEM)*. *Samenwerkende Elektriciteitsbedrijven (SEP)*. Entities distributing electricity on the basis of a licence (*vergunning*) granted by the provincial authorities pursuant to the *Provinciewet*.

AUSTRIA Entities producing, transporting or distributing electricity pursuant to the second *Verstaatlichungsgesetz (BGBl. Nr. 81/1947)* and the *Elektrizitätswirtschaftsgesetz (BGBl. Nr. 260/1975)*, including the *Elektrizitätswirtschaftsgesetze* of the nine *Länder*.

PORTUGAL *Electricidade de Portugal (EDP)*, set up pursuant to *Decreto-Lei no 502/76* of 30 June 1976. Entities distributing electricity pursuant to *Artigo 1o do Decreto-Lei no 344-B/82* of 1 September 1982, as amended by *Decreto-Lei no 297/86* of 19 September 1986. Entities producing electricity pursuant to *Decreto-Lei no 189/88* of 27 May 1988. Independent producers of electricity pursuant to *Decreto-Lei no 189/88* of 27 May 1988 .

Empresa de Electricidade dos Açores - EDA, EP, created pursuant to *Decreto Regional no 16/80* of 21 August 1980.

Empresa de Electricidade da Madeira, EP, created pursuant to *Decreto-Lei no 12/74* of 17 January 1974 and regionalised pursuant to *Decreto-Lei no 31/79* of 24 February 1979 and *Decreto-Lei no 91/79* of 19 April 1979.

FINLAND

Entities producing, transporting or distributing electricity on the basis of a concession pursuant to Article 27 of *Sähkölaki (319/79)* of 16 March 1979.

SWEDEN

Entities transporting or distributing electricity on the basis of a concession pursuant to *lagen (1902:71 s. 1) innefattande vissa bestämmelser om elektriska anläggningar.*

UNITED KINGDOM

Central Electricity Generating Board (CEGB) and the *Area Electricity Boards* producing, transporting or distributing electricity pursuant to the *Electricity Act 1947* and the *Electricity Act 1957*.

The *North of Scotland Hydro-Electricity Board (NSHB)*, transporting or distributing electricity pursuant to the *Electricity (Scotland) Act 1979*.

The *South of Scotland Electricity Board (SSEB)* transporting or distributing electricity pursuant to the *Electricity (Scotland) Act 1979*.

The *Northern Ireland Electricity Service (NIES)*, set up pursuant to the *Electricity Supply (Northern Ireland) Order 1972*.

c) Contracting entities in the field of urban railway, automated systems, tramway, trolley bus, bus or cable services

BELGIUM

Société nationale des chemins de fer vicinaux (SNCV)/Nationale Maatschappij van Buurtspoorwegen (NMB).

Entities providing transport services to the public on the basis of a contract granted by the *SNCV* pursuant to Articles 16 and 21 of the *Arrêté relatif aux transports rémunérés de voyageurs par route effectués par autobus et par autocars* of 30 December 1946.

Société des transports intercommunaux de Bruxelles (STIB).

Maatschappij van het Intercommunaal Vervoer te Antwerpen (MIVA).

Maatschappij van het Intercommunaal Vervoer te Gent (MIVG).

Société des transports intercommunaux de Charleroi (STIC).

Société des transports intercommunaux de la région liégeoise (STIL).

Société des transports intercommunaux de l'agglomération verviétoise (STIAV) and other entities set up pursuant to the Loi relative à la création de sociétés de transports en commun urbains/Wet betreffende de oprichting van maatschappijen voor stedelijk gemeenschappelijk vervoer of 22 February 1962.

Entities providing transport services to the public on the basis of a contract with STIB pursuant to Article 10 or with other transport entities pursuant to Article 11 of the Arrêté royal 140 relatif aux mesures d'assainissement applicables à certains organismes d'intérêt public dépendant du ministère des communications of 30 December 1982.

DENMARK

Danske Statsbaner (DSB).

Entities providing bus services to the public (almindelig rutekørsel) on the basis of an authorisation pursuant to Lov nr. 1150m buskørsel of 29 March 1978.

GERMANY

Entities providing, on the basis of an authorisation, short-distance transport services to the public (Öffentlichen Personennahverkehr) pursuant to the Personenbeförderungsgesetz of 21 March 1961, as last amended on 25 July 1989.

GREECE

Ilektrokinita Leoforeia Periochis Athinon-Peiraios (Electric buses of the Athens - Piraeus area) operating pursuant to Decree 768/1970 and Law 588/1977.

