



EUROPEAN
COMMISSION

Brussels, 31.10.2016
COM(2016) 703 final

ANNEX 1

ANNEX

to the

Proposal for a Council Decision

on the position to be adopted, on behalf of the European Union, in the Association Committee in Trade configuration established by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other in relation to the update of Annexes XXI-A to XXI-P on regulatory approximation in the area of public procurement

DRAFT

**DECISION NO 1/2016 OF THE EU-UKRAINE ASSOCIATION COMMITTEE IN
TRADE CONFIGURATION**

of ...2016

**updating Annex XXI to the Association Agreement and giving a favourable opinion
regarding the comprehensive roadmap on public procurement**

THE ASSOCIATION COMMITTEE IN TRADE CONFIGURATION,

Having regard to the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, signed in Brussels on 27 June 2014, and in particular Article 149, Article 153 and Article 463 thereof,

Whereas:

- (1) In accordance with Article 486 of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States of the one part, and Ukraine, of the other part ('the Agreement'), parts of the Agreement, including provisions on public procurement, are applied provisionally as of 1 January 2016.
- (2) Article 149 of the Agreement provides that the value thresholds for public procurement contracts provided for in Annex XXI-P are to be revised regularly, beginning in the first even year following the entry into force of the Agreement and such revision is to be adopted by decision of the Association Committee in Trade configuration, as set out in Article 465(4) of the Agreement.
- (3) Article 153 of the Agreement provides that Ukraine is to ensure that its public procurement legislation is gradually made compatible with the relevant Union *acquis*, in line with the schedule provided in Annex XXI to the Agreement.
- (4) Several Union acts listed in Annex XXI to the Agreement have been recast or repealed and replaced by a new Union act since the initialling of the Agreement on 30 March 2012. In particular, the Union adopted and notified to Ukraine the following acts:
 - (a) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts¹
 - (b) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC²
 - (c) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC³
- (5) The above-mentioned new Directives amended the value thresholds for public procurement contracts provided for in Annex XXI-P, which were subsequently amended by the Commission Delegated Regulations (EU) 2015/2172, (EU) 2015/2170 and respectively (EU) 2015/2171.

¹ OJ L 94, 28.3.2014, p. 1.

² OJ L 94, 28.3.2014, p. 65.

³ OJ L 94, 28.3.2014, p. 24.

- (6) Article 463(3) of the Agreement provides that the Association Council shall have the power to update or amend the Annexes to the Agreement.
- (7) It is necessary to update Annex XXI to the Agreement in order to reflect the changes made to the Union *acquis* listed in that Annex, in accordance with Article 149, Article 153 and Article 463 of the Agreement.
- (8) The new Union *acquis* on public procurement has a new structure. It is appropriate to reflect this new structure in Annex XXI. In the interest of clarity, Annex XXI should be updated in its entirety and replaced by the Annex as set out in the Appendix to this Decision. It is furthermore appropriate to take into account the progress made by the Ukraine in the process of approximation to the Union *acquis*.
- (9) Article 465(2) of the Agreement specifies that the Association Council may delegate to the Association Committee in Trade configuration any of its powers, including the power to take binding decisions.
- (10) The EU-Ukraine Association Council empowered the Association Committee in Trade configuration in its Decision No. 3/2014 of 15 December 2014 to update or amend certain trade-related annexes.
- (11) Article 152(1) of the Agreement stipulates that Ukraine shall submit to the Association Committee in Trade configuration a comprehensive roadmap for the implementation of the legislation related to public procurement with time schedules and milestones which should include all reforms in terms of legislative approximation to the Union *acquis*.
- (12) Article 152(3) specifies that a favourable opinion by the Association Committee in Trade configuration is needed in order for the comprehensive roadmap to become a reference document for the process of implementation i.e. for the legislative approximation of the public procurement related legislation to the Union *acquis*.
- (13) It is therefore appropriate for the Association Committee in Trade configuration to adopt a decision giving favourable opinion regarding the comprehensive roadmap,

HAS ADOPTED THIS DECISION:

Article 1

Annex XXI to the Association Agreement between the European Union and the European Atomic Energy Community and their Member States of the one part, and Ukraine, of the other part, is hereby replaced by the updated version of the Annex (enclosed to this Decision).

Article 2

A favourable opinion is given regarding the comprehensive roadmap approved by the Ordinance of the Cabinet of Ministers of Ukraine of 24 February 2016 (number 175-p) adopted by the government of Ukraine on 24 February 2016.

Article 3

This Decision shall enter into force on the day of its adoption.

Done at ..., ...

