

COMMISSION OF THE EUROPEAN COMMUNITIES

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PROPOSAL FOR A COUNCIL DIRECTIVE ON THE PROCUREMENT PROCEDURES OF ENTITIES OPERATING IN THE TELECOMMUNICATIONS SECTOR

Version including elements from the proposal for a Council Directive on the procurement procedures of entities providing WATER, ENERGY and TRANSPORT services (COM (88) 377)

(Commission Staff Working Paper)

TITLE I - GENERAL PROVISIONS

ARTICLE 1

For the purposes of this Directive:

1. **"Public contracting entities"** means public authorities and public undertakings;
2. **"Public authorities"** means the State, regional or local authorities, bodies governed by public law or associations formed by one or several of such authorities or bodies governed by public law. A body is considered to be governed by public law where it
 - is established for the specific purpose of meeting needs in the general interest, and
 - has legal personality and
 - has 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, and
 - is financed, for the most part, by the State, or regional or local authorities, or other bodies governed by public law;
3. **"Public undertakings"** means :

any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly in relation to an undertaking:

 - hold the major part of the undertaking's subscribed capital; or
 - control the majority of the votes attaching to shares issued by the undertakings; or
 - can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.

4.

5. **"Supply, works and software service contracts"** are contracts for pecuniary interest concluded in writing between one of the contracting entities referred to in article 2 and a tenderer, and which have as their object

- a) in the case of **supply contracts**, the purchase, lease, rental or hire-purchase of products - with or without options to buy. The contract may in addition cover siting and installation operations provided that their value is lower than that of the products :
- b) in the case of **works contracts**, either the execution or both the execution and design of works related to one of the activities referred to in Annex II or the realization by whatever means of building or civil engineering works taken as a whole that are sufficient of themselves to fulfill an economic or technical function for the user;
- c) in the case of **software service contracts**, procurements of software for use in connection with networks or telecommunications services and purchased by one of the contracting entities defined in article 2.

6.

7. A supplier or contractor who submits a tender shall be designated by the term "tenderer" and one who has sought an invitation to take part in a restricted or negotiated procedure by the term "candidate"
8. Open, restricted and negotiated procedures are the purchasing procedures applied by the contracting entities, whereby
 - a) in the case of open procedures all interested suppliers or contractors can present an offer
 - b) in the case of restricted procedures only the candidates invited by the contracting entity may submit tenders,
 - c) in the case of negotiated procedures the contracting entity consults selected suppliers or contractors and negotiates the terms of the contract with one or several of them
9. "Technical specifications" means any of the technical prescriptions contained in particular in the tender documents which define the characteristics of a work, material, product or supply, in such a manner that it fulfills the use for which it is intended. These technical prescriptions may include quality, performance, safety or dimensions, as well as requirements concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking or labelling. In relation to works contracts, they may also include the test, inspection and acceptances for works and methods or techniques of construction and any other technical conditions in relation to the finished works and to the materials or parts which they involve.
10. A "Standard" is a technical specification approved by a recognized standardizing body for repeated and continuous application, compliance with which is in principle not compulsory.

11. **A "European standard" is a standard approved by European Standards Organizations such as the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (CENELEC) as "European Standard (EN)" or "Harmonization Document (HD)" according to the Common Rules of these organizations.**
12. **A "Common technical specification" is a technical specification drawn up with a view to uniform application in all Member States of the Community.**
13. **A "European technical approval" is a favourable technical assessment of the fitness for use of a product, for a particular purpose based on fulfillment of the essential requirements for building works for which the product is used.**

ARTICLE 2

- 1. The provisions of this Directive shall apply to the award of supply, works and software service contracts by contracting entities which**
 - a) are public or are granted special or exclusive rights by Member States, and**
 - b) operate public telecommunications networks or offer one or more telecommunications services to the public.**
- 2. The entities listed in Annex I fulfill these criteria.**

ARTICLE 3

This Directive shall not apply to contracts which contracting entities award :

- (a) exclusively for purposes other than the pursuit of their activities as described in Article 2, provided that**
 - (i) these activities have been notified to the Commission by the contracting entities and**
 - (ii) the Commission has published notification of their exclusion, after verification, in the Official Journal of the European Communities;**
- (b) for purchases exclusively in connection with one or more telecommunications services where other entities are free to offer the same services in the same geographical area and under the same conditions.**

Member States shall notify the Commission of services covered by (b) and any relevant legal provisions.

