

EUROPEAN COMMISSION

**PUBLIC PROCUREMENT  
IN THE EUROPEAN UNION**

**GUIDE TO THE COMMUNITY RULES ON  
PUBLIC SUPPLY CONTRACTS**

**OTHER THAN IN THE WATER, ENERGY, TRANSPORT  
AND TELECOMMUNICATIONS SECTORS**

**DIRECTIVE 93/36/EEC**

*This guide has no legal value and does not necessarily  
represent the official position of the Commission*

# CONTENTS

|  |    |
|--|----|
| I. INTRODUCTION: THE COMMUNITY RULES ON PUBLIC SUPPLY CONTRACTS .....            | 1  |
| 1. PROHIBITIONS LAID DOWN IN THE TREATY .....                                    | 1  |
| 2. PROVISIONS COORDINATING NATIONAL PROCEDURES .....                             | 3  |
| 2.1 Objectives .....   | 3  |
| 2.2 Legal effect.....  | 4  |
| II. DIRECTIVE 93/37/EEC ON PUBLIC SUPPLY CONTRACTS .....                         | 7  |
| 1. WHAT IS MEANT BY “PUBLIC SUPPLY CONTRACTS”? .....                             | 7  |
| 1.1 Definition.....  | 7  |
| 1.2 The supplier.....  | 7  |
| 1.3 The contracting authority .....  | 7  |
| 1.4 Types of contract .....  | 9  |
| 1.5 Identification of contracts.....   | 10 |
| 1.5.1 Public supply contracts and public works contracts.....                    | 10 |
| 1.5.2 Public supply contracts and public service contracts .....                 | 10 |
| 2. PUBLIC SUPPLY CONTRACTS COVERED BY THE DIRECTIVE.....                         | 12 |
| 2.1 Thresholds .....   | 12 |
| 2.2 Estimation of contract value.....  | 14 |
| 2.2.1 Methods .....  | 14 |
| 2.2.2 Time of estimation.....  | 15 |
| 2.2.3 Splitting of contracts .....   | 15 |
| 2.3 Exclusions .....   | 15 |
| 2.4 Defence procurement .....  | 20 |
| 3. AWARD PROCEDURES .....  | 21 |
| 3.1 Open procedures.....   | 21 |
| 3.2 Restricted procedures .....  | 21 |
| 3.3 Negotiated procedures .....  | 22 |
| 3.3.1 Negotiated procedures with prior publication of a contract notice .....    | 23 |
| 3.3.2 Negotiated procedures without prior publication of a contract notice ..... | 24 |

|  |    |
|--|----|
| 3.4 Information concerning the contracting authority's decision .....  | 25 |
| 3.4.1 Rejection of applications and tenders.....   | 25 |
| 3.4.2 Cancellation of an award procedure.....  | 26 |
| 3.4.3 Contract report.....   | 26 |
| 4. COMMON ADVERTISING RULES .....  | 27 |
| 4.1 Contract notices.....  | 27 |
| 4.1.1. Indicative notice .....   | 27 |
| 4.1.2 Contract notice .....  | 27 |
| 4.1.3 Contract award notice.....   | 28 |
| 4.2 Content and presentation of notices .....  | 28 |
| 4.3 Model notices .....  | 29 |
| 4.3.1 Indicative notice .....  | 29 |
| 4.3.2 Contract notice .....  | 30 |
| 4.3.3 Contract award notice.....   | 33 |
| 4.4 Method of setting time-limits .....  | 33 |
| 4.5 National advertising .....   | 33 |
| 4.6 Who is responsible for publishing notices?.....  | 34 |
| 4.7 Time-limits .....  | 35 |
| 4.7.1 Open procedures.....   | 35 |
| 4.7.2 Restricted procedures .....  | 35 |
| 4.7.3 Negotiated procedures with prior publication of a contract notice .....  | 36 |
| 4.7.4 Summary tables .....   | 36 |
| 4.8 Method of calculating certain time-limits .....  | 37 |
| 4.9 Submission of requests to participate.....   | 37 |
| 4.10 Rules governing the dispatch and content of invitations to tender .....   | 37 |
| 5. COMMON RULES IN THE TECHNICAL FIELD .....   | 39 |
| 5.1 What technical specifications should be referred to?.....  | 39 |
| 5.2 Exceptions .....   | 40 |
| 5.3 Cases where no European standards, European technical approvals or<br>common technical specifications exist.....               | 41 |
| 5.4 Prohibition of discriminatory specifications .....   | 41 |
| 5.4.1 Principle of equivalence and mutual recognition and the new<br>approach to technical harmonization and standardization ..... | 42 |

|   |         |
|---|---------|
| 6. PARTICIPATION IN PROCEDURES AND AWARD OF CONTRACTS .....   | 44      |
| 6.1 Common rules on participation .....   | 44      |
| 6.1.1 When and how is the suitability of suppliers checked and the<br>contract awarded? .....   | 44      |
| 6.1.2 Selection and number of candidates invited to submit a tender or<br>to negotiate .....  | 45      |
| 6.1.3 Inviting nationals from other Member States .....   | 46      |
| 6.1.4 Groups of suppliers .....   | 46      |
| 6.1.5 Tenders proposing variants on the specifications .....  | 46      |
| 6.1.6 Subcontracting .....  | 47      |
| 6.2 Selection of suppliers .....  | 48      |
| 6.2.1 Supplier's personal situation .....   | 48      |
| 6.2.2 Enrolment in the professional or trade register .....   | 49      |
| 6.2.3 Financial and economic standing .....   | 50      |
| 6.2.4 Technical capacity .....  | 51      |
| 6.2.5 Additional information .....  | 52      |
| 6.2.6 Official lists of approved suppliers .....  | 52      |
| 6.3 Criteria for the award of contracts .....   | 53      |
| 6.3.1 Abnormally low tenders .....  | 54      |
| 7. GRANTING OF SPECIAL OR EXCLUSIVE RIGHTS TO ENGAGE IN A PUBLIC<br>SERVICE ACTIVITY .....  | 56      |
| <br>ANNEXES   |         |
| I. List of bodies and categories of bodies governed by public law .....   | 61      |
| II. List of contracting authorities subject to the GATT Agreement .....   | 73      |
| III. List of products which, when supplied to defence authorities listed in<br>Annex II, are subject to the GATT Agreement .....                  | 105     |
| IV. List of addresses from which the Supplement to the Official Journal<br>can be obtained .....  | 111     |
| V. Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971<br>determining the rules applicable to periods, dates and time limits ..... | 115     |
| <br><b>FOR FURTHER INFORMATION</b> .....  | <br>117 |

# I. INTRODUCTION

## THE COMMUNITY RULES ON PUBLIC SUPPLY CONTRACTS

### 1. PROHIBITIONS LAID DOWN IN THE TREATY

The EC Treaty does not specifically mention public procurement. It does, however, lay down fundamental principles which are generally applicable and which contracting authorities have to observe when awarding all contracts, including those whose value falls below the thresholds for application of the specific rules laid down in the Directive.

The Treaty principle governing public supply contracts is the free movement of goods and, more specifically, the ban, established in Articles 30 *et seq.*, on quantitative restrictions on imports and exports and all measures having equivalent effect.<sup>1</sup>

The principle of the free movement of goods, and the consequent ban on quantitative restrictions and measures having equivalent effect, applies both to goods originating in the Community and to goods coming from non-member countries which are put into free circulation in the Member States.

A measure having an effect equivalent to a quantitative restriction means any measure, be it a law or regulation, an administrative practice or an act of, or attributable to, a public authority, that is capable of hindering, directly or indirectly, actually or potentially, intra-Community trade.

Such measures may discriminate between domestic and imported or exported goods or they may apply to domestic and imported goods alike.

A requirement for import or export licences is an example of a measure falling within the first category. There are a number of exceptions to the prohibition of measures in this category, however, which are listed in Article 36.

Article 36 allows Member States to maintain in force or introduce prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security, the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property, provided that the prohibitions or restrictions do not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

---

<sup>1</sup> An equivalent ban is established in the ECSC Treaty by Article 4 read in conjunction with Article 86. Article 4 provides that “the following are recognized as incompatible with the common market for coal and steel and shall accordingly be abolished and prohibited within the Community, as provided in this Treaty: (a) (...) quantitative restrictions on the movement of products”. Under the second paragraph of Article 86, “Member States undertake to refrain from any measures incompatible with the common market referred to in Articles 1 and 4”.

In the Euratom Treaty, quantitative restrictions are prohibited by Article 93.

The second category, namely measures that are equally applicable to domestic and to imported products, mainly comprises regulations prescribing technical requirements, quality standards or testing and type-approval conditions that have to be satisfied by any product of a certain kind that is put on sale on the domestic market. Most such regulations are introduced for consumer protection, environmental or health and safety reasons. However, they are contrary to Article 30 if their trade-restricting effect is excessive in relation to the mandatory requirements they are intended to satisfy. The basic principle applicable to technical regulations and standards is that of mutual recognition by Member States of each others' quality standards, composition rules, national testing and certification procedures, etc.

Technical regulations are now seldom harmonized at Community level unless a mandatory requirement renders harmonization indispensable. It is important that no new unjustified barriers to intra-Community trade should be introduced in the name of essential technical requirements.

Article 100a of the Treaty provides that proposals for harmonization of health, safety, environmental protection and consumer protection legislation must take as a base a high level of protection (so that it will only in exceptional circumstances be possible to restrict the movement of products meeting the harmonized Community standards) and lays down a more flexible, and hence swifter, procedure for adopting such proposals.

If, after the adoption of a Community harmonization measure, a Member State were nevertheless to adopt exceptional measures on grounds of major needs referred to in Article 36, or relating to protection of the environment or the working environment, it would have to justify them to the Commission and the Court of Justice.

## **2. PROVISIONS COORDINATING NATIONAL PROCEDURES**

### **2.1 Objectives**

The Treaty places a general ban on discriminatory measures and unfair treatment.

However, these prohibitions were not sufficient, on their own, to establish a single market in the specific area of public procurement. Differences between national rules together with the lack of any obligation to open up contracts to Community-wide competition often conspired to keep national markets walled off from foreign competitors. Legislation was therefore needed to make sure that public contracts throughout the Community were open to firms from all Member States on equal terms and to make procurement procedures more transparent so that compliance with the principles laid down in the Treaty could be enforced more effectively.

To supplement the ban on restrictions on the free movement of goods, on 21 December 1976 the Council adopted Directive 77/62/EEC coordinating procedures for the award of public supply contracts.<sup>2</sup>

That coordination was based on three main principles:

- Community-wide advertising of contracts to develop real competition between economic operators in all the Member States;
- the banning of technical specifications liable to discriminate against potential foreign bidders;
- application of objective criteria for the selection of tenderers and the award of contracts.

Directive 77/62/EEC did not open up public procurement to the extent expected: the Community legislation did not provide sufficient guarantees and contained several gaps, and its application at national level reflected the protectionism which had characterized the sector for too long.

To make up for the deficiencies identified in these rules, a new directive was therefore adopted: Council Directive 88/295/EEC of 22 March 1988 amending Directive 77/62/EEC relating to the coordination of procedures for the award of public supply contracts and repealing certain provisions of Directive 80/767/EEC.<sup>3</sup>

---

<sup>2</sup> OJ No L 13, 15.1.1977, p. 1. To bring Community law into line with the outcome of the Tokyo Round of trade negotiations, the Directive was subsequently adapted and supplemented by Directive 80/767/EEC of 22 July 1980 (OJ No L 215, 18.8.1980, p. 1).

<sup>3</sup> OJ No L 127, 20.5.1988, p. 1.

The principal innovations concerned in particular:

- the definition of the Directive's scope;
- information and tendering conditions;
- transparency of procedures;
- the definition of the technical specifications.

The legislation was finally replaced by Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts.<sup>4</sup>

Directive 93/36/EEC aligned the rules on public supply contracts on the stricter and more detailed rules already adopted for public works contracts and brought together in a single text all the rules that were previously dispersed between a number of different instruments. It had become evident that such consolidation was necessary so that Community firms could use a clear, transparent text and, hence, exercise more easily the specific rights which they enjoy.

Directive 93/36/EEC applies not only throughout the European Community but, in accordance with the Agreement on the European Economic Area,<sup>5</sup> also in Norway, Iceland and Liechtenstein<sup>6</sup>.

The European Parliament and the Council are currently discussing a proposal for a Directive<sup>7</sup> which would align the relevant provisions of Directive 93/36/EEC on those of the new Agreement on Government Procurement (GPA)<sup>8</sup> signed by the European Union on completion of the Uruguay Round of trade negotiations conducted under the auspices of what is now the World Trade Organization.

## **2.2 Legal effect**

As regards legal effect, Article 189 of the EC Treaty states that "a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods".

The Member States are obliged, therefore, to adopt and implement all the arrangements and measures necessary to bring their national law into line with the provisions of directives addressed to them.

---

<sup>4</sup> OJ No L 199, 9.8.1993, p. 1.

<sup>5</sup> OJ No L 1, 3.1.1994, p. 1.

<sup>6</sup> Decision of the EEA Council No 1/95 of 10 March 1995 (OJ No L 86, 20.4.1995, p. 58).

<sup>7</sup> OJ No C 138, 3.6.1995, p. 1.

<sup>8</sup> OJ No C 256, 3.9.1996, p. 1.

The deadline for implementation of Directive 93/36/EEC expired on 14 June 1994. The Community legislature nevertheless maintained the obligations laid down in the various earlier provisions concerning the time-limits for their transposal and application. Thus, the only time-limits for application still running are those for Greece and Portugal (1 January 1998), and only in the case of the provisions relating to contracts concluded in the water, energy, transport and telecommunications sectors.

The effectiveness of the Directives is not, however, necessarily dependent on the implementing measures taken by the Member States concerned.

In accordance with the established case-law of the Court of Justice concerning direct effect, when the time-limit for transposal into national law expires a Member State may not rely on the non-fulfilment of the formalities for transposing a directive into national law or on the adoption of measures which are inconsistent with a directive in order to preclude its courts from applying provisions capable of producing direct effects.

In accordance with the principles established by the Court to determine whether provisions have direct effect, an examination should be made in each case as to whether the nature, structure and terms of the provision in question are likely to produce direct effects in relations between Member States and individuals. Such is the case, as a general rule, where a provision expresses a clear, precise and unconditional obligation allowing the Member States to which the directive is addressed no room for interpretation.

In addition, “when the conditions under which the Court has held that individuals may rely on the provisions of a directive before the national courts are met, all organs of the administration, including decentralized authorities (...) are obliged to apply those provisions”.<sup>9</sup>

The Court took the line that it would be contradictory to hold that private individuals are entitled to avail themselves of the provisions of a directive fulfilling the above conditions before national courts, with a view to obtaining judgment against the authorities, and yet to find that the latter are not obliged to apply the provisions of the directive by disregarding those provisions of national law which are not consistent with the directive.

---

<sup>9</sup> Paragraph 31 of the Court’s judgment of 22 June 1989 in Case 103/88 *Fratelli Costanzo v Comune di Milano* [1989] ECR 1839.



## **II. DIRECTIVE 93/37/EEC ON PUBLIC SUPPLY CONTRACTS**

### **1. WHAT IS MEANT BY “PUBLIC SUPPLY CONTRACTS”?**

#### **1.1 Definition**

Public supply contracts are contracts for pecuniary interest concluded in writing between a supplier and a contracting authority and involving the purchase, lease, rental or hire purchase, with or without option to buy, of products. The delivery of such products may, in addition, include siting and installation operations.

#### **1.2 The supplier**

The supplier may be a natural or legal person or a group of suppliers.

#### **1.3 The contracting authority**

Article 1 of the Directive defines contracting authorities as the State, regional or local authorities, bodies governed by public law, or associations formed by one or more such authorities or bodies governed by public law.

- *The State*

It is worth stressing that for the purposes of applying the Directive, the concept of the State is not confined to the administration as such, but also covers bodies which, albeit not formally part of the traditional structures of the administration, have no legal personality of their own and carry out tasks that are normally the responsibility of the State administration, which they merely represent in different ways.

This point was clarified by the Court of Justice in *Beentjes v Netherlands State*,<sup>10</sup> in which it had to rule whether Directive 71/305/EEC<sup>11</sup> applied to the award of public works contracts by the Waterland Local Land Consolidation Committee, a body with no legal personality of its own.

---

<sup>10</sup> Judgment of 20 September 1988 in Case 31/87 [1988] ECR 4635.

<sup>11</sup> Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts (OJ No L 185, 16.8.1971, p. 5).

In accordance with the interpretation handed down by the Court in connection with the Works Directive, but which also applies to the Supplies Directive, the definition of the State must be interpreted in functional terms. In other words, it must include bodies which, albeit formally separate from the contracting authorities, are in fact entirely dependent on them and carry out tasks on their behalf. In the case in point, the Court ruled that a body whose composition and functions are laid down by legislation and which depends on the authorities for the appointment of its members, the observance of the obligations arising out of its measures and the financing of the public contracts which it is its task to award must be regarded as falling within the notion of the State, even though it is not part of the State administration in formal terms.

This principle, which was laid down by the Court to clarify the concept of the State, should also be applied to all the other contracting authorities listed in the Directive: these should thus be understood as including bodies of any kind which they create by law, regulation or administrative action.

- *Bodies governed by public law*

The Directive defines bodies governed by public law on the basis of three cumulative criteria. A body governed by public law thus means any body:

- (1) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and
- (2) having legal personality, and
- (3) \* either financed, for the most part, by the State, or regional or local authorities, or other bodies governed by public law,  
\* or subject to management supervision by those bodies,  
\* or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law.

The Directive thus applies to any body with legal personality under public or private law, established in the general interest, whose operational choices and activities are or may be influenced by a contracting authority as a result of the links between them by virtue of one or more of the conditions that go to make up the third criterion.

The only bodies which are established in the general interest and fulfil the other criteria but are not regarded as contracting authorities by the Directive are those set up for the specific purpose of meeting needs of an industrial or commercial nature, i.e. needs which they satisfy by carrying on economic activities in the industrial or commercial field that involve supplying goods or services on markets which are open to other public or private operators under fully competitive conditions. These are therefore bodies which carry on a business equivalent to that of a private operator.

It should be emphasized that the exemption provided for by the Directive applies only to bodies which carry on such economic activities since they were set up in order

specifically to do so. Consequently, the exemption does not apply to bodies which, while carrying on commercial or industrial activities, were in fact set up to satisfy a different general interest: e.g. a body set up specifically to carry out administrative tasks so as to meet general-interest needs of a social nature, which, to ensure that its books balance, also carries on a profitable commercial activity.

Nevertheless, each individual case must be analysed to determine whether the body governed by public law is subject to the Directive.

In the interests of greater transparency in application, the Directive sets out, in Annex I, a list<sup>12</sup> of bodies and categories of bodies fulfilling the criteria for bodies governed by public law. The list is as exhaustive as possible; the Directive lays down a procedure for updating it.

The obligation on a body governed by public law to comply with the Directive does not, however, depend on its prior inclusion in the list: it is under such an obligation as soon as it fulfils the criteria. Similarly, although a body may be on the list, it could be exempted from complying with the Directive if it were no longer to meet one or more of the cumulative criteria.

#### **1.4 Types of contract**

The Directive defines public supply contracts as “contracts for pecuniary interest concluded in writing involving the purchase, lease, rental or hire purchase, with or without option to buy, of products ...”.

As regards form, the Directive applies only to contracts in writing.

However, the definition of supplies between contracting parties is very wide and is interpreted as such by the Commission. The definition covers the whole range of the various forms of remuneration, quantifiable in money terms, which the contracting authority undertakes to make to the supplier. The Directive also covers all forms in which the supplier, in consideration for the remuneration, undertakes to make the goods available to the contracting authority, whether immediately or in the future.

A strict interpretation, limiting the Directive’s applicability only to the contracts defined as such in the various Member States, would mean that the Directive’s scope varied from one Member State to another in accordance with the difference in the substance of such contracts as determined by the national law governing them. The Directive must be the same in scope, however, for all those to whom it is addressed.

Accordingly, public supply contracts include open or standing contracts, i.e. contracts concluded between a contracting authority and one or more suppliers, whose purpose is to lay down the terms - such as price conditions, quantities proposed, minimum and/or

---

<sup>12</sup> The list is reproduced in Annex I to this guide.

maximum quantities and delivery conditions - of the supplies ordered over a given period, for which definitive quantities and prices will therefore be determined when each order is made and in accordance therewith.

The value of these contracts must be estimated in accordance with the rules laid down in the Directive and discussed in point 2.2.

Problems could arise regarding the applicability of the Directive in respect of certain practices which are not binding on contracting authorities or suppliers and are only preliminary to the conclusion of as yet undefined contracts for the purchase, lease, rental or hire purchase, with or without option to buy, of products. It should be stressed here that contractual, procedural, administrative or other practices may not under any circumstances lead to non-compliance with the Directive in the conclusion of contracts which it defines as public supply contracts and whose estimated value, determined according to the rules, exceeds the applicable threshold.

