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PROPOSAL

from:	European Commission
dated:	23 May 2013
No Cion doc.:	COM(2013) 290 final - Annex VII
Subject:	Proposal for a Council Decision on the conclusion of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine of the other part, on behalf of the European Union - Annex VII

Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

Encl.: COM(2013) 290 final - Annex VII



EUROPEAN
COMMISSION

Brussels, 15.5.2013
COM(2013) 290 final

Annex VII

ANNEX

Annex XXI to Title IV of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine of the other

ANNEX VII

to the

PROPOSAL FOR A COUNCIL DECISION

on the conclusion of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, on behalf of the European Union

ANNEX

Annex XXI to Title IV of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine of the other

ANNEX VII

to the

PROPOSAL FOR A COUNCIL DECISION

on the conclusion of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, on behalf of the European Union

ANNEX XXI

PUBLIC PROCUREMENT

ANNEX XXI-A¹

INDICATIVE TIME SCHEDULE FOR INSTITUTIONAL REFORM, LEGISLATIVE APPROXIMATION AND MARKET ACCESS

Phase		Indicative time schedule	Market access granted to EU by Ukraine	Market access granted to Ukraine by EU	
1	Implementation of Article 151 Implementation of the Institutional reform set out in Article 150.2 Agreement of the	6 months after the entry into force of the Agreement	Supplies for central government authorities	Supplies for central government authorities	

¹ Pursuant to the Public Procurement Chapter of the Agreement this Annex is based on the provisions of Directives 2004/17/EC, 2004/18/EC, 89/665/EEC, 92/13/EEC and 2007/66/EC which cover contract award and review procedures within the European Union. This may raise practical questions in the interpretation of certain provisions of the said Directives in the course of legislative approximation. In such cases legislative approximation shall be performed *mutatis mutandis*, taking into account the EU-Ukraine relations as stipulated in this Agreement. Ukraine shall choose the appropriate legal instruments to transpose the obligations deriving from this Chapter according to its own constitutional order.

	Reform Strategy set out in Article 152				
2	Approximation and implementation of basic elements of Directive 2004/18/EC and of Directive 89/665/EEC	3 years after the entry into force of the Agreement	Supplies for state, regional and local authorities and bodies governed by public law	Supplies for state, regional and local authorities and bodies governed by public law	Annexes XXI-B and XXI-C
3	Approximation and implementation of basic elements of Directive 2004/17/EC and of Directive 92/13/EEC	4 years after the entry into force of the Agreement	Supplies for all contracting entities in the utilities sector	Supplies for all contracting entities	Annexes XXI-D and XXI-E
4	Approximation and implementation of Other elements of Directive 2004/18/EC	6 years after the entry into force of the Agreement	Service and works contracts and concessions for all contracting authorities	Service and works contracts and concessions for all contracting authorities	Annexes XXI-F, XXI-G and XXI-H
5	Approximation and implementation of Other elements of Directive 2004/17/EC	8 years after the entry into force of the Agreement	Service and works contracts for all contracting entities in the utilities sector	Service and works contracts for all contracting entities in the utilities sector	Annexes XXI-I and XXI-J

ANNEX XXI-B

BASIC ELEMENTS OF DIRECTIVE 2004/18/EC (PHASE 2)

TITLE I

Definitions and general principles

Article 1	Definitions (points: 1, 2, 8, 9 ² , 11a, b and d, 12, 13, 14, 15)
Article 2	Principles of awarding contracts
Article 3	Granting of special or exclusive rights: non-discrimination clause

TITLE II

Rules on public contracts

CHAPTER I

General provisions

Article 4	Economic operators
Article 6	Confidentiality

CHAPTER II

Scope

Section 1 — Thresholds

Article 8	Contracts subsidised by more than 50 % by contracting authorities ³
Article 9	Methods for calculating the estimated value of public contracts, framework agreements and dynamic purchasing systems

Section 2 — Specific situations

Article 10	Defence procurement ⁴
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² It is noted that 'bodies governed by public law' are bodies that fulfil all three conditions set out in Article 1(9) of Directive 2004/18/EC

³ It is noted that Article 9(8)(b)(ii) of Directive 2004/18/EC does not oblige a Party to use contracts without a fixed term of duration. It is left to the domestic legislator to determine whether and where such contracts may be used.

⁴ The present Agreement only covers defence-related procurement as set out in Annex V to Directive 2004/18/EC. The Parties may remove items from this list at any time by decision of the Trade Committee.