*For the Association Committee
in Trade configuration*

The Chair

ANNEX XXI-A TO CHAPTER 8

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

Phase		Indicative time schedule	Market access granted to the EU by Ukraine	Market access granted to Ukraine by the EU	
1	Implementation of Articles 150(2) and 151 of this Agreement Agreement of the Reform Strategy set out in Article 152 of this Agreement	6 months after the entry into force of this Agreement	Supplies for central government authorities	Supplies for central government authorities	
2	Approximation and implementation of basic elements of Directive 2014/24/EU and of Directive 89/665/EEC	3 years after the entry into force of this 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 2014/25/EU and of Directive 92 /13/EEC	4 years after the entry into force of this 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 2014/24/EU. Approximation and implementation of Directive 2014/23/EU	6 years after the entry into force of this 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 2014/25/EU	8 years after the entry into force of this 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 TO CHAPTER 8
BASIC ELEMENTS OF DIRECTIVE 2014/24/EU
of 26 February 2014 on public procurement
(Phase 2)

TITLE I

Scope, definitions and general principles

CHAPTER I

Scope and definitions

Section 1 - Subject-matter and definitions

Article 1 Subject-matter and scope: paragraphs 1, 2, 5 and 6

Article 2 Definitions: paragraphs 1, point (1), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (18), (19), (20), (22), (23), (24)

Article 3 Mixed procurement

Section 2 - Thresholds

Article 4 Threshold amounts

Article 5 Methods for calculating the estimated value of procurement

Section 3 - Exclusions

Article 7 Contracts in the water, energy, transport and postal services sectors

Article 8 Specific exclusions in the field of electronic communications

Article 9 Public contracts awarded and design contests organised pursuant to international rules

Article 10 Specific exclusions for service contracts

Article 11 Service contracts awarded on the basis of an exclusive right

Article 12 Public contracts between entities within the public sector

Section 4 - Specific situations

Subsection 1: Subsidised contracts and research and development services

Article 13 Contracts subsidised by contracting authorities

Article 14 Research and development services

Subsection 2: Procurement involving defence and security aspects

Article 15 Defence and security

Article 16 Mixed procurement involving defence or security aspects

- Article 17 Public contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules

CHAPTER II

General Rules

- Article 18 Principles of procurement
Article 19 Economic operators
Article 21 Confidentiality
Article 22 Rules applicable to communication: paragraphs 2-6
Article 23 Nomenclatures
Article 24 Conflicts of interest

TITLE II

Rules on public contracts

CHAPTER I

Procedures

- Article 26 Choice of procedures: paragraphs 1, 2, first alternative of paragraph 4, 5, 6
Article 27 Open procedure
Article 28 Restricted procedure
Article 29 Competitive procedure with negotiation
Article 32 Use of the negotiated procedure without prior publication

CHAPTER III

Conduct of the procedure

Section 1 - Preparation

- Article 40 Preliminary market consultations
Article 41 Prior involvement of candidates or tenderers
Article 42 Technical specifications
Article 43 Labels
Article 44 Test reports, certification and other means of proof: paragraphs 1, 2
Article 45 Variants
Article 46 Division of contracts into lots
Article 47 Setting time limits

Section 2 - Publication and transparency

- Article 48 Prior information notices
- Article 49 Contract notices
- Article 50 Contract award notices: paragraphs 1 and 4
- Article 51 Form and manner of publication of notices: 1st subparagraph of paragraph 1, 1st subparagraph of paragraph 5
- Article 53 Electronic availability of procurement documents
- Article 54 Invitations to candidates
- Article 55 Informing candidates and tenderers

Section 3 - Choice of participants and award of contracts

- Article 56 General principles
- Subsection 1: Criteria for qualitative selection
 - Article 57 Exclusion grounds
 - Article 58 Selection criteria
 - Article 59 European Single Procurement Document: paragraph 1 mutatis mutandis, paragraph 4
 - Article 60 Means of proof
 - Article 62 Quality assurance standards and environmental management standards: paragraphs 1 and 2
 - Article 63 Reliance on the capacities of other entities
- Subsection 2: Reduction of numbers of candidates, tenders and solutions
 - Article 65 Reduction of the number of otherwise qualified candidates to be invited to participate
 - Article 66 Reduction of the number of tenders and solutions
- Subsection 3: Award of the contract
 - Article 67 Contract award criteria
 - Article 68 Life-cycle costing: paragraphs 1 and 2
 - Article 69 Abnormally low tenders: paragraphs 1 - 4

CHAPTER IV

Contract performance

- Article 70 Conditions for performance of contracts
- Article 71 Subcontracting
- Article 72 Modification of contracts during their term
- Article 73 Termination of contracts

TITLE III

Particular procurement regimes

CHAPTER I

Article 74 Award of contracts for social and other specific services

Article 75 Publication of notices

Article 76 Principles of awarding contracts

ANNEXES

ANNEX II LIST OF THE ACTIVITIES REFERRED TO IN POINT 6(a) OF ARTICLE 2(1)

ANNEX III LIST OF PRODUCTS REFERRED TO IN ARTICLE 4(b) WITH REGARD TO CONTRACTS AWARDED CONTRACTING AUTHORITIES IN THE FIELD OF DEFENCE

ANNEX IV REQUIREMENTS RELATING TO TOOLS AND DEVICES FOR THE ELECTRONIC RECEIPT OF TENDERS, REQUESTS FOR PARTICIPATION AS WELL AS PLANS AND PROJECTS IN CONTESTS

