

II

(Preparatory Acts)

COMMISSION

Amended Proposal for a Council Directive on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors ⁽¹⁾

COM(89) 380 final — SYN 153

(Presented by the Commission pursuant to Article 149 of the EEC Treaty on 18 July 1989)

(89/C 264/02)

⁽¹⁾ OJ No C 319, 12. 12. 1988, p. 2.

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a and Article 113 thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the measures aimed at progressively establishing the internal market, during the period up to 31 December 1992, need to be taken; whereas the internal market consists of an area without internal frontiers in which free movement of goods, persons, services and capital is guaranteed;

Whereas successive European Councils have drawn conclusions concerning the need to realise a single internal market;

Whereas restrictions on the free movement of goods and on the freedom to provide services in respect of supply contracts awarded in the water, energy and transport and telecommunications sectors are prohibited by the terms of Articles 30 and 59 of the Treaty;

Whereas Article 97 of the Euratom Treaty prohibits any restrictions based on nationality as regards companies under the jurisdiction of a Member State where they desire

to participate in the construction of nuclear installations of a scientific or industrial nature in the Community;

Whereas these objectives also require the coordination of the procurement procedures applied by the entities operating in these sectors;

Whereas the *White Paper* on the completion of the internal market contains an action programme and a timetable for opening up public procurement markets in sectors which are currently excluded from Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts ⁽²⁾, as last amended by the Act of Accession of Spain and Portugal, and Council Directive 77/62/EEC of 21 December 1976 coordinating procedures for the award of public supply contracts ⁽³⁾, as last amended by Directive 88/295/EEC ⁽⁴⁾;

Whereas among such excluded sectors are those concerning the provision of water, energy and transport services and, as far as the Directive 77/62/EEC is concerned the telecommunications sector;

Whereas the main reason for their exclusion was that entities providing such services are in some cases governed by public law, in others by private law;

Whereas the need to ensure a real opening-up of the market and a fair balance in the application of procurement rules in these sectors requires that the entities to be covered must be identified on a different basis than by reference to their legal status;

⁽²⁾ OJ No L 185, 16. 8. 1971, p. 5.

⁽³⁾ OJ No L 13, 15. 1. 1977, p. 1.

⁽⁴⁾ OJ No L 127, 20. 5. 1988, p. 1.

Whereas among the main reasons why entities operating in these sectors do not purchase on the basis of Community-wide competition is the closed nature of the markets in which they operate, due to the existence of special or exclusive rights or authorizations granted by the national authorities, concerning the supply or management of networks for providing the service concerned, or to the exploitation of a given geographical area for a particular purpose, the operation of telecommunications networks or the provision of telecommunications services;

Whereas the other main reason for the absence of Community-wide competition in these areas results from various ways in which national authorities can influence the behaviour of these entities, including participations in their capital and representation in the entities' administrative, managerial or supervisory bodies;

Whereas this Directive should not extend to activities of these entities which either fall outside the sectors of water, energy and transport services or outside the telecommunications sector, or which fall within those sectors but nevertheless are directly exposed to competitive forces in markets to which entry is unrestricted;

Whereas it is appropriate that these entities apply common procurement procedures in respect of their activities relating to water; whereas certain entities have been covered up to now by Directives 71/305/EEC and 77/62/EEC in respect of their activities in the field of hydraulic engineering projects, irrigation, land drainage or the disposal treatment of sewerage;

Whereas, however, procurement rules of the type proposed for supplies of goods are inappropriate for purchases of water, given the need to procure water from sources near the area where it will be used;

Whereas the Commission has announced that it will propose measures to remove obstacles to cross-frontier exchanges of electricity by 1992; whereas procurement rules of the type proposed for supplies of goods would not make it possible to overcome existing obstacles to the purchases of energy and fuels in the energy sector; and whereas the problems posed by purchases of energy and fuels in the energy sector will be addressed in the context of the initiatives to be taken to realize the Community's internal market in energy, and consequently it is not appropriate to include such purchases in the scope of this Directive;

Whereas Regulation (EEC) 3975/87 ⁽¹⁾ and 3976/87 ⁽²⁾, Directive 87/601/EEC ⁽³⁾ and Council Decision 87/602 ⁽⁴⁾

are designed to introduce more competition between the entities offering air transport services to the public and it is not appropriate for the time being to include such entities in the scope of this Directive, and whereas the situation ought to be reviewed at a later stage in the light of progress made as regards such competition;

Whereas, with a view to facilitating compliance with the provisions exempting those activities not covered by this Directive, the Commission should publish such activities in the *Official Journal of the European Communities*;

Whereas this Directive should not apply to procurement contracts which affect basic State security interests or which are concluded according to other rules set up by existing international agreements or international organisations;

Whereas the Community's or the Member States' existing international obligations must not be affected by the rules of this Directive;

Whereas, within certain limits, a preference should be given to an offer of Community origin where there are equivalent offers of third country origin;

Whereas this Directive should not prejudice the position of the Community in any current or future international negotiations;

Whereas, based on the results of such international negotiations this Directive should be extendable to offers of third country origin, pursuant to a Council Decision;

Whereas in the area of standards and technical specifications it is necessary to adopt common rules taking fully into account Community policy in the field;

Whereas contracting entities must be able to reject offers which, because they are based on State aids, are unreliable;

Whereas the principles of equivalence and of mutual recognition of national standards, technical specifications and manufacturing methods are applicable in the field of application of this Directive;

Whereas the rules to be applied by the entities concerned should establish a framework for sound commercial practice and should leave a maximum of flexibility;

Whereas as a counterpart for such flexibility and in the interest of mutual confidence a minimum level of transparency and appropriate ways for monitoring the application of this Directive must be ensured;

⁽¹⁾ OJ No L 374, 31. 12. 1987, p. 1.

⁽²⁾ OJ No L 374, 31. 12. 1987, p. 9.

⁽³⁾ OJ No L 374, 31. 12. 1987, p. 12.

⁽⁴⁾ OJ No L 374, 31. 12. 1987, p. 19.

Whereas the arrangements to be introduced for the telecommunications sector should to a large extent be the same as those laid down for the sectors of water, energy and transport services;

Whereas in the different sectors covered, the procurement problems to be solved are of a similar nature permitting them to be addressed in one instrument;

Whereas the provisions applicable to the telecommunications sector should be phased in two steps, with a transitional period of one year during which 30 % of overall annual procurements may be made outside this Directive. In order to ensure its smooth application as from 1992 on the basis of experience gained during the previous year and whereas no transitional period should be laid down, however, as regards the obligation to publish periodic information notices;

Whereas it is desirable for national provisions in favour of regional development to be included in the Communities' objectives;

Whereas the Commission should review the functioning of this Directive and the effects which it has had, after four years, in order to make any necessary further proposals,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

General provisions

Article 1

For the purposes of this Directive:

1. '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
 - is financed for the most part, by the State, or regional or local authorities, or other bodies governed by public law; or is subject to management supervision by those bodies; or has an administrative, managerial, or supervisory board more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.
2. '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.
3. 'Supply and works 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 XI or the realisation by whatever means of building or civil engineering works taken as a whole that are sufficient of themselves to fulfil an economic or technical function for the user.
 4. A software service contract means procurement of software for use in connection with telecommunications networks or telecommunications services and purchased by one of the contracting entities whose activities are defined in Article 2(2)(d).
 5. 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'.
 6. 'Open, restricted and negotiated procedures' are the purchasing procedures applied by contracting entities whereby:
 - (a) in the case of open procedures, all interested suppliers or contractors may submit tenders;
 - (b) in the case of the restricted procedures, only candidates invited by the contracting entity may submit tenders;
 - (c) in the case of negotiated procedures, the contracting entity consults suppliers or contractors of its choice and negotiates the terms of the contract with one or several of them.

7. 'Technical specifications' means the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics of a work, material, product or supply, which permits a work, a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting entity. These technical prescriptions may include quality, performance, safety or dimensions, as well as requirements applicable to the material, product, or supply as regards quality assurance, terminology, symbols, testing and test methods, packaging, marking or labelling. In relation to works contracts, they may also include rules for the design and costing, the test, inspection and acceptances for works and methods or techniques of construction and all other technical conditions which the contracting entity is in a position to prescribe under general or specific regulations, in relation to the finished works and to the materials or parts which they involve.

8. 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.

9. A 'European standard' is a standard approved by the European Committee for Standardisation (CEN) or by the European Committee for Electrotechnical Standardisation (CENELEC) as a 'European Standard (EN)' or 'Harmonisation Document (HD)' according to the Common Rules of those organisations or by the European Telecommunications Standards Institute (ETSI) as a 'European Telecommunications Standard (ETS)'.