## **1.5 Identification of contracts**

### *1.5.1 Public supply contracts and public works contracts*

According to the above definition of public supply contracts, delivery of the products covered by the contract may, in addition, include siting and installation operations, i.e. the activities necessary to make the products supplied operational.

In some cases, doubts may arise as to the nature of the public contract which it is wanted to award and, consequently, as to the rules to be applied.

To determine whether a contract is for supplies or for works, the subject of the contract should be examined to see whether the purpose is to make goods, i.e. movable property, available to the contracting authority or to provide the contracting authority with the result of construction and/or civil engineering works, which result constitutes immovable property (e.g. a new school) or is incorporated in immovable property that already exists (e.g. renovations to a theatre).

### *1.5.2 Public supply contracts and public service contracts*

Directive 92/50/EEC on public service contracts,<sup>13</sup> to distinguish its scope from that of the Supplies Directive, takes the value of the different components of a contract as its reference criterion. Accordingly, a contract whose purpose, as well as the supply of products, is to supply services covered by Directive 92/50/EEC is to be regarded as a public supply contract or a public services contract depending on whether the value of the products or the services is greater.

---

<sup>13</sup> Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ No L 209, 24.7.1992, p. 1).

It must be stressed that this criterion alone is not sufficient to determine what a contracting authority must do when it wants to award a contract where the value of the services exceeds that of the supplies, but to which the Services Directive does not apply.

In such a case, before applying the value criterion, it has to be seen whether the supply of products can be dissociated from the other activities.

Where the supply of the products can be dissociated from performance of the other services required, the contracting authority may not rely on the non-applicability of the Services Directive in order to derogate from the Supplies Directive.

In any event, it is under an obligation to award the supply contract in compliance with the Supplies Directive.

The successive application of the dissociation and then the value criterion derives from a judgment which the Court of Justice delivered before the Services Directive had been adopted and, thus, from a context of Community rules similar to that obtaining in this case.

In that judgment,<sup>14</sup> the Court had to rule on the applicability of Directive 77/62/EEC to the award of contracts for the establishment of data-processing systems. The main argument adduced by the defendant rested on the great complexity involved in establishing a large data-processing system which, in addition to the purchase of the hardware, comprised the creation of software, the planning, installation, maintenance and technical commissioning of the system and sometimes its operation; this meant that complete responsibility for all those activities had to be entrusted to a single company. Therefore, and bearing in mind that the hardware is an ancillary element in the establishment of a data-processing system, the Directive was inapplicable, so the argument ran, since the concept of public supply contracts covered only contracts the principal object of which was the delivery of products. The Court dismissed this argument, ruling that the establishment of a data-processing system could be separated from the activities involved in its design and operation and that the Directive did apply to the supply of the necessary hardware. It pointed out that the contracting authority “could have approached companies specializing in software development for the design of the data-processing systems in question and, in compliance with the Directive, could have purchased hardware meeting the technical specifications laid down by such companies”.

---

<sup>14</sup> Judgment of 5 December 1989 in Case C-3/88 *Commission v Italy* [1989] ECR 4035.

## **2. PUBLIC SUPPLY CONTRACTS COVERED BY THE DIRECTIVE**

Award of the public supply contracts defined above is not always subject to the specific rules laid down in the Directive, since these do not apply to contracts falling below certain value thresholds and since there are certain exceptions to do with the subject-matter of the contract, the activity carried on by the contracting authority or special procedural rules governing the award of the contract.

### **2.1 Thresholds**

The value threshold above which public supply contracts are covered by the Directive varies. In general, all contracting authorities must comply with the Community procedural rules where the estimated value of the contract before VAT is not less than ECU 200 000.

Nevertheless, the central entities listed in Annex I to the Directive<sup>15</sup> must comply with the Directive in respect of contracts whose estimated value before VAT equals or exceeds the threshold laid down in accordance with the GATT Agreement on Government Procurement.<sup>16</sup>

The threshold is currently SDR 130 000.<sup>17</sup>

Where entities listed in Annex I operate in the defence field, they must observe the SDR 130 000 threshold only in the case of contracts for products listed in Annex II to Directive 93/36/EEC.<sup>18</sup> Contracting authorities must observe the ECU 200 000 threshold in respect of other products not covered by this Annex.

The value of the thresholds in national currencies and the threshold of the GATT Agreement expressed in ecus are normally to be adjusted every two years from 1 January 1988 onwards.

These values are calculated on the basis of the average daily values of these currencies expressed in ecus and of the ecu expressed in SDRs over the 24 months ending on the last day of August immediately preceding the 1 January revision.

The values are published in the "C" series (Information and Notices) of the Official Journal of the European Communities ("Official Journal") at the beginning of November.

---

<sup>15</sup> The list is reproduced in Annex II to this guide.

<sup>16</sup> OJ No L 71, 17.3.1980, p. 44.

<sup>17</sup> OJ No L 345, 9.12.1987, p. 24.

<sup>18</sup> The list is reproduced in Annex III to this guide.

The currency equivalents of the thresholds applicable until the forthcoming adjustment (i.e., unless adjusted early, until 31 December 1997) are the following:

National currency equivalent of:

|                    | <b>ECU 200.000</b> | <b>ECU 750.000</b> | <b>SDR 130 000</b> |
|--------------------|--------------------|--------------------|--------------------|
|                    |                    |                    | ECU 137 537        |
| Belgian franc      | 7 898 547          | 29 619 550         | 5 431 710          |
| Luxembourg franc   | 7 898 547          | 29 619 550         | 5 431 710          |
| Danish krone       | 1 500 685          | 5 627 567          | 1 031 998          |
| German mark        | 381 161            | 1 429 353          | 262 118            |
| Greek drachma      | 58 015 458         | 217 557 969        | 39 896 348         |
| French franc       | 1 316 439          | 4 936 647          | 905 295            |
| Finish markka      | 1 223 466          | 4 587 996          | 841 359            |
| Dutch guilder      | 427 359            | 1 602 595          | 293 888            |
| Irish pound        | 160 564            | 602 116            | 110 418            |
| Italian lira       | 397 087 000        | 1 489 076 250      | 273 070 685        |
| Austrian schilling | 2 681 443          | 10 055 413         | 1 843 988          |
| Pound sterling     | 158 018            | 592 568            | 108 667            |
| Spanish peseta     | 31 992 917         | 119 973 438        | 22 001 042         |
| Portuguese escudo  | 39 297 792         | 147 366 719        | 27 024 493         |
| Swedish krona      | 1 865 157          | 6 994 337          | 1 282 640          |

On the subject of thresholds, it is worth noting that the European Parliament and the Council are currently discussing a proposal for a Directive<sup>19</sup> which would align the relevant provisions of Directive 93/36/EEC on those of the new Agreement on Government Procurement (GPA)<sup>20</sup> signed by the European Union on completion of the Uruguay Round of trade negotiations conducted under the auspices of what is now the World Trade Organization.

<sup>19</sup> OJ No C 138, 3.6.1995, p. 1.

<sup>20</sup> OJ No C 256, 3.9.1996, p. 1.

## **2.2 Estimation of contract value**

### *2.2.1 Methods*

In establishing whether or not the relevant threshold is reached, the way in which the value of a contract is calculated is obviously crucial. To ensure that identical calculation methods are used throughout the Community and to prevent evasion of the procurement rules by artificially low valuations, the Directive lays down specific rules.

Where the contract is to be concluded in the form of a lease, rental or hire–purchase agreement, the calculation method varies according to the contract’s duration.

The estimated value is to be calculated on the basis of:

- where its term is 12 months or less, the total value for the contract’s duration;
- where its term exceeds 12 months, the total value for the contract’s duration, including the estimated residual value of the products;
- where the contract is concluded for an indefinite period or where its term cannot be defined, the monthly value multiplied by 48.

Where contracts are of a regular nature or are to be renewed over a given period, the following must be taken into account:

- either the actual aggregate value of similar successive contracts awarded over the previous 12 months or accounting period, adjusted where possible for anticipated changes in quantity or value over the subsequent 12 months;
- or the estimated aggregate value of the successive contracts concluded during the 12 months following the initial delivery or accounting period, where this exceeds 12 months.

In any event, the choice between these two valuation methods must not be made with the intention of keeping contracts outside the scope of the Directive.

If a proposed procurement of supplies of the same type may lead to contracts being awarded at the same time in separate lots, the estimated value of all the lots must be taken into account. If it reaches the relevant threshold, all the lots must be awarded in compliance with the Directive. The same rules apply when estimating the value of leasing, rental or hire–purchase contracts.

“Supplies of the same type” are to be understood as products which are intended for identical or similar uses, e.g. supplies of a range of foods or of different items of office furniture.

Where provision is explicitly made for options, the basis for calculating the estimated contract value must be the highest possible total permitted for the purchase, lease, rental or hire purchase, options included.

### *2.2.2 Time of estimation*

The value of the supplies which it is wanted to procure may vary depending on a number of factors. The time at which the value is estimated, therefore, may turn out to be crucial to determining whether the contract attains the threshold laid down in the Directive.

Accordingly, contracting authorities are obliged, regardless of any earlier estimate of the contract, to take account of the value which the supplies that are the subject of the contract will have when the award procedure is initiated by the dispatch of the notice for publication or by an invitation to negotiate.

### *2.2.3 Splitting of contracts*

There is a blanket prohibition on the splitting of a procurement requirement with the intention of circumventing the rules on estimating the contract value and, more widely, on applying the Directive as a whole.

For example, where a contracting authority comprises several departments that are not decentralized from an administrative viewpoint and, consequently, cannot be regarded as contracting authorities in their own right with the power to award public supply contracts within the meaning of the Directive, it must take into account all the requirements of its constituent departments when estimating the value of a contract.

## **2.3 Exclusions**

Before indicating what contracts are excluded from application of the Supplies Directive, it should be emphasized that, since these are derogations, the provisions establishing them must be interpreted restrictively.

As far as supply contracts in the utilities sectors are concerned, the Directive does not apply to “contracts awarded in the fields referred to in Articles 2, 7, 8 and 9 of Directive 90/531/EEC<sup>21</sup> or fulfilling the conditions in Article 6(2) of that Directive”.

---

<sup>21</sup> Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ No L 297, 29.10.1990, p. 1).

Directive 90/531/EEC has been replaced by Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors<sup>22</sup>; references to Directive 90/531/EEC are therefore to be understood as applying to Directive 93/38/EEC.

The text of these articles is as follows:

## *Article 2*

1. *This Directive shall apply to contracting entities which:*
  - (a) *are public authorities or public undertakings and exercise one of the activities referred to in paragraph 2;*
  - (b) *when they are not public authorities or public undertakings, have as one of their activities any of those referred to in paragraph 2 or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of a Member State.*
  
2. *Relevant activities for the purposes of this Directive shall be:*
  - (a) *the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of:*
    - (i) *drinking water, or*
    - (ii) *electricity, or*
    - (iii) *gas or heat,**or the supply of drinking water, electricity, gas or heat to such networks;*
  - (b) *the exploitation of a geographical area for the purpose of:*
    - (i) *exploring for or extracting oil, gas, coal or other solid fuels, or*
    - (ii) *the provision of airport, maritime or inland port or other terminal facilities to carriers by air, sea or inland waterway;*
  - (c) *the operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.*

*As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of a Member State, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service;*
  - (d) *the provision or operation of public telecommunications networks or the provision of one or more public telecommunications services.*
  
3. *For the purpose of applying paragraph 1(b), special or exclusive rights shall mean rights deriving from authorizations granted by a competent authority of the*

---

<sup>22</sup> OJ No L 199, 9.8.1993, p. 84.

*Member State concerned, by law, regulation or administrative action, having as their result the reservation for one or more entities of the exploitation of an activity defined in paragraph 2.*

*A contracting entity shall be considered to enjoy special or exclusive rights in particular where:*

- (a) for the purpose of constructing the networks or facilities referred to in paragraph 2, it may take advantage of a procedure for the expropriation or use of property or may place network equipment on, under or over the public highway;*
- (b) in the case of paragraph 2(a), the entity supplies with drinking water, electricity, gas or heat a network which is itself operated by an entity enjoying special or exclusive rights granted by a competent authority of the Member State concerned.*

*4. The provision of bus transport services to the public shall not be considered to be a relevant activity within the meaning of paragraph 2(c) where other entities are free to provide those services, either in general or in a particular geographical area, under the same conditions as the contracting entities.*

*5. The supply of drinking water, electricity, gas or heat to networks which provide a service to the public by a contracting entity other than a public authority shall not be considered as a relevant activity within the meaning of paragraph 2(a) where:*

- (a) in the case of drinking water or electricity:
  - the production of drinking water or electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than that referred to in paragraph 2, and*
  - supply to the public network depends only on the entity's own consumption and has not exceeded 30% of the entity's total production of drinking water or energy, having regard to the average for the preceding three years, including the current year;**
- (b) in the case of gas or heat:
  - the production of gas or heat by the entity concerned is the unavoidable consequence of carrying on an activity other than that referred to in paragraph 2, and*
  - supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20% of the entity's turnover having regard to the average for the preceding three years, including the current year.**

*6. The contracting entities listed in Annexes I to X shall fulfil the criteria set out above. In order to ensure that the lists are as exhaustive as possible, Member States shall notify the Commission of amendments to their lists. The Commission shall revise Annexes I to X in accordance with the procedure in Article 40.*

## **Article 6**

*1. This Directive shall not apply to contracts or design contests which the contracting entities award for purposes other than the pursuit of their activities as described in Article 2(2) or for the pursuit of such activities in a non-member country, in*

*conditions not involving the physical use of a network or geographical area within the Community.*

2. *However, this Directive shall apply to contracts or design contests awarded or organized by the entities which exercise an activity referred to in Article 2(2)(a)(i) and which:*

(a) *are connected with hydraulic engineering projects, irrigation or land drainage, provided that the volume of water intended for the supply of drinking water represents more than 20% of the total volume of water made available by these projects or irrigation or drainage installations; or*

(b) *are connected with the disposal or treatment of sewage.*

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

#### **Article 7**

1. *This Directive shall not apply to 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.*

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 lists of the categories of products or activities which it considers to be covered by this exclusion for information in the Official Journal of the European Communities. In so doing, the Commission shall respect any sensitive commercial aspects the contracting entities may point out when forwarding this information.*

#### **Article 8**

1. *This Directive shall not apply to contracts which contracting entities exercising an activity described in Article 2(2)(d) award for purchases intended exclusively to enable them to provide one or more telecommunications services where other entities are free to offer the same services in the same geographical area and under substantially the same conditions.*

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

## *Article 9*

1. *This Directive shall not apply to:*
  - (a) *contracts which the contracting entities listed in Annex I award for the purchase of water;*
  - (b) *contracts which the contracting entities listed in Annexes II to V award for the supply of energy or of fuels for the production of energy.*
2. *The Council shall re-examine the provisions of paragraph 1 when it has before it a report from the Commission together with appropriate proposals.*

The public supply contracts awarded in the fields of water, energy, transport and telecommunications excluded from the scope of the Supplies Directive are, therefore, those covered by the abovementioned articles of Directive 90/531/EEC, which are not the subject of this guide.

It seems appropriate, however, to make a few observations about the distinction between contracts covered by the Supplies Directive and those covered by Directive 90/531/EEC.

It should be emphasized that the latter, in view of the qualifications provided for by Article 6(2), applies only to contracts which the contracting entities, exercising an activity referred to by the Directive, award for the pursuit of such activities.

Consequently, a contracting authority which carries on several activities at the same time may rely on the non-applicability of Directive 93/36/EEC only in respect of the public supply contracts which it awards in the exercise of the activities covered by the abovementioned articles of Directive 90/531/EEC.

For example, a municipality running a tram service will not comply with the Supplies Directive when purchasing the vehicles to be used for that service but will have to do so when purchasing school furniture.

On the other hand, the Supplies Directive does apply when a municipality that does not itself operate such a service purchases or hires vehicles to put them at the disposal of an entity which runs the transport network on its behalf.

The Directive does not apply to public contracts governed by different procedural rules and awarded:

- in pursuance of an international agreement, concluded in conformity with the EC Treaty, between a Member State and one or more non-member countries and covering supplies intended for the joint implementation or exploitation of a project by the signatory States: all such agreements must, however, be communicated to the

Commission, which may examine them in consultation with the Advisory Committee for Public Contracts;<sup>23</sup>

- to undertakings in a Member State or a non-member country in pursuance of an international agreement relating to the stationing of troops;
- pursuant to the particular procedure of an international organization: it should be pointed out here that international organizations are not contracting authorities within the meaning of the Directive, which consequently does not apply to them. This exclusion thus covers contracts which, although concluded by contracting authorities, have to be awarded in accordance with the particular rules of an international organization.

Lastly, the Directive excludes public supply contracts from its scope:

- where the supplies are declared secret; or
- where their performance must be accompanied by special security measures in accordance with the provisions laid down by law, regulation or administrative action in force in the Member State concerned; or
- where the protection of the basic interests of that State's security so requires.

These last three exclusions from the Directive give concrete expression, in the public procurement field, to the powers already reserved for the Member States by Article 36 of the EC Treaty, which allows them in certain cases to derogate from the prohibitions on import and export restrictions enshrined in Articles 30 and 34 respectively. These three exclusions from the Directive must be interpreted as strictly and according to the same criteria as exceptions under Article 36.

## **2.4 Defence procurement**

Without prejudice to the abovementioned exclusions (see point 2.3), the Directive applies to all products which are the subject of public supply contracts, including those which are the subject of contracts awarded by contracting authorities in the field of defence, except for the products to which Article 223(1)(b) of the EC Treaty applies. In accordance with that Article, the exception covers only arms, munitions and war material appearing on the list laid down by the Council Decision of 15 April 1958, and only where those items are intended for specifically military purposes.

---

<sup>23</sup> This Committee was set up by Council Decision 71/306/EEC (OJ No L 185, 16.8.1971, p. 15), as amended by Council Decision 77/63/EEC (OJ No L 13, 15.1.1977, p. 15).

### **3. AWARD PROCEDURES**

The Directive provides for three types of procedure for awarding public supply contracts: the open procedure, the restricted procedure, and the negotiated procedure, which may be used only in exceptional circumstances listed exhaustively in the Directive. According to the circumstances justifying its use, the negotiated procedure may or may not comprise a call for competition.

#### ***N.B.***

*In open and restricted procedures, the contracting authorities are allowed to request further information from tenderers so as to assess their tenders more fully, but they may not negotiate the conditions of the contract with them.*

*This principle, which is essential to the transparency of both procedures, was stated quite clearly by the Council and the Commission when Directive 89/440/EEC concerning coordination of procedures for the award of public works contracts was adopted.*

*They stressed in a joint statement that “in open and restricted procedures all negotiation with candidates or tenderers on fundamental aspects of contracts, variations in which are likely to distort competition, and in particular on prices, shall be ruled out; however, discussions with candidates or tenderers may be held but only for the purpose of clarifying or supplementing the content of their tenders or the requirements of the contracting authorities and provided this does not involve discrimination”.<sup>24</sup>*

#### **3.1 Open procedures**

An open procedure is one where all interested suppliers may submit tenders in response to a published contract notice.

#### **3.2 Restricted procedures**

A restricted procedure is one where, of the suppliers who have expressed their interest following publication of the contract notice, only those so invited by the contracting authority may submit tenders.

An accelerated form of restricted procedure may be used where, for reasons of urgency, suppliers cannot be allowed the periods normally required under restricted procedures.

In such cases, contracting authorities are required to indicate in the contract notice published in the Official Journal the grounds for using the accelerated form of the procedure.

---

<sup>24</sup> See OJ No L 210, 21.7.1989, p. 22.

As this is an exception which is likely to restrict competition, it should be construed strictly, i.e. reserved for cases where the contracting authority can prove the objective need for urgency and the genuine impossibility of allowing the normal periods prescribed for this procedure.

The use of an accelerated procedure must be limited, therefore, to the types and quantities of products which it can be shown are urgently required. Other products must be supplied under a normal procedure.

It should be emphasized that the use of two procedures and hence the splitting of a supplies contract into two parts may not in any circumstances justify non-compliance with the Directive where such splitting would mean reducing the estimated value of one or both contracts below the threshold for applying the Directive: in such cases, too, the value of the contracts must be estimated in accordance with the rules described in point 2.2.

### **3.3 Negotiated procedures**

A negotiated procedure is one where the contracting authority consults the suppliers of its choice and negotiates with them the terms of the contract, e.g. the technical, administrative or financial conditions.

In a negotiated procedure, the Directive enables the contracting authority to act flexibly not only at the time it awards the contract but also during the prior discussions. The procedure is not, however, to be equated with private contracting. It requires the contracting authority to play an active role in determining the terms of the contract, with special reference to prices, delivery deadlines, quantities, technical characteristics and guarantees.

Nor does the procedure relieve the contracting authority of the obligation to comply with certain rules of good administrative practice. In other words, it has to:

- compare effectively tenders and the advantages they offer; and
- apply the principle of equal treatment between competitors.