ANNEX V INFORMATION TO BE INCLUDED IN NOTICES

Part A: INFORMATION TO BE INCLUDED IN NOTICES OF THE PUBLICATION OF A PRIOR INFORMATION NOTICE ON A BUYER PROFILE

Part B: INFORMATION TO BE INCLUDED IN PRIOR INFORMATION NOTICES (as referred to in Article 48)

Part C: INFORMATION TO BE INCLUDED IN CONTRACT NOTICES (as referred to in Article 49)

Part D: INFORMATION TO BE INCLUDED IN CONTRACT AWARD NOTICES (as referred to in Article 50)

Part G: INFORMATION TO BE INCLUDED IN NOTICES OF MODIFICATIONS OF A CONTRACT DURING ITS TERM (as referred to in Article 72(1))

Part H: INFORMATION TO BE INCLUDED IN CONTRACT NOTICES CONCERNING CONTRACTS FOR SOCIAL AND OTHER SPECIFIC SERVICES (as referred to in Article 75(1))

Part I: INFORMATION TO BE INCLUDED IN PRIOR INFORMATION NOTICES FOR SOCIAL AND OTHER SPECIFIC SERVICES (as referred to in Article 75(1))

Part J: INFORMATION TO BE INCLUDED IN CONTRACT AWARD NOTICES CONCERNING CONTRACTS FOR SOCIAL AND OTHER SPECIFIC SERVICES (as referred to in Article 75(2))

ANNEX VII DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS

- ANNEX IX CONTENTS OF THE INVITATIONS TO SUBMIT A TENDER, TO PARTICIPATE IN THE DIALOGUE OR TO CONFIRM INTEREST PROVIDED FOR UNDER ARTICLE 54
- ANNEX X LIST OF INTERNATIONAL SOCIAL AND ENVIRONMENTAL CONVENTIONS REFERRED TO IN ARTICLE 18(2)
- ANNEX XII MEANS OF PROOF OF SELECTION CRITERIA
- ANNEX XIV SERVICES REFERRED TO IN ARTICLE 74

ANNEX XXI-C TO CHAPTER 8

BASIC ELEMENTS OF DIRECTIVE 89/665/EEC

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 (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 (Directive 2007/66/EC) and by Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (Directive 2014/23/EU) (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 Point (b) of the first paragraph of Article 2b
Article 2c	Time limits for applying for review
Article 2d	Ineffectiveness Paragraph 1(b) Paragraph 2 and 3
Article 2e	Infringements of this Directive and alternative penalties
Article 2f	Time limits

ANNEX XXI-D TO CHAPTER 8
BASIC ELEMENTS OF DIRECTIVE 2014/25/EU

of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors

(Phase 3)

TITLE I

Scope, definitions and general principles

CHAPTER I

Subject-matter and definitions

- | | |
|-----------|--|
| Article 1 | Subject-matter and scope: paragraphs 1, 2, 5 and 6 |
| Article 2 | Definitions: points 1-9, 13-16 and 18-20 |
| Article 3 | Contracting authorities (paragraphs 1 and 4) |
| Article 4 | Contracting entities: paragraphs 1-3 |
| Article 5 | Mixed procurement covering the same activity |
| Article 6 | Procurement covering several activities |

CHAPTER II

Activities

- | | |
|------------|--|
| Article 7 | Common provisions |
| Article 8 | Gas and heat |
| Article 9 | Electricity |
| Article 10 | Water |
| Article 11 | Transport services |
| Article 12 | Ports and airports |
| Article 13 | Postal services |
| Article 14 | Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels |

CHAPTER III

Material scope

Section 1 - Thresholds

- | | |
|------------|--|
| Article 15 | Threshold amounts |
| Article 16 | Methods for calculating the estimated value of procurement: paragraph 1-4 and 7-14 |

Section 2 - Excluded contracts and design contests: Special provisions for procurement involving defence and security aspects

Subsection 1: Exclusions applicable to all contracting entities and special exclusions for the water and energy sector

Article 18 Contracts awarded for purposes of resale or lease to third parties: para 1

Article 19 Contracts and design contests awarded or organised for purposes other than the pursuit of a covered activity or for the pursuit of such an activity in a third country: para 1

Article 20 Contracts awarded and design contests organised pursuant to international rules

Article 21 Specific exclusions for service contracts

Article 22 Service contracts awarded on the basis of an exclusive right

Article 23 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

Subsection 2: Procurement involving defence and security aspects

Article 24 Defence and security

Article 25 Mixed procurement covering the same activity and involving defence or security aspects

Article 26 Procurement covering several activities and involving defence or security aspects

Article 27 Contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules

Subsection 3: Special relations (cooperation, affiliated undertakings and joint ventures)

Article 28 Contracts between contracting authorities

Article 29 Contracts awarded to an affiliated undertaking

Article 30 Contracts awarded to a joint venture or to a contracting entity forming part of a joint venture