10. A 'common technical specification' is a technical specification drawn up in accordance with a procedure recognized by the Community with a view to uniform application in all Member States and published in the *Official Journal of the European Communities*.

11. A 'European technical approval' is a favourable technical assessment of the fitness for use of a product for a particular purpose, based on fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of applications and use, as provided for in the Council Directive 89/106 ⁽¹⁾. The European technical approval shall be issued by an approval body designated for this purpose by the Member State.

Article 2

1. The provisions of this Directive shall apply to contracting entities which:

- (a) are public authorities or public undertakings and have as one of their activities any of those defined as being relevant for the purposes of this Directive by paragraph 2, or
- (b) when they are not public authorities or public undertakings, have as one of their principal activities any of those defined as being relevant for the purposes of this Directive by 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 are:

- (a) the supply or management of networks providing 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;
- (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, land, or inland waterway;
- (c) the management of networks providing a service to the public in the field of transport by railway, tramway, trolley bus, or bus.

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, including conditions on the routes to be served, the capacity to be made available, and the frequency of the service;

- (d) the operation of public telecommunications networks or the provision of one or more telecommunications services to the public.

3. For the purposes of applying paragraph 1(b), a contracting entity shall be considered to operate on the basis of special or exclusive rights in particular when:

- (a) for the purpose of engaging in an activity to which paragraph 2 refers, it is obliged to obtain prior authorisation from a competent authority of the relevant Member State;
- (b) for the purpose of constructing the networks or facilities to which paragraph 2 refers, 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;

⁽¹⁾ OJ No L 40, 11. 2. 1989, p. 12.

(c) In the case of paragraph 2(a) it supplies a network which is itself managed by an entity on the basis of special or exclusive rights or an authorisation granted by a competent authority of a Member State.

4. Contracting entities providing bus transport services to the public within the meaning of paragraph 2(c) shall be excluded from the provisions of this Directive provided that 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 contracting entities identified in Annexes I to X fulfil the criteria set out above.

Article 3

When awarding supply, works or software service contracts the contracting entities shall apply their own procedures adapted to the provisions of Titles II, III and IV.

Article 4

1. A contracting entity benefiting from a concession in relation to an activity described in Article 2(2)(a)(1) may award supply or works contracts without complying with the provisions of Titles II, III and IV when it intends to award such contracts to undertakings with which it is associated or affiliated, provided that for those cases where the concession contract of which it is a beneficiary has been concluded after the implementation of this Directive:

(a) a call for competition has been made through the publication of a tender notice in the *Official Journal of the European Communities* drawn up in accordance with Annex XII; and

(b) the entity enclosed a comprehensive list of these undertakings with its candidature for the concession, and has updated that list following any subsequent changes in relationships between the undertakings.

2. A 'concession' means a contract concluded in writing between a contracting entity which is a public authority within the meaning of Article 1(1) and a contracting entity, which is not a public authority or a public undertaking, whereby the latter accepts the responsibility for constructing, supplying or managing a network falling within the scope of Article 2(2)(a)(i) at its own expense and risk, in return for a remuneration.

3. An 'associated or affiliated undertaking' means any undertaking over which the contracting entity may exercise directly or indirectly a dominant influence or which may exercise a dominant influence over the contracting entity or which, in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of

ownership, financial participation, or the rules which govern it. A dominant influence on the part of an undertaking shall be presumed when, directly or indirectly in relation to another undertaking, it:

— holds the major part of the undertaking's subscribed capital, or

— controls 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. This Directive shall apply to contracts awarded by contracting entities whose activities are described in Article 2 (2)(a)(i), in so far as the contracts are in connection with hydraulic engineering projects, irrigation, land drainage or the disposal or treatment of sewage.

Article 5

1. Except in the case of public authorities, this Directive shall not apply to contracts which the contracting entities award exclusively for purposes other than the pursuit of their activities as described in Article 2(2).

2. The contracting entities referred to in paragraph 1 shall notify the Commission of any activities they regard as covered by the exclusion referred to in paragraph 1. The Commission shall periodically publish lists of those activities which it considers to be covered by this exclusion, for information in the *Official Journal of the European Communities*. In doing so the Commission shall take into account any sensitive commercial aspects the contracting entities may point out when forwarding this information.

Article 6

1. The provisions 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 the Commission of the products falling within the scope of paragraph 1 and of any relevant legal provisions.

Article 7

1. This Directive shall not apply to contracts which contracting entities, whose activities are described in Article 2(2)(d), award for purchase 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.

2. Member States shall notify the Commission of the services falling within the scope of paragraph 1 and any relevant legal provisions.

Article 8

This Directive shall not apply to contracts

- (a) in the case of the contracting entities specified in Annex I for the purchase of water;
- (b) in the case of contracting entities specified in Annexes II, III, IV and V, for the purchase of energy or for the supply of fuels for the production of energy.

Article 9

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 10

1. 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 for Public Contracts set up by Council Decision 71/306/EEC ⁽¹⁾; in the case of agreements governing contracts awarded by entities whose activities are defined in Article 2(2)(d), the Commission shall consult the Advisory Committee on Telecommunications Procurement as referred to in Article 30;
- (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.

⁽¹⁾ OJ No 185, 16. 8. 1971, p. 15.

Article 11

1. This Directive shall apply to contracts whose value, net of VAT, is not less than:

- ECU 200 000 in the case of supply and software service contracts,
- ECU 5 000 000 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 contracts, where their term is 12 months or less, the total contract value for its duration, or, where their term exceeds 12 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 instalment 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 for the same group of products 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 cases 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.

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.

However, in the case of works contracts contracting entities may derogate from paragraph 1 in respect of lots whose net of value added tax, does not exceed ECU 1 000 000, provided that the aggregate value of those lots does not exceed 20 % of the overall value.

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.

TITLE II

Technical specifications and standards

Article 12

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, European technical approvals or common technical specifications do not include provision for establishing conformity, or technical means do not exist for establishing satisfactorily conformity of a product with these standards, European technical approvals or common technical specifications;
- (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 ⁽¹⁾; or of Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications ⁽²⁾;
- (c) use of these standards, European technical approvals or common technical specifications would oblige the contracting entity to acquire supplies incompatible with equipment already in use or 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 or European technical approvals;
- (d) the project concerned is of a genuinely innovative nature for which use of existing European standards, European technical approvals or common technical specifications would not be appropriate.

3. In so far as contracting entities are obliged to publish a tender notice according to Article 16(1) or do so voluntarily according to Article 16(2)(a), they shall record in that notice, unless it is impossible, the reasons for invoking paragraph 2.

Article 13

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 14

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 17. Where such technical specifications are based on documents available to interested suppliers or contractors, a reference to those documents shall be sufficient.

⁽¹⁾ OJ No L 217, 5. 8. 1986, p. 21.

⁽²⁾ OJ No L 36, 7. 2. 1987, p. 31.

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 15

1. Contracting entities may choose any of the procedures described in Article 1(6) provided, subject to paragraph 2, a call for competition has been made in accordance with Article 16.

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, works and software service contracts, when the products, works or services involved are manufactured or carried out purely for the purpose of research, experiment, study or development. However, this provision shall not extend to contracts executed for the purpose of ensuring profit or of recovering 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 by events unforeseeable by the contracting entities, the time limits laid down for open and restricted procedures cannot be adhered to;
- (e) in the case of supply 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 contractor to which the same contracting entities awarded an earlier contract, provided that such works conform to a basic project for which a first contract was awarded after a call for competition. As soon as the first project is put up for tender, notice must be given that this procedure 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 11. This procedure may only be applied, as a general rule, during the five years following the conclusion 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 16

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 XIII 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 XIII B or Annex XIII C; or
- (b) by inviting candidates who have qualified in accordance with a qualification system meeting the conditions

of Article 23 which has been the subject of a notice drawn up in accordance with Annex XIV.

3. A call for competition shall also be considered to have been made by means of a periodic indicative notice within the meaning of Article 17 on condition that:

- (a) the contract relates to supplies, works or software service contracts 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 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 17

1. Contracting entities shall make known, at least once a year, by means of a periodic indicative notice drawn up in accordance with Annexes XV A and 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 12 months for each product area of which the estimated value, taking into account the provisions of Article 11, is equal to or greater than ECU 750 000;
- (b) in the case of works contracts, the essential characteristics of the works contracts envisaged of which the estimated value is equal to or greater than ECU 5 000 000.