Reliance on this flexible procedure is justified by the exceptional circumstances in which the contract has to be awarded and so is allowed only in the cases listed exhaustively in the Directive.

Since these constitute derogations from the rules of the Directive, which are designed to ensure that firms competing for public supply contracts can effectively rely on the rights conferred on them by the Treaty, they must be interpreted strictly<sup>25</sup> and the burden of

---

<sup>25</sup> Paragraph 36 of the Court's judgment of 17 November 1993 in Case C-71/92 *Commission v Spain* [1993] ECR I-5978.

proving the actual existence of exceptional circumstances justifying a derogation lies with the contracting authority seeking to rely on those circumstances<sup>26</sup>.

According to circumstances, the Directive allows the negotiated procedure to be used with or without prior publication of a contract notice in the Official Journal.

### *3.3.1 Negotiated procedures with prior publication of a contract notice*

In this procedure, the contracting authority has to select the candidates it invites to take part in the negotiated procedure from among those presenting the qualifications specified in the notice. Such qualifications can be only those provided for in Articles 20 to 24 of the Directive, i.e. they must relate exclusively to the supplier's personal standing and financial, economic and technical capacity.

An accelerated form of negotiated procedure with prior publication of a notice may be used where, for reasons of urgency, suppliers cannot be allowed the periods normally required under negotiated procedures. The considerations set out above in connection with accelerated restricted procedures apply here, and contracting authorities also have to indicate in the notice the grounds for using the accelerated form of the procedure.

Public supply contracts may be awarded by negotiated procedure with prior publication of a contract notice where an open or restricted procedure has elicited only irregular tenders<sup>27</sup> or tenders which are unacceptable<sup>28</sup> under national provisions compatible with Title IV of the Directive (Common rules on participation; Criteria for qualitative selection; and Criteria for the award of contracts), in so far as the original terms of the contract, as specified in the tender notice and contract documents, are not substantially altered.

Otherwise, the open or restricted procedure has to be started again from the beginning in full compliance with the provisions of the Directive applicable to each of the procedures. For instance, changes in the financing conditions, the deadlines for delivery or the technical specifications identifying the products to be supplied are to be regarded as substantial alterations to the original terms of the contract.

Furthermore, a contracting authority may legitimately resort to the negotiated procedure only where it has issued a prior official statement that the tenders received during the preceding open or restricted procedure were irregular or unacceptable, and has declared that procedure closed.

Prior publication of a contract notice is not required where contracting authorities include in the negotiated procedure all suppliers who satisfy the qualitative selection criteria

---

<sup>26</sup> Paragraph 14 of the Court's judgment of 10 March 1987 in Case 199/85 *Commission v Italy* [1987] ECR 1039.

<sup>27</sup> For example, tenders which do not comply with the tender requirements, in which prices are sheltered from normal competitive forces or which comprise unconscionable clauses.

<sup>28</sup> For example, tenders received late, submitted by tenderers who do not have the requisite qualifications or whose price either exceeds the contracting authority's budget or is abnormally low.

referred to in Articles 20 to 24 of the Directive and who submitted during the earlier open or restricted procedure tenders complying with the formal requirements of the tendering procedure.

### 3.3.2 *Negotiated procedures without prior publication of a contract notice*

The negotiated procedure without prior publication of a contract notice may be used in the following exceptional cases:

- (1) where no tenders or appropriate tenders are received in response to an open or restricted procedure, in so far as the terms of the contract established for that procedure are not substantially altered during the negotiated procedure and provided that the contracting authority submits a report to the Commission setting out all the information required to prove that these circumstances are met;

“Inappropriate tenders” means not only unacceptable or irregular tenders, but also tenders which are completely irrelevant to the contract and are therefore incapable of meeting the contracting authority’s needs as specified in the contract documents. Such tenders are consequently regarded as not having been submitted;

- (2) where the articles involved are manufactured purely for the purposes of research, experiment, study or development. This provision does not extend to quantity production to establish commercial viability or to recover R&D costs; nor does it cover capital goods purchased for research or experimental laboratories;
- (3) where, for technical or artistic reasons or for reasons connected with protection of exclusive rights, the goods supplied can be manufactured or delivered only by a particular supplier.

This rule therefore lays down two conditions, both of which must be proven to be satisfied: the goods must have special technical or artistic features or must be protected by exclusive rights, and there must be only one potential supplier.

In a case<sup>29</sup> concerning the supply of pharmaceutical products and specialities in which the defendant tried to use the existence of exclusive rights as a justification for derogating from the Directive, the Court stressed that it was not sufficient for the products in question to be protected by exclusive rights; they also had to be capable of being manufactured or delivered only by a particular supplier, a requirement that was satisfied only with respect to those products and specialities for which there was no competition on the market;

- (4) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events that could not be foreseen by the contracting authority, suppliers cannot be allowed the periods laid down for open or restricted procedures, or for a

---

<sup>29</sup> Paragraph 17 of the Court’s judgment of 3 May 1994 in Case C-328/92 *Commission v Spain* [1994] ECR I-1569.

negotiated procedure with prior publication of a notice, including accelerated procedures – whether restricted or negotiated. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority.

***N.B.***

*The concept of unforeseeable events is taken to mean occurrences that overwhelmingly transcend the normal bounds of economic and social life (for example, an earthquake or flooding in the wake of which essential supplies are needed as a matter of the utmost urgency in order to provide relief and shelter for the victims). It should also be stressed that reliance on this exceptional procedure is allowed in the Directive only for obtaining the types and quantities of products that are genuinely necessary to cope with the emergency immediately, in other words, given the minimum time-limits to be allowed under the accelerated procedures, for a period of around one month. For the products needed subsequently, the contracting authority has time to put contracts up for Community-wide competition in accordance with the requirements of the Directive.*

In the health-care sector, the Court has accepted that, given doctors' freedom to prescribe pharmaceutical products, an urgent need for a particular pharmaceutical speciality may well arise in a hospital pharmacy; it has, however, stressed that this cannot justify *a priori* systematic recourse to private contracting for all supplies of pharmaceutical products and specialities to hospitals;

- (5) for additional deliveries by the original supplier, where:
- they are intended
    - either as a partial replacement of normal supplies or installations
    - or as the extension of existing supplies or installations; and
  - a change of supplier obliges the contracting authority to acquire material having different technical characteristics which would result in
    - either incompatibility with the supplies or installations covered by the original contract
    - or disproportionate technical difficulties in operation and maintenance.

The length of such contracts and of recurrent contracts may, as a general rule, not exceed three years.

### **3.4 Information concerning the contracting authority's decision**

#### ***3.4.1 Rejection of applications and tenders***

Any eliminated candidate has the right to ask the contracting authority for the reasons for his rejection, and any tenderer whose bid has been rejected has the right to ask for the reasons and for the name of the successful tenderer.

The contracting authority must provide the information requested within fifteen days of receiving the request.

### *3.4.2 Cancellation of an award procedure*

Contracting authorities may decide not to award a contract in respect of which a prior call for competition has been made or to recommence the procedure.

In such cases, they must inform the Office for Official Publications of the European Communities (“Publications Office”) of their decision.

They must also inform candidates or tenderers who so request of the grounds for their decision.

### *3.4.3 Contract report*

For each contract awarded, contracting authorities are obliged to draw up a report, which must contain at least the following information:

- the name and address of the contracting authority, the subject and value of the contract;
- the names of the candidates or tenderers selected, with reasons;
- the names of the candidates or tenderers rejected, with reasons;
- the name of the successful tenderer and the reasons why his tender was chosen and, if known, any share of the contract which the tenderer intends to subcontract to third parties;
- for negotiated procedures, the circumstances justifying the use of the procedure. The circumstances may, of course, be only those provided for in the Directive.

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

## **4. COMMON ADVERTISING RULES**

### **4.1 Contract notices**

Transparency at all stages of award procedures is a key factor in fostering competition between economic operators and genuinely opening up public procurement in the European Union.

With a view to achieving greater transparency, the new Directive has increased the number of notices that contracting authorities must, under certain conditions, submit for publication in the Official Journal and input into the TED (Tenders Electronic Daily) database concerning the contracts they award under open, restricted or negotiated procedures.

#### *4.1.1. Indicative notice*

The purpose of this notice is to make contracting authorities' procurement programmes known to potentially interested suppliers.

Contracting authorities must, as soon as possible after the beginning of their budgetary year, make known by means of an indicative notice the total procurement by product area which they intend to award during the subsequent 12 months.

This form of advertising is mandatory where the total amount by product area, estimated in accordance with the abovementioned rules laid down by the Directive, equals or exceeds ECU 750 000.

Product areas must be established by reference to the headings in the CPA nomenclature (Classification of Products According to Activities).<sup>30</sup>

The aim is to draw procurement programmes to the attention of potential suppliers as soon as they are established<sup>31</sup> and to enable firms – even those located furthest away from the contracting authority – to compete for contracts on an equal footing wherever possible.

#### *4.1.2 Contract notice*

The obligation to publish a contract notice when the award procedure is about to be launched is a key aspect of the drive to build a single market in public procurement. Publication of the notice enables economic operators in all Member States to be informed of contracts put up for tender throughout the Union and provides them with the information they need in order to assess the contracts which interest them.

---

<sup>30</sup> OJ No L 342, 31.12.1993, p. 1.

<sup>31</sup> The timing varies according to national procurement planning procedures.

This obligation must be complied with both where an open or restricted procedure is used and, in accordance with the conditions and limits already explained, in the case of a negotiated procedure.

#### *4.1.3 Contract award notice*

Contracting authorities which have awarded a contract must, irrespective of the procedure used (open or restricted procedure or negotiated procedure with or without prior publication of a contract notice), publish a notice setting out the most important points concerning the conditions in which the contract has been awarded. Contract award notices are intended not only to ensure greater transparency in award procedures but also to generate more interest among suppliers in the Community and encourage more of them to take part in award procedures.

## **4.2 Content and presentation of notices**

Contracting authorities are required to draw up notices in accordance with the models given in Annex IV to the Directive, giving the information specified in the relevant model.

Where the items are mandatory, the information required must be given. Where they are optional and not relevant to the contract in question, the contracting authority should indicate the fact, by entering “not applicable” or words to that effect.

Certain items of the contract notice call for some explanation.

In the section relating to the minimum economic and technical standards required of the supplier, the information and formalities specified must comply with Articles 22 and 23 of the Directive.

In the section concerning the criteria to be used for awarding the contract, the contracting authority must enter either:

- “the lowest price”, or
- “the most economically advantageous tender”, or
- where it is using the restricted procedure and specifies the award criteria in the invitation to tender, “award criteria specified in the invitation to tender”, or words to that effect.

Where the contracting authority indicates that it will award the contract to “the most economically advantageous tender”, it must specify the factors that will be taken into consideration either in the same section of the notice or in the contract documents. In the latter case, it must add in that section of the notice the words “award criteria stated in the contract documents”.

The contract notice relating to an open or standing contract must, as far as possible, clearly state the nature and proposed quantities of the supplies.

In the case of contract award notices, the Directive allows certain derogations. Publication of the notice remains mandatory, of course, but contracting authorities may, in certain cases, withhold information whose release would impede law enforcement or be otherwise contrary to the public interest, would prejudice the legitimate commercial interests of particular enterprises, whether public or private, or might prejudice fair competition between suppliers.

While conveying clear and comprehensive information, notices must be concise: the Directive stipulates that they must not run to more than one page of the Official Journal, or approximately 650 words.

### **4.3 Model notices**

The model notices specified in the Directive are given below.

#### *4.3.1 Indicative notice*

1. Name, address, telegraphic address, telephone, telex and fax numbers of the contracting authority and, if different, of the service from which additional information may be obtained.
2. Nature and quantity or value of the products to be supplied. CPA reference number.
3. Estimated date for initiating the award procedures in respect of the contract or contracts (if known).
4. Other information.
5. Date of dispatch of the notice.
6. Date of receipt of the notice by the Publications Office.

#### 4.3.2 *Contract notice*

### **Open procedures**

1. Name, address, telegraphic address and telephone, telex and fax numbers of the contracting authority.
2. (a) Award procedure chosen;  
(b) Form of the contract for which tenders are being requested.
3. (a) Place of delivery;  
(b) Nature and quantity of the goods to be supplied. CPA reference number;  
(c) Indication of whether the supplier can tender for part of the goods required.
4. Time-limit for delivery, if any.
5. (a) Name and address of the service from which the contract documents and additional documents may be requested;  
(b) Final date for making such requests;  
(c) Where applicable, the amount and terms of payment of the sum to be paid to obtain such documents.
6. (a) Final date for receipt of tenders;  
(b) Address to which they must be sent;  
(c) Language or languages in which they must be drawn up.
7. (a) Persons authorized to be present at the opening of tenders;  
(b) Date, time and place of such opening.
8. Where applicable, any deposits and guarantees required.
9. Main terms concerning financing and payment and/or references to the provisions in which these are contained.
10. Where applicable, the legal form to be taken by the grouping of suppliers to whom the contract is awarded.
11. Information concerning the supplier's own position, and information and formalities necessary for an appraisal of the minimum economic and technical standards required of the supplier.
12. Period during which the tenderer is bound to keep open his tender.
13. Criteria for the award of the contract. Criteria other than that of the lowest price must be mentioned if they do not appear in the contract documents.
14. Where applicable, prohibition on variants.
15. Other information.
16. Date of publication of the indicative notice in the Official Journal or reference to its non-publication.
17. Date of dispatch of the notice.
18. Date of receipt of the notice by the Publications Office.

## Restricted procedures

1. Name, address, telegraphic address and telephone, telex and fax numbers of the contracting authority.
2.
  - (a) Award procedure chosen;
  - (b) Where applicable, justification for use of the accelerated procedure;
  - (c) Form of the contract for which tenders are being requested.
3.
  - (a) Place of delivery;
  - (b) Nature and quantity of the goods to be supplied. CPA reference number;
  - (c) Indication of whether the supplier can tender for part of the goods required.
4. Time-limit for delivery, if any.
5. Where applicable, the legal form to be taken by the grouping of suppliers to whom the contract is awarded.
6.
  - (a) Final date for receipt of requests to participate;
  - (b) Address to which they must be sent;
  - (c) Language or languages in which they must be drawn up.
7. Final date for dispatch of invitations to tender.
8. Where applicable, any deposits and guarantees required.
9. Information concerning the supplier's personal position, and the information and formalities necessary for an appraisal of the minimum economic and technical standards required of him.
10. Criteria for the award of the contract where they are not mentioned in the invitation to tender.
11. Envisaged number or range of suppliers who will be invited to tender.
12. Where applicable, prohibition on variants.
13. Other information.
14. Date of publication of the indicative notice in the Official Journal or reference to its non-publication.
15. Date of dispatch of the notice.
16. Date of receipt of the notice by the Publications Office.

## Negotiated procedures

1. Name, address, telegraphic address, telephone, telex and fax numbers of the contracting authority.
2.
  - (a) Award procedure chosen;
  - (b) Where applicable, justification for use of the accelerated procedure;
  - (c) Where applicable, form of the contract for which tenders are invited.
3.
  - (a) Place of delivery;
  - (b) Nature and quantity of the goods to be supplied. CPA reference number;
  - (c) Indication of whether the supplier can tender for part of the goods required.
4. Time-limit for delivery, if any.
5. Where applicable, the legal form to be taken by the grouping of suppliers to whom the contract is awarded.
6.
  - (a) Final date for receipt of requests to participate;
  - (b) Address to which they must be sent;
  - (c) Language or languages in which they must be drawn up.
7. Where applicable, any deposits and guarantees required.
8. Information concerning the supplier's personal position, and the information and formalities necessary for an appraisal of the minimum economic and technical standards required of him.
9. Envisaged number or range of suppliers who will be invited to tender.
10. Where applicable, prohibition on variants.
11. Where applicable, names and addresses of suppliers already selected by the awarding authority.
12. Where applicable, date(s) of previous publications in the Official Journal.
13. Other information.
14. Date of dispatch of the notice.
15. Date of receipt of the notice by the Publications Office.

#### 4.3.3 *Contract award notice*

1. Name and address of awarding authority.
2. Award procedure chosen. In the case of the negotiated procedure, without prior publication of a contract notice, justification (Article 6(3)).
3. Date of award of contract.
4. Criteria for award of contract.
5. Number of tenders received.
6. Name(s) and address(es) of supplier(s).
7. Nature and quantity of goods supplied, where applicable, by supplier. CPA reference number.
8. Price or range of prices (minimum/maximum) paid.
9. Where appropriate, value and proportion of contract likely to be subcontracted to third parties.
10. Other information.
11. Date of publication of the contract notice in the Official Journal.
12. Date of dispatch of the notice.
13. Date of receipt of the notice by the Publications Office.

#### **4.4 Method of setting time-limits**

The time-limits specified in contract notices must be such that their expiry can be determined by suppliers in all Member States on an equal footing.

Contracting authorities are therefore not allowed to set such time-limits in a way that would place much greater difficulties in the way of suppliers from other Member States, by referring to the date of publication of the notice in a national or regional official gazette, for example.

#### **4.5 National advertising**

In order to ensure that equivalent information is disseminated at both national and Community level, the Directive provides that any notices published in the official gazettes or in the press of the country of the contracting authority must not contain information other than that published in the Official Journal of the European Communities. In addition, notices may not be published at national level before they are dispatched for publication at Community level and must mention the date of such dispatch.

#### 4.6 Who is responsible for publishing notices?

Notices are published by the Publications Office.

In general terms, contracting authorities have to transmit their notices as quickly as possible and through the most appropriate channels. This means that they should, wherever possible, use the modern methods of communication provided for by the Directive so that notices are published early enough to serve their purpose.

In particular, the Directive requires them:

- to send the indicative notice as soon as possible after the beginning of each budgetary year;
- in the case of accelerated restricted or negotiated procedures, to send notices by telex, telegram or fax;
- to send the contract award notice not later than 48 days after the award of the contract in question;
- to be able to supply proof of the date of dispatch of notices to the Publications Office.

The address for correspondence is:

*Supplement to the Official Journal of the European Communities*  
*Office for Official Publications of the European Communities*  
*2, rue Mercier*  
*L-2985 Luxembourg*  
*Telephone: (352) 499 28 23 32*  
*Telex: 1324 pubof LU*  
*2731 pubof LU*  
*Fax: (352) 49 00 03*  
*(352) 49 57 19*

Within twelve days (or five days in the case of the accelerated form of restricted or negotiated procedures), the Publications Office publishes the notices in the Supplement to the Official Journal<sup>32</sup> and via the TED (Tenders Electronic Daily) database<sup>33</sup>. Notices are published in full in their original language only and in summary form in the other Community languages.

The Publications Office takes responsibility for the necessary translations and summaries.

The costs of publishing notices in the Supplement to the Official Journal are borne by the Community.

---

<sup>32</sup> The Supplement to the Official Journal may be obtained in all Member States and in other countries from the addresses listed in Annex IV.

<sup>33</sup> For any information concerning this database and the arrangements for accessing it, please contact the Office for Official Publications of the European Communities, 2, rue Mercier, L-2985 Luxembourg. Telephone: (352) 499 28 25 63/499 28 25 64, Telex: 1324 pubof LU, Fax: (352) 48 85 73.

## **4.7 Time-limits**

In order to give all potential suppliers throughout the Community a chance to tender for a contract or seek an invitation to take part in an award procedure before the closing date, the Directive lays down minimum periods to be allowed at the different stages of the procedures: contracting authorities may not set shorter deadlines than those specified in the Directive, but they are, of course, free to allow longer periods, and they must do so in certain cases. The Directive also lays down maximum periods within which contracting authorities have to dispatch contract documents and provide additional information.

### *4.7.1 Open procedures*

- (a) Time-limit set by the contracting authority for the receipt of tenders: not less than 52 days from the date of dispatch of the notice for publication in the Official Journal.

This time-limit must be appropriately extended:

- where the contract documents, supporting documents or additional information are too bulky to be supplied within the time-limit laid down by the Directive; 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.
- (b) Time-limit for dispatch of the contract documents and supporting documents by the contracting authority: within six days of receipt of the request, provided that such information has been requested in good time.
- (c) Time-limit for additional information relating to the contract documents to be supplied by the contracting authority: not later than six days prior to the closing date for the receipt of tenders, provided that such information has been requested in good time.

### *4.7.2 Restricted procedures*

- (a) Time-limit set by the contracting authority for the receipt of requests to participate: not less than 37 days (or 15 days, in the case of accelerated restricted procedures) from the date of dispatch of the notice for publication in the Official Journal.
- (b) Time-limit for additional information relating to the contract documents to be supplied by the contracting authority: not later than six days (or four days in the case of accelerated restricted procedures) prior to the closing date for the receipt of tenders, provided that such information has been requested in good time.
- (c) Time-limit set by the contracting authority for the receipt of tenders: not less than 40 days (or 10 days in the case of accelerated restricted procedures) from the date of dispatch of the written invitation.

This time-limit must be appropriately extended 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.

