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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 signing, on behalf of the European Union, and provisional application of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine of the other part**

## 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 signing, on behalf of the European Union, and provisional application of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine of the other part

#### ANNEX XXI

#### PUBLIC PROCUREMENT

#### ANNEX XXI-A<sup>1</sup>

#### 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 Reform Strategy set out in Article 152	6 months after the entry into force of the Agreement	Supplies for central government authorities	Supplies for central government authorities	

<sup>1</sup> 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.

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 <sup>2</sup> , 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 <sup>3</sup>                                       |
| 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 <sup>4</sup> |
|------------|----------------------------------|

Section 3 — Excluded contracts

- |            |   |
|------------|---|
| Article 12 | Contracts in the water, energy, transport and postal services sectors |
|------------|---|

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<sup>2</sup> 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

<sup>3</sup> 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.

<sup>4</sup> 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.

(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

### 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 *mutatis mutandis*<sup>5</sup>; paragraph 2<sup>6</sup>; 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<sup>7</sup> 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<sup>8</sup> Personal situation of the candidate or tenderer
- Article 46<sup>9</sup> Suitability to pursue the professional activity
- Article 47 Economic and financial standing

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<sup>5</sup> The three subparagraphs following indent c) do not need to be transposed.

<sup>6</sup> 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.

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

<sup>8</sup> 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.

<sup>9</sup> 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 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/EEC<sup>10</sup> 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 <sup>11</sup> Paragraph 1(b) Paragraph 2 and 3
Article 2e	Infringements of this Directive and alternative penalties
Article 2f	Time limits

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<sup>10</sup> 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.

<sup>11</sup> 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 entities<sup>12</sup>

Section 2 - Activities

Article 3            Gas, heat and electricity

Article 4            Water

Article 5            Transport services<sup>13</sup>

Article 6            Postal services<sup>14</sup>

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 activities<sup>15</sup>

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<sup>12</sup> 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.

<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> 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 published by the European Commission. When adopting specific legislation to implement Article 9, Ukraine will take into account the guidance provided by that document.

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 parties<sup>16</sup>

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 rules<sup>17</sup>

Article 23 Contracts awarded to an affiliated undertaking<sup>18</sup>, to a joint venture or to a contracting entity forming part of a joint venture

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<sup>16</sup> 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.

<sup>17</sup> 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.

<sup>18</sup> 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 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

*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<sup>19</sup>

*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<sup>20</sup>

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

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Article 23 of Directive 2004/17/EC, the notifications foreseen by that provision should be made to the Trade Committee.

<sup>19</sup> 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.

<sup>20</sup> 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.

## CHAPTER VI

### *Rules on publication<sup>21</sup> and transparency*

#### Section 1 - Publication of notices

- |            |  |
|------------|--|
| Article 41 | Periodic indicative notices and notices on the existence of a system of qualification <sup>22</sup>                          |
| 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 <sup>23</sup>                       |
| Article 49 | Information to applicants for qualification, candidates and tenderers |

## CHAPTER VII

### *Conduct of the procedure*

- |            |                    |
|------------|--------------------|
| Article 51 | General provisions |
|------------|--------------------|

#### Section 1 - Qualification and qualitative selection

- |            |  |
|------------|--|
| Article 52 | Mutual recognition concerning administrative, technical or financial |
|------------|--|

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<sup>21</sup> 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.

<sup>22</sup> 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).

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

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

ANNEX XXI-E

**BASIC ELEMENTS OF COUNCIL DIRECTIVE 92/13/EEC<sup>24</sup> 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 <sup>25</sup>
Article 2a	Standstill period
Article 2b	Derogations from the standstill period Paragraph (b)
Article 2c	Time limits for applying for review
Article 2d	Ineffectiveness <sup>26</sup> Paragraph 1 (b) Paragraph 2 and 3
Article 2e	Infringements of this Directive and alternative penalties
Article 2f	Time limits

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<sup>24</sup> 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.

<sup>25</sup> 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.

<sup>26</sup> 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.

## 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 Subcontracting<sup>27</sup>

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

Article 64 Publication of the notice

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<sup>27</sup>

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 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<sup>28</sup>

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<sup>29</sup>

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

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<sup>28</sup> 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.

<sup>29</sup> 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/EEC<sup>30</sup>**  
**AS AMENDED BY DIRECTIVE 2007/66/EC**  
**(PHASE 4)**

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

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<sup>30</sup> See Note 10

<sup>31</sup> 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/EEC<sup>32</sup>**  
**AS AMENDED BY DIRECTIVE 2007/66/EC**  
**(PHASE 5)**

Article 2b Derogations from the standstill period  
Paragraph (c)

Article 2d Ineffectiveness<sup>33</sup>  
Paragraph 1 (c)  
Paragraph 5

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<sup>32</sup> See Note 24

<sup>33</sup> 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

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

Article 37            Non-mandatory publication

Section 5 — Reports

Article 43            Content of reports

TITLE V

Statistical obligations, executory powers and final provisions

Article 75            Statistical obligations

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Article 77            Advisory Committee

Article 78            Revision of the thresholds

Article 79            Amendments

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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

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Section 2 - Activities

Article 8 Lists of contracting entities

TITLE II

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CHAPTER I

*General provisions*

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

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*Subsection 1*

Article 18 Works and service concessions

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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 competition<sup>34</sup>

CHAPTER IV

*Specific rules governing specifications and contract documents*

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<sup>34</sup> 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.

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

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### Statistical obligations, executory powers and final provisions

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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
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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 parties<sup>35</sup>:

- (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. 3<sup>rd</sup> 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.

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<sup>35</sup> 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.