Disclaimer: Please note that the present documents are only made available for information purposes. The official version of the Association Agreement – once signed – will be published in the Official Journal of the European Union. The texts are capable of neither conferring any rights nor creating any legally binding obligations of public international law.

ANNEX XXI to Chapter 8
PUBLIC PROCUREMENT

ANNEX XXI-A

ANNEX XXI-A to Chapter 8

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

<table>
<thead>
<tr>
<th>Phase</th>
<th>Indicative time schedule</th>
<th>Market access granted to EU by Ukraine</th>
<th>Market access granted to Ukraine by EU</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>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</td>
<td>6 months after the entry into force of the Agreement</td>
<td>Supplies for central government authorities</td>
</tr>
</tbody>
</table>

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.

EU/UA/Annex XXI-A/en 1
<table>
<thead>
<tr>
<th>Phase</th>
<th>Approximation and implementation of basic elements of Directive 2004/18/EC and of Directive 89/665/EEC</th>
<th>Indicative time schedule</th>
<th>Market access granted to EU by Ukraine</th>
<th>Market access granted to Ukraine by EU</th>
<th>Annexes</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>3 years after the entry into force of the Agreement</td>
<td>Supplies for state, regional and local authorities and bodies governed by public law</td>
<td>Supplies for state, regional and local authorities and bodies governed by public law</td>
<td></td>
<td>XXI-B and XXI-C</td>
</tr>
<tr>
<td>3</td>
<td>4 years after the entry into force of the Agreement</td>
<td>Supplies for all contracting entities in the utilities sector</td>
<td>Supplies for all contracting entities</td>
<td></td>
<td>XXI-D and XXI-E</td>
</tr>
<tr>
<td>4</td>
<td>6 years after the entry into force of the Agreement</td>
<td>Service and works contracts and concessions for all contracting authorities</td>
<td>Service and works contracts and concessions for all contracting authorities</td>
<td></td>
<td>XXI-F, XXI-G and XXI-H</td>
</tr>
<tr>
<td>5</td>
<td>8 years after the entry into force of the Agreement</td>
<td>Service and works contracts for all contracting entities in the utilities sector</td>
<td>Service and works contracts for all contracting entities in the utilities sector</td>
<td></td>
<td>XXI-I and XXI-J</td>
</tr>
</tbody>
</table>

EU/UA/Annex XXI-A/en 2
ANNEX XXI-B

ANNEX XXI-B to Chapter 8
BASIC ELEMENTS OF DIRECTIVE 2004/18/EC
(PHASE 2)

TITLE I
Definitions and general principles

Article 1 Definitions (points: 1, 2, 8, 9\(^1\), 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

---

\(^1\) 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
CHAPTER II
Scope

Section 1
Thresholds

Article 8  Contracts subsidised by more than 50 % by contracting authorities

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

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

---

1 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.

2 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 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 mutandis¹; paragraph 2²; 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

¹ The three subparagraphs following indent c) do not need to be transposed.
² 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.
Section 3
Information content and means of transmission

Article 40  Invitations to submit a tender, participate in the dialogue or negotiate
Article 41  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

1 The reference to "framework agreements" and "dynamic purchasing systems" in Article 41 should be implemented as part of Phase 4
Section 2
Criteria for qualitative selection

<table>
<thead>
<tr>
<th>Article</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>45¹</td>
<td>Personal situation of the candidate or tenderer</td>
</tr>
<tr>
<td>46²</td>
<td>Suitability to pursue the professional activity</td>
</tr>
<tr>
<td>47</td>
<td>Economic and financial standing</td>
</tr>
<tr>
<td>48</td>
<td>Technical and/or professional ability</td>
</tr>
<tr>
<td>49</td>
<td>Quality assurance standards</td>
</tr>
<tr>
<td>50</td>
<td>Environmental management standards</td>
</tr>
<tr>
<td>51</td>
<td>Additional documentation and information</td>
</tr>
</tbody>
</table>

Section 3
Award of the contract

<table>
<thead>
<tr>
<th>Article</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>53</td>
<td>Contract award criteria</td>
</tr>
<tr>
<td>55</td>
<td>Abnormally low tenders</td>
</tr>
</tbody>
</table>

¹ 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.