2. A periodic notice need not include information on contracts which would prejudice the legitimate commercial interests of the contracting entity.

Article 18

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 XVI.

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 19

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 Publications of the European Communities shall publish the notices not later than 12 days after their dispatch.

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 Article 16(1) or (2)(a) shall not be published in any other way before that notice has been dispatched to the Publications Office of the European Communities. Such publications shall not contain information other than that published in the *Official Journal of the European Communities*.

Article 20

1. In open procedures the time limit for the receipt of tenders shall be fixed by contracting entities at not less than 40 days from the date of publication of the notice.

2. In restricted procedures and in negotiated procedures with a prior call for competition, the following arrangements shall apply:

— where a notice is published in accordance with Article 16(2)(a), the time for receipt of requests to participate shall, as a general rule, be at least three weeks and shall in any case not be less than 10 days from the date of publication of the tender notice;

— the time for receipt of tenders may be fixed by mutual agreement between the contracting entity and the selected candidates, provided that all tenderers are given equal time to prepare and submit tenders;

— where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting entity shall fix a time limit which shall, as a general rule, be at least three weeks and shall in any case not be less than 10 days from the date of the invitation to tender and which shall be sufficiently long to take account of the complexity of the specifications, the need to examine in detail contract documents, supporting documents or additional information as well as the need for site-visits or on-the-spot examination of essential reference documents.

3. Contracting entities which wish to award a concession in the water sector, pursuant to Article 4(1), shall fix a time limit for receipt of candidatures which shall be not less than 40 days from the date of publication of the notice.

Article 21

In the contract documents, the contracting entity may ask the tenderer to indicate in his tender any share of the contract he may intend to subcontract to third parties.

This indication shall be without prejudice to the question of the principal contractor's responsibility.

Article 22

1. Provided they have been requested in good time, the contract documents and supporting documents must be sent to the suppliers or contractors by the contracting entities as a general rule within six 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 six days before the final date fixed for receipt of tenders. In the case of Article 17 (4), the time limit may be reduced to four 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 and 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 contract if these are not given in the notice.

5. Requests to participate in contracts and invitations to tender may be made by letter, telegram, telex, telefax or telephone. If by one of the last four, they must be confirmed by letter dispatched before the end of the period laid down in Article 20(2).

TITLE IV

Qualification, selection and award of contracts

Article 23

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 24

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 23(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 23(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 XIII 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 25

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 26

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, commitments with regard to spare parts, security of supplies, 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 are submitted by a tenderer and meet the minimum specifications required by the contracting entities. Contracting entities shall state in the contract documents the minimum specifications to be respected by the variants and any specific requirements for their presentation. They shall indicate in the contract documents if variants will not be considered.

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 Directive 89/106/EEC, when and where this is required by the regulations concerning given works.

5. If, for a given contract, tenders appear abnormally low in relation to the transaction, before it may reject those tenders the contracting entity shall request in writing details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements taking account of the explanations received. 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 the approval of the Commission pursuant to Article 93(3) of the Treaty.

The contracting entity may take into consideration explanations which 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 27

1. Article 26(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 or 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.

TITLE V

Final provisions

Article 28

1. Without prejudice to the obligations of the Community or its Member States in relation to non-member countries, 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 such an 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 %.

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 non-member countries;
- (b) the value of services performed outside the Community shall include the value of all activities performed on the territory of non-member countries that contribute to the rendering of the services covered by the contract.

5. This Article shall not apply to offers of non-member 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 non-member country, within the GATT framework or otherwise.

Article 29

1. The value in national currencies of the thresholds specified in Article 11 shall in principle be revised every two years with effect from 1 January 1992. 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 for Public Contracts, in principle two years after its initial application. In the case of entities whose activities are defined in Article 2(2)(d), the method of calculation shall also be examined by the Advisory Committee on Telecommunications Procurement.

Article 30

1. The Commission shall be assisted, as regards procurement by the contracting entities whose activities are defined in Article 2(2)(d), by a committee of an advisory nature which shall be the Advisory Committee on Telecommuni-

cations Procurement. The Committee is composed of the representatives of the Member States and chaired by the representative of the Commission.

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

Article 31

1. Annexes I to X may be amended by the Commission
- (a) to delete entities to which the Annexes refer because they no longer fulfil the criteria for their inclusion set out in Article 2 (1);
 - (b) to include entities which meet those criteria;
 - (c) to take account of amendments to the legal instruments to which the Annexes I to IX refer which do not involve the deletion or inclusion of entities in accordance with (a) and (b).

2. Amendments to Annexes I to IX shall be made by the Commission after consulting the Advisory Committee for Public Contracts, set up by Decision 71/306/EEC. In the case of Annex X, the Advisory Committee on Telecommunications Procurement shall be consulted.

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 annexes shall be published for information in the *Official Journal of the European Communities*.

Article 32

1. Contracting entities shall keep appropriate information 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 standards other than European standards, common technical specifications

or European technical approvals, pursuant to Article 12(2), or the reasons for not applying performance standards and specifications pursuant to Article 13(2);

- (b) information on decisions concerning the qualification, non-qualification or termination of a qualification of undertakings, pursuant to Article 24. 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, pursuant to Article 18(2);
- (d) information on cases of reliance on restricted or negotiated procedures without prior call for competition;
- (e) the criteria used and the manner of their application with regard to the selection of candidates pursuant to Articles 23 and Article 25;
- (f) the criteria used and the manner of their application with regard to the award of the contract pursuant to Article 26.

2. The information shall be kept for a period not less than the limitation period under the relevant national law and shall be made available to the Commission on demand.

Article 33

Member States shall communicate to the Commission, each year at the latest on 31 October for the preceding calendar year, a statistical report concerning the contracts awarded by the entities defined in Article 2 and broken down between the categories of activities to which Annex I to X refer. Such a report shall at least include:

- (a) for each of these categories by number and total value of contracts covered by this Directive
 - the breakdown between supply, software service and works contracts,
 - the breakdown between the means of call for competition provided for in Article 16,
 - the breakdown between contracts awarded to suppliers inside and outside the Community and from each of the Member States,
 - the proportion of contracts awarded by negotiated procedures without prior call for competition,

- (b) for each of these categories the total value of contracts which fall below the thresholds specified in Article 11

and which would otherwise have been covered by this Directive and broken down between supply, software service and works contracts;

- (c) for the category of the entities whose activities are defined in Article 2(2)(d), evidence that the levels of progressive implementation of this Directive established in Article 36 are complied with.

Article 34

1. Article 2(2) of Directive 77/62/EEC is hereby replaced by the following:

‘2. This Directive shall not apply to:

- (a) the award of public supply contracts by contracting authorities in the field covered by the provisions of Council Directive ...(*);
- (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 interests of that State's security so require.

(*) OJ No L...’

2. Article 3(4) and (5) of Directive 71/305/EEC, as amended by Directive...⁽¹⁾, is hereby replaced by the following:

‘4. This Directive shall not apply to the award of public works contracts by contracting authorities in the field covered by the provisions of Council Directive ...(*)’.

(*) OJ No L ...’

Article 35

Not later than four years after the coming into force of this Directive, the Commission, acting in close cooperation

(1) 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].

with the Advisory Committee for Public Contracts, 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 within and between the sectors concerned. In the case of entities whose activities are defined in Article 2(2)(d), the Commission shall act in close cooperation with the Advisory Committee on Telecommunications Procurement.

Article 36

1. In the case of supplies and software service contracts awarded by entities whose activities are defined in Article 2(2)(d) the provisions of this Directive shall apply to:

— at least 70 % in estimated value of the procurement procedures carried out in the year 1992,

— all procurement carried out from 1 January 1993 onwards.

2. Notwithstanding paragraph 1, the provisions of Article 17 shall apply to all supply and software service contracts from 1 January 1993.

Article 37

1. Member States shall adopt the measures necessary to comply with this Directive by 1 January 1992. They shall inform the Commission thereof.

The provisions adopted pursuant to the first subparagraph shall make express reference to this Directive.

2. Recommendation 84/550/EEC is withdrawn with effect from 31 December 1991.

Article 38

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

Article 39

This Directive is addressed to the Member States.