ARTICLE 4

1. **The provision of this Directive shall not apply to contracts for the supply of products purchased for re-sale or hire to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or hire such products, and other entities are free to sell or hire them under the same conditions as the contracting entity.**
2. **Member States shall notify to the Commission of the products falling within the scope of paragraph 1 and of any relevant legal provision**

ARTICLE 5

Not applicable

ARTICLE 6

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

ARTICLE 7

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

- (a) pursuant to an international agreement concluded between a Member State and one or more non-member countries and covering supplies or works intended for the joint implementation or exploitation of a project by the signatory States; every agreement shall be communicated to the Commission, which may consult the Advisory Committee set up pursuant to Article 30 ter.
- (b) to undertakings in a Member State or a non-member country in pursuance of an international agreement relating to the stationing of troops;
- (c) pursuant to the particular procedure of an international organization

ARTICLE 8

1. This Directive shall apply to contracts whose value, net of VAT is not less than
 - 200 000 ECU in the case of supply contracts,
 - 200 000 ECU in the case of software service contracts
 - 5.000 000 ECU in the case of works contracts.
2. In the case of supply contracts, the basis for calculating the contract value shall be:
 - in the case of fixed term contract, where their term is twelve months or less, the total contract value for its duration, or, where their term exceeds twelve months its total value including the estimated residual value;
 - in the case of contracts for an indefinite period or in cases where there is doubt as to the duration of the contracts, the monthly installment multiplied by 48.
3. In the case of regular supply contracts or of contracts which are to be renewed within a given time, the contract value may be established on the basis of
 - either the aggregate cost of similar contracts concluded over the previous fiscal year or 12 months, adjusted, where possible, for anticipated changes in quantity or value over the subsequent 12 months.
 - or the estimated aggregate cost during the 12 months following first delivery or during the term of the contract where this is greater than 12 months.

The selection of the evaluation method shall not be used with the intention of avoiding the application of this Directive.
4. In case where a proposed procurement specifies option clauses, the basis for calculating the contract value shall be the highest possible total purchase, lease, rental, or hire-purchase permissible, inclusive of the option clauses.

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5. Contracts may not be split up with the intention of avoiding the application of this Directive. For the purpose of establishing the contract value for the application of paragraph 1 :
 - the value of products of the same type must be added up when contracts for these products are awarded at the same time but in different parts
 - the value of all contracts must be added up where a work is the subject of several lots involving separate contracts.
6. The value of works contracts shall include the value of any products or services which are made available to the contractor by the contracting entity and which are necessary for the execution of the contract.

N.B. Internal remark : No reference exists anymore in paragraphs 2, 3 and 5 to the basis for calculating the contract values for software contracts.

TITLE II - TECHNICAL SPECIFICATIONS AND STANDARDS**ARTICLE 9**

1. The technical specifications concerning materials, products, supplies or works shall be defined by reference to national standards implementing European standards or by reference to common technical specifications or European technical approvals.
2. Contracting entities may derogate from paragraph 1 if:
 - a) the standards do not include provisions for establishing conformity, or technical means do not exist to establish satisfactorily conformity with these standards;
 - b) **the application of paragraph 1 would prejudice 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, or Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications**
 - c) use of these standards would oblige the contracting entity to acquire supplies incompatible with equipment already in use and would entail disproportionate cost or disproportionate technical difficulties, but only as part of a clearly defined and recorded strategy with a view to a change-over, within a determined period, to European standards or common technical specifications;
 - d) the project concerned is of a genuinely innovative nature for which use of existing standards would not be appropriate;
3. Insofar as contracting entities are obliged to publish a tender notice according to Article 13.(1). or do so voluntarily according to Art. 13.(2) (a), they shall record in that notice, unless it is impossible, the reasons for invoking paragraph 2.

ARTICLE 10

1. In the absence of European standards, common technical specifications, or European technical approvals, the technical specifications may be defined by reference to other standards.

In this case, it is appropriate to make reference in order of preference to:

- a) national standards implementing international standards accepted in the country of the contracting entity,
 - b) other national standards of the country of the contracting entity,
 - c) any other standard;
2. Standards and specifications that indicate performance requirements rather than design or description characteristics shall be preferred unless the contracting entity has objective reasons for considering that such standards are inadequate for the purposes of the contract.
 3. 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 undertakings shall not be used unless such specifications are indispensable for the subject of the contract. In particular, the indication of trade marks, patents, types or specific origin or production shall be prohibited; however, such an indication accompanied by the words 'or equivalent' shall be authorized where the subject of the contract cannot otherwise be described by specifications which are sufficiently precise and fully intelligible to all concerned.