Ilektrikoi Sidirodromoi Athinon-Peiraios (Athens - Piraeus electric railways) operating pursuant to Laws 352/1976 and 588/1977.

Epicheirisi Astikon Sygkoinonion (Enterprise of urban transport) operating pursuant to Law 588/1977.

Koino Tameio Eisprazeos Leoforeion (Joint receipts fund of buses) operating pursuant to Decree 102/1973.

RODA (Dimotiky Epicheirisi Leoforeion Rodoy) Roda: Municipal bus enterprise in Rhodes.

Organismos Astikon Sygkoinonion Thessalonikis (Urban transport organisation of Thessaloniki) operating pursuant to Decree 3721/1957 and Law 716/1980.

SPAIN

Entities providing transport services to the public pursuant to Article 71 of the *Ley de Régimen local. Corporación metropolitana de Madrid. Corporación metropolitana de Barcelona.*

Entities providing bus services to the public pursuant to Article 71 of the *Ley de Ordenación de Transportes Terrestres* of 31 July 1987.

Entities providing urban or inter-urban bus services to the public pursuant to Articles 113 to 118 of the *Ley de Ordenación de Transportes Terrestres* of 31 July 1987.

FEVE, RENFE (or *Empresa Nacional de Transportes de Viajeros por Carretera*) providing bus services to the public pursuant to the *Disposiciones adicionales, Primera, de la Ley de Ordenación de Transportes Terrestres* of 31 July 1957.

Entities providing bus services to the public pursuant to *Disposiciones Transitorias, Tercera, de la Ley de Ordenación de Transportes Terrestres* of 31 July 1957.

FRANCE

Entities providing transport services to the public pursuant to Article 7-II of *Loi 82-1153 (transports intérieurs, orientation)* of 30 December 1982.

Régie autonome des transports parisiens, Société nationale des chemins de fer français, APTR, and other entities providing transport services to the public on the basis of an authorisation granted by the *Syndicat des transports parisiens* pursuant to the *Ordonnance de 1959 et ses décrets d'application relatifs à l'organisation des transports de voyageurs dans la région parisienne.*

IRELAND

Iarnrod Éireann (Irish Rail).

Bus Éireann (Irish Bus).

Bus Átha Cliath (Dublin Bus).

Entities providing services to the public pursuant to the amended *Road Transport Act 1932.*

ITALY

Entities providing transport services on the basis of a concession pursuant to Article 1 of *Legge n. 1822 - Disciplina degli autoservizi di linea (autolinee per viaggiatori, bagagli e pacchi agricoli in regime di concessione all'industria privata)* of 28 September 1939, as amended by Article 45 of *Decreto del Presidente della Repubblica n. 771* of 28 June 1955.

	<p>Entities providing transport services to the public pursuant to Article 1(15) of <i>Regio Decreto n. 2578 - Approvazione del Testo unico della legge sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province</i> of 15 October 1925.</p> <p>Entities operating on the basis of a concession pursuant to Article 242 or 256 of <i>Regio Decreto n. 1447, che approva il Testo unico delle disposizioni di legge per le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili</i> of 9 May 1912.</p> <p>Entities operating on the basis of a concession pursuant to Article 4 of <i>Legge n. 410, concorso dello Stato per la riattivazione dei pubblici servizi di trasporto in concessione</i> of 14 June 1949.</p> <p>Entities operating on the basis of a concession pursuant to Article 14 of <i>Legge n. 1221 - Provvedimenti per l'esercizio ed il potenziamento di ferrovie e di altre linee di trasporto in regime di concessione</i> of 2 August 1952.</p>
LUXEMBOURG	<p><i>Chemins de fer luxembourgeois (CFL).</i></p> <p><i>Service communal des autobus municipaux de la ville de Luxembourg.</i></p> <p><i>Transports intercommunaux du canton d'Esch-sur-Alzette (TICE).</i></p> <p>Bus service undertakings operating pursuant to the <i>Règlement grand-ducal concernant les conditions d'octroi des autorisations d'établissement et d'exploitation des services de transports routiers réguliers de personnes rémunérées</i> of 3 February 1978.</p>
NETHERLANDS	<p>Entities providing transport services to the public pursuant to Chapter II (<i>Openbaar vervoer</i>) of the <i>Wet Personenvervoer</i> of 12 March 1987.</p>
AUSTRIA	<p>Entities providing transport services pursuant to the <i>Eisenbahngesetz 1957 (BGBl. Nr. 60/1957)</i> and the <i>Kraftfahrliniengesetz 1952 (BGBl. Nr. 84/1952)</i>.</p>
PORTUGAL	<p><i>Rodoviária Nacional, EP.</i></p> <p><i>Companhia Carris de Ferro de Lisboa.</i></p> <p><i>Metropolitano de Lisboa, EP.</i></p> <p><i>Serviços de Transportes Colectivos do Porto.</i></p> <p><i>Serviços Municipalizados de Transporte do Barreiro.</i></p> <p><i>Serviços Municipalizados de Transporte de Aveiro.</i></p> <p><i>Serviços Municipalizados de Transporte de Braga.</i></p>

