

## Documentation

# EU DISABILITY LAW AND THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES



413DV05 Trier, 23-24 January 2013

## Background Documentation

### A. Primary legislation

1.	Articles 2, 3, 6 and 19 of the Treaty on European Union (TEU)	
2.	Articles 10, 19 and 267 of the Treaty on the Functioning of the European Union (TFEU, ex EC Treaty)	
3.	Articles 20, 21, 22, 25, 26 of the EU Charter of Fundamental Rights of the European Union.	

### B. European Disability Strategy 2010-2020

4.	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions - European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, Brussels, 15.11.2010. COM(2010) 636 final	

### C. UN CRPD and the EU

5.	Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities	
6.	Optional Protocol	
7.	Information Note from the European Commission on progress in implementing the UN Convention on the Rights of Persons with Disabilities to the EPSCO Council, Brussels, 7 June 2011	
8.	Fifth Disability High Level Group Report on Implementation of the UN Convention on the Rights of Persons with Disabilities	

### D. Non-discrimination

	<b>Council Directive 2000/78</b>	
9.	Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation	
	<b>ECJ case law</b>	
10.	Judgment of the Court of 6 December 2012, Case C-152/11, <i>Johann Odar v Baxter Deutschland GmbH</i>	

11.	Action brought on 20 June 2011, Case C-312/11, <i>European Commission v Italian Republic</i>	
12.	Action brought on 1 July 2011, Case C-335/11, <i>Jette Ring v Dansk almennyttigt Boligselskab DAB</i>	
13.	Opinion of the Advocate General of 6 December 2012, Case C-335/11, <i>Jette Ring v Dansk almennyttigt Boligselskab DAB</i> (not available in English) <ul style="list-style-type: none"> <li>a. German version</li> <li>b. French version</li> </ul>	
14.	Judgment of the Court of 17 July 2008, Case C-303/06, <i>S. Coleman v Attridge Law and Steve Law</i>	
15.	Judgment of the Court of 11 July 2006, Case C-13/05, <i>Sonia Chacón Navas v Eurest Colectividades SA</i>	
	<b>Jurisprudence of the European Court of Human Rights</b>	
16.	Case of <i>Sykora v. Czech Republic</i> (Application no. 23419/07) Judgment of the Court (Fifth Section) of 22 November 2012	
17.	Case of <i>Bureš v. Czech Republic</i> (Application no. 37679/08) Judgment of the Court (Fifth Section) of 18 October 2012	
18.	Case of <i>D.D. v. Lithuania</i> (Application no. 13469/06) Judgment of the Court (Second Section) of 14 February 2012	
19.	Case of <i>Stanev v. Bulgaria</i> (Application no. 36760/06) Judgment of the Court (Grand Chamber) of 17 January 2012	
	<b>Proposal for a new Directive</b>	
20.	Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation. COM(2008) 426 final. Brussels, 2.7.2008	
	<b>Code of Good Practice</b>	
21.	Code of good Practice for the employment of people with Disabilities, Bureau Decision of 22 June 2005	

## E. Transport

22.	Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004	

23.	Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004	
24.	Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations	
25.	Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air	
26.	Communication from the Commission Communication on the cope of the liability of air carriers and airports in the event of destroyed, damaged or lost mobility equipment of passengers with reduced mobility when travelling by air. COM/2008/0510 final	
27.	Evaluation of Regulation 1107/2006 Final report Main report and Appendices A-B June 2010 – Executive Summary	

#### F. The built environment and telecommunication

28.	DIRECTIVE 2004/17/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors	
28a.	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on procurement by entities operating in the water, energy, transport and postal services sectors, COM/2011/0895 final - 2011/0439 (COD)	
29.	DIRECTIVE 2004/18/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts	
29a.	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on public procurement, COM/2011/0896 final - 2011/0438 (COD)	
30.	The Build-For-All Reference Manual: A guide to the implementation of accessibility to the built environment through public procurement	
31.	Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the regions - "Towards an accessible information society" COM/2008/0804 final.	

32.	Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee and the Committee of the Regions - eAccessibility [SEC(2005)1095] COM/2005/0425 final.	
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**G. Other**

33.	List of secondary legislation relevant to "disability"	
34.	Judgment of the High Court of Ireland, [2011 No. 9548P], M.X. [APUM] v Health Service Executive and by order the Attorney General	

**H. Document(s) added during or after the conference**

35.	Case of <i>Lashin v. Russia</i> (Application no. 33117/02) Judgment of the Court (First Section) of 22 January 2013	

# CONSOLIDATED VERSION OF THE TREATY ON EUROPEAN UNION 30.3.2010

*Official Journal of the European Union C 83, 30.3.2010*

## *Article 2*

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

## *Article 3* *(ex Article 2 TEU)*

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.
3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

1. The Union shall establish an economic and monetary union whose currency is the euro.
2. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty

and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

3. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.

*Article 6*  
(*ex Article 6 TEU*)

1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.

1. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.
2. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

*Article 19*

1. The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed.

Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.

2. The Court of Justice shall consist of one judge from each Member State. It shall be assisted by Advocates-General.

The General Court shall include at least one judge per Member State.

The Judges and the Advocates-General of the Court of Justice and the Judges of the General Court shall be chosen from persons whose independence is beyond doubt and who satisfy the conditions set out in Articles 253 and 254 of the Treaty on the Functioning of the European Union. They shall be appointed by common accord of the governments of the Member States for six years. Retiring Judges and Advocates-General may be reappointed.

3. The Court of Justice of the European Union shall, in accordance with the Treaties:
- (a) rule on actions brought by a Member State, an institution or a natural or legal person;
  - (b) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions;
  - (c) rule in other cases provided for in the Treaties.



# CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

*Official Journal of the European Union C 83, 30.3.2010*

## *Article 10*

In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

## *Article 19* *(ex Article 13 TEC)*

1. Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.
2. By way of derogation from paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of Union incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1.

## *Article 267* *(ex Article 234 TEC)*

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of the Treaties;
- (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay

# **CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**

(2000/C 364/01)

## CHAPTER III

### EQUALITY

#### *Article 20*

#### **Equality before the law**

Everyone is equal before the law.

#### *Article 21*

#### **Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

#### *Article 22*

#### **Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.

#### *Article 23*

#### **Equality between men and women**

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

#### *Article 24*

#### **The rights of the child**

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

*Article 25*

**The rights of the elderly**

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

*Article 26*

**Integration of persons with disabilities**

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

EN

EN

EN



EUROPEAN COMMISSION

Brussels, 15.11.2010  
COM(2010) 636 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**European Disability Strategy 2010-2020:  
A Renewed Commitment to a Barrier-Free Europe**

{SEC(2010) 1323}

{SEC(2010) 1324}

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
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**European Disability Strategy 2010-2020:  
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## 1. INTRODUCTION

One in six people in the European Union (EU) has a disability<sup>1</sup> that ranges from mild to severe making around 80 million who are often prevented from taking part fully in society and the economy because of environmental and attitudinal barriers. For people with disabilities the rate of poverty is 70 % higher than the average<sup>2</sup> partly due to limited access to employment.

Over a third of people aged over 75 have disabilities that restrict them to some extent, and over 20 % are considerably restricted<sup>3</sup>. Furthermore, these numbers are set to rise as the EU's population ages.

The EU and its Member States have a strong mandate to improve the social and economic situation of people with disabilities.

- Article 1 of the Charter of Fundamental Rights of the EU (the Charter) states that ‘Human dignity is inviolable. It must be respected and protected.’ Article 26 states that ‘the EU recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.’ In addition, Article 21 prohibits any discrimination on the basis of disability.
- The Treaty on the Functioning of the EU (TFEU) requires the Union to combat discrimination based on disability when defining and implementing its policies and activities (Article 10) and gives it the power to adopt legislation to address such discrimination (Article 19).
- The United Nations Convention on the Rights of Persons with Disabilities (the UN Convention), the first legally-binding international human rights instrument to which the EU and its Member States are parties, will soon apply throughout the EU<sup>4</sup>. The UN Convention requires States Parties to protect and safeguard all human rights and fundamental freedoms of persons with disabilities.

According to the UN Convention, people with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

The Commission will work together with the Member States to tackle the obstacles to a barrier-free Europe, taking up recent European Parliament and Council resolutions<sup>5</sup>. This

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<sup>1</sup> EU Labour Force Survey ad hoc module on employment of disabled people (LFS AHM), 2002.

<sup>2</sup> EU Statistics on Income and Living Conditions (EU-SILC), 2004.

<sup>3</sup> LFS AHM and EU- SILC 2007.

<sup>4</sup> Agreed in 2007 and signed by all Member States and the EU; ratified by October 2010 by 16 Member States (BE, CZ, DK, DE, ES, FR, IT, LV, LT, HU, AT, PT, SI, SK, SE, UK) while the rest are in the process of doing so. The UN Convention will be binding on the EU and will form part of the EU legal order.

<sup>5</sup> Council Resolutions (SOC 375 of 2 June 2010) and 2008/C 75/01 and European Parliament Resolution B6-0194/2009, P6\_TA(2009)0334.

Strategy provides a framework for action at European level, as well as with national action to address the diverse situation of men, women and children with disabilities.

Full economic and social participation of people with disabilities is essential if the EU's Europe 2020 strategy<sup>6</sup> is to succeed in creating smart, sustainable and inclusive growth. Building a society that includes everyone also brings market opportunities and fosters innovation. There is a strong business case for making services and products accessible to all, given the demand from a growing number of ageing consumers. For example, the EU market for assistive devices (with an estimated annual value of over €30 billion<sup>7</sup>) is still fragmented, and the devices are expensive. Policy and regulatory frameworks do not reflect the needs of people with disabilities adequately, neither do product and service development. Many goods and services, as well as much of the built environment, are still not accessible enough.

The economic downturn has had an adverse impact on the situation of people with disabilities, making it all the more urgent to act. This Strategy aims to improve the lives of individuals, as well as bringing wider benefits for society and the economy without undue burden on industry and administrations.

## 2. OBJECTIVES AND ACTIONS

The overall aim of this Strategy is to empower people with disabilities so that they can enjoy their full rights, and benefit fully from participating in society and in the European economy, notably through the Single market. Achieving this and ensuring effective implementation of the UN Convention across the EU calls for consistency. This Strategy identifies actions at EU level to supplement national ones, and it determines the mechanisms<sup>8</sup> needed to implement the UN Convention at EU level, including inside the EU institutions. It also identifies the support needed for funding, research, awareness-raising, statistics and data collection.

This Strategy focuses on eliminating barriers<sup>9</sup>. The Commission has identified eight main areas for action: **Accessibility, Participation, Equality, Employment, Education and training, Social protection, Health, and External Action**. For each area, key actions are identified, with the overarching EU-level objective highlighted in a box. These areas were selected on the basis of their potential to contribute to the overall objectives of the Strategy and of the UN Convention, the related policy documents from EU institutions and the Council of Europe, as well as the results of the EU Disability Action Plan 2003-2010, and a consultation of the Member States, stakeholders and the general public. The references to national actions are intended to supplement action at EU level, rather than to cover all national obligations under the UN Convention. The Commission will also tackle the situation of people with disabilities through the Europe 2020 strategy, its flagship initiatives and the relaunch of the single market.

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<sup>6</sup> COM(2010) 2020.

<sup>7</sup> Deloitte & Touche, Access to Assistive Technology in the EU, 2003, and BCC Research, 2008.

<sup>8</sup> Article 33 UN Convention.

<sup>9</sup> 2006 Eurobarometer: 91 % find that more money should be spent on eliminating physical barriers for people with disabilities.

## 2.1. Areas for action

### 1 — Accessibility

'Accessibility' is defined as meaning that people with disabilities have access, on an equal basis with others, to the physical environment, transportation, information and communications technologies and systems (ICT), and other facilities and services. There are still major barriers in all of these areas. For example, on average in the EU-27, only 5% of public websites comply fully with web accessibility standards, though more are partially accessible. Many television broadcasters still provide few subtitled and audio-described programmes<sup>10</sup>.

Accessibility is a precondition for participation in society and in the economy, but the EU still has a long way to go in achieving this. The Commission proposes to use legislative and other instruments, such as standardisation, to optimise the accessibility of the built environment, transport and ICT in line with the Digital Agenda and Innovation Union flagships. Based on smarter regulation principles, it will explore the merits of adopting regulatory measures to ensure accessibility of products and services, including measures to step up the use of public procurement (proven to be very effective in the US<sup>11</sup>). It will encourage the incorporation of accessibility and 'design for all' in educational curricula and training for relevant professions. It will also foster an EU-wide market for assistive technology. Following further consultations with Member States and other stakeholders, the Commission will consider whether to propose a 'European Accessibility Act' by 2012. This could include developing specific standards for particular sectors to substantially improve the proper functioning of the internal market for accessible products and services.

EU action will support and supplement national activities for implementing accessibility and removing existing barriers, and improving the availability and choice of assistive technologies.

Ensure accessibility to goods, services including public services and assistive devices for people with disabilities.

### 2 — Participation

There are still many obstacles preventing people with disabilities from fully exercising their fundamental rights - including their Union citizenship rights - and limiting their participation in society on an equal basis with others. Those rights include the right to free movement, to choose where and how to live, and to have full access to cultural, recreational, and sports activities. For example a person with a recognised disability moving to another EU country can lose access to national benefits, such as free or reduced-cost public transport.

The Commission will work to:

- overcome the obstacles to exercising their rights as individuals, consumers, students, economic and political actors; tackle the problems related to intra-EU mobility and facilitate and promote the use of the European model of disability parking card;

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<sup>10</sup> EC (2007), SEC(2007) 1469, p. 7.

<sup>11</sup> Section 508 of Rehabilitation Act and Architectural Barriers Act.

- promote the transition from institutional to community-based care by: using Structural Funds and the Rural Development Fund to support the development of community-based services and raising awareness of the situation of people with disabilities living in residential institutions, in particular children and elderly people;
- improve the accessibility of sports, leisure, cultural and recreational organisations, activities, events, venues, goods and services including audiovisual ones; promote participation in sports events and the organisation of disability-specific ones; explore ways of facilitating the use of sign language and Braille in dealing with the EU institutions; address accessibility to voting in order to facilitate the exercise of EU citizens' electoral rights; foster the cross-border transfer of copyright works in accessible format; promote use of the scope for exceptions provided by the Directive on copyright<sup>12</sup>.

EU action will support national activities to:

- achieve the transition from institutional to community-based care, including use of Structural Funds and the Rural Development Fund for training human resources and adapting social infrastructure, developing personal assistance funding schemes, promoting sound working conditions for professional carers and support for families and informal carers;
- make sports, leisure, cultural and recreational organisations and activities accessible, and use the possibilities for exceptions in the Directive on copyright.

Achieve full participation of people with disabilities in society by:

- enabling them to enjoy all the benefits of EU citizenship;
- removing administrative and attitudinal barriers to full and equal participation;
- providing quality community-based services, including access to personal assistance.

### 3 — Equality

Over half of all Europeans consider discrimination on grounds of disability or age to be widespread in the EU<sup>13</sup>. As required by Articles 1, 21 and 26 of the EU Charter and by Articles 10 and 19 TFEU, the Commission will promote the equal treatment of people with disabilities through a two-pronged approach. This will involve using existing EU legislation to provide protection from discrimination, and implementing an active policy to combat discrimination and promote equal opportunities in EU policies. The Commission will also pay attention to the cumulative impact of discrimination that people with disabilities may experience on other grounds, such as nationality, age, race or ethnicity, sex, religion or belief, or sexual orientation.

It will also ensure that Directive 2000/78/EC<sup>14</sup> banning discrimination in employment is fully implemented; it will promote diversity and combat discrimination through awareness-raising

<sup>12</sup> Directive 2001/29/EC. A Stakeholder Memorandum of Understanding signed on 14.9.2009.

<sup>13</sup> Special Eurobarometer 317.

<sup>14</sup> Council Directive 2000/78/EC (OJ L 303, 2.12.2000, p. 16).

campaigns at EU and national level, and support the work of EU-level NGOs active in the area.

EU action will support and supplement national policies and programmes to promote equality, for instance by promoting the conformity of Member State legislation on legal capacity with the UN Convention.

Eradicate discrimination on grounds of disability in the EU.

#### **4 — Employment**

Quality jobs ensure economic independence, foster personal achievement, and offer the best protection against poverty. However, the rate of employment for people with disabilities is only around 50%<sup>15</sup>. To achieve the EU's growth targets, more people with disabilities need to be in paid employment on the open labour market. The Commission will exploit the full potential of the Europe 2020 Strategy and its Agenda for new skills and jobs by providing Member States with analysis, political guidance, information exchange and other support. It will improve knowledge of the employment situation of women and men with disabilities, identify challenges and propose remedies. It will pay particular attention to young people with disabilities in their transition from education to employment. It will address intra-job mobility on the open labour market and in sheltered workshops, through information exchange and mutual learning. It will also address the issue of self employment and quality jobs, including aspects such as working conditions and career advancement, with the involvement of the social partners. The Commission will step up its support for voluntary initiatives that promote diversity management at the workplace, such as diversity charters signed by employers and a Social Business Initiative.

EU action will support and supplement national efforts to: analyse the labour market situation of people with disabilities; fight those disability benefit cultures and traps that discourage them from entering the labour market; help their integration in the labour market making use of the European Social Fund (ESF); develop active labour market policies; make workplaces more accessible; develop services for job placement, support structures and on-the-job training; promote use of the General Block Exemption Regulation<sup>16</sup> which allows the granting of state aid without prior notification to the Commission.

Enable many more people with disabilities to earn their living on the open labour market.

#### **5 — Education and training**

In the 16-19 age group the rate of non-participation in education is 37% for considerably restricted people, and 25% for those restricted to some extent, against 17% for those not restricted<sup>17</sup>. Access to mainstream education for children with severe disabilities is difficult and sometimes segregated. People with disabilities, in particular children, need to be integrated appropriately into the general education system and provided with individual support in the best interest of the child. With full respect for the responsibility of the Member

<sup>15</sup> LFS AHM 2002.

<sup>16</sup> Commission Regulation (EC) No 800/2008 (OJ L 214, 9.8.2008, p. 3).

<sup>17</sup> LFS AHM 2002.

States for the content of teaching and the organisation of education systems, the Commission will support the goal of inclusive, quality education and training under the Youth on the Move initiative. It will increase knowledge on levels of education and opportunities for people with disabilities, and increase their mobility by facilitating participation in the Lifelong Learning Programme.

EU action will support national efforts through ET 2020, the strategic framework for European cooperation in education and training<sup>18</sup>, to remove legal and organisational barriers for people with disabilities to general education and lifelong learning systems; provide timely support for inclusive education and personalised learning, and early identification of special needs; provide adequate training and support for professionals working at all levels of education and report on participation rates and outcomes.

Promote inclusive education and lifelong learning for pupils and students with disabilities.

## 6 –Social protection

Lower participation in general education and in the labour market lead to income inequalities and poverty for people with disabilities, as well as to social exclusion and isolation. They need to be able to benefit from social protection systems and poverty reduction programmes, disability-related assistance, public housing programmes and other enabling services, and retirement and benefit programmes. The Commission will pay attention to these issues through the European Platform against Poverty. This will include assessing the adequacy and sustainability of social protection systems and support through the ESF. In full respect of the competence of the Member States, the EU will support national measures to ensure the quality and sustainability of social protection systems for people with disabilities, notably through policy exchange and mutual learning.

Promote decent living conditions for people with disabilities.

## 7 — Health

People with disabilities may have limited access to health services, including routine medical treatments, leading to health inequalities unrelated to their disabilities. They are entitled to equal access to healthcare, including preventive healthcare, and specific affordable quality health and rehabilitation services which take their needs into account, including gender-based needs. This is mainly the task of the Member States, which are responsible for organising and delivering health services and medical care. The Commission will support policy developments for equal access to healthcare, including quality health and rehabilitation services designed for people with disabilities. It will pay specific attention to people with disabilities when implementing policies to tackle health inequalities; promote action in the field of health and safety at work to reduce risks of disabilities developing during working life and to improve the reintegration of workers with disabilities<sup>19</sup>; and work to prevent those risks.

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<sup>18</sup> Council conclusions of 12 May 2009 on ET 2020 (OJ C 119, 28.5.2009, p. 2).

<sup>19</sup> EU Strategy on Health and Safety at Work 2007-2012 - COM(2007) 62.

EU action will support national measures to deliver accessible, non-discriminatory health services and facilities; promote awareness of disabilities in medical schools and in curricula for healthcare professionals; provide adequate rehabilitation services; promote mental health services and the development of early intervention and needs assessment services.

Foster equal access to health services and related facilities for people with disabilities.

## **8 — External action**

The EU and the Member States should promote the rights of people with disabilities in their external action, including EU enlargement, neighbourhood and development programmes. The Commission will work where appropriate within a broader framework of non-discrimination to highlight disability as a human rights issue in the EU's external action; raise awareness of the UN Convention and the needs of people with disabilities, including accessibility, in the area of emergency and humanitarian aid; consolidate the network of disability correspondents, increasing awareness of disability issues in EU delegations; ensure that candidate and potential candidate countries make progress in promoting the rights of people with disabilities and ensure that the financial instruments for pre-accession assistance are used to improve their situation.

EU action will support and complement national initiatives to address disability issues in dialogues with non-member countries, and where appropriate include disability and the implementation of the UN Convention taking into account the Accra commitments on aid-effectiveness. It will foster agreement and commitment on disability issues in international fora (UN, Council of Europe, OECD).

Promote the rights of people with disabilities within the EU external action.

### **2.2. Implementation of the Strategy**

This Strategy requires a joint and renewed commitment of the EU institutions and all Member States. The actions in the main areas above need to be underpinned by the following general instruments:

#### **1 — Awareness-raising**

The Commission will work to ensure that people with disabilities are aware of their rights, paying special attention to accessibility of materials and information channels. It will promote awareness of 'design for all' approaches to products, services and environments.

EU action will support and supplement national public awareness campaigns on the capabilities and contributions of people with disabilities and promote exchange of good practices in the Disability High Level Group (DHLG).

Raise society's awareness of disability issues and foster greater knowledge among people with disabilities of their rights and how to exercise them.

#### **2 — Financial support**

The Commission will work to ensure that EU programmes in policy areas relevant to people with disabilities offer funding possibilities, for example in research programmes. The cost of measures to enable people with disabilities to take part in EU programmes should be eligible for reimbursement. EU funding instruments, particularly the Structural Funds, need to be implemented in an accessible and non-discriminatory way.

EU action will support and supplement national efforts to improve accessibility and combat discrimination through mainstream funding, proper application of Article 16 of the Structural Funds General Regulation<sup>20</sup>, and by maximising requirements regarding accessibility in public procurement. All measures should be implemented in accordance with European competition law, in particular State aid rules.

Optimise use of EU funding instruments for accessibility and non-discrimination and increase visibility of disability-relevant funding possibilities in post-2013 programmes.

### **3 — Statistics and data collection and monitoring**

The Commission will work to streamline information on disability collected through EU social surveys (EU Statistics on Income and Living Conditions, Labour Force Survey ad hoc module, European Health Interview Survey), develop a specific survey on barriers for social integration of disabled people and present a set of indicators to monitor their situation with reference to key Europe 2020 targets (education, employment and poverty reduction). The EU Fundamental Rights Agency is requested to contribute to this task, within the framework of its mandate, by data collection, research and analysis.

The Commission will also establish a web-based tool giving an overview of the practical measures and legislation used to implement the UN Convention.

EU action will support and supplement Member States' efforts to collect statistics and data that reflect the barriers preventing people with disabilities from exercising their rights.

Supplement the collection of periodic disability-related statistics with a view to monitoring the situation of persons with disabilities.

### **4 — Mechanisms required by the UN Convention**

The governance framework required under Article 33 of the UN Convention (focal points, coordination mechanism, independent mechanism and involvement of people with disabilities and their organisations) needs to be addressed on two levels: *vis-à-vis* the Member States in a wide range of EU policies, and within EU institutions. At EU level, mechanisms for coordination based on existing facilities will be established both between the Commission services and the EU institutions, and between the EU and the Member States. The implementation of this Strategy and of the UN Convention will be regularly discussed at the DHLG with representatives of the Member States and their national focal points, the Commission, disabled people and their organisations and other stakeholders. It will continue to provide progress reports for informal ministerial meetings.

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<sup>20</sup> Council Regulation (EC) No 1083/2006 (OJ L 210, 31.7.2006, p. 25).



Also, a monitoring framework including one or more independent mechanisms will be established to promote, protect and monitor implementation of the UN Convention. After the UN Convention is concluded and after considering the possible role of a number of existing EU bodies and institutions, the Commission will propose a governance framework without undue administrative burden to facilitate implementation of the UN Convention in Europe.

By the end of 2013, the Commission will report on progress achieved through this Strategy, covering implementation of actions, national progress and the EU report to the UN Committee on the Rights of Persons with Disabilities<sup>21</sup>. The Commission will use statistics and data collection to illustrate changes in disparities between people with disabilities and the population as a whole, and to establish disability-related indicators linked to the Europe 2020 targets for education, employment and poverty reduction. This will provide an opportunity to revise the Strategy and the actions. A further report is scheduled for 2016.

### **3. CONCLUSION**

This Strategy is intended to harness the combined potential of the EU Charter of Fundamental Rights, the Treaty on the Functioning of the European Union, and the UN Convention, and to make full use of Europe 2020 and its instruments. It sets in motion a process to empower people with disabilities, so that they can participate fully in society on an equal basis with others. As Europe's population ages, these actions will have a tangible impact on the quality of life of an increasingly large proportion of its people. The EU institutions and the Member States are called upon to work together under this Strategy to build a barrier-free Europe for all.

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<sup>21</sup> Articles 35 and 36 UN Convention.

## IV

(Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty)

## COUNCIL DECISION

of 26 November 2009

**concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities**

(2010/48/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 13 and 95 in conjunction with the second sentence of the first paragraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Whereas:

- (1) In May 2004, the Council authorised the Commission to conduct negotiations on behalf of the European Community concerning the United Nations Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (hereinafter referred to as the UN Convention).
- (2) The UN Convention was adopted by the United Nations General Assembly on 13 December 2006 and entered into force on 3 May 2008.
- (3) The UN Convention was signed on behalf of the Community on 30 March 2007 subject to its possible conclusion at a later date.
- (4) The UN Convention constitutes a relevant and effective pillar for promoting and protecting the rights of persons with disabilities within the European Union, to which both the Community and its Member States attach the greatest importance.
- (5) The UN Convention should be thus approved, on behalf of the Community, as soon as possible.

(6) Such approval should, however, be accompanied by a reservation, to be entered by the European Community, with regard to Article 27(1) of the UN Convention, in order to state that the Community concludes the UN Convention without prejudice to the Community law-based right, as provided under Article 3(4) of Council Directive 2000/78/EC <sup>(2)</sup>, of its Member States not to apply to armed forces the principle of equal treatment on the grounds of disability.

(7) Both the Community and its Member States have competence in the fields covered by the UN Convention. The Community and the Member States should therefore become Contracting Parties to it, so that together they can fulfil the obligations laid down by the UN Convention and exercise the rights invested in them, in situations of mixed competence in a coherent manner.

(8) The Community should, when depositing the instrument of formal confirmation, also deposit a declaration under Article 44.1 of the Convention specifying the matters governed by the Convention in respect of which competence has been transferred to it by its Member States,

HAS DECIDED AS FOLLOWS:

*Article 1*

1. The UN Convention on the Rights of Persons with Disabilities is hereby approved on behalf of the Community, subject to a reservation in respect of Article 27.1 thereof.

2. The text of the UN Convention is set out in Annex I to this Decision.

The text of the reservation is contained in Annex III to this Decision.

<sup>(1)</sup> Opinion delivered on 27 April 2009, not yet published in the Official Journal.

<sup>(2)</sup> OJ L 303, 2.12.2000, p. 16.

*Article 2*

1. The President of the Council is hereby authorised to designate the person(s) empowered to deposit, on behalf of the European Community, the instrument of formal confirmation of the Convention with the Secretary-General of the United Nations, in accordance with Articles 41 and 43 of the UN Convention.

2. When depositing the instrument of formal confirmation, the designated person(s) shall, in accordance with Articles 44.1 of the Convention, deposit the Declaration of Competence, set out in Annex II to this Decision, as well as the Reservation, set out in Annex III to this Decision.

*Article 3*

With respect to matters falling within the Community's competence and without prejudice to the respective competences of the Member States, the Commission shall be a focal point for matters relating to the implementation of the UN Convention in accordance with Article 33.1 of the UN Convention. The details of the function of focal point in this regard shall be laid down in a Code of Conduct before the deposition of the instrument of formal confirmation on behalf of the Community.

*Article 4*

1. With respect to matters falling within the Community's exclusive competence, the Commission shall represent the Community at meetings of the bodies created by the UN Convention, in particular the Conference of Parties referred to in Article 40 thereof, and shall act on its behalf as concerns questions falling within the remit of those bodies.

2. With respect to matters falling within the shared competences of the Community and the Member States, the Commission and the Member States shall determine in advance the appropriate arrangements for representation of the Community's position at meetings of the bodies created by the UN Convention. The details of this representation shall be laid down in a Code of Conduct to be agreed before the deposition of the instrument of formal confirmation on behalf of the Community.

3. At the meetings referred to in paragraphs 1 and 2 the Commission and the Member States, when necessary in prior consultation with other institutions of the Community concerned, shall closely cooperate, in particular as far as the questions of monitoring, reporting and voting arrangements are concerned. The arrangements for ensuring close cooperation shall also be addressed in the Code of Conduct referred to in paragraph 2.

*Article 5*

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 26 November 2009.