ARTICLE 11

1. **Contracting entities shall make available to interested suppliers or contractors on demand the technical specifications concerning materials, products, supplies, or works which they procure regularly or which they intend to apply to procurement covered by periodic information notices within the meaning of Article 14. Where such technical specifications are based on documents available to interested suppliers or contractors, a reference to those documents shall be sufficient.**
2. **Contracting entities shall include the technical specifications in the general documents or the contractual documents relating to each contract.**

TITLE III - PROCEDURES FOR THE AWARD OF CONTRACTS**ARTICLE 12**

1. Contracting entities may choose any of the procedures described in Article 1 (8) provided, subject to paragraph 2, a call for competition has been made in accordance with Article 13.
2. Contracting entities may use the negotiated procedure without prior call for competition in the following cases :
 - a) in the absence of tenders or where all tenders are irregular in response to an open or restricted procedure;
 - b) in the case of supply or software service contracts, when the contract will be executed purely for the purpose of research, experiment, study or development. However, this provision shall not extend to quantity production to establish commercial viability or to recover research and development costs;
 - c) when, for technical or artistic reasons, or for reasons connected with protection of exclusive rights, the contract may be executed only by a particular supplier or contractor;
 - d) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting entities, the time limits laid down for the open and restricted procedures cannot be adhered to;
 - e) in the case of supply and software service contracts, for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting entity to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance. This procedure may only be applied, as a general rule, during the five years following the award of the original contract;

- f) in the case of works contracts, for additional works not included in the project initially considered or in the contract first concluded but which have, through unforeseen circumstances, become necessary for the carrying out of the work described therein, on condition that the award is made to the contractor carrying out such work :
- when such works cannot be technically or economically separated from the main contract without great inconvenience to the contracting entities;
 - or when such works, although separable from the execution of the original contract, are strictly necessary to its later stages;
- g) in the case of works contracts, for new works consisting of the repetition of similar works entrusted to the undertaking to which the same contracting entities awarded an earlier contract, provided that such work conform to a basic project for which a first contract was awarded following a call for competition. As soon as the first project is put up for tender, notice must be given that this procedure might be adopted and the total estimated cost of subsequent works shall be taken into consideration by the contracting entities when they apply the provisions of Article 8; this procedure may only be applied as a general rule during the five years following the award of the original contract;
- h) for goods quoted and purchased on a commodity market;
- i) for purchases from suppliers who are bankrupt or being wound up, whose affairs are being administered by the court, who have entered into an arrangement with creditors, whose business activities have been suspended or who are in any analogous situation arising from a similar procedure under national laws and regulations.

ARTICLE 13

1. Contracting entities which intend to award a contract by open procedure shall make known their intention by means of a tender notice in accordance with Annex II A.
2. Contracting entities which intend to award a contract by restricted or negotiated procedure with a prior call for competition may choose to make the call :
 - a) by means of a notice drawn up in accordance with Annex II B or Annex II C,
or
 - b) by inviting candidates who have qualified in accordance with a qualification system meeting the conditions of Article 20 which has been the subject of a notice drawn up in accordance with Annex III.
3. A call for competition shall also be considered to have been made by means of a periodic indicative notice within the meaning of Art. 14. on condition that
 - a) the contract relates to supplies or works covered by the notice; and
 - b) the notice indicated that the contract would be awarded by restricted or negotiated procedure; and
 - c) the contracting entities provide all candidates which have indicated in writing their interest to take part in the tender procedure with an opportunity to confirm their interest in receiving an invitation on the basis of more detailed information relating to the particular contract.
4. All notices referred to in this Article shall be published in the Official Journal of the European Communities.

ARTICLE 14

1. Contracting entities shall make known at least once a year, by means of a periodic indicative notice drawn up in accordance with Annexes IV A and IV B and published in the Official Journal of the European Communities :
 - a) in the case of supply and software service contracts, the total procurement envisaged for the coming twelve months for each product and software service area of which the estimated value, taking into account the provisions of Article 8, is equal to or greater than 750,000 ECU;
 - b) in the case of works contracts, the essential characteristics of the works contracts envisaged of which the estimated value is equal or greater than 5.000.000 ECU
2. A periodic notice need not include information on contracts which would prejudice the legitimate commercial interests of the contracting entity.

ARTICLE 15

1. Contracting entities which have awarded a contract shall make known the results of the procedure by means of a notice published in the Official Journal of the European Communities. The notice shall be drawn up in accordance with Annex V.
2. Where publication of the information envisaged in the model notice would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular undertakings, public or private, or might prejudice fair competition between suppliers or contractors, the entities may limit the contents of the notice to the fact that the contract has been awarded.
3. The notices referred to in the preceding paragraphs shall be dispatched at the latest 48 days after the award of the contract in question.

ARTICLE 16

1. The length of the notices referred to in the preceding articles shall not exceed one page of the Official Journal of the European Communities, that is to say approximately 650 words.
2. The contracting entities must be able to supply proof of the date of dispatch.
3. The notices shall be published in full in their original language in the Official Journal of the European Communities and in the data bank TED. A summary of the important elements of each notice shall be published in the other official languages of the Community, the original text alone being authentic.
4. The Office for Official Publication of the European Communities shall publish the notices not later than 12 days after their dispatch. In the case of the accelerated procedure, referred to in Article 17 (4), this period shall be reduced to 5 days.