Section 3 — Excluded contracts

Article 12	Contracts in the water, energy, transport and postal services sectors (only when basic rules of Directive 2004/17/EC have been transposed)
Article 13	Specific exclusions in the field of telecommunications
Article 14	Secret contracts and contracts requiring special security measures
Article 15	Contracts awarded pursuant to international rules
Article 18	Service contracts awarded on the basis of an exclusive right

Section 4 — Special arrangement

Article 19	Reserved contracts
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CHAPTER III

Arrangements for public service contracts

Article 20	Service contracts listed in Annex II A
Article 21	Service contracts listed in Annex II B
Article 22	Mixed contracts including services listed in Annex II A and services listed in Annex II B

CHAPTER IV

Specific rules governing specifications and contract documents

Article 23	Technical specifications
Article 24	Variants
Article 25	Subcontracting
Article 26	Conditions for performance of contracts
Article 27	Obligations relating to taxes, environmental protection, employment protection provisions and working conditions

CHAPTER V

Procedures

Article 28	Use of open, restricted and negotiated procedures and of competitive dialogue
Article 30	Cases justifying use of the negotiated procedure with prior publication of a contract notice
Article 31	Cases justifying use of the negotiated procedure without publication of a contract notice

CHAPTER VI

Rules on advertising and transparency

Section 1 — Publication of notices

- | | |
|------------|---|
| Article 35 | Notices: paragraph 1 <i>mutatis mutandis</i> ⁵ ; paragraph 2 ⁶ ; paragraph 4 first, third and fourth subparagraph |
| Article 36 | Form and manner of publication of notices: paragraph 1; paragraph 7 |

Section 2 — Time limits

- | | |
|------------|---|
| Article 38 | Time limits for receipt of requests to participate and for receipt of tenders |
| Article 39 | Open procedures: Specifications, additional documents and information |

Section 3 — Information content and means of transmission

- | | |
|-------------------------|--|
| Article 40 | Invitations to submit a tender, participate in the dialogue or negotiate |
| Article 41 ⁷ | Informing candidates and tenderers |

Section 4 — Communication

- | | |
|------------|-----------------------------------|
| Article 42 | Rules applicable to communication |
|------------|-----------------------------------|

CHAPTER VII

Conduct of the procedure

Section 1 — General provisions

- | | |
|------------|---|
| Article 44 | Verification of the suitability and choice of participants and award of contracts |
|------------|---|

Section 2 — Criteria for qualitative selection

- | | |
|-------------------------|---|
| Article 45 ⁸ | Personal situation of the candidate or tenderer |
| Article 46 ⁹ | Suitability to pursue the professional activity |

⁵ The three subparagraphs following indent c) do not need to be transposed.

⁶ The reference to “competitive dialogues”, “framework agreements” and “dynamic purchasing systems” in Article 35 paragraph 2, 3 and 4 should be implemented as part of Phase 4.

⁷ The reference to “framework agreements” and “dynamic purchasing systems” in Article 41 should be implemented as part of Phase 4

⁸ Ukraine shall not be obliged to join any of the Conventions referred to in this article. Instead, it will, where necessary, transpose the definitions contained in these Conventions into her domestic legislation.

⁹ In transposing Article 46 of Directive 2004/18/EC, Ukraine should include a list of professional or trade registers corresponding to those set out in Annexes, IX-A, IX-B and IX-C to that Directive.

Article 47	Economic and financial standing
Article 48	Technical and/or professional ability
Article 49	Quality assurance standards
Article 50	Environmental management standards
Article 51	Additional documentation and information

Section 3 — Award of the contract

Article 53	Contract award criteria
Article 55	Abnormally low tenders

ANNEXES

Annex I	List of the activities referred to in Article 1(2)(b)
Annex II	Services referred to in Article 1(2)(d)
Annex II A	
Annex II B	
Annex V	List of products referred to in Article 7 with regard to contracts awarded by contracting authorities in the field of defence
Annex VI	Definition of certain technical specifications
Annex VII	Information to be included in notices
Annex VII A	Information to be included in public contract notices
Annex X	Requirements relating to equipment for the electronic receipt of tenders, requests to participate and plans and projects in design contests

ANNEX XXI-C

BASIC ELEMENTS OF DIRECTIVE 89/665/EEC¹⁰ of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (hereinafter referred to as "Directive 89/665/EEC")

AS AMENDED BY DIRECTIVE 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (hereinafter referred to as "Directive 2007/66/EC")
(PHASE 2)

Article 1	Scope and availability of review procedures
Article 2	Requirements for review procedures
Article 2a	Standstill period
Article 2b	Derogations from the standstill period Paragraph (b)
Article 2c	Time limits for applying for review
Article 2d	Ineffectiveness ¹¹ Paragraph 1(b) Paragraph 2 and 3
Article 2e	Infringements of this Directive and alternative penalties
Article 2f	Time limits