² 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.
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

ANNEX XXI-C to Chapter 8

BASIC ELEMENTS OF DIRECTIVE 89/665/EEC¹ 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)

¹ 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.
<table>
<thead>
<tr>
<th>Article 1</th>
<th>Scope and availability of review procedures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 2</td>
<td>Requirements for review procedures</td>
</tr>
<tr>
<td>Article 2a</td>
<td>Standstill period</td>
</tr>
<tr>
<td>Article 2b</td>
<td>Derogations from the standstill period</td>
</tr>
<tr>
<td></td>
<td>Paragraph (b)</td>
</tr>
<tr>
<td>Article 2c</td>
<td>Time limits for applying for review</td>
</tr>
<tr>
<td>Article 2d</td>
<td>Ineffectiveness¹</td>
</tr>
<tr>
<td></td>
<td>Paragraph 1(b)</td>
</tr>
<tr>
<td></td>
<td>Paragraph 2 and 3</td>
</tr>
<tr>
<td>Article 2e</td>
<td>Infringements of this Directive and alternative penalties</td>
</tr>
<tr>
<td>Article 2f</td>
<td>Time limits</td>
</tr>
</tbody>
</table>

---

¹ 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

ANNEX XXI-D to Chapter 8
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

---

1 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.
Section 2
Activities

Article 3  Gas, heat and electricity
Article 4  Water
Article 5  Transport services\(^1\)
Article 6  Postal services\(^2\)
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\(^3\)

---

\(^1\) 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.

\(^2\) 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.

\(^3\) 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

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

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

1 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.

2 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.

3 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 Article 23 of Directive 2004/17/EC, the notifications foreseen by that provision should be made to the Trade Committee.
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 right¹

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

¹ 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.
CHAPTER IV
Specific rules governing specifications and contract documents

Article 34  Technical specifications
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 (except paragraph 3 (i) and (l))  Use of open, restricted and negotiated procedures

---

1 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 publication¹ and transparency

Section 1
Publication of notices

Article 41  Periodic indicative notices and notices on the existence of a system of qualification²
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)

---
¹ 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.

² 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).
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 communication¹
Article 49  Information to applicants for qualification, candidates and tenderers

CHAPTER VII
Conduct of the procedure

Article 51  General provisions

¹ 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
ANNEXES

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

ANNEX XXI-E to Chapter 8
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)

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

---

¹ 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.

² 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 expeditiousness, 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.
(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

ANNEX XXI-G to Chapter 8
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  Subcontracting¹
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
Article 65  Time limit for the receipt of requests to participate and receipt of tenders

¹ 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
TITLE IV
Rules governing design contests

Article 66 General provisions
Article 67 Scope
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
Article 74 Decisions of the jury

1 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.

2 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).
ANNEXES

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
ANNEX XXI-H

ANNEX XXI-H to Chapter 8
OTHER ELEMENTS OF DIRECTIVE 89/665/EEC\(^1\)
AS AMENDED BY DIRECTIVE 2007/66/EC
(PHASE 4)

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

Article 2d  Ineffectiveness\(^2\)
Paragraph 1 (c)
Paragraph 5

\(^1\) See Note 10
\(^2\) See Note 11
ANNEX XXI-I to Chapter 8

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

ANNEXES

Annex XIII Information to be included in contract notices:
D. Simplified contract notice for use in a dynamic purchasing system
ANNEX XXI-J to Chapter 8
OTHER ELEMENTS OF DIRECTIVE 92/13/EEC\(^1\)
AS AMENDED BY DIRECTIVE 2007/66/EC
(PHASE 5)

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

Article 2d  Ineffectiveness\(^2\)
Paragraph 1 (c)
Paragraph 5

\(^1\) See Note 24
\(^2\) See Note 11
ANNEX XXI-K to Chapter 8

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
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 to Chapter 8

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 competition

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)

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.
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
Annex X   Contracting entities in the field of airport installations
Annex XI  List of legislation referred to in Article 30(3)
Annex XII List of professional activities as set out in Article 1(2), point b
Annex XXII Summary table of the time limits laid down in Article 45
Annex XXV  Time limits for transposition and implementation
Annex XXVI Correlation table
ANNEX XXI-M

ANNEX XXI-M to Chapter 8
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)

<table>
<thead>
<tr>
<th>Article</th>
<th>Description</th>
</tr>
</thead>
</table>
| 2b      | Derogations from the standstill period  
|          | Paragraph (c) |
| 2d      | Ineffectiveness  
|          | Paragraph 1 (a)  
|          | Paragraph 4 |
| 3       | Corrective Mechanisms |
| 3a      | Content of the notice for voluntary ex ante transparency |
| 3b      | Committee Procedure |
| 4       | Implementation |
| 4a      | Review |
ANNEX XXI-N

ANNEX XXI-N to Chapter 8
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

ANNEX XXI-O to Chapter 8

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

(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.

1 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.