Subsection 4: Specific situations

Article 32 Research and development services

CHAPTER IV

General principles

Article 36 Principles of procurement

Article 37 Economic operators

Article 39 Confidentiality

Article 40 Rules applicable to communication

Article 41 Nomenclatures

Article 42 Conflicts of interest

TITLE II

Rules applicable to contracts

CHAPTER I

Procedures

- Article 44 Choice of procedures: para 1, 2, 4
- Article 45 Open procedure
- Article 46 Restricted procedure
- Article 47 Negotiated procedure with prior call for competition
- Article 50 Use of the negotiated procedure without prior call for competition: point (a) – (i)

CHAPTER III

Conduct of the procedure

Section 1 - Preparation

- Article 58 Preliminary market consultations
- Article 59 Prior involvement of candidates or tenderers
- Article 60 Technical specifications
- Article 61 Labels
- Article 62 Test reports, certification and other means of proof
- Article 63 Communication of technical specifications
- Article 64 Variants
- Article 65 Division of contracts into lots
- Article 66 Setting time limits

Section 2 - Publication and transparency

- Article 67 Periodic indicative notices
- Article 68 Notices on the existence of a qualification system
- Article 69 Contract notices
- Article 70 Contract award notices: para 1, 3, 4
- Article 71 Form and manner of publication of notices: paragraph 1, 1st subparagraph of paragraph 5
- Article 73 Electronic availability of procurement documents
- Article 74 Invitations to candidates

Article 75 Informing applicants for qualification, candidates and tenderers

Section 3 - Choice of participants and award of contract

Article 76 General principles

Subsection 1: Qualification and qualitative selection

Article 78 Criteria for qualitative selection

Article 79 Reliance on the capacities of other entities: para 2

Article 80 Use of exclusion grounds and selection criteria provided for under Directive 2014/24/EU

Article 81 Quality assurance standards and environmental management standards: para 1, 2

Subsection 2: Award of the contract

Article 82 Contract award criteria

Article 83 Life-cycle costing: paragraphs 1 and 2

Article 84 Abnormally low tenders: para 1-4

CHAPTER IV: Contract performance

Article 87 Conditions for performance of contracts

Article 88 Subcontracting

Article 89 Modification of contracts during their term

Article 90 Termination of contracts

TITLE III

Particular procurement regimes

CHAPTER I

Social and other specific services

Article 91 Award of contracts for social and other specific services

Article 92 Publication of notices

Article 93 Principles of awarding contracts

ANNEXES

ANNEX I List of activities as set out in point (a) of point 2 of Article 2

ANNEX V Requirement relating to tools and devices for the electronic receipt of tenders, requests to participate, applications for qualification as well as plans and projects in contests

- ANNEX VI A Information to be included in the periodic indicative notice (as referred to in Article 67)
- ANNEX VI B Information to be included in notices of publication of a periodic indicative notice on a buyer profile not used as a means of calling for competition (as referred to in Article 67(1))
- ANNEX VIII Definition of certain technical specifications
- ANNEX IX Features concerning publication
- ANNEX X Information to be included in the notice on the existence of a qualification system (as referred to in point (b) of Article 44(4) and in Article 68)
- ANNEX XI Information to be included in contract notices (as referred to in Article 69)
- ANNEX XII Information to be included in the contract award notice (as referred to in Article 70)
- ANNEX XIII Contents of the invitation to submit a tender, to participate in the dialogue, to negotiate or to confirm interest provided for under Article 74
- ANNEX XIV List of International Social and Environmental Conventions referred to in Article 36(2)
- ANNEX XVI Information to be included in notices of modifications of a contract during its term (as referred to in Article 89(1))
- ANNEX XVII Services referred to in Article 91
- ANNEX XVIII Information to be included in notices concerning contracts for social and other specific services (as referred to in Article 92)

ANNEX XXI-E TO CHAPTER 8

BASIC ELEMENTS OF COUNCIL DIRECTIVE 92/13/EEC

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 (Directive 92/13/EEC)

as amended by Directive 2007/66/EC and Directive 2014/23/EU

(Phase 3)

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 Point (b) of the first paragraph of Article 2b
Article 2c	Time limits for applying for review
Article 2d	Ineffectiveness Paragraph 1 (b) 2 and 3
Article 2e	Infringements of this Directive and alternative penalties
Article 2f	Time limits

ANNEX XXI-F TO CHAPTER 8

I. OTHER NON-MANDATORY ELEMENTS OF DIRECTIVE 2014/24/EU

(Phase 4)

The elements of Directive 2014/24/EU set out in this Annex are not mandatory but recommended for approximation. Ukraine may approximate these elements within the time-frame set in Annex XXI-B

TITLE I

Scope, definitions and general principles

CHAPTER I

Scope and definitions

Section 1 - Subject-matter and definitions

Article 2 Definitions (para 1, point (14), (16))