#### 4.7.3 Negotiated procedures with prior publication of a contract notice

Time-limit set by the contracting authority for the receipt of requests to participate: not less than 37 days (or 15 days in the case of accelerated negotiated procedures) from the date of dispatch of the notice for publication in the Official Journal.

#### 4.7.4 Summary tables

##### **OPEN PROCEDURES**

The **contract documents** and **supporting documents** must be supplied within **six days** of the request

Any **additional information** concerning the contract documents must be communicated not later than **six days** prior to the time-limit for the receipt of tenders

Time-limit for the **receipt of tenders**, from the date when the notice is sent for publication in the Official Journal:

Not less than **52 days**

##### **RESTRICTED PROCEDURES AND NEGOTIATED PROCEDURES WITH PRIOR PUBLICATION OF A CONTRACT NOTICE**

The **invitation to submit a tender** must be sent **simultaneously** to all successful candidates, along with the **contract documents** and **supporting documents**

Any **additional information** concerning the contract documents must be communicated not later than **six days** (**four days** in the case of accelerated procedures) prior to the time-limit for the receipt of tenders

Time-limit for the **receipt of applications to take part**, from the date when the notice is sent for publication in the OJ:

Not less than **37 days**

Not less than **15 days** (**accelerated procedures**)

##### **RESTRICTED PROCEDURES ONLY**

Time-limit for the **receipt of tenders**, from the date of dispatch of the written invitation to tender:

Not less than **40 days**

Not less than **10 days** (**accelerated procedures**)

#### **4.8 Method of calculating certain time-limits**

All the time-limits laid down in the Directive must be calculated in accordance with Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time-limits.

Under these rules, periods expressed as a certain number of days from a particular event:

- (a) run from the day following the day on which the event takes place;
- (b) begin at 00h00 on the first day, as defined in (a), and end at 24h00 on the last day of the period;
- (c) end, if the last day of the period falls on a public holiday or a Saturday or Sunday, and the period is not expressed in hours, at 24h00 on the following working day.

Periods expressed in hours, which are common for certain acts to be performed by suppliers, end at the time and date stated.

Periods include public holidays and weekends unless these are expressly excluded or the periods are expressed as a certain number of working days. Public holidays are all days designated as such in the Member State in which the relevant act has to be performed.

For further details, the reader is referred to the text of the Regulation.<sup>34</sup>

#### **4.9 Submission of requests to participate**

In restricted procedures and negotiated procedures with prior publication of a contract notice, requests to participate may be made by letter or by telegram, telex, fax or telephone. If they are made by one of the last four methods, they must be confirmed by letter dispatched before the closing date for the receipt of such requests.

Where the accelerated form of those procedures is used, requests to participate must be made, in accordance with the Directive, by the most rapid means of communication possible. If they are made by telegram, telex, fax or telephone, they must be confirmed by letter dispatched before the closing date for the receipt of requests to participate.

#### **4.10 Rules governing the dispatch and content of invitations to tender**

Invitations to tender must be made in writing and sent simultaneously to all selected candidates.

The letter of invitation should normally be accompanied by the contract documents and supporting documents and include at least the following information:

---

<sup>34</sup> The text of the Regulation is reproduced in Annex V.

- (a) where it is not accompanied by the contract documents and supporting documents, which the contracting authority does not have since they are the responsibility of another department, the address of the department from which they may be requested, the deadline for submitting such a request and the amount and terms of payment of any charge for obtaining such documents;
- (b) the closing date for the receipt of tenders, the address to which they must be sent and the language(s) in which they must be drawn up;
- (c) a reference to the published contract notice;
- (d) an indication of any documents to be attached, either to support verifiable statements made, or to supplement the information provided by the candidate to show that he meets the selection criteria;
- (e) the criteria for the award of the contract, if not stated in the contract notice.

Where the accelerated form of restricted or negotiated procedures is used, the Directive requires contracting authorities to send out invitations to tender by the most rapid means of communication possible.

## 5. COMMON RULES IN THE TECHNICAL FIELD

The contracting authorities have to indicate, in the general or contractual documents relating to each contract, the technical specifications with which the goods must comply.

For the purposes of the Directive:

- (1) **“Technical specifications”** means the totality of the technical requirements contained in particular in the contract 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 authority. These technical requirements shall include levels of quality, performance, safety or dimensions, including the requirements applicable to the material, the product or to the supply as regards quality assurance, terminology, symbols, testing and test methods, packaging, marking or labelling;
- (2) **“Standard”** means a technical specification approved by a recognized standardizing body for repeated and continuous application, compliance with which is in principle not compulsory;
- (3) **“European standard”** means a standard approved by the European Committee for Standardization (CEN) or by the European Committee for Electrotechnical Standardization (Cenelec) as ‘European standards (EN)’ or ‘Harmonization documents (HD)’ according to the common rules of these organizations;
- (4) **“European technical approval”** 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. The European approval shall be issued by an approval body designated for this purpose by the Member State;
- (5) **“Common technical specification”** means a technical specification laid down in accordance with a procedure recognized by the Member States to ensure uniform application in all Member States which has been published in the Official Journal.

### 5.1 What technical specifications should be referred to?

The common rules in the technical field have been brought into line with the Community’s new policy on standardization and certification and determine how much discretion contracting authorities have when defining contract specifications.

The Directive provides that “without prejudice to the legally binding national technical rules, in so far as these are compatible with Community law, the technical specifications (...) shall be defined by the contracting authorities by reference to national standards implementing European standards, or by reference to European technical approvals or by reference to common technical specifications”.

In practical terms, this provision should be interpreted as requiring contracting authorities to define the technical specifications for the products to be supplied - except

in exceptional cases - by reference to national standards transposing European standards or to European technical approvals or to common technical specifications wherever they exist.

In this provision, the Community legislature's purpose has been to use Community standards to remove the technical discrimination to which abusive reliance on national standards in contract documents has given rise.

## 5.2 Exceptions

A contracting authority may depart from this general rule if:

- the standards, European technical approvals or common technical specifications do not include any provision for establishing conformity, or technical means do not exist for establishing satisfactorily the conformity of a product to these standards, European technical approvals or common technical specifications;
- application of the general rule prejudices the application of Council Directive 86/361/EEC of 24 July 1986 on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment<sup>35</sup> or Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications<sup>36</sup> or other Community instruments in specific service or product areas;
- use of these standards, European technical approvals or common technical specifications would oblige the contracting authority to acquire supplies incompatible with equipment already in use or would entail disproportionate costs or disproportionate technical difficulties, but only as part of a clearly defined and recorded strategy with a view to the changeover, within a given period, to European standards, European technical approvals or common technical specifications.

This exception also applies in cases where a European standard is technically inappropriate through being technically obsolete or intended for application in a different context. In such situations, the contracting authority could clearly not be required to have a strategy for the changeover to European standards. It would, however, be desirable for the contracting authority to take the necessary steps with a view to securing the updating of the European standard;

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

Contracting authorities relying on these possibilities for departing from the general rule must, wherever possible, state the reasons for doing so in the contract notice published in

---

<sup>35</sup> OJ No L 217, 5.8.1986, p. 21. Directive amended by Directive 91/263/EEC (OJ No L 128, 23.5.1991, p. 1).

<sup>36</sup> OJ No L 36, 7.2.1987, p. 31.

the Official Journal or in the contract documents. They are required, at all events, systematically to record the reasons in their internal documentation and to communicate them on request to Member States and to the Commission.

### **5.3 Cases where no European standards, European technical approvals or common technical specifications exist**

In the absence of European standards, European technical approvals or common technical specifications, the technical specifications for contracts:

- (a) are to be defined by reference to the national technical specifications recognized as complying with the essential requirements listed in the Community directives on technical harmonization, in accordance with the procedures laid down in those directives, and in particular in accordance with the procedures laid down in Council Directive 89/106/EEC of 21 December 1988 on construction products;<sup>37</sup>
- (b) may be defined by reference to national technical specifications relating to the design and method of calculation and execution of works and use of materials;
- (c) may be defined by reference to other documents. In such cases, reference should be made, in order of preference, to:
  - (i) national standards implementing international standards accepted by the country of the contracting authority;
  - (ii) other national standards and national technical approvals of the country of the contracting authority;
  - (iii) any other standard.

### **5.4 Prohibition of discriminatory specifications**

There is a general ban on technical specifications which mention goods of a specific make or source or of a particular process and which have the effect of favouring or eliminating certain enterprises or products. Among the specifications that can have such a discriminatory effect, and are therefore prohibited, the Directive mentions in particular the indication of trade marks, patents, types or a specific origin or production.

An exception to this general ban is only allowed where the subject-matter of the contract cannot otherwise be described by specifications which are sufficiently precise and intelligible to all concerned. Reliance on this derogation should not, however, have discriminatory effects; to that end, the Directive requires that such indications be accompanied by the words “or equivalent”. Contracting authorities relying on this or other derogations must always be able to provide evidence that they are necessary.

---

<sup>37</sup> OJ No L 40, 11.12.1989, p. 12.

The judgment delivered by the Court of Justice in a case involving a public contract for the supply and maintenance of a meteorological station<sup>38</sup> is relevant here: the contract documents defined a technical specification by reference to a specific computer system, without mentioning that it was open to the supplier to use an equivalent system.

As the Court stressed, the fact that the indication of a specific computer system was not followed by the words “or equivalent” could not only deter economic operators using similar systems from taking part in the tendering procedure, but also “impede the flow of imports in intra-Community trade, contrary to Article 30 of the Treaty, by reserving the contract exclusively to suppliers intending to use the system specifically indicated”.

The Court therefore held that failure to add the words “or equivalent” after reference to a product of a specific make ran contrary not only to the provisions of the Directive but also to the bans on discrimination laid down in the Treaty.

#### *5.4.1 Principle of equivalence and mutual recognition and the new approach to technical harmonization and standardization*

At all events, the above provisions could not be interpreted and applied in such a way as to limit the obligations arising already from Article 30 of the Treaty, whose liberalization effect the Directive is designed to complement in the field of public procurement.

Where Community harmonization has determined the essential requirements which products must meet, contracting authorities must presume that products manufactured in accordance with the standards drawn up by the competent standards bodies conform to the essential requirements laid down in the directive concerned. They may not refuse products simply because they were not manufactured in accordance with such standards, if evidence is supplied that those products conform to the essential requirements established by Community legislative harmonization.

If there are no common technical rules or standards, a contracting authority cannot reject products from other Member States on the sole grounds that they comply with different technical rules or standards, without first checking whether they meet the requirements of the contract.<sup>39</sup>

In accordance with the mutual recognition principle, it must consider on equal terms products from other Member States manufactured in accordance with technical rules or standards which afford the same degree of performance and protection of the legitimate interests concerned as products manufactured in conformity with the technical specifications stipulated in the contract documents.

Such evidence may be supplied, in particular, by complying with the conformity assessment procedures as listed in Council Decision 90/683/EEC of 13 December 1990

---

<sup>38</sup> Judgment of 24 January 1995 in Case C-359/93 *Commission v Netherlands* [1995] ECR I-157.

<sup>39</sup> Judgment of 22 September 1988 in Case 45/87 *Commission v Ireland* [1988] ECR 4929.

concerning the modules for the various phases of the conformity assessment procedures which are intended to be used in the technical harmonization directives.<sup>40</sup> In the absence of common technical coordinates, these conformity assessment procedures, based primarily on quality instruments (tests, certification of products, quality assurance, etc.), are such as to ensure that the products to be supplied can match the performance required by the contracting authorities.

In addition, to ensure that these quality assessment procedures are applied consistently and in a harmonized fashion, it is recommended that the services of competent bodies operating on the basis of similar criteria be enlisted. Compliance with the standards in the EN 45000 and EN 29000 series by such bodies constitutes a presumption of competence, which may, for example, be validated by accreditation.

The European Organization for Testing and Certification (EOTC), whose task it is to provide a European structure for such bodies, may also be able to help contracting authorities in their choice.

---

<sup>40</sup> OJ No L 380, 31.12.1990, p. 13.

## **6. PARTICIPATION IN PROCEDURES AND AWARD OF CONTRACTS**

For there to be effective Community-wide competition and, hence, genuine liberalization of intra-Community trade in the field of public supply contracts, steps had to be taken to prevent prospective suppliers being selected and their tenders assessed according to criteria selected arbitrarily by the contracting authorities.

Title IV of the Directive therefore lays down common rules on participation which contain provisions on procedures for granting permission to bid and set the criteria for selecting potential suppliers and those for awarding contracts.

### **6.1 Common rules on participation**

#### *6.1.1 When and how is the suitability of suppliers checked and the contract awarded?*

The Directive provides that contracts are to be awarded on the basis of the criteria laid down in Title IV, Chapter 3 (“Criteria for the award of contracts”) after the suitability of suppliers not excluded under Article 20 (supplier’s good repute) has been checked. It stipulates that contracting authorities must base such checks on the criteria of economic, financial and technical capacity referred to in Articles 22 to 24.

The suitability of suppliers must therefore be checked not only in open, but also in restricted and negotiated procedures.

However, a favourable verdict does not have the same consequences in the three procedures.

In open procedures, compliance with the predetermined selection criteria gives the tenderers concerned an automatic right to participate in the award procedure. The contracting authority will, therefore, be obliged to examine all bids from such tenderers.

In restricted and negotiated procedures, however, candidates who satisfy the predetermined selection criteria may be excluded from the procedure, since contracting authorities, subject to certain conditions specified in point 6.1.2 below, may limit the number of candidates they invite to tender or negotiate and, therefore, may effect a choice.

In the system set up by the Directive, examination of the suitability of suppliers and award of the contract are two different steps in the procurement procedure. In its interpretation of similar provisions in Directive 71/305/EEC on public works contracts, the Court,<sup>41</sup> without finding a rigid chronological division between the two stages, nevertheless stressed the clear distinction drawn in the Directive between the criteria for checking the suitability of a tenderer and those for awarding the contract. In its judgment, the Court stated that “even though the Directive (...) does not rule out the

---

<sup>41</sup> Case 31/87 *Beentjes v Netherlands State* [1988] ECR 4635.

possibility that examination of the tenderer's suitability and the award of the contract may take place simultaneously, the two procedures are governed by different rules".

Consequently, when examining tenders, contracting authorities may not, for example, allow themselves to be influenced by the tenderer's financial capacity or give a tenderer who has not satisfied the pre-established selection criteria a second chance because they deem his tender advantageous.

Contracting authorities are under the further obligation to respect fully the confidential nature of any information furnished by candidates or tenderers.

#### *6.1.2 Selection and number of candidates invited to submit a tender or to negotiate*

Suppliers invited to submit a tender may be selected only from among those who have requested to participate in the procedure and display the qualifications required for that procedure; those qualifications may be based only on the criteria for qualitative selection provided for in Articles 20 to 24 of the Directive.

In accordance with Article 19, "in restricted and negotiated procedures the contracting authorities shall, on the basis of information given relating to the supplier's personal position as well as to the information and formalities necessary for the evaluation of the minimum conditions of an economic and technical nature to be fulfilled by him, select from among the candidates with the qualifications required by Articles 20 to 24 those whom they will invite to submit a tender or to negotiate".

#### ***N.B.***

*Contracting authorities are not obliged to invite all candidates to bid who meet the requirements of the contract.*

*Those who are invited, however, must all satisfy such conditions and may be chosen by the contracting authority only on the basis of these qualitative selection criteria, which must be transparent and objective and laid down in advance.*

*Contracting authorities may, therefore, limit the numbers of those invited to tender or negotiate only by taking into consideration the candidates with the best qualifications in accordance with the selection criteria specified in the contract notice.*

In order to be able to invite fewer candidates than those who meet the requirements of the contract, contracting authorities must have previously stated in the contract notice the proposed number, or range, of suppliers who will be invited to tender or negotiate.

Where this has not been stated, they may not eliminate any of the candidates who have submitted correct applications and possess the requisite qualifications.

In *restricted procedures*, the range encompassing the number of candidates who will be invited to tender must be determined with reference to the nature of the supplies to be provided. The Directive lays down that the range must number at least five suppliers.

Where a contracting authority wants to limit the decisions it will have to take and stipulate a single figure instead of a range, there is all the more reason why that figure, which may not be increased, must not be less than five.

***N.B.***

*The Directive also provides that, in any event, the number of candidates invited to tender must be sufficient to ensure genuine competition.*

*Having determined a minimum number in advance in accordance with the Directive, a contracting authority could find itself unable to stick to that number because it had received too few applications from sufficiently qualified suppliers. In that eventuality, it can be considered that there is genuine competition where at least three candidates are invited to tender, assuming that sufficient applications to take part were received from eligible suppliers.*

In *negotiated procedures* with prior publication of a contract notice, the Directive lays down that the minimum number of candidates invited to negotiate may not be less than three, on condition, of course, that there are sufficient suitable candidates.

### *6.1.3 Inviting nationals from other Member States*

In any event, where candidates are invited to tender under a restricted or negotiated procedure, the Directive requires contracting authorities - and makes it the duty of Member States to see that this obligation is fulfilled - to issue invitations, without discrimination, to suppliers in other Member States who satisfy the necessary requirements, and to do so under the same conditions as apply to domestic suppliers.

In this respect, it can be presumed as a general rule that there is no discrimination on grounds of nationality when suppliers are selected if, in its selection, the contracting authority maintains the same proportion between domestic candidates and those from other Member States as that observed among candidates with the requisite qualifications. If a check is made, however, such a presumption will be without prejudice to a more detailed assessment of the information taken into account at the selection stage.

### *6.1.4 Groups of suppliers*

Groups of suppliers must be allowed to submit a tender without having to assume a particular legal form. However, a group may be required to assume a particular legal form if it is awarded the contract, to the extent that this change is necessary for the satisfactory performance of the contract.

### *6.1.5 Tenders proposing variants on the specifications*

Contracting authorities are obliged to state the technical specifications of the products sought. It is very important, however, both for economic agents and for users, that it

should be possible to tender goods which, albeit not corresponding to those stipulated by the contracting authority, do meet the latter's requirements.

This possibility helps to stimulate the search for new technologies and enables users as a whole to benefit from a wider range of products and from technical progress.

The Directive provides, therefore, that variants may be proposed in tenders. However, this possibility is subject to certain conditions.

First of all, it is possible to propose variants where a contract is awarded to the most economically advantageous tender and not on the basis of the lowest price. A variant can be fairly assessed and compared with tenders meeting different requirements only by examining the tenders from several viewpoints, which means that several assessment criteria must be used.

The Directive leaves it to the discretion of contracting authorities to decide whether they wish to authorize or prohibit variants and to establish what type of variants they are prepared to consider and the conditions for the submission of such variants – they may, for instance, require that a basic tender be submitted along with the variant.

However, if they decide to prohibit variants, contracting authorities must say so in the contract notice.

Where variants are allowed, the contracting authority is not bound to say so in the contract notice, but must mention in the contract documents the minimum conditions which variants must comply with and the procedures for their submission.

Thereafter, it may take into consideration only those variants that meet the minimum requirements set out in the contract documents.

Furthermore, contracting authorities may not reject a variant on the sole grounds that it has been drawn up with technical specifications defined by reference to national standards transposing European standards, to European technical approvals, to common technical

specifications, or by reference to national technical specifications recognized as complying with the essential requirements listed in the Community directives on technical harmonization, in accordance with the procedures laid down in those directives, or again by reference to national technical specifications relating to design and method of calculation and execution of works and use of materials.

Contracting authorities which have admitted variants may not reject a tender proposing a variant simply because it would lead, if successful, to a services contract. Such a prohibition relates to variants which, in addition to the supply of products, provide for the supply of services whose value exceeds that of the products (see point 1.5).

#### *6.1.6 Subcontracting*

Subcontracting in public contracts is not regulated as such by the Directive. However, to ensure transparency of the conditions under which contracts are performed, the Directive provides that, in the contract documents, the contracting authority may ask the tenderer

to indicate in his tender any share of the contract he may intend to subcontract to third parties.

## **6.2 Selection of suppliers**

In accordance with the case-law of the Court of Justice concerning the Works Directive, which, as far as selection is concerned, is based on principles and criteria similar to those laid down in the Supplies Directive, the suitability of suppliers may be examined only on the basis of the qualitative criteria established in the Directive.<sup>42</sup> These relate to the good repute and professional qualifications of the supplier, i.e. trade registration, economic and financial standing, and technical capacity.

### ***N.B.***

*The aim of the relevant provisions of the Directive is not, however, to restrict the national authorities' powers to set the level of those capacities for the purposes of participation in different contracts, but to determine what references or evidence contracting authorities may require to be submitted.<sup>43</sup> National competence in this field is not unlimited, though, since all the relevant provisions of Community law, and in particular - as we are dealing with supplies here - the prohibitions enshrined in Article 30 of the EC Treaty, must be complied with.*

### **6.2.1 Supplier's personal situation**

Article 20 of the Directive gives an exhaustive list of the grounds to do with a supplier's personal situation on which contracting authorities may exclude candidates or tenderers from a procedure, without further verification.