	<i>Serviços Municipalizados de Transporte de Coimbra.</i> <i>Serviços Municipalizados de Transporte de</i> <i>Portalegre.</i>
FINLAND	Public or private entities operating bus services according to <i>Laki (343/91) luvanvaraisesta henkilöliikenteestä tiellä</i> and <i>Helsingin kaupungin liikennelaitos/Helsingfors stads trafikverk</i> (Helsinki Transport Board), which provides metro and tramway services to the public.
SWEDEN	Entities operating urban railway or tramway services according to <i>lagen (1978:438) om huvudmannaskap för viss kollektiv persontrafik</i> and <i>lagen (1990:1157) om järnvägssäkerhet</i> . Public or private entities operating a trolley bus or bus service in accordance with <i>lagen (1978:438) om huvudmannaskap för viss kollektiv persontrafik</i> and <i>lagen (1983:293) om yrkestrafik</i> .
UNITED KINGDOM	Entities providing bus services to the public pursuant to the <i>London Regional Transport Act 1984</i> . <i>Glasgow Underground.</i> <i>Greater Manchester Rapid Transit Company.</i> <i>Docklands Light Railway.</i> <i>London Underground Ltd.</i> <i>British Railways Board.</i> <i>Tyne and Wear Metro.</i>

d) Contracting entities in the field of airport facilities

BELGIUM	<i>Régie des voies aériennes</i> set up pursuant to the <i>Arrêté-loi portant création de la régie des voies aériennes</i> of 20 November 1946, amended by <i>Arrêté royal portant refonte du statut de la régie des voies aériennes</i> of 5 October 1970.
DENMARK	Airports operating on the basis of an authorisation pursuant to § 55, <i>stk. 1, lov om luftfart, jf. lovbekendtgørelse nr. 408</i> of 11 September 1985.
GERMANY	Airports as defined in Article 38 Absatz 2 Nr. 1 of the <i>Luftverkehrszulassungsordnung</i> of 13 March 1979, as last amended by the <i>Verordnung</i> of 21 July 1986.

GREECE Airports operating pursuant to Law 517/1931 setting up the civil aviation service (*Ypiresia Politikis Aeroporias (YPA)*).
International airports operating pursuant to Presidential decree 647/981.

SPAIN Airports managed by *Aeropuertos Nacionales* operating pursuant to *Real Decreto 278/1982* of 15 October 1982.

FRANCE *Aéroports de Paris* operating pursuant to *Titre V, Articles L 251-1 à 252-1* of the *Code de l'aviation civile*.
Aéroport de Bâle-Mulhouse, set up pursuant to the *Convention franco-suisse* of 4 July 1949.
Airports as defined in *Article L 270-1* of the *Code de l'aviation civile*.
Airports operating pursuant to the *Cahier des charges type d'une concession d'aéroport, Décret* of 6 May 1955.
Airports operating on the basis of a *Convention d'exploitation* pursuant to *Article L/221* of the *Code de l'aviation civile*.

IRELAND Airports of *Dublin, Cork and Shannon* managed by *Aer Rianta - Irish Airports*.
Airports operating on the basis of a *Public use License* granted pursuant to the *Air Navigation and Transport Act No 40/1936*, the *Transport Fuel and Power (Transfer of Departmental Administration Functions) Order 1959 (SI No 125 of 1959)* and the *Air Navigation (Aerodromes and Visual Ground Aids) Order 1970 (SI No 291 of 1970)*.

ITALY Civil State airports (*aerodromi civili istituiti dallo Stato*) referred to in *Article 692* of the *Codice della navigazione, Regio Decreto n. 327* of 30 March 1942.
Entities operating airport facilities on the basis of a concession granted pursuant to *Article 694* of the *Codice della navigazione, Regio Decreto n. 327* of 30 March 1942.