*For the Council*  
*The President*  
J. BJÖRKLUND

## ANNEX I

**CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES****Preamble**

THE STATES PARTIES TO THE PRESENT CONVENTION,

- (a) Recalling the principles proclaimed in the Charter of the United Nations which recognise the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,
- (b) Recognising that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,
- (c) Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,
- (d) Recalling the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,
- (e) Recognising that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others,
- (f) Recognising the importance of the principles and policy guidelines contained in the World Programme of Action concerning Disabled Persons and in the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities in influencing the promotion, formulation and evaluation of the policies, plans, programmes and actions at the national, regional and international levels to further equalise opportunities for persons with disabilities,
- (g) Emphasising the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development,
- (h) Recognising also that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person,
- (i) Recognising further the diversity of persons with disabilities,
- (j) Recognising the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support,
- (k) Concerned that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world,
- (l) Recognising the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries,
- (m) Recognising the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty,
- (n) Recognising the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,
- (o) Considering that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them,
- (p) Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status,

- (q) Recognising that women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,
- (r) Recognising that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child,
- (s) Emphasising the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,
- (t) Highlighting the fact that the majority of persons with disabilities live in conditions of poverty, and in this regard recognising the critical need to address the negative impact of poverty on persons with disabilities,
- (u) Bearing in mind that conditions of peace and security based on full respect for the purposes and principles contained in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of persons with disabilities, in particular during armed conflicts and foreign occupation,
- (v) Recognising the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,
- (w) Realising that the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognised in the International Bill of Human Rights,
- (x) Convinced that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities,
- (y) Convinced that a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,

HAVE AGREED AS FOLLOWS:

#### *Article 1*

##### **Purpose**

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

#### *Article 2*

##### **Definitions**

For the purposes of the present Convention:

'Communication' includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

'Language' includes spoken and signed languages and other forms of non-spoken languages;

'Discrimination on the basis of disability' means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

'Reasonable accommodation' means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

'Universal design' means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design. 'Universal design' shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

#### Article 3

##### **General principles**

The principles of the present Convention shall be:

- (a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;
- (g) equality between men and women;
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

#### Article 4

##### **General obligations**

1. States Parties undertake to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

- (a) to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention;
- (b) to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- (c) to take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;
- (d) to refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;
- (e) to take all appropriate measures to eliminate discrimination on the basis of disability by any person, organisation or private enterprise;
- (f) to undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in Article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;
- (g) to undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;

(h) to provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;

(i) to promote the training of professionals and staff working with persons with disabilities in the rights recognised in the present Convention so as to better provide the assistance and services guaranteed by those rights.

2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realisation of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations.

4. Nothing in the present Convention shall affect any provisions which are more conducive to the realisation of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognised or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognise such rights or freedoms or that it recognises them to a lesser extent.

5. The provisions of the present Convention shall extend to all parts of federal States without any limitations or exceptions.

#### *Article 5*

##### **Equality and non-discrimination**

1. States Parties recognise that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

#### *Article 6*

##### **Women with disabilities**

1. States Parties recognise that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

#### *Article 7*

##### **Children with disabilities**

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realise that right.

*Article 8***Awareness-raising**

1. States Parties undertake to adopt immediate, effective and appropriate measures:
  - (a) to raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;
  - (b) to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;
  - (c) to promote awareness of the capabilities and contributions of persons with disabilities.
2. Measures to this end include:
  - (a) initiating and maintaining effective public awareness campaigns designed:
    - (i) to nurture receptiveness to the rights of persons with disabilities;
    - (ii) to promote positive perceptions and greater social awareness towards persons with disabilities;
    - (iii) to promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;
  - (b) fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;
  - (c) encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;
  - (d) promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

*Article 9***Accessibility**

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:
  - (a) buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
  - (b) information, communications and other services, including electronic services and emergency services.
2. States Parties shall also take appropriate measures:
  - (a) to develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
  - (b) to ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
  - (c) to provide training for stakeholders on accessibility issues facing persons with disabilities;
  - (d) to provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
  - (e) to provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;



- (f) to promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
- (g) to promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
- (h) to promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

#### *Article 10*

##### **Right to life**

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

#### *Article 11*

##### **Situations of risk and humanitarian emergencies**

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

#### *Article 12*

##### **Equal recognition before the law**

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.
5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

#### *Article 13*

##### **Access to justice**

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

#### *Article 14*

##### **Liberty and security of person**

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:
  - (a) enjoy the right to liberty and security of person;

(b) are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation.

#### *Article 15*

##### **Freedom from torture or cruel, inhuman or degrading treatment or punishment**

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

#### *Article 16*

##### **Freedom from exploitation, violence and abuse**

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognise and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

#### *Article 17*

##### **Protecting the integrity of the person**

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

#### *Article 18*

##### **Liberty of movement and nationality**

1. States Parties shall recognise the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:

(a) have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;

(b) are not deprived, on the basis of disability, of their ability to obtain, possess and utilise documentation of their nationality or other documentation of identification, or to utilise relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;

(c) are free to leave any country, including their own;

(d) are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

*Article 19*

**Living independently and being included in the community**

States Parties to the present Convention recognise the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- (a) persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- (b) persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
- (c) community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

*Article 20*

**Personal mobility**

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

- (a) facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;
- (b) facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;
- (c) providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;
- (d) encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.

*Article 21*

**Freedom of expression and opinion, and access to information**

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in Article 2 of the present Convention, including by:

- (a) providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- (b) accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
- (c) urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;
- (d) encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;
- (e) recognising and promoting the use of sign languages.

*Article 22***Respect for privacy**

1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.
2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

*Article 23***Respect for home and the family**

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:
  - (a) the right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognised;
  - (b) the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognised, and the means necessary to enable them to exercise these rights are provided;
  - (c) persons with disabilities, including children, retain their fertility on an equal basis with others.
2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.
3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realising these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.
4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.
5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

*Article 24***Education**

1. States Parties recognise the right of persons with disabilities to education. With a view to realising this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:
  - (a) the full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
  - (b) the development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
  - (c) enabling persons with disabilities to participate effectively in a free society.

2. In realising this right, States Parties shall ensure that:
  - (a) persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
  - (b) persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
  - (c) reasonable accommodation of the individual's requirements is provided;
  - (d) persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
  - (e) effective individualised support measures are provided in environments that maximise academic and social development, consistent with the goal of full inclusion.
3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:
  - (a) facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
  - (b) facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
  - (c) ensuring that the education of persons, and in particular children, who are blind, deaf or deaf-blind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximise academic and social development.
4. In order to help ensure the realisation of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.
5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

#### Article 25

##### Health

States Parties recognise that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

- (a) provide persons with disabilities with the same range, quality and standard of free or affordable healthcare and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;
- (b) provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimise and prevent further disabilities, including among children and older persons;
- (c) provide these health services as close as possible to people's own communities, including in rural areas;
- (d) require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private healthcare;

- (e) prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;
- (f) prevent discriminatory denial of healthcare or health services or food and fluids on the basis of disability.

#### Article 26

##### **Habilitation and rehabilitation**

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organise, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:

- (a) begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;
- (b) support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.

#### Article 27

##### **Work and employment**

1. States Parties recognise the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realisation of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

- (a) prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
- (b) protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
- (c) ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
- (d) enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
- (e) promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;
- (f) promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
- (g) employ persons with disabilities in the public sector;
- (h) promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
- (i) ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
- (j) promote the acquisition by persons with disabilities of work experience in the open labour market;
- (k) promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

*Article 28*

**Adequate standard of living and social protection**

1. States Parties recognise the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realisation of this right without discrimination on the basis of disability.
2. States Parties recognise the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realisation of this right, including measures:
  - (a) to ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
  - (b) to ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
  - (c) to ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;
  - (d) to ensure access by persons with disabilities to public housing programmes;
  - (e) to ensure equal access by persons with disabilities to retirement benefits and programmes.

*Article 29*

**Participation in political and public life**

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:

- (a) to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:
  - (i) ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
  - (ii) protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;
  - (iii) guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;
- (b) to promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:
  - (i) participation in non-governmental organisations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;
  - (ii) forming and joining organisations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

*Article 30***Participation in cultural life, recreation, leisure and sport**

1. States Parties recognise the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:
  - (a) enjoy access to cultural materials in accessible formats;
  - (b) enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;
  - (c) enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.
2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilise their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.
3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.
4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.
5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:
  - (a) to encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;
  - (b) to ensure that persons with disabilities have an opportunity to organise, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;
  - (c) to ensure that persons with disabilities have access to sporting, recreational and tourism venues;
  - (d) to ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;
  - (e) to ensure that persons with disabilities have access to services from those involved in the organisation of recreational, tourism, leisure and sporting activities.

*Article 31***Statistics and data collection**

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:
  - (a) comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;
  - (b) comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.
2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.
3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.



*Article 32***International cooperation**

1. States Parties recognise the importance of international cooperation and its promotion, in support of national efforts for the realisation of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organisations and civil society, in particular organisations of persons with disabilities. Such measures could include, inter alia:

- (a) ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;
- (b) facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;
- (c) facilitating cooperation in research and access to scientific and technical knowledge;
- (d) providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.

*Article 33***National implementation and monitoring**

1. States Parties, in accordance with their system of organisation, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.

2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

3. Civil society, in particular persons with disabilities and their representative organisations, shall be involved and participate fully in the monitoring process.

*Article 34***Committee on the Rights of Persons with Disabilities**

1. There shall be established a Committee on the Rights of Persons with Disabilities (hereafter referred to as the Committee), which shall carry out the functions hereinafter provided.

2. The Committee shall consist, at the time of entry into force of the present Convention, of 12 experts. After an additional sixty ratifications or accessions to the Convention, the membership of the Committee shall increase by six members, attaining a maximum number of 18 members.

3. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognised competence and experience in the field covered by the present Convention. When nominating their candidates, States Parties are invited to give due consideration to the provision set out in Article 4, paragraph 3, of the present Convention.

4. The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of the different forms of civilisation and of the principal legal systems, balanced gender representation and participation of experts with disabilities.

5. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties from among their nationals at meetings of the Conference of States Parties. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The initial election shall be held no later than six months after the date of entry into force of the present Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit the nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the State Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

7. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of six of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these six members shall be chosen by lot by the chairperson of the meeting referred to in paragraph 5 of this article.

8. The election of the six additional members of the Committee shall be held on the occasion of regular elections, in accordance with the relevant provisions of this article.

9. If a member of the Committee dies or resigns or declares that for any other cause she or he can no longer perform her or his duties, the State Party which nominated the member shall appoint another expert possessing the qualifications and meeting the requirements set out in the relevant provisions of this article, to serve for the remainder of the term.

10. The Committee shall establish its own rules of procedure.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention, and shall convene its initial meeting.

12. With the approval of the General Assembly of the United Nations, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

13. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### *Article 35*

##### **Reports by States Parties**

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the entry into force of the present Convention for the State Party concerned.

2. Thereafter, States Parties shall submit subsequent reports at least every four years and further whenever the Committee so requests.

3. The Committee shall decide any guidelines applicable to the content of the reports.

4. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports, repeat information previously provided. When preparing reports to the Committee, States Parties are invited to consider doing so in an open and transparent process and to give due consideration to the provision set out in Article 4, paragraph 3, of the present Convention.

5. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

#### *Article 36*

##### **Consideration of reports**

1. Each report shall be considered by the Committee, which shall make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned. The State Party may respond with any information it chooses to the Committee. The Committee may request further information from States Parties relevant to the implementation of the present Convention.

2. If a State Party is significantly overdue in the submission of a report, the Committee may notify the State Party concerned of the need to examine the implementation of the present Convention in that State Party, on the basis of reliable information available to the Committee, if the relevant report is not submitted within three months following the notification. The Committee shall invite the State Party concerned to participate in such examination. Should the State Party respond by submitting the relevant report, the provisions of paragraph 1 of this article will apply.

3. The Secretary-General of the United Nations shall make available the reports to all States Parties.
4. States Parties shall make their reports widely available to the public in their own countries and facilitate access to the suggestions and general recommendations relating to these reports.
5. The Committee shall transmit, as it may consider appropriate, to the specialised agencies, funds and programmes of the United Nations, and other competent bodies, reports from States Parties in order to address a request or indication of a need for technical advice or assistance contained therein, along with the Committee's observations and recommendations, if any, on these requests or indications.

*Article 37*

**Cooperation between States Parties and the Committee**

1. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate.
2. In its relationship with States Parties, the Committee shall give due consideration to ways and means of enhancing national capacities for the implementation of the present Convention, including through international cooperation.

*Article 38*

**Relationship of the Committee with other bodies**

In order to foster the effective implementation of the present Convention and to encourage international cooperation in the field covered by the present Convention:

- (a) the specialised agencies and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialised agencies and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite specialised agencies and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;
- (b) the Committee, as it discharges its mandate, shall consult, as appropriate, other relevant bodies instituted by international human rights treaties, with a view to ensuring the consistency of their respective reporting guidelines, suggestions and general recommendations, and avoiding duplication and overlap in the performance of their functions.

*Article 39*

**Report of the Committee**

The Committee shall report every two years to the General Assembly and to the Economic and Social Council on its activities, and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

*Article 40*

**Conference of States Parties**

1. The States Parties shall meet regularly in a Conference of States Parties in order to consider any matter with regard to the implementation of the present Convention.
2. No later than six months after the entry into force of the present Convention, the Conference of States Parties shall be convened by the Secretary-General of the United Nations. The subsequent meetings shall be convened by the Secretary-General biennially or upon the decision of the Conference of States Parties.

*Article 41*

**Depositary**

The Secretary-General of the United Nations shall be the depositary of the present Convention.

*Article 42*

**Signature**

The present Convention shall be open for signature by all States and by regional integration organisations at United Nations Headquarters in New York as of 30 March 2007.

*Article 43***Consent to be bound**

The present Convention shall be subject to ratification by signatory States and to formal confirmation by signatory regional integration organisations. It shall be open for accession by any State or regional integration organisation which has not signed the Convention.

*Article 44***Regional integration organisations**

1. 'Regional integration organisation' shall mean an organisation constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by the present Convention. Such organisations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by the present Convention. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.

2. References to 'States Parties' in the present Convention shall apply to such organisations within the limits of their competence.

3. For the purposes of Article 45, paragraph 1, and Article 47, paragraphs 2 and 3, of the present Convention, any instrument deposited by a regional integration organisation shall not be counted.

4. Regional integration organisations, in matters within their competence, may exercise their right to vote in the Conference of States Parties, with a number of votes equal to the number of their member States that are Parties to the present Convention. Such an organisation shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

*Article 45***Entry into force**

1. The present Convention shall enter into force on the thirtieth day after the deposit of the 20th instrument of ratification or accession.

2. For each State or regional integration organisation ratifying, formally confirming or acceding to the present Convention after the deposit of the 20th such instrument, the Convention shall enter into force on the thirtieth day after the deposit of its own such instrument.

*Article 46***Reservations**

1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.

2. Reservations may be withdrawn at any time.

*Article 47***Amendments**

1. Any State Party may propose an amendment to the present Convention and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a conference of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly of the United Nations for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

3. If so decided by the Conference of States Parties by consensus, an amendment adopted and approved in accordance with paragraph 1 of this article which relates exclusively to Articles 34, 38, 39 and 40 shall enter into force for all States Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment.

*Article 48*

**Denunciation**

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

*Article 49*

**Accessible format**

The text of the present Convention shall be made available in accessible formats.

*Article 50*

**Authentic texts**

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention shall be equally authentic.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorised thereto by their respective governments, have signed the present Convention.

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## ANNEX II

**DECLARATION CONCERNING THE COMPETENCE OF THE EUROPEAN COMMUNITY WITH REGARD TO MATTERS GOVERNED BY THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES**

(Declaration made pursuant to Article 44(1) of the Convention)

Article 44(1) of the United Nations Convention on the Rights of Persons with Disabilities (hereinafter referred to as the Convention) provides that a regional integration organisation in its instrument of formal confirmation or accession is to declare the extent of its competence with respect to matters governed by the Convention.

The current members of the European Community are the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

The European Community notes that for the purpose of the Convention, the term 'State Parties' applies to regional integration organisations within the limits of their competence.

The United Nations Convention on the Rights of Persons with Disabilities shall apply, with regard to the competence of the European Community, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty, in particular Article 299 thereof.

Pursuant to Article 299, this Declaration is not applicable to the territories of the Member States in which the said Treaty does not apply and is without prejudice to such act or positions as may be adopted under the Convention by Member States concerned on behalf and in the interests of those territories.

In accordance with Article 44(1) of the Convention, this Declaration indicates the competences transferred to the Community by the Member States under the Treaty establishing the European Community, in the areas covered by the Convention.

The scope and the exercise of Community competence are, by their nature, subject to continuous development and the Community will complete or amend this Declaration, if necessary, in accordance with Article 44(1) of the Convention.

In some matters the European Community has exclusive competence and in other matters competence is shared between the European Community and the Member States. The Member States remain competent for all matters in respect of which no competence has been transferred to the European Community.

At present:

1. The Community has exclusive competence as regards the compatibility of State aid with the common market and the Common Custom Tariff.

To the extent that provisions of Community law are affected by the provision of the Convention, the European Community has an exclusive competence to accept such obligations with respect to its own public administration. In this regard, the Community declares that it has power to deal with regulating the recruitment, conditions of service, remuneration, training etc. of non-elected officials under the Staff Regulations and the implementing rules to those Regulations<sup>(1)</sup>.

2. The Community shares competence with Member States as regards action to combat discrimination on the ground of disability, free movement of goods, persons, services and capital agriculture, transport by rail, road, sea and air transport, taxation, internal market, equal pay for male and female workers, trans-European network policy and statistics.

<sup>(1)</sup> Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities (OJ L 56, 4.3.1968, p. 1).

The European Community has exclusive competence to enter into this Convention in respect of those matters only to the extent that provisions of the Convention or legal instruments adopted in implementation thereof affect common rules previously established by the European Community. When Community rules exist but are not affected, in particular in cases of Community provisions establishing only minimum standards, the Member States have competence, without prejudice to the competence of the European Community to act in this field. Otherwise competence rests with the Member States. A list of relevant acts adopted by the European Community appears in the Appendix hereto. The extent of the European Community's competence ensuing from these acts must be assessed by reference to the precise provisions of each measure, and in particular, the extent to which these provisions establish common rules.

3. The following EC policies may also be relevant to the UN Convention: Member States and the Community shall work towards developing a coordinated strategy for employment. The Community shall contribute to the development of quality of education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action. The Community shall implement a vocational training policy which shall support and supplement the action of the Member States. In order to promote its overall harmonious development, the Community shall develop and pursue its actions leading to the strengthening of its economic and social cohesion. The Community conducts a development cooperation policy and economic, financial and technical cooperation with third countries without prejudice to the respective competences of the Member States.

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## Appendix

## COMMUNITY ACTS WHICH REFER TO MATTERS GOVERNED BY THE CONVENTION

The Community acts listed below illustrate the extent of the area of competence of the Community in accordance with the Treaty establishing the European Community. In particular the European Community has exclusive competence in relation to some matters and in some other matters competence is shared between the Community and the Member States. The extent of the Community's competence ensuing from these acts must be assessed by reference to the precise provisions of each measure, and in particular, the extent to which these provisions establish common rules that are affected by the provisions of the Convention.

— regarding accessibility

Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (OJ L 91, 7.4.1999, p. 10)

Directive 2001/85/EC of the European Parliament and of the Council of 20 November 2001 relating to special provisions for vehicles used for the carriage of passengers comprising more than eight seats in addition to the driver's seat, amending Directives 70/156/EEC and 97/27/EC (OJ L 42, 13.2.2002, p. 1)

Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ L 235, 17.9.1996, p. 6), as amended by Directive 2004/50/EC of the European Parliament and of the Council (OJ L 164, 30.4.2004, p. 114)

Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system (OJ L 110, 20.4.2001, p. 1), as amended by Directive 2004/50/EC of the European Parliament and of the Council (OJ L 164, 30.4.2004, p. 114)

Directive 2006/87/EC of the European Parliament and of the Council of 12 December 2006 laying down technical requirements for inland waterway vessels and repealing Council Directive 82/714/EEC (OJ L 389, 30.12.2006, p. 1)

Directive 2003/24/EC of the European Parliament and of the Council of 14 April 2003 amending Council Directive 98/18/EC on safety rules and standards for passenger ships (OJ L 123, 17.5.2003, p. 18)

Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ L 263, 9.10.2007, p. 1)

Commission Decision 2008/164/EC of 21 December 2007 concerning the technical specification of interoperability relating to 'persons with reduced mobility' in the trans-European conventional and high-speed rail system (OJ L 64, 7.3.2008, p. 72)

Directive 95/16/EC of the European Parliament and of the Council of 29 June 1995 on the approximation of the laws of the Member States relating to lifts (OJ L 213, 7.9.1995, p. 1), as amended by Directive 2006/42/EC of the European Parliament and of the Council on machinery, and amending Directive 95/16/EC (OJ L 157, 9.6.2006, p. 24)

Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33)

Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108, 24.4.2002, p. 51)

Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of services (OJ L 15, 21.1.1998, p. 14), as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services (OJ L 176, 5.7.2002, p. 21), and as amended by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services (OJ L 52, 27.2.2008, p. 3)



Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ L 210, 31.7.2006, p. 25)

Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004, p. 1)

Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114)

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 (OJ L 76, 23.3.1992, p. 14), 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 (OJ L 335, 20.12.2007, p. 31)

Council 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 (OJ L 395, 30.12.1989, p. 33), 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 (OJ L 335, 20.12.2007, p. 31)

— in the field of independent living and social inclusion, work and employment

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16)

Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General Block Exemption Regulation) (OJ L 214, 9.8.2008, p. 3)

Commission Regulation (EEC) No 2289/83 of 29 July 1983 laying down provisions for the implementation of Articles 70 to 78 of Council Regulation (EEC) No 918/83 establishing a Community system of duty-free arrangements (OJ L 220, 11.8.1983, p. 15)

Council Directive 83/181/EEC of 28 March 1983 determining the scope of Article 14(1)(d) of Directive 77/388/EEC as regards exemption from value added tax on the final importation of certain goods (OJ L 105, 23.4.1983, p. 38)

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23)

Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty (OJ L 105, 23.4.1983, p. 1)

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1), as amended by Council Directive 2009/47/EC of 5 May 2009 amending Directive 2006/112/EC as regards reduced rates of value added tax (OJ L 116, 9.5.2009, p. 18)

Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 277, 21.10.2005, p. 1)

Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L 283, 31.10.2003, p. 51)

— in the field of personal mobility

Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ L 237, 24.8.1991, p. 1)

Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ L 403, 30.12.2006, p. 18)

Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC (OJ L 226, 10.9.2003, p. 4)

Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ L 46, 17.2.2004, p. 1)

Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, Text with EEA relevance (OJ L 204, 26.7.2006, p. 1)

Regulation (EC) No 1899/2006 of the European Parliament and of the Council of 12 December 2006 amending Council Regulation (EEC) No 3922/91 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation (OJ L 377, 27.12.2006, p. 1)

Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14)

Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1)

Commission Regulation (EC) No 8/2008 of 11 December 2007 amending Council Regulation (EEC) No 3922/91 as regards common technical requirements and administrative procedures applicable to commercial transportation by aeroplane (OJ L 10, 12.1.2008, p. 1)

— regarding access to information

Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67), as amended by Directive 2004/27/EC of the European Parliament and of the Council (OJ L 136, 30.4.2004, p. 34)

Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ L 332, 18.12.2007, p. 27)

Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (OJ L 178, 17.7.2000, p. 1)

Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10)

Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive) (OJ L 149, 11.6.2005, p. 22)

— regarding statistics and data collection

Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and the free movement of such data (OJ L 281, 23.11.1995, p. 31)

Council Regulation (EC) No 577/98 of 9 March 1998 on the organisation of the Labour Force Sample Survey in the Community (OJ L 77, 14.3.1998, p. 3) with related implementing Regulations

Regulation (EC) No 1177/2003 of the European Parliament and of the Council of 16 June 2003 concerning Community statistics on income and living conditions (EU-SILC); text with EEA relevance (OJ L 165, 3.7.2003, p. 1) with related implementing regulations

Regulation (EC) No 458/2007 of the European Parliament and of the Council of 25 April 2007 on the European system of integrated social protection statistics (ESSPROS) (OJ L 113, 30.4.2007, p. 3) with related implementing regulations

Regulation (EC) No 1338/2008 of the European Parliament and of the Council of 16 December 2008 on Community statistics on public health and health and safety at work (OJ L 354, 31.12.2008, p. 70)

— in the field of international cooperation

Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation (OJ L 378, 27.12.2006, p. 41)

Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide (OJ L 386, 29.12.2006, p. 1)

Commission Regulation (EC) No 718/2007 of 12 June 2007 implementing Council Regulation (EC) No 1085/2006 establishing an Instrument for Pre-accession Assistance (IPA) (OJ L 170, 29.6.2007, p. 1)

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*ANNEX III***RESERVATION BY THE EUROPEAN COMMUNITY TO ARTICLE 27(1) OF THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES**

The European Community states that pursuant to Community law (notably Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation), the Member States may, if appropriate, enter their own reservations to Article 27(1) of the Disabilities Convention to the extent that Article 3(4) of the said Council Directive provides them with the right to exclude non-discrimination on the grounds of disability with respect to employment in the armed forces from the scope of the Directive. Therefore, the Community states that it concludes the Convention without prejudice to the above right, conferred on its Member States by virtue of Community law.

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## **OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES**

*The States Parties to the present Protocol have agreed as follows:*

### **Article 1**

1. A State Party to the present Protocol (“State Party”) recognizes the competence of the Committee on the Rights of Persons with Disabilities (“the Committee”) to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of the provisions of the Convention.
2. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol.

### **Article 2**

The Committee shall consider a communication inadmissible when:

- (a) The communication is anonymous;
- (b) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the Convention;
- (c) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
- (d) All available domestic remedies have not been exhausted. This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief;
- (e) It is manifestly ill-founded or not sufficiently substantiated; or when
- (f) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

### **Article 3**

Subject to the provisions of article 2 of the present Protocol, the Committee shall bring any communications submitted to it confidentially to the attention of the State Party. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

#### **Article 4**

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.

2. Where the Committee exercises its discretion under paragraph 1 of this article, this does not imply a determination on admissibility or on the merits of the communication.

#### **Article 5**

The Committee shall hold closed meetings when examining communications under the present Protocol. After examining a communication, the Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

#### **Article 6**

1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end submit observations with regard to the information concerned.

2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

4. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

#### **Article 7**

1. The Committee may invite the State Party concerned to include in its report under article 35 of the Convention details of any measures taken in response to an inquiry conducted under article 6 of the present Protocol.
2. The Committee may, if necessary, after the end of the period of six months referred to in article 6, paragraph 4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

#### **Article 8**

Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 6 and 7.

#### **Article 9**

The Secretary-General of the United Nations shall be the depositary of the present Protocol.

#### **Article 10**

The present Protocol shall be open for signature by signatory States and regional integration organizations of the Convention at United Nations Headquarters in New York as of 30 March 2007.

#### **Article 11**

The present Protocol shall be subject to ratification by signatory States of the present Protocol which have ratified or acceded to the Convention. It shall be subject to formal confirmation by signatory regional integration organizations of the present Protocol which have formally confirmed or acceded to the Convention. It shall be open for accession by any State or regional integration organization which has ratified, formally confirmed or acceded to the Convention and which has not signed the Protocol.

#### **Article 12**

1. "Regional integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by the Convention and the present Protocol. Such organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by the Convention and the present Protocol.

Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.

2. References to “States Parties” in the present Protocol shall apply to such organizations within the limits of their competence.

3. For the purposes of article 13, paragraph 1, and article 15, paragraph 2, of the present Protocol, any instrument deposited by a regional integration organization shall not be counted.

4. Regional integration organizations, in matters within their competence, may exercise their right to vote in the meeting of States Parties, with a number of votes equal to the number of their member States that are Parties to the present Protocol. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

### **Article 13**

1. Subject to the entry into force of the Convention, the present Protocol shall enter into force on the thirtieth day after the deposit of the tenth instrument of ratification or accession.

2. For each State or regional integration organization ratifying, formally confirming or acceding to the present Protocol after the deposit of the tenth such instrument, the Protocol shall enter into force on the thirtieth day after the deposit of its own such instrument.

### **Article 14**

1. Reservations incompatible with the object and purpose of the present Protocol shall not be permitted.

2. Reservations may be withdrawn at any time.

### **Article 15**

1. Any State Party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a meeting of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be



submitted by the Secretary-General to the General Assembly of the United Nations for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

#### **Article 16**

A State Party may denounce the present Protocol by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

#### **Article 17**

The text of the present Protocol shall be made available in accessible formats.

#### **Article 18**

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Protocol shall be equally authentic.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 7 June 2011**

**11125/11**

**SOC 460  
COHOM 156**

**NOTE**

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from: The Commission  
to: COUNCIL (Employment, Social Policy, Health and Consumer Affairs)  
Subject: Ratification and implementation of the UN Convention on the Rights of People  
with Disabilities  
- Information from the Commission  
(Any other business item)

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Delegations will find attached a note from the Commission in preparation for the EPSCO Council meeting on 17 June.

**Information Note from the European Commission  
on progress in implementing the UN Convention  
on the Rights of Persons with Disabilities to the EPSCO Council**

## **1. Introduction**

This note is based on the 4<sup>th</sup> Disability High Level Group Report<sup>1</sup> and reports on progress in ratifying and implementing the UN Convention on the Rights of Persons with Disabilities. It provides an update of developments in the national implementation of the Convention, with a more detailed reference to the governance structures required by Article 33 of the UNCRPD. The report of this year also examines the interface between implementation of the UNCRPD and the headline targets set in the context of the Europe 2020 Strategy for education, employment and poverty.

The annual progress reporting by the Disability High-Level Group was triggered by the Council Conclusions adopted under the German Presidency in 2007. The first joint Report was discussed by the ministers responsible for disability issues on 22 May 2008 under the Slovenian Presidency. The second Report responded to the Council's request in the Resolution adopted under the Slovenian Presidency for an assessment as to how national actions reflect the commitments entered into by the European Union and the Member States with a view to implementing the UNCRPD. The Report identified seven priority areas where collaboration at EU level could be useful and highlighted progress in the nine priorities for joint action that were identified in the first report. The second Report also highlighted the importance of four key matters for the implementation of the UNCRPD that were presented at the EPSCO Council in June 2009. The third Report was presented on 19 May 2010 at the third informal ministerial meeting on disability issues organised under the Spanish Presidency in Zaragoza. It complemented the two previous Reports but also had a stronger focus on procedural matters and governance aspects.