Article 20 Reserved contracts

CHAPTER II

Techniques and instruments for electronic and aggregated procurement

Article 37 Centralised purchasing activities and central purchasing bodies

CHAPTER III

Conduct of the procedure

Section 3 - Choice of participants and award of contracts

Article 64 Official lists of approved economic operators and certification by bodies established under public or private law

TITLE III

Particular procurement regimes

CHAPTER I

Article 77 Reserved contracts for certain services

II. Non-mandatory elements of Directive 2014/23/EU

(Phase 4)

The elements of Directive 2014/23/EU set out in this Annex are not mandatory but recommended for approximation. Ukraine may approximate these elements within the time-frame set in Annex XXI-B

TITLE I

Subject matter, scope, principles and definitions

CHAPTER I

Scope, general principles and definitions

Section IV - Specific situations

Article 24 Reserved Concessions

ANNEX XXI-G TO CHAPTER 8

I. OTHER MANDATORY ELEMENTS OF DIRECTIVE 2014/24/EU

(Phase 4)

TITLE I

Scope, definitions and general principles

CHAPTER I

Scope and definitions

Section 1 - Subject-matter and definitions

Article 2 Definitions (para 1 point (21))

Article 22 Rules applicable to communication: paragraph 1

TITLE II

Rules on public contracts

CHAPTER I

Procedures

Article 26 Choice of procedures: paragraph 3, second alternative of paragraph 4

Article 30 Competitive dialogue

Article 31 Innovation Partnership

CHAPTER II

Techniques and instruments for electronic and aggregated procurement

Article 33 Framework agreements

Article 34 Dynamic purchasing systems

Article 35 Electronic auctions

Article 36 Electronic catalogues

Article 38 Occasional joint procurement

CHAPTER III

Conduct of the procedure

Section 2 - Publication and Transparency

Article 50 Contract award notices: paragraphs 2 and 3

TITLE III

Particular procurement regimes

CHAPTER II

Rules governing design contests

Article 78	Scope
Article 79	Notices
Article 80	Rules on the organisation of design contests and the selection of participants
Article 81	Composition of the jury
Article 82	Decisions of the jury

ANNEXES

ANNEX V INFORMATION TO BE INCLUDED IN NOTICES

Part E: INFORMATION TO BE INCLUDED IN DESIGN CONTEST NOTICES (as referred to in Article 79(1))

Part F: INFORMATION TO BE INCLUDED IN NOTICES OF THE RESULTS OF A CONTEST (as referred to in Article 79(2))

ANNEX VI: INFORMATION TO BE INCLUDED IN THE PROCUREMENT DOCUMENTS RELATING TO ELECTRONIC AUCTIONS (ARTICLE 35(4))

II. MANDATORY ELEMENTS OF DIRECTIVE 2014/23/EU

(Phase 4)

TITLE I

Subject matter, scope, principles and definitions

CHAPTER I

Scope, general principles and definitions

Section I - Subject-matter, scope, general principles, definitions and threshold

- Article 1 Subject-matter and scope: paragraphs 1, 2 and 4
- Article 2 Principle of free administration by public authorities
- Article 3 Principle of equal treatment, non-discrimination and transparency
- Article 4 Freedom to define services of general economic interest
- Article 5 Definitions
- Article 6 Contracting authorities: paragraphs 1 and 4
- Article 7 Contracting entities
- Article 8: Threshold and methods for calculating the estimated value of concessions

Section II - Exclusions

- Article 10 Exclusions applicable to concessions awarded by contracting authorities and contracting entities
- Article 11 Specific exclusions in the field of electronic communications
- Article 12 Specific exclusions in the field of water
- Article 13 Concessions awarded to an affiliated undertaking
- Article 14 Concessions awarded to a joint venture or to a contracting entity forming part of a joint venture
- Article 17 Concessions between entities within the public sector

Section III - General provisions

- Article 18 Duration of the concession
- Article 19 Social and other specific services
- Article 20 Mixed contracts
- Article 21 Mixed procurement contracts involving defence or security aspects
- Article 22 Contracts covering both activities referred to in Annex II and other activities
- Article 23 Concessions covering both activities referred to in Annex II and activities involving defence or security aspects
- Article 25 Research and development services

CHAPTER II

Principles

- Article 26 Economic operators
- Article 27 Nomenclatures
- Article 28 Confidentiality
- Article 29 Rules applicable to communication

TITLE II

Rules on the award of concessions: General principles and procedural guarantees

CHAPTER I

General principles

- Article 30 General principles: paragraphs 1, 2 and 3
- Article 31 Concession notices
- Article 32 Concession award notices
- Article 33 Form and manner of publication of notices: 1st subparagraph of paragraph 1
- Article 34 Electronic availability of concession documents
- Article 35 Combating corruption and preventing conflicts of interest

CHAPTER II

Procedural guarantees

- Article 36 Technical and functional requirements
- Article 37 Procedural guarantees
- Article 38 Selection of and qualitative assessment of candidates
- Article 39 Time limits for receipt of applications and tenders for the concession
- Article 40 Provision of information to candidates and tenderers
- Article 41 Award criteria