LUXEMBOURG *Aéroport de Findel*.

NETHERLANDS Airports operating pursuant to *Articles 18 and following* of the *Luchtvaartwet* of 15 January 1958 (*stbld. 47*), amended on 7 June 1978.

AUSTRIA *Austro Control GmbH*.
Entities as defined in *Articles 60 to 80* of the *Luftfahrtgesetz 1957 (BGBl. Nr. 253/1957)*.

PORTUGAL Airports managed by *Aeropostos e Navegação Aérea (ANA), EP* pursuant to *Decreto-Lei no 246/79*.
Aeroporto de Funchal and *Aeroporto de Porto Santo*, regionalised pursuant to *Decreto-Lei no 284/81*.

FINLAND Airports managed by *Ilmailulaitos/Luftfartsverket* pursuant to *Ilmailulaki (595/64)*.

SWEDEN Publicly owned and operated airports in accordance with *lagen (1957:297) om luftfart*.
Privately owned and operated airports with an exploitation permit under the act, where this permit corresponds to the criteria of Article 2(3) of the Directive.

UNITED KINGDOM Airports managed by *British Airports Authority plc*.
Airports which are *public limited companies (plc)* and operated pursuant to the *Airports Act 1986*.

e) Contracting entities in the field of maritime or inland port or other terminal facilities

BELGIUM *Société anonyme du canal et des installations maritimes de Bruxelles.*
Port autonome de Liège.
Port autonome de Namur.
Port autonome de Charleroi.
Port de la ville de Gand.
Compagnie des installations maritimes de Bruges - Maatschappij der Brugse haveninrichtingen.
Société intercommunale de la rive gauche de l'Escaut - Intercommunale maatschappij van de linker Scheldeoever (Port d'Anvers).
Port de Nieuwport.
Port d'Ostende.

DENMARK Ports as defined in Article 1, I to III of the *bekendtgørelse nr. 604* of 16 December 1985 *om hvilke havne der er omfattet af lov om trafikhavne, jf. Lov nr. 239* of 12 May 1976 *om trafikhavne*.

GERMANY Seaports owned totally or partially by territorial authorities (*Länder, Kreise, Gemeinden*).

Inland ports subject to the *Hafenordnung* pursuant to the *Wassergesetze der Länder*.

GREECE Piraeus port (*Organismos Limenos Peiraios*) set up pursuant to Emergency Law 1559/1950 and Law 1630/1951.
Thessaloniki port (*Organismos Limenos Thessalonikis*) set up pursuant to decree N.A. 2251/1953.

Other ports governed by Presidential decree 649/1977 (N.A. 649/1977) *Epopteia, organosi leitoyrgias kai dioikitikos elenchos limenon* (supervision, organisation of functioning and administrative control).

SPAIN

Puerto de Huelva set up pursuant to *Decreto no 2380/692* of 2 October 1969: *Puertos y Faros. Otorga Régimen de Estatuto de Autonomía al Puerto de Huelva.*

Puerto de Barcelona set up pursuant to *Decreto no 2407/78* of 25 August 1978: *Puertos y Faros. Otorga al de Barcelona Régimen de Estatuto de Autonomía.*

Puerto de Bilbao set up pursuant to *Decreto no 2408/78* of 25 August 1978: *Puertos y Faros. Otorga al de Bilbao Régimen de Estatuto de Autonomía.*

Puerto de Valencia set up pursuant to *Decreto no 2409/78* of 25 August 1978: *Puertos y Faros. Otorga al de Valencia Régimen de Estatuto de Autonomía.*

Juntas de Puertos operating pursuant to *Ley 27/68* of 20 June 1968: *Puertos y Faros. Juntas de Puertos y Estatutos de Autonomía* and to *Decreto no 1350/70* of 9 April de 1970: *Juntas de Puertos. Reglamento.*

Ports managed by the *Comisión Administrativa de Grupos de Puertos*, operating pursuant to *Ley 27/68* of 20 June 1968, *Decreto 1958/78* of 23 June 1978 and *Decreto 571/81* of 6 May 1981.

Ports listed in *Real Decreto 989/82* of 14 May 1982: *Puertos. Clasificación de los de interés general.*

FRANCE

Port autonome de Paris set up pursuant to *Loi 68/917* relative au port autonome de Paris of 24 October 1968.

Port autonome de Strasbourg set up pursuant to the *Convention entre l'État et la ville de Strasbourg relative à la construction du port rhénan de Strasbourg et à l'exécution de travaux d'extension de ce port* of 20 May 1923, approved by the Law of 26 April.