¹⁰ For the purpose of this Agreement, it is clarified that the objective of legislative approximation to Directive 89/665/EEC consists in ensuring the availability of appropriate remedy procedures for contracts falling within the scope of this Agreement. Therefore, references in Directive 89/665/EEC to “contracts referred to Directive 2004/18/EC” or “contracts falling within the scope of Directive 2004/18/EC” shall be understood as references to the contracts covered by this Agreement, and references to “infringements of Community law” shall be understood as meaning infringements of this Agreement. Where Directive 89/665/EEC makes reference to the publication of a tender notice or a contract award notice in the Official Journal of the EU, such reference, in the case of Ukraine, shall mean the publication in the appropriate Ukrainian media. It is also understood that Ukraine may use all the flexibilities set out in Directive 89/665/EEC.

¹¹ Concerning the finding that a contract be considered ineffective according to Article 2(d) of Directive 89/665/EEC, it is noted that, in conformity to Article 2(2) of the same Directive, Ukraine may confer powers on separate bodies responsible for different aspects of the procedure, including to the judiciary branch. However, in order to meet the requirement of effectiveness, the responsible bodies must be enabled to take such decisions in an expeditious manner, e.g. through an accelerated procedure.

ANNEX XXI-D

BASIC ELEMENTS OF DIRECTIVE 2004/17/EC (PHASE 3)

TITLE I

General provisions applicable to contracts and design contests

CHAPTER I

Basic terms

Article 1 Definitions: points 2, 7, 9, 11, 12, 13

CHAPTER II

Definition of the activities and entities covered

Section 1 - Entities

Article 2 Contracting entities¹²

Section 2 - Activities

Article 3 Gas, heat and electricity

Article 4 Water

Article 5 Transport services¹³

Article 6 Postal services¹⁴

Article 7 Exploration for, or extraction of, oil, gas, coal or other solid fuels,
as well as ports and airports

Article 9 Contracts covering several activities¹⁵

¹² It is noted that 'bodies governed by public law' are bodies that fulfil all three conditions set out in Article 2(1)(a) of Directive 2004/17/EC. Concerning 'public undertakings', the legal presumption in Article 2(1)(b) of Directive 2004/17/EC serves to clarify the scope of application of that Directive and remains without prejudice to the commercial law of the Member States of the EU, or of Ukraine. For the purposes of Article 2(3) of Directive 2004/17/EC, 'legislative, regulatory or administrative provisions' are legal acts adopted by State, regional or local authorities and their administrations, within their competence.

¹³ According to Article 5(2) of Directive 2004/17/EC, that Directive does not apply to entities providing bus transport services to the public where other entities are free to provide those services, either in general or in a particular geographical area, under the same conditions as the contracting entities.

¹⁴ The references to Directive 97/67/EC in Article 6 of Directive 2004/17/EC serve the purpose of clarifying that the latter will not apply to activities relating to the provision of postal services following their liberalisation (i.e., the opening to full competition). The same should apply to Ukraine, if and when Ukraine decides to liberalise the market for postal services. It is furthermore noted that the Ukrainian Postal administration currently does not offer all of the services listed in Article 6(2)(c) of Directive 2004/17/EC, but that, if such services should be offered at a later stage, they will be covered by this Chapter.

¹⁵ For the correct application of Article 9 of Directive 2004/17/EC, guidance and assistance is provided by the Explanatory Note "Utilities Directive – Contracts involving more than one activity", which has been

CHAPTER III

General principles

Article 10 Principles of awarding contracts

TITLE II

Rules applicable to contracts

CHAPTER I

General provisions

Article 11 Economic operators

Article 13 Confidentiality

CHAPTER II

Thresholds and exclusion provisions

Section 1 - Thresholds

Article 16 Contract thresholds

Article 17 Methods of calculating the estimated value of contracts, framework agreements and dynamic systems

Section 2 - Contracts and concessions and contracts subject to special arrangements

Subsection 2 - Exclusions applicable to all contracting entities and to all types of contract

Article 19 Contracts awarded for purposes of resale or lease to third parties¹⁶

Article 20 Contracts awarded for purposes other than the pursuit of an activity covered or for the pursuit of such an activity in a third country: paragraph 1

Article 21 Contracts which are secret or require special security measures

Article 22 Contracts awarded pursuant to international rules¹⁷

Article 23 Contracts awarded to an affiliated undertaking¹⁸, to a joint venture or to a contracting entity forming part of a joint venture

published by the European Commission. When adopting specific legislation to implement Article 9, Ukraine will take into account the guidance provided by that document.