Each edition of the Official Journal of the European Communities which contains one or more notices shall reproduce the model notice or notices on which the published notice or notices are based.

5. The cost of publication of the notices in the Official Journal of the European Communities shall be borne by the Communities.
6. Contracts in respect of which a notice is published in the Official Journal of the European Communities, pursuant to Articles 13 (1) or (2) (a) shall not be published in any other way before that notice has been dispatched to the Publication Office of the European Communities. Such publications shall not contain information other than that published in the Official Journal of the European Communities.

ARTICLE 17

1. In open procedures, the time limit for the receipt of tenders shall be fixed by contracting entities at not less than 52 days from the date of dispatch of the notice.
2. In restricted procedures and negotiated procedures with prior call for competition, the time for receipt of requests to participate fixed by the contracting entities shall be not less than 37 days from the date of dispatch of the notice or the letter of invitation.
3. In restricted procedures, the time limit for receipt of tenders fixed by contracting entities may not be less than 40 days from the date of dispatch of the written invitation.
4. In cases where urgency renders impracticable the time limits laid down in paragraphs 2 and 3, the contracting entities may fix the following time limits:
 - a) a time limit for receipt of requests to participate which shall be not less than 15 days from the date of dispatch of the notice or the letter of invitation,
 - b) a time limit for the receipt of tenders which shall be not less than 10 days from the date of the invitation to tender.
5.

ARTICLE 18

1. The contract documents must be sent to the suppliers or contractors by the contracting entities as a general rule within 4 working days of receiving their application.
2. Provided it has been requested in good time, additional information relating to the contract documents shall be supplied by the contracting entities not later than 6 days before the final date fixed for receipt of tenders. In the case of Article 17 (4), the time-limit may be reduced to 4 days.
3. Where tenders require the examination of voluminous documentation such as lengthy technical specifications, a visit to the site or an on-the-spot inspection of the documents supporting the contract documents, this shall be taken into account in fixing the appropriate time-limits.
4. Contracting entities shall invite selected candidates simultaneously in writing. The letter of invitation shall be accompanied by the contract documents and supporting documents. It shall include at least the following information :
 - a) the address from which any additional documents can be requested and the final date for making such a request; also the amount and terms of payment of any sum to be paid for such documents;
 - b) the final date for receipt of tenders, the address to which they must be sent and the language or languages in which they must be drawn up;
 - c) a reference to the tender notice published;
 - d) an indication of any document to be annexed;
 - e) the criteria for the award of the contracts if these are not given in the notice
5. Requests to participate in contracts and invitations to tender may be made by letter or by any appropriate means of telecommunication. If by the latter, they must be confirmed by letter.

TITLE IV - QUALIFICATION, SELECTION AND AWARD OF CONTRACTS**ARTICLE 19**

1. The qualification of suppliers or contractors and their selection to participate in restricted or negotiated procedures shall be based on criteria that are objective and non-discriminatory. Contracting entities shall not, in particular,
 - a) impose obligations of an administrative, technical or financial nature on some suppliers or contractors that are not imposed on others;
 - b) require tests or proofs that duplicate objective evidence already available.
2. The criteria for exclusion specified in Article 23 of Directive 71/305/EEC and in Article 20 of Directive 77/62/EEC shall be considered objective and non-discriminatory.
3. Contracting entities shall lay down the criteria and rules according to which they will qualify or select candidates. These criteria and rules shall be made available on demand to any interested supplier or contractor.
4. Contracting entities shall respect the confidential nature of information made available by suppliers or contractors for the purposes of qualification, selection or participation in a contract procedure.

ARTICLE 20

1. Contracting entities which operate a system of qualification of suppliers or contractors shall take a decision as to qualification within a period of six months from the presentation of an application unless for objective reasons notified to the applicant within two months of the application a longer period is necessary. In such cases, the contracting entity shall inform the applicant of the reasons justifying the longer period and of the date by which its application will be accepted or refused.
2. Applicants whose qualification is refused shall be informed of this decision and the reasons for refusal. The reasons must be based on the criteria for qualification referred to in Article 19 (1).
3. A written record of qualified suppliers or contractors shall be kept, which may be divided into categories according to the type of contract for which the qualification is valid.
4. Contracting entities may bring the qualification of a supplier or contractor to an end only for reasons justified by the criteria referred to in Article 19 (1). The intention to bring a qualification to an end must be notified in writing in advance to the supplier or contractor, together with the reason or reasons justifying the proposed action.
5. Where the qualification system is of indefinite duration, it shall be the subject of a notice drawn up in accordance with Annex III and published annually in the Official Journal of the European Communities indicating the purpose of the qualification system and the availability of the rules concerning its operation.
6. Where the qualification system is not of indefinite duration, it shall be the subject of a notice in the Official Journal of the European Communities indicating in addition to the information required by paragraph 5, the duration of the system which shall not be longer than a period of three years.