Any supplier may be disqualified who:

- (a) is bankrupt or is being wound up, whose affairs are being administered by the court, who has entered into an arrangement with creditors or who is in any analogous situation arising from a similar procedure under national laws and regulations;
- (b) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding-up or administration by the court or for an arrangement with creditors or is the subject of any other similar proceedings under national laws or regulations;

---

<sup>42</sup> Judgment of 10 February 1982 in Case 76/81 *Transporoute v Minister of Public Works* [1982] ECR 417.

<sup>43</sup> Judgment of 9 July 1987 in Joined Cases 27 to 29/86 *CEI v Association intercommunale pour les autoroutes des Ardennes* [1987] ECR 3368; Case 31/87 *Beentjes v Netherlands State* [1988] ECR 4635.

- (c) has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;
- (d) has been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- (e) has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he is established or those of the country of the contracting authority;
- (f) has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country in which he is established or those of the country of the contracting authority;
- (g) is guilty of serious misrepresentation in supplying the information required under the provisions of the Directive on the criteria for qualitative selection.

As regards (d) and (g), it is for the contracting authority to prove that such circumstances exist. Otherwise, it is for the candidate or tenderer, if the contracting authority so requests in the notice, to prove that none of the circumstances mentioned apply.























































































































































































































































































































































































































































However, the type of evidence that contracting authorities may require of suppliers is regulated by the same article of the Directive. Where a contracting authority requires such proof, it has to accept as sufficient evidence:

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

Where the country concerned does not issue such documents or certificates or where these do not cover all the cases mentioned in (a), (b) or (c), they may be replaced by a declaration on oath or, in Member States where such an oath is not used, by a solemn declaration made by the interested party before the competent judicial or administrative authority, a notary or a competent professional or trade body in the country of origin or in the country from which that party comes.

### 6.2.2 *Enrolment in the professional or trade register*

As evidence of general professional capacity, the contracting authority may, pursuant to Article 21, request suppliers to prove that they are enrolled in the professional or trade register or to provide a declaration on oath or a certificate in accordance with the conditions laid down by the laws of the Member State in which they are established. The registers concerned are:

- in Belgium, the Registre du commerce/Handelsregister;
- in Denmark, the Aktieselskabsregistret, Foreningsregistret and the Handelsregistret;
- in Germany, the Handelsregister and the Handwerksrolle;
- in Greece, the                                                                                                                                                                                                                                                                                                                                                                                                                                                      

All the references required must be specified in the contract notice (in the case of open procedures) or in the contract notice or invitation to tender (in the case of restricted or negotiated procedures).

If, for any valid reason, the supplier is unable to furnish the references requested, the contracting authority must allow him to establish his economic and financial standing by means of any other document. However, it is for the contracting authority to assess whether such documents are appropriate.

#### 6.2.4 *Technical capacity*

As regards the supplier's technical capacity, Article 23 contains an exhaustive list of the evidence which contracting authorities may require.

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

- (a) a list of the principal deliveries effected in the past three years, with the sums, dates and recipients, public or private, involved:
  - in the case of public contracting authorities, evidence to be in the form of certificates issued or countersigned by the competent authority;
  - in the case of private purchasers, delivery to be certified by the purchaser or, failing this, simply declared by the supplier to have been effected;
- (b) a description of the firm's technical facilities, its measures for ensuring quality and its study and research facilities;
- (c) indication of the technicians or technical bodies involved, whether or not belonging directly to the supplier's firm, especially those responsible for quality control;
- (d) samples, description and/or photographs of the products to be supplied, the authenticity of which must be certified if the contracting authority so requests;
- (e) certificates drawn up by official quality control institutes or agencies of recognized competence attesting conformity to certain specifications or standards of products clearly identified by references to specifications or standards;
- (f) where the goods to be supplied are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authority or on its behalf by a competent official body of the country in which the supplier is established, subject to that body's agreement, on the production capacities of the supplier and, if necessary, on his study and research facilities and quality control measures.

In open procedures, the references required as evidence of the supplier's technical capacity must appear in the contract notice; in restricted or negotiated procedures, they must be specified in the contract notice or the invitation to tender.

Article 23 also provides that the extent of the information required by contracting authorities "must be confined to the subject of the contract", in other words, the

information specified must be strictly necessary for assessing whether the supplier's technical capacity is appropriate to the desired supply. Contracting authorities must furthermore take into consideration the legitimate interests of suppliers as regards the protection of their firms' technical or commercial secrets.

#### *6.2.5 Additional information*

To ensure the transparency of the selection process, additional qualitative requirements may not be specified after publication of the contract notice or transmission of the invitation to tender.

After that stage, the contracting authority may, within the limits of the above-mentioned selection criteria, request suppliers only to supplement or clarify the certificates and documents submitted.

This is an option which is open to contracting authorities and which they may use at their discretion, but not in a discriminatory manner. Nor does it give a supplier who has not furnished proper evidence that he satisfies the requirements for a particular contract the right to be invited to rectify his omissions.

#### *6.2.6 Official lists of approved suppliers*

Some Member States compile official lists of approved suppliers. This may in practice result in discrimination against foreign suppliers, who have more difficulty in learning of the existence of such lists and of the procedures for getting their names on them.

Accordingly, the Community legislature has introduced in Directive 93/36/EEC a rule which, while recognizing the advantage of open lists of approved suppliers, lays down the limits and conditions under which Member States may use them.

Such lists must be adapted to the qualitative selection criteria laid down in the Directive, discussed above and set out in Articles 20(1)(a) to (d) and (g), 21, 22 and 23.

Suppliers on such lists in the Member States in which they are established may, on the occasion of each contract, claim such enrolment as alternative evidence, within the limits examined below, that they fulfil the qualitative criteria set out in Articles 20 to 23.

A supplier who chooses to use such alternative evidence must submit to the contracting authority a registration certificate issued by the appropriate authority indicating the references which made enrolment possible and his classification on the list.

As regards the evidential value of such a certificate, Article 25 provides that: "certified registration in official lists of suppliers by the competent bodies shall, for the contracting authorities of other Member States, constitute a presumption of suitability only as regards Article 20(1)(a) to (d) and (g), Article 21, Article 22(1)(b) and (c) and Article 23(1)(a).

Information which can be deduced from registration in official lists may not be questioned. However, with regard to the payment of social security contributions, an

additional certificate may be required of any registered suppliers whenever a contract is offered”.

Apart from the evidence provided by such objective facts, the supplier may, as regards those references where suitability can be presumed, be requested by the contracting authority to supplement that information so that his suitability for the contract concerned may be assessed.

As regards those references where suitability cannot be presumed, the contractor is obliged to submit the documents required by the contracting authority in accordance with the Directive.

As the Court has confirmed<sup>44</sup> with regard to the lists of approved contractors regulated by the analogous provisions of the Works Directive, it should be emphasized that the evidential value of a certificate of registration on an official list of authorized suppliers in one Member State to contracting authorities in other Member States is confined to the objective facts which made registration possible and does not extend to the resultant classification. The contracting authorities, while they may not question the information deduced from registration, may determine the level of financial and commercial standing and technical capacity required in order to participate in a given contract.

Within the limits described above, a supplier registered in his country on a list of approved suppliers has the right, therefore, to use that registration as alternative evidence for contracting authorities in the other Member States. In no circumstances, however, could a contracting authority demand, as a condition of admission to the contract, that suppliers established in other Member States should be registered on an official list in its country. Such a requirement would in fact constitute a measure having equivalent effect to a quantitative restriction on imports, which is prohibited under Article 30 of the Treaty.

Moreover, Member States which have official lists of approved suppliers are obliged to open them to suppliers from other Member States and, in order to enrol them, may not require evidence and declarations other than those required of national suppliers and, in any event, other than those laid down in Articles 20 to 23.

### **6.3 Criteria for the award of contracts**

The criteria on which contracting authorities base the award of contracts must be either the lowest price or the most economically advantageous tender.

The criterion of the lowest price is not difficult to apply, since only the price requested by tenderers is to be taken into consideration and the contract must be awarded to the tenderer asking the lowest price.

---

<sup>44</sup> Joined Cases 27 to 29/86 *CEI v Association intercommunale pour les autoroutes des Ardennes* [1987] ECR 3368.

What constitutes the most economically advantageous tender, however, requires further clarification. The Directive states that contracting authorities may base themselves on “various criteria according to the contract in question: e.g. price, delivery date, running costs, cost-effectiveness, quality, aesthetic and functional characteristics, technical merit, after-sales service and technical assistance”.

This list is not exhaustive. It is clear from the examples given, though, that the most economically advantageous tender can only be decided on objective grounds, equally applicable to all tenders and strictly related to the subject of the contract. Variation is allowed, to reflect the inherent requirements of the desired supplies and the use which the contracting authority intends to make of them.

Where contracting authorities do not award contracts on the basis of the lowest price only but intend to use various criteria to determine the most economically advantageous tender, they must list these criteria either in the contract notice or in the contract documents.

Criteria which have not been announced in this way may not be used to select the tender. This disclosure obligation would not be met – as the Court made clear<sup>45</sup> in connection with the same requirement in the Works Directive – by a general reference to a provision of national law.

The Directive also provides that, where possible, the criteria should be listed in descending order of importance: suppliers need to know on what basis their tenders will be assessed.

Under the Supplies Directive currently in force, it is not possible, as it was under the previous Community legislation, to base an award on criteria different to the above in the context of national laws designed to give certain categories of tenderer an advantage.

This facility must not be confused with the regional preference arrangements, which expired on 31 December 1992.

Consequently, the lowest price and the most economically advantageous tender are the only criteria which contracting authorities may use in order to grant their supply contracts.

### *6.3.1 Abnormally low tenders*

Where tenders appear to be abnormally low in relation to the goods to be supplied, the contracting authority must – before it may reject those tenders – request the tenderers concerned, in writing, to supply details of the constituent elements of the tenders which it considers relevant and must verify those constituent elements taking account of the explanations received.

The Directive specifies the types of explanation that the contracting authority may take into consideration, i.e. those relating to the economics of the manufacturing process or to the technical solutions chosen or to the exceptionally favourable conditions available to

---

<sup>45</sup> Case 31/87 *Beentjes v Netherlands State* [1988] ECR 4635.

the tenderer for the supply of the goods or to the originality of the supplies proposed by the tenderer.

The aim of this procedure, in which the contracting authority must examine tenders in detail in the light of explanations given by the tenderers concerned, is to protect the latter against arbitrariness on the part of the contracting authority by affording them the assurance that, at whatever level the procedure is triggered, they will be given an opportunity to show that their tenders are soundly based before they are rejected.

Consequently, the fact that the contracting authority is expressly empowered to establish whether the explanations furnished by a tenderer are acceptable does not, under any circumstances, authorize it to decide in advance, by rejecting the tender without even seeking an explanation from the tenderer, that no acceptable explanation could be given. The aim of the procedure could not be achieved if it were left to the contracting authority to judge whether or not it was appropriate to seek explanations.<sup>46</sup>

In addition, if the award criterion is the lowest price, the Directive requires the contracting authority to inform the Commission of those tenders which it rejects as too low.

In such cases, the tenders excluded would, if correctly priced, satisfy the criterion laid down for winning the contract. Consequently, it is particularly important to ensure maximum transparency and to allow the Commission to verify, where appropriate, whether the price was indeed abnormally low and therefore unacceptable.

---

<sup>46</sup> This interpretation is in line with the rulings handed down by the Court concerning the same procedure for the examination of abnormally low tenders provided for by Directive 71/305/EEC on public works contracts, namely in Case 76/81 *Transporoute v Minister of Public Works* [1982] ECR 417; Case 103/88 *Fratelli Costanzo v Comune di Milano* [1989] ECR 1839; and Case C-295/89 *Donà Alfonso v Comune di Monfalcone* [1991] ECR I-3641.

## **7. GRANTING OF SPECIAL OR EXCLUSIVE RIGHTS TO ENGAGE IN A PUBLIC SERVICE ACTIVITY**

Under the Supplies Directive, the granting of a special or exclusive right to carry on a public service activity is not subject to any particular procedural requirement.<sup>47</sup> This rule concerns only public supply contracts.

The Directive nevertheless stipulates<sup>48</sup> that, when a contracting authority grants to a body which is not itself a contracting authority – regardless of its legal status – special or exclusive rights to engage in a public service activity, the instrument granting that right must require the body in question to observe the principle of non-discrimination on grounds of nationality when awarding public supply contracts to third parties.

In this context, supply contracts awarded by a body which has been granted such a special or exclusive right are deemed to be public supply contracts since they are awarded in the pursuit of a public service activity. In reality, such supplies are not intended for the contracting authority, but are to be used by the entity itself in the management and operation of the public service. It must also be stressed that the entity – although within any limits and under any supervision imposed in connection with the grant of the exclusive or special right – carries on the activity independently of the contracting authority and is directly liable to the recipients of the service which it provides.

---

<sup>47</sup> The absence of Community procedural rules does not mean, of course, that any grant of exclusive or special rights is legitimate under Community law as a whole.

<sup>48</sup> Article 2(2).

## **ANNEXES**

- I. List of bodies and categories of bodies governed by public law**
- II. List of contracting authorities subject to the GATT Agreement**
- III. List of products which, when supplied to defence authorities listed in Annex II, are subject to the GATT Agreement**
- IV. List of addresses from which the Supplement to the Official Journal can be obtained**
- V. Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits**



# **ANNEX I**

**List of bodies and categories of bodies governed by public law**



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

I. BELGIUM

**Bodies**

- Archives générales du Royaume et Archives de l'État dans les Provinces - Algemeen Rijksarchief en Rijksarchief in de Provinciën,
- Conseil autonome de l'enseignement communautaire - Autonome Raad van het Gemeenschapsonderwijs,
- Radio et télévision belges, émissions néerlandaises - Belgische Radio en Televisie, Nederlandse uitzendingen,
- Belgisches Rundfunk- und Fernsehzentrum der Deutschsprachigen Gemeinschaft (Centre de radio et télévision belge de la Communauté de langue allemande - Centrum voor Belgische Radio en Televisie voor de Duitstalige Gemeenschap),
- Bibliothèque royale Albert Ier - Koninklijke Bibliotheek Albert I,
- Caisse auxiliaire de paiement des allocations de chômage - Hulpkas voor Werkloosheidsuitkeringen,
- Caisse auxiliaire d'assurance maladie-invalidité - Hulpkas voor Ziekte- en Invaliditeitsverzekeringen,
- Caisse nationale des pensions de retraite et de survie - Rijkskas voor Rust- en Overlevingspensioenen,
- Caisse de secours et de prévoyance en faveur des marins naviguant sous pavillon belge - Hulp- en Voorzorgskas voor Zeevarenden onder Belgische Vlag,
- Caisse nationale des calamités - Nationale Kas voor de Rampenschade,
- Caisse spéciale de compensation pour allocations familiales en faveur des travailleurs de l'industrie diamantaire - Bijzondere Verrekenkas voor Gezinsvergoedingen ten bate van de Arbeiders der Diamantnijverheid,
- Caisse spéciale de compensation pour allocations familiales en faveur des travailleurs de l'industrie du bois - Bijzondere Verrekenkas voor Gezinsvergoedingen ten bate van Arbeiders in de Houtnijverheid,
- Caisse spéciale de compensation pour allocations familiales en faveur des travailleurs occupés dans les entreprises de batellerie - Bijzondere Verrekenkas voor Gezinsvergoedingen ten bate van Arbeiders der Ondernemingen voor Binnenscheepvaart,
- Caisse spéciale de compensation pour allocations familiales en faveur des travailleurs occupés dans les entreprises de chargement, déchargement et manutention de marchandises dans les ports débarcadères, entrepôts et stations (appelée habituellement «Caisse spéciale de compensation pour allocations familiales des régions maritimes») - Bijzondere Verrekenkas voor Gezinsvergoedingen ten bate van de Arbeiders gebezigd door Ladings- en Lossingsondernemingen en door de Stuwadoors in de Havens, Losplaatsen, Stapelplaatsen en Stations (gewoonlijk genoemd: "Bijzondere Compensatiekas voor kindertoeslagen van de zeevaartgewesten"),
- Centre informatique pour la Région bruxelloise - Centrum voor Informatica voor het Brusselse Gewest,
- Commissariat général de la Communauté flamande pour la coopération internationale - Commissariaat-generaal voor Internationale Samenwerking van de Vlaamse Gemeenschap,
- Commissariat général pour les relations internationales de la Communauté française de Belgique - Commissariaat-generaal bij de Internationale Betrekkingen van de Franse Gemeenschap van België,
- Conseil central de l'économie - Centrale Raad voor het Bedrijfsleven,
- Conseil économique et social de la Région wallonne - Sociaal-economische Raad van het Waals Gewest,
- Conseil national du travail - Nationale Arbeidsraad,
- Conseil supérieur des classes moyennes - Hoge Raad voor de Middenstand,
- Office pour les travaux d'infrastructure de l'enseignement subsidié - Dienst voor Infrastructuurwerken van het Gesubsidieerd Onderwijs,
- Fondation royale - Koninklijke Schenking,
- Fonds communautaire de garantie des bâtiments scolaires - Gemeenschappelijk Waarborgfonds voor Schoolgebouwen,

- Fonds d'aide médicale urgente - Fonds voor Dringende Geneeskundige Hulp,
- Fonds des accidents du travail - Fonds voor Arbeidsongevallen,
- Fonds des maladies professionnelles - Fonds voor Beroepsziekten,
- Fonds des routes - Wegenfonds,
- Fonds d'indemnisation des travailleurs licenciés en cas de fermeture d'entreprises - Fonds tot Vergoeding van de in geval van Sluiting van Ondernemingen Ontslagen Werknemers,
- Fonds national de garantie pour la réparation des dégâts houillers - Nationaal Waarborgfonds inzake Kolenmijnschade,
- Fonds national de retraite des ouvriers mineurs - Nationaal Pensioenfonds voor Mijnwerkers,
- Fonds pour le financement des prêts à des États étrangers - Fonds voor Financiering van de Leningen aan Vreemde Staten,
- Fonds pour la rémunération des mousses enrôlés à bord des bâtiments de pêche - Fonds voor Scheepsjongens aan Boord van Vissersvaartuigen,
- Fonds wallon d'avances pour la réparation des dommages provoqués par des pompages et des prises d'eau souterraine - Waals Fonds van Voorschotten voor het Herstel van de Schade veroorzaakt door Grondwaterzuiveringen en Afpompingen,
- Institut d'aéronomie spatiale - Instituut voor Ruimte-aëronomie,
- Institut belge de normalisation - Belgisch Instituut voor Normalisatie,
- Institut bruxellois de l'environnement - Brussels Instituut voor Milieubeheer,
- Institut d'expertise vétérinaire - Instituut voor Veterinaire Keuring,
- Institut économique et social des classes moyennes - Economisch en Sociaal Instituut voor de Middenstand,
- Institut d'hygiène et d'épidémiologie - Instituut voor Hygiëne en Epidemiologie,
- Institut francophone pour la formation permanente des classes moyennes - Franstalig Instituut voor Permanente Vorming voor de Middenstand,
- Institut géographique national - Nationaal Geografisch Instituut,
- Institut géotechnique de l'État - Rijksinstituut voor Grondmechanica,
- Institut national d'assurance maladie-invalidité - Rijksinstituut voor Ziekte- en Invaliditeitsverzekering,
- Institut national d'assurances sociales pour travailleurs indépendants - Rijksinstituut voor de Sociale Verzekeringen der Zelfstandigen,
- Institut national des industries extractives - Nationaal Instituut voor de Extractiebedrijven,
- Institut national des invalides de guerre, anciens combattants et victimes de guerre - Nationaal Instituut voor Oorlogsinvaliden, Oudstrijders en Oorlogsslachtoffers,
- Institut pour l'amélioration des conditions de travail - Instituut voor Verbetering van de Arbeidsvoorwaarden,
- Institut pour l'encouragement de la recherche scientifique dans l'industrie et l'agriculture - Instituut tot Aanmoediging van het Wetenschappelijk Onderzoek in Nijverheid en Landbouw,
- Institut royal belge des sciences naturelles - Koninklijk Belgisch Instituut voor Natuurwetenschappen,
- Institut royal belge du patrimoine artistique - Koninklijk Belgisch Instituut voor het Kunstpatrimonium,
- Institut royal de météorologie - Koninklijk Meteorologisch Instituut,
- Enfance et famille - Kind en Gezin,
- Compagnie des installations maritimes de Bruges - Maatschappij der Brugse Zeevaartinrichtingen,
- Mémorial national du fort de Breendonck - Nationaal Gedenkteken van het Fort van Breendonck,
- Musée royal de l'Afrique centrale - Koninklijk Museum voor Midden-Afrika,
- Musées royaux d'art et d'histoire - Koninklijke Musea voor Kunst en Geschiedenis,
- Musées royaux des beaux-arts de Belgique - Koninklijke Musea voor Schone Kunsten van België,
- Observatoire royal de Belgique - Koninklijke Sterrenwacht van België,
- Office belge de l'économie et de l'agriculture - Belgische Dienst voor Bedrijfsleven en Landbouw,
- Office belge du commerce extérieur - Belgische Dienst voor Buitenlandse Handel,
- Office central d'action sociale et culturelle au profit des membres de la communauté militaire - Centrale Dienst voor Sociale en Culturele Actie ten behoeve van de Leden van de Militaire Gemeenschap,
- Office de la naissance et de l'enfance - Dienst voor Borelingen en Kinderen,