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<sup>1</sup> Available online at: <http://ec.europa.eu/social/BlobServlet?docId=6851&langId=en>

## 2. Ratification/formal confirmation/accession

Since the previous Report from the Disability High Level Group (March 2010), further progress has been achieved, three additional Member States having ratified the Convention,<sup>2</sup> and three Member States having ratified the Optional Protocol.<sup>3</sup> In addition, one Member State has finished the internal ratification procedure for the Convention and the Optional Protocol and is awaiting deposit with the UN.<sup>4</sup> One Member State<sup>5</sup> signed the Optional Protocol. Moreover, in 2010, the EU formally confirmed the Convention.

The current situation is as follows:

- All Member States and the EU have signed the Convention,
- 22 Member States have signed the Optional Protocol,
- 17 Member States have ratified the Convention, (Austria, Belgium, Czech Republic, Denmark, Germany, France, Hungary, Italy, Latvia, Lithuania, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK),
- 1 Member State has finished the internal ratification procedure for the Optional Protocol and the Convention and is in the process of depositing the ratification instruments at the UN Headquarters (Cyprus),
- 14 Member States have ratified the Optional Protocol (Austria, Belgium, France, Germany, Hungary, Italy, Latvia, Lithuania, Portugal, Slovakia, Slovenia, Spain, Sweden, UK), and
- The EU has formally confirmed the Convention.

On 26 November 2009 the Council Decision concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities was adopted (Decision 2010/48/EC). Before final confirmation of the Convention on behalf of the EU, the Commission, Council and Member States needed to agree on a Code of Conduct (see Article 3 and 4 of the Council Decision) setting out the framework for implementation of the Convention within the EU and, *inter alia*, the applicable coordination, representation, voting and speaking arrangements in the UN.

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<sup>2</sup> Lithuania, Slovakia, Romania.

<sup>3</sup> Latvia, Lithuania, Slovakia.

<sup>4</sup> Cyprus.

<sup>5</sup> Greece.

The Code of Conduct was agreed on the 2 December 2010,<sup>6</sup> enabling the EU to complete the procedure of conclusion of the Convention by depositing its instruments of formal confirmation with the UN Secretary General in New York on 23 December 2010.

The Convention entered into force with respect to the EU on 22 January 2011. The EU is bound by the Convention to the extent of its competences as these are listed in an Annex to the Decision 2010/48/EC. The EU will have to submit its first Report to the UN Committee in Geneva by 22 January 2013.

With respect to the Representation of the EU *vis-à-vis* the UN in UNCPRD matters within EU competence, the Member States and the EU are bound by the principle of loyal cooperation and the principle of unity of external representation and these principles should permeate their cooperation. It is essential to build up good cooperation practices in line with the provisions of the Code of Conduct.

The proposal for EU accession to the Optional Protocol, adopted by the Commission on 29 August 2008<sup>7</sup> and transmitted to the European Parliament and the Council is still with the Council. Before pursuing the discussion on the Optional Protocol, it was decided to give priority to the procedure of formal confirmation of the Convention and to the adoption of a Code of Conduct. Now that these two procedures have been completed, the Commission considers that the process of accession of the EU to the Optional Protocol should be continued.

The process of ratification of the Convention is ongoing in 9 Member States. As the UN Convention came into force on 3 May 2008 the Commission encourages its swift ratification by the remaining Member States.

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<sup>6</sup> Code of Conduct between the Council, the Member States and the Commission setting out internal arrangements for the implementation by and representation of the EU relating to the UNCPRD, Council of the European Union, 16243/10.

<sup>7</sup> COM (2008) 530 final. The proposal was endorsed by the European Parliament on 24 April 2009.

### 3. Progress on implementation and monitoring of the UNCRPD

The effective implementation of the UNCRPD requires a proper *governance structure*. To that end, Article 33.1 UNCRPD directly obliges the State Parties, to designate one or more focal points within government for matters relating to the implementation of the UNCRPD, and to give due consideration to the establishment of a coordination mechanism to facilitate related action in different sectors and at different levels. The efforts to put effective governance structures in place in the Member States are ongoing and advancing. Some Member States have very recently established structures and processes, while others are at the beginning or in the midst of the implementation process.

It was therefore very timely that the first Work Forum, organised in November 2010, focused on the implementation of Article 33 of the UNCRPD, and on the involvement of persons with disabilities in those structures. The Work Forum provided examples of good practices such as: effective methods of involvement and consultation with people with disabilities, action plans which work across Ministries, consultative structures, legislative instruments and multi annual funding programs.

Most Member States have designated the Focal Point within their Ministry of Welfare, Labour or Social Affairs while it is interesting to note that in a recent report of the UN-OHCHR there was a recommendation to nominate the Focal Point in the Ministry of Justice.

The establishment of a *Coordination Mechanism* is optional, but a majority of the Member States has chosen to establish such a mechanism.<sup>8</sup> Many Member States combine the lead for the Coordination Mechanism and Focal Point into one body.

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<sup>8</sup> AT, BE, CY, CZ, DK, DE, ES, FR, HU, IT, IE, LU, LV, NL, PT, RO, SE, UK.

For the EU the European Commission is the Focal Point<sup>9</sup>. Certain aspects of the coordination between the Council, the Member States and the Commission in the implementation of the Convention are covered by the Code of Conduct, adopted on 2 December 2010. The Code contains provisions on representation of the EU *vis-à-vis* the UN in UNCRPD matters, how to coordinate the establishment of positions (point 6), speaking arrangements (points 7 and 9), voting arrangements (point 8), nominations (point 10) reporting and monitoring (point 12).

Article 33.2 of the UNCRPD obliges State Parties to maintain, strengthen, designate or establish a framework, including one or more independent mechanism, to promote, protect and monitor the implementation of the Convention in accordance with their legal and administrative systems.

A majority of the Member States having ratified report that they have established an independent mechanism. While all Member States recognise the importance of involving civil society in developing and implementing laws relating to persons with disabilities, only some of them have arrangements for involving civil society in the monitoring process.

At the EU level, the Commission has announced that it will present during 2011 its proposal on a framework for the purposes of Article 33 UNCRPD.

#### **4. The interface between implementation of the UNCRPD and Europe 2020**

The fourth Disability High Level Group Report highlights the link between the implementation of the UNCRPD and the goals of the Europe 2020 Strategy for education, employment and poverty reduction. The three relevant headline targets are: raising to 75% the **employment rate** for women and men aged 20-64; **improving education levels**, in particular by aiming to reduce school drop-out rates to less than 10% and by increasing the share of 30-34 years old having completed tertiary or equivalent education to at least 40%; and promoting **social inclusion**, in particular through the reduction of poverty, by aiming to lift at least 20 million people out of the risk of poverty and exclusion.

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<sup>9</sup> Article 3, Decision 2010/48/EC, point 11, Code of Conduct.

On the basis of the EU Statistics on Income and Living Conditions (SILC) from 2008, it is estimated that the percentage of persons with disabilities having completed tertiary education or equivalent in the age group 30-34 is around 19%, while for those without disabilities the figure is around 31%. The employment rate (from the same source) among those between 20-64 years old with disabilities is 45 % compared to 73% for persons without disabilities. The poverty risk for persons with disabilities older than sixteen years is 21% while for those without disabilities it is about 15%. The situation of persons with disabilities therefore has to improve in order to contribute to reaching the headline targets. This means that the Member States should include measures addressing the situation of persons with disabilities when they prepare their programmes aiming to reach the Europe 2020 headline targets.

In this respect, the Disability High Level Group Report shows some interesting examples and practices, for example involving the Member State's UNCRPD focal point in the preparation of the National Reform Programmes (NRP), and setting specific targets for persons with disabilities in the NRP. The overall picture so far, however, is that few NRPs contain specific measures for persons with disabilities. Moreover, the existing measures and national plans do not appear to address disability mainstreaming objectives in the actions designed to reach the three headline targets. Member States are therefore encouraged to mainstream disability concerns in their general measures but also to consider the inclusion of specific measures in their NRPs to improve the situation of persons with disabilities. This process could be underpinned by the setting of national disability targets in these three areas, in order to strengthen the disability-relevant contribution to the policies aimed at reaching the headline targets.

In order to be able to monitor progress as regards the position of persons with disabilities in the context of these three headline targets, it is of great importance that the Member States and the EU improve their relevant data and statistics. While some efforts are being made, the Member States' answers to the questionnaire reveal that there are insufficient statistics and data on disability-related issues with regard to the three above-mentioned headline targets.



While there is a need for more and better disability related data from the Member States, the European Commission will use annual SILC data to report regularly on the situation of persons with disabilities in education, employment and poverty, compared to the figures for the rest of the population.

At the same time, the Member States are encouraged to improve their data collection, statistics and the development of disability related indicators.

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FIFTH DISABILITY HIGH LEVEL GROUP REPORT  
ON THE IMPLEMENTATION OF THE UN CONVENTION  
ON THE RIGHTS OF PERSONS WITH DISABILITIES

(May 2012)

**Disclaimer**

**This report has only been very partially edited.**

A large part of this document is based on contributions written in English mainly by non native authors. The Commission did not have the time or sufficient translating resources to correct linguistic imperfections. This linguistic reservation applies even more to most parts of the report dealing with Belgium and France. Parts of these contributions have been included in the report in the original French version.

The Report takes account of developments until approximately 1 April 2012.

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## **INTRODUCTION**

This Report gives an overview of progress made in ratifying and implementing the UN Convention on the Rights of Persons with Disabilities in the EU and its Member States. It is prepared on the basis of replies to questionnaires and updates received from 27 Member States and various non governmental stakeholders. The Report can be particularly useful in helping to identify good practices.

It provides an update of developments in the national and EU implementation of the Convention, with detailed reference to the governance structures required by Article 33 of the UNCRPD. The report of this year also examines the legal and regulatory framework for accessibility, and changes introduced as a consequence of UNCRPD implementation.

The first chapter summarises the updated information on the process of signature and ratification of the Convention and its Optional Protocol by the Member States and the EU, as well as on reservations and declarations. The second chapter focuses on progress in the national implementation and monitoring of the UNCRPD. The third chapter provides an overview of accessibility legislation, regulations and standards implementing Article 9 of the UN Convention – which stipulates that "State Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications [...] and to other facilities and services open or provided to the public".

These three chapters are complemented by three annexes with practical information. Annex 1 presents, in a table, the state of signatures, reporting and ratifications/formal confirmation of the UNCRPD and the Optional Protocol by the Member States and the Union. Annex 2 lists details of identified responsible authorities, focal points, coordination mechanisms and contact points. Annex 3 provides links to websites where more information on the UNCRPD can be found, including national translations of the text of the UNCRPD and the Optional Protocol.

## **1. STATE OF PLAY ON SIGNATURE AND RATIFICATION OF THE CONVENTION AND OPTIONAL PROTOCOL IN THE EU AND THE MEMBER STATES**

On 30 March 2007, the day of opening for signature, the UN Convention on the Rights of Persons with Disabilities was signed by the European Community and twenty two Member States. Seventeen of those Member States also signed the Optional Protocol.

As of March 2012 the UN CRPD has been signed by the European Community (now the European Union) and all its Member States. The Optional Protocol has been signed by 22 Member States.

The EU deposited the instruments of conclusion/formal confirmation at the UN the 23 December 2010 so the Convention entered into force for the EU on 22 January 2011. Twenty Members States have ratified the UN CRPD: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Germany, Denmark, Spain, France, Hungary, Italy, Lithuania, Luxembourg, Latvia, Portugal, Romania, Slovenia, Sweden, Slovakia, United Kingdom. The Optional Protocol has been ratified by sixteen Member States: Austria, Belgium, France, Cyprus, Germany, Hungary, Italy, Latvia, Lithuania, Portugal, Slovakia, Slovenia, Spain, Sweden, UK.

### **Ratifications**

The ratification procedures are in most cases complicated and provide for various stages involving several institutions.

Austria signed the UN Disability Rights Convention and the Optional Protocol on 30 March 2007 in New York. The Convention and the Protocol were ratified on 6 August 2008 and entered into force on 26 October 2008. There has been a translation of the Convention and the Protocol into German language and into an easy-to-read version for people with learning disabilities.

In Belgium the statement of the reasons (Exposé des Motifs) was finalised on 21 March 2008. It was presented to the meeting of the Council of Ministers (Conseil des Ministres) by mid 2008. The Council of Ministers addressed it to the State Council (Conseil d'Etat) before presenting the file to the Parliament for a vote. The same procedure was followed at eight various levels of competent authority (federal state, the Communities and the Regions). Belgium ratified the Convention and the Optional Protocol on 2 July 2009. They became executive on 1 August 2009.

Bulgaria ratified the Convention on 26.01.2012. Bulgaria also signed the Optional Protocol on 18.12.2008. The UN Convention has been translated and will be published in Bulgarian language. The UN Convention entered into force in Republic of Bulgaria on 21 April 2012.

In Cyprus, the ratification of the UNCRPD and the Protocol were enabled by Law 8(III)/2011 of 4 March 2011. The instruments of ratification were deposited at the UN on 27 June 2011 and the Convention and the Protocol entered into force in the Republic of Cyprus on 27 July 2011.

The Czech Republic ratified the Convention on the Rights of Persons with Disabilities in September 2009. That important event influenced the preparation and form of a new National Plan in the field of disability, i.e. National Plan for Promoting Equal Opportunities for Persons with Disabilities 2010–2014 approved by Resolution of the Government of the Czech Republic No 253 of 29 March 2010. The Czech Republic has not ratified the Optional Protocol yet, however, the National Plan for the Creation of Equal Opportunities for Persons with Disabilities 2010–2014<sup>1</sup> takes into account the preparation of a draft for its ratification by the end of 2012.

Denmark launched a comprehensive consultation process in the autumn of 2008, encompassing all ministries, organisations and the general public and aimed at assessing any legal and financial preconditions for and implications of ratifying the UN Convention on the Rights of Persons with Disabilities. The comprehensive consultation process formed the basis of the government's continued work. As the coordinating ministry of disability aspects, the Ministry of Social Welfare<sup>2</sup>, established an inter-ministerial working group in autumn 2008 tasked with identifying implications and preconditions for Denmark's ratification of the UN Convention. The inter-ministerial working group held its first meeting on 4 September 2008. The meeting reviewed the obligations of the Convention and concluded that it needed, in particular, to study the scope of obligations inherent in the non-discrimination provisions under Article 5, obligations under the provisions of accessibility under Article 9 and obligations under the provision of education under Article 24. This conclusion led to the set up of three subgroups each charged with performing a detailed analysis of one of the mentioned problem areas. The Ministry of Social Welfare headed up the subgroups on non-discrimination provisions and accessibility, while the Ministry of Education was in charge of the subgroup on education. The subgroups on anti-discrimination and accessibility held two meetings, supplemented by several written consultation rounds. Concurrently with the work in the inter-ministerial working group, Denmark adopted Act no. 1347 of 19 December 2008 amending the Parliamentary Election Act, the Danish European Parliament Elections Act and the Local and Regional Government Election Act. The amended Act ensures that Denmark meet the provisions of Article 29 of the Convention, which require state parties to guarantee persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others. In addition to the amendments made to the elections legislation, the inter-ministerial working group concluded that no further legislation was needed before Denmark could ratify the Convention. The analyses carried out by the subgroups and the inter-ministerial working group were presented to the Government on 11 March 2009 and constituted the basis for preparing a motion for resolution to ratify the Convention. The draft motion for resolution underwent an external consultation round and was uploaded to the public consultation portal, [www.borger.dk](http://www.borger.dk), on 23 March 2009, the deadline for comments being 6 April 2009. Stakeholder organisations were able to monitor the ratification process constantly at the Ministry of Social Welfare website and later at the Ministry of the Interior and Social Affairs website and were also able throughout the process to contact the Ministry directly. The final resolution was presented in the Danish parliament on 22 April 2009 and adopted on 28 May 2009. In close cooperation with the Ministry of Foreign Affairs, the Ministry of the Interior and Social Affairs subsequently launched the preparation of the ratification instruments for the formal ratification of the UN Disability Convention. The

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<sup>1</sup> Approved by Resolution of the Government of the Czech Republic on 29 March 2010 No. 253.

<sup>2</sup> The ministry has changed name three times since then: first to the Ministry of the Interior and Social Affairs, then to the Ministry of Social Affairs, and latest to the Ministry of Social Affairs and Integration.



ratification instrument was deposited on 23 July 2009. The Convention has formally been in force for Denmark since 23 August 2009. The ministry regularly briefed the organisations for people with disabilities in Denmark throughout the entire ratification process. Additionally, four meetings were held with these organisations in Denmark, at which the Convention and the ratification process were discussed and reviewed.

Estonia: The Parliament of Estonia has adopted the Act of ratification of the UNCRPD and endorsed the accession to the Optional Protocol in March 2012. The President of Estonia has proclaimed the Act. The instrument of ratification is prepared but not deposited yet and ratification has not entered into force (May 2012). Estonia made an interpretative declaration upon ratification about Article 12.

A detailed analysis of the articles of the UNCRPD was done and the compliance of Estonian legislation with them was assessed beforehand to determine whether full implementation of every particular obligation is already ensured. The Ministry of Social Affairs consulted with people with disabilities on the impact of the UNCRPD on individuals, businesses and others. The articles of the UNCRPD were also discussed with other ministries, associations of local governments, the Estonian Chamber of People with Disabilities and Estonian Institute of Human Rights. Many issues requiring further clarification also emerged during the preparation of ratification and that prolonged the ratification process. However, it was concluded that no amendments of legislation were needed in order to proceed.

In Finland, the main part of the legislation already complies with the requirements of the Convention. The Ministry of Social Affairs and Health is preparing the legislative amendments needed for the ratification of the Convention. A new Act on the use of coercion on persons with intellectual disabilities and dementia will be required by Article 14 of the Convention (Liberty and security of person). A working group to prepare the legislation was set up in July 2010. In relation to the right of persons with disabilities in need of institutional or residential care to move from one municipality to another, Article 18 (Liberty of movement and nationality) and Article 19 (living independently and being included in the community) required changes in the Municipality of Residence Act and the Social Welfare Act. The legislative amendments necessitated by Articles 18 and 19 were completed during 2010 and the relevant Acts entered into force on 1 January 2011.

Additional issues requiring further clarification or specification of legislation may also emerge during the preparation for ratification. Finland has currently no mechanism that has been, or could as such be, designated to attend to the tasks referred to Article 33.2 of the UN Convention. Thus, the ratification of the Convention will necessitate either the establishment of a new mechanism or the transformation or some existing mechanism into such a mechanism. All in all, preparation of the legislative amendments will still take time and Finland would be prepared to ratify the Convention during the current Government's term of office.

The Ministry for Foreign Affairs has, in May 2011, set up a working group to prepare the measures necessitated by the ratification of the Convention and its Optional Protocol in Finland. The working group is comprised of representatives of the public administration and the local and regional authorities, as well as the National Council on Disability (VANE), the Finnish Disability Forum and the Center for Human Rights of Persons with Disabilities (VIKE). The work of the working group and the preparation of the legislative amendments is still ongoing. The intention is to ratify the Convention during the current Government's term of office (2011-2015).

France: The ratification of the UNCRPD and the Optional Protocol were enabled by Law 2009-1791 of 31 December 2009. The instruments of ratification were deposited at the UN on 18 February 2010. Consequently, the Convention and the Optional Protocol entered into force in France on 20 March 2010.

Germany: The German Bundestag passed the law with the consent of the Bundesrat which was necessary for ratifying the Convention and the Optional Protocol. The law entered into force on 1 January 2009. Germany ratified both the Convention and the Optional Protocol. The instruments of ratification were deposited 24 February 2009 at the UN Headquarters. Germany has translated both the Convention and the Protocol into sign and easy-to-read versions.

Greece signed the UNCRPD on 30<sup>th</sup> March 2007 and the Optional Protocol on 27<sup>th</sup> September 2010. On 11 April 2012 the Greek Parliament enacted Law 4074 / 2012 ratifying the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto. The instrument of ratification of both the Convention and the Optional Protocol is expected to be deposited with the Depository of the Convention within the current month.

Hungary has ratified the Convention and the Optional Protocol on the 20<sup>th</sup> July 2007 by the Act No 92 of 2007.

Ireland signed, subject to ratification, the UNCRPD on its opening for signature on 30 March 2007. It is the Government of Ireland's intention to ratify the UNCRPD as quickly as possible, taking into account the need to ensure that all necessary requirements under the Convention are being met. There will be no undue delay in the State's ratification of it; however, Ireland does not become party to treaties until it is first in a position to comply with the obligations imposed by the treaty in question, including by amending domestic law as necessary. The National Disability Strategy (NDS) of Ireland in many respects comprehends many of the provisions of the UNCRPD. A high-level Interdepartmental Committee advises on and monitors legislative, policy and administrative actions required to enable the State to ratify the UNCRPD. This Committee has developed a Work Programme to (i) address any elements of the National Disability Strategy that require alignment with the Convention and (ii) address any matters that fall outside the NDS which are required to enable Ireland to ratify. This programme is being progressed across the relevant Government Departments. At the Committee's request, the National Disability Authority, the lead statutory agency for the sector, has independently assessed the remaining requirements for ratification so as to ensure conclusively that all such issues will be addressed. The Committee will also closely examine the Optional Protocol to the Convention in consultation with the Department of Foreign Affairs and the Office of the Attorney General (the Government's legal advisers). The Optional Protocol will be addressed by the Government at the time of ratification of the Convention.

Italy: On November 28<sup>th</sup>, 2008, the Italian Government approved the ratification proposal for the UN Convention and Optional Protocol, which was passed by the Parliament on February 24<sup>th</sup>, 2009. By law no. 18 of 3 March 2009, the Italian Parliament has ratified the UN Convention and the Protocol. On 15 May 2009 Italy deposited its instruments of ratification with the depositary of the Convention.

The ratification decision also established the new National Observatory on the condition of persons with disabilities, which met for its first official meeting on 16 December 2010. The Observatory is responsible for the implementation of the UNCRPD in close co-operation with the inter-ministerial Committee on Human Rights (CIDU) of the Italian Ministry of Foreign Affairs. It will also assure the monitoring activities provided by Article 33.2 of the UN Convention.

Latvia: On 28 January 2010 the Parliament of Latvia finalised the ratification of the Convention at the national level. In accordance with the Depositary Notification communicated by the Secretary-General of the United Nations, the ratification was completed on 1 March 2010. The Convention entered into force for Latvia on 31 March 2010 in accordance with its Article 45(2). Furthermore, on 3 June 2010 the Parliament of Latvia has ratified at the national level also the Optional Protocol to the Convention. The ratification of the Optional Protocol was completed on 31 August 2010 and it entered into force for Latvia on 30 September 2010.

Lithuania: On 30 March 2007, the Minister of Social Security and Labour of Lithuania signed the UNCRPD and its Optional Protocol in New York. On 27 June 2007, by Order No. A1-176, the Minister of Social Security and Labour initiated an inter-institutional taskforce to deliver the analysis of relevance and feasibility for ratification of these international instruments. The taskforce involved representatives from the Ministry of Culture, the Ministry of Health, the Ministry of Education and Science, the Ministry of Transport and Communication, the Ministry of Social Security and Labour, the Ministry of Foreign Affairs, the Ministry of National Defence, the Ministry of Environment, the Office of Equal Opportunities Ombudsperson, the Department of Physical Education and Sports under the Government of the Republic of Lithuania and representatives of NGOs.

The analysis of the relevance and feasibility of ratifying the UNCRPD encompassed the conformity of the Lithuanian legal framework with the provisions of the Convention as well as the possibility of ratifying all articles of the Convention and the Protocol. On 27 May 2010, seeking to become a full-fledged member of the international community pursuing the equal opportunities mainstreaming policy effectively, Lithuania ratified the UN Convention and its Optional Protocol (Republic of Lithuania Law on the Ratification of the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol, Official Gazette, 2010, No.67-3350).

Luxembourg: After analysing the compatibility of national legislation with the Convention - in order to identify potential conflicting laws or regulations - Luxembourg started the official ratification procedure in May 2010 and finally ratified the Convention and the Optional Protocol on 13th July 2011 (Law of 28th July 2011). The date of the deposit of the instrument of ratification at the UN Headquarters is the 26 September 2011. The Convention entered into force for Luxemburg on October 26, 2011.

In Malta, a Disability Matters Bill was approved by Parliament on 26 March 2012. It will come into effect in mid-April. In light of these legislative changes, fresh consideration is being given to the ratification by Malta of the Convention and the Optional Protocol.

The Netherlands is carrying out a study of the nature and scope of the obligations of the UN Convention as a preliminary step for an impact assessment of the financial consequences of the Convention. The results are expected in spring 2012. Based on the results, the draft

version of the Approval and Introductory Act will be finalised. These Acts contain all changes necessary in Dutch laws to implement the Convention. Civil society is actively involved in these legal analyses and in the drafting of the Approval and Introductory Act.

The Netherlands expect to start the consultation process with civil society of the drafts of the Approval and Introductory Act in spring 2012. The proposals for the Approval and Introductory Act will then be submitted to the Council of State. Upon receipt of the advisory opinion of the Council of State the proposals will be submitted to the Parliament. It is expected that this will take place in 2012. The ratification process will be concluded when both Chambers of Parliament have consented to the proposals for legislation.

Poland: For international agreements concerning human rights, the Polish Constitution requires "a major ratification process", which means that the Council of Ministers has to adopt a draft Act on the ratification and submit it to the Parliament for consideration and approval, before the President can ratify the agreement. Ratified agreements are promulgated in the Official Journal of Laws and only then constitute part of the domestic legal order.

The assessment of compatibility of national legislation with the Convention, carried out by the Ministry of Labour and Social Policy, in collaboration with relevant ministries, resulted in the proposal on ratification of the Convention in July 2011. Extensive consultations with social partners and NGOs took place. Consideration of the proposal by the Council of Ministers, foreseen for August 2011, has been suspended to make additional consultations with the Minister of Finance.

The process was slowed down because of the parliamentary election which took place on 9 October 2011 (a new Government's term of office started on 8 November 2011).

On 27 March 2012 the Council of Ministers considered the proposal on ratification of the Convention, revised following the adoption of new legislation since August 2011, and decided to submit a draft Act on the ratification to the Parliament for consideration.

Portugal: The UNCRPD was ratified in 2009 and since then it is part of the Portuguese legal system. Both the first Action Plan for Persons with Disabilities (2006-2009) and the National Strategy for Disability (2011-2013) develop and implement the Principles and obligations defined in the Convention. According to the latest Government proposal, the National Institute for Rehabilitation (INR, I.P.) will be designated the national coordination mechanism within the government and it will elaborate the national report to submit to the Committee on the Rights of Persons with Disabilities in 2012. The civil society has been consulted in the beginning of current year. According to the latest Government proposal, the independent mechanism will be designated in 2012.

In Romania, the Ratification Law of the UNCRPD was promulgated by the President of Romania in November 2010 (Law 221/2010 for the Ratification of the Convention regarding the Rights of the Persons with Disabilities) and the instruments of ratification were deposited 31 January 2011. Depositing the instrument of ratification of the Convention by Romania was announced by the Secretary General of the United Nations - as depositary of the Convention on the Rights of Persons with Disabilities - on January 31, 2011. In accordance with Article 45, paragraph 2 of the Convention, it entered into force for Romania on 2<sup>nd</sup> of March 2011.

Slovak Republic: The National Council of the Slovak Republic expressed its agreement with the Convention and the Optional Protocol in its Resolution no. 2048 of 9 March 2010 and decided that it constitutes an international agreement which, pursuant to Article 7 (5) of the

Constitution of the Slovak Republic, has precedence over national laws. The President of the Slovak Republic ratified the Convention and the Optional Protocol on 28 April 2010. On 26 May 2010 the Deed of Ratification was deposited with the Secretary General of the United Nations.

The Convention became binding for the Slovak Republic on 25 June 2010 in accordance with Article 45 (2) and also the Optional Protocol entered into force on 25 June 2010.

Slovenia: The Act on Ratification of the Convention and the Protocol was adopted in the Parliament on April 2, 2008. The Convention and the Protocol were published in the Official Journal of the Republic in Slovenia. The Ministry of Foreign Affairs sent the documents to the UN Permanent Mission of Slovenia, which handed in the documents at the UN on 24 April 2008. The UN Convention and the Protocol were officially translated, submitted to the UN and published on the UN web page by 2007. In 2008, the Convention was printed in Slovenian in both the usual and the accessible formats for persons with disabilities, namely the easy-to-read, Braille and sign language versions.

Spain signed the UNCRPD and the Optional Protocol on 30 March 2007 in New York. The instruments of ratification were deposited at the UN on 3 December 2007 and were published into the Spanish Official State Gazette (BOE) on 21 April 2008. Consequently, they entered into force in Spain on 3 May 2008.

Sweden: An investigator within the Government's office examined Swedish legislation in order to see if it is in harmony with the UN Convention's requirements and those of the Optional Protocol. This work has been published in a report and referred to stakeholders for further consideration. This report formed the basis of a bill to the Parliament. The ratification of the Convention requires a parliamentary resolution. Sweden ratified the UN Convention and its Optional Protocol on 15 December 2008. According to the above mentioned examination, the Swedish legislation is in harmony with the UN Convention's requirements. The translation into Swedish can be found at [www.sweden.gov.se](http://www.sweden.gov.se).

The United Kingdom ratified the Convention on 8 June 2009 and the Optional Protocol on 7 August 2009. The UK developed reporting and monitoring arrangements, including the establishment of an independent mechanism comprising the UK's four equality and human rights commissions. The UK submitted its initial report to the UN on 24 November 2011.

The European Union signed the Convention the 30 March 2007. On the 26 November 2009 the Council Decision concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities was adopted (Decision 2010/48/EC).<sup>3</sup>

As required by Articles 3 and 4 of this Decision, a Code of Conduct needed to be adopted before the deposit of the instrument of formal confirmation on behalf of the European Union could take place. On 2 December 2010, the Code of Conduct between the Council, the Member States and the Commission was agreed, setting out internal arrangement for the implementation and representation of the EU relating to the UNCRPD.<sup>4</sup> Following this, the

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<sup>3</sup> Decision 2010/48/EC <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:023:0035:0061:EN:PDF>

<sup>4</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:340:0011:0015:EN:PDF>, 2010/C 340/08

EU deposited the instruments of ratification on 23 December 2010. The UNCPRD entered into force with respect to the EU on 22 January 2011.