TITLE III

Rules on performance of concessions

- Article 42 Subcontracting
- Article 43 Modification of contracts during their term
- Article 44 Termination of concessions
- Article 45 Monitoring and Reporting

ANNEXES

- ANNEX I LIST OF THE ACTIVITIES REFERRED TO IN POINT (7) OF ARTICLE 5

ANNEX II	ACTIVITIES EXERCISED BY CONTRACTING ENTITIES AS REFERRED TO IN ARTICLE 7
ANNEX III	LIST OF LEGAL ACTS OF THE UNION REFERRED TO IN POINT (B) OF ARTICLE 7(2)
ANNEX IV	SERVICES REFERRED TO IN ARTICLE 19
ANNEX V	INFORMATION TO BE INCLUDED IN CONCESSION NOTICES REFERRED TO IN ARTICLE 31
ANNEX VI	INFORMATION TO BE INCLUDED IN PRIOR INFORMATION NOTICES CONCERNING CONCESSIONS FOR SOCIAL AND OTHER SPECIFIC SERVICES, AS REFERRED TO IN ARTICLE 31(3)
ANNEX VII	INFORMATION TO BE INCLUDED IN CONCESSION AWARD NOTICES, AS REFERRED TO IN ARTICLE 32
ANNEX VIII	INFORMATION TO BE INCLUDED IN CONCESSION AWARD NOTICES CONCERNING CONCESSIONS FOR SOCIAL AND OTHER SPECIFIC SERVICES, AS REFERRED TO IN ARTICLE 32
ANNEX IX	FEATURES CONCERNING PUBLICATION
ANNEX X	LIST OF INTERNATIONAL SOCIAL AND ENVIRONMENTAL CONVENTIONS REFERRED TO IN ARTICLE 30(3)
ANNEX XI	INFORMATION TO BE INCLUDED IN NOTICES OF MODIFICATIONS OF A CONCESSION DURING ITS TERM ACCORDING TO ARTICLE 43

ANNEX XXI-H TO CHAPTER 8
OTHER ELEMENTS OF DIRECTIVE 89/665/EEC
as amended by Directive 2007/66/EC and Directive 2014/23/EU
(Phase 4)

Article 2b	Derogations from the standstill period
	Point (c) of the first paragraph of Article 2b
Article 2d	Ineffectiveness
	Point (c) of the first paragraph of Article 2d
	Paragraph 5

ANNEX XXI-I TO CHAPTER 8

(Phase 5)

I. OTHER MANDATORY ELEMENTS OF DIRECTIVE 2014/25/EU

TITLE I

Scope, definitions and general principles

CHAPTER I

Subject-matter and definitions

Article 2 Definitions: point 17

CHAPTER III

Material scope

Section 1 - Thresholds

Article 16 Methods for calculating the estimated value of procurement: paragraphs 5, 6

TITLE II

Rules applicable to contracts

CHAPTER I

Procedures

Article 44 Choice of procedures: paragraph 3

Article 48 Competitive dialogue

Article 49 Innovation Partnership

Article 50 Use of the negotiated procedure without prior call for competition: point (j)

CHAPTER II

Techniques and instruments for electronic and aggregated procurement

Article 51 Framework agreements

Article 52 Dynamic purchasing systems

Article 53 Electronic auctions

Article 54 Electronic catalogues

Article 56 Occasional joint procurement

CHAPTER III

Conduct of the procedure

Section 2 - Publication and transparency

Article 70 Contract award notices: para 2

Section 3 - Choice of participants and award of contract

Subsection 1: Qualification and qualitative selection

Article 77 Qualification systems

Article 79 Reliance on the capacities of other entities: paragraph 1

TITLE III

Particular procurement regimes

CHAPTER II

Rules governing design contests

Article 95 Scope

Article 96 Notices

Article 97 Rules on the organisation of design contests, the selection of participants and the jury

Article 98 Decision of the jury

ANNEXES

ANNEX VII Information to be included in the procurement documents relating to electronic auctions (Article 53(4))

ANNEX XIX Information to be included in the design contest notice (as referred to in Article 96(1))

ANNEX XX Information to be included in the results of design contest notices (as referred to in Article 96(1))

II. OTHER NON-MANDATORY ELEMENTS OF DIRECTIVE 2014/25/EU

The further elements of Directive 2014/25/EU set out in this Annex are not mandatory but recommended for approximation. Ukraine may approximate these elements within the time-frame set in Annex XXI-B.