- Office de la navigation - Dienst voor de Scheepvaart,
- Office de promotion du tourisme de la Communauté française - Dienst voor de Promotie van het Toerisme van de Franse Gemeenschap,
- Office de renseignements et d'aide aux familles des militaires - Hulp- en Informatiebureau voor Gezinnen van Militairen,
- Office de sécurité sociale d'outre-mer - Dienst voor Overzeese Sociale Zekerheid,
- Office national d'allocations familiales pour travailleurs salariés - Rijksdienst voor Kinderbijslag voor Werknemers,
- Office national de l'emploi - Rijksdienst voor de Arbeidsvoorziening,
- Office national des débouchés agricoles et horticoles - Nationale Dienst voor Afzet van Land- en Tuinbouwprodukten,
- Office national de sécurité sociale - Rijksdienst voor Sociale Zekerheid,
- Office national de sécurité sociale des administrations provinciales et locales - Rijksdienst voor Sociale Zekerheid van de Provinciale en Plaatselijke Overheidsdiensten,
- Office national des pensions - Rijksdienst voor Pensioenen,
- Office national des vacances annuelles - Rijksdienst voor de Jaarlijkse Vakantie,
- Office national du lait - Nationale Zuiveldienst,
- Office régional bruxellois de l'emploi - Brusselse Gewestelijke Dienst voor Arbeidsbemiddeling,
- Office régional et communautaire de l'emploi et de la formation - Gewestelijke en Gemeenschappelijke Dienst voor Arbeidsvoorziening en Vorming,
- Office régulateur de la navigation intérieure - Dienst voor Regeling der Binnenvaart,
- Société publique des déchets pour la Région flamande - Openbare Afvalstoffenmaatschappij voor het Vlaams Gewest,
- Orchestre national de Belgique - Nationaal Orkest van België,
- Organisme national des déchets radioactifs et des matières fissiles - Nationale Instelling voor Radioactief Afval en Splijtstoffen,
- Palais des beaux-arts - Paleis voor Schone Kunsten,
- Pool des marins de la marine marchande - Pool van de Zeelieden ter Koopvaardij,
- Port autonome de Charleroi - Autonome Haven van Charleroi,
- Port autonome de Liège - Autonome Haven van Luik,
- Port autonome de Namur - Autonome Haven van Namen,
- Radio et télévision belges de la Communauté française - Belgische Radio en Televisie van de Franse Gemeenschap,
- Régie des bâtiments - Regie der Gebouwen,
- Régie des voies aériennes - Regie der Luchtwegen,
- Régie des postes - Regie der Posterijen,
- Régie des télégraphes et des téléphones - Regie van Telegraaf en Telefoon,
- Conseil économique et social pour la Flandre - Sociaal-economische Raad voor Vlaanderen,
- Société anonyme du canal et des installations maritimes de Bruxelles - Naamloze Vennootschap "Zeekanaal en Haveninrichtingen van Brussel",
- Société du logement de la Région bruxelloise et sociétés agréées - Brusselse Gewestelijke Huisvestingsmaatschappij en erkende maatschappijen,
- Société nationale terrienne - Nationale Landmaatschappij,
- Théâtre royal de la Monnaie - De Koninklijke Muntchouwborg,
- Universités relevant de la Communauté flamande - Universiteiten afhangende van de Vlaamse Gemeenschap,
- Universités relevant de la Communauté française - Universiteiten afhangende van de Franse Gemeenschap,
- Office flamand de l'emploi et de la formation professionnelle - Vlaamse Dienst voor Arbeidsvoorziening en Beroepsopleiding,
- Fonds flamand de construction d'institutions hospitalières et médico-sociales - Vlaams Fonds voor de Bouw van Ziekenhuizen en Medisch-Sociale Instellingen,
- Société flamande du logement et sociétés agréées - Vlaamse Huisvestingsmaatschappij en erkende maatschappijen,
- Société régionale wallonne du logement et sociétés agréées - Waalse Gewestelijke Maatschappij voor de Huisvesting en erkende maatschappijen,

- Société flamande d'épuration des eaux - Vlaamse Maatschappij voor Waterzuivering,
- Fonds flamand du logement des familles nombreuses - Vlaams Woningfonds van de Grote Gezinnen.

### **Categories**

- les centres publics d'aide sociale,
- les fabriques d'église (church councils).

## **II. DENMARK**

### **Bodies**

- Københavns Havn,
- Danmarks Radio,
- TV 2/Danmark,
- TV2 Reklame A/S,
- Danmarks Nationalbank,
- A/S Storebæltsforbindelsen,
- A/S Øresundsforbindelsen (alene tilslutningsanlæg i Danmark),
- Københavns Lufthavn A/S,
- Byfornylsesselskabet København,
- Tele Danmark A/S with subsidiaries,
- Fyns Telefon A/S,
- Jydsk Telefon Aktieselskab A/S,
- Københavns Telefon Aktieselskab,
- Tele Sønderjylland A/S,
- Telecom A/S,
- Tele Danmark Mobil A/S.

### **Categories**

- De kommunale havne (municipal ports),
- Andre Forvaltningssubjekter (other public administrative bodies).

## **III. GERMANY**

### **1. Legal persons governed by public law**

Authorities, establishments and foundations governed by public law and created by federal, State or local authorities in particular in the following sectors:

#### *1.1. Authorities*

- Wissenschaftliche Hochschulen und verfaßte Studentenschaften (universities and established student bodies),
- berufsständige Vereinigungen (Rechtsanwalts-, Notar-, Steuerberater-, Wirtschaftsprüfer-, Architekten-, Ärzte- und Apothekerkammern) (professional associations representing lawyers, notaries, tax consultants, accountants, architects, medical practitioners and pharmacists),

- Wirtschaftsvereinigungen (Landwirtschafts-, Handwerks-, Industrie- und Handelskammern, Handwerksinnungen, Handwerkerschaften) (business and trade associations: agricultural and craft associations, chambers of industry and commerce, craftsmen's guilds, tradesmen's associations),
- Sozialversicherungen (Krankenkassen, Unfall- und Rentenversicherungsträger) (social security institutions: health, accident and pension insurance funds),
- kassenärztliche Vereinigungen (associations of panel doctors),
- Genossenschaften und Verbände (cooperatives and other associations).

### 1.2. *Establishments and foundations*

Non-industrial and non-commercial establishments subject to State control and operating in the general interest, particularly in the following fields:

- Rechtsfähige Bundesanstalten (federal institutions having legal capacity),
- Versorgungsanstalten und Studentenwerke (pension organizations and students' unions),
- Kultur-, Wohlfahrts- und Hilfsstiftungen (cultural, welfare and relief foundations).

## 2. **Legal persons governed by private law**

Non-industrial and non-commercial establishments subject to State control and operating in the general interest (including 'Kommunale Versorgungsunternehmen' - municipal utilities), particularly in the following fields:

- Gesundheitswesen (Krankenhäuser, Kurmittelbetriebe, medizinische Forschungseinrichtungen, Untersuchungs- und Tierkörperbeseitigungsanstalten) (health: hospitals, health resort establishments, medical research institutes, testing and carcass-disposal establishments),
- Kultur (öffentliche Bühnen, Orchester, Museen, Bibliotheken, Archive, zoologische und botanische Gärten) (culture: public theatres, orchestras, museums, libraries, archives, zoological and botanical gardens),
- Soziales (Kindergärten, Kindertagesheime, Erholungseinrichtungen, Kinder- und Jugendheime, Freizeiteinrichtungen, Gemeinschafts- und Bürgerhäuser, Frauenhäuser, Altersheime, Obdachlosenunterkünfte) (social welfare: nursery schools, children's playschools, rest-homes, children's homes, hostels for young people, leisure centres, community and civic centres, homes for battered wives, old people's homes, accommodation for the homeless),
- Sport (Schwimmbäder, Sportanlagen und -einrichtungen) (sport: swimming baths, sports facilities),
- Sicherheit (Feuerwehren, Rettungsdienste) (safety: fire brigades, other emergency services),
- Bildung (Umschulungs-, Aus-, Fort- und Weiterbildungseinrichtungen, Volkshochschulen) (education: training, further training and retraining establishments, adult evening classes),
- Wissenschaft, Forschung und Entwicklung (Großforschungseinrichtungen, wissenschaftliche Gesellschaften und Vereine, Wissenschaftsförderung) (science, research and development: large-scale research institutes, scientific societies and associations, bodies promoting science),
- Entsorgung (Straßenreinigung, Abfall- und Abwasserbeseitigung) (refuse and garbage disposal services: street cleaning, waste and sewage disposal),
- Bauwesen und Wohnungswirtschaft (Stadtplanung, Stadtentwicklung, Wohnungsunternehmen, Wohnraumvermittlung) (building, civil engineering and housing: town planning, urban development, housing enterprises, housing agency services),
- Wirtschaft (Wirtschaftsförderungsgesellschaften) (economy: organizations promoting economic development),
- Friedhofs- und Bestattungswesen (cemeteries and burial services),
- Zusammenarbeit mit den Entwicklungsländern (Finanzierung, technische Zusammenarbeit, Entwicklungshilfe, Ausbildung) (cooperation with developing countries: financing, technical cooperation, development and training).

#### IV. GREECE

##### **Categories**

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

#### V. SPAIN

##### **Categories**

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

#### VI. FRANCE

##### **Bodies**

###### 1. National public bodies:

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

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

###### 1.2. Scientific and technological:

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

###### 1.3. with administrative character:

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

##### **Categories**

###### 1. National public bodies:

- universités (universities),
- écoles normales d'instituteurs (teacher training colleges).

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

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

### 3. Groupings of territorial authorities:

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

## VII. IRELAND

### **Bodies**

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

### **Categories**

- Third Level Educational Bodies of a Public Character,
- National Training, Cultural or Research Agencies,
- Hospital Boards of a Public Character,
- National Health & Social Agencies of a Public Character,
- Central & Regional Fishery Boards.

## VIII. ITALY

### **Bodies**

- Agenzia per la promozione dello sviluppo nel Mezzogiorno.

### **Categories**

- Enti portuali e aeroportuali (port and airport authorities),
- Consorzi per le opere idrauliche (consortia for water engineering works),
- Le università statali, gli istituti universitari statali, i consorzi per i lavori interessanti le università (State universities, State university institutes, consortia for university development work),
- Gli istituti superiori scientifici e culturali, gli osservatori astronomici, astrofisici, geofisici o vulcanologici (higher scientific and cultural institutes, astronomical, astrophysical, geophysical or vulcanological observatories),
- Enti di ricerca e sperimentazione (organizations conducting research and experimental work),
- Le istituzioni pubbliche di assistenza e di beneficenza (public welfare and benevolent institutions),

- Enti che gestiscono forme obbligatorie di previdenza e di assistenza (agencies administering compulsory social security and welfare schemes),
- Consorzi di bonifica (land reclamation consortia),
- Enti di sviluppo o di irrigazione (development or irrigation agencies),
- Consorzi per le aree industriali (associations for industrial areas),
- Comunità montane (groupings of municipalities in mountain areas),
- Enti preposti a servizi di pubblico interesse (organizations providing services in the public interest),
- Enti pubblici preposti ad attività di spettacolo, sportive, turistiche e del tempo libero (public bodies engaged in entertainment, sport, tourism and leisure activities),
- Enti culturali e di promozione artistica (organizations promoting culture and artistic activities).

## IX. LUXEMBOURG

### **Categories**

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

## X. THE NETHERLANDS

### **Bodies**

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

### **Categories**

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

## XI. PORTUGAL

### **Categories**

- Estabelecimentos públicos de ensino, investigação científica e saúde (public establishments for education, scientific research and health),
- Institutos públicos sem carácter comercial ou industrial (public institutions without commercial or industrial character),
- Fundações públicas (public foundations),
- Administrações gerais e juntas autónomas (general administration bodies and independent councils).

## XII. THE UNITED KINGDOM

### **Bodies**

- Central Blood Laboratories Authority,
- Design Council,
- Health and Safety Executive,
- National Research Development Corporation,
- Public Health Laboratory Services Board,
- Advisory, Conciliation and Arbitration Service,
- Commission for the New Towns,
- Development Board For Rural Wales,
- English Industrial Estates Corporation,
- National Rivers Authority,
- Northern Ireland Housing Executive,
- Scottish Enterprise,
- Scottish Homes,
- Welsh Development Agency.

### **Categories**

- Universities and polytechnics, maintained schools and colleges,
- National Museums and Galleries,
- Research Councils,
- Fire Authorities,
- National Health Service Authorities,
- Police Authorities,
- New Town Development Corporations,
- Urban Development Corporations.

## XIII. AUSTRIA

All bodies subject to budgetary supervision by the "Rechnungshof" (audit authority) not having an industrial or commercial character.

## XIV. FINLAND

Public or publicly controlled entities or undertakings not having an industrial or commercial character.

## XV. SWEDEN

All non-commercial bodies whose procurement is subject to supervision by the National Board for Public Procurement.



## **ANNEX II**

**List of contracting authorities subject to the GATT Agreement**



## ANNEX II

### LIST OF CONTRACTING AUTHORITIES SUBJECT TO THE GATT AGREEMENT ON GOVERNMENT PROCUREMENT

#### BELGIUM

|   |  |
|---|--|
| <p><b>A.</b> L'État, exception faite pour les marchés passés dans le cadre de coopération au développement qui, en vertu d'accords internationaux conclus avec des pays tiers et se rapportant à la passation de marchés, sont soumis à d'autres dispositions, incompatibles avec les dispositions du présent arrêté <sup>(1)</sup>:</p> <ul style="list-style-type: none"><li>- la Régie des postes <sup>(2)</sup>,</li><li>- la Régie des bâtiments,</li><li>- le Fonds des routes,</li></ul>   | <p>De Staat, met uitzondering van de opdrachten inzake ontwikkelingsamenwerking die, krachtens internationale overeenkomsten met derde landen inzake het plaatsen van opdrachten, andere bepalingen behelzen die niet verenigbaar zijn met de bepalingen van dit besluit <sup>(1)</sup>:</p> <ul style="list-style-type: none"><li>- de Regie der Posterijen <sup>(2)</sup>;</li><li>- de Regie der Gebouwen;</li><li>- het Wegenfonds</li></ul>   |
| <p><b>B.</b> Le Fonds général des bâtiments scolaires de l'État<br/>Le Fonds de construction d'institutions hospitalières et médico-sociales<br/>La Société nationale terrienne<br/>L'Office national de sécurité sociale<br/>L'Institut national d'assurances sociales pour travailleurs indépendants<br/>L'Institut national d'assurance maladie-invalidité</p> <p>L'Institut national de crédit agricole<br/>L'Office national des pensions<br/>L'Office central de crédit hypothécaire<br/>L'Office national du ducroire<br/>La Caisse auxiliaire d'assurance maladie-invalidité<br/>Le Fonds des maladies professionnelles<br/>La Caisse nationale de crédit professionnel<br/>L'Office national des débouchés agricoles et horticoles</p> <p>L'Office national du lait et de ses dérivés<br/>L'Office national de l'emploi<br/>La Régie des voies aériennes</p> | <p>Het Algemeen Gebouwenfonds voor de rijksscholen<br/>Het Fonds voor de bouw van ziekenhuizen en medisc sociale inrichtingen<br/>De Nationale Landmaatschappij<br/>De Rijksdienst voor sociale zekerheid<br/>Het Rijksinstituut voor de sociale verzekeringen der zelfstandigen<br/>Het Rijksinstituut voor ziekte- en invaliditeitsverzekering<br/>Het Nationaal Instituut voor landbouwkrediet<br/>De Rijksdienst voor pensioenen<br/>Het Centraal Bureau voor hypothecair krediet<br/>De Nationale Delcrederedienst<br/>De Hulpkas voor ziekte- en invaliditeitsverzekering<br/>Het Fonds voor de beroepsziekten<br/>De Nationale Kas voor beroepskrediet<br/>De Nationale Dienst voor afzet van land- en tuinbouwprodukten<br/>De Nationale Zuiveldienst<br/>De Rijksdienst voor arbeidsvoorziening<br/>De Regie der Luchtwegen</p> |

<sup>(1)</sup> Non-warlike materials contained in Annex II.

<sup>(2)</sup> Postal business only.

## DENMARK

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

---

<sup>(1)</sup> With the exception of telecommunications services of the 'Post- og Telegrafvæsenet'.

<sup>(2)</sup> With the exception of the 'Danske Statsbaner'.

<sup>(3)</sup> Non-warlike materials contained in Annex II.

## FEDERAL REPUBLIC OF GERMANY

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

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

---

<sup>(1)</sup> With the exception of telecommunications equipment.

<sup>(2)</sup> Non-warlike materials contained in Annex II.

## FRANCE

### 1. Main purchasing entities

#### A. General budget

- Premier ministre
- Ministère d'État, ministère de l'éducation nationale, de la jeunesse et des sports
- Ministère d'État, ministère de l'économie, des finances et du budget
- Ministère d'État, ministère de l'équipement, du logement, des transports et de la mer
- Ministère d'État, ministère des affaires étrangères
- Ministère de la justice
- Ministère de la défense <sup>(1)</sup>
- Ministère de l'intérieur et de la centralisation
- Ministère de l'industrie et de l'aménagement du territoire
- Ministère des affaires européennes
- Ministère d'État, ministère de la fonction publique et des réformes administratives
- Ministère du travail, de l'emploi et de la formation professionnelle
- Ministère de la coopération et du développement
- Ministère de la culture, de la communication, des grands travaux et du bicentenaire
- Ministère des départements et territoires d'outre-mer
- Ministère de l'agriculture et de la forêt
- Ministère des postes, des télécommunications et de l'espace <sup>(2)</sup>
- Ministère chargé des relations avec le Parlement
- Ministère de la solidarité, de la santé et de la protection sociale
- Ministère de la recherche et de la technologie
- Ministère du commerce extérieur
- Ministère délégué auprès du ministère d'État, ministère de l'économie, des finances et du budget, chargé du budget
- Ministère délégué auprès du ministère d'État, ministère des affaires étrangères, chargé de la francophonie
- Ministère délégué auprès du ministère d'État, ministère des affaires étrangères
- Ministère délégué auprès du ministère de l'industrie et de l'aménagement du territoire, chargé de l'aménagement du territoire et des reconversions
- Ministère délégué auprès du ministère de l'industrie et de l'aménagement du territoire, chargé du commerce et de l'artisanat
- Ministère délégué auprès du ministère de l'industrie et de l'aménagement du territoire, chargé du tourisme
- Ministère délégué auprès du ministère de l'équipement, du logement, des transports et de la mer, chargé de la mer
- Ministère délégué auprès du ministère de la culture, de la communication, des grands travaux et du bicentenaire, chargé de la communication
- Ministère délégué auprès du ministère de la solidarité, de la santé et de la protection sociale, chargé des personnes âgées

---

<sup>(1)</sup> Non-warlike materials contained in Annex II.

<sup>(2)</sup> Postal business only.