In August 2008, the Commission adopted a proposal for a Council Decision on the EU accession to the Optional Protocol (COM(2008) 530 final/2). However, it was decided within the Council to give priority to negotiations on the Decision on the Conclusion of the Convention, and then on the Code of Conduct. Now that the Code of Conduct has been agreed in December 2010, and the EU has concluded the Convention, it is up to the Council Presidency to act on the Commission's Draft Decision on the Optional Protocol.

## **Declarations and Reservations**

The majority of the Member States do not foresee any reservation as regards to the matter of application of the Convention or of the Optional Protocol. Even though the need for reservations after finalising the screening of the national legislation may arise, most countries express a strong political will to ratify the entire Convention and its Optional Protocol.

As exception, at the signing ceremony the Dutch Ambassador had a statement on several articles. It is not known now whether the need for new reservations or explanations will arise.

During the ratification of the Convention on 27<sup>th</sup> of May, 2010, the Lithuanian Government has made a statement regarding the Article 25 (a). The Parliament of the Republic of Lithuania stated that the concept “sexual and reproductive health” can’t be interpreted as establishing new human rights and constituting relevant international obligations for the Republic of Lithuania. In the content of this concept is not included support, promotion or advertising of disabled peoples abortions and sterilization and medical procedures which could lead to discrimination based on genetic characteristics.

The Maltese Government has also already made an interpretative statement regarding the phrase “sexual and reproductive health” in Article 25(a) to the effect that Malta understands that this phrase does not constitute recognition of any new international law obligation, does not create any abortion rights and cannot be interpreted to constitute support, endorsement, or promotion of abortion. Malta further understands that the use of this phrase is intended exclusively to underline the point where health services are provided, they are provided without discrimination on the basis of disability. Malta has also made a reservation pursuant to Article 29(a)(i) and (iii) of the Convention. While declaring its full commitment to ensure the effective and full participation of persons with disabilities in political and public life, including the right to vote by secret ballot in elections and referenda, and to stand for elections, with regard to Article 29(a)(i), Malta reserved the right to continue to apply its current electoral legislation in so far as voting procedures, facilities and materials are concerned and with regard to (a)(iii) Malta reserved the right to continue to apply its current electoral legislation in so far as assistance to voting procedure is concerned. It is envisaged that both the above-mentioned interpretative statement and reservation will be confirmed on ratification.

France has not made any reservations; however, it made a declaration on the term 'consent' in Article 15. France will interpret this term in conformity with international instruments such as the Council of Europe Convention on Human Rights and Biomedicine and its Additional Protocol on Biomedical Research, as well as on its national legislation which is already consistent with the latter instruments.

Poland submitted a reservation concerning article 23.1 (b) and 25 (a) (reproductive health). International law of treaties asks for the confirmation at the moment of submitting ratification documents. This point will be decided at the moment of ratifying the Convention. Currently it is planned to slightly modify the original text of this reservation and submit an additional one concerning article 23.1 (a) (on marriage of a disabled person whose disability results from a mental illness or mental disability), as well as an interpretative declaration concerning article 12 (on application of the incapacitation).

When depositing the Deed of Ratification, the Slovak Republic expressed a reservation in respect of the provision of Article 27 (1), a) of the Convention on the Rights of Persons with Disabilities in accordance with its Article 46, in the following wording: “The Slovak Republic shall apply the provisions of Article 27 (1) a) provided that implementation of prohibition of discrimination on the basis of disability when determining the conditions of recruitment, hiring and continuance of employment shall not apply to hiring of members of armed forces, armed state security services, armed corps, National Security Authority, Slovak Information Service and Fire Brigade and Rescuers.”

The UK has introduced a proportionate system of review for social security benefit appointees and therefore removed its reservation in respect of Equal Recognition before the Law (Convention Article 12.4) when it submitted its initial report to the UN. The reservations in respect of Work and Employment (Convention Article 27 mainly); and Liberty of Movement (Convention Article 18); and an interpretative declaration and a reservation in respect of Education (Convention Article 24, Clause 2 (a) and 2 (b) remain in place.

Cyprus has submitted a reservation on Article 27 of the Convention regarding employment.

The EU in the Decision concerning the conclusion of the UNCPRD states that it concludes the Convention without prejudice to the right, conferred on its Member States by virtue of the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, to exclude non-discrimination on the grounds of disability with respect to employment in the armed forces from the scope of the Directive. Therefore the Member States may, if appropriate, enter their own reservations to Article 27(1) of the Disabilities Convention to the extent that Article 3(4) of the said Council Directive.

<b>2. ACTIONS UNDERTAKEN BY THE MEMBER STATES, EUROPEAN UNION AND STAKEHOLDERS TO IMPLEMENT AND MONITOR THE UNCRPD</b>
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## **Austria**

### **2.1. National Implementation of the UNCRPD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)**

In Austria, the Federal Ministry of Labour, Social Affairs and Consumer Protection is the Focal point at federal level. The Ministry of Labour, Social Affairs and Consumer Protection is also responsible for coordinating the implementation of the UN Disability Rights Convention in Austria. In 2012 the government has foreseen a decision on a National Action Plan (NAP) on the implementation of the UN Disability Rights Convention 2012 to 2020 (“**NAP Behinderung**”). The National Disability Action will promote the objectives of the UN Disability Rights Convention and contain the guidelines and strategies for the Austrian policy for persons with disabilities in the upcoming years (from 2012 to 2020).

#### **2.1.2. National strategies to implement the UNCRPD**

In accordance with Article 35 para. 1 of the UNCRPD, Austria drew up its **First State Report** for the United Nations in October 2010. On the basis of numerous contributions from governmental and non-governmental organisations, this comprehensive report reflects the measures taken to fulfil the obligations from the agreement. The main purpose of the **National Action Plan 2012 to 2020** is to promote and to implement the aims of the UNCRPD. The Plan is built on the basis of the First State Report of the Austrian Government required by the UNCRPD, submitted in 2010.

The Federal Ministry of Labour, Social Affairs and Consumer Protection, in its function to coordinate disability policy in Austria, was responsible to set up the National Action Plan. The draft of the Action Plan was presented in January 2012. The Federal Disability Advisory Board was involved in the process of setting up the plan from the beginning. In order to involve all stakeholders, the plan was established in close cooperation with civil society. There will be a further broad discussion with stakeholders, civil society and NGOs at the end of February 2012. After that the Action Plan is expected to be adopted by the Federal Government in spring 2012.

### **2.2. Monitoring of the UNCRPD**

#### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

The 2008 amendment to the Federal Disability Act established the Independent Monitoring Committee. The Monitoring Committee is also represented in the Federal Disability Advisory Board at the Federal Ministry of Labour, Social Affairs and Consumer Protection with representatives from the federal government, the nine “Länder” as regional authorities, the social insurance institutions, disability organisations, social partners and the Disability Ombudsman.



The Independent Monitoring Committee has started to work on implementing the UNCRPD in 2008. Since December 2008 the Committee has held 37 meetings (one per month). Every 6 months ca. a public meeting is organized. The latest public meeting took place in November 2011. One meeting was held at the Austrian Parliament in November 2009. About 40 individual complaints were raised until now. The Independent Monitoring Committee regularly gives a written and published expert opinion on a current disability policy issue (e.g. inclusive education, occupational and work therapy, violence and abuse, personal assistance, legal capacity and supported decision-making) and makes recommendations. Although the Independent Monitoring Committee is only responsible for the federal level, it also deals with requests at the regional level if no other monitoring unit is in charge.

### **2.2.2. The involvement of civil society in the monitoring process (Article 33.3)**

The Independent Monitoring Committee is solely composed of members from civil society. In fact, the members of the Committee are representatives from disability organizations, human rights organizations, development organizations and representatives of academic institutions.

Representatives of disability organisations are involved in many boards of the Federal government (for example protection against dismissal of people with disabilities, most second level authorities in matters of people with disabilities).

The Federal Disability Advisory Board has to be heard by the Federal Minister of Labour, Social Affairs and Consumer Protection in all important issues concerning people with disabilities.

Furthermore, there are various tools and methods used in Austria to foster the empowerment of people with disabilities:

- Experts' opinions on laws
- Support in all questions about equal rights
- Raising public awareness: events, campaigns, reports, brochures
- Brochures in 'Easy-to-read'-versions
- Empowerment-programmes financed by the Federal Ministry of Labour, Social Affairs and Consumer Protection
- Working groups with representatives from all stakeholders, including the disability NGOs
- 'Peer-Groups'

### **2.2.3. Collecting statistics and/or developing indicators (Art. 31)**

The National Action Plan 2012-2020 refers to the necessity to set up further disability statistics in Austria. The plan also contains some disability indicators such as the unemployment quota of people with disabilities.

## Belgium

### 2.1. National Implementation of the UNCRPD

#### 2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

In Belgium, the Federal Public Service Social Security is the focal point at the federal level and also the coordinating mechanism (interfederal: for the national level and the level of the Regions and Communities). In each administration at the federal level, a contact point is or will be designated.

Focal points were also established in the various regions and communities:

- *Flemish* region: the team 'Equal Opportunities in Flanders' (*Gelijke Kansen in Vlaanderen*);
- *Walloon* region: the Agency for Integration of Persons with Disabilities (*Agence Wallonne pour l'Intégration des Personnes handicapées*);
- *Brussels-Capital* region: the "Equal Opportunities and Diversity" body (*cel Gelijke Kansen en Diversiteit*);
- Commission of the *French-speaking* Community (*Commission communautaire française - COCOF*): the PHARE Service (*Personne Handicapée Autonomie Recherche*);
- *Joint Community Commission* (*Commission communautaire commune - COCOM*): the COCOM Administration;
- *French-speaking community*: the WBI Multilateral World Service (*Wallonie-Bruxelles International – Service multilatéral mondial*);
- *German-speaking community*: the Office for People with Disabilities (*Dienststelle für Personen mit Behinderung*).

#### 2.1.2. National strategies to implement the UNCRPD

Belgium ratified the Convention and the Optional Protocol on 2 July 2009. They became binding on 1 August 2009.

In accordance with article 35, § 1 of the UNCRPD, Belgium drew up its **First State Report** for the United Nations in July 2011. On the basis of numerous contributions from governmental organisations at the federal level and at the level of the Regions and Communities and with implication of the civil society, this comprehensive report reflects the measures taken to fulfil the obligations of the UNCRPD.

Both on the federal and on the regional level, governments work on a mainstreaming policy for the inclusion of persons with disabilities.

Flanders published its strategic framework on disability 2012-2014 in December 2011. The strategic and operational goals will be translated into concrete action plans during 2012. The evaluation of the framework strategy will be handled via indicators, deliverable from January 2012 on.

Wallonia is busy to prepare its strategic framework on disability 2012-2017. It will be translated into concrete action plans during the last six months of 2012. The first action of this

plan is nominated 'A more inclusive society'. The evaluation of the framework strategy will be handled via indicators in link with UNCRPD.

## **2.2. Monitoring of the UNCRPD**

### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

On 12th July 2011 Belgium designed the Centre for Equal Opportunities and Opposition to Racism (the Centre) as independent mechanism to promote, protect and monitor the implementation of the Convention.

The Centre was established in 1993. Following the extension of its mandate in 2003 and 2007, it became Belgium's national equality body. It provides advice to government on disability issues and handles complaints of discriminations against persons with disabilities. The Centre is currently a national human rights institution with B-Status.

Both the federal state and the federated entities (Communities and Regions) have agreed to designate the Centre. The operation of the independent mechanism has been defined through individual agreements between the Centre and the federal state and the seven federated entities. This includes the establishment of a CRPD Unit and of a CRPD Commission.

On the one hand, the CRPD Unit, a permanent expertise and administrative cell composed of five persons, amongst whom a head of unit has been created to promote, protect and monitor the implementation of the CRPD. The CRPD Unit works in close cooperation with the other branches of the Centre and is in permanent contact with public authorities, national institutions, DPOs, NGOs, independent mechanisms abroad and international organisations.

On the other hand, the Disability Commission is a non-permanent body composed of 23 members chosen by their knowledge, experience and interest in the disability sector, among which a President elected by his/her peers. Members emanate from: DPOs (10), universities (6) and labour unions (7). The Disability Commission approves the annual and triennial strategic plans of the independent mechanism and follows its daily activities.

### **2.2.2. The involvement of civil society in the monitoring process (Article 33.3)**

#### *At national level*

The Belgian Disability Forum (BDF) and the national higher Council of disabled persons monitor the work on the implementation of the Convention. The BDF expressed opinions during the implementation of the ratification process and will follow the application of the Convention.

The BDF is an ASBL comprising 20 associations of disabled persons. The ASBL aims to inform its members regarding the repercussions of supranational regulation on the rights of disabled persons. The ASBL also endeavors to make the political, economic and social Belgian actors aware of the need to incorporate the disabled needs of persons into their discussion and decision process. The BDF is the official representative of Belgium within the European Disability Forum.

### *At federal level*

The national higher Council of disabled persons is in charge of examining all the problems relating to disabled persons, falling within the federal competence. The Council is entitled, through its own initiative or at the request of the relevant Ministers, to deliver opinions or to make proposals on these subjects, inter alia for rationalisation and of the coordination of the legal and regulatory provisions. The Council is composed of 20 members, specially qualified through their participation in activities of organizations of persons with disabilities or through social or scientific activities.

### *At regional and community level*

People with disabilities and the organizations/associations representing them are members of the management Board of the Office of the German-speaking Community for People with Disabilities. They are therefore directly involved in important decision-making processes during the formation of the policymaking for the disabled in the German-speaking Community.

There is also an annual plenary meeting attended by the disabled and all the organizations/associations representing them. The aim is to discuss common concerns and questions and work out joint responses to outstanding issues.

In Flanders, the umbrella organization "Toegankelijkheidsoverleg Vlaanderen" ('Accessibility consultation Flanders') represents people with disabilities concerning the accessibility-topic. They are consulted with regards to the accessibility policy that the Flemish Equal Opportunities unit works on.

With regards to disability, there is no regional board or council representing people with disabilities. But "Equal opportunities in Flanders" actively consults civil society when setting their policy targets via the open method of coordination. Representative organizations are not only involved when elaborating the transversal equal opportunities policy. Even at the level of the different departments and policy fields structures are created to guarantee the participation of people with disabilities in the policy preparation and execution (for e.g. the working group 'Integrale Jeugdhulp', the advisory committee at the Flemish Agency for Disabled Persons (VAPH), Flemish Platform for organizations with disabilities, commission diversity at SERV, etc.). Furthermore, ad hoc consultations will be organized when deemed necessary (for e.g. in regard to the first report on the CRPD).

In 2011, a research project was set up to examine the possibilities, conditions and approach of participation of people with disabilities in policy preparation and execution (Nothing about us without us. Policy participation of people with disabilities). Its aim is to end up with a formula for an advisory, communication and consultation structure for the Flemish Government.

For the territory of the Walloon Region, a Walloon Advisory Board for Persons with Disabilities was created. This council aims to ensure the participation of persons with disabilities and of their associations to the development of the measures which concern them. To this end, the council:

- represents all the associations representative of persons and can ensure coordination of them;
- Gives to the Walloon regional Council and to the Government, upon their request or own initiative, opinions on the guidelines of the policy for persons with disabilities, and on the practical methods of its implementation;

- delivers its opinion on the operation of the Agency and the way in which it carries out the missions which are entrusted to it

Various tools and methods are used in Belgium to foster empowerment of people with disabilities, both at federal and local level.

The associative sector regularly organizes debates, dialogue and training. For example, training intended mainly for the professionals, including the professionals of the associative sector, is organized by the SPF Social Security. In the German speaking Community each disabled person who contacts the Office for People with Disabilities is given individual assistance in the form of an Individual Service Plan (*Individueller Dienstleistungsplan* - IDP) specifying the measures necessary for their social integration and full participation. Furthermore, awareness-raising measures are also being continually organised to increase the general public's awareness of the needs of the disabled. Regular training courses are also available for disabled people. The people concerned and the organisations representing them are actively involved in a working group for monitoring the implementation of the UN Convention on the Rights of Persons with Disabilities and the Action Plan 2006 – 2015 of the Council of Europe. People with disabilities and their respective organisations were involved when drafting the first report on the implementation of the CRPD. They will certainly be involved when drafting the action plan, even if the form has not been determined yet.

In Wallonia, pursuant to Article 120 a) of the new communal law, it is possible for the communes of to establish an Advisory Board of disabled persons.

These communal Advisory Boards of disabled persons aim to:

- Incorporate the needs of disabled persons into local authorities' urban and communal policies.
- Strengthen or establish regular co-operation and dialogue mechanisms enabling disabled persons, by the channel of their representative organizations, to contribute to planning, implementation, follow-up and the evaluation of each action of the political and social field aiming at equality and inclusion.
- All reception and accommodation services approved by the AWIPH are required to create a "Council of the users" representing those and, if necessary, their legal representatives, comprising at least three members including an elected President at its centre. Its members can under no circumstances form part of the organizing service power.

Since February 2011, due to his first “Equal Chances Plan”, an “Equal Chances public agent” will be designated in all communes and cities of Wallonia.

### **2.2.3. Collecting statistics and/or developing indicators (Article 31)**

Since there is no single definition of 'disability' in Belgium, certain persons with disabilities may not be recorded by various data collection mechanisms, and due to the structure of the Belgian State and of legislation on the protection of privacy, it is not possible to globalize the various statistics. For example, at federal level, there are statistics on the benefits and on medical certificates allowing for granting benefits as well as various social and tax advantages.

In the Walloon Region, the indicators currently used are those relating to the management Contract of the Walloon Agency for the Integration of Persons with Disabilities. Indeed, certain main principles of this contract relate to a number of articles of the Convention.

In Flanders, indicators are being drawn up to measure the progress made within the framework of the Open Method of Coordination. These indicators will be available from January 2012 on.

## **Bulgaria**

### **2.1. National Implementation of the UNCRPD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)**

The focal point is the Integration of People with Disabilities Department, in the Ministry of Labour and Social Policy.

Bulgaria is currently in the process of establishing a coordination mechanism foreseen in Article 33 (1) of the UN Convention. Representatives of the NGOs of and for people with disabilities which are members of the National Council for Integration of People with Disabilities are involved in that discussion and also in the same process of establishment of the coordination mechanism. There is a draft of amendment of legislation in relation to the establishment of the coordination mechanism foreseen in 33 (1) of the CRPD.

#### **2.1.2. National strategies to implement the UNCRPD**

- At the beginning of 2011, an expert group was set up with the task to prepare a comprehensive plan for preparing Bulgaria for implementation of the UN CRPD. Representatives of the national representative NGOs of and for people with disabilities take part of the mentioned expert group. The outcome of that expert group was presented to the Council for Integration of People with Disabilities and it was taken into account for ratification of the CRPD.
- In 2012, following ratification, the Ministry of Labour and Social Policy will prepare a biannual action plan for the implementation of the UN Convention by the expert group draft.

### **2.2. Monitoring of the UNCRPD**

#### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

During the work of the expert group preparing the comprehensive plan for Bulgaria's implementation of the UN CRPD, the issues of a framework for promoting/protecting/ monitoring CRPD will be discussed.

#### **2.2.2. The involvement of civil society in the monitoring process (Article 33.3)**

The National Council of Integration of People with Disabilities has been set up with the Council of Ministers. The National Council was established when the new "Integration of People with Disabilities Act" was adopted and came into force 1 January 2005. The National Council is functioning according to the "Regulation of Procedure of the National Council for the Integration of People with Disabilities" and the criteria for representation of organizations of people with disabilities and organizations for people with disabilities, adopted by the Council of Ministers, in Ordinance No 346 from 17 December 2004. The mentioned Regulation lays down the criteria for representation of the organizations of and for people with disabilities which are members of the National Council. In accordance with the Integration of People with Disabilities Act, it is responsible for the cooperation in the policy

development and conduct in the field of disability. It is an advisory body which includes representatives of the state, named by the Council of Ministers, representative organizations of and for people with disabilities, representative organizations of workers and employees, representative organizations of employers and the National Association of Municipalities.

Representatives of NGOs of and for people with disabilities are members of the National Council for Integration of People with Disabilities, which gives a preliminary stand before the statutory instruments for people with disabilities are adopted.

Currently 20 non-governmental organizations of and for people with disabilities in Bulgaria are members of that National Council. Members of the National Council which represent children and adults with disabilities are also involved in drafting the national strategy, action plans, pieces of legislation and also expert group for preparing Bulgaria for the implementation of the UN CRPD.

There is a National strategy for ensuring equal opportunities for people with disabilities and a biannual Action plan for implementation of the strategy. The Bulgarian Government is confident of the great importance of implementation of UN CRPD and it always expresses its willingness to discuss with civil society the problems related to the ratification of the UNCRPD in the framework of the National Council for integration of people with disabilities. In 2012 the Bulgarian disability strategy will be updated to be brought in line with the European Union Disability Strategy and the UN Convention for persons with disabilities.

### **2.2.3. Collecting statistics and/or developing indicators (Article 31)**

During the work of the expert group responsible for preparing the comprehensive plan for Bulgaria's implementation of the UN CRPD, the issue of developing indicators will be discussed.



## Cyprus

### **2.1. National Implementation of the UNCRPD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)**

In Cyprus, the Department for Social Inclusion of Persons with Disabilities has been nominated as the focal point for the implementation of the Convention.

As coordination mechanism for the ratification, implementation and monitoring of the Convention was nominated the Pancyprian Council for Persons with Disabilities which is the highest consultative body for the issues of persons with disabilities. The role of the Council is to consult the government as to the formulation, monitoring and implementation of social policies for persons with disabilities. The Chairman of the Council is the Minister of Labour and Social Insurance and its members are representatives of co-responsible for disability issues Ministries, Organisations of persons with disabilities, social partners (trade unions and organisations of employers) as well as independent persons.

In order to strengthen the coordination procedures regarding the implementation of the UNCRPD the establishment of thematic sub-committees under the Council with the participation of a liaison officer to be nominated by each responsible Ministry dealing with disability issues is in process. The whole coordination mechanism will be supported administratively by the Department for Social Inclusion of Persons with Disabilities.

#### **2.1.2. National strategies to implement the UNCRPD**

Strategy guidelines, aims, policies and measures promoted on disability issues are already included in the Governance Programme 2008-2013, the Strategic Development Plan 2007-2013, the National Strategy on Social Protection and Social Inclusion, the National Employment Strategy and others. Taking into account the new European Disability Strategy the Council of Ministers has decided to assign to the Department for Social Inclusion of Persons with Disabilities the coordination of the formulation of a National Disability Action Plan.

### **2.2. Monitoring of the UNCRPD**

#### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

By a Council of Ministers Decision on the 9<sup>th</sup> of May 2012, the Ombudsman and Commissioner for the Protection of Human Rights being also the Equality Authority in Cyprus has been nominated as the independent mechanism pursuant to Article 33.2 of the UN Convention.

#### **2.2.2. The involvement of civil society in the monitoring process (Article 33.3)**

The representatives of the disability movement are involved in the monitoring process through the Pancyprian Council for Persons with Disabilities. In addition, the representatives of the Cyprus Confederation of Organisations of Persons with Disabilities will participate in a

consultative committee to cooperate with the Ombudsman and Commissioner for the Protection of Human Rights.

### **2.2.3. Collecting statistics and/or developing indicators (Article 31)**

There is no central Disability Database for the time being. Each state service collects its own statistical data according to the services provided to persons with disabilities. The Statistical Service also collects and issues data related to employment and social protection of persons with disabilities according to Eurostat requirements and standards.

Recognising the need for the establishment of National Records on persons with disabilities in Cyprus in order to be able to formulate the appropriate policies, programmes and measures, the Ministry of Labour and Social Insurance has prepared a plan for the creation of a new System for the Assessment of Disability and Functioning based on the International Classification of Functionality, Disability and Health of the World Health Organisation. The new System aims to provide credible and reliable information to all public services related to the needs and capabilities of persons with disabilities. The disability database will also enable the collection of statistics and the development of indicators related to the application of Article 31 of the Convention.

## **Czech Republic**

### **2.1. National Implementation of the UNCRPD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)**

In the Czech Republic, the Convention has entered into force on 12 February 2010, so the relevant bodies have started working. The Ministry of Labour and Social Affairs was appointed as the national focal point for the issues relating to the implementation of the Convention.

#### **2.1.2. National strategies to implement the UNCRPD**

A new National Plan for Promoting Equal Opportunities for Persons with Disabilities 2010–2014 was approved by Resolution of the Government of the Czech Republic No 253 of 29 March 2010. The basic format of the new Plan, its content and structure, draw on the general principles on which the Convention is based. In the development of the document, only those articles of the Convention which are most important and relevant for the next five years in terms of promoting an equal and non-discriminatory environment for persons with disabilities were selected.

The National Plan is divided into separate chapters corresponding to the individual articles of the Convention. Each chapter contains a quotation of the relevant article of the Convention, brief explanation of the field in question, the desirable target situation to be achieved, and clearly formulated measures specifying the competent department and the proposed deadline for fulfilment.

### **2.2. Monitoring of the UNCRPD**

#### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

In the Czech Republic, the Ministry of Labour and Social Affairs is the focal point as it is responsible for its implementation pursuant to legal regulations. Based on the current practice and experience of other State Parties to the Convention, the establishment of another focal point is not considered at present.

The process of creating monitoring mechanisms to implement the Convention was initiated in 2010. In the Czech Republic, no institution has been established yet that would systematically deal with the issues of human rights (national institution to protect and promote human rights consistent with Paris Principles), although the Ombudsman conducts an informal review of state administration. However, the Ombudsman's principal task is to observe the performance of state administration in pursuance of good governance principles.

On account of this situation, it was not possible to use existing institutions to monitor the Convention, and other options had to be found to comply with the provisions of the Convention. A suitable solution may be one of the alternatives, the Monitoring Committee. This alternative is also accepted by organizations of persons with disabilities. Nevertheless, consensus regarding the composition of such Committee, the number of its members and its

legal form has not been reached yet. However, the negotiations and consultations conducted to date have brought numerous ideas and suggestions which will be processed and used in the preparation of the statute and rules of procedure of the referred Monitoring Committee.

A comprehensive draft on measures taken to give effect to the Convention and its monitoring at the national level according to Article 33 will be prepared in cooperation with the organizations of persons with disabilities and social partners. The Government of the Czech Republic should approve it no later than in the 1st half of 2012.

### **2.2.2. The involvement of civil society in the monitoring process (Article 33.3)**

The involvement of civil society is guaranteed by the Government Board for People with Disabilities and other formal and informal mechanisms of cooperation, e.g. with the Czech National Disability Council. The Government Board for People with Disabilities was established by the resolution of the Czech Government (1991) as its advisory body for the issues of disability. The Board cooperates with the public administration authorities as well as with the non - governmental sphere. It consists of Government representatives and ministries, as well as representatives of associations of persons with disabilities and their employers.

Organisations representing persons with disabilities play an important role, not to say the most important, in the policy planning and decision-making process concerning disability issues. One of them is for example the Czech National Disability Council, an umbrella organisation which associates about 114 organisations of persons with disabilities. The Council has its representatives in the Government Board for People with Disabilities.

Also other representative organisations are invited to take active part in the policy planning, for example through participation in working groups established to deal with any disability-related issues (preparation of new legislation, proposals for amendments of the existing legislation, creation of disability policy plans and concepts etc.).

At local level, municipalities are supposed to take into account the views and opinions of persons with disabilities and their representative organisations when planning disability policy measures (in the field of social services, accessibility etc.). Most municipalities welcome the possibility of discussing the key issues with the organisations and individuals through public hearings, debates, surveys etc.

As far as awareness-raising activities are concerned, several conferences, debates, workshops, seminars etc. are organised in order to mainstream disability issues and to foster active participation of persons with disabilities in public life.

### **2.2.3. Collecting statistics and/or developing indicators (Article 31)**

There are several resources of statistical data, e.g. in 2007, the Czech Statistical Office was given a task to propose a system of statistical information collection related to persons with disabilities and their needs. The results of its work and first comprehensive report on the situation of persons with disabilities with statistical data were published in 2008.

## **Denmark**

### **2.1. National Implementation of the UNCRPD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)**

The Ministry of Social Affairs and Integration is appointed as the national focal point for issues related to implementing the Convention. The reason for the appointment is that the Ministry of Social Affairs and Integration is the coordinating ministry for disability matters. The appointment was made by parliamentary decision B 194, which adopted the ratification of the convention. As the coordinating ministry for disability matters, the Ministry exercises its function as the national focal point in close contact and coordination with the other parts of the government and organisations in the disability area.

The Ministry of Social Affairs and Integration heads The Inter-ministerial Committee of Civil Servants on Disability Matters which is tasked with facilitating the coordination of government disability policy.

#### **2.1.2. National strategies to implement the UNCRPD**

Since Denmark's ratification of the UN Convention on the Rights of Persons with Disabilities in 2009, the UNCRPD has set the framework for goals and specific initiatives in the disability field, including the progressive realization of economic, social and cultural rights.

No comprehensive national action plan encompassing all ministries has yet been finalised, but a wide range of initiatives has been carried out within the individual ministries in order to implement the UNCRPD progressively. The Ministry of Social Affairs yearly reviews and reports on the Government's disability policy initiatives to the Parliamentary Ombudsman, and has made the first report to the UN Committee on the Rights of Persons with Disabilities on measures taken with a view to implementing the UN Convention of 13 December 2006 on the Rights of Persons with Disabilities. These reports give a good introduction to the comprehensive work put in the follow up on the ratification.

##### *New action plan for the disability area*

The government has launched the work of a new long-term, multi-disciplinary action plan for the disability area. The action plan work will be divided into two phases, briefly described below.

The first phase consists of an analysis to map trends and challenges in the disability area, the aim being to determine the key challenges and priority action areas. The analysis will be conducted with participation of relevant key players in the area.

In the second phase, the above analysis will be used to prepare a new action plan for the disability area. The action plan will have a 5-10-year perspective.

The action plan must contribute to setting up clear political and economic priorities for disability-policy initiatives across policy areas and must function as a framework for the continued work of implementing the UN Convention on the Rights of Persons with Disabilities.