TITLE I

Scope, definitions and general principles

CHAPTER I

Subject-matter and definitions

Article 2 Definitions: points 10-12

CHAPTER IV

General principles

Article 38 Reserved contracts

TITLE II

Rules applicable to contracts

CHAPTER I

Procedures

Article 55 Centralised purchasing activities and central purchasing bodies

TITLE III

Particular procurement regimes

CHAPTER I

Social and other specific services

Article 94 Reserved contracts for certain services

ANNEX XXI-J TO CHAPTER 8
OTHER ELEMENTS OF DIRECTIVE 92/13/EEC
as amended by Directive 2007/66/EC and Directive 2014/23/EU
(Phase 5)

Article 2b	Derogations from the standstill period
	Point (c) of the first paragraph of Article 2b
Article 2d	Ineffectiveness
	Point (c) of the first paragraph of Article 2d
	Paragraph 5

ANNEX XXI-K TO CHAPTER 8

I. PROVISIONS OF DIRECTIVE 2014/24/EU OUTSIDE THE SCOPE OF APPROXIMATION

The elements of Directive 2014/24/EU listed in this Annex are not subject to the process of approximation.

TITLE I

Scope, definitions and general principles

CHAPTER I

Scope and definitions

Section 1 - Subject-matter and definitions

Article 1 Subject-matter and scope: paragraphs 3 and 4

Article 2 Definitions: paragraph 2

Section 2 - Thresholds

Article 6 Revision of the thresholds and of the list of central government authorities

TITLE II

Rules on public contracts

CHAPTER I

Procedures

Article 25 Conditions relating to the GPA and other international agreements

CHAPTER II

Techniques and instruments for electronic and aggregated procurement

Article 39 Procurement involving contracting authorities from different Member States

CHAPTER III

Conduct of the procedure

Section 1 - Preparation

Article 44 Test reports, certification and other means of proof: paragraph 3

Section 2 - Publication and transparency

Article 51 Form and manner of publication of notices: second subparagraph of paragraph 1, paragraphs 2, 3, 4, second subparagraph of paragraph 5, paragraph 6

Article 52 Publication at national level

Section 3 - Choice of participants and award of contracts

- Article 61 Online repository of certificates (e-Certis)
- Article 62 Quality assurance standards and environmental management standards: paragraph 3
- Article 68 Life-cycle costing: paragraph 3
- Article 69 Abnormally low tender: paragraph 5

TITLE IV

GOVERNANCE

- Article 83 Enforcement
- Article 84 Individual reports on procedures for the award of contracts
- Article 85 National reporting and statistical information
- Article 86 Administrative Cooperation

TITLE V

DELEGATED POWERS, IMPLEMENTING POWERS AND FINAL PROVISIONS

- Article 87 Exercise of the delegation of powers
- Article 88 Urgency procedure
- Article 89 Committee procedure
- Article 90 Transposition and transitional provisions
- Article 91 Repeals
- Article 92 Review
- Article 93 Entry into force
- Article 94 Addressees

ANNEXES

ANNEX I CENTRAL GOVERNMENT AUTHORITIES

ANNEX VIII FEATURES CONCERNING PUBLICATION

ANNEX XI REGISTERS

ANNEX XIII LIST OF EU LEGISLATION REFERRED TO IN ARTICLE 68(3)

ANNEX XV CORRELATION TABLE

II. PROVISIONS OF DIRECTIVE 2014/23/EU OUTSIDE THE SCOPE OF APPROXIMATION

The elements of Directive 2014/23/EU listed in this Annex are not subject to the process of approximation.

TITLE I

Subject matter, scope, principles and definitions

CHAPTER I

Scope, general principles and definitions

Section I - Subject-matter, scope, general principles, definitions and threshold

Article 1 Subject-matter and scope: paragraph 3

Article 6 Contracting authorities: paragraphs 2 and 3

Article 9 Revision of the threshold

Section II - Exclusions

Article 15 Notification of information by contracting entities

Article 16 Exclusion of activities which are directly exposed to competition

TITLE II

Rules on the award of concessions: General principles and procedural guarantees

CHAPTER I

General principles

Article 30 General principles: paragraph 4

Article 33 Form and manner of publication of notices: 2nd subparagraph of paragraph 1, paragraphs 2, 3 and 4

TITLE IV

Amendments to Directive 89/665/EEC and 92/13/EEC

Article 46 Amendments to Directive 89/665/EEC

Article 47 Amendments to Directive 92/13/EEC

TITLE V

Delegated powers, implementing powers and final provisions

Article 48 Exercise of the delegation

Article 49 Urgency procedure

Article 50 Committee procedure

Article 51 Transposition

Article 52 Transitional provisions

Article 53	Monitoring and reporting
Article 54	Entry into force
Article 55	Addressees

ANNEX XXI-L TO CHAPTER 8
PROVISIONS OF DIRECTIVE 2014/25/EU OUTSIDE THE SCOPE OF
APPROXIMATION

The elements listed in this Annex are not subject to the process of approximation.