ARTICLE 21

1. **Suppliers or contractors which have requested to participate in a contract procedure may not be excluded from the procedure for reasons other than those laid down by the contracting entity and available from it on demand. Such reasons may include the objective need of the entity to reduce the number of candidates to a level which is justified by the need to balance the particular characteristics of the contract procedure and the resources required to complete it.**

2. **Groupings of suppliers or contractors may not be refused as regards the submission of tenders or participation in a contract procedure. Groupings shall not be required to assume a specific legal form in order to submit a tender or to negotiate. However, should a grouping be awarded the contract it may be required to do so, provided that a specific legal form is necessary for the satisfactory performance of the contract.**

ARTICLE 22

1. The criteria on which the contracting entities shall base the award of contracts shall be:
 - a) the most economically advantageous tender, involving various criteria such as: delivery date, period for completion, running costs cost-effectiveness, quality, aesthetic and functional characteristics, technical merit, after-sales service and technical assistance, price; or
 - b) the lowest price only.
2. In the case referred to in paragraph 1 (a), the contracting entities shall state in the contract documents or in the tender notice all the criteria they intend to apply to the award, where possible in descending order of importance.
3. Where the criterion for the award of the contract is that of the most economically advantageous tender, contracting entities may take account of variants which meet the minimal specifications required by the contracting entities. Contracting entities shall indicate in the contract documents whether variants will be considered together with the minimal specifications to be respected and any special requirements for the presentation.
4. Contracting entities shall not reject offers concerning works contracts for reasons related to the technical specifications laid down in the contract documents if the products described in the offer are fit for their intended use, that is have such characteristics that the works in which they are to be incorporated, assembled, applied or installed can, if properly designed and built, satisfy the essential requirements within the meaning of Council Directive⁽¹⁾, when and where this is required by the regulations concerning given works.

(1) Proposal for a Council Directive on the approximation of the laws, regulations and administrative provisions of the Member States relating to construction products, COM (86) 756 (final/3 of 17 February 1987

5. If , for a given contract, tenders appear abnormally low in relation to the transaction, the contracting entity shall request, in writing, explanations on the constituent elements of the tender concerned. It shall in particular enquire whether the tenderer is in receipt of any form of State aid and whether the aid has been notified to and received approval of the Commission pursuant to Art. 93 (3) of the Treaty.

Tenders which appear abnormally low may not be rejected if they are justified on objective grounds including the economy of the construction or production method, or the technical solutions chosen, or the exceptionally favourable conditions available to the tenderer for the execution of the contract, or the originality of the product or the work proposed by the tenderer.

Tenders which are abnormally low due to the receipt of a State aid may be rejected if the aid in question has not been notified to the Commission pursuant to Article 93(3) of the Treaty or has not received the Commission's approval. Contracting entities which reject a tender under these circumstances shall inform the Commission.

ARTICLE 23

1. Article 22 (1) shall not apply when a Member State bases the award of contracts on other criteria within the framework of rules existing at the time this Directive is adopted whose aim is to give preference to certain tenderers, on condition that those rules are compatible with the Treaty.
2. Without prejudice to paragraph 1, this Directive shall not prevent, until 31 December 1992, the application of existing national provisions on the award of public supply and works contracts which have as their objective the reduction of regional disparities and the promotion of job creation in regions whose development is lagging behind and in declining industrial regions, on condition that the provisions concerned are compatible with the Treaty and with the Community's International obligations.

N.B. Internal remark : the reference to software service contracts in Article 23.2. (for Telecoms) has been lost

TITLE V -FINAL PROVISIONS**ARTICLE 24**

1. Without prejudice to the obligations of the Community or its Member States in relation to third States, any offer may be rejected when more than half of the price offered represents the value of products manufactured or services performed outside the Community or a combination thereof.
2. Subject to paragraph 3, an offer which is equivalent to one falling within the scope of paragraph 1 but which itself falls outside the scope of that paragraph shall be preferred. The price of the latter offer shall be considered equivalent provided it does not exceed the price of the offer falling within the scope of paragraph 1 by more than 3 percent.
3. However, an offer shall not be preferred to another pursuant to paragraph 2 where its acceptance would oblige the contracting entity to acquire material having different technical characteristics from existing material which would result in incompatibility or disproportionate technical difficulties in operation and maintenance.
4. For the purposes of this Article,
 - a) the value of products manufactured outside the Community shall include the value of all finished or semi-finished products imported, directly or indirectly, from third countries;
 - b) the value of services performed outside the Community shall include the value of all activities performed on the territory of third countries that contribute to the rendering of the services covered by the contract.
5. This Article shall not apply to offers of third country origin to which the benefit of the provisions of this Directive has been extended by a decision of the Council, acting by qualified majority on a proposal from the Commission, pursuant to an agreement between the Community and a third country, within the GATT framework or otherwise.