ANNEXES

- ANNEX I: Contracting entities in the field of the production, transport or distribution of drinking water
- ANNEX II: Contracting entities in the field of the production, transport or distribution of electricity
- ANNEX III: Contracting entities in the field of the transport or distribution of gas or heat
- ANNEX IV: Contracting entities in the field of exploration for and extraction of oil or gas
- ANNEX V: Contracting entities in the field of exploration for and extraction of coal or other solid fuels
- ANNEX VI: Contracting entities in the field of railway services
- ANNEX VII: Contracting entities in the field of urban railway, tramway, trolley bus or bus services
- ANNEX VIII: Contracting entities in the field of airport facilities
- ANNEX IX: Contracting entities in the field of maritime or inland port or other terminal facilities
- ANNEX X: Contracting entities in the field of telecommunications
- ANNEX XI: Professional activities in the building and civil engineering sector
- ANNEX XII: Notice concerning water concession contracts
- ANNEX XIII: A. Tender notice related to open procedures
B. Notice related to restricted procedures
C. Notice related to negotiated procedures
- ANNEX XIV: Notice on the existence of a qualification system
- ANNEX XV: Periodic notice
A. Concerning supply and software service contracts
B. Concerning works contracts
- ANNEX XVI: Notice on contracts awarded

ANNEX I

PRODUCTION, TRANSPORT OR DISTRIBUTION OF DRINKING WATER

BELGIUM

Entity set up pursuant to the *Décret du 2 juillet 1987 de la région wallonne érigeant en entreprise régionale de production et d'adduction d'eau le service du ministère de la région chargé de la production et du grand transport d'eau*.

Entity set up pursuant to the *Arrêté du 23 avril 1986 portant constitution d'une société wallonne de distribution d'eau*.

Entity set up pursuant to the *Arrêté du 17 juillet 1985 de l'exécutif flamand portant fixation des statuts de la société flamande de distribution d'eau*.

Entities producing or distributing water and set up pursuant to the *Loi relative aux intercommunales du 22 décembre 1986*.

Entities producing or distributing water set up pursuant to the *Code communal, article 147bis, ter et quater, sur les régies communales*.

DENMARK

Entities producing or distributing water referred to in article 3, paragraph 3 of *Lov om vandforsyning m.v. af 4. juli 1985*.

GERMANY

Entities producing or distributing water pursuant to the *Eigenbetriebsverordnungen* or *Eigenbetriebsgesetze* of the *Länder*.

Entities producing or distributing water pursuant to the *Gesetze über die Kommunale Gemeinschaftsarbeit oder Zusammenarbeit* of the *Länder*.

Entities producing water pursuant to the *Gesetz über Wasser- und Bodenverbände vom 10. Februar 1937* and the *erste Verordnung über Wasser- und Bodenverbände vom 3. September 1937*.

(*Regiebetriebe*) producing or distributing water pursuant to the *Gemeindeordnungen der Länder*.

Entities set up pursuant to the *Aktiengesetz vom 6. September 1965 geändert 19. Dezember 1985* or *GmbH-Gesetz vom 20. Mai 1898 geändert 15. Mai 1986* or having the legal status of a *Kommanditgesellschaft*, producing or distributing water on the basis of a *Konzessionsvertrag* granted by regional or local authorities.

GREECE

The Water Company of Athens (*Εταιρεία Υδρεύσεως — Αποχετεύσεως Πρωτευούσης*) set up pursuant to law 1068/80 of 23 August 1980.

The Water Company of Salonic (*Οργανισμός Υδρεύσεως Θεσσαλονίκης*) operating pursuant to presidential decree 61/1988.

The Water Company of Volos (*Εταιρεία Υδρεύσεως Βόλου*) operating pursuant to law 890/1979.

Municipal Companies (*Δημοτικές Επιχειρήσεις ύδρευσης-αποχέτευσης*) producing or distributing water and set up pursuant to law 1069/80 of 23 August 1980.

Associations of Local Authorities (*Σύνδεσμοι Ύδρευσης*) operating pursuant to the Code of Local Authorities (*Κώδικας Δήμων και Κοινοτήτων*) implemented by presidential decree 76/1985.

SPAIN

Entities producing or distributing water pursuant to the *Ley nº 7/1985 de 2 de abril de 1985. Reguladora de las Bases del Régimen local* and to the *Decreto Real nº 781/1986 Texto Refundido Régimen Local*.

FRANCE

Entities producing or distributing water pursuant to the:

Code des communes L 323-1 à L 328-8, R 323-1 à R 323-6 (*dispositions générales sur les régies*).

Code des communes L 323-8 R 323-4 [*Régies directes (ou de fait)*]; or

Décret-loi du 28 décembre 1926, Règlement d'administration publique du 17 février 1930, code des communes L 323-10 à L 323-13 R 323-75 à 323-132 (régies à simple autonomie financière); or

Code des communes L 323-9, R 323-7 à R 323-74, décret du 19 octobre 1959 (régies à personnalité morale et à autonomie financière); or

Code des communes L 324-1 à L 324-6, R 324-1 à R 324-13 (gestion déléguée, concession et affermage); or

Jurisprudence administrative, Circulaire intérieure du 13 décembre 1975 (gérance); or

Code des communes R 324-6, Circulaire intérieure du 13 décembre 1975 (régie intéressée); or

Circulaire intérieure du 13 décembre 1975 (exploitation aux risques et périls); or

Décret du 20 mai 1955, Loi du 7 juillet 1983 sur les sociétés d'économie mixte (participation à une société d'économie mixte); or

Code des communes L 322-1 à L 322-6, R 322-1 à R 322-4 (dispositions communes aux régies, concessions et affermagés).

IRELAND

The Dublin Corporation.

Entities producing or distributing water pursuant to *The Public Health (Ireland) Act 1878, the Water Supplies Act 1942, the Sanitary Services Act 1964.*

ITALY

Entities producing or distributing water pursuant to the *Testo Unico delle leggi sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province approvato con Regio Decreto 15 ottobre 1925, n. 2578* and to the *Decreto del P.R. n. 902 del 4 ottobre 1986.*

Ente Autonomo Acquedotto Pugliese set up pursuant to *RDL 19 ottobre 1919, n. 2060.*

Ente Acquedotti Siciliani set up pursuant to *leggi regionali 4 settembre 1979, n. 2/2e 9 agosto 1980, n. 81.*

Ente Sardo Acquedotti e Fognature set up pursuant to *legge 5 luglio 1963 n. 9.*

LUXEMBOURG

Local authorities distributing water.

Associations of local authorities producing or distributing water set up pursuant to the *Loi du 14 février 1900 concernant la création des syndicats de communes telle qu'elle a été modifiée et complétée par la Loi du 23 décembre 1958 et par la Loi du 29 juillet 1981* and pursuant to the *Loi du 31 juillet 1962 ayant pour objet le renforcement de l'alimentation en eau potable du Grand-Duché du Luxembourg à partir du réservoir d'Esch-sur-Sûre.*

NETHERLANDS

Entities producing or distributing water pursuant to the *Waterleidingwet van 6 april 1957*, amended by *de Wetten van 30 juni 1967, 10 september 1975, 23 juni 1976, 30 september 1981, 25 januari 1984, 29 januari 1986.*

PORTUGAL

Empresa Pública das Aguas Livres producing or distributing water pursuant to *Decreto-Lei 190/81 de 4 de Julho de 1981.*

Local authorities producing or distributing water.

UNITED KINGDOM

Water authorities and companies producing or distributing water pursuant to the *Water Acts 1945, 1973 and 1983.*

The *Central Scotland Water Development Board* producing water and the *water authorities* producing or distributing water pursuant to the *Water (Scotland) Act 1980.*

The *Department of the Environment for Northern Ireland* responsible for producing and distributing water pursuant to the *Water and Sewerage (Northern Ireland) Order 1973.*

ANNEX II

PRODUCTION, TRANSPORT OR DISTRIBUTION OF ELECTRICITY

BELGIUM

Entities producing, transporting or distributing electricity pursuant to *Article 5: Des régies communales et intercommunales* of the *Loi du 10 mars 1925 sur les distributions d'énergie électrique*.

Entities transporting or distributing electricity pursuant to the *Loi relative aux intercommunales du 22 décembre 1986*.

EBES, INTERCOM, UNERG and other entities producing, transporting or distributing electricity and granted a concession for distribution pursuant to *Article 8 — les concessions communales et intercommunales* of the *Loi du 10 mars 1925 sur les distributions d'énergie électrique*.

The *Société publique de production d'électricité (SPE)*.

DENMARK

Entities producing or transporting electricity on the basis of a licence pursuant to §3, *stk. 1* of the *Lov nr. 54 af 25. februar 1976 om elforsyning, jf. Bekendtgørelse nr. 607 af 17. december 1976 om elforsyningslovens anvendelsesområde*.

Entities distributing electricity as defined in §3, *stk. 2* of the *Lov nr. 54 af 25. februar 1976 om elforsyning, jf. Bekendtgørelse nr. 607 af 17. december 1976 om elforsyningslovens anvendelsesområde* and on the basis of authorizations for expropriation pursuant to articles 10 to 15 of the *Lov om elektriske stærktstrømsanlæg, jf. Lovbekendtgørelse nr. 669 af 28. december 1977*.

GERMANY

Entities producing, transporting or distributing electricity as defined in § 2 II of the *Gesetz zur Förderung der Energiewirtschaft (Energiewirtschaftsgesetz) vom 13. Dezember 1935*.

GREECE

The *Δημόσια Επιχείρηση Ηλεκτρισμού* (Public Power Corporation) set up pursuant to the law 1468 of 2 August 1950. *Περί ιδρύσεως Δημοσίας Επιχειρήσεως Ηλεκτρισμού* and operating pursuant to the law 57/85. *Δομή, ρόλος και τρόπος διοίκησης και λειτουργίας της κοινωνικοποιημένης Δημόσιας Επιχείρησης Ηλεκτρισμού*.

SPAIN

Entities producing, transporting or distributing electricity pursuant to article 1 of the *Decreto Ley de 12 de marzo de 1954* approving the *Reglamento de Verificaciones Eléctricas y Regularidad en el suministro de Energía*.

Red Eléctrica España (REDESA) set up pursuant to *Decreto Real nº 91 de 23 de enero de 1985*.

FRANCE

Électricité de France, set up and operating pursuant to *Loi 46/6288 du 8 avril 1946 sur la nationalisation de l'électricité et du gaz*.

Entities (*sociétés d'économie mixte* or *régies*) distributing electricity and referred to in article 23 of *Loi 48/1260 du 12 août 1948 portant modification des Lois 46/6288 du 8 avril 1946 et 46/2298 du 21 octobre 1946 sur la nationalisation de l'électricité et du gaz*.

Compagnie Nationale du Rhône.

IRELAND

The *Electricity Supply Board (ESB)* set up and operating pursuant to the *Electricity Supply Act 1927*.

ITALY

Ente Nazionale per l'Energia elettrica set up pursuant to *legge n. 1643, 6 dicembre 1962 approvato con Decreto n. 1720, 21 dicembre 1965*.

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

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

LUXEMBOURG

Compagnie grand-ducale d'électricité de Luxembourg producing or distributing electricity pursuant to the *Convention du 11 novembre 1927 concernant l'établissement et l'exploitation des réseaux de distribution d'énergie électrique dans le Grand-Duché du Luxembourg approuvée par la loi du 4 janvier 1928*.

Société électrique de l'Our (SEO).

Syndicat de Communes SIDOR.

Entities producing electricity pursuant to the *Accord du 1^{er} janvier 1960 entre le Gouvernement et les petites centrales hydro-électriques privées concernant la fourniture d'énergie électrique au réseau public*.

Entities distributing electricity pursuant to article 5 of the *Convention du 11 novembre 1927 concernant l'établissement et l'exploitation des réseaux de distribution d'énergie électrique dans le Grand-Duché du Luxembourg, approuvés par la loi du 4 janvier 1928*.

NETHERLANDS

Elektriciteitsproduktie maatschappij Oost-Nederland (EPON).

Elektriciteitsbedrijf Utrecht-Noord-Holland-Amsterdam (UNA).

Elektriciteitsbedrijf Zuid-Holland (EZH).

Elektriciteitsproduktie maatschappij Zuid-Nederland (EPZ).

Provinciale Zeeuwse Energie Maatschappij (PZEM).

Samenwerkende Elektriciteitsproduktiebedrijven (SEP).

Entities distributing electricity on the basis of a licence (*Vergunning*) granted by the provincial authorities pursuant to the *Provinciewet van 25 januari 1962*.

PORTUGAL

Electricidade de Portugal (EDP) set up pursuant to *Decreto Lei 502/76 de 30 de Junho de 1976*.

Entities distributing electricity pursuant to *Artigo 1^o — Decreto Lei 344-B/82 de 1 de Setembro de 1982*, amended by *Decreto Lei 297/86 de 19 de Setembro de 1986*.

UNITED KINGDOM

Central Electricity Generating Board (CEGB), and the Areas Electricity Boards producing, transporting or distributing electricity pursuant to the *Electricity Supply Act 1926, Electricity Act 1947 and the Electricity Act 1957*.

The *North of Scotland Hydro-Electricity Board (NSHB)* set up pursuant to the *Hydro Electric Development (Scotland Act 1943)* and the *Electricity Act 1947*.

The *South of Scotland Electricity Board (SSEB)* set up pursuant to the *South of Scotland Electricity Order Confirmation Act 1956*.

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

ANNEX III

TRANSPORT OR DISTRIBUTION OF GAS OR HEAT

BELGIUM

Distrigaz SA operating pursuant to the *Loi du 29 juillet 1983*.

Entities transporting gas on the basis of an authorization or concession pursuant to the *Loi du 12 avril 1965*, as amended by the *Loi du 28 juillet 1987*.

Entities distributing gas and operating pursuant to the *Loi relative aux intercommunales du 22 décembre 1986*.

Local authorities, or associations of, supplying heat to the public.

DENMARK

Dansk Olie og Naturgas A/S operating on the basis of an exclusive right granted pursuant to *Bekendtgørelse nr. 869 af 18. juni 1979 om eneretsbevilling til indførsel, forhandling, transport og oplagring af naturgas*.

Entities operating pursuant to *lov nr. 294 af 7. juni 1972 om naturgasforsyning*.

Entities distributing gas or heat on the basis of an approval pursuant to chapter IV of *lov om varmforsyning jf. lov bekendtgørelse nr. 542 af 6. oktober 1982*.

Entities transporting gas on the basis of an authorization pursuant to *Bekendtgørelse nr. 141 af 13. marts 1974 om rørledningsanlæg på dansk kontinentalsokkelområde til transport af kulbrinter* (installation of pipelines on continental platform for the transport of hydrocarbons).

GERMANY

Entities transporting or distributing gas as defined in § 2 II/1 of the *Gesetz zur Förderung der Energiewirtschaft vom 19. Dezember 1935 (Energiewirtschaftsgesetz)*.

Local authorities, or associations of, supplying heat to the public.

GREECE

DEP transporting or distributing gas pursuant to the Ministerial decision 2583/1987. *Ανάθεση στη Δημόσια Επιχείρηση Πετρελαίου αρμοδιοτήτων σχετικών με το φυσικό αέριο*.

Athens Municipal Gasworks SA DEFA transporting or distributing gas.

SPAIN

Entities operating pursuant to *Ley nº 10 de 15 de junio de 1987*.

FRANCE

Société nationale des gaz du Sud-ouest transporting gas.

Gaz de France, set up and operating pursuant to *Loi 46/6288 du 8 avril 1946 sur la nationalisation de l'électricité et du gaz*.

Entities (*sociétés d'économie mixte* or *régies*) distributing electricity and referred to in article 23 of *Loi 48/1260 du 12 août 1948 portant modification des Lois 46/6288 du 8 avril 1946 et 46/2298 du 21 octobre 1946 sur la nationalisation de l'électricité et du gaz*.

Compagnie Française du Méthane transporting gas.

Local authorities, or associations of, supplying heat to the public.

IRELAND

Irish Gas Board and other entities operating pursuant to the *Gas Act 1976*.

Dublin Corporation supplying heat to the public.

ITALY

SNAM and SGMe Montedison transporting gas.

Entities distributing gas pursuant to the *Testo Unico delle leggi sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province approvato con Regio Decreto 15 ottobre 1925, n. 2578* and to the *Decreto del P.R. n. 902 del 4 ottobre 1986*.

Entities distributing heat to the public referred to in article 10 of the *legge 29 maggio 1982, n. 308 — Norme sul contenimento dei consumi energetici, lo sviluppo delle fonti rinnovabili di energia, l'esercizio di centrali elettriche alimentate con combustibili diversi dagli idrocarburi*.

Local authorities, or associations of, supplying heat to the public.

LUXEMBOURG

Société de Transport de Gaz SOTEG SA.

Gaswerk Esch-Uelzecht SA.

Service Industriel de la Commune de Dudelange.

Service Industriel de la Commune de Luxembourg.

Local authorities, or associations of, supplying heat to the public.

NETHERLANDS

Gasunie

Entities transporting or distributing gas on the basis of a concession (*concessie*) granted by the local authorities pursuant to the *Gemeentewet van 29 juni 1851*.

Local or provincial authorities transporting or distributing gas to the public pursuant to the *Gemeentewet van 29 juni 1851* and the *Provinciewet van 25 januari 1962*.

Local authorities, or associations of, supplying heat to the public.

PORTUGAL

Sociedade de Electricidade de Portugal (EDP).

UNITED KINGDOM

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

Local authorities, or associations of, supplying heat to the public.

ANNEX IV

EXPLORATION FOR AND EXTRACTION OF OIL OR GAS

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

BELGIUM

Loi du 1^{er} mai 1939 complétée par l'arrêté royal n° 83 du 28 novembre 1939 sur l'exploration et l'exploitation du pétrole et du gaz.

Arrêté royal du 15 novembre 1919.

Arrêté royal du 7 avril 1953.

Arrêté royal du 15 mars 1960, Loi au sujet de la plate-forme continentale du 15 juin 1969.

Arrêté de l'Exécutif régional wallon du 29 septembre 1982.

Arrêté de l'Exécutif flamand du 30 mai 1984.

DENMARK

Lov nr. 293 af 10. juni 1981 om anvendelse af Danmarks undergrund.

Lov om kontinentalsoklen, jf. lovbekendtgørelse nr. 182 af 1. maj 1979.

GERMANY

Bundesberggesetz vom 13. August 1980, amended on 29 November 1986.

GREECE

Law 87/1975 setting up DEP EKY. Περί ιδρύσεως Δημοσίας Επιχειρήσεως Πετρελαίου.

SPAIN

Ley sobre Investigación y Explotación de Hidrocarburo de 27 de junio de 1974 and its implementing decrees.

FRANCE

Code minier (Décret 56-838 du 16 août 1956), amended by *Loi 56-1327 du 29 décembre 1956*, *Ordonnance 58-1186 du 10 décembre 1958*, *Décret 60-800 du 2 août 1960*, *Décret 61-6359 du 7 avril 1961*, *Loi 70-1 du 2 janvier 1970*, *Loi 77-620 du 16 juin 1977*, *Décret 80-204 du 11 mars 1980*.

IRELAND

Petroleum and Other Minerals Development Act 1960.

Ireland Exclusive Licensing Terms 1975.

Revised Licensing Terms 1987.

ITALY

Law No 136 of 10 February 1953.

Law No 6 of 11 January 1957, amended by Law No 613 of 21 July 1967.

LUXEMBOURG

—

NETHERLANDS

Mijnwet nr. 285 van 21 april 1810.

Wet opsporing delfstoffen nr. 258 van 3 mei 1967.

Mijnwet continentaalplat 1965, nr. 428 van 23 september 1965.

PORTUGAL

Decreto-Lei 543/74 de 16 de Outubro de 1974, as amended by *Decrees and communications 168/77, 22/79, 266/80, 234/84, 174/85*.

Decreto 47/973 de 30 de Setembro de 1967 and 493/69 de 11 de Novembro de 1969, as amended by *Decrees 97/71, 98/71, 96/74, 424-C/76, 315/78, 266/80, 2/81, 245/82*.

UNITED KINGDOM

Petroleum Production Act 1934.

Continental Shelf Act 1964.

Pipeline Act 1962.

Petroleum and Submarine Pipeline Act 1975.

Oil and Gas Act 1982.

Petroleum Act 1987.

Petroleum (Production) regulation 1982, 1984, 1986.

Oil and Pipeline Act 1985.

ANNEX V

EXPLORATION FOR AND EXTRACTION OF COAL OR OTHER SOLID FUELS

BELGIUM

Entities exploring or extracting coal or other solid fuels pursuant to the *Arrêté du régent du 22 août 1948* and the *Loi du 22 avril 1980*.

DENMARK

Entities exploring or extracting coal or other solid fuels pursuant to the *lov nr. 223 af 8. juni 1977 om råstoffer*.

GERMANY

Entities exploring or extracting coal or other solid fuels pursuant to the *Bundesberggesetz vom 13. August 1980, BGBl 1980*.

GREECE

Public Power Corporation (*Δημόσια Επιχείρηση Ηλεκτρισμού*) exploring or extracting coal or other solid fuels pursuant to *the Mining Code of 1973, as amended by the law of 27 April 1976*.

SPAIN

Entities exploring or extracting coal or other solid fuels pursuant to the Mining Code of 21 July 1973.

FRANCE

Entities exploring or extracting coal or other solid fuels pursuant to *Code minier (Décret 56-863 du 16 août 1956)*, as amended by *Loi 77-620 du 16 juin 1977, Décret 80-204 et Arrêté du 11 mars 1980*.

IRELAND

Bord na Mona.

ITALY

Carbo Suicis SpA.

LUXEMBOURG

—

NETHERLANDS

—

PORTUGAL

Empresa Carbonifera do Douro.

UNITED KINGDOM

British Coal Board set up pursuant to *Coal Industry Nationalisation Act 1946*.

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

ANNEX VI

CONTRACTING ENTITIES IN THE FIELD OF RAILWAY SERVICES

BELGIUM

Société nationale des chemins de fer belges.
Nationale Maatschappij der Belgische Spoorwegen.

DENMARK

Danske Statsbaner (DSB).

Entities operating set up pursuant to *Lov nr. 295 af 6. juni 1984 om privatbanerne*.

GERMANY

Deutsche Bundesbahn.

Other entities providing railway services to the public as defined in paragraph 2 of *Allgemeines Eisenbahngesetz* 1951.

GREECE

Οργανισμός Σιδηροδρόμων Ελλάδος.

SPAIN

Red Nacional de Los Ferrocarriles Españoles.
Ferrocarriles de Vía Estrecha (FEVE).
Ferrocarriles de la Generalitat de Catalunya (FGC).
Eusko Trenbideak (Bilbao).
Ferrocarriles de la Generalitat Valenciana (FGV).

FRANCE

Société nationale des chemins de fer français and other *réseaux ferroviaires ouverts au public* referred to in the *Loi d'orientation des Transports intérieurs du 30 décembre 1982, Titre II, Chapitre 1^{er} du Transport ferroviaire.*

IRELAND

Iarnrod Eireann (Irish Rail).

ITALY

Ferrovie dello Stato.

Entities providing railway services on the basis of a concession pursuant to article 10 of *Regio Decreto 9 maggio 1912, n. 1447, che approva il testo unico delle disposizioni di legge per le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili.*

Entities operating on the basis of a concession granted, pursuant to special laws, as referred to in *Titolo XI, Capo II, Sezione 1a* of *Regio Decreto 9 maggio 1912, n. 1447, che approva il testo unico delle disposizioni di legge per le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili.*

Entities providing railway services on the basis of a concession pursuant to article 4 of *Legge 14 giugno 1949, n. 410, concorso dello Stato per la riattivazione dei pubblici servizi di trasporto in concessione.*

Entities or local authorities providing railway services on the basis of a concession pursuant to article 14 of *Legge 2 agosto 1952, n. 1221 — Provvedimenti per l'esercizio ed il potenziamento di ferrovie e di altre linee di trasporto in regime di concessione.*

LUXEMBOURG

Chemins de fer luxembourgeois (CFL).

NETHERLANDS

Nederlandse Spoorwegen NV.
Streekvervoerbedrijf Centraal Nederland.

PORTUGAL

Caminhos de Ferro Portugueses.

UNITED KINGDOM

British Rail.
Northern Ireland Railways.

ANNEX VII

CONTRACTING ENTITIES IN THE FIELD OF URBAN RAILWAY, TRAMWAY, TROLLEY BUS
OR BUS SERVICES

BELGIUM

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

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

Société des transports intercommunaux de Bruxelles (STIB).

Maatschappij van het intercommunaal Vervoer te Antwerpen (MIVA).

Maatschappij van het intercommunaal Vervoer te Gent (MIVG).

Société des transports intercommunaux de Charleroi (STIC).

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

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

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

DENMARK

Danske Statsbaner (DSB)

Entities providing bus services to the public (*almindelig rutekørsel*) on the basis of an authorization pursuant to *Lov nr. 115 af 29. marts 1978 om buskørsel.*

GERMANY

Entities providing transport services to the public as defined in § 12, II und II of the *Personenbeförderungsgesetz vom 21. März 1961.*

GREECE

Ηλεκτροκίνητα Λεωφορεία Περιοχής Αθηνών-Πειραιώς.

(Electric Buses of the Athens — Piraeus Area) operating pursuant to *decree 768/1970 and law 588/1977.*

Ηλεκτρικοί Σιδηρόδρομοι Αθηνών-Πειραιώς.

(Athens — Piraeus Electric Railways) operating pursuant to *laws 352/1976 and 588/1977.*

Επιχείρηση Αστικών Συγκοινωνιών.