¹⁶ Article 19(2) of Directive 2004/17/EC is not applicable to contracting entities from Ukraine. Instead, the Trade Committee may request Ukrainian contracting entities to provide relevant information.

¹⁷ If and where Ukraine excludes contracts from the scope of application of the present chapter pursuant to Article 22(a) of Directive 2004/17/EC, the notifications foreseen by that provision should be made to the Trade Committee.

¹⁸ Directive 83/349/EEC does not apply to Ukraine. Thus, an 'affiliated undertaking' is understood to be any undertaking the annual accounts of which are consolidated with those of the contracting entity or any undertaking over which the contracting entity may exercise, directly or indirectly, a dominant influence within the meaning of Article 2(1)(b) of Directive 2004/17/EC or which may exercise a

Subsection 3 - Exclusions applicable to all contracting entities, but to service contracts only

- | | |
|------------|--|
| Article 24 | Contracts relating to certain services excluded from the scope of this Directive |
| Article 25 | Service contracts awarded on the basis of an exclusive right ¹⁹ |

Subsection 4 - Exclusions applicable to certain contracting entities only

- | | |
|------------|---|
| Article 26 | Contracts awarded by certain contracting entities for the purchase of water and for the supply of energy or of fuels for the production of energy |
|------------|---|

CHAPTER III

Rules applicable to service contracts

- | | |
|------------|---|
| Article 31 | Service contracts listed in Annex XVII A |
| Article 32 | Service contracts listed in Annex XVII B |
| Article 33 | Mixed service contracts including services listed in Annex XVII A and services listed in Annex XVII B |

CHAPTER IV

Specific rules governing specifications and contract documents

- | | |
|------------|--|
| Article 34 | Technical specifications ²⁰ |
| Article 35 | Communication of technical specifications |
| Article 36 | Variants |
| Article 37 | Subcontracting |
| Article 39 | Obligations relating to taxes, environmental protection, employment protection provisions and working conditions |

CHAPTER V

Procedures

- | | |
|------------|---|
| Article 40 | Use of open, restricted and negotiated procedures |
|------------|---|

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.

If and where Ukraine excludes contracts from the scope of application of the present chapter pursuant to Article 23 of Directive 2004/17/EC, the notifications foreseen by that provision should be made to the Trade Committee.

¹⁹ The reference to the EC Treaty in Article 25 of Directive 2004/17/EC does not directly apply to Ukrainian contracting entities. Instead, this reference must be understood as referring to the principles of non-discrimination, equality of treatment, transparency, mutual recognition and proportionality.

²⁰ The technical specifications used by contracting entities of both parties shall comply to what is agreed in the relevant Chapter (elimination of Technical Barriers to Trade) of this Agreement.

(except
paragraph 3 (i)
and (l))

CHAPTER VI

Rules on publication²¹ and transparency

Section 1 - Publication of notices

Article 41	Periodic indicative notices and notices on the existence of a system of qualification ²²
Article 42	Notices used as a means of calling for competition: paragraphs 1 and 3
Article 43	Contract award notices (except for paragraph 1, second and third subparagraphs)
Article 44	Form and manner of publication of notices (except for paragraph 2 first subparagraph; paragraph 4; paragraph 5; paragraph 7)

Section 2 - Time limits

Article 45	Time-limits for the receipt of requests to participate and for the receipt of tenders
Article 46	Open procedures: specifications, additional documents and information
Article 47	Invitations to submit a tender or to negotiate

Section 3 - Communication and information

Article 48	Rules applicable to communication ²³
Article 49	Information to applicants for qualification, candidates and tenderers

CHAPTER VII

Conduct of the procedure

Article 51	General provisions
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²¹ Where, in the context of this Chapter of Directive 2004/17/EC and the relevant Annexes, reference is made to notifications to, or to publication of information by, the Commission, it is understood that Ukrainian contracting entities will address such notifications to the competent entity designed by Ukrainian law, which will then proceed to the necessary publication of the information concerned according to the rules set out in Ukrainian law. There will be one single means of publication in Ukraine responsible for the publication of all tender notices under this Chapter. In addition, Ukrainian contracting entities may publish the same information also through other means.

²² Under Article 41(1) of Directive 2004/17/EC, the required publication of information can take place either through the publication of a periodic indicative notice (as foreseen by Annex XV-A), or, alternatively, through a 'buyer profile' (as described in Annex XX).

²³ Article 48(6)(a) of Directive 2004/17/EC: in Ukraine, requests to participate must be made in writing.