ARTICLE 25

1. **The value in national currencies of the thresholds specified in Article 8 shall in principle be revised every two years with effect from 1 January 1990. The calculation of such value shall be based on the average daily values of these currencies in terms of the ECU over the 24 months terminating on the last day of October immediately preceding the 1 January revision. The values shall be published in the Official Journal of the European Communities at the beginning of November.**

2. **The method of calculation laid down in paragraph 1 shall be examined, on the Commission's initiative, by the Advisory Committee set up pursuant to Article 30 ter, in principle two years after its initial application.**

ARTICLE 26

1. **Annex I to this Directive may be amended by the Commission**
 - a) **to delete entities to which Annex I refers because they no longer fulfill the criteria for their inclusion set out in Article 2, or**
 - b) **to include entities which meet those criteria.**
2. **Amendments shall be made by the Commission after consulting the Advisory Committee set up pursuant to Article 30 ter.**

The chairman of the Committee shall submit to the Committee any necessary draft revisions. The Committee shall deliver its opinion on the draft, if necessary by taking a vote, within a time-limit to be laid down by the chairman.

The opinion shall be recorded in the minutes. In addition, each Member State shall have the right to ask to have its position recorded in the minutes.

3. **Amended versions of the annex shall be published for information in the Official Journal of the European Communities.**

ARTICLE 27

1. Contracting entities shall keep internal records on each contract award procedure which are sufficient to permit the contracting entity at a later date to give :
 - a) the reasons underlying the use of other standards than European standards, common technical specifications or European technical approvals, according to Article 9 (2) or the reasons for not applying performance specifications and standards, according to Article 10 (2);
 - b) information on decisions concerning the qualification, non-qualification or termination of a qualification of undertakings, pursuant to Article 20. These records shall be sufficiently detailed to permit an evaluation to be made of the criteria used and the manner of their application;
 - c) the information on contracts awarded provided to interested companies, or withheld from, according to Article 15 (2);
 - d) information on cases of reliance on restricted or negotiated procedures. These records shall include at least the subject of the contract; where applicable, the suppliers which have requested to participate , the candidates invited to present an offer and, should the occasion arise, the number of candidates rejected and the reasons for their rejection;
 - e) the criteria used and the manner of their application with regard to the selection of candidates according to Article 19 and Article 21;
 - f) the criteria used and the manner of their application with regard to the award of the contract according to Article 22.
2. These records or the information contained therein shall be made available to the Commission on demand.

ARTICLE 28

Member States shall communicate to the Commission, each year at the latest on 31 October for the preceding calendar year, a statistical report which includes at least

- a) (**)
- b) by number and total value of contracts :
- the breakdown between supply contracts, work contracts and software service contracts,
 - the breakdown between the means of call for competition provided for in Article 13,
 - the breakdown between contracts awarded to suppliers inside and outside the Community and in each of the Member States,
 - the proportion of contracts awarded by negotiated procedures without prior call for competition
- c) evidence that the levels of progressive implementation of this directive established in Article 30 bis are complied with.

(*) N.B. : paragraph a) is missing since reference to it is not made in COM(88)378 and COM(88)377 only refers to Annexes I to IX to COM(88)377

ARTICLE 29

1. Article 2 (2) of Directive 77/62/CEE as amended by Directive 88/295/EEC of 22/3/88 shall be replaced by the following :

"2. This Directive shall not apply to :

- (a) the award of public supply contracts by contracting authorities in the fields covered by the provisions of Directive .../.../EEC(1) and those of Directive .../.../EEC⁽²⁾
- (b) supplies which are declared secret or when their delivery must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned or when the protection of the basic interest of that State's security so require."

2. The text of Article 3 (4) and (5) of Directive 71/305/EEC as amended by Directive .../.../EEC(3) is hereby replaced by the following :

"This Directive shall not apply to works contracts by contracting authorities in the fields covered by the provisions of Directive .../.../EEC(1) and those of Directive .../.../EEC⁽²⁾."

(1) COM(88)377 final of ...

(2) COM(88)378 final of ...

(3) Proposal for a Council directive amending Directive 71/305/EEC concerning the coordination of procedures for the award of public works contracts, COM(88)354 final of 20 June 1988

ARTICLE 30

Not later than four years after the coming into force of this Directive, the Commission, acting in close co-operation with the Advisory Committee set up pursuant to Article 30 ter, shall review the manner in which this Directive has operated and its field of application and, if necessary, make further proposals to adapt it, in the light of developments concerning in particular progress in market opening and the level of competition in the telecommunications sectors concerned.