Other inland waterway ports set up or managed pursuant to *Article 6 (navigation intérieure)* of *Décret 69-140 relatif aux concessions d'outillage public dans les ports maritimes* of 6 February 1969.

Ports autonomes operating pursuant to *Articles L 111-1* and following of the *Code des ports maritimes.*

Ports non autonomes operating pursuant to *Articles R 121-1* and following of the *Code des ports maritimes.*

Ports managed by regional authorities (*départements*) or operating pursuant to a concession granted by the regional authorities (*départements*) pursuant to Article 6 of *Loi 86-663* of 22 July 1983 *complétant la loi 83-8 relative à la répartition des compétences entre les communes, départements et l'État* of 7 January 1983.

IRELAND
 Ports operating pursuant to the *Harbour Acts 1946 to 1976*.
 Port of *Dun Laoghaire* operating pursuant to the *State Harbours Act 1924*.
 Port of *Rosslare Harbour* operating pursuant to the *Finguard and Rosslare Railways and Harbours Act 1899*.

ITALY
 State ports and other ports managed by the *Capitaneria di Porto* pursuant to the *Codice della navigazione, Regio Decreto n. 327* of 30 March 1942.
 Autonomous ports (*enti portuali*) set up by special laws pursuant to Article 19 of the *Codice della Navigazione, Regio Decreto n. 327* of 30 March 1942.

LUXEMBOURG
 Port de *Mertert* set up and operating pursuant to the *Loi relative à l'aménagement et à l'exploitation d'un port fluvial sur la Moselle* of 22 July 1963.

NETHERLANDS
Havenbedrijven, set up and operating pursuant to the *Gemeentewet* of 29 June 1851.
Havenschap Vlissingen, set up by the *Wet houdende een gemeenschappelijke regeling tot oprichting van het Havenschap Vlissingen* of 10 September 1970.
Havenschap Terneuzen, set up by the *Wethoudende een gemeenschappelijke regeling tot oprichting van het Havenschap Terneuzen* of 8 April 1970.
Havenschap Delfzijl, set up by the *Wethoudende een gemeenschappelijke regeling tot oprichting van het Havenschap Delfzijl* of 31 July 1957.
Industrie- en havenschap Moerdijk, set up by the *gemeenschappelijke regeling tot oprichting van het Industrie- en havenschap Moerdijk* of 23 October 1970, approved by *Koninklijk Besluit nr. 23* of 4 March 1972.

AUSTRIA
 Inland ports owned totally or partially by *Länder* and/or *Gemeinden*.

PORTUGAL	<p><i>Porto de Lisboa</i> set up pursuant to the <i>Decreto Real</i> of 18 February 1907 and operating pursuant to <i>Decreto-Lei n° 36976</i> of 20 July 1948.</p> <p><i>Porto do Douro e Leixões</i> set up pursuant to <i>Decreto-Lei n° 36977</i> of 20 July 1948.</p> <p><i>Porto do Sines</i> set up pursuant to <i>Decreto-Lei n° 508/77</i> of 14 December 1977.</p> <p><i>Portos de Setúbal, Aveiro, Figueira da Foz, Viana do Castelo, Portimão e Faro</i> set up pursuant to <i>Decreto-Lei n° 37754</i> of 18 February 1950.</p>
FINLAND	<p>Ports operating pursuant to <i>Laki kunnallisista satamajärjestyksistä ja liikennemaksuista (955/76)</i>. <i>Saimaa Canal (Saimaan kanavan hoitokunta)</i>.</p>
SWEDEN	<p>Ports and terminal facilities according to <i>lagen (1983:293) om inrättande, utvidgning och avlysning av allmän farled och allmän hamn</i> and the <i>förordningen (1983:744) om trafiken på Göta kanal</i>.</p>
UNITED KINGDOM	<p><i>Harbour Authorities</i> within the meaning of <i>Section 57 of the Harbours Act 1964</i> providing port facilities to carriers by sea or inland waterway.</p>

Annex IV B - Switzerland

Specification of private utilities as referred to in Article 3(1) and (2)(f) of the Agreement

a) Production, transport or distribution of drinking water

Entities producing, transporting and distributing drinking water and operating pursuant to cantonal or local legislation or under individual agreements complying with such legislation.

For example: *Wasserversorgung Zug AG, Wasserversorgung Düringen*.

b) Production, transport or distribution of electricity

Entities transporting and distributing electricity which may be granted a right to expropriate pursuant to the *Loi fédérale concernant les installations électriques à faible et à fort courant* of 24 June 1902.