## **2.2. Monitoring of the UNCRPD**

### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

Parliamentary decision B 15 of 2010 established "The Danish Institute for Human Rights" as the independent mechanism for the promotion, protection and monitoring of the implementation of the UNCRPD. The Danish Institute for Human Rights carries out its mandate in accordance with the principles relating to the status and functioning of national institutions for protection and promotion of human rights (Paris Principles). The Danish Government will present legislation in 2012 which turns the Danish Institute for Human Rights (which is currently part of the Danish Center for International Studies and Human Rights) into an independent institution in order to strengthen and clarify the Institute's position as Denmark's National Human Rights Institution. The legislative proposal contains changes in the composition of the board of the Institute, i.a. in order to ensure that one of the board members is appointed upon nomination of the Disabled Peoples Organisations Denmark. In this way the Government of Denmark intends to ensure the involvement and participation of representatives of disabled people in the monitoring process according to article 33.2 of the UNCRPD.

The Danish Disability Council is a Government-funded body made up of representatives of people with disabilities, nominated by the Danish Council of Organisations of Disabled People, and from the labour market parties as well as representatives from relevant fields of research. The task of the Council is to monitor the situation of people with disabilities in society and to act as an advisory body to the Government and Parliament on issues relating to disability policy.

The Danish Parliamentary Ombudsman "Folketingets Ombudsmand" is tasked with monitoring the equal treatment of persons with disability within his area of competence.

Together the Danish Institute for Human Rights, the Danish Disability Council and the Danish Parliamentary Ombudsman constitute the framework for the promotion, protection and monitoring of the UNCRPD in accordance with article 33.2 of the UNCRPD.

### **2.2.2. The involvement of civil society in the monitoring process (Article 33.3)**

Civil society, specifically organisations of people with disability, will be involved in the monitoring process in accordance with the relevant provisions of the UNCRPD.

The organisations of persons with disability will be closely consulted in the work of the Danish Institute for Human Rights.

The umbrella organisation Danish Council of Organisations of People with Disabilities (Danske Handicaporganisationer) is consulted on a regular basis on relevant matters and during all stages of the policy-making process. The Danish Council of Organisations of People with Disabilities is also strongly represented in the Danish Disability Council

Furthermore, dialogue through consultation with civil society/disability organisations at all stages of new initiatives, financial support to disability organisations, public funds

(satspuljen) support of training schemes, awareness raising activities etc. are used to foster empowerment of people with disability.

### **2.2.3. Collecting statistics and/or developing indicators (Article 31)**

Denmark uses the UN Standard Rules on equal opportunities and treatment of people with disabilities, in which the concept of "disability" covers loss or impairment of a person's ability to participate fully and effectively in society on an equal basis with others. The definition is intended to focus on the obstacles in surroundings that prevent persons with disabilities from participating on an equal basis with others. As the concept of disability is environment-related, it cannot be defined more unambiguously and there is no single definition of disability.

Furthermore as a result of the principle of sector accountability, the individual sector ministry is responsible for collecting data in the individual area. No common norm exists for data processing of specific statistics in the disability area, and no permanent norms exist in terms of highlighting the disability aspect in relation to statistics on the individual sectors.

General disability-related statistics are available via Statistics Denmark and the National Social Appeals Board as statements and reports on the extent of social benefits and services. These are categorised in compliance with relevant statutory provisions. Hence, Denmark does not centrally register data on private individuals. Instead, Denmark conducts national surveys that can be merged with registered data with a view to stressing the trend in, e.g., employment of persons with disabilities in relation to the population in general. The Danish National Institute of Social Research conducts such surveys, and the institute performs various surveys and analyses in the area of social welfare, including the disability area. The results of the surveys are accessible to the public and constitute a significant part of the public debate on the development of social welfare in general.

At present, there is no complete list of relevant disability data and statistics, but work is being undertaken under the auspices of the Interministerial Committee of Civil Servants on Disability Matters to prepare one.

A documentation project to improve social statistics has been launched in the area of disability. The objective of the project is to make specific recommendations for improving, renewing and simplifying the ongoing documentation of local activities and their effects. Project participants are Local Government Denmark, Statistics Denmark, Danish Regions, the Ministry of Finance and the Ministry of Social Affairs (chairman). The project group aims at preparing an agreement comprising a proposal for introducing a reporting system that is based on the civil registration number and builds on the electronic transfer of data generated in local casework. Short term, the purpose is to establish better basic documentation in the area so that developments in the disability area can be monitored. The long-term objective is to measure the effects of central and local government disability policy. In addition, other national players contribute to collecting and communicating information in the area.

The Social Services Gateway is a freely accessible Internet-based portal where authorities, providers and citizens can seek information about local, regional and private services for persons with disabilities (and other disadvantaged groups). The gateway was established in 2007 to reinforce the foundation for individual citizens' choice of specific services and with a view to generating general openness and transparency in the services existing in the area. Today, local and regional councils report information to the Social Services Gateway about a

vast number of different aspects of individual services, including target groups, number of places, services and methods of treatment, rates, staff, physical conditions, evaluations of conditions, food and eating conditions, resident activities, etc. The Social Services Gateway is run by the National Board of Social Services under the Ministry of Social Affairs.

Moreover, various national research and evaluation institutions contribute new knowledge and data collection in the disability area. From 2009 through 2010, the Danish National Centre for Social Research – an independent national research centre under the Ministry of Social Affairs and Integration– released 24 publications on disability. The Danish Evaluation Institute for Local Governments (KREVI) and the Institute of Local Government Studies (AKF) each released two publications in the area during the same period.



## **Estonia**

### **2.1. National implementation of the UNCRPD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)**

The Ministry of Social Affairs (especially Social Welfare Department) is responsible for the implementation of the UNCRPD. In the future, the Ministry of Social Affairs shall become the focal point and also coordination mechanism. It cooperates with other ministries and the Estonian Chamber of Disabled People<sup>5</sup> for implementation.

#### **2.1.2. National strategies to implement the UNCRPD**

After ratification of the UNCRPD, a strategy will be elaborated for effective and comprehensive implementation of the Convention.

Right now the disability policy of Estonia is based on three main documents: the UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (the abridged and adjusted version of the UN General Assembly Resolution 48/96); the Recommendation of the Committee of Ministers to Member States on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society (improving the quality of life of people with disabilities in Europe 2006-2015); and the European Disability Strategy 2010-2020.

All the mentioned documents follow the principles of the UNCRPD. Estonia will continue to work within an anti-discriminatory and human rights framework to enhance independence, freedom of choice and the quality of life of people with disabilities and to raise awareness of disabilities as a part of human diversity. Estonian disability policy acknowledges the basic principle that society has a duty towards all its citizens, to ensure that the difficulties related to disability are minimised through active supporting of healthy lifestyle, adequate health care, rehabilitation, supportive services and supportive communities.

The following tools and methods are used in Estonia to foster the implementation of the UNCRPD:

- Dialogue with other ministries (working groups, councils, written statements) to promote awareness about the UNCRPD, protect the rights of persons with disabilities and enhance collaboration between ministries;
- Dialogue and collaboration with the Estonian Chamber of Disabled People (projects and seminars about the implementation of the UNCRPD, awareness-raising campaigns, workshops etc. for general public, ministries and local governments as well as for organisations of people with disabilities);
- Financing and supporting activities of non-governmental organisations, e.g. projects that promote and protect the rights of persons with disabilities, enhance awareness etc.

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<sup>5</sup> The Estonian Chamber of Disabled People is the national umbrella organisation of persons with disabilities in Estonia. This umbrella body was established in 1993 and has continuously gained new members since then. Right now the Chamber has 47 member organisations. It is also a member of European Disability Forum.

Civil society has been involved in the ratification process and it will be involved in the implementation process after the ratification as well. The Memorandum of principles of cooperation has been signed recently between the Government and the Estonian Chamber of Disabled People. A multidisciplinary high-level workgroup that includes relevant ministries, local governments and non-governmental organizations to implement the UNCRPD will be established after ratification. The workgroup will also remain in constant contact with people with disabilities through their representative organisations by the implementation of the UNCRPD.

## **2.2. Monitoring of the UNCRPD**

### **2.2.1. Framework, including independent mechanisms, for promoting/protecting/monitoring (Article 33.2)**

A mechanism pursuant to Article 33.2 of the UNCRPD is not established yet, but it will be formed by the Estonian Chamber of Disabled People<sup>6</sup> in the coming months, following the ratification of the UNCRPD.

### **2.2.2. The involvement of civil society in the monitoring process (Article 33.3)**

Estonia is using different means and methods to foster empowerment of people with disabilities, such as meetings, conferences, dialogue, collaboration, awareness raising and training. The Government also consults civil society when working on legislation, strategies or other important documents related to disability.

In the context of establishing an independent monitoring mechanism according to Article 33.2 of the UNCRPD, special attention should be paid to the need to ensure that civil society, in particular persons with disabilities and their respective organisations are included in the monitoring work of the mechanism. A multidisciplinary working group that includes several representative organisations of persons with disabilities, human rights organisations etc. for monitoring the implementation of the UNCRPD in different fields and levels will be established after the ratification of the UNCRPD. The working group will discuss its observations and statements with people with disabilities.

Civil society was involved in the ratification process and will be involved in the implementation and monitoring process after the ratification as well. The main partner is the Estonian Chamber of Disabled People. It is the national co-operation and co-ordination body for people with disabilities in Estonia. The Chamber was established in 1993 and now has 47 member organisations. The goal of the Chamber is to facilitate the improvement in the quality of life of persons with disabilities. For this purpose, the Chamber co-operates with governmental bodies and social partners in order to secure that Estonian legislation and enforcement of it also considers the disability perspective.

One of the tasks of the Chamber is also to monitor the implementation of the UN Standard Regulations in Estonia. Other tasks of the Chamber are:

- To participate in elaboration of national social policy, special initiation of the elaboration and implementation of laws and other drafts of legal acts, development plans, programmes and projects related to persons with disabilities;

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<sup>6</sup> <http://www.epikoda.ee/index.php?op=2&path=IN+ENGLISH>

- To support social and working activity of persons with disabilities;
- To support the development and professional growth of member organizations;
- To promote awareness of society about the issues related to persons with disabilities and to form positive public opinion on issues related to them;
- To improve the collection and generalization of information and statistical data related to persons with disabilities, supporting the activity and research of the respective branches of science.

For an efficient execution of these tasks, the Chamber has established four commissions: the education commission, the health care and rehabilitation commission, the employment commission, and the organizational development commission.

### **2.2.3. Collecting statistics and/or developing indicators (Art. 31)**

The Estonian government is collecting appropriate statistics which can be used for monitoring the implementation of the UNCRPD. The existing indicators will be reviewed and new ones will be applied under the strategy of persons with disabilities which will be elaborated after the ratification of the UNCRPD.

Throughout the past years, many surveys have been carried out. The aim of these surveys was to identify the changes that have taken place in the situation of independent living, employment, provision of services and thereby to evaluate the implementation and effectiveness of relevant policies and measures taken.

## **Finland**

### **2.1. National Implementation of the UNCRPD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)**

Finland has signed both the UN Convention and its Optional Protocol on 30 March 2007. The Ministry for Foreign Affairs has, in May 2011, set up a working group to prepare the measures necessitated by the ratification of the Convention and its Optional Protocol in Finland. However, the work of the working group and other related work are still ongoing. Therefore neither focal points nor a coordination mechanism have yet been specifically designated. Information on the UN CRPD is spread by the Ministry for Foreign Affairs, the Ministry of Social Affairs and Health, the National Council on Disability and by disabled people's organisations. The Threshold Association, a disabled people's organisation, created an internet-based contact point.

#### **2.1.2. National strategies to implement the UNCRPD**

In 2010, the Ministry of Social Affairs and Health prepared a specific Disability Policy Programme in order to guarantee equal treatment of persons with disabilities. The programme outlines the concrete disability policy actions for the next few years (2010–2015). The social development to achieve sustainable and accountable disability policy is outlined in the same context. The objective of the programme is to create a strong foundation for human rights, non-discrimination, equality and inclusion. The programme was prepared in cooperation with the different administrative sectors, expert bodies, NGOs, DPOs and other stakeholders.

The Disability Policy Programme contains concrete proposals on how to promote and implement the UN Convention in different sectors. Areas that are covered include: independent living, social inclusion, building, transport, education, employment, social protection, health and rehabilitation, safety, culture, international cooperation and statistics. The main content of the Disability Policy Programme are measures to ensure the following objectives:

1. Preparation and implementation of the legislative amendments necessitated by the ratification of the UN Convention on the Rights of Persons with Disabilities;
2. Improving the socioeconomic status of persons with disabilities and combating poverty;
3. The availability and high quality of special services and support measures will be ensured across the country;
4. Accessibility in society will be strengthened and increased;
5. Disability research will be reinforced, the information base improved, and diversified high-quality methods developed in support of disability policy and monitoring.

The National Council on Disability (VANE) is responsible for monitoring the implementation of the Disability Policy Programme. More information in English is available at [http://www.vane.to/vampo\\_eng.html](http://www.vane.to/vampo_eng.html)

Furthermore, there have been major developments related to the priorities for action described in the previous reports in relation to independent living (point 4 of the 2<sup>nd</sup> HLG report),

namely, the legislative reform on personal assistance services and moving into community-based settings.

### *Background*

There are 336 municipalities in Finland that are in charge of providing *e.g.* social and health services, including services for persons with disabilities, to their inhabitants. Services are funded by a block grant subsidy from the state, municipal taxes and by service users. The services for persons with disabilities are mostly free of charge.

In Finland the starting point is that services are provided to all citizens on an equal basis. In addition, special services tailored to the needs of persons with disabilities are provided in accordance with the Act on Services and Support for the Disabled and the Special Care Act for Persons with Intellectual Disabilities. According to these Acts, severely disabled persons have a subjective right to the following services: transportation services, service housing, daily activities, personal assistance and alterations and assistive devices in housing. In this connection a subjective right means that the municipality is obliged to provide the service as soon as the criteria set out in the legislation are fulfilled irrespectively of the financial situation of the municipality.

### *Legislative reform concerning interpretation services for persons with disabilities*

A revised Act on interpretation services for deaf-blind, hard of hearing people and persons with a speech disorder entered into force on 1 September 2010. In effect, the responsibility for organising and financing these services was transferred from the municipalities to the Social Insurance Institution of Finland. It means that the state now takes full responsibility for financing the interpretation services.

The new Act did not change the existing rights to interpretation services, but only changed the administration and financing responsibility of those services. Deaf-blind persons have by law the right to obtain a minimum of 360 hours and persons with hearing and speech impairments a minimum of 180 hours of interpretation services a year. The amount of interpretation services may vary according to the person's individual needs.

In 2010, the total number of people with disabilities receiving interpretation services was 4500.

### *A new housing programme for intellectually disabled persons*

In January 2010, the Finnish Government issued a Resolution on a programme to organise housing and related services for people with intellectual disabilities in 2010–2015.

The goal is to provide persons with intellectual disabilities individual housing solutions in regular housing environments and to reinforce their inclusion and equal treatment in the community and society.

The development objectives for disability legislation laid down in the Government Programme, the guidelines of the Finnish Disability Policy Programme, and the UN Convention on the Rights of Persons with Disabilities define good housing as one of the prerequisites for independent living and inclusion.

The programme aims at giving people with intellectual disabilities who are moving out of institutions or their childhood homes the opportunity of individual housing in an accessible

and functioning home in a regular housing environment. At the same time, the number of institutional care places for persons with intellectual disabilities is reduced systematically and in a controlled way.

The programme also aims at producing about 1,500 homes for persons with intellectual disabilities moving from institutions and about 2,000 homes for grown-up persons moving out of their childhood homes. Once implemented, the programme will reduce the number of places in institutions, from 2,000 long-term places of the year 2010 to about 500 places by the end of 2015. Implementation of the programme is ongoing. In 2010-2011, the construction of over 1000 dwellings has been started, financed by investment grants from the Housing Finance and Development Centre of Finland (ARA).

## **2.2. Monitoring of the UNCRPD**

### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

The work of the working group set up to prepare the measures necessitated by the ratification and other related work is still ongoing. Thus, a framework including one or more independent mechanisms pursuant to Article 33.2 of the UN Convention has not yet been established. However, in the context of nominating/establishing a mechanism referred to in Article 33.2 of the UN Convention, particular attention will be paid to the need to ensure that civil society, in particular persons with disabilities and their respective organisations are involved in the monitoring process.

### **2.2.2. The involvement of civil society in the monitoring process (Article 33.3)**

In Finland, there is already a well-established practice to cooperate and involve civil society and other organisations in all stages of reforming legislation. Also, in its existing human rights reporting practice, the Finnish Government encourages civil society to actively participate in the reporting to the international organisations. Usually, when a periodic report is prepared, civil society is asked to provide views on the information to be included in the report, and the interested civil society representatives are invited to attend a discussion on the draft report before its finalisation. Civil society is also encouraged to participate in the so called "shadow reporting", i.e., to send parallel reports to the human rights treaty monitoring bodies.

The organisations of persons with disabilities have actively participated in international processes related to the human rights of persons with disabilities, in particular in relation to the drafting of the UN Convention. Organisations of persons with disabilities and the National Council on Disability have also been consulted on the legislative amendments needed for the ratification of the UN Convention. In addition to the representatives of the public administration and the local and regional authorities, the National Council on Disability (VANE), the Finnish Disability Forum and the Centre for Human Rights of Persons with Disabilities (VIKE) are members of the working group set up to prepare the measures necessitated by the ratification of the Convention and its Optional Protocol.

The organisations of persons with disabilities and the National Council on Disability are also consulted in relation to the overall human rights policy of Finland, which includes a focus on the rights of persons with disabilities.

In connection with awareness-raising, organisations of persons with disabilities have been notified in various contexts of the legislative amendments necessitated by the ratification of UNCRPD.

The preparation of the Government Disability Policy Programme was based on a process of active participation of persons with disabilities and their organisations. This included - among other activities - a series of ten open seminars in different parts of the country, where both representatives of the key ministries and persons with disabilities met and debated on the challenges of promoting “a society for all”.

### **2.2.3. Collecting statistics and/or developing indicators (Article 31)**

The collection of statistics has not yet been linked to the Convention. Statistics on disability are collected mainly by the National Institute for Health and Welfare, Statistics Finland and the Social Insurance Institution of Finland.

In general, statistics are based on national legislation. However, since disability is not used as a variable in population surveys, it is impossible to gather comprehensive data on persons with disabilities in Finland. Statistics Finland collects disability statistics only according to EU legislation through different EU surveys (for example Labour Force Survey’s ad hoc module 2011 on employment of people with disabilities) for which the definitions and specifications are given by Eurostat.

Statistics on disability describe mostly services provided to persons with disabilities. SOTKANet Indicator Bank ([www.sotkanet.fi](http://www.sotkanet.fi)) operated by the National Institute for Health and Welfare (THL) is an information service that offers key population welfare and health data from Finnish municipalities since 1990. Disability data is collected by several different indicators that fall under the following five categories: services for persons with disabilities, housing services for people with intellectual disabilities, sheltered work for disabled people, statutory services and assistance for disabled people and other disability services and benefits. Social Insurance Institution of Finland provides annual statistics about the benefits it grants to persons with disabilities.

A monitoring group on barrier-free communications services chaired by the Ministry of Transport and Communications will this year start to develop concrete indicators for a barrier-free information society. The Ministry of Transport and Communications have published a study that presents a number of justifications and suggestions for actions that could be applied in promoting information society accessibility and are based on well planned usage of indicators and measured data.

## France

### 2.1. National Implementation of the UNCRRPD

#### 2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

Since disability policy is of cross-cutting nature, it is expected that rather than nominating a single focal point, the government will designate all ministerial bodies directly involved in disability policy. Depending on the organization mechanisms of the different ministries, the focal point will either be an administration, a bureau or even a mission.

Since the dissemination of knowledge on the Convention onto the entire country is necessary for its effective implementation, focal points could perhaps be put in place at the level of decentralized services and regional authorities. The practical details of such a designation still require further analysis, so as to respect the constitutional principle of free administration of regional authorities.

Sans être officiellement désignées comme « points focaux locaux » au sens de la convention de l'ONU – car, placées sous l'autorité des présidents de Conseil général dont les collectivités départementales qu'ils dirigent sont régies par le principe constitutionnel de libre administration des collectivités territoriales- , les maisons départementales des personnes handicapées (MDPH) constituent de facto autant de relais locaux pour l'application des dispositions de la convention, telles qu'elles s'expriment dans notre législation nationale. Pour mémoire, les MDPH sont administrées par une commission qui réunit le département, l'Etat, les organismes locaux de sécurité sociale et, pour un quart de ses membres, les représentants d'associations de personnes handicapées. Elles sont présentes dans chacune des 100 collectivités départementales et exercent une mission d'accueil, d'information et de conseil des personnes handicapées et de leurs familles. Elles reçoivent et procèdent à l'évaluation de toutes les demandes de reconnaissance de droit (prestations, orientations) qui relèvent d'une décision de la commission des droits et de l'autonomie des personnes handicapées (CDAPH) ; elles assurent également l'accompagnement et le suivi de la mise en œuvre desdites décisions. Elles ont enfin une mission de sensibilisation de tous les citoyens au handicap. Elles sont donc « un carrefour incontournable » et un interlocuteur privilégié de la personne handicapée : elles doivent l'aider et lui simplifier toutes les démarches nécessaires à la réalisation de son projet de vie. Réciproquement, elles sont pour tous, un lieu de référence local pour l'ensemble des questions touchant au handicap.

La coordination de l'activité des MDPH est assurée au niveau national par la Caisse Nationale de Solidarité pour l'Autonomie (CNSA). Cette caisse a été créée en 2004-2005 pour collecter et distribuer les financements nécessaires aux prestations, services et établissements qui contribuent à l'autonomie des personnes handicapées et des personnes âgées. Elle rassemble elle aussi des représentants de l'Etat, des départements, des partenaires sociaux (employeurs et syndicats), des personnes handicapées et des personnes âgées, ainsi que des institutions spécialisées (établissements et services).

Parmi ses missions, cette caisse anime le réseau des MDPH, sans pour autant exercer une autorité hiérarchique sur ses maisons, chacune d'elles étant autonome et relevant de son département d'implantation. Par la contribution au financement de leur fonctionnement, par l'échange de bonnes pratiques, par la diffusion d'informations et de recommandations, par la signature de conventions de qualité de services, par l'organisation de formations, la caisse



contribue à faire converger les pratiques des maisons afin d'assurer une égalité de traitement des personnes handicapées sur tout le territoire national.

Even though the coordination mechanism is deemed voluntary according to the Convention, France has decided to yet put in place such a mechanism. The Interministerial Committee of Disability (Comité interministériel du handicap (CIH)), established by the decree nr. 2009-1367 of 6 November 2009, will be responsible for setting up this mechanism. By appointing the interministerial CIH as the coordination mechanism, the French Government wishes to highlight that it regards disability policy as a political priority.

Moreover, the CIH's secretary general will be able to appoint and call together the focal points as deemed necessary. The secretary general has already set up meetings with responsible persons and administration on several occasions ever since its creation, even though they have not yet been officially appointed as focal points for the implementation of the UNCRPD.

The French Government also expresses its wish to establish close relations between the coordination mechanism and the representatives of persons with disabilities. Therefore, the government asked the CIH secretary general to also exercise the duties of the secretary of the National Advisory Council for Persons with Disabilities (Conseil National Consultatif des Personnes Handicapées), in order to establish an institutional link between both bodies.

### **2.1.2. National strategies to implement the UNCRPD**

The implementation of the obligations arising from the UN CRPD and its Optional Protocol has been foreseen through the law nr. 2005-102 of 11 February 2005. Through its adoption, the adaptation of the French national legislation to the UN Convention will be very limited. The law of 11 February 2005 moreover goes further than the UN Convention on certain points, and thereby it gives a functional nature to most general obligations in the UN CRPD.

As the Convention sets out the establishment of a national action plan, the law of 11 February 2005 requires the holding of a national conference on disability every three years. These conferences will gather representatives of organizations of persons with disabilities, social/medical institutions or services working with persons with disabilities, social insurance institutions, trade unions and employer organizations and other bodies relevant in disability policy.

In order to prepare the conference, the law maintains that the Government has to deposit a report on the implementation and future developments of the national disability policy at the parliamentary assemblies' bureau, after a consultation with the National Advisory Council for Persons with Disabilities.

The first conference was held on 10 June 2008. It gave the opportunity to the French President to present his action plan in relation to persons with disabilities. The Plan consisted of seven objectives:

- To allow residential homes for persons with disabilities to fully fulfil their mission;
- To further develop benefits for persons with disabilities in the light of the establishment of a fifth risk of social welfare (un cinquième risque de protection sociale);
- To turn benefits for adults with disabilities (l'allocation aux adultes handicapés (AAH)) into a tool to increase resources and facilitate persons with disabilities' access to the labour market;

- To conclude a National Employment Pact for persons with disabilities;
- To decide upon an annual plan to support employment of persons with severe disabilities
- To increase and improve the accessibility to all aspects of city life;
- To allow all children with disabilities to have access to education adapted to their needs.

Une seconde Conférence nationale sur le handicap s'est tenue le 8 juin 2011, avec comme thème central une « société inclusive à tous les âges de la vie ».

Six ans après le vote de la loi du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées, la deuxième Conférence nationale du handicap du 8 juin 2011 a procédé au bilan d'application de cette loi fondamentale pour la pleine insertion des personnes handicapées dans la société.

Elle s'inscrit dans la continuité de la Conférence de juin 2008 qui a dressé un constat encourageant de l'action des pouvoirs publics en matière d'égalité des droits et des chances, de participation et d'accès à la citoyenneté des personnes handicapées. L'effort de solidarité nationale, quels que soient les contributeurs publics et privés, envers ces citoyens a fortement progressé au fil des années, notamment en termes de compensation du handicap, d'accessibilité à la Cité, d'emploi et de ressources, avec notamment une forte revalorisation de l'allocation pour adultes handicapés, mais aussi dans les champs de la recherche, la prévention et la formation.

Depuis la première Conférence nationale du handicap de 2008, le travail réalisé par l'ensemble des parties prenantes (services de l'État, collectivités locales, associations, opérateurs publics et privés), témoigne d'une mobilisation sans précédent de chaque acteur pour que soit prise en compte la thématique du handicap dans toutes les composantes de la société et s'attacher à ancrer au quotidien les droits que la Nation reconnaît aux personnes handicapées.

Les mesures phares présentées lors de la conférence du 8 juin 2011 sont les suivantes :

- Un effort sans précédent des pouvoirs publics pour l'accessibilité :

- Un plan pluriannuel de mise en accessibilité des lieux de travail dans les trois fonctions publiques, les écoles de service public et les petites communes ;
- Un plan d'accessibilité numérique des sites internet de l'Etat et du Gouvernement;

- Des moyens pour garantir un accès aux savoirs de qualité, répondant aux besoins de tous les enfants et de tous les étudiants handicapés :

Dès la rentrée 2011, recrutement d'auxiliaires de scolarisation qualifiés, sous contrat de droit public, afin de faire face à la montée en charge de la scolarisation en milieu ordinaire et qu'aucun enfant ne reste sans solution d'accompagnement

- Un nouveau plan pour l'emploi des travailleurs handicapés :

- La création de 1000 postes supplémentaires chaque année dans les entreprises adaptées pendant 3 ans, soit 3000 postes supplémentaires ;
- Les jeunes en situation de handicap inscrits comme publics prioritaires des contrats Etat/régions pour l'apprentissage ;

- Une mission spécifique confiée au service public de l'orientation pour les jeunes handicapés, notamment issus des établissements médico-sociaux ;
- Des mesures pour améliorer l'information des salariés sur les formations accessibles dans chaque région

- Faire du handicap un des axes stratégiques de la recherche en France :

- En prenant en compte le handicap dans l'actualisation de la stratégie nationale de recherche et en impliquant les associations de personnes handicapées dans ces travaux.

- Des réponses spécifiques pour les plus fragiles

- Un abondement pluriannuel des fonds départementaux de compensation ;
- L'établissement de conventions d'objectifs et de moyens avec les MDPH, afin de stabiliser leur financement et leur personnel et d'améliorer le service rendu aux usagers ;
- Renforcer l'aide à la garde d'enfants pour les parents lourdement handicapés : il s'agit de majorer de 30 % le complément de libre choix de mode de garde, pour apporter un soutien à domicile aux parents lourdement handicapés dans la garde de leur enfant.

## **2.2. Monitoring of the UNCRPD**

### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

The establishment of a mechanism to protect, promote and monitor the implementation of the Convention, is currently being considered in the light of the recent reform that brings together several bodies of fundamental rights protection under the authority of a *Défenseur des Droits*, without prejudice to the powers of the National Advisory Council for Human Rights (*Commission Nationale Consultative des Droits de l'Homme* (CNCDH)).

Le Défenseur des droits est une autorité constitutionnelle indépendante présidée depuis le 22 juin 2011 par M. Dominique Baudis. Il est nommé par le Président de la République pour un mandat de 6 ans non renouvelable et non révocable. Cette autorité, qui regroupe notamment les missions antérieures du Médiateur de la République, du Défenseur des enfants, de la Haute Autorité de Lutte contre les Discriminations et pour l'Égalité (HALDE) est chargée de veiller à la protection des droits, des libertés et de promouvoir l'égalité en particulier pour l'ensemble des personnes handicapées, quel que soit leur âge.

### **2.2.2. The involvement of civil society in the monitoring process (Article 33.3)**

Co-operation with disabled persons is ensured by the Advisory national Board of disabled persons (CNCPPH).

The law of 17 January 2002 had created the CNCPPH to ensure the participation of disabled persons in the development and in the implementation of the policies related to disability (article L. 146-1 of the CASF). The CNCPPH links the public authorities and civil society. Indeed, it assembles the following institutions: organizations for persons with disabilities and their relatives, administrative bodies, bodies financing social protection of disabled persons or

relevant research projects, trade-unions, professional organizations, the representatives of territorial authorities.

The law of 11 February 2005 widened the scope of responsibility of the CNCPH beyond its right of initiative or the optional rights granted by the Government, by giving it the responsibility to assess the situation of persons with disabilities. It is given the role to analyse whether the situation corresponds to the national principle of solidarity. According to Government's proposals it shall be granted this responsibility "by continuous multi-annual programming". Especially, the last article of the 2005 law envisages an obligatory consultation of the CNCPH for all regulatory texts of application of the law of 11 February 2005.

The CNCPH plays therefore an essential role for both, in the implementation of the law and in the evaluation and development of policies dealing with disability.