Section 1 - Qualification and qualitative selection

- | | |
|------------|---|
| Article 52 | Mutual recognition concerning administrative, technical or financial conditions, and certificates, tests and evidence |
| Article 54 | Criteria for qualitative selection |

Section 2 - Award of the contract

- | | |
|------------|-------------------------|
| Article 55 | Contract award criteria |
| Article 57 | Abnormally low tenders |

Annex XIII Information to be included in contract notices:

- A. Open procedures
- B. Restricted procedures
- C. Negotiated procedures

Annex XIV Information to be included in the notice on the existence of a system of qualification

Annex XV A Information to be included in the periodic indicative notice

Annex XV B Information to be included in notices of publication of a periodic notice on a buyer profile not used as a means of calling for competition

Annex XVI Information to be included in the contract award notice

Annex XVII A Services within the meaning of Article 31

Annex XVII B Services within the meaning of Article 32

Annex XX Features concerning publication

Annex XXI Definition of certain technical specifications

Annex XXIII International labour law provisions within the meaning of Article 59(4)

Annex XXIV Requirements relating to equipment for the electronic receipt of tenders, requests to participate, applications for qualification as well as plans and projects

**BASIC ELEMENTS OF COUNCIL DIRECTIVE 92/13/EEC²⁴ of 25 February 1992
coordinating the laws, regulations and administrative provisions relating to the
application of Community rules on the procurement procedures of entities operating in
the water, energy, transport and telecommunications sectors (hereinafter referred to as
"Directive 92/13/EEC")**

**AS AMENDED BY DIRECTIVE 2007/66/EC
(PHASE 3)**

Article 1	Scope and availability of review procedures
Article 2	Requirements for review procedures ²⁵
Article 2a	Standstill period
Article 2b	Derogations from the standstill period Paragraph (b)
Article 2c	Time limits for applying for review
Article 2d	Ineffectiveness ²⁶ Paragraph 1 (b) Paragraph 2 and 3
Article 2e	Infringements of this Directive and alternative penalties

²⁴ For the purpose of this Agreement, it is clarified that the objective of legislative approximation to Directive 92/13/EEC consists in ensuring the availability of appropriate remedy procedures for contracts falling within the scope of this Agreement. Therefore, references in Directive 92/13/EEC to "contracts referred to Directive 2004/17/EC" or "contracts falling within the scope of Directive 2004/17/EC" shall be understood as references to the contracts covered by this Agreement, and references to "infringements of Community law" shall be understood as meaning infringements of this Agreement. Where Directive 92/13/EEC makes reference to the publication of a tender notice or a contract award notice in the Official Journal of the EU, such reference, in the case of Ukraine, shall mean the publication in the appropriate Ukrainian media. It is also understood that Ukraine may use all the flexibilities set out in Directive 92/13/EEC.

²⁵ Article 2(1) of Directive 92/13/EEC offers a choice of implementing either the measures foreseen in subparagraphs (a), (b), and (d), or – alternatively – the measures foreseen in subparagraphs (c) and (d) of that provision. Ukraine has indicated its intention to use the first option, given that the current state of legislation does not allow using the second. However, Ukraine reserves the right to use the second option at any later stage.

²⁶ Concerning the finding that a contract be considered ineffective according to Article 2d of Directive 92/13/EEC, it is noted that, in conformity to Article 2(2) of the same Directive, Ukraine may confer powers on separate bodies responsible for different aspects of the procedure, including to the judiciary branch. However, in order to meet the requirement of effectiveness, the responsible bodies must be enabled to take such decisions in an expeditious manner, e.g. through an accelerated procedure. It is further noted that the obligation to foresee review procedures relating to procurement made under framework agreements and/or dynamic purchasing systems is conditional on Ukraine deciding to make use of these procedures; at the same time, it should be noted that the present Agreement does not oblige Ukraine to use framework agreements and/or dynamic purchasing systems.

Article 2f

Time limits

ANNEX XXI-F

OTHER NON-MANDATORY ELEMENTS OF DIRECTIVE 2004/18/EC (PHASE 4)

(The elements of Directive 2004/18/EC set out in Annex XXI-F are not mandatory. It is therefore up to Ukraine to decide whether it wants to implement these elements, and whether it wishes to do so within the timeframe set out in the time schedule. The EU, from its side, recommends the implementation of these elements.)