- Secrétariat d'État chargé des droits des femmes
- Secrétariat d'État chargé des anciens combattants et des victimes de guerre
- Secrétariat d'État chargé de la prévention des risques technologiques et naturels majeurs
- Secrétariat d'État auprès du premier ministre, chargé du plan
- Secrétariat d'État auprès du premier ministre, chargé de l'environnement
- Secrétariat d'État auprès du premier ministre
- Secrétariat d'État auprès du premier ministre, chargé de l'action humanitaire
- Secrétariat d'État auprès du ministère d'État, ministère de l'éducation nationale, de la jeunesse et des sports, chargé de l'enseignement technique
- Secrétariat d'État auprès du ministère d'État, ministère de l'éducation nationale, de la jeunesse et des sports, chargé de la jeunesse et des sports
- Secrétariat d'État auprès du ministère d'État, ministère de l'économie, des finances et du budget, chargé de la consommation
- Secrétariat d'État auprès du ministère des affaires étrangères, chargé des relations culturelles internationales
- Secrétariat d'État auprès du ministère de l'intérieur, chargé des collectivités territoriales
- Secrétariat d'État auprès du ministère de l'équipement, du logement, des transports et de la mer, chargé des transports routiers et fluviaux
- Secrétariat d'État auprès du ministère du travail, de l'emploi et de la formation professionnelle, chargé de la formation professionnelle
- Secrétariat d'État auprès du ministère de la culture, de la communication, des grands travaux et du bicentenaire, chargé des grands travaux
- Secrétariat d'État auprès du ministère de la solidarité, de la santé et de la protection sociale, chargé de la famille
- Secrétariat d'État auprès du ministère de la solidarité, de la santé et de la protection sociale, chargé des handicapés et des accidentés de la vie

## **B. Budget Annex**

In particular:

- Imprimerie nationale

## **C. Special Treasury accounts**

In particular:

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

## **2. National administrative public bodies**

- Académie de France à Rome
- Académie de marine
- Académie des sciences d'outre-mer
- Agence centrale des organismes de sécurité sociale (ACOSS)
- Agences financières de bassins
- Agence nationale pour l'amélioration des conditions de travail (ANACT)
- Agence nationale pour l'amélioration de l'habitat (ANAH)
- Agence nationale pour l'emploi (ANPE)

- Agence nationale pour l'indemnisation des français d'outre-mer (ANIFOM)
- Assemblée permanente des chambres d'agriculture (APCA)
- Bibliothèque nationale
- Bibliothèque nationale et universitaire de Strasbourg
- Bureau d'études des postes et télécommunications d'outre-mer (BEPTOM)
- Caisse d'aide à l'équipement des collectivités locales (CAECL)
- Caisse des dépôts et consignations
- Caisse nationale des allocations familiales (CNAF)
- Caisse nationale d'assurance maladie des travailleurs salariés (CNAM)
- Caisse nationale d'assurance vieillesse des travailleurs salariés (CNAVTS)
- Caisse nationale des autoroutes (CNA)
- Caisse nationale militaire de sécurité sociale (CNMSS)
- Caisse nationale des monuments historiques et des sites
- Caisse nationale des télécommunications<sup>(1)</sup>
- Caisse de garantie du logement social
- Casa de Velasquez
- Centre d'enseignement zootechnique de Rambouillet
- Centre d'études du milieu et de pédagogie appliquée du ministère de l'agriculture
- Centre d'études supérieures de sécurité sociale
- Centres de formation professionnelle agricole
- Centre national d'art et de culture Georges Pompidou
- Centre national de la cinématographie française
- Centre national d'études et de formation pour l'enfance inadaptée
- Centre national d'études et d'expérimentation du machinisme agricole, du génie rural, des eaux et des forêts
- Centre national et de formation pour l'adaptation scolaire et l'éducation spécialisée (CNEFASES)
- Centre national de formation et de perfectionnement des professeurs d'enseignement ménager agricole
- Centre national des lettres
- Centre national de documentation pédagogique
- Centre national des oeuvres universitaires et scolaires (CNOUS)
- Centre national d'ophtalmologie des quinze-vingts
- Centre national de préparation au professorat de travaux manuels éducatifs et d'enseignement ménager
- Centre national de promotion rurale de Marmilhat
- Centre national de la recherche scientifique (CNRS)
- Centre régional d'éducation populaire d'Île-de-France
- Centres d'éducation populaire et de sport (CREPS)
- Centres régionaux des oeuvres universitaires (CROUS)
- Centres régionaux de la propriété forestière
- Centre de sécurité sociale des travailleurs migrants
- Chancelleries des universités
- Collèges d'État

---

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

- Commission des opérations de bourse
- Conseil supérieur de la pêche
- Conservatoire de l'espace littoral et des rivages lacustres
- Conservatoire national des arts et métiers
- Conservatoire national supérieur de musique
- Conservatoire national supérieur d'art dramatique
- Domaine de Pompadour
- École centrale - Lyon
- École centrale des arts et manufactures
- École française d'archéologie d'Athènes
- École française d'Extrême-Orient
- École française de Rome
- École des hautes études en sciences sociales
- École nationale d'administration
- École nationale de l'aviation civile (ENAC)
- École nationale des Chartes
- École nationale d'équitation
- École nationale du génie rural, des eaux et forêts (ENGREF)
- Écoles nationales d'ingénieurs
- École nationale d'ingénieurs des techniques et industries agricoles et alimentaires
- Écoles nationales d'ingénieurs des travaux agricoles
- École nationale d'ingénieurs des travaux ruraux et des techniques sanitaires
- École nationale d'ingénieurs des travaux des eaux et forêts (ENITEF)
- École nationale de la magistrature
- Écoles nationales de la marine marchande
- École nationale de la santé publique (ENSP)
- École nationale de ski et d'alpinisme
- École nationale supérieure agronomique - Montpellier
- École nationale supérieure agronomique - Rennes
- École nationale supérieure des arts décoratifs
- École nationale supérieure des arts et industries - Strasbourg
- École nationale supérieure des arts et industries textiles - Roubaix
- Écoles nationales supérieures d'arts et métiers
- École nationale supérieure des beaux-arts
- École nationale supérieure des bibliothécaires
- École nationale supérieure de céramique industrielle
- École nationale supérieure de l'électronique et de ses applications (ENSEA)
- École nationale supérieure d'horticulture
- École nationale supérieure des industries agricoles alimentaires
- École nationale supérieure du paysage (rattachée à l'École nationale supérieure d'horticulture)
- École nationale supérieure des sciences agronomiques appliquées (ENSSA)
- Écoles nationales vétérinaires

- École nationale de voile
- Écoles normales d'instituteurs et d'institutrices
- Écoles normales nationales d'apprentissage
- Écoles normales supérieures
- École polytechnique
- École technique professionnelle agricole et forestière de Meymac (Corrèze)
- École de sylviculture - Croigny (Aube)
- École de viticulture et d'œnologie de la Tour Blanche (Gironde)
- École de viticulture - Avize (Marne)
- Établissement national de convalescents de Saint-Maurice
- Établissement national des invalides de la marine (ENIM)
- Établissement national de bienfaisance Koenigs-Wazter
- Fondation Carnegie
- Fondations Singer-Polignac
- Fonds d'action sociale pour les travailleurs immigrés et leurs familles
- Hôpital-hospice national Dufresne-Sommeiller
- Institut de l'élevage et de médecine vétérinaire des pays tropicaux (IEMVPT)
- Institut français d'archéologie orientale du Caire
- Institut géographique national
- Institut industriel du Nord
- Institut international d'administration publique (IIAP)
- Institut national agronomique de Paris-Grignon
- Institut national des appellations d'origine des vins et eaux-de-vie (INAOVEV)
- Institut national d'astronomie et de géophysique (INAG)
- Institut national de la consommation (INC)
- Institut national d'éducation populaire (INEP)
- Institut national d'études démographiques (INED)
- Institut national des jeunes aveugles - Paris
- Institut national des jeunes sourds - Bordeaux
- Institut national des jeunes sourds - Chambéry
- Institut national des jeunes sourds - Metz
- Institut national des jeunes sourds - Paris
- Institut national de physique nucléaire et de physique des particules (I.N2.P3)
- Institut national de promotion supérieure agricole
- Institut national de la propriété industrielle
- Institut national de la recherche agronomique (INRA)
- Institut national de recherche pédagogique (INRP)
- Institut national de la santé et de la recherche médicale (INSERM)
- Institut national des sports
- Instituts nationaux polytechniques
- Instituts nationaux des sciences appliquées
- Institut national supérieur de chimie industrielle de Rouen

- Institut national de recherche en informatique et en automatique (INRIA)
- Institut national de recherche sur les transports et leur sécurité (INRETS)
- Instituts régionaux d'administration
- Institut supérieur des matériaux et de la construction mécanique de Saint-Ouen
- Lycées d'État
- Musée de l'armée
- Musée Gustave Moreau
- Musée de la marine
- Musée national J.J. Henner
- Musée national de la Légion d'honneur
- Musée de la poste
- Muséum national d'histoire naturelle
- Musée Auguste Rodin
- Observatoire de Paris
- Office de coopération et d'accueil universitaire
- Office français de protection des réfugiés et apatrides
- Office national des anciens combattants
- Office national de la chasse
- Office national d'information sur les enseignements et les professions (ONISEP)
- Office national d'immigration (ONI)
- ORSTOM - Institut français de recherche scientifique pour le développement en coopération
- Office universitaire et culturel français pour l'Algérie
- Palais de la découverte
- Parcs nationaux
- Réunion des musées nationaux
- Syndicat des transports parisiens
- Thermes nationaux - Aix-les-Bains
- Universités

### **3. Other national public bodies**

- Union des groupements d'achats publics (UGAP)

## IRELAND

### 1. Main purchasing entities

- Office of Public Works

### 2. Other departments

- President's Establishment
- Houses of the Oireachtas (Parliament)
- Department of the Taoiseach (Prime Minister)
- Central Statistics Office
- Department of the Gaeltacht (Irish-speaking areas)
- National Gallery of Ireland
- Department of Finance
- State Laboratory
- Office of the Comptroller and Auditor General
- Office of the Attorney general
- Office of the Director of Public Prosecutions
- Valuation Office
- Civil Service Commission
- Office of the Ombudsman
- Office of the Revenue Commissioners
- Department of Justice
- Commissioners of Charitable Donations and Bequests for Ireland
- Department of the Environment
- Department of Education
- Department of the Marine
- Department of Agriculture and Food
- Department of Labour
- Department of Industry and Commerce
- Department of Tourism and Transport
- Department of Communications
- Department of Defence <sup>(1)</sup>
- Department of Foreign Affairs
- Department of Social Welfare
- Department of Health
- Department of Energy

---

<sup>(1)</sup> Non-warlike materials contained in Annex II.

## ITALY

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

**NB:** This Agreement shall not prevent the implementation of provisions contained in Italian Law No 835 of 6 October 1950 (Official Gazette No 245 of 24 October 1950 of the Italian Republic) and in modifications thereto in force on the date on which this Agreement is adopted.

---

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

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

<sup>(3)</sup> Non-warlike materials contained in Annex II.

<sup>(4)</sup> Postal business only.

## LUXEMBOURG

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

---

<sup>(1)</sup> Non-warlike materials contained in Annex II.

<sup>(2)</sup> Postal business only.

## THE NETHERLANDS

### A. Ministries and central government bodies

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

### B. Central procurement offices

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

1. Directoraat-generaal Rijkswaterstaat
2. Directoraat-generaal voor de Koninklijke Landmacht <sup>(1)</sup>
3. Directoraat-generaal voor de Koninklijke Luchtmacht <sup>(1)</sup>
4. Directoraat-generaal voor de Koninklijke Marine <sup>(1)</sup>

---

<sup>(1)</sup> Non-warlike materials contained in Annex II.

## UNITED KINGDOM

### Cabinet Office

- Civil Service College
- Civil Service Commission
- Civil Service Occupational Health Service
- Office of the Minister for the Civil Service
- Parliamentary Counsel Office

### Central Office of Information

### Charity Commission

### Crown Prosecution Service

### Crown Estate Commissioners

### Customs and Excise Department

### Department for National Savings

### Department of Education and Science

- University Grants Committee

### Department of Employment

- Employment Appeals Tribunal
- Industrial Tribunals
- Office of Manpower Economics

### Department of Energy

### Department of Health

- Central Council for Education and Training in Social Work
- Dental Estimates Board
- English National Board for Nursing, Midwifery and Health Visitors
- Medical Boards and Examining Medical Officers (War Pensions)
- National Health Service Authorities
- Prescriptions Pricing Authority
- Public Health Laboratory Service Board
- Regional Medical Service
- United Kingdom Central Council for Nursing, Midwifery and Health Visiting

### Department of Social Security

- Attendance Allowance Board
- Occupational Pensions Board
- Social Security Advisory Committee
- Supplementary Benefits Appeal Tribunals

### Department of the Environment

- Building Research Establishment
- Commons Commissioners
- Countryside Commission
- Fire Research Station (Boreham Wood)
- Historic Buildings and Monuments Commission
- Local Valuation Panels
- Property Services Agency
- Rent Assessment Panels
- Royal Commission on Environmental Pollution
- Royal Commission on Historical Monuments of England
- Royal Fine Art Commission (England)

### Department of the Procurator General and Treasury Solicitor

- Legal Secretariat to the Law Officers

### Department of Trade and Industry

Laboratory of the Government Chemist  
 National Engineering Laboratory  
 National Physical Laboratory  
 Warren Spring Laboratory  
 National Weights and Measures Laboratory  
 Domestic Coal Consumers' Council  
 Electricity Consultative Councils for England and Wales  
 Gas Consumers' Council  
 Transport Users Consultative Committee  
 Monopolies and Mergers Commission  
 Patent Office

Department of Transport  
 Coastguard Services  
 Transport and Road Research Laboratory  
 Transport Tribunal

Export Credits Guarantee Department

Foreign and Commonwealth Office  
 Government Communications Headquarters  
 Wilton Park Conference Centre

Government Actuary's Department

Home Office  
 Boundary Commission for England  
 Gaming Board for Great Britain  
 Inspectors of Constabulary  
 Parole Board and Local Review Committees

House of Commons

House of Lords

Inland Revenue, Board of

Intervention Board for Agricultural Produce

Lord Chancellor's Department  
 Council on Tribunals  
 County Courts (England and Wales)  
 Immigration Appellate Authorities  
     Immigration Adjudicators  
     Immigration Appeals Tribunal  
 Judge Advocate-General and Judge Advocate of the Fleet  
 Lands Tribunal  
 Law Commission  
 Legal Aid Fund (England and Wales)  
 Pensions Appeals Tribunals  
 Public Trustee Office  
 Office of the Social Security Commissioners  
 Special Commissioners for Income Tax (England and Wales)  
 Supreme Court (England and Wales)  
     Court of Appeal: Civil and Criminal Divisions  
     Courts Martial Appeal Court  
     Crown Court  
     High Court  
 Value Added Tax Tribunals

Ministry of Agriculture, Fisheries and Food  
 Advisory Services  
 Agricultural Development and Advisory Service  
 Agricultural Dwelling House Advisory Committees

Agricultural Land Tribunals  
 Agricultural Science Laboratories  
 Agricultural Wages Board and Committees  
 Cattle Breeding Centre  
 Plant Variety Rights Office  
 Royal Botanic Gardens, Kew  
 Ministry of Defence <sup>(1)</sup>  
     Meteorological Office  
     Procurement Executive  
 National Audit Office  
 National Investment Loans Office  
 Northern Ireland Court Service  
     Coroners Courts  
     County Courts  
     Crown Courts  
     Enforcement of Judgements Office  
     Legal Aid Fund  
     Magistrates Court  
     Pensions Appeals Tribunals  
     Supreme Court of Judicature and Courts of Criminal Appeal  
 Northern Ireland, Department of Agriculture  
 Northern Ireland, Department for Economic Development  
 Northern Ireland, Department of Education  
 Northern Ireland, Department of the Environment  
 Northern Ireland, Department of Finance and Personnel  
 Northern Ireland, Department of Health and Social Services  
 Northern Ireland Office  
     Crown Solicitor's Office  
     Department of the Director of Public Prosecutions for Northern Ireland  
     Northern Ireland Forensic Science Laboratory  
     Office of Chief Electoral Officer for Northern Ireland  
     Police Authority for Northern Ireland  
     Probation Board for Northern Ireland  
     State Pathologist Service  
 Office of Arts and Libraries  
     British Library  
     British Museum  
     British Museum (Natural History)  
     Imperial War Museum  
     Museums and Galleries Commission  
     National Gallery  
     National Maritime Museum  
     National Portrait Gallery  
     Science Museum  
     Tate Gallery  
     Victoria and Albert Museum  
     Wallace Collection

---

<sup>(1)</sup> Non-warlike materials contained in Annex II.

Office of Fair Trading  
Office of Population Censuses and Surveys  
National Health Service Central Register

Office of the Parliamentary Commissioner for Administration and Health  
Service Commissioners

Overseas Development Administration  
Overseas Development and National Research Institute

Paymaster General's Office

Postal Business of the Post Office

Privy Council Office

Public Record Office

Registry of Friendly Societies

Royal Commission on Historical Manuscripts

Royal Hospital, Chelsea

Royal Mint

Scotland, Crown Office and Procurator  
Fiscal Service

Scotland, Department of the Registers of Scotland

Scotland, General Register Office  
National Health Service Central Register

Scotland, Lord Advocate's Department

Scotland, Queen's and Lord Treasurer's Remembrancer

Scottish Courts Administration  
Accountant of Court's Office  
Court of Justiciary  
Court of Session  
Lands Tribunal for Scotland  
Pensions Appeal Tribunals  
Scottish Land Court  
Scottish Law Commission  
Sherriff Courts  
Social Security Commissioners' Office

Scottish Office  
Central Services  
Department of Agriculture and Fisheries for Scotland  
Artificial Insemination Service  
Crofters Commission  
Red Deer Commission  
Royal Botanic Garden, Edinburgh

Industry Department for Scotland  
Scottish Electricity Consultative Councils

Scottish Development Department  
Rent Assessment Panel and Committees  
Royal Commission on the Ancient and Historical Monuments of Scotland  
Royal Fine Art Commission for Scotland

Scottish Education Department  
National Galleries of Scotland  
National Library of Scotland  
National Museums of Scotland

Scottish and Health Departments  
HM Inspectorate of Constabulary  
Local Health Councils

Mental Welfare Commission for Scotland  
National Board for Nursing, Midwifery and Health Visiting for Scotland  
Parole Board for Scotland and Local Review Committees  
Scottish Antibody Production Unit  
Scottish Council for Postgraduate Medical Education  
Scottish Crime Squad  
Scottish Criminal Record Office  
Scottish Fire Service Training School  
Scottish Health Boards  
Scottish Health Service - Common Services Agency  
Scottish Health Service Planning Council  
Scottish Police College

Scottish Record Office

HM Stationery Office

HM Treasury

Central Computer and Telecommunications Agency  
Chessington Computer Centre  
Civil Service Catering Organisation  
National Economic Development Council  
Rating of Government Property Department

Welsh Office

Ancient Monuments (Wales) Commission  
Council for the Education and Training of Health Visitors  
Local Government Boundary Commission for Wales  
Local Valuation Panels and Courts  
National Health Service Authorities  
Rent Control Tribunals and Rent Assessment Panels and Committees





## SPAIN

1. Ministerio de Asuntos Exteriores
2. Ministerio de Justicia
3. Ministerio de Defensa <sup>(1)</sup>
4. Ministerio de Economía y Hacienda
5. Ministerio del Interior
6. Ministerio de Obras Públicas y Transportes
7. Ministerio de Educación y Ciencia
8. Ministerio de Trabajo y Seguridad Social
9. Ministerio de Industria, Comercio y Turismo
10. Ministerio de Agricultura, Pesca y Alimentación
11. Ministerio para las Administraciones Públicas
12. Ministerio de Cultura
13. Ministerio de Relaciones con las Cortes y de la Secretaría del Gobierno
14. Ministerio de Sanidad y Consumo
15. Ministerio de Asuntos Sociales
16. Ministerio del Portavoz del Gobierno

---

<sup>(1)</sup> Non-warlike materials contained in Annex II.

## PORTUGAL

### Presidência do Conselho de Ministros

1. Auditoria Jurídica da Presidência do Conselho de Ministros
2. Centro de Estudos e Formação Autárquica
3. Centro de Estudos Técnicos e Apoio Legislativo
4. Centro de Gestão da Rede Informática do Governo
5. Conselho Nacional de Planeamento Civil de Emergência
6. Conselho Permanente de Concertação Social
7. Departamento de Formação e Aperfeiçoamento Profissional
8. Gabinete de Macau
9. Gabinete do Serviço Cívico dos Objectores de Consciência
10. Instituto da Juventude
11. Instituto Nacional de Administração
12. Secretaria-Geral da Presidência do Conselho de Ministros
13. Secretariado para a Modernização Administrativa
14. Serviço Nacional de Protecção Civil
15. Serviços Sociais da Presidência do Conselho de Ministros

### Ministério da Administração Interna

1. Direcção-Geral de Viação
2. Gabinete de Estudos e Planeamento de Instalações
3. Governos Cívicos
4. Guarda Fiscal
5. Guarda Nacional Republicana
6. Polícia de Segurança Pública
7. Secretaria-Geral
8. Secretariado Técnico dos Assuntos para o Processo Eleitoral
9. Serviço de Estrangeiros e Fronteiras
10. Serviço de Informação e Segurança
11. Serviço Nacional de Bombeiros

### Ministério da Agricultura

1. Agência do Controlo das Ajudas Comunitárias ao Sector do Azeite
2. Direcção-Geral da Hidráulica e Engenharia Agrícola
3. Direcção-Geral da Pecuária
4. Direcção-Geral das Florestas
5. Direcção-Geral de Planeamento e Agricultura
6. Direcção-Geral dos Mercados Agrícolas e da Indústria Agro-alimentar
7. Direcção Regional de Agricultura da Beira Interior
8. Direcção Regional de Agricultura da Beira Litoral
9. Direcção Regional de Agricultura de Entre Douro e Minho

10. Direcção Regional de Agricultura de Trás-os-Montes
11. Direcção Regional de Agricultura do Alentejo
12. Direcção Regional de Agricultura do Algarve
13. Direcção Regional de Agricultura do Ribatejo e Oeste
14. Gabinete para os Assuntos Agrícolas Comunitários
15. Inspeção Geral e Auditoria de Gestão
16. Instituto da Vinha e do Vinho
17. Instituto de Qualidade Alimentar
18. Instituto Nacional de Investigação Agrária
19. Instituto Regulador Orientador dos Mercados Agrícolas
20. Obra Social - Secretaria Geral
21. Rede de Informação de Contabilidades Agrícolas
22. Secretaria Geral
23. IFADAP - Instituto Financeiro de Apoio ao Desenvolvimento da Agricultura e Pescas
24. INGA - Instituto Nacional de Intervenção e Garantia Agrícola

Ministério do Ambiente e Recursos Naturais

1. Direcção-Geral da Qualidade do Ambiente
2. Direcção-Geral dos Recursos Naturais
3. Gabinete dos Assuntos Europeus
4. Gabinete de Estudos e Planeamento
5. Gabinete de Protecção e Segurança Nuclear
6. Instituto Nacional do Ambiente
7. Instituto Nacional de Defesa do Consumidor
8. Instituto Nacional de Meteorologia e Geofísica
9. Secretaria-Geral
10. Serviço Nacional de Parques, Reservas e Conservação da Natureza
11. Gabinete do Saneamento Básico da Costa do Estoril
12. Delegações Regionais
13. Instituto Nacional da Água

Ministério do Comércio e Turismo

1. Comissão de Aplicação de Coimas em Matéria Económica
2. Direcção-Geral de Concorrência e Preços
3. Direcção-Geral de Inspeção Económica
4. Direcção-Geral do Comércio Externo
5. Direcção-Geral do Comércio Interno
6. Direcção-Geral do Turismo
7. Fundo de Turismo
8. Gabinete para os Assuntos Comunitários
9. ICEP - Instituto do Comércio Externo de Portugal
10. Inspeção Geral de Jogos
11. Instituto de Promoção Turística

12. Instituto Nacional de Formação Turística
13. Regiões de turismo
14. Secretaria-Geral
15. ENATUR - Empresa Nacional de Turismo, EP
16. AGA - Administração-Geral do Açúcar e do Alcool, EP

Ministério da Defesa Nacional <sup>(1)</sup>

1. Estado-Maior General das Forças Armadas
2. Estado-Maior da Força Aérea
3. Comando Logístico-Administrativo da Força Aérea
4. Estado-Maior do Exército
5. Estado-Maior da Armada
6. Direcção-Geral do Material Naval
7. Direcção das Infra-Estruturas Navais
8. Direcção de Abastecimento
9. Fábrica Nacional de Cordoaria
10. Hospital da Marinha
11. Arsenal do Alfeite
12. Instituto Hidrográfico
13. Direcção-Geral de Armamento
14. Direcção-Geral de Pessoal e Infra-estruturas
15. Direcção-Geral de Política de Defesa Nacional
16. Instituto de Defesa Nacional
17. Secretaria-Geral

Ministério da Educação

1. Auditoria Jurídica
2. Direcção-Geral da Administração Escolar
3. Direcção-Geral da Extensão Educativa
4. Direcção-Geral do Ensino Superior
5. Direcção-Geral dos Desportos
6. Direcção-Geral dos Ensinos Básico e Secundário
7. Direcção Regional de Educação de Lisboa
8. Direcção Regional de Educação do Algarve
9. Direcção Regional de Educação do Centro
10. Direcção Regional de Educação do Norte
11. Direcção Regional de Educação do Sul
12. Editorial do Ministério da Educação
13. Gabinete Coordenador do Ingresso no Ensino Superior
14. Gabinete de Estudos e Planeamento
15. Gabinete de Gestão Financeira
16. Gabinete do Ensino Tecnológico, Artístico e Profissional

---

<sup>(1)</sup> Non-warlike materials contained in Annex II.

17. Inspeção Geral de Educação
18. Instituto de Cultura da Língua Portuguesa
19. Instituto de Inovação Educacional
20. Instituto dos Assuntos Sociais da Educação
21. Secretaria-Geral

Ministério do Emprego e Segurança Social

1. Auditoria Jurídica
2. Caixa Nacional de Seguros e Doenças Profissionais
3. Caixas de Previdência Social
4. Casa Pia de Lisboa
5. Centro Nacional de Pensões
6. Centros Regionais de Segurança Social
7. Comissão para a Igualdade e Direitos das Mulheres
8. Departamento de Estatística
9. Departamento de Estudos e Planeamento
10. Departamento de Relações Internacionais e Convenções da Segurança Social
11. Departamento para Assuntos do Fundo Social Europeu
12. Departamento para os Assuntos Europeus e Relações Externas
13. Direcção-Geral da Acção Social
14. Direcção-Geral da Família
15. Direcção-Geral das Relações de Trabalho
16. Direcção-Geral de Apoio Técnico à Gestão
17. Direcção-Geral de Higiene e Segurança no Trabalho
18. Direcção-Geral do Emprego e Formação Profissional
19. Direcção-Geral dos Regimes de Segurança Social
20. Fundo de Estabilização Financeira da Segurança Social
21. Inspeção Geral da Segurança Social
22. Inspeção Geral do Trabalho
23. Instituto de Gestão Financeira da Segurança Social
24. Instituto do Emprego e Formação Profissional
25. Instituto Nacional para o Aproveitamento dos Tempos Livres dos Trabalhadores
26. Secretaria-Geral
27. Secretariado Nacional de Reabilitação
28. Serviços Sociais do MESS
29. Santa Casa da Misericórdia de Lisboa

Ministério das Finanças

1. ADSE - Direcção-Geral de Protecção aos Funcionários e Agentes da Administração Pública
2. Auditoria Jurídica
3. Direcção-Geral da Administração Pública
4. Direcção-Geral da Contabilidade Pública e Intendência Geral do Orçamento
5. Direcção-Geral da Junta de Crédito Público

6. Direcção-Geral das Alfândegas
7. Direcção-Geral das Contribuições e Impostos
8. Direcção-Geral do Património do Estado
9. Direcção-Geral do Tesouro
10. Gabinete de Estudos Económicos
11. Gabinete dos Assuntos Europeus
12. GAFEED - Gabinete para a análise do Financiamento do Estado e das Empresas Públicas
13. Inspeção Geral de Finanças
14. Instituto de Informática
15. Junta de Crédito Público
16. Secretaria-Geral
17. SOFE - Serviços Sociais do Ministério das Finanças

#### Ministério da Indústria e Energia

1. Delegação Regional da Indústria e Energia de Lisboa e Vale do Tejo
2. Delegação Regional da Indústria e Energia do Alentejo
3. Delegação Regional da Indústria e Energia do Algarve
4. Delegação Regional da Indústria e Energia do Centro
5. Delegação Regional da Indústria e Energia do Norte
6. Direcção-Geral da Indústria
7. Direcção-Geral da Energia
8. Direcção-Geral de Geologia e Minas
9. Gabinete de Estudos e Planeamento
10. Gabinete para a Pesquisa e Exploração do Petróleo
11. Gabinete para os Assuntos Comunitários
12. Instituto Nacional da Propriedade Industrial
13. Instituto Português da Qualidade
14. LNETI - Laboratório Nacional de Engenharia e Tecnologia Industrial
15. Secretaria-Geral

#### Ministério da Justiça

1. Centro de Estudos Judiciários
2. Centro de Identificação Civil e Criminal
3. Centros de Observação e Acção Social
4. Conselho Superior de Magistratura
5. Conservatória dos Registos Centrais
6. Direcção-Geral dos Registos e Notariado
7. Direcção-Geral dos Serviços de Informática
8. Direcção-Geral dos Serviços Judiciários
9. Direcção-Geral dos Serviços Prisionais
10. Direcção-Geral dos Serviços Tutelares de Menores
11. Estabelecimentos Prisionais
12. Gabinete de Direito Europeu

13. Gabinete de Documentação e Direito Comparado
14. Gabinete de Estudos e Planeamento
15. Gabinete de Gestão Financeira
16. Gabinete de Planeamento e Coordenação do Combate à Droga
17. Hospital-prisão de S. João de Deus
18. Instituto Corpus Christi
19. Instituto da Guarda
20. Instituto de Reinserção Social
21. Instituto de S. Domingos de Benfica
22. Instituto Nacional da Política e Ciências Criminais
23. Instituto Navarro Paiva
24. Instituto Padre António Oliveira
25. Instituto S. Fiel
26. Instituto S. José
27. Instituto Vila Fernando
28. Instituto de Criminologia
29. Instituto de Medicina Legal
30. Polícia Judiciária
31. Secretaria-Geral
32. Serviços Sociais

#### Ministério das Obras Públicas, Transportes e Comunicações

1. Conselho de Mercados de Obras Públicas e Particulares
2. Direcção-Geral de Aviação Civil
3. Direcção-Geral dos Edifícios e Monumentos Nacionais
4. Direcção-Geral dos Transportes Terrestres
5. Gabinete da Travessia do Tejo
6. Gabinete de Estudos e Planeamento
7. Gabinete do Nó Ferroviário de Lisboa
8. Gabinete do Nó Ferroviário do Porto
9. Gabinete para a Navegabilidade do Douro
10. Gabinete para as Comunidades Europeias
11. Inspeção Geral de Obras Públicas, Transportes e Comunicações
12. Junta Autónoma das Estradas
13. Laboratório Nacional de Engenharia Civil
14. Obra Social do Ministério das Obras Públicas, Transportes e Comunicações
15. Secretaria-Geral

#### Ministério dos Negócios Estrangeiros

1. Direcção-Geral dos Assuntos Consulares e Administração Financeira
2. Direcção-Geral das Comunidades Europeias
3. Direcção-Geral da Cooperação
4. Instituto de Apoio à Emigração e às Comunidades Portuguesas

5. Instituto de Cooperação Económica
6. Secretaria-Geral

Ministério do Planeamento e Administração do Território

1. Academia das Ciências
2. Auditoria Jurídica
3. Centro Nacional de Informação Geográfica
4. Comissão Coordenadora da Região Centro
5. Comissão Coordenadora da Região de Lisboa e Vale do Tejo
6. Comissão Coordenadora da Região do Alentejo
7. Comissão Coordenadora da Região do Algarve
8. Comissão Coordenadora da Região Norte
9. Departamento Central de Planeamento
10. Direcção-Geral da Administração Autárquica
11. Direcção-Geral do Desenvolvimento Regional
12. Direcção-Geral do Ordenamento do Território
13. Gabinete Coordenador do projecto do Alqueva
14. Gabinete de Estudos e Planeamento da Administração do Território
15. Gabinete para os Aeroportos da Região Autónoma da Madeira
16. Inspeção Geral de Administração do Território
17. Instituto Nacional de Estatísticas
18. Instituto António Sérgio de Sector Cooperativo
19. Instituto de Investigação Científica e Tropical
20. Instituto Geográfico e Cadastral
21. Junta Nacional de Investigação Científica e Tecnológica
22. Secretaria-Geral

## AUSTRIA

### LIST OF CENTRAL PURCHASING ENTITIES

1. Bundeskanzleramt
2. Bundesministerium für auswärtige Angelegenheiten
3. Bundesministerium für wirtschaftliche Angelegenheiten, Abteilung Präsidium I
4. Bundesministerium für Arbeit und Soziales Amtswirtschaftsstelle
5. Bundesministerium für Finanzen
  - (a) Amtswirtschaftsstelle
  - (b) Abteilung VI/5 (EDV-Bereich des Bundesministeriums für Finanzen und des Bundesrechenamtes)
  - (c) Abteilung III/1 (Beschaffung von technischen Geräten, Einrichtungen und Sachgütern für die Zollwache)
6. Bundesministerium für Gesundheit, Sport und Konsumentenschutz
7. Bundesministerium für Inneres
8. Bundesministerium für Justiz, Amtswirtschaftsstelle
9. Bundesministerium für Landesverteidigung (non-warlike materials contained in Annex I, Part II, Austria of the GATT Agreement on Government Procurement)
10. Bundesministerium für Land- und Forstwirtschaft
11. Bundesministerium für Umwelt, Jugend und Familie Amtswirtschaftsstelle
12. Bundesministerium für Unterricht und Kunst
13. Bundesministerium für öffentliche Wirtschaft und Verkehr
14. Bundesministerium für Wissenschaft und Forschung
15. Österreichisches Statistisches Zentralamt
16. Österreichische Staatsdruckerei
17. Bundesamt für Eich- und Vermessungswesen
18. Bundesversuchs- und Forschungsanstalt Arsenal (BVFA)
19. Bundesstaatliche Prothesenwerkstätten
20. Bundesprüfanstalt für Kraftfahrzeuge
21. Generaldirektion für die Post- und Telegraphenverwaltung (postal business only)

## FINLAND

### LIST OF CENTRAL PURCHASING ENTITIES

1. Oikeusministerio/Justitieministeriet
2. Rahapaja Oy/Myntverket Ab
3. Painatuskeskus Oy/Tryckericentralen Ab
4. Metsaehallitus/Forststyrelsen
5. Maanmittaushallitus/Lantmaeteristyrelsen
6. Maatalouden tutkimuskeskus/Lantbrukets forskningscentral
7. Ilmailulaitos/Luftfartsverket
8. Ilmatieteen laitos/Meteorologiska institutet
9. Merenkulkuhallitus/Sjoefartstyrelsen
10. Valtion teknillinen tutkimuskeskus/Statens tekniska forskningscentral
11. Valtion Hankintakeskus/Statens upphand - lingscentral
12. Vesi- ja ympaeristoehallitus/Vatten- och miljoe - styrelsen
13. Opetushallitus/Utbildningsstyrelsen

## SWEDEN

### LIST OF CENTRAL PURCHASING ENTITIES

The listed entities include regional and local subdivisions

1. Rikspolisstyrelsen
2. Kriminalvaardsstyrelsen
3. Foersvarets sjukvaardsstyrelse
4. Fortifikationsfoervaltningen
5. Foersvarets materielverk
6. Statens raeddningsverk
7. Kustbevakningen
8. Socialstyrelsen
9. Laekemedelsverket
10. Postverket
11. Vaegverket
12. Sjoefartsverket
13. Luftfartsverket
14. Generaltullstyrelsen
15. Byggnadsstyrelsen
16. Riksskatteverket
17. Skogsstyrelsen
18. AMU-gruppen
19. Statens lantmaeteriverk
20. Naerings- och teknikutvecklingsverket
21. Domaenverket
22. Statistiska centralbyraan
23. Statskontoret

## **ANNEX III**

**List of products which, when supplied to defence authorities listed in Annex II, are  
subject to the GATT Agreement**



**LIST OF PRODUCTS WHICH, WHEN SUPPLIED TO DEFENCE AUTHORITIES LISTED IN  
ANNEX II, ARE SUBJECT TO THE GATT AGREEMENT**

- Chapter 25: Salt; sulphur; earths and stone; plastering materials, lime and cement
- Chapter 26: Metallic ores, slag and ash
- Chapter 27: Mineral fuels, mineral oils and products of their distillation; bituminous substances;  
mineral waxes  
*except:*  
ex 27.10: special engine fuels
- Chapter 28: Inorganic chemicals; organic and inorganic compounds of precious metals, of rare-earth  
metals, of radioactive elements and of isotopes  
*except:*  
ex 28.09: explosives  
ex 28.13: explosives  
ex 28.14: tear gas  
ex 28.28: explosives  
ex 28.32: explosives  
ex 28.39: explosives  
ex 28.50: toxic products  
ex 28.51: toxic products  
ex 28.54: explosives
- Chapter 29: Organic chemicals  
*except:*  
ex 29.03: explosives  
ex 29.04: explosives  
ex 29.07: explosives  
ex 29.08: explosives  
ex 29.11: explosives  
ex 29.12: explosives  
ex 29.13: toxic products  
ex 29.14: toxic products  
ex 29.15: toxic products  
ex 29.21: toxic products  
ex 29.22: toxic products  
ex 29.23: toxic products  
ex 29.26: explosives  
ex 29.27: toxic products  
ex 29.29: explosives
- Chapter 30: Pharmaceutical products
- Chapter 31: Fertilizers

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

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

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

## **ANNEX IV**

**List of addresses from which the Supplement  
to the Official Journal can be obtained**



*list*



## **ANNEX V**

**Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits**



**REGULATION (EEC , EURATOM ) No 1182/71 OF THE COUNCIL**  
**of 3 June 1971**  
**determining the rules applicable to periods, dates and time limits**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof;

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament<sup>1</sup>;

Whereas numerous acts of the Council and of the Commission determine periods, dates or time limits and employ the terms 'working days' or 'public holidays';

Whereas it is necessary to establish uniform general rules on the subject;

Whereas it may, in exceptional cases, be necessary for certain acts of the Council or Commission to derogate from these general rules;

Whereas, to attain the objectives of the Communities, it is necessary to ensure the uniform application of Community law and consequently to determine the general rules applicable to periods, dates and time limits;

Whereas no authority to establish such rules is provided for in the Treaties;

HAS ADOPTED THIS REGULATION:

*Article 1*

Save as otherwise provided, this Regulation shall apply to acts of the Council or Commission which have been or will be passed pursuant to the Treaty establishing the European Economic Community or the Treaty establishing the European Atomic Energy Community.

<sup>1</sup> OJ No C 51, 29.4.1970, p. 25.

(c) a period expressed in weeks, months or years shall

CHAPTER I

**Periods**

*Article 2*

1. For the purposes of this Regulation, 'public holidays' means all days designated as such in the Member State or in the Community institution in which action is to be taken.

To this end, each Member State shall transmit to the Commission the list of days designated as public holidays in its laws. The Commission shall publish in the *Official Journal of the European Communities* the lists transmitted by the Member States, to which shall be added the days designated as public holidays in the Community institutions.

2. For the purposes of this Regulation, 'working days' means all days other than public holidays, Sundays and Saturdays.

*Article 3*

1. Where a period expressed in hours is to be calculated from the moment at which an event occurs or an action takes place, the hour during which that event occurs or that action takes place shall not be considered as falling within the period in question.

Where a period expressed in days, weeks, months or years is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be considered as falling within the period in question.

2. Subject to the provisions of paragraphs 1 and 4:

(a) a period expressed in hours shall start at the beginning of the first hour and shall end with the expiry of the last hour of the period;

(b) a period expressed in days shall start at the beginning of the first hour of the first day and shall end with the expiry of the last hour of the last day of the period;

provisions of such acts - fixed at a given date shall

start at the beginning of the first hour of the first day of the period, and shall end with the expiry of the last hour of whichever day in the last week, month or year is the same day of the week, or falls on the same date, as the day from which the period runs. If, in a period expressed in months or in years, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last hour of the last day of that month;

(d) if a period includes parts of months, the month shall, for the purpose of calculating such parts, be considered as having thirty days.

3. The periods concerned shall include public holidays, Sundays and Saturdays, save where these are expressly excepted or where the periods are expressed in working days.

4. Where the last day of a period expressed otherwise than in hours is a public holiday, Sunday or Saturday, the period shall end with the expiry of the last hour of the following working day.

This provision shall not apply to periods calculated retroactively from a given date or event.

5. Any period of two days or more shall include at least two working days.

## CHAPTER II

### Dates and time limits

#### Article 4

1. Subject to the provisions of this Article, the provisions of Article 3 shall, with the exception of paragraphs 4 and 5, apply to the times and periods of entry into force, taking effect, application, expiry of validity, termination of effect or cessation of application of acts of the Council or Commission or of any provisions of such acts.

2. Entry into force, taking effect or application of acts of the Council or Commission - or of

occur at the beginning of the first hour of the day falling on that date.

This provision shall also apply when entry into force, taking effect or application of the afore-mentioned acts or provisions is to occur within a given number of days following the moment when an event occurs or an action takes place.

3. Expiry of validity, the termination of effect or the cessation of application of acts of the Council or Commission - or of any provisions of such acts - fixed at a given date shall occur on the expiry of the last hour of the day falling on that date.

This provision shall also apply when expiry of validity, termination of effect or cessation of application of the afore-mentioned acts or provisions is to occur within a given number of days following the moment when an event occurs or an action takes place.

#### Article 5

1. Subject to the provisions of this Article, the provisions of Article 3 shall, with the exception of paragraphs 4 and 5, apply when an action may or must be effected in implementation of an act of the Council or Commission at a specified moment.

2. Where an action may or must be effected in implementation of an act of the Council or Commission at a specified date, it may or must be effected between the beginning of the first hour and the expiry of the last hour of the day falling on that date.

This provision shall also apply where an action may or must be effected in implementation of an act of the Council or Commission within a given number of days following the moment when an event occurs or another action takes place.

#### Article 6

This Regulation shall enter into force on 1 July 1971.

This Regulation shall be binding in its entirety and directly applicable in all Member States.  
Done at Luxembourg, 3 June 1971.

*For the Council*  
*The President*  
R. PLEVEN

**FOR FURTHER INFORMATION**

**EUROPEAN COMMISSION  
Rue de la Loi 200  
B-1049 Brussels  
Belgium**

**Unit XV/B/3**

**Public procurement:  
formulation and application of Community law**

**Tel: (32-2) 295 12 33  
Fax: (32-2) 296 09 62**