The CNCPH organized the work of its Committees as to examine the most complex decrees and foster the co-operation with the administrations, which allowed for a smooth development of certain draft texts. Thus, the CNCPH was not an advisory body solely responsible for approving or disapproving. Rather, it could play an active role in the development of regulation. In 90 % of the cases, the application texts of the 11 February 2005 law were given favorable comments by the CNCPH.

The CNCPH discussed several topics which developed into a report on disabled persons in situation of dependence and on the granting of minimal incomes. The Minister of Labour, Solidarity and the Civil Service, and the secretary of State responsible for Solidarity also contributed to the report on the development of "trade plans".

The CNCPH is responsible for "coordinating" the Departmental Advisory Boards of Disabled Persons (CDCPH) provided for in article L. 146-2, evaluating the departmental implementation of disability policy and the situation of disabled persons. To facilitate their analyses, the CDCPH gather information on the activities of the Departmental Houses of Disabled Persons (MDPH) and of the contents and the application of the Departmental Programmes for the Inclusion of Disabled Workers (PDITH). They moreover have access to the data of the Committee of the Rights of Autonomy of Persons with Disabilities (CDAPH) and of the institutions working with persons with disabilities.

### **2.2.3. Collecting statistics and/or developing indicators (Art. 31)**

In accordance with Article 31 of the UN Convention, France has to set up a statistical mechanism specifically for monitoring the implementation of the UNCRPD. Currently, France does not yet have this type of mechanism. However numerous tools used on a national level for collecting information on persons with disabilities could be used to this end. For instance, one may refer to the survey on disability and dependence (HID), which relates to all persons residing or being looked after in special facilities or living in ordinary homes. The HID survey is being updated since April 2008, carried out with 40,000 participants. Numerous statistics are also available in the field of employment.

Moreover, an interministerial Observatory for accessibility and universal conception has been established on 11 February 2010, with the mission to monitor the developments, identify the challenges to the implementation of accessibility, disseminate good practice and create

monitoring indicators. The first progress report will be presented in 2011 during the national disability conference. The Observatory is composed of construction and transportation experts and representatives of organizations for persons with disabilities. The secretary general of the interministerial committee for disability issues is in charge of its secretariat.

L'Observatoire insiste tout particulièrement sur l'objectif final d'une Cité conçue pour tous. Afin d'accompagner la mise en mouvement de la société française et en particulier de la filière industrielle dans cette voie, il est important de rendre concrète et opérationnelle la notion de « conception universelle ». À cet effet, il a organisé, le 9 décembre 2011, une journée technique visant à promouvoir cette nouvelle approche en France à partir d'actions qui la déclinent actuellement sur le territoire et d'exemples relevés dans d'autres pays

Monsieur Philippe BAS, ancien ministre délégué à la Sécurité sociale, aux Personnes âgées, aux Personnes handicapées et à la Famille, sénateur de la Manche, préside l'Observatoire depuis le 10 novembre 2011. Cette instance s'est réunie le 9 février 2012 pour évoquer ses principales missions et faire un point d'étape au regard de l'objectif d'accessibilité fixé par la loi de 2005.

At the same time, numerous studies carried out for Community coordination use indicators which are also relevant to disability-related issues (employment, fight against exclusion, social welfare...) and could therefore be used for collecting statistics of developing indicators.

## Germany

### 2.1. National implementation of the UNCRPD

#### 2.1.1. Focal points and coordination mechanisms for implementing (Art. 33.1)

Germany highlights the importance of national implementation and monitoring structures as a precondition for an effective implementation. Due to the federal structure of Germany, an important part of the implementation of the Convention lies with the German Länder.

The Federal Ministry for Labour and Social Affairs ([www.bmas.bund.de](http://www.bmas.bund.de)) is appointed focal point according to Article 33. Some of the Länder have appointed focal points on their level as well. Others work with a comparable structure.

The Federal Government Commissioner for Matters relating to Persons with Disabilities ([www.behindertenbeauftragter.de](http://www.behindertenbeauftragter.de)) is appointed Coordination Mechanism according to Article 33. In September 2010, the Commissioner has appointed in close cooperation with the German Disability Council ([www.deutscher-behindertenrat.de](http://www.deutscher-behindertenrat.de)) an advisory board called “Inclusion Committee”, in order to ensure a long-term and strategic consultation process with civil society, particularly with organisations of and for persons with disabilities in the implementation process of the Convention. For this reason, the Committee consists mainly of people with different disabilities. In addition, the Committee installs four thematic working groups to integrate the broader civil society in the process and enable the development of technical input to specific themes and topics.

#### 2.1.2. National strategies to implement the UNCRPD

The UN Convention is the international equivalent to the change of paradigms, which was initiated in Germany especially by the Ninth Book of the Social Code and the Equality Act for Persons with Disabilities. The Federal Government will use the UN Convention to strengthen and promote new developments in disability policy in order to further advance a self-determined and discrimination-free participation in Germany.

In the Coalition Agreement of the Federal Government for the 17<sup>th</sup> legislative period it was agreed to draw up a National Action Plan (NAP) to implement the UN Convention. This Plan, adopted by the Federal Government on 15 June 2011, draws up a long-term overall strategy for the implementation of the Convention. It is a package of measures rather than a legislative package and is, in particular, aimed at closing existing gaps between the legal situation and the practice. More than 200 plans, projects and activities show that inclusion is a process that covers all areas of life.

The federal government’s action plan is supplemented by other action plans of the federal states, municipalities, rehabilitation providers, disability and social organisations as well as providers of services for persons with disabilities and private sector companies. Most of the Länder have developed or still are developing own action plans. Also cities and enterprises and institutions like the German Social Accident Insurance have brought on action plans.

The voice of the civil society, especially of organisations of and for persons with disabilities, has been and is streamlined in a special advisory board. The closest cooperation with persons

with disabilities and their organisations is not only postulated by the UN Convention. It is also of tremendous importance for the Federal Ministry and the Federal Commissioner.

## **2.2. Monitoring of the UNCRPD**

### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

The Federal Government's Cabinet decision of 1 October 2008 initiating the legislative procedure for ratifying the Convention and the Optional Protocol entrusted the Deutsche Institut für Menschenrechte e.V. (German Institute for Human Rights) with the monitoring task under Article 33(2) UNCRPD.

The Institute is an independent body operating on the basis of the United Nations Paris Principles, to which Article 33(2) refers. It is currently financed by the Federal Ministry of Justice, the Foreign Ministry and the Federal Ministry of Economic Cooperation and Development and its independence is guaranteed via its legal form and the articles of association. It started work in 2001 and was recognised internationally as the national human rights institution with an A-status in 2003. To comply with the monitoring task under UNCRPD, a separate department within the Institute for the tasks under Article 33(2) has been set up. The Federal Ministry for Labour and Social Affairs provides some 430 000 EUR a year to support the independent body.

The Monitoring Body has six staff members – besides the head, the body is comprised of two research and policy professionals (one law, one social science), one assistant, one public relations and communications and one for administrative matters. The existing budget of the National Monitoring Body provides additional resources to organise conferences, to cover travel costs and conferences fees, and to commission research to some minor extend.

The German Institute started to set up the National Monitoring Body in May 2009, which is under full operation since November the same year. Since then, it has developed a great number of activities, e.g. it holds regular consultations with civil society organisations, has started a publication series with elements in easy to read, organised public conferences.

For up-to-date information on the work of and events organised by the Mechanism see its website [www.institut-fuer-menschenrechte.de/de/monitoring-stelle.html](http://www.institut-fuer-menschenrechte.de/de/monitoring-stelle.html) (German only).

### **2.2.2. The involvement of civil society in the monitoring process (Art. 33.3)**

All three pillars involve civil society in the implementation and/or monitoring process:

1) Federal Ministry of Labour and Social Affairs as focal point

Civil society was consulted during the ratification process, for the implementation of the Convention by means of a national action plan these consultations were continued with several workshops, bi- and multilateral meetings and via the online-portal [www.einfach-teilhabe.de](http://www.einfach-teilhabe.de). and a special advisory board with civil society representatives. Members of the special advisory board are representatives from disability organizations, social partners, charity organizations, the Federal Government Commissioner for Matters relating to Persons with Disabilities and a representative of an academic institution.

As mentioned above, the closest cooperation with persons with disabilities and their organisations is not only postulated by the UN CRPD. It is also of tremendous importance for the Federal Ministry and the Federal Commissioner.

Furthermore and with a view to implementing the UN CRPD, the Federal Ministry of Labour and Social Affairs takes – among others - the following measures to inform the public about the Convention:

- broad public awareness campaign to implement the UN CRPD;
- regular lectures for civil society and other institutions;
- translation of the convention into accessible formats (easy-to-read language and sign language) and distribution of all versions via brochures, dvd and/or the internet;
- Handbook for persons with disabilities: the handbook is the Ministry's most important publication in the area of disability policy. The new version will include the text of the Convention and provide information on it;
- Online portal [www.einfach-teilhabe.de](http://www.einfach-teilhabe.de), which gathers information for persons with disabilities, their families, enterprises and administration.

2) Federal Government Commissioner for Matters relating to Persons with Disabilities as coordinating mechanism

In order to ensure a long-term and strategic consultation process with civil society, particularly with organisations of and for persons with disabilities, the Commissioner established a council. One of the main tasks of the council is to advise the federal government in questions related to the national action plan to implement the UN CRPD. In addition, the Commissioner established a consultative committee with members only from organisations of and for persons with disabilities. The Commissioner also launched a website that includes participatory elements of web 2.0 in order to ensure the participation of individuals. In addition, the coordinating mechanism informs the public in expert meetings and campaigns on all relevant aspects of the implementation of the Convention.

3) Monitoring Body at the German Institute for Human Rights:

The National Monitoring Body has underlined in public statements that monitoring the implementation is a task involving a number of non-state actors besides the National Monitoring Body, such as the UN Committee on the Rights of Persons with Disabilities at the international level and civil society, in particular persons with disabilities and their representative organisations within Germany. Consequently, the collaboration of these actors is of great importance. Thus, the German civil society organisations have the standing invitation to participate in the regular consultations with the National Monitoring Body. These meetings take place twice or three times a year. Although the National Monitoring Body does neither have the mandate nor the resources to handle complaints, it is open to receive individual communications and to learn from them, since individual cases might indicate deficits in structural terms.

### **2.2.3. Collecting statistics and/or developing indicators (Article 31)**

Statistics on the population, labour market and housing situation in Germany are collected by the Federal Statistics Office and the Regional Statistical Offices under the *Mikrozensusgesetz*



(Micro-Census Act). The micro-census is a multiple random sample survey which provides detailed information on the economic and social situation of the population and answers questions about employment, the labour market and training.

On the basis of §131 SGB IX a statistical survey of persons with severe disabilities, which started as early as 1979, is carried out every two years.

In addition to the evaluation of existing data, part of the action plan will be the establishment of a better data basis on the situation of persons with disabilities in Germany. A pre-study with suggestions for a respective roadmap was presented in February 2011. The work on the report is on progress. It will be published end of 2012.

## Greece

### **2.1. National Implementation of the UNCRPD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)**

Until the governance structure is established, all ministries are called to take the provisions of the UNCRPD into consideration when working on questions related to disability.

#### **2.1.2. National strategies to implement the UNCRPD**

Until now, no concrete measures were taken for the implementation of the Convention. Greece is in the stage of examining relevant methods, processes and policies. One of the main priorities for all government-owned mechanisms involved in the issue of disability is also adapting the existing legal framework to the requirements of the Convention. The review of the existing legal framework in relation to the UN CRPD provisions as well as the establishment of new or additional regulations are considered necessary for the implementation of the Convention. The establishment of a central mechanism that will examine the subject of disability in all the dimensions will strengthen the effort for a united and completed approach to disability.

In terms of major developments, deinstitutionalisation is a basic pillar in the area of health and social care. Within this aim, 35 structures (small houses with a limited number of patients and staff) have been established, where people with disabilities are under constant care from specialized personnel (nurses, psychologists etc.). The aim is to increase the number of these establishments in the next few years. (See HLG-Report 2008, chapter 4 on Independent living).

### **2.2. Monitoring of the UNCRPD**

#### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Art. 33.2)**

As required by Article 33.2 of the UN CRPD, a monitoring body should be defined to facilitate and supervise the application of the Convention in different sectors and on different levels. In Greece, such a body has not yet been defined. All ministries are thus reminded to recall the provisions of the Convention until a new body is established.

#### **2.2.2. The involvement of civil society in the monitoring process (Art. 33.3)**

The national organizations of people with disabilities are much consulted by the governmental bodies. They offer essential advice and support the rights of people with disability. After the development of an independent mechanism, the participation of organizations of people with disabilities is considered as essential. They will fully participate in the process of monitoring the implementation of the Convention.

The role of the National Confederation of Disabled People (ESAMEA) and the National Confederation of Parents and Tutors of Disabled People (POSGAMEA), the most representative NGOs of people with disabilities, may participate in the dialogue with the

Ministries' services for the determination and implementation of the UN Convention and also for the nomination of the monitoring body.

People with disabilities and their representative organisations participate as full members in several committees and working groups at national, regional and local level contributing in the formulation of policies relating to people with disabilities. In addition, they are members of political parties on an equal basis with ordinary members and to several non-profit organisations.

According to Law 2430/1997, every year on the 3rd December – which is the International Day of People with Disabilities - several events take place under the aegis of the Greek Parliament, the Ministry of Health and Social Solidarity and the National Confederation of Disabled People (ESAMEA) with the aim to raise awareness of the human and social rights of people with disabilities in Greece. On the same day, each year, ESAMEA submits a report on the situation of people with disabilities in Greece to the president of the Greek Parliament.

It is a priority for all authorities, ministries and unions of people with disabilities to raise awareness of issues related to disability and to participate in dialogue to implement related programmes and actions more effectively.

Seminars, lectures and conferences are organized on a regular basis, covering subjects that are related to disability. They are not only relevant for people with disabilities but for the society as a whole. These meetings, seminars and conferences are organised each year throughout the country by the Secretariat General of Communication/ Secretariat General of Information with the aim to promote positive attitudes towards people with disabilities. Advertising campaigns are also promoted by the government authorities or by non-governmental organisations, aiming at the sensitization of society in the subject of disability, showing ways of improving the lives of people with disabilities.

### **2.2.3. Collecting statistics and/or developing indicators (Article 31)**

The central administration - mainly governmental bodies and the ministries – meet on a regular basis to exchange information and statistical data on people with disabilities so that they have a complete overview of the issue in the whole of Greece.

As an institution assembling individual statistical indicators, the national statistical service produces regularly centralized statistical bulletins with regard to disability. Thereby, it is possible to locate weaknesses and omissions concerning the obligations mentioned in the UNCRPD. Consequently, adequate policies can be developed in order to effectively implement the Convention.

## **Hungary**

### **2.1. National Implementation of the UNCRPD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)**

The National Council on Disability Affairs (NCD) was established by the act on the rights of people with disabilities in 1998. The NCD is an advisory body to the Government with the following rights:

- To take initiatives, make proposals, and provide consultation and co-ordination in all decisions related to persons with disabilities;
- To carry out analysis and evaluation in the process of implementing such decisions;
- To comment on draft legislation concerning persons with disabilities;
- To make proposals for decisions, programs and legislation affecting persons with disabilities;
- To be involved in co-ordinating activities related to the affairs of persons with disabilities;
- To brief the Government regularly about the situation of persons with disabilities;
- To elaborate the National Disability Program and monitor the implementation thereof.

According to the Statutes of the Ministry of National Resources, the tasks related to the implementation of human rights conventions belong to the Ministry's responsibility, and the Constitution on Operation of the Ministry assigns the international issues connected to disability to the Department of Disability. This way the appointment of the central governmental actor is indirectly deducible, although no concrete, specified appointment has been done.

#### **2.1.2. National strategies to implement the UNCRPD**

The Hungarian Parliament adopted the National Disability Action Plan in 2006 for 2007-2013. In order to implement the DAP the Government adopted the midterm Action Plan for 2007-2010. Although these legal and policy instruments were adopted before the ratification of the UNCRPD, in great part they comply with the principles and main targets of the Convention. The new Action Plan for 2011-2013 was elaborated in February 2011. In the work process the UNCRPD is identified also formally as a main point of reference.

Furthermore, the following developments have taken place in relation to the implementation:

- The Hungarian Parliament adopted the Act No 125 in 2009 on the Hungarian Sign Language and the use of Hungarian Sign Language. This Act implements Article 9 subsection 1.b), Article 21, Article 24 subsections 3.b), 3.c), 4.
- The Ministry of National Resources coordinates the interministerial discussions on the legislation concerning the strategy and the tasks of the Government regarding the implementation of the transition from institutional care of disabled people (deinstitutionalisation). That will implement Article 19 UNCRPD. With the governmental decree 1257/2011, the Hungarian Government has adopted the Strategy of the replacement of the large social institutions providing nursing and caring for persons with disabilities with community based settings (Deinstitutionalisation) 2011 – 2041 (hereinafter referred to as Strategy). Based on the decree, the Minister of National Resources has established the National Body for Deinstitutionalisation (hereinafter referred to as Body). The Body is in

charge of coordinating the tasks defined in the Strategy. Every three years, the Minister of National Resources proposes an Action Plan encompassing the realization of the Strategy scheduled for the three-year-period to the Government, which is also outlined by the Body. The first Action Plan has to be submitted on March 31 2012. The realization of the task is supported by the EU development resource Code TIOP 3.4.1, which amounts to 7 billion HUF and aims at the deinstitutionalisation of 1500 capacities.

- On the assignment of the legal predecessor of the Ministry of National Resources, a National Autism Strategy was adopted in July 2008, under the technical guidance of the Hungarian Autistic Society. This five-year comprehensive plan for the development of services for people living with autism sets out medium-term targets and tasks in the field of diagnostics, professional staff training, education, development, employment, adult training and family support.

## **2.2. Monitoring of the UNCRPD**

### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

Taking into account that the NCD already had the right and duty to follow up and comment governmental activities related to persons with disabilities as well as to monitor the implementation of the National Disability Program, the Government Decree No 1065 of 2008 (X.14.) assigned to the NCD the task to promote, protect and monitor the UNCRPD.

Nevertheless this solution is not fully in line with the UNCRPD since the NCD is not considered as an independent body because it is constituted by representatives of the relevant ministries and governmental organisations as well as representatives of the civil society.

It is also important to mention that in 2009 the Hungarian Ombudsman for civil rights carried out an ex officio thematic review about the effectiveness of the rights of people with disabilities.

The first deadline for the compilation of the report required by Article 35 UNCRPD was 3 May 2010 for Hungary. Due to the governmental restructuring the contributions from the different ministries arrived with a great delay, so Hungary asked for the extension of deadline until 15 October 2010. The National Report has been prepared by that deadline and Hungary submitted it through the UN High Commissioner for Human Rights to the UN Commission on Human Rights. The Committee on the Rights of Persons with Disabilities reviewed the Hungarian report on the implementation of the Convention and adopted a 31-item list of issues requesting supplementary information on April 20 2012. The written replies of Hungary to the list of issues have to be submitted within a month. The consideration of the report will take place on September 20-21 2012 in Geneva.

### **2.2.2. The involvement of civil society in the monitoring process (Article 33.3)**

Civil society takes part in the monitoring process mainly through the National Council on Disability Issues, since it was officially appointed by the Government Decree mentioned above for the task of monitoring. In the NCD, the elected civil members and the national civil society organisations representing various branches of disability as permanent representatives take part, therefore civil society is fully involved in the process. The NCD consists of two

main parts, namely, the governmental and non-governmental side. Within this constellation, the non-governmental side itself has a dual composition. On the one hand, the representatives of the main branches of organisations advocating the rights of persons with disabilities are permanent members of the Council. On the other hand, there are also elected members from the non-governmental sector. They win their seats during a delegating meeting arranged on the basis of legislative regulation where the participants are exclusively those non-governmental organisations working for the benefit of persons with disabilities that do not have permanent seats in the Council. Thus, the NGOs elect these members from amongst themselves.

Every policy document, proposal, draft, etc. which deals with disability issues or may have an impact on people with disabilities, has to be submitted to the Council for further comments. Besides, during the elaboration of such documents, the relevant civil organisations are consulted about the draft proposals and provisions.

The National Council on Disability Issues has the right to discuss, comment all policy documents and draft legislation dealing with disability and/or having any impact on people with disabilities.

Apart from the above mentioned involvement, drafts of new legislation related to disability is discussed separately also with the professional and interest representation organisations mainly concerned.

### **2.2.3. Collecting statistics and/or developing indicators (Article 31)**

In the course of a national census there are always questions concerning the status of being disabled and the type of it. Regarding the fact that disability and information related to it are so called sensitive data, the declaration on it is voluntary, this means that the validity of statistics compiled on this base is doubtful. For measuring the implementation of international conventions, including mainly the UNCRPD, the legal predecessor of the Ministry of National Resources developed a specific system of indicators. By using this set of tools it is considered possible to get a more realistic view on the social process affecting people living with disabilities.

## **Ireland**

### **2.1. National implementation of the UNCRPD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)**

Focal point and coordination arrangements pursuant to Article 33.1 will be settled in due course following Ireland's ratification of the UNCRPD.

The Disability Policy Division (DPD) of the Department of Justice and Equality co-ordinates both the implementation of the National Disability Strategy and the work of the Interdepartmental Committee on the UNCRPD, which are the primary elements at present in meeting the requirements of the UNCRPD.

#### **2.1.2. National strategies to implement the UNCRPD**

The Irish Government launched its National Disability Strategy (NDS) in September 2004 to underpin the participation of people with disabilities in Irish society. The NDS builds on existing policy and legislation, including the policy of mainstreaming public services for people with disabilities, and comprehends many of the provisions of the UNCRPD.

The NDS continues to be the focus of Government policy and the Programme for Government 2011-2016 commits to publishing “following wide consultation, a realistic implementation plan for the National Disability Strategy (NDS), including sectoral plans with achievable time scales and targets within available resources and ensuring whole of government involvement and monitoring of the Strategy, in partnership with the disability sector”. The Minister for Disability, Equality, Mental Health and Older people has established a new National Disability Strategy Implementation Group to guide the development of this plan and monitor its subsequent implementation. This Group replaces the former National Disability Strategy Stakeholder Monitoring Group.

Implementation of the NDS, which is ongoing in spite of current economic circumstances, also provides the basis for implementation of the UNCRPD.

The key elements of the National Disability Strategy are:

- the Disability Act 2005
- Sectoral Plans for services prepared by six Government Departments
- the Citizens Information Act 2007 which provides for a personal advocacy service for people with disabilities
- the Education for Persons with Special Educational Needs Act 2004
- a multi-annual investment programme 2006-2009 targeted at high-priority disability support services.

The Disability Act 2005 is designed to support the provision of disability-specific services and improve access to mainstream public services for people with disabilities. In accordance with the Act, a review of its operation was carried out in 2010. Under the Act, six Government Departments published Sectoral Plans in December 2006 that set out the programme of measures to be taken in relation to the provision and mainstreaming of services for people with specified disabilities. The relevant Departments are those with the functions

of Employment <sup>7</sup> ; Health <sup>8</sup> ; Transport <sup>9</sup> ; Social Protection <sup>10</sup> ; Environment <sup>11</sup> ; and Communications. The Disability Act also requires the preparation of reports relating to the progress made in the implementation of the Sectoral Plans not more than three years after their publication. These Reports were approved for publication by Government in February 2010. The general finding was one of significant and substantial progress by all six Departments.

In terms of the UNCRPD, the NDS is complemented by a high-level Interdepartmental Committee on the UNCRPD which advises on and monitors legislative, policy and administrative actions required to enable the State to ratify the UNCRPD. The committee is chaired by Disability Policy Division of the Department of Justice and Equality and contains officials from the six Sectoral Plan Departments as well as other relevant Government Departments and the Office of Public Works. It has developed a Work Programme to address (i) any elements of the NDS that require alignment with the Convention; and (ii) any matters outside the NDS required for ratification. This programme is being progressed across the relevant Government Departments. At the Committee's request, the National Disability Authority, the lead statutory agency for the sector, has independently assessed the remaining requirements for ratification so as to ensure conclusively that all such issues will be addressed.

An example of what is required for ratification of the UNCRPD is the enactment of mental capacity legislation. The Government's Legislation Programme as announced on 11 January 2012, indicates that the Mental Capacity Bill is expected to be published in the current Parliamentary session. The Bill will replace the Wards of Court system with a modern statutory framework governing decision-making on behalf of adults who lack capacity. The passage of this Bill will add substantially to the overall progress on implementation of the requirements towards ratification of the Convention.

## **2.2. Monitoring of the UNCRPD**

### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

The role of the Interdepartmental Committee on the UNCRPD was outlined at 2.1.2. It is likely that this committee will continue to monitor the process towards implementation following Ireland's ratification.

The National Disability Strategy (NDS), as also outlined at 2.1.2, comprehends many of the provisions of the UNCRPD. Progress on its implementation is driven by the Senior Officials Group on Disability (SOGD), which reports to the Cabinet Committee on Social Policy.

Progress on the overall implementation of the NDS is monitored by the National Disability Strategy Implementation Group, which provides a means of facilitating dialogue between all parties involved. Membership of the Group is made up of representatives of the Senior Officials

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<sup>7</sup> Sectoral Plan is at [www.entemp.ie/labour/strategy/sectoralplan.pdf](http://www.entemp.ie/labour/strategy/sectoralplan.pdf)

<sup>8</sup> [www.dohc.ie/publications/fulltext/disability\\_sectoral\\_plan/](http://www.dohc.ie/publications/fulltext/disability_sectoral_plan/)

<sup>9</sup> [www.transport.ie/upload/general/7760-0.htm](http://www.transport.ie/upload/general/7760-0.htm)

<sup>10</sup> [www.welfare.ie/EN/Policy/CorporatePublications/HowWeWork/Disability%20Sectoral%20Plan/Pages/index.aspx](http://www.welfare.ie/EN/Policy/CorporatePublications/HowWeWork/Disability%20Sectoral%20Plan/Pages/index.aspx)

<sup>11</sup> [www.environ.ie/en/LocalGovernment/LocalGovernmentAdministration/SectoralPlan/PublicationsDocuments/FileDownLoad,2011,en.pdf](http://www.environ.ie/en/LocalGovernment/LocalGovernmentAdministration/SectoralPlan/PublicationsDocuments/FileDownLoad,2011,en.pdf)



Group on Disability (SOGD)<sup>12</sup>; County and City Managers Association; the Disability Stakeholder Group (DSG)<sup>13</sup>; and the National Disability Authority.

The National Disability Authority (NDA) is the lead state agency on disability issues and is under the aegis of the Department of Justice and Equality. It develops and monitors standards in services for people with disabilities and advises Government on disability policy and practice. The NDA is actively involved with the implementation of important aspects of the National Disability Strategy and supports Government Departments and agencies in meeting relevant objectives.

### **2.2.2. The involvement of civil society in the monitoring process (Art. 33.3)**

The purpose of the National Disability Strategy Implementation Group is to maintain a constructive relationship with stakeholders, provide them with a forum to raise issues and a means of facilitating dialogue between all parties involved in the NDS. Membership of the NDSIG (see also 2.2.1. above) includes the Disability Stakeholder Group, which represents the sector, its organisations and service users.

The Interdepartmental Committee on the UNCRPD consults with people with disabilities through their representative organisations and has prepared Irish language and Braille versions of the UNCRPD.

People with disabilities, their families, carers, advocates and service providers were consulted on the Sectoral Plans before they were completed. Each plan includes arrangements for complaints, monitoring and review procedures. The DSG, apart from being part of the NDSIG, is in ongoing consultation with relevant Government Departments in relation to Sectoral Plans and all aspects of disability.

Disability organisations were also consulted in respect of the review of the operation of the Disability Act (see also 2.1.2.). A consultation event was held with the assistance of and in the headquarters of the National Disability Authority (NDA). Presentations were made and discussions held at the event on the context of the review; clarification of its purpose in examining the operation of the Act; and an overview of each Part of the Act under review and how it operates at present. Following the event, an official invitation was extended to all stakeholders to make submissions on the review.

### **2.3. Collecting statistics and/or developing indicators (Art. 31)**

The Central Statistics Office (CSO) is the national statutory body with responsibility for the collection, compilation, extraction and dissemination for statistical purposes of information

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<sup>12</sup> The SOGD comprises officials from the Departments of Health; Social Protection; Transport, Tourism and Sport; Environment, Community and Local Government; Jobs, Enterprise and Innovation; Communications, Energy and Natural Resources; Arts, Heritage and the Gaeltacht; Agriculture, Fisheries and Food; Education and Skills; Children and Youth Affairs and Public Expenditure and Reform.

<sup>13</sup> The DSG comprises representatives from Disability Federation of Ireland; Inclusion Ireland; Mental Health Reform; National Federation of Voluntary Bodies; National Service Users Executive and Not for Profit Business Association. It also includes a number of service users who are serving as individuals in a personal capacity.

relating to economic, social and general activities and conditions in the State<sup>14</sup>. CSO surveys with particular relevance in providing statistics on people with disabilities include:

- the Census of Population
- the National Disability Survey
- the Quarterly National Household Survey
- the annual Survey on Income and Living Conditions (SILC)

The National Disability Authority has a statutory remit to undertake, commission or collaborate in disability research and to contribute to the development of statistical information relating to programmes and services for people with disabilities. The NDA fulfils this remit in a number of ways, including:

- the production and dissemination of disability research on a wide range of policy and service related issues;
- contributing expertise to national research and development initiatives - such as the Central Statistics Office's National Disability Survey, the Health Research Board's National Disability Databases (see below), and projects in partnership with agencies such as the National Women's Council, the Council for Ageing and Older People, the Equality Authority and many others;
- hosting the NDA Annual Disability Research Conference;
- the NDA Database of Disability Research in Ireland;
- funding research at grassroots level through the Research Promotion Scheme (RPS); and
- funding postgraduate research through the NDA Disability Research Scholarships

There are two national service-planning databases in Ireland for persons with disabilities managed by the Health Research Board: the National Intellectual Disability Database and the National Physical and Sensory Disability Database. These databases inform decision-making in relation to the planning of specialised health and personal social services for people with intellectual, physical or sensory disabilities.