TITLE I

Definitions and general principles

Article 1 Definitions (points: 5, 6, 7, 10, and 11c)

TITLE II

Rules on public contracts

CHAPTER II

Scope

Section 2 — Specific situations

Article 11 Public contracts and framework agreements awarded by central purchasing bodies

Section 4 — Special arrangement

Article 19 Reserved contracts

CHAPTER V

Procedures

Article 29 Competitive dialogue

Article 32 Framework agreements

Article 33 Dynamic purchasing systems

Article 34 Public works contracts: particular rules on subsidised housing schemes

CHAPTER VI

Rules on advertising and transparency

Section 1 — Publication of notices

Article 35 Notices: paragraph 3; paragraph 4, subparagraphs two and three

CHAPTER VII

Conduct of the procedure

Section 2 — Criteria for qualitative selection

Article 52 Official lists of approved economic operators and certification by
bodies established under public or private law

Section 3 — Award of the contract

Article 54 Use of electronic auctions

ANNEX XXI-G

OTHER MANDATORY ELEMENTS OF DIRECTIVE 2004/18/EC (PHASE 4)

TITLE I

Definitions and general principles

Article 1 Definitions (points: 3, 4, and 11e)

TITLE II

Rules on public contracts

CHAPTER II

Scope

Section 3 - Excluded contracts

Article 17 Service concessions

TITLE III

Rules on public works concessions

CHAPTER I

Rules governing public works concessions

Article 56 Scope

Article 57 Exclusions from the scope (except the last paragraph)

Article 58 Publication of the notice concerning public works concessions

Article 59 Time limit

Article 60 Subcontracting²⁷

Article 61 Awarding of additional works to the concessionaire

CHAPTER II

Rules on contracts awarded by concessionaires which are contracting authorities

Article 62 Applicable rules

CHAPTER III

Rules applicable to contracts awarded by concessionaires which are not contracting authorities

Article 63 Advertising rules: threshold and exceptions

²⁷

For the purposes of this Agreement, the Parties consider that Article 60 of Directive 2004/18/EC shall be interpreted as meaning that, if a contracting authority decides to impose a condition related to subcontracting, it must choose between the two options (a) and (b) set out in that Article

Article 64	Publication of the notice
Article 65	Time limit for the receipt of requests to participate and receipt of tenders

TITLE IV

Rules governing design contests

Article 66	General provisions
Article 67	Scope ²⁸
Article 68	Exclusions from the scope
Article 69	Notices
Article 70	Form and manner of publication of notices of contests
Article 71	Means of communication
Article 72	Selection of competitors
Article 73	Composition of the jury ²⁹
Article 74	Decisions of the jury

Annex VII B	Information which must appear in public works concession notices
Annex VII C	Information which must appear in works contracts notices of concessionaires who are not contracting authorities
Annex VII D	Information which must appear in design contest notices

²⁸ In the case set out in Art 67(2)(b) of Directive 2004/18/EC, the rules governing design contests (Title IV) do not apply if the prizes and payments are below the thresholds defined in Article 149(3) of the Chapter on Public Procurement of this Agreement and the contest notice excludes the award of a public service contract subsequent to the contest. However, these rules do apply in cases where a prize is awarded to the winner of the contest and the contest notice does not exclude the award of a public service contract subsequent to the contest, if the combined value of the prize and the contract exceeds these thresholds. The rules also apply when no prize is awarded but the value of the subsequent contract is expected to exceed the thresholds in Article 149(3) of the Chapter on Public Procurement of this Agreement.

²⁹ It is clarified that the contracting authority is not prevented from forming a jury that includes, or consists of, its own employees, provided that those employees fulfill the criteria set out in Article 73 of Directive 2004/18/EC (i.e., that they are *independent of participants in the contest and dispose of the necessary qualifications*).

ANNEX XXI-H

**OTHER ELEMENTS OF DIRECTIVE 89/665/EEC³⁰
AS AMENDED BY DIRECTIVE 2007/66/EC
(PHASE 4)**

Article 2b	Derogations from the standstill period Paragraph (c)
Article 2d	Ineffectiveness ³¹ Paragraph 1 (c) Paragraph 5

³⁰ See Note 10

³¹ See Note 11

ANNEX XXI-I

OTHER NON-MANDATORY ELEMENTS OF DIRECTIVE 2004/17/EC (PHASE 5)

(The elements of Directive 2004/17/EC set out in Annex XXI-I are not mandatory. It is therefore up to Ukraine to decide whether it wants to implement these elements, and whether it wishes to do so within the timeframe set out in the time schedule. The EU, from its side, recommends the implementation of these elements)

TITLE I

General provisions applicable to contracts and design contests

CHAPTER I

Basic terms

Article 1 Definitions: points 4, 5, 6, 8

TITLE II

Rules applicable to contracts

CHAPTER I

General provisions

Article 14 Framework agreements

Article 15 Dynamic purchasing systems

Section 2 - Contracts and concessions and contracts subject to special arrangements