TITLE I

Scope, definitions and general principles

CHAPTER I

Subject-matter and definitions

Article 1 Subject matter and scope: paragraphs 3 and 4

Article 3 Contracting authorities: paragraphs 2 and 3

Article 4 Contracting entities: paragraph 4

CHAPTER III

Material scope

Section 1 - Thresholds

Article 17 Revision of the thresholds

Section 2 - Excluded contracts and design contests: Special provisions for procurement involving defence and security aspects

Subsection 1: Exclusions applicable to all contracting entities and special exclusions for the water and energy sector

Article 18 Contracts awarded for purposes of resale or lease to third parties: paragraph 2

Article 19 Contracts and design contests awarded or organised for purposes other than the pursuit of a covered activity or for the pursuit of such an activity in a third country: paragraph 2

Subsection 3: Special relations (cooperation, affiliated undertakings and joint ventures)

Article 31 Notification of information

Subsection 4: Specific situations

Article 33 Contracts subject to special arrangements

Subsection 5: Activities directly exposed to competition and procedural provisions relating thereto

Article 34 Activities directly exposed to competition

Article 35 Procedure for establishing whether Article 34 is applicable

TITLE II

Rules applicable to contracts

CHAPTER I

Procedures

Article 43 Conditions relating to the GPA and other international agreements

CHAPTER II

Article 57 Procurement involving contracting entities from different Member States

CHAPTER III

Conduct of the procedure

Section 2 - Publication and transparency

Article 71 Form and manner of publication of notices: paragraphs 2, 3, 4, 2nd subparagraph of paragraph 5, paragraph 6

Article 72 Publication at national level

Section 3 - Choice of participants and award of contract

Article 81 Quality assurance standards and environmental management standards: paragraph 3

Article 83 Life-cycle costing: paragraph 3

Section 4 - Tenders comprising products originating in third countries and relations with those countries

Article 85 Tenders comprising products originating in third countries

Article 86 Relations with third countries as regards works, supplies and service contracts

TITLE IV

Governance

Article 99 Enforcement

Article 100 Individual reports on procedures for the award of contracts

Article 101 National reporting and statistical information

Article 102 Administrative cooperation

TITLE V

DELEGATED POWERS, IMPLEMENTING POWERS AND FINAL PROVISIONS

Article 103 Exercise of the delegation

Article 104 Urgency procedure

Article 105	Committee procedure
Article 106	Transposition and transitional provisions
Article 107	Repeal
Article 108	Review
Article 109	Entry into force
Article 110	Addressees

ANNEXES

ANNEX II	List of Union legal acts referred to in Article 4(3)
Annex III	List of Union legal acts referred to in Article 34(3)
Annex IV	Deadlines for the adoption of the implementing acts referred to in Article 35
Annex XV	List of Union legal acts referred to in Article 83(3)

ANNEX XXI-M TO CHAPTER 8
PROVISIONS OF DIRECTIVE 89/665/EEC AS AMENDED BY DIRECTIVE
2007/66/EC AND DIRECTIVE 2014/23/EU OUTSIDE THE SCOPE OF
APPROXIMATION

The elements listed in this Annex are not subject to the process of approximation.

Article 2b	Derogations from the standstill period
	Point (a) of the first paragraph of Article 2b
Article 2d	Ineffectiveness
	Point (a) of the first paragraph of Article 2d
	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 TO CHAPTER 8
PROVISIONS OF DIRECTIVE 92/13/EEC AS AMENDED BY DIRECTIVE
2007/66/EC AND DIRECTIVE 2014/23/EU OUTSIDE THE SCOPE OF
APPROXIMATION

The elements listed in this Annex are not subject to the process of approximation.

Article 2b	Derogations from the standstill period Point (a) of the first paragraph of Article 2b
Article 2d	Ineffectiveness Point (a) of the first paragraph of Article 2d 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 TO CHAPTER 8

UKRAINE: INDICATIVE LIST OF ISSUES FOR COOPERATION

1. Training, in Ukraine and EU countries, of Ukrainian officials from government bodies engaged in public procurement;
2. Training of suppliers interested participating in public procurement;
3. Exchange of information and experience on best practice and regulatory rules in the sphere of public procurement;
4. Enhancement of the functionality of the public procurement website and establishment of a system of public procurement monitoring;
5. Consultations and methodological assistance from the EU Party in application of modern electronic technologies in the sphere of public procurement;
6. 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 paragraph 2 of this Agreement)

ANNEX XXI-P TO CHAPTER 8

THRESHOLDS

1. The value thresholds mentioned in Article 149(3) of this Agreement shall be for both Parties:
 - (a) EUR 135.000 for public supply and service contracts awarded by central government authorities and design contests awarded by such authorities;
 - (b) EUR 209.000 in the case of public supply and public service contracts not covered by point a);
 - (c) EUR 5.225.000 in the case of public works contracts;
 - (d) EUR 5.225.000 in the case of works contracts in the utilities sector;
 - (e) EUR 5.225.000 in the case of concessions;
 - (f) EUR 418.000 in the case of supply and service contracts in the utilities sector;
 - (g) EUR 750.000 for public service contracts for social and other specific services;
 - (h) EUR 1.000.000 for service contracts for social and other specific services in the utilities sector.
2. The EUR thresholds quoted in paragraph 1 shall be adapted to reflect the thresholds applicable under the EU Directives at the moment of the entry into force of this Agreement.