(Enterprise of Urban Transport) operating pursuant to *law 588/1977.*

Κοινό Ταμείο Εισπράξεως Λεωφορείων.

(Joint Receipts Fund of Buses) operating pursuant to *decree 102/1973.*

ΡΟΔΑ (Δημοτική Επιχείρηση Λεωφορείων Ρόδου).

Roda Municipal bus enterprise in Rhodes.

Οργανισμός Αστικών Συγκοινωνιών Θεσσαλονίκης.

(Urban Transport Organization of Thessaloniki) operating pursuant to *decree 3721/1957 and law 716/1980.*

SPAIN

Entities providing transport services to the public pursuant to the *Ley de Régimen Local.*

Corporación metropolitana de Madrid.

Corporación metropolitana de Barcelona.

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

Entities providing bus services to the public, pursuant to article 71 of the *Ley de Ordenación de Transportes Terrestres de 31 de julio de 1987.*

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

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

FRANCE

Entities providing transport services to the public pursuant to article 7-11 of *Loi 82-1153 du 30 décembre 1982, Transports intérieurs, Orientation*.

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

IRELAND

Iarnrod Eireann (Irish Rail).

Bus Eireann (Irish Bus).

Bus Atha Cliath (Dublin Bus).

Entities providing transport services to the public on the basis of a licence granted pursuant to the *Road Transport Act 1932*.

ITALY

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

Entities providing transport services to the public pursuant to article 1, n. 4 or n. 15 of *Regio Decreto 15 ottobre 1925, n. 2578 — Approvazione del testo unico della legge sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province*.

Entities operating on the basis of a concession pursuant to article 242 or 256 of *Regio Decreto 9 maggio 1912, n. 1447, che approva il testo unico delle disposizioni di legge per le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili*.

Entities or local authorities operating on the basis of a concession pursuant to article 4 of *Legge 14 giugno 1949, n. 410, concorso dello Stato per la riattivazione dei pubblici servizi di trasporto in concessione*.

Entities operating on the basis of a concession pursuant to article 14 of *Legge 2 agosto 1952, n. 1221 — Provvedimenti per l'esercizio ed il potenziamento di ferrovie e di altre linee di trasporto in regime di concessione*.

LUXEMBOURG

Chemins de fer du Luxembourg (CFL).

Service communal des autobus municipaux de la ville de Luxembourg.

Transports intercommunaux du Canton d'Esch-sur-Alzette (TICE).

Fédération luxembourgeoise des entreprises d'autobus et d'autocars operating pursuant to the *Règlement Grand-Ducal du 3 février 1978 concernant les conditions d'octroi des autorisations d'établissement et d'exploitation des services de transports routiers réguliers de personnes rémunérées*.

NETHERLANDS

Entities providing transport services to the public pursuant to chapter II (*openbaar vervoer*) of the *Wet Personenvervoer van 12 maart 1987*.

PORTUGAL

Rodoviária Nacional EP.

Serviço de Transportes Colectivos do Porto.

Companhia Carris de Ferro de Lisboa.

Companhia de Metropolitano de Lisboa.

Entities providing bus services to the public pursuant to *base 7, Lei 2008 de 7 de Setembro de 1945, Coordenação do Transportes Terrestres* and article 72 of the *Decreto Lei 372-72 de 31 de Dezembro de 1948, Regulamento do transportes automoveis*.

UNITED KINGDOM

Entities providing bus services to the public pursuant to *the London Regional Transport Act 1984*.

Entities providing bus services to the public pursuant to the *Transport Act 1985*.

Newcastle Railway.

Glasgow Underground.

Manchester Underground.

Dockland Railway.

London Underground.

ANNEX VIII

CONTRACTING ENTITIES IN THE FIELD OF AIRPORT FACILITIES

BELGIUM

Régie des Voies Aériennes set up pursuant to the *Arrêté-loi du 20 novembre 1946 portant création de la régie des voies aériennes* amended by the *Arrêté royal du 5 octobre 1970 portant refonte du statut de la régie des voies aériennes*.

DENMARK

Airports operating on the basis of an authorization pursuant to § 55, *stk. 1 i Lov om Luftfart*, jf. *Lovbekendtgivelse nr. 408 af 11. september 1985*.

GERMANY

Airports as defined in paragraphs 38 II Nr. 1 and 49 II Nr. 1 of the *Luftverkehrszulassungsordnung vom 19. Juni 1964*.

GREECE

Airports operating pursuant to law 517/1931 setting up the Civil Aviation Service [*Υπηρεσία Πολιτικής Αεροπορίας (ΥΠΑ)*].

International airports operating pursuant to presidential decree 647/1981.

SPAIN

Airports managed by *Aeropuertos Nacionales* operating pursuant to *Real Decreto 278/1982 de 15 de octubre de 1982*.

FRANCE

Aéroports de Paris operating pursuant to *Titre V, Articles L 251-1 à 252-1 du Code de l'aviation civile*.

Aéroport de Bâle-Mulhouse set up pursuant to the *Convention Franco-Suisse du 4 juillet 1949*.

Airports as defined in *Article L 270-1 du Code de l'aviation civile*.

Airports operating pursuant to the *Cahier de charges type d'une concession d'aéroport, décret du 6 mai 1955*.

Airports operating on the basis of a *Convention d'exploitation* pursuant to Article L 221 du Code de l'aviation civile.

IRELAND

Airports of *Dublin, Cork and Shannon* managed by *Aer Rianta-Irish Airports*.

Airports operating on the basis of a *public use license* granted, pursuant to the *Air Navigation and Transport Act No 23 1936*, the *Transport fuel and power (transfer of departmental Administration and ministerial functions Order 1959)* and the *Air Navigation (aerodrome and visual ground aids) Order 1970*.

ITALY

Civil State airports (*aerodromi civili istituiti dallo Stato*) referred to in article 692 of the *Codice della navigazione*, Regio Decreto 30 marzo 1942, n. 327.

Entities operating airport facilities on the basis of a concession granted pursuant to Article 694 of the *Codice della navigazione*, Regio Decreto 30 marzo 1942, n. 327.

LUXEMBOURG

Aéroport de Findel.

NETHERLANDS

Airports operating pursuant to Articles 18 to 30 of the *Luchtvaartwet* of 15 January 1958, amended on 7 June 1978.

PORTUGAL

Airports managed by *Aeroportos e Navegação Aérea (ANA) EP* pursuant to *Decreto-Lei 246/79*.

Aeroporto do Funchal and *Aeroporto de Porto Santo* regionalized, pursuant to *Decreto-Lei 284/81*.

UNITED KINGDOM

Airports managed by *BAA plc*.

Airports which are *public limited companies (plc's)* pursuant to the 1986 Airports Act.

ANNEX IX

CONTRACTING ENTITIES IN THE FIELD OF MARITIME OR INLAND PORT OR OTHER TERMINAL FACILITIES

BELGIUM

Société anonyme du Canal et des installations maritimes de Bruxelles.

Port autonome de Liège.

Port autonome de Namur.

Port autonome de Charleroi.

Port de la ville de Gand.

La Compagnie des installations maritimes de Bruges — Maatschappij der Brugse haveninrichtingen.

Société intercommunale de la rive gauche de l'Escaut — Intercommunale maatschappij van de linker Scheldeoever (Port d'Anvers).

Port de Nieuport.

Port d'Ostende.

DENMARK

Ports as defined in article 1, I to III of the *Bekendtgørelse nr. 604 af 16. december 1985 om hvilke havne der er omfattet af lov om trafikhavne, jf. lov nr. 239 af 12. maj 1976 om trafikhavne.*

GERMANY

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

Inland ports subject to the *Tarifordnung* pursuant to the *Wassergesetze* of the *Länder*.

GREECE

Piraeus port *Οργανισμός Λιμένος Πειραιώς*, set up pursuant to Emergency Law 1559/1950 and Law 1630/1951.

Thessaloniki port *Οργανισμός Λιμένος Θεσσαλονίκης*, set up pursuant to decree NA 2251/1953.

Other ports governed by presidential decree 649/1977 (*ΠΔ 649/1977*).

Εποπτεία, οργάνωση λειτουργίας, διοικητικός έλεγχος λιμένων (surveillance organization of functioning and administrative control).