ARTICLE 30 BIS

1. **In the case of supplies and software service contracts the provisions of this Directive shall apply to :**
 - **at least 70 % in estimated value of the procurement procedures carried out in the year 1990 and the year 1991.**
 - **all procurements carried out from 1992 onwards.**
2. **Notwithstanding the above, the provisions of Art. 14 as regards supplies and software service contracts will apply to all procurement procedures from 1.1.1990.**

ARTICLE 30 TER

- 1. The Commission shall be assisted by a committee of an advisory nature which shall be the Advisory Committee on Telecommunications Procurement. The Committee is composed of the representatives of the Member States and chaired by a representative of the Commission.**

- 2. The Commission shall consult the Committee on :**
 - (a) amendments to Annex I,**
 - (b) revision of the thresholds,**
 - (c) procurement rules established under international agreements,**
 - (d) review of the operation of this directive.**

ARTICLE 31

- 1. Member States shall implement the measures necessary to comply with this Directive by 31 December 1989 at the latest and shall inform the Commission thereof.**
- 2. Recommendation 84/550/EEC is withdrawn on 31 December 1989.**

ARTICLE 32

Member States shall ensure that the texts of the basic provisions of domestic laws, regulations and administrative provisions, which they adopt in the field covered by this Directive, are communicated to the Commission.

ARTICLE 33

This Directive is addressed to the Member States.

Done at

For the Council

The President

ANNEXES

ANNEX I: Contracting entities

ANNEX II:

- A.** Tender notice related to OPEN procedures
- B.** Tender notice related to RESTRICTED procedures
- C.** Tender notice related to NEGOTIATED procedures

ANNEX III: Notice on the existence of a qualification system

ANNEX IV: Periodic notice :

- A.** Supply and software service contracts
- B.** For works contracts

ANNEX V: Notice on contracts awarded

ANNEX I

CONTRACTING ENTITIES**Belgique**

Régie des Télégraphes et des Téléphones
Regie van Telegrafie en Telefonie

Danemark

Kobenhavns Telefon Aktieselskab
Jydsk Telefon
Fyns Kommunale Telefonselskab
Post-og Telegrafvaesnet
Statens Teletjeneste

République Fédérale d'Allemagne

Deutsche Bundespost

Grèce

OTE / Hellenic Telecommunications Organization

Espagne

Compania telefonica Nacional de Espana

France

Direction Générale des Télécommunications
Transpac
Telecom Service Mobile
Société Française de Radiotelefone

Irlande

Telecom Eireann

Italie

Amministrazione delle Poste e delle Telecomunicazioni
Azienda di Stato per i Servizi Telefonici
Società Italiana per l'Esercizio Telefonico SpA
Italcable
Telespazio SpA

Luxembourg

Administration des Postes et des Télécommunications

Pays Bas

Post Telegraaf en Telefon

Portugal

Telefones de Lisboa e Porto
Companhia Portuguesa Radio Marconi
Correios e Telecomunicacoes de Portugal

Royaume-Uni

British Telecommunications PLC
Mercury Communications Ltd
City of Kingston-Upon-Hull

ANNEX II

A. OPEN PROCEDURES

1. The name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity
2. For supply and software service contracts : form of contract for which offers are invited
3.
 - a) Place of delivery, or site
 - b) Nature and quantity of the goods to be supplied
or
The nature and extent of the services to be provided and, in the case of works, general nature of the work.....
 - c) Indication of whether the suppliers can tender for some and/or all of the goods required
or, for works contracts :
if the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all of the lots
 - d) authorization to submit variants
 - e) where applicable, information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects
4. Derogation from the use of European standards, common technical specifications or European technical approvals, in accordance with Article 9.
5. Time-limits for delivery or completion
6.
 - a) Name and address of the service from which the contract documents and additional documents may be requested
 - b) Where applicable, the amount and terms of payment of the sum to be paid to obtain such documents

7.
 - a) the final date for receipt of tenders
 - b) the address to which they must be sent
 - c) the language or languages in which they must be drawn up

8.
 - a) The persons authorized to be present at the opening of tenders
 - b) the date, hour and place of such opening

9. Where applicable, any deposits and guarantees required

10. Main terms concerning financing and payment and/or references to the provisions in which these are contained

11. Where applicable, the legal form to be taken by the grouping of suppliers or contractors to whom the contract is awarded

12. Economic and technical standards required of the supplier or contractor to whom the contract is awarded

13. Period during which the tenderer is bound to keep open his tender

14. The criteria for the award of the contract. Criteria other than that of the lowest price shall be mentioned where they do not appear in the contract documents

15. Other information

16. Where applicable, date of publication of the periodic information notice in the Official Journal to which this contract refers