Subsection 5 - Contracts subject to special arrangements, provisions concerning central purchasing bodies and the general procedure in case of direct exposure to competition

Article 28 Reserved contracts

Article 29 Contracts and framework agreements awarded by central purchasing bodies

CHAPTER V

Procedures

Article 40 (3)
(i) and (l)

CHAPTER VI

Rules on publication and transparency

Section 1 - Publication of notices

Article 42 Notices used as a means of calling for competition: paragraph 2

Article 43 Contract award notices (only for paragraph 1 second and third

subparagraphs)

CHAPTER VII

Conduct of the procedure

Section 2 - Award of the contract

Article 56 Use of electronic auctions

Annex XIII Information to be included in contract notices:

D. Simplified contract notice for use in a dynamic purchasing system

ANNEX XXI-J

**OTHER ELEMENTS OF DIRECTIVE 92/13/EEC³²
AS AMENDED BY DIRECTIVE 2007/66/EC
(PHASE 5)**

Article 2b	Derogations from the standstill period Paragraph (c)
Article 2d	Ineffectiveness ³³ Paragraph 1 (c) Paragraph 5

³² See Note 24

³³ See Note 11

ANNEX XXI-K

PROVISIONS OF DIRECTIVE 2004/18/EC OUTSIDE THE SCOPE OF THE PROCESS OF LEGISLATIVE APPROXIMATION

(The elements listed in this annex are not subject to the process of legislative approximation and therefore do not need to be transposed into Ukrainian legislation)

TITLE II

Rules on public contracts

CHAPTER I

General provisions

Article 5	Conditions relating to agreements concluded within the World Trade Organisation
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CHAPTER VI

Rules on advertising and transparency

Section 1 — Publication of notices

Article 36	Form and manner of publication of notices: paragraph 2, paragraph 3, paragraph 4, paragraph 5, paragraph 6, paragraph 8
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Article 37	Non-mandatory publication
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Section 5 — Reports

Article 43	Content of reports
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TITLE V

Statistical obligations, executory powers and final provisions

Article 75	Statistical obligations
Article 76	Content of statistical report
Article 77	Advisory Committee
Article 78	Revision of the thresholds
Article 79	Amendments
Article 80	Implementation
Article 81	Monitoring mechanisms
Article 82	Repeals
Article 83	Entry into force
Article 84	Addressees

ANNEXES

Annex III	List of bodies and categories of bodies governed by public law referred to in the second subparagraph of Article 1(9)
Annex IV	Central Government authorities
Annex VIII	Features concerning publication
Annex IX	Registers
Annex IX A	Public works contracts
Annex IX B	Public supply contracts
Annex IX C	Public service contracts
Annex XI	Deadlines for transposition and application (Article 80)
Annex XII	Correlation table

ANNEX XXI-L

PROVISIONS OF DIRECTIVE 2004/17/EC OUTSIDE THE SCOPE OF THE PROCESS OF LEGISLATIVE APPROXIMATION

(The elements listed in this annex are not subject to the process of legislative approximation and therefore do not need to be transposed into Ukrainian legislation)

TITLE I

General provisions applicable to contracts and design contests

CHAPTER II

Definition of the activities and entities covered

Section 2 - Activities

Article 8 Lists of contracting entities

TITLE II

Rules applicable to contracts

CHAPTER I

General provisions

Article 12 Conditions relating to Agreements concluded within the World Trade Organisation

Section 2 - Contracts and concessions and contracts subject to special arrangements

Subsection 1

Article 18 Works and service concessions

Subsection 2 - Exclusions applicable to all contracting entities and to all types of contract

Article 20 Contracts awarded for purposes other than the pursuit of an activity covered or for the pursuit of such an activity in a third country: paragraph 2

Subsection 5 - Contracts subject to special arrangements, provisions concerning central purchasing bodies and the general procedure in case of direct exposure to competition

Article 27 Contracts subject to special arrangements

Article 30 Procedure for establishing whether a given activity is directly exposed to competition³⁴

³⁴ If and when Ukraine decides to implement a procedure for establishing whether a given activity is directly exposed to competition similar to that set out in Article 30 of Directive 2004/17/EC, the EU will provide guidance and technical assistance. The rules applicable in the EU are set out in: Commission Decision 2005/15/EC of 7 January 2005 on the detailed rules for the application of the procedure provided for in Article 30 of Directive 2004/17/EC.