SPAIN

Puerto de Huelva set up pursuant to the *Decreto de 2 de octubre de 1969, nº 2380/69. Puertos y Faros. Otorga Régimen de Estatuto de Autonomía al Puerto de Huelva.*

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

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

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

Juntas de Puertos operating pursuant to the *Ley 27/68 de 20 de junio 1968. Puertos y Faros. Juntas de Puertos y Estatutos de Autonomía* and to the *Decreto de 9 de abril de 1970, nº 1350/70. Juntas de Puertos. Reglamiento.*

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

Ports listed in the *Real Decreto 989/82 de 14 de mayo de 1982. Puertos. Clasificación de los de interés general.*

FRANCE

Port autonome de Paris set up pursuant to *Loi 68-917 du 24 octobre 1968 relative au port autonome de Paris.*

Port autonome de Strasbourg set up pursuant to the *Convention du 20 mai 1923 entre l'État et la ville de Strasbourg relative à la constitution du port rhénan de Strasbourg et à l'exécution de travaux d'extension de ce port*, approved by the *Loi du 26 avril 1924.*

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

Ports autonomes operating pursuant to *articles L 111-1 et suivants* of the *Code des ports maritimes.*

Ports non autonomes operating pursuant to *articles R 121-1 et suivants* of the *Code des ports maritimes.*

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

IRELAND

Ports operating pursuant to the *Harbour Act 1968*.

ITALY

State ports and other ports managed by the *Capitaneria di Porto* pursuant to the *Codice della navigazione*, *Regio Decreto 30 marzo 1982, n. 32*.

Autonomous ports (*Enti portuali*) set up by special laws pursuant to article 19 of the *Codice della navigazione*, *Regio Decreto 30 marzo 1982, n. 327*.

LUXEMBOURG

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

NETHERLANDS

Havenbedrijven, set up and operating pursuant to the *Gemeentewet van 29 juni 1851*.

Havenschap Vlissingen, set up by the *wet van 10 september 1979 inzake de gemeenschappelijke regeling tot oprichting van het Havenschap Vlissingen*.

Havenschap Terneuzen, set up by the *wet van 8 april 1970 inzake de gemeenschappelijke regeling tot oprichting van het Havenschap Terneuzen*.

Havenschap Delfzijl, set up by the *wet van 31 juli 1957 inzake de gemeenschappelijke regeling tot oprichting van het Havenschap Delfzijl*.

Haven- en Industrieschap Moerdijk, set up by the *gemeenschappelijke regeling tot oprichting van het Haven- en Industrieschap Moerdijk van 23 oktober 1970*, approved by *Koninklijk Besluit nr. 23 van 4 maart 1972*.

PORTUGAL

Porto de Lisboa set up pursuant to the *Decreto Real de 18 de Fevereiro de 1907* and operating pursuant to *Decreto-Lei 36976 de 20 de Julho de 1948*.

Porto do Douro e Leixões set up pursuant to *Decreto-Lei 36977 de 20 de Julho de 1948*.

Porto de Sines set up pursuant to *Decreto-Lei 508/77 de 14 de Dezembro de 1977*.

Portos de Setúbal, Aveiro, Figueira da Foz, Viana do Castelo, Portimão e Faro operating pursuant to *Decreto-Lei 37754 de 18 de Fevereiro de 1950*.

UNITED KINGDOM

Harbour authorities within the meaning of *section 57 of the Harbours Act 1964* providing port facilities to carriers by sea or inland water way.

ANNEX XOPERATION OF TELECOMMUNICATIONS NETWORKS OR PROVISION OF
TELECOMMUNICATIONS SERVICES

BELGIUM

Régie des Télégraphes et des Téléphones.

Regie van Telegrafie en Telefonie.

DENMARK

Københavns Telefon Aktieselskab.

Jydsk Telefon.

Fyns Kommunale Telefonselskab.

Post-og Telegrafva esnet.

Statens Teletjeneste.

FEDERAL REPUBLIC OF GERMANY

Deutsche Bundespost.

GREECE

OTE/Hellenic Telecommunications Organization.

SPAIN

Compañía telefónica Nacional de España.

FRANCE

Direction Générale des Télécommunications.

Transpac.

Telecom Service Mobile.

Société Française de Radiotéléphone.

IRELAND

Telecom Eireann.

ITALY

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.

NETHERLANDS

Post, Telegraaf en Telefon.

PORTUGAL

Telefones de Lisboa e Porto.

Companhia Portuguesa Radio Marconi.

Correios e Telecomunicações de Portugal.

UNITED KINGDOM

British Telecommunications plc.

Mercury Communications Ltd.

City of Kingston-Upon-Hull.

Racal Vodafone.

Telecoms Securicor Cellular Radio Ltd (Cellnet).

ANNEX XI

LIST OF PROFESSIONAL ACTIVITIES AS SET OUT IN THE GENERAL INDUSTRIAL
CLASSIFICATION OF ECONOMIC ACTIVITIES WITHIN THE EUROPEAN COMMUNITIES

Classes	Groups	Subgroups and items	Description
50			BUILDING AND CIVIL ENGINEERING
	500		General building and civil engineering work (without any particular specification) and demolition work
		500.1	General building and civil engineering work (without any particular specification)
		500.2	Demolition work
	501		Construction of flats, office blocks, hospitals and other buildings, both residential and non-residential
		501.1	General building contractors
		501.2	Roofings
		501.3	Construction of chimneys, kilns and furnaces
		501.4	Water-proofing and damp-proofing
		501.5	Restoration and maintenance of outside walls (repointing, cleaning, etc.)
		501.6	Erection and dismantlement of scaffolding
		501.7	Other specialized activities relating to construction work (including carpentry)
	502		Civil engineering: construction of roads, bridges, railways, etc.
		502.1	General civil engineering work
		502.2	Earth-moving (navvying)
		502.3	Construction of bridges, tunnels and shafts; drillings
		502.4	Hydraulic engineering (rivers, canals, harbours, flows, lochs and dams)
		502.5	Road-building (including specialized construction of airports and runways)
		502.6	Specialized construction work relating to water (i.e. to irrigation land drainage, water supply, sewage disposal, sewerage, etc.)
		502.7	Specialized activities in other areas of civil engineering
	503		Installation (fittings and fixtures)
		503.1	General installation work
		503.2	Gas fitting and plumbing, and the installation of sanitary equipment
		503.3	Installation of heating and ventilating apparatus (central heating, air-conditioning, ventilation)
		503.4	Sound and heat insulation; insulation against vibration
		503.5	Electrical fittings
		503.6	Installation of aerials, lightning conductors telephones, etc.
	504		Building completion work
		504.1	General building completion work
		504.2	Plastering
		504.3	Joinery, primarily engaged in the after assembly and/or installation (including the laying of parquet flooring)
		504.4	Painting, glazing and paper-hanging
		504.5	Tiling and otherwise covering floors and walls
		504.6	Other building completion work (putting in fireplaces, etc.)

ANNEX XII

MODEL NOTICE OF CONCESSION CONTRACTS IN THE WATER SECTOR

1. The name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity:
2. The subject of the concession, nature and characteristics of the services to be provided:
3. (a) Final date for receipt of candidatures:
(b) The address to which they must be sent:
(c) The language or languages in which they must be drawn up:
4. Information concerning the candidate's own position and economic and technical standards required of him:
5. The criteria for the award of the contract:
6. Other information:
7. Date of dispatch of the notice:
8. Date of receipt of the notice by the Office for Official Publications of the European Communities:

ANNEX XIII

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 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) For works contracts: 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 12:
5. Time limit 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 of the European Communities* 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:

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. (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 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) For works contracts: 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 12:
5. Time limit 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 requests to participate:
(b) The address to which they must be sent:
(c) The language or languages in which they must be drawn up:
8. The final date for dispatch of invitations to tender:
9. (Where applicable) any deposits and guarantees required:
10. Main terms concerning financing and payment and/or the provisions laid down by law or regulation in which these are contained:
11. Information concerning the supplier's or contractor's position and economic and technical standards required of him:

12. The criteria for the award of the contract where they are not mentioned in the invitation to tender:
13. Other information:
14. (Where applicable) date of publication of the periodic information notice in the *Official Journal of the European Communities* to which this contract refers:
15. Date of dispatch of the notice:
16. Date of receipt of the notice by the Office for Official Publications of the European Communities:

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 and 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) For works contracts: 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 12:
5. Time limit 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) 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 names and addresses of suppliers or contractors already selected by the contracting entity:
12. (Where applicable) date(s) of previous publication 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 of the European Communities* 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 XIV

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 XV

PERIODIC INFORMATION NOTICE

A. *For supply and software service contracts*

1. Name, address, telephone number, 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, telegraphic address, telephone, telex and telecopier number of the contracting entity:
 - (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:

ANNEX XVI

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: including the value and share of the contract likely to be subcontracted to third parties
 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:
-