17. Date of dispatch of the notice

18. Date of receipt of the notice by the Office of Official Publications of the European Communities

ANNEX II

B. RESTRICTED PROCEDURES

1. The name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity
2. For supply and software service contracts : form of contract for which offers are invited
3. Where applicable, justification for the use of the accelerated procedure
4.
 - a) Place of delivery, or site
 - b) Nature and quantity of the goods to be supplied
or
The nature and extent of the services to be provided and for works, general nature of the work
 - c) indication of whether the suppliers can tender for some and/or all of the goods required
or, for works contracts :
if the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all of the lots
 - d) authorization to submit variants
 - e) information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects
5. Derogation from the use of European standards, common technical specifications or European technical approvals
6. Time-limits for delivery or completion
7. Where applicable, the legal form to be taken by the grouping of suppliers or contractors to whom the contract is awarded
8.
 - a) the final date for receipt of requests to participate
 - b) the address to which they must be sent
 - c) the language or languages in which they must be drawn up

9. The final date for dispatch of invitations to tender
10. Where applicable, any deposits and guarantees required
11. Main terms concerning financing and payment and/or the provisions laid down by law or regulation in which these are contained
12. Information concerning the supplier's or contractor's position and economic and technical standards required of him
13. The criteria for the award of the contract where they are not mentioned in the invitation to tender
14. Other information
15. Where applicable, date of publication of the periodic information notice in the Official Journal to which this contract refers
16. Date of dispatch of the notice
17. Date of receipt of the notice by the Office of Official Publications of the European Communities

ANNEX II

C. NEGOTIATED PROCEDURES

1. The name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity
2. For supply and software service contracts : form of contract for which offers are invited
3.
 - a) Place of delivery, or site
 - b) Nature and quantity of the goods to be supplied
or
The nature and extent of the services to be provided for works general nature of the work
 - c) indication of whether the suppliers can tender for some and/or all of the goods required
or, for works contracts :
if the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all of the lots
 - d) information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects
4. Derogation from the use of European standards, common technical specifications or European technical approvals.
5. Time-limits for delivery or completion
6. Where applicable, the legal form to be taken by the grouping of suppliers or contractors to whom the contract is awarded
7.
 - a) the final date for receipt of tenders
 - b) the address to which they must be sent
 - c) the language or languages in which they must be drawn up

8. Where applicable, any deposits and guarantees required
9. Main terms concerning financing and payment and/or the provisions laid down by law or regulation in which these are contained
10. Information concerning the supplier's or contractor's position and economic and technical standards required of him
11. Where applicable, the name and addresses of suppliers or contractors already selected by the contracting entity
12. Where applicable, date of previous publications in the Official Journal of the European Communities
13. Other information
14. Where applicable, date of publication of the periodic information notice in the Official Journal to which this contract refers
15. Date of dispatch of the notice
16. Date of receipt of the notice by the Office of Official Publications of the European Communities

ANNEX III

NOTICE ON THE EXISTENCE OF A QUALIFICATION SYSTEM

1. **Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity**
2. **Purpose of the qualification system**
3. **Address where the rules concerning the qualification system can be obtained (if different from the address mentioned under 1 above)**
4. **Where applicable, duration of the qualification system**

ANNEX IV

PERIODIC INFORMATION NOTICE**A. For supply and software service contracts**

1. Name, address, telephone, telegraphic address, telex and telecopier number of the contracting entity or the service from which additional information may be obtained
2. Nature and quantity or value of the products to be supplied or, for software service contracts, nature and value of the services
3. a) Estimated date of the commencement of the procedures of the award of the contract(s) (if known)
b) Type of award procedure to be used
4. Other information
5. Date of dispatch of the notice
6. Date of receipt of the notice by the Office for Official Publications of the European Communities

B. For works contracts :

1. the name, address, telephone, telegraphic address, telex and telecopier number of the contracting entity
2. a) the site
b) the nature and extent of the services to be provided, the main characteristics of the work or of the lots by reference to the work
c) an estimate of the cost of the services to be provided
3. a) type of award procedure to be used
b) the date scheduled for initiating the award procedures in respect of the contract or contracts
c) the date scheduled for the start of the work
d) planned timetable for completion of the work

4. **Terms of financing of the work and of price revision**
5. **Other information**
6. **Date of dispatch of the notice**
7. **Date of receipt of the notice by the Office for Official Publications of the European Communities**

NOTICE ON CONTRACTS AWARDED

1. Name and address of contracting entity
2. Award procedure
3. Date of award of contract
4. Criteria for award of contract
5. Number of offers received
6. Name and address of successful supplier(s) or contractor(s)
7. Nature and quantity of goods supplied, where applicable, by supplier
or
the nature and extent of the services provided, general characteristics of the finished structure
8. Price or range of prices (minimum/maximum) paid
9. Other information
10. Date of publication of the tender notice in the Official Journal of the European Communities
11. Date of dispatch of the notice
12. Date of receipt of the notice by the Office for Official Publications of the European Communities