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<sup>14</sup> [www.cso.ie](http://www.cso.ie)

## **Italy**

### **2.1. National Implementation of the UNCRPD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Art. 33.1)**

The Ministry of Labour and Social Policies, Directorate-General for inclusion and social policies serves as the focal point for Italy, in co-ordination with other relevant ministries and departments, as well as regional and local authorities.

#### **2.1.2. National strategies to implement the UNCRPD**

The tasks assigned to the National Observatory aim at giving new and constant inputs regarding public policies in the field of disability and can be summarized as follows:

- a. implementation of the UN Convention on the Rights of Persons with Disabilities, also through a detailed report on the measures taken, as provided by Article 35 of the Convention, in close co-operation with the Inter-ministerial Committee on Human Rights;
- b. to set up of a two-year plan of action for the promotion of the rights and integration of people with disabilities, as provided by national and international provisions;
- c. to collect statistical data on the situation of people with disabilities, with reference to the local peculiarities;
- d. to set up a national report on the implementation of policies in the field of disabilities (as provided in national Law n. 104/1992);
- e. to promote studies and researches that can contribute to the identification of priority areas of actions and programs for the promotion of the rights of people with disabilities.

### **2.2. Monitoring of the UNCRPD**

#### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

The ratification act of the UN Convention was adopted by the Italian Parliament by national Law n. 18/2009, also providing the establishment of a National Observatory in order to monitor the condition of people with disabilities. The National Observatory, which met for its official session on December 16<sup>th</sup>, 2010, will also ensure the implementation of the activities provided by Article 33.2 of the UN Convention.

The Observatory is a collective body that will facilitate the constant link between government and people with disabilities and their families and supporting organizations, and the discussion on the various needs of people with disabilities in order to identify proper and joint solutions, based on an effective coordination of policies and programs.

The Scientific and Technical Committee (CTS) within the Observatory deals with scientific analysis in relation to the activities and tasks of the Observatory itself. The Committee meets regularly since the first meeting of the Observatory; in 2011 it produced the methodological guidelines on the Observatory's several activities and functions.

On July 2011 six working groups were formed in order to deal with all major areas of reference set by the UN Convention on the Rights of Persons with Disabilities. It was thus

confirmed that the research and analysis of the working groups, whose members are, by a large number, representatives of associations of people with disabilities, will contribute to the report under Article 35 of the UN Convention, in order to give maximum importance to the Convention provisions on the full participation of civil society and organizations representing people with disabilities throughout the monitoring process (art.33.3).

### **2.2.2. The involvement of civil society in the monitoring process (Art. 33.3)**

In the Observatory the following entities are represented: the administrative departments from the national level involved in the definition and implementation of policies in favour of persons with disabilities; regions and autonomous provinces of Trento and Bolzano; the local autonomies, i.e. provinces and municipalities; the national Institutes of social provisions and protection; the national institute of statistics; trade unions representing persons with disabilities, workers, retired people and employers; national associations representing persons with disabilities; organizations from the non profit sector dealing with disability issues.

The national organisations and federations representing people with disabilities have been involved in the decision-making processes on disability issues, at national, regional and local level. In 1992 the law n. 104/1992 introduced a National Conference on the policies for disability with the active participation of people with disabilities and their representative organisations. Organised every three years, the last Conference was held in Turin in October 2009. The law provides a Communication to the Parliament on the conclusions of the National Conference.

Until the ratification of the UN Convention, Italy lacked an institutional body for the permanent consultation of persons with disabilities. However, thanks to the National Observatory for monitoring the condition of people with disabilities, established by the national law for the ratification of UN Convention (Law 18/2009), mainstreaming strategy on disability issues will be thoroughly discussed there. It has to be underlined that within the Observatory 14 members out of 40 are representatives of organisations and federations of people with disabilities.

### **2.2.3. Collecting statistics and/or developing indicators (Article 31)**

A specific data collection related to the implementation of the Convention has not been launched yet. However, at [www.disabilitaincifre.it](http://www.disabilitaincifre.it), a website promoted by the Ministry of Labour and Social Policies in co-operation with ISTAT, the national institute for statistics, various data on Persons with Disabilities are available. The website is currently under development on the basis of a Protocol among the Ministry of Labour and Social Policies and ISTAT.

In December 2011 the General Directorate for inclusion and social policies of the Ministry of Labour and Social Policies, in accordance with the CTS guidelines, signed an agreement with the National Institute of Statistics (ISTAT) in order to fully comply with the provisions on statistics of art. 31. The agreement covers a series of activities such as, for example, the analysis of the life conditions of people with disabilities; an experimental analysis of the disability condition of children (0-17 years) through the inclusion of specific questions; a feasibility study for the preparation of a national registry of persons with disabilities, listed by gender, age, residence, type of disability to be used for statistical purposes; a system of

specific indicators to monitor the level of social inclusion of people with disabilities, in accordance with the provisions of the UN Convention, and new statistical tools for mental and intellectual disabilities.

## **Latvia**

### **2.1. National Implementation of the UNCRPD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)**

The Ministry of Welfare of Latvia is directly responsible for disability policy in the area of social protection and at the same time in charge of monitoring the implementation and development of equal opportunities policy for disabled people in Latvia at large; as such, this ministry is the official focal point for matters relating to the implementation of the Convention.

According to the Law on Convention on the Rights of Persons with Disabilities from 28/01/2010, passed in the follow-up to ratification, the Ministry of Welfare is appointed as coordinating body for the implementation of the Convention).

This task is carried out by gathering information from other ministries and preparing respective annual reports, by keeping track of developments of other ministries' policy related to disability, and by taking into consideration complaints and ideas for the improvement of legislation in different areas. These are proposed by NGOs. The ministry then tries to solve these problems in cooperation with other involved ministries.

The National Council of Disability Affairs (NCDA), established by the Cabinet of Ministers, is used as a forum to carry out coordination and monitoring of the Convention. Chairman of the NCDA is the Minister of Welfare, and the Ministry of Welfare carries out the secretariat's function for the National Council of Disability Affairs (it plans the content and coordinates the work). The NCDA is an advisory institution that takes part in development and implementation of integration policy of disabled people. NCDA involves line ministers, Chairperson of the Latvian Association of Local and Regional Governments, Ombudsman, Chairperson of Public Utilities Commission, Director of Society Integration Foundation, President of Free Trade Union Confederation of Latvia and also representatives of key non-governmental organizations. Starting from 2009 the progress and challenges of implementation of the Convention has been discussed in every NCDA meeting. Every year specific items of the Convention, article by article, are included in every NCDA meeting's agenda.

Specific working groups are being established to carry out in-depth analysis, prepare reports and generate solutions and recommendations to be presented to the responsible ministries for further implementation. Working groups on legal capacity, employment matters, tackling accessibility matters have been established. The task of the latest working group will be finding bottlenecks and generating solutions of problems related to all kinds of accessibility and presenting results at the NCDA meetings on regular basis.

Coordination of implementation of the Convention is carried out also through several working groups formed by the Ministry of Welfare under policy guidelines and strategic plans.

Information about all NCDA meetings and relevant working groups is available at the Ministry of Welfare home page [www.lm.gov.lv](http://www.lm.gov.lv) (in Latvian).

#### **2.1.2. National strategies to implement the UNCRPD**

Several strategic documents or advanced plans for a strategy directly devoted to the disability policy matters are already in place:

- Different ministries carry out implementation of the concept paper „Equal opportunities for all” (adopted by the Cabinet in 1998). The concept paper covers actions until 2010 within the following fields: health, education, employment, proper environment and social security. Planned actions for the implementation of this concept paper have to be included in the annual action plans of ministries. The Ministry of Welfare prepares each year the report on progress and presents it at the NCDA meeting. After 2010 an evaluation report has been prepared stating that the economic crisis that hit Latvia in 2008 particularly hard has negatively affected the implementation of several activities that were requesting additional public means. Nevertheless some progress can be observed and objectives that have not been reached are to be included in coming policy papers.
- The „Basic Principles on Policy for Elimination of Disability and its Consequences, 2005-2015” elaborated by the Ministry of Welfare has been adopted by the Cabinet in 2005. This strategic document contains guidelines for preventing disabilities and the basic principles, objectives and priorities of state social protection policy for persons with disabilities. The implementation of this strategy is supported by the „Action Plan for Implementing the Basic Principles on Policy for Elimination of Disability and its Consequences 2005-2015”, adopted by the Cabinet in 2006. An aim determined in the Action Plan is to eliminate or to reduce the risk of disability for persons with threatened/prognosticated disability, to reduce the effect of a disability on persons with disability and to reduce the risk of social exclusion for all those persons. The Ministry of Welfare prepares each year the report on progress and submits it to the Cabinet.
- The UNCRPD Implementation Action Plan 2010-2012, adopted by the Cabinet in October 2009, envisages initial steps for promoting the implementation of the Convention. Due to the significant financial restrictions caused by the recession, this plan includes only short term activities where additional financing is not required, or reduced to a minimum, or supported by EU financial instruments. One of the tasks of this Action plan is to elaborate the UNCRPD implementation programme for 2013-2019 which will be a comprehensive strategy to reach the UNCRPD objectives.
- Currently the strategic document (policy guidelines) “Basic Principles of Implementation of the Convention on the Rights of Persons with Disabilities for 2013-2019” is being elaborated. This strategy will replace previous policy guidelines and plans and thus create one comprehensive policy planning document.

All above mentioned documents as well as annual reports on their implementation are available at the Ministry of Welfare home page [www.lm.gov.lv](http://www.lm.gov.lv) (in Latvian).

## **2.2. Monitoring of the UNCRPD**

### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

According to the above mentioned Law on the Convention on the Rights of Persons with Disabilities, the Ombudsman office as the independent institution ensures monitoring of the implementation of the Convention. Representatives of the Ombudsman office participate in

the above mentioned NCDA and in all working groups for the implementation of the Convention.

As the ministry is responsible for disability policy at large, it is also responsible for monitoring the implementation of the Convention. All line ministries are responsible for the implementation of their specific activities, according to their respective sphere of competence

### **2.2.2. The involvement of civil society in the monitoring process (Art. 33.3)**

Civil society, in particular persons with disabilities and their representative organizations, shall be involved through the NCDA and the above mentioned working groups. Starting from 2007, on a regular basis, the Ministry of Welfare organises meetings with DPO's to discuss practical and political issues.

Information about all monthly meetings with NGOs is available at the Ministry of Welfare home page [www.lm.gov.lv](http://www.lm.gov.lv) (in Latvian).

NGOs representing persons with disabilities have the opportunity to participate in the process of policy planning as well as monitoring of implementation. DPO's are involved in all working groups established by the ministry; they provide expertise and opinion on national legal acts and planned services. During the preparation of draft laws and regulations, and the development of amendments on existing legislation (for example, Policy Guidelines for Reduction of Disability and its Consequences, draft law On Disability and its sub laws, the conformity assessment of national legal acts to the United Nation Convention), the NGOs have played and continue to play a significant role.

The future strategic document "Basic Principles of Implementation of the Convention on the Rights of Persons with Disabilities for 2013-2019" is being elaborated in close cooperation with line ministries and DPO's.

### **2.2.3. Collecting statistics and/or developing indicators (Article 31)**

In Latvia the statistical data which cover also disability matters, are collected and available in several institutions, depending on the respective policy area. It should be mentioned at this stage that the Ministry of Welfare has subordinate institutions (the State Social Insurance Agency, the State Employment Agency, the State Medical Expertise Commission of Health and Capacity for Work (Expertise Commission)) whose regular statistics are used to monitor disability policy. Besides, relevant data related to disability statistics are collected also by other ministries (for instance the Ministry of Education and Science, the Ministry of Health, the Ministry of Transport etc.) and, of course, by the Central Statistical Bureau (CSB). Some statistics are provided in the annual public reports of respective ministries, or institutions, via their home pages, and in the CSB publications. Data is mostly longitudinal.

The definition of disability in Latvia is related to the level of impairment and thus all the public services and entitlements are provided to the persons with disability status that is granted by the Expertise Commission. Accordingly whenever the statistics on disabled persons are collected they include persons with disability status. An exception are provisions for technical aids, which persons with different kinds of functional disorders are entitled to, not only persons with disability status.



The improvement of data collection for the total number of persons with disability is in progress: during the 2004-2006 EU structural funds' planning period the Expertise Commission, involving ERDF co-financing, created the disability information system, i.e. a unified database of disabled people. To continue the development of this database during the 2007-2013 EU structural funds' planning period the Expertise Commission, involving ERDF co-financing, has started a new project, "Digitalization of the archive data bases and implementation of e-services". One of the outputs of this project is an improved disability information system, which allows to obtain comprehensive and detailed statistical data distributed by gender, age, administrative region, as well as by diagnosis, covering all persons with disabilities (and also persons with anticipated disability), including also historical data, which previously was mostly available only in paper form.

In general, the above mentioned data sources are successfully used for policy formulation and monitoring of implementation. However, it is not sufficient for monitoring the implementation of the Convention because the available data cover multidimensional and multidisciplinary area of the Convention only partially.

The monitoring mechanism of the implementation of the Convention, including Article 31, is not yet adjudicated. Therefore in a view of ensuring both the monitoring of implementation of the Convention and preparation of reports on progress (in accordance with the article 35, paragraph 1 of the Convention) the development of indicators will be discussed during the forthcoming meeting of the working group for preparation of the strategic document "Basic Principles of Implementation of the Convention on the Rights of Persons with Disabilities for 2013-2019". The working group will start its activities in March 2010 and in parallel to the elaboration of the strategic document for 2013-2019, all relevant ministries will be asked to make proposals for specific indicators which could support the analysis of the implementation of the Convention. After reaching an agreement on the indicators, the involved relevant ministries will be obliged to ensure collecting and maintenance of these specific statistical data.

## **Lithuania**

### **2.1. National Implementation of the UNCRPD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)**

As the UN Convention on the Rights of Persons with Disabilities was ratified on 27 May 2010, the coordination mechanism and focal points were designated by the Resolution of Government No. 1739 on 8<sup>th</sup> of December, 2010.

The Ministry of Social Security and Labour was designated as coordinating body and focal point for implementing the UN Convention. Other public authorities (the Ministry of Education and Science, the Ministry of Transport and Communications, the Ministry of Health, the Ministry of Environment, the Ministry of Economics, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of the Interior, the Ministry of Culture, the Department of Physical Education and Sports under the Government of the Republic of Lithuania, the Department of Statistics and the Information Society Development Committee under the Ministry of Transport and Communications) were designated as sub-focal points for the implementation of UN Convention according to their competence.

#### **2.1.2. National strategies to implement the UNCRPD**

The main aims and objectives of the UN Convention and its implementation are included in the National Social Integration Programme for Persons with Disabilities 2010-2012 (hereinafter referred to as the Programme).

The main aim of the Programme is to achieve equal opportunities and improve the quality of life for people with disabilities in line with international and national public policy objectives and commitments.

The main objectives of the Programme are:

1. To increase aid to the families of people with disabilities (children, adults);
2. To develop services for people with disabilities in the community and improve their quality of life;
3. To improve the environment for people with disabilities, the legal framework, and accessibility;
4. To improve health care and medical rehabilitation services for people with disabilities and improve the quality of these services;
5. To increase and raise the effectiveness and accessibility for the disabled of education and training services;
6. To increase access to employment and labour market;
7. To strengthen legal protection;
8. To increase participation in public and political life;
9. To increase participation in physical education and sports activities;
10. To improve the management of the social inclusion process.

The Programme is coordinated and monitored by the Department for the Affairs of Disabled at the Ministry of Social Security and Labour.

It is noteworthy that after the ratification of the UN Convention, the Plan for Implementation of the National Social Integration Programme for Persons with Disabilities 2010-2012 was complemented with other measures proposed by public authorities and non-governmental organizations of disabled persons. The document was approved by the Minister of Social Security and Labour.

## **2.2. Monitoring of the UNCRPD**

### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

The Council for the Affairs of Disabled at the Ministry of Social Security and Labour (hereinafter referred to as the Council) and the Office of Equal Opportunities Ombudsperson perform the function of independent mechanism. The Office of Equal Opportunities Ombudsperson performs the function of protection and ensures that all the rights of disabled people are guaranteed. The Ombudsperson also takes actions so that violation of the rights of persons with disabilities are stopped: the Ombudsperson accepts complaints, investigates them, solves problems, and writes comments to the Courts. The Council monitors the implementation of the UN Convention and in particular:

- Assesses the human rights situation in respect to disabled persons;
- Draws public authorities' attention to the violation of disabled rights;
- Helps to foresee measures to protect from human rights violation;
- Makes proposals for improving legislation and seeking to properly implement the Convention;
- Analyzes how provisions of the UN Convention are implemented.

### **2.2.2 The involvement of civil society in the monitoring process (Article 33.3)**

The rights of people with disabilities are defended and represented by the associations of disabled persons. Decisions are taken after including the opinions and experiences of persons with disabilities.

The Ministry of Social Security and Labour has several subordinated bodies: the Department for the Affairs of the Disabled, the Service for Establishing Disability and Capacity for Work, the Dispute Commission, and the Centre for Technical Assistance for People with Disabilities. They organize regular meetings with relevant NGOs in order to ensure closer cooperation, distribution of information as well as resolution of existing problems. Relevant problems related to the establishment of ability-for-work and disability, determination of the need for professional rehabilitation services, ensuring equal opportunities etc. are issues discussed at these meetings.

As mentioned above, disabled persons are involved in the process of monitoring the implementation of the provisions of the UN Convention through representatives of non-governmental organizations of disabled people who take part in the activities of the Council.

The Council analyzes the most important issues in relation to the social integration of people with disabilities and submits proposals to the Minister of Social Security and Labour regarding the implementation of social integration policy relating to the needs of people with disabilities (after the ratification of the UN Convention, the Council also monitors its implementation).

The Council is composed, on a voluntary basis and according to the principle of equal partnership rights, of state institutions and representatives delegated from the Lithuanian Union of Persons with Visual Impairment, the Lithuanian Society of Persons with Hearing Impairment, the Lithuanian Association of Disabled, the Lithuanian Union of Persons with Disabilities, “Viltis” Association for Care for People with Intellectual Disorders, the Lithuanian Association for Care for People with Mental Disorders and the Paralympic Committee of Lithuania. They each have one main representative, at the level of either the president, the vice-president or the chairman.

The members of the Council representing state institutions are chosen within the Ministry of Social Security and Labour, the Ministry of Health, the Ministry of Education and Science, the Ministry of Environment, the Ministry of Communications, the Ministry of Interior and the Ministry of the Economy. They have one representative each - the vice-minister.

The purpose of the Council is to examine the key issues of social integration of persons with disabilities and to assist the Minister of Social Security and Labour and other Ministers in the implementation of the social integration policy. Decisions by the Council inform and advise the Minister of Social Security and Labour.

### **2.2.3. Collecting statistics and/or developing indicators (Article 31)**

The Equal Opportunities Division of the Ministry of Social Security and Labour (MSSL), acting within the scope of its competence, collects, systematises and analyses information about the implementation of the equal opportunities policy in Lithuania and abroad.

The Department for the Affairs of the Disabled at the Ministry of Social Security and Labour collects, on an annual basis, information and statistics related to the social integration of people with disabilities from the state, local authorities and organizations of people with disabilities. It also systematises and summarises them before notifying the Ministry of Social Security and Labour, state and local authorities and organizations of people with disabilities.

The Service for Establishing Disability and Ability-for-Work under the Ministry of Social Security and Labour draws up statistical reports on persons with disabilities and submits them to the Ministry of Social Security and Labour and to the Department of Statistics. The Service for Establishing Disability and Ability-for-Work under the Ministry of Social Security and Labour exchanges information and collaborates with individual healthcare establishments, the National Labour Exchange under the Ministry of Social Security and Labour, the State Social Insurance Fund Board under the Ministry of Social Security and Labour, local authorities, state institutions and other organisations in accordance with the provisions of the Law on Legal Protection of Personal Data.

## **Luxembourg**

### **2.1. National Implementation of the UNCRPD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)**

The Ministry of Family Affairs and Integration is the designated focal point within the Luxembourg Government for matters relating to the implementation of the Convention. It also fulfils a coordination role, cooperating closely, on matters relating to the Convention, with an ad hoc Steering Group representing different players within civil society.

#### **2.1.2. National strategies to implement the UNCRPD**

The 2009-2014 state agenda plans the development of an outline law on disability proposing a global concept of integration and non-discrimination of persons with disabilities. Simultaneously, the Ministry of Family Affairs and Integration is developing a national strategy to put in place the UNCRPD and the Optional Protocol to allow persons with disabilities to participate fully in all aspects of society.

The analysis of the national legislation in relation to the ratification of the Convention was meant to identify possible laws which may be at the source of discrimination against persons with disabilities. The main findings were related to the accessibility of public services, to higher education as well as adults' legal protection.

In order to raise public awareness about the situation of persons with disabilities and to provide information about the objectives of the Convention, the Family and Integration Ministry has developed an information and awareness campaign on the topic of the UNCRPD.

The principle objectives of the campaign are as follows:

- Informing persons with disabilities about the objectives of the Convention
- Raising awareness of the wider public on the rights of persons with disabilities, showing through various means (posters, adverts) that these rights equal general human rights.
- Providing information to the family members and officials from the social, education, health and care sectors on the UNCRPD.

This campaign was developed in close cooperation with Info-Handicap - Centre National d'Information et de Rencontre du Handicap - and various NGOs and other institutions dealing with disability and persons with disabilities.

Furthermore, the Ministry of Family and Integration is also cooperating closely, on matters relating to the UNCRPD, with an ad hoc Steering Group representing different players within civil society. Together with the Steering Group it is organizing, on a regular basis, working groups where persons with disabilities and all people interested in the subject can express their views freely and be directly involved in the decision making process related to the main subjects of the UNCRPD.

From March to December 2011, during four full-day Working Meetings, the Ministry of Family Affairs and Integration elaborated a national disability Action Plan. This was achieved

together with civil society and in close cooperation with the other Ministries. The Action Plan contains short and mid-term actions and announces modifications of the relevant bills that aim to implement most of the crucial provisions of the UNCRPD. The Government has accepted the 5-Year Action Plan on March 9, 2012. It has been officially presented to the public on March 28 by the Minister of Family Affairs and Integration together with representatives of the different working groups.. Thanks to the contributions of persons with disabilities, the document is now an Action Plan from persons with disabilities for persons with disabilities.

## **2.2. Monitoring of the UNCRPD**

### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

The 2011 act on the approval of the CRPD<sup>15</sup> allocates the task of promoting and monitoring the Convention to the Consultative Commission of Human Rights of the Grand Duchy of Luxembourg. It will carry out that task jointly with the Centre for Equal Treatment, while the task of protecting has been allocated to the National Ombudsman.

The mission of the Consultative Commission of Human Rights is to promote human rights throughout the Grand Duchy of Luxembourg *inter alia* for persons with disabilities, while the Ombudsman is mainly dealing with citizens' individual complaints. As for the Centre for Equal Treatment, its purpose is to promote, analyse and monitor equal treatment between all persons without discrimination on the basis of race, ethnic origin, sex, sexual orientation, religion or beliefs, disability or age.

### **2.2.2. The involvement of civil society in the monitoring process (Article 33.3)**

The “Conseil supérieur des personnes handicapées” is a national council which has its legal basis in the law of September 12, 2003 about the income of disabled people. It is composed of 11 members, of which five disabled persons, four representatives of organisations for persons with disabilities, one representative of the “Centre national d’information et de rencontre du handicap” and one of the Ministry of Family Affairs and Integration. It is allowed to take the initiative of giving advice on specific disability-related issues and it is bound to express its view on every single law or other disability-specific legal instruments and to advise the Minister on other issues on her request.

Furthermore, the Ministry of Family Affairs and Integration cooperates largely with Info-Handicap-Conseil National des Personnes Handicapées which represents Luxembourg in the European Disability Forum (EDF). It is a loose federation currently comprising more than 50 member organisations which are active in many different areas. Some members are major service providers, responsible for running large institutions, while others are very small self-help or support groups. One of Info-Handicap's main tasks is thus to identify shortcomings in these areas and seek solutions in cooperation with the authorities. It is also undertaking, on a regular basis, actions to raise awareness in the field of disability.

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<sup>15</sup> Loi du 28 juillet 2011 portant 1. approbation de la Convention relative aux droits des personnes handicapées, faite à New York, le 13 décembre 2006; 2. approbation du Protocole facultatif à la Convention relative aux droits des personnes handicapées relatif au Comité des droits des personnes handicapées, fait à New York, le 13 décembre 2006; 3. désignation des mécanismes indépendants de promotion, de protection et de suivi de l’application de la Convention relative aux droits des personnes handicapées.

Consultations between the Ministry of Family and Integration and several organisations of and for disabled persons take place on a regular basis. This cooperation is of variable geometry depending on the questions and problems that need to be tackled.

The pillars of the policy for disabled persons are social inclusion and the participation at all levels as well as the maintenance and development of the personal autonomy and independence of persons with disabilities. An evaluation of the expectations and of the needs is necessarily carried out before the launch of a new project.

Another important tool used to foster empowerment of people with disabilities is the support of the Ministry of Family and Integration for umbrella organisations which coordinate the activities of a number of member organisations. For some years now, two of those organisations, namely Info-Handicap a.s.b.l. and “Solidarität mit Hörgeschädigten”, have been benefiting from a convention (that guarantees them regular subsidies) with the Ministry of Family and Integration for their information, consultation and training services.

That same ministry is also cooperating closely, on matters relating to the UNCRPD, with an ad hoc Steering Group representing different players within civil society. Together with that “Steering Group” it is organizing, on a regular basis, task groups where persons with disabilities and other people interested in the subject can express their views freely and are directly involved in the decision making process related to the main subjects of the UNCRPD.

### **2.2.3. Collecting statistics and/or developing indicators (Article 31)**

The department for persons with disabilities of the Ministry of Family Affairs and Integration is reflecting upon and developing a common coherent strategy for a coordinated collection of statistical data. In the meantime, Luxembourg uses statistical data collected by different actors working with issues related to disability such as the *Service des Travailleurs Handicapés de l'Administration de l'Emploi*, the *Service de l'Education Différenciée*, *l'Assurance Dépendance et la Caisse Nationale des Prestations Familiales*. While collecting relevant data, the main problems encountered were the double citing of certain figures and the legal protection of specific data.

## **Malta**

### **2.1. National Implementation of the UNCRPD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Art. 33.1)**

The Disability Matters Act was approved by the Maltese Parliament on 26 March 2012. It will come into effect in mid-April. It includes amendments to the Equal Opportunities (Persons with Disability) Act. These amendments include the identification of the Ministry responsible for Social Policy as the focal point for the Convention.

#### **2.1.2. National strategies to implement the UNCRPD**

No strategy is yet in place since Malta still has to ratify the Convention.

### **2.2. Monitoring of the UNCRPD**

#### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Art. 33.2)**

The Disability Matters Bill currently being debated in Parliament includes amendments to the Equal Opportunities (Persons with Disability) Act. These amendments include the identification of the National Commission Persons with Disability as the independent mechanism for the Convention.

#### **2.2.2 The involvement of civil society in the monitoring process (Art. 33.3)**

To date, several seminars and conferences have been held with representatives of disability organisations and other stakeholders in order to disseminate information about the Convention. The text of the Convention has been produced in accessible formats through EU funding. To date, it is available in audio, Maltese, easy-to-read Maltese versions, and in Maltese Sign Language.

The National Commission for Persons with Disability (KNPD) has the legal capacity to promote and raise awareness of disability issues and has now been identified as the independent mechanism for the Convention. The Commission is composed of not less than fourteen members. Seven of the members shall be appointed from amongst such persons appearing to the Prime Minister to best represent the Ministries responsible for Social Policy, Labour, Health, Education, Housing and Economic Planning. Another seven of the members shall be appointed from among such persons who, in the opinion of the Prime Minister, best represent voluntary organisations working in the field of disability issues. Furthermore, half the board members must themselves be persons with disabilities, or family members of persons with a mental disability. Either the chairperson, or the vice chairperson must be disabled himself or he must be related to a person with a mental disability. More than half of the employees of the KNPD's secretariat have disabilities.

The KNPD has a comprehensive programme of empowering persons with disability. KNPD organises regular awareness-raising campaigns with the direct participation of persons with disability and often with EU funding. These include an annual national conference and the



Parliament of Persons with Disability. KNPD organises training for persons with disability to assume these roles and tasks, as well as disability studies and lectures, mainly for university students. These sessions always include the direct involvement of persons with disability, in both the curriculum design as well as lecture-delivery. Disability Equality Training is also provided to public and private organisations and community groups. KNPD, on a regular basis, includes persons with disability when participating in activities organised at EU level (e.g. annual Conference organised to mark the European Day of Persons with Disability in December).

### **2.2.3. Collecting statistics and/or developing indicators (Art. 31)**

KNPD collects statistics but not with direct reference to the Convention. The information published in KNPD's Annual Equal Opportunities Act (Cap. 413) Report is relevant to this but may be limited in scope for this purpose.

In 2009, KNPD published statistics about the quality of life of disabled people in Malta, based on the 2005 National Census. This will be updated after the next Census due to take place in 2011.

Further information can be obtained from the KNPD website, [www.knpd.org](http://www.knpd.org).

## **The Netherlands**

### **2.1. National Implementation of the UNCRPD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)**

It is proposed that after the ratification of the UNCRPD the focal point will be the Ministry of Health, Welfare and Sport. The coordination mechanism consists of an interministerial Steering Group in which all relevant government departments and other government levels (local and provincial) are represented.

#### **2.1.2. National strategies to implement the UNCRPD**

Equal treatment and mainstreaming of issues relevant for persons with disabilities are the basic conditions for policies on a local and national level. The Government and the Parliament also assess policies on this aspect. Apart from this, no comprehensive implementation plan for the Convention has yet been put in place.

However, in the course of preparing for the ratification of the UNCRPD, the government focal point (the Ministry of Health, Welfare and Sport) prepares and supports conferences and publications on the UNCRPD.