Entities producing electricity pursuant to the *Loi fédérale sur l'utilisation des forces hydrauliques* of 22 December 1916 and the *Loi fédérale sur l'utilisation pacifique de l'énergie atomique* of 23 December 1959.

For example: *CKW, ATEL, EGL*.

c) Transport by urban railway, tramway, automated systems, trolley bus, bus or cable

Entities operating tramway services within the meaning of Article 2(1) of the *Loi fédérale sur les chemins de fer* of 20 December 1957.

Entities providing transport services to the public within the meaning of Article 4(1) of the *Loi fédérale sur les entreprises de trolleybus* of 29 March 1950.

Entities providing, as a business activity, regular scheduled passenger transport services on the basis of a concession granted pursuant to Article 4 of the *Loi fédérale sur le transport de voyageurs et les transports par route* of 18 June 1993, where their lines provide a service within the meaning of Article 5(3) of the *Ordonnance sur les indemnités, les prêts et les aides financières selon la loi des chemins des fers* of 18 December 1995.

d) Airports

Entities operating airports on the basis of a concession granted pursuant to Article 37(1) of the *Loi fédérale sur la navigation aérienne* of 21 December 1948.

For example: Bern-Belp, Birrfeld, Grenchen, Samedan.

Annex V

(referred to in Article 5 of the Agreement, relating to challenge procedures)

1. Challenges shall be heard by a court or by an impartial and independent review body having no interest in the outcome of the procurement, the members of which are secure from external influence and the decisions of which are legally binding. The time-limit, if any, within which a challenge procedure may be initiated shall in no case be less than 10 days and shall run from the time when the basis of the complaint is known or should reasonably have been known.

A review body which is not a court shall either be subject to judicial review or shall have procedures which provide that:

(a) participants have the right to be heard before a decision is reached, they may be represented and accompanied during the proceedings and shall have access to all proceedings;

(b) witnesses may be presented and documentation relating to procurement under challenge and necessary to the proceedings shall be disclosed to the review body;

(c) oral proceedings may be public and decisions shall be given in writing and shall state the reasons on which they are based.

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

(a) to take, at the earliest opportunity, interim measures with the aim of correcting the alleged infringement or preventing further injury to the interests concerned, including measures to suspend or to ensure the suspension of the procedure for the award of a contract or the implementation of any decision taken by the Covered Entity; and

(b) to set aside or ensure the setting aside of decisions taken unlawfully, including the removal of discriminatory technical, economic or financial specifications in the tender notice, the indicative notice, the notice on the existence of a qualification system or any other document relating to the contract award procedure in question. However, the powers of the body responsible for challenge procedures may be limited to awarding damages to any person harmed by an infringement if the contract has already been concluded by a Covered Entity;

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

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

Annex VI

(referred to in Article 3(6) and (7) of the Agreement)

Services

The following services, which are listed in the sectoral classification of services reproduced in document MTN.GNS/W/120, are covered by this Agreement:

<u>Subject</u>	<u>CPC (Central Product Classification) reference No</u>
Maintenance and repair services	6112, 6122, 633, 886
Land transport services ³ including armoured car services, and courier services, except carriage of mail	712 (except 71235) 7512, 87304
Air transport services: carriage of passengers and freight, except carriage of mail	73 (except 7321)
Carriage of mail by land (except transport services by rail) and by air	71235, 7321
Telecommunications services	752 ⁴
Financial services:	ex 81
a) insurance services	812, 814
b) banking and investment services ⁵	
Financial services:	ex 81
(a) Insurance services	812, 814
(b) Banking and investment services ¹⁰	
Computer and related services	84
Accounting, auditing and book-keeping services	862

³ Excluding rail transport services.

⁴ Excluding services of voice telephony, telex, radiotelephony, radiopaging and satellite telecommunications.

⁵ Excluding financial market services relating to the issue, purchase, sale and transfer of securities or other financial instruments, and central bank services.

Market research and public opinion polling services	864
Management consulting services and related services	865, 866 ⁶
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
Advertising services	871
Building-cleaning services and property management services	874, 82201-82206
Publishing and printing services on a fee or contract basis	88442
Sewage and refuse disposal services; Sanitation and similar services	94

The commitments entered into by the Parties in the field of services, including construction services, under this Agreement are limited to the initial commitments specified in the final offers presented by the Community and Switzerland in the context of the General Agreement on Trade in Services.

Trade in Services.

This Agreement does not apply to:

1. service contracts awarded to an entity which is itself a contracting authority within the meaning of this Agreement and of Annex 1, 2 or 3 to the GPA on the basis of an exclusive right which it enjoys pursuant to a published law, regulation or administrative provision;

⁶ Excluding arbitration and conciliation services.

2. service contracts which a contracting entity awards to an affiliated undertaking or are awarded by a joint venture formed by a number of contracting entities for the purpose of carrying out a relevant activity within the meaning of Article 3 of this Agreement to one of those contracting entities or to an undertaking which is affiliated with one of these contracting entities, provided that at least 80% of the average turnover of that undertaking with respect to services for the preceding three years derives from the provision of such services to undertakings with which it is affiliated. Where more than one undertaking affiliated with the contracting entity provides the same service or similar services, the total turnover deriving from the provision of services by those undertakings shall be taken into account;
3. service contracts for the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;
4. employment contracts;
5. contracts for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time.

Annex VII

(referred to in Article 3(6) of the Agreement)

Construction Services

Specification construction services covered:

1. Definition:

A contract for construction services is a contract which has as its object the execution, by whatever means, of construction, civil engineering or building work within the meaning of Division 51 of the Central Product Classification (CPC).

2. List of services covered according to Division 51 of the CPC

Site preparation work	511
Construction work	512
Civil engineering work	513
Assembly and construction of prefabricated structures	514
Specialised construction work	515
Installation work	516
Building completion work	517
Other services	518

The commitments entered into by the Parties in the field of services, including construction services, under this Agreement are limited to the initial commitments specified in the final offers presented by the EC and Switzerland in the context of the General Agreement on Trade in Services.

Annex VIII

(referred to in Article 3(7) of the Agreement)

Switzerland

This Agreement shall not apply in Switzerland to:

- (a) contracts which the contracting entities award for purposes other than the pursuit of their activities as described in Article 3(2) and Annexes I to IV to this Agreement or for the pursuit of their activities outside Switzerland;
- (b) contracts awarded for purposes of resale or hire to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and other entities are free to sell or hire it under the same conditions as the contracting entity;
- (c) contracts awarded for the purchase of water;
- (d) contracts awarded by a contracting entity other than a public authority supplying drinking water or electricity to networks which provide a service to the public, where the production of drinking water or electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than that referred to in Article 3(2)(f)(i) and (ii) and supply to the public network depends only on the entity's own consumption and has not exceeded 30% of the entity's total production of drinking water or energy, having regard to the average for the preceding three years, including the current year;
- (e) contracts awarded by a contracting entity other than a public authority supplying gas or heat to networks which provide a service to the public, where the production of gas or heat by the entity concerned is the inevitable result of the exercise of an activity other than that referred to in Article 3(2)(e)(i) and the purpose of supply to the public network is solely the economic exploitation of such production and accounts for no more than 20% of the entity's turnover, having regard to the average for the three preceding years, including the current year;
- (f) contracts awarded for the supply of energy or of fuels for the production of energy;

- (g) contracts awarded by contracting entities providing bus transport services to the public where other entities are free to provide those services, either in general or in a particular geographical area, under the same conditions as the contracting entities;
- (h) contracts awarded by contracting entities carrying out an activity referred to in Article 3(2)(d), provided that the contracts have as their object the sale and leasing of products for re-financing a supply contract awarded in accordance with the provisions of this Agreement;
- (i) contracts awarded pursuant to an international agreement and covering the joint implementation or exploitation of a project by the Parties;
- (j) contracts awarded pursuant to the particular procedure of an international organisation;
- (k) contracts when they are declared to be secret by the Parties or when their execution must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the signatory states or when the protection of the basic security interests of that state so requires.

Annex IX

(referred to in Article 6(4) of the Agreement)

Annex IX A - Measures notified by the European Community:

Annex IX B - Measures notified by Switzerland:

- Review procedures in accordance with Article 6(4) of this Agreement introduced in the cantons and municipalities for contracts below the thresholds on the basis of the *Loi fédérale sur le marché intérieur* of 6 October 1995.

Annex X

(referred to in Article 6(2) of the Agreement)

Examples of areas where discrimination may be possible:

Any law, procedure or practice, such as levies, price preferences, local content requirements, local investment or production requirements, terms of licence or authorization, or funding or bidding rights, which discriminate, or require a Party's Covered Entity to discriminate, against the other Party's products, services, suppliers or service providers in the award of procurement contracts shall be prohibited.

=====

FINAL ACT

The Plenipotentiaries

of the EUROPEAN COMMUNITY

and

of the SWISS CONFEDERATION,

meeting on the twenty-first day of June in the year one thousand nine hundred and ninety-nine in Luxembourg for the signature of the Agreement between the European Community and the Swiss Confederation on certain aspects of Government Procurement have adopted the Joint Declarations mentioned below and attached to this Final Act:

Joint Declaration by the Contracting Parties on the procedures for the award of contract and on challenging procedures

Joint Declaration by the Contracting Parties on the monitoring authorities

Joint Declaration by the Contracting Parties on updating the Annexes

Joint Declaration on further negotiations.

They also took note of the following Declarations annexed to this Final Act:

Declaration by Switzerland on the principle of reciprocity concerning the opening up of markets at the district and municipal level to Community suppliers and providers of services,

Declaration on Swiss attendance of committees,

Done at Luxembourg, on the twenty-first day of June in the year one thousand nine hundred and ninety-nine.

**JOINT DECLARATION BY THE CONTRACTING PARTIES ON THE
PROCEDURES FOR THE AWARD OF CONTRACT AND ON CHALLENGING
PROCEDURES**

The Parties agree that by requiring, on the one hand, Swiss Covered Entities to comply with the rules of the GPA, and, on the other, Covered Entities of the Community and its Member States to comply with the rules of Directive 93/38/EEC as last amended by Directive 98/4/EC of 16 February 1998 (OJ L 101, 1 April 1998, p. 1) and of Directive 92/13/EEC of 25 February 1992 (OJ L 76, 23 March 1992, p. 14) they each meet the requirements of Articles 4 and 5 of the Agreement on certain aspects of government procurement

**JOINT DECLARATION BY THE CONTRACTING PARTIES ON
THE MONITORING AUTHORITIES**

With regard to the Community, the monitoring authority referred to in Article 8 of this Agreement may be the Commission of the European Communities or an independent national authority of a Member State without either having sole authority to act under this Agreement. Pursuant to Article 211 of the EC Treaty, the Commission of the European Communities already possesses the powers stipulated in Article 8(2).

With regard to Switzerland, the monitoring authority may be a federal authority for the whole of the country or a cantonal authority for the areas for which it is responsible.

**JOINT DECLARATION BY THE CONTRACTING PARTIES ON
UPDATING THE ANNEXES**

The Contracting Parties undertake to update the Annexes to the Agreement on certain aspects of government procurement not later than one month after its entry into force.

JOINT DECLARATION ON FURTHER NEGOTIATIONS

The European Community and the Swiss Confederation declare their intention of undertaking negotiations to conclude agreements in areas of common interest such as the updating of Protocol 2 to the 1972 Free Trade Agreement and Swiss participation in certain Community training, youth, media, statistical and environmental programmes. Preparatory work for these negotiations should proceed rapidly once the current bilateral negotiations have been concluded.

**DECLARATION BY SWITZERLAND ON THE PRINCIPLE OF RECIPROCITY
CONCERNING THE OPENING UP OF MARKETS AT THE DISTRICT AND
MUNICIPAL LEVEL TO COMMUNITY SUPPLIERS AND PROVIDERS OF
SERVICES**

In accordance with the principle of reciprocity and with the intention of restricting access to contracts awarded in Switzerland at district and municipal level to Community suppliers and providers of services, Switzerland will insert after the first paragraph in General Note No 1 of its Annexes to the Agreement on Government Procurement a new paragraph as follows:

"concerning contracts awarded by the entities referred to in part 3 of Annex 2 to suppliers of products and services of Canada, Israel, Japan, the Republic of Korea, Norway, the United States of America, Hong Kong (China), Singapore and Aruba."

DECLARATION ON SWISS ATTENDANCE OF COMMITTEES

The Council agrees that Switzerland's representatives may, in so far as the items concern them, attend meetings of the following committees and expert working parties as observers:

- Committees of research programmes, including the Scientific and Technical Research Committee (CREST)
- Administrative Commission on Social Security for Migrant Workers
- Coordinating Group on the mutual recognition of higher-education diplomas
- Advisory committees on air routes and the application of competition rules in the field of air transport.

Switzerland's representatives shall not be present when these committees vote.

In the case of other committees dealing with areas covered by these agreements in which Switzerland has adopted either the *acquis communautaire* or equivalent measures, the Commission will consult Swiss experts by the method specified in Article 100 of the EEA Agreement.