CHAPTER IV

Specific rules governing specifications and contract documents

Article 38 Conditions for performance of contracts

CHAPTER VI

Rules on publication and transparency

Section 1 - Publication of notices

Article 44 Form and manner of publication of notices (only for paragraph 2 first subparagraph; paragraph 4; paragraph 5; paragraph 7)

Section 3 - Communication and information

Article 50 Information to be stored concerning awards

CHAPTER VII

Conduct of the procedure

Section 3 - Tenders comprising products originating in third countries and relations with those countries

Article 58 Tenders comprising products originating in third countries

Article 59 Relations with third countries as regards service contracts

TITLE IV

Statistical obligations, executory powers and final provisions

Article 67 Statistical obligations

Article 68 Advisory Committee

Article 69 Revision of the thresholds

Article 70 Amendments

Article 71 Implementation of the Directive

Article 72 Monitoring mechanisms

Article 73 Repeal

Article 74 Entry into force

Article 75 Addressees

ANNEXES

Annex I Contracting entities in the sectors of transport or distribution of gas or heat

Annex II	Contracting entities in the sectors of production, transport or distribution of electricity
Annex III	Contracting entities in the sectors of production, transport or distribution of drinking water
Annex IV	Contracting entities in the field of rail services
Annex V	Contracting entities in the field of urban railway, tramway, trolleybus or bus services
Annex VI	Contracting entities in the postal services sector
Annex VII	Contracting entities in the sectors of exploration for and extraction of oil or gas
Annex VIII	Contracting entities in the sectors of exploration for and extraction of coal and other solid fuels
Annex IX	Contracting entities in the field of maritime or inland port or other terminal facilities
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Annex XI	List of legislation referred to in Article 30(3)
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Annex XXII	Summary table of the time limits laid down in Article 45
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ANNEX XXI-M

**PROVISIONS OF DIRECTIVE 89/665/EEC
AS AMENDED BY DIRECTIVE 2007/66/EC
OUTSIDE THE SCOPE OF THE PROCESS OF LEGISLATIVE APPROXIMATION**

(The elements listed in this annex are not subject to the process of legislative approximation and therefore do not need to be transposed into Ukrainian legislation)

Article 2b	Derogations from the standstill period Paragraph (c)
Article 2d	Ineffectiveness Paragraph 1 (a) Paragraph 4
Article 3	Corrective Mechanisms
Article 3a	Content of the notice for voluntary ex ante transparency
Article 3b	Committee Procedure
Article 4	Implementation
Article 4a	Review

ANNEX XXI-N

**PROVISIONS OF DIRECTIVE 92/13/EEC
AS AMENDED BY DIRECTIVE 2007/66/EC
OUTSIDE THE SCOPE OF THE PROCESS OF LEGISLATIVE APPROXIMATION**

(The elements listed in this annex are not subject to the process of legislative approximation and therefore do not need to be transposed into Ukrainian legislation)

Article 2b	Derogations from the standstill period Paragraph (a)
Article 2d	Ineffectiveness Paragraph 1 (a) Paragraph 4
Article 3a	Content of the notice for voluntary ex ante transparency
Article 3b	Committee Procedure
Article 8	Corrective Mechanisms
Article 12	Implementation
Article 12a	Review

ANNEX XXI-O

INDICATIVE LIST OF ISSUES FOR CO-OPERATION

- training, in Ukraine and EU countries, of Ukrainian officials from government bodies engaged in public procurement;
- training of suppliers interested participating in public procurement;
- exchange of information and experience on best practice and regulatory rules in the sphere of public procurement;
- enhancement of the functionality of the Public Procurement Web Site and establishment of a system of public procurement monitoring;
- consultations and methodological assistance from the EU Party in application of modern electronic technologies in the sphere of public procurement;
- strengthening the bodies charged with guaranteeing a coherent policy in all areas related to public procurement and the independent and impartial consideration (review) of contracting authorities' decisions. (Cf. Article 150(2) of this Agreement)

ANNEX XXI-P

THRESHOLDS

(Article 149(3))

The value thresholds mentioned in Article 149(3) shall be for both parties³⁵:

- (a) EUR 133.000 for public supply and service contracts awarded by central government authorities, except for public service contracts defined in Directive 2004/18/EC Article 7. b. 3rd indent;
- (b) EUR 206.000 in the case of public supply and public service contracts not covered by point a);
- (c) EUR 5.150.000 in the case of public works contracts and concessions;
- (d) EUR 5.150.000 in the case of works contracts in the utilities sector;
- (e) EUR 412.000 in the case of supply and service contracts in the utilities sector.

³⁵ The EUR thresholds quoted in this Annex should be adapted at the moment of the entry into force of this agreement to reflect the thresholds then in place under the EU Directives.