Moreover, some measures have already been taken for the implementation of the UNCRPD:

- The Ministry of the Interior and Kingdom Relations has issued an obligation for municipalities to provide for at least 25 percent of the polling stations in every region to be completely accessible. A detailed regulation will enter into force in 2012 providing for accessible public transport system. Most buses are already accessible and around 50% of the bus stops will be accessible in 2015. This regulation sets out different time schemes for different aspects of transport system. After finalization of the notification procedure in Brussels (European Commission, DG MOVE), the regulation will enter into force in the Netherlands by the beginning of 2012. On the labour market and domain of social affairs, the growing influx of young people into the scheme for young disabled is a worrying development. In order to increase the labour participation for young persons with disabilities a new Act came into force on 1st January 2010. Under this Act, young persons must be given the chance to look for a regular job or ‘supported job’ before they apply for a benefit. The Rutte Government has taken further steps to increase chances on labour participation. On 1st February 2012, the Government has proposed to Parliament a new law, the ‘Working to capacity Act’ (Wet werken naar vermogen), for a new system on work according to capacity. The proposal integrates several existing systems into one new system for different groups (among them young persons with disabilities) and will be executed by municipalities. Main features of the new system are a single benefit, a single reintegration budget, and (under certain conditions) dispensation from the statutory national minimum wage. The new Act will not apply to people who are permanently incapable to work and people who can only work in sheltered employment. For these groups the existing laws remain unchanged. The Dutch Government aims to put the new Act into effect on 1st January 2013.
- In the domain of education the equal treatment act is broadened to all aspects of primary, secondary and higher education.
- The equal treatment act on the basis of handicap and chronic illness has been made applicable in the field of primary and secondary education and housing and will be applicable with regard to public transport in the near future (halfway 2012). At the moment

further extension of the applicability of this act with respect to web-accessibility is being prepared.

At local level many municipalities have started different stimulating programs, such as Agenda 22 in the municipality of Utrecht. This is a working method that has been derived from the 22 rules that the United Nations drafted. This working method means that the city of Utrecht involves disabled people actively in its policy. This includes the accessibility of buildings, access to public transport and better readability and usability of various forms for people with intellectual disabilities. This agenda seeks to ensure that all people of Utrecht, with and without disabilities, can participate in society.

## **2.2. Monitoring of the UNCRPD**

### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

The Netherlands have designated the new National Human Rights Institute (NHRI) as the independent mechanism for promoting, protecting and monitoring the UNCRPD. To set up the NHRI, a draft law has been approved by Parliament. The law will enter into force by July 2012. The NHRI will then start its work.

### **2.2.2. The involvement of civil society in the monitoring process (Art. 33.3)**

After ratification, the National Human Right Institute will involve civil society in the monitoring process.

Furthermore, civil society is monitoring the implementation of UNCRPD when asked for an opinion in the process of drafting new legislation and policies relevant to persons with disabilities. To this end, strong relations between several government departments and civil society have been formalized. Monitoring of UNCRPD also takes place within the ambit of several formal advisory bodies to the government in which civil society is represented. These bodies advise the government on major policy subjects. Civil society in the Netherlands is well organised and receives government funding for its work on empowering persons with disabilities, also with a view to monitoring governmental action.

On a local level, municipalities are legally obliged to establish a formal advisory and monitoring structure for persons with disabilities in the area of labour and social support. Furthermore, municipalities create “platforms” for persons with disabilities to advice local authorities, shopkeepers’ associations service providers etc. on any issue relevant for persons with disabilities. These platforms are supported by a national program funded by the government and aiming at the empowerment of persons with a disability.

### **2.2.3. Collecting statistics and/or developing indicators (Article 31)**

A “participation index” has been developed to measure the level of participation of persons with disabilities. This index includes indicators on education, labour, leisure, housing and the level of using mainstream provisions.

## **Poland**

### **2.1. National Implementation of the UNCRD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)**

Poland has not ratified the Convention yet, so no “relevant structures, namely focal point, coordination mechanism and a framework including independent mechanism to protect, promote and monitor the UNCRPD pursuant to its Article 33” have been put in place. Decisions concerning these issues will be taken at the moment of deciding on the ratification of the Convention, giving due consideration to the legal system in force, existing human rights protection structures and the Convention provisions.

#### **2.1.2. National strategies to implement the UNCRPD**

As Poland has not ratified the Convention yet, there is no formal obligation to implement it. Preparation for the ratification is carried out within the framework of the procedure applicable to the ratification of international agreements, set out by the Act on international agreements. The adoption of any special strategy is not envisaged.

The same will apply to the implementation of the Convention once Poland ratifies it. Relevant Ministries apply the principle of disability mainstreaming and include disability issues into legislation, programmes and action plans.

The Polish Government and the self-government authorities have been called upon by the Sejm to undertake activities aiming at implementing the rights mentioned in the Resolution - Charter of the Rights of Persons with Disabilities passed on 1 August 1997. The implementation of these rights aims to enable persons with disabilities to lead an independent, self-reliant and active life and not to be discriminated in any area of life. These goals reflect the goals of the Convention. In the Resolution, the Sejm called upon the Government to submit annual reports on these activities. The reports are prepared in cooperation with various Ministries and central offices and presented to the Sejm by the Government Plenipotentiary for Disabled People, situated within the Ministry of Labour and Social Policy.

Several developments regarding to information on “Voting rights” have taken place in Poland, in relation to the last Report.

The Act-Election Code, adopted on 5 January 2011, replaced previous legal acts on conduct of various elections. It includes some provisions concerning persons with disabilities. But enjoyment of the right to vote by persons with disabilities has been further improved thanks to additional provisions regarding adaptation of the organisation of elections to the needs of people with various disabilities, provided in the Act of 27 May 2011 on the amendments to the Act-Election Code and to the Act implementing the Act-Election Code. The amended Act-Election Code came in force on 1 August 2011. The Act-Election Code lays down rules and procedure for nominating candidates, the conduct and the conditions of validity of the elections to the Sejm and the Senate of the Republic of Poland, of the President of the Republic of Poland, to the European Parliament in the Republic of Poland, to the proclaiming bodies of the local self-government units, as well as of mayors.

The Act grants special rights to disabled voters. A disabled voter is defined in the Act as a person with reduced physical, psychological, mental or sensory performance, which hinders participation in the election. But some provisions of the Act concern only voters with a severe or moderate degree of disability, within the meaning of the Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities.

People who have the right to vote shall be put down on the register of voters. A disabled voter, following a written request to the office of the municipality submitted not later than 14 days before the election, is added to the register of voters in the electoral district chosen by him from among electoral districts with polling stations adapted to the needs of disabled voters, in the municipality of his residence.

One can vote in person. A voter with a severe or moderate degree of disability, within the meaning of the Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities, may delegate somebody to vote on his behalf. This solution also applies to voters who turn 75 on election day at the latest. Authorisation for voting shall be granted before the wójt or another officer authorized by the wójt for the drafting of authorisation for voting. The document of authorisation for voting shall be prepared at the domicile of the voter, who grants authorisation for voting, or elsewhere, as requested by the authorising person.

During voting, a disabled voter may request for help of other person, excluding members of the electoral commission and the persons of trust.

According to the Election Code, voting is conducted in permanent and separate electoral districts established in the municipality. Separate electoral districts are formed, *inter alia*, in health care institutions and nursing homes. In these separate districts a second ballot box can be used.

Moreover, as concerns disabled voters, the Act provides, *inter alia*, for:

- the right to obtain information about the organisation of elections by telephone, by printed material sent on request, including in electronic form,
- placing of information, by the National Electoral Commission on its website, on the rights of disabled voters, in the form which takes into account the various types of disabilities and preparation of information in Braille about these rights and passing it on request to interested persons,
- the obligation of members of the district election commission to transmit verbally the content of election notices,
- ensuring the accessibility of polling stations for people with reduced mobility,
- the possibility of postal voting, according to the statutory defined procedure, by a voter with a severe or moderate degree of disability, within the meaning of the Act on Vocational and Social Rehabilitation and Employment of Persons with disabilities,
- voting using overlays to voting cards prepared in Braille (the overlay model has been defined by the National Electoral Commission).

The Regulation of the Minister of Infrastructure of 29 July 2011 on the polling stations adapted to the needs of voters with disabilities came into force on 1 August 2011.

## **2.2. Monitoring the UNCRPD**

### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

In Poland an independent mechanism pursuant to Article 33.2 of the UN Convention will be nominated at the moment of ratifying the Convention. Poland has already well-established

administrative procedures for reporting on the application of different UN conventions concerning human rights and it intends to maintain them. Should there be a need for any adaptations, they will be considered at a later stage.

### **2.2.2. The involvement of civil society in the monitoring process (Article 33.3)**

Means ensuring involvement of civil society in the process of implementation and monitoring of the UNCRPD has not yet been defined. Common legal regulations which are already in force will continue to be applied.

According to the Act on access to public information, any person has the right to obtain information from public authorities and to request access to the official documents elaborated, inter alia, by the public authority bodies.

The representatives of people with disabilities are consulted within the framework of decision-making processes conducted with the participation of:

- the National Consultative Council for Disabled People (on the national level), which is an advisory body of the Government Plenipotentiary for Disabled People and acts as a platform of cooperation to the benefit of persons with disabilities between bodies of national administration, bodies of territorial self-government and non-governmental organisations. The scope of activities of the Council includes the submission to the Plenipotentiary of proposals for actions aimed at meeting the needs of people with disabilities. It also includes the submission, upon the Plenipotentiary's request, of opinions on the proposals for underlying principles of policy concerning employment and vocational and social rehabilitation of persons with disabilities and on legislative projects that can affect the situation of persons with disabilities, as well as informing on the need to establish or change the regulations in this respect;
- the voluntary voivodship councils for persons with disabilities (on the regional level), which are consultative and advisory bodies serving the marshals of voivodships; their task is to inspire actions aimed at vocational and social rehabilitation of persons with disabilities and exercising the rights by persons with disabilities, to issue opinions on the voivodship programmes of action for the benefit of persons with disabilities, to evaluate their implementation as well as to advise on draft resolutions and programmes prepared for adoption by the voivodship parliament from the perspective of their impact on persons with disabilities;
- the voluntary powiat (district) councils for persons with disabilities (on the local level), which are consultative and advisory bodies serving the starostas; the scope of their activity is powiat-wide and their tasks are similar to those of the voivodship councils.

Moreover, the Foundation "Regional Development Institute" and the Polish Disability Forum (an umbrella organisation in the field of disability) were involved in the assessment of compliance of the Polish legislation and the Convention provisions, which was carried out in 2008 as a part of a project co-financed by the State Fund for Rehabilitation of Persons with Disabilities. Their recommendations included in the report "Polish way to the Convention on the rights of persons with disabilities" are duly taken into consideration by governmental administration when considering the necessity of and elaborating proposals for amendments to national legislation prior to a decision on the ratification of the Convention.

Furthermore, consultative and participatory techniques are used to raise the awareness in terms of equal treatment and non-discrimination of persons with disabilities. Moreover they aim at supporting the incorporation of their needs in legislative and practical matters. The application of such techniques results in the participation of people with disabilities in the various evaluation and advisory bodies. It also results in promoting the integration of persons with disabilities in the upbringing and education (starting from pre-school age); organizing of seminars and conferences, media campaigns, events and other actions in order to integrate persons with disabilities into the local communities. It shall also raise awareness of the local self-governments on the needs of people with disabilities.

It should be mentioned that, according to the Resolution of the Sejm of the Republic of Poland - Charter of the Rights of Persons with Disabilities, the Government Plenipotentiary for People with Disabilities annually informs the Sejm on actions undertaken by the Polish Government and local authorities to implement the rights of persons with disabilities defined in the Resolution. This is followed by the Parliamentary debate on the developments in increasing the opportunities of persons with disabilities in the most important areas of daily life, and on questions of avoiding and eliminating any kinds of discrimination of people with disabilities.

### **2.2.3. Collecting statistics and/or developing indicators (Article 31)**

A more thorough examination of the Convention may reveal the need to collect statistical data which currently is not in place. At the moment, there is no particular need to collect additional statistical data or to develop indicators in view of monitoring the application of the Convention.

## **Portugal**

### **2.1. National Implementation of the UNCRPD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)**

Portugal ratified the UNCRPCD in September 2009. According to the latest Portuguese Government proposal, the Focal Point will be situated within the Ministry of Foreign Affairs and the Ministry of Solidarity and Social Security. The National Institute for Rehabilitation is going to be designated as Coordination Mechanism. And finally, the Ombudsman will be invited to be the Independent Mechanism at national level.

#### **2.1.2. National strategies to implement the UNCRPD**

The Portuguese Government approved the National Strategy for the Disability (2011-2013) by the Resolution of Ministers n° 97/2010 of 14<sup>th</sup> December 2010. This strategy is based on the UNCRPD and succeeds the Action Plan for the Integration of People with Disabilities or Impairments (2006-2009).

The National Institute for Rehabilitation (INR, I.P.) is responsible for the planning, execution and coordination of policies aimed to promote the fundamental rights of persons with disabilities. This Institute will monitor the implementation of the National Strategy for Disability. This strategy was a result of a public consultation and is intended to promote a wide partnership between public and private entities, central, regional or local administration, social partners, NGOs and civil society as well as people with disabilities. It establishes a set of measures, targets and indicators distributed by five strategic areas of action:

- Axis n°1: Disability and multiple discrimination;
- Axis n°2: Justice and exercise of rights;
- Axis n°3: Autonomy and quality of life;
- Axis n°4: Accessibility and design for all;
- Axis n°5: Modernization of Administrative and Information systems.

Regarding axis n°1 and 2, the National Strategy for the Disability intends to:

- Promote awareness and information about domestic violence against persons with disabilities
- develop a program about UNCRPD at national level;
- make an assessment of national legislation verifying if Portuguese laws are meeting the requirements of UNCRPD;
- make the first national report regarding the UNCRPD implementation;
- review national laws concerning the accessibilities in buildings;
- promote public dissemination of rights, dignity and better health conditions for persons with disability;

Regarding axis n°3 and 4: The National Strategy for the Disability intends to:

- develop a national campaign on the employment of persons with disabilities
- Implement a National System of Intervention in Precocious Childhood
- Strengthen teachers skills in special education
- Develop initiatives addressed to persons with disability in order to increase their skills



- Increase the number of accessible beaches
- Increase the number of accessible public buildings
- Create a guide on good practices in accessible tourism
- Improve accessibility of public transports
- Reinforce school manuals and books in accessible formats

Regarding axis nº5: Administrative modernization and information systems intends to:

- develop a project that will allow public services to answer questions and doubts of persons with hearing impairments;
- Consolidate the accessibility of public services internet sites.

The National Strategy for Disability is intended to strength the disability public policy and to consolidate the previous Action Plan for the Integration of People with Disabilities. It develops a mainstreaming approach of disability and defines the measures that will be adopted and implemented in the different areas of public policy.

Annually the National Institute for Rehabilitation I.P. elaborates a report concerning the complaints based on the disability discrimination act. The complaint procedure is also available on the Institute's website.

The Portuguese Government approved the Decree-Law 163/2006, 08<sup>th</sup> August that establishes the technical norms of accessibility to public and collective equipments, public buildings and housing. This new law reinforces the accessibility rules as well as the sanctions that apply to public or private entities.

Portugal has also approved the National Plan for the Promotion of Accessibility (2006-2015) to provide to persons with disabilities, autonomy, equal opportunities and full participation. This plan incorporates a set of measures of accessibility in the built of environment, transportation and information and communication technologies (ICT) and supportive technologies (TA) to all citizens without exception.

In October 2010, the Disability Rights Promotion International (DRPI) project was launched in Portugal. This project involves the National Institute for Rehabilitation I.P., the Calouste Gulbenkian Foundation and the High Institute for Social and Political Sciences/Lisbon Technical University. The DRPI project will create an independent instrument to monitor the Convention on the Rights of Persons with Disabilities and is intended to promote the human rights of persons with disability and their empowerment. The DRPI project is an innovative approach that involves three institutions with knowledge in disability, human rights and social research areas. It is also intended to be freely used by the independent mechanism that monitors the Convention.

The National Strategy for Disability sets up some measures, namely, the creation of an Independent Mechanism responsible for the promotion and screening of the UNCRPD.

The National Institute for Rehabilitation also invested in research and manuals in specific areas such as multiple discrimination of women with disabilities, deinstitutionalization of children with disability, accessible tourism, the available information on disability produced in public administration data and the implementation of ICF in health and social security inquiries.

These studies were financed by the ESF and are available on the Institute's website ([www.inr.pt](http://www.inr.pt)). From 2010 to 2012 it has approved more research studies on the mental health of persons with intellectual disability, the violence against persons with disabilities and personal assistance services. Most of the studies were made by research centres of Portuguese Universities and created manuals and/or recommendations to implement good practices in different public and private services.

## **2.2. Monitoring of the UNCRPD**

### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

Portugal has not yet nominated an independent mechanism as mentioned in Article 33.2 of the UN Convention. However, according to the latest Portuguese Government proposal, the Ombudsman will be invited to be the Independent Mechanism.

### **2.2.2. The involvement of civil society in the monitoring process (Article 33.3)**

The 38/2004 law ensures full participation of people with disabilities or their representative organisations in the drafting of legislation on disability, execution and evaluation of all policies mentioned in this law, so as to ensure their involvement in all situations of everyday life and society in general.

The technical and financing program of the National Institute for Rehabilitation, I.P. for NGOPD has been developed in the framework of the Convention on the Rights of Persons with Disabilities since 2009. This Financial Program has contributed to developing civil society activities in different areas as cultural and leisure activities, empowerment and awareness, accessible and easy to read information on human rights and technical seminars. The National Institute for Rehabilitation I.P. undertook some initiatives (i.e. conferences/seminars/presentations) in order to disseminate the UNCRPD and has a training program for specific groups (persons with disabilities, local communities' architects and social workers, journalists and public servants). It even published a children's version of the UN Convention and a manual for parliamentarians about the implementation of the Convention. All documentation is available and can be freely consulted on the institute's website [institute \(www.inr.pt\)](http://www.inr.pt).

The involvement of NGOs is also guaranteed through the National Council for the Rehabilitation and Integration of the People with Disabilities (“Conselho Nacional de Reabilitação e Integração das Pessoas com Deficiência” – CNRIPD), which is a consultative body of the Minister of Labour and Social Solidarity providing the Government with information used in deciding on matters related to the definition of the National Rehabilitation Policies. This body supports and includes representatives of all kinds of organizations of people with disabilities as well as social partners and public authorities. It issues opinions and presents proposals for measures related to the problems of rehabilitation and disability.

The State encourages and supports people with disabilities, their families and the disability movement throughout all measures taken for the prevention of disabilities, the rehabilitation and the social integration of people with disabilities.

In recent years, the disability movement has grown significantly and consolidated its form of acting. In some cases it has taken on an active role of claiming rights for the people with disabilities. The dialogue between the State and NGOs, and the logistical and financial support that the latter have received, has contributed to encouraging the social role played by associations.

In doing so, the Portuguese Government is adhering to both the principles contained in the Basic Law and to the international recommendations for the participation of people with disabilities in the definition and concretisation of effective related policies.

### **2.2.3. Collecting statistics and/or developing indicators (Article 31)**

The Portuguese Census 2011 will update the last Census 2001. It will include the Washington Group questions about Disability as well as questions about accessibility in the environment and private houses. However the results of Portuguese Census 2011 are not available yet.

In 2010 the National Institute for Rehabilitation made two studies about the available information on disability produced in public administration data and the implementation of ICF in health and social security inquiries. The National Statistic Institute also adopted a Recommendation about the use of ICF in national data collection systems.

## **Romania**

### **2.1. National Implementation of the UNCRPD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)**

The focal point is the General Directorate for the Protection of Persons with Disabilities, within the Ministry of Labour, Family and Social Protection. It also acts as the coordination mechanism.

#### **2.1.2. National strategies to implement the UNCRPD**

Romania has not yet developed any comprehensive strategy to implement the UNCRPD.

However, the promotion and observance of the rights of disabled persons shall be, mainly, the duty of the local public administration authorities where the disabled person has his/her domicile or residence and, in subsidiary, and complementarily, of the central public administration authorities, civil society and the family or of the legal representative of the person.

Based on the principle of equality, the competent public authorities shall ensure the necessary financial resources, and take specific measures as to ensure the direct and unlimited access to services. The Ministry of Labour, Family and Social Protection through the General Directorate for the Protection of Persons with Disabilities and the other local and central public authorities shall ensure the necessary conditions for the social integration and inclusion of disabled persons.

### **2.2. Monitoring the UNCRPD**

#### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

Within the Law 221/2010 for the Ratification of the Convention the monitoring mechanism was established. The Ministry of Labor, Family and Social Protection through the General Directorate for the Protection of Persons with Disabilities is designated the central authority for the implementation of the UNCRPD, incorporating functions of both coordination mechanism and focal point. The independent monitoring mechanism is not established yet.

#### **2.2.2 The involvement of civil society in the monitoring process (Art. 33.3)**

Civil society will be involved through the independent mechanism to protect, promote and monitor the UNCRPD.

The NGOs of persons with disabilities are consulted in regard to all legislative measures for persons with disabilities in the following areas:

- For activities related to the protection and promotion of the rights of disabled persons, the Ministry of Labour, Family and Social Protection and the local and central public administration authorities maintain dialogue, collaboration and partnership relationships with the non-governmental organizations of persons with disabilities or

which represent their interests, and with the cult institutions recognized by law with activity in this field.

- The Council for the analysis of the problems of disabled persons is an advisory body attached to the General Directorate for the Protection of Persons with Disabilities, formed by representatives of central public administration authorities as well as representatives of civil society.
- The task of the Council is to analyze problems related to the protection of disabled persons, to propose measures regarding the improvement of their living conditions and to notify the competent bodies of the breach of the rights of disabled persons.

The Ministry of Labour, Family and Social Protection through the General Directorate for the Protection of Persons with Disabilities may conclude partnerships with non-governmental organizations of disabled persons, which represent their interests or perform activities in the field of promotion and defense of human rights.

### **2.2.3. Collecting statistics and/or developing indicators (Article 31)**

The Ministry of Labour, Family and Social Protection through the General Directorate for the Protection of Persons with Disabilities is collecting statistics on the number of persons with disabilities, the kinds of disabilities, the number of residential institutions and the living conditions they offer, the number and type of alternative services, data regarding the implementation of specific quality standards in residential institutions and data regarding the costs.

## **Slovakia**

### **2.1. National Implementation of the UNCRPD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)**

Currently, no contact point has been established in the Slovak Republic to deal with implementation of the Convention.

However, the discussion on the modalities of implementation of the Convention is very intense. Several meetings discussing the modalities concerning institutional infrastructure have already taken place: for instance a Round Table organized by the Slovak Disability Council, the umbrella organization for NGOs working for people with various types of disability (March 2011), whose recommendations were also introduced publicly at the constituting meeting of the Government Council for Human Rights, Minorities and Gender Equality (April 2011); the meeting of the representatives of the Ministry of Labour, Social Affairs and Family of the Slovak Republic and the Ministry of Foreign Affairs of the Slovak Republic (March 2011); the meeting of the representatives of the Ministry of Labour, Social Affairs and Family of the Slovak Republic and the Government's Office of the Slovak Republic (July 2011) to mention a few.

The core document in this respect is the “Proposal for the implementation of Article 33 of the Convention on the Rights of Persons with Disabilities“, introduced by the Disability Rights Center on the second meeting of the Government Council for Human Rights, Minorities and Gender Equality on June 27<sup>th</sup> 2011. The document offered analysis of the resource and competence implications with respect to several governmental bodies (the Office of the Prime Minister, the Office of the Deputy Prime Minister for Human Rights and National Minorities, Ministry of Labour, Social Affairs and Family of the Slovak Republic) which are considered for the position of the Central Focal Point, as well as that of specialized (secondary) focal points at the respective ministries.

#### **2.1.2. National strategies to implement the UNCRPD**

No strategy on the Convention implementation has been developed so far. However, a new National Programme of developing the living conditions of persons with disabilities has been under preparation, based on the Convention on the Rights of Persons with Disabilities and could serve as a national strategy. By Resolution no. 158 of 2 March 2011, the Government approved the Statute of the Government Council for Human Rights, Minorities and Gender Equality and also abrogated the Council of the Government for people with disabilities. The role and functions of the Council of the Government for people with disabilities have been taken over by the Committee for People with Disabilities, a standing expert body of the newly established Government Council for Human Rights, Minorities and Gender Equality. The Statute of the Committee for People with Disabilities has been approved by the Council on June 27<sup>th</sup> 2011.

The newly constituted Committee for Persons with Disabilities made the finalization of the National Programme for the Development of living conditions of persons with disabilities its priority, in line of which the Committee established a specialised expert working group to deal with this issue in more detail. The deadline for completion of the National Programme

for the Development of living conditions of persons with disabilities is envisaged for the end of 2012.

## **2.2. Monitoring of the UNCRPD**

### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

The Slovak Republic has currently not established an unambiguous, independent mechanism for promoting, protecting and monitoring the Convention. Some conclusions in this respect can be however drawn from the recently approved Proposal for a Creation of the Nationwide Strategy on the Protection and Promotion of Human Rights in the Slovak Republic, which suggests mandating the current parliamentary ombudsman institution (The Public Defender of Rights) with the task of independent promotion, protection and monitoring of the rights of people with disabilities by creating a post of vice-ombudsman for disability issues. The finalization of the Strategy is set for the end of September 2012.

### **2.2.2. The involvement of civil society in the monitoring process (Article 33.3)**

Civil society, in particular persons with disabilities and their representative organisation (in accordance with Article 33 (3) of the Convention) have been preparing for the monitoring process through the National Council of Persons with Disabilities.

Apart from this, also the Statute of the Committee for People with Disabilities follows the principles of parity and direct participation, thus creating wide and relevant possibilities for people with disabilities to participate and influence the work of the Committee.

The Statute recognizes six different groups of organizations representing different types of disability - intellectual disability, chronic illness, mental and behavioral disorder, hearing impairment, physical disability, and visual impairment. According to the Statute, two representatives, elected by organisations representing different types of disability, became members of the Committee following a call for interest opened on July 4th 2011. In order to make the call widely accessible, it was marketed both on the internet and in one of the nationwide daily newspapers.

An initiative to create a nationwide coalition of organisations of people with disabilities and the independent monitoring mechanism shall be discussed during a thematic meeting of the Committee for People with Disabilities scheduled for February 21<sup>st</sup> 2012 (focusing on UNCRPD implementation process and related issues).

### **2.2.3. Collecting statistics and/or developing indicators (Article 31)**

At present, there is no national coordination of disability research in Slovakia either in terms of research institutions or explored topics. The final available research products on issues related to disability and the lives of the disabled and their families are rather matter of individual research initiatives of various, mainly publicly-funded institutions. For working purposes, these can be divided into several groups:

- *Sectoral Disability Research* (these are mostly different research projects thematically linked to the selected topical issues addressed in the scope of individual sectoral Ministries, such as sector of Labour, Social Affairs and Family, sector/ of Education, Science, Research and Sport, Ministry of Culture, etc.)
- *Disability Research conducted by universities and the Slovak Academy of Sciences* (this refers to different research projects implemented with the support of national grant schemes, such as VEGA, and international grant schemes)
- *Research implemented by independent and civil society organizations* (such as IVO/Institute for Public Affairs, SOCIA Foundation, Slovak Disability Council etc.)

The Statistical Office of the Slovak Republic does not collect data regarding people with disabilities disaggregated by gender, age, education or various types of disability (physical, visual, auditory, intellectual/learning, mental, internal), the cause of the disability, level of independence, economic activity or whether they live in home/community-based environment/independent living or in institutional settings. In the framework of the ESSPROS methodology – European System of Integrated Social Protection Statistics, there are data on the number of recipients of disability pensions, including recipients of disability pension for youth, and data on expenditure on disability social benefits.

In 2009, the Statistical Office conducted a pilot project that aimed to prepare and test the Slovak version of the European Disability and Social Integration Module (EDSIM). Given the fact that testing of the Slovak version of questions of the module was carried out on a small sample, the results of the survey were not representative and were not published. Outputs from the project were provided to Eurostat.



## Slovenia

### 2.1. National Implementation of the UNCRPD

#### 2.1.1. Focal points and coordination mechanisms for implementing (Art. 33.1)

The [Ministry of Labour, Family and Social Affairs](#) was designated as the focal point within government for matters relating to the implementation of the Convention in accordance with the Act on ratification of UNCRPD and the Protocol, in accordance with the Slovenian system of disability policy.

Within the National Assembly there is a special Committee on Labour, the Family, Social Policy and Disability and within the National Council of the Republic of Slovenia there is a special independent Commission for Social Care, Labour, Health and the Disabled (the current president of this commission is a person with a disability).

The framework of organisations which are also dealing with disability issues in Slovenia is composed of the [National Council of Disabled People's Organisation of Slovenia \(NSIOS\)](#) with its representative and other disabled people's organisation working on a national level and of several expert and governmental institutions.

#### 2.1.2. National strategies to implement the UNCRPD

In 2006, the Slovenian Government accepted the Action Programme for Persons with Disabilities 2007-2013. The program is based on the Convention on the Rights of Persons with Disabilities, as well as on other UN documents, Action Programme of the EU for persons with disabilities and on the Action Programme of the Council of Europe. Slovenian Government approves a yearly report on implementation and control of the objectives and measures of APPD ([report for 2010 – in Slovenian only](#)).

The purpose of Slovenia's Action Programme for Persons with Disabilities is to promote, protect and ensure the full and equal enjoyment of all human rights by persons with disabilities, and to promote respect for their inherent dignity. The program comprises twelve fundamental objectives together with 124 measures, comprehensively governing all spheres of persons with disabilities life, and referring to the period 2007 – 2013.

The last section of Action [Programme for Persons with Disabilities 2007-2013 \(APPD\)](#) includes a list with several actions for the implementation and control of the objectives and measures laid down in the APPD. Participation of civil society is provided for in 2<sup>nd</sup> article: "ensuring that disabled people's organizations are fully involved in control procedures". Further to that a Disabled Organisations Act (article 4) prescribes that all the state institutions should consult with Disabled People's Organisations in all matters concerning the planning of national policy and actions to ensure equal opportunities and equal treatment of disabled people.

A special Governmental committee was established to control the implementation of actions laid down in the APPD and has the task to prepare an annual report to be send to the Ministry of Labour, Family and Social Affairs. Members of this committee are representatives of all

relevant ministries, institutions and of the NSIOS, as representatives of persons with disabilities.

The goals of the Action Programme for persons with disabilities 2007-2013 are to:

1. Expand awareness throughout society regarding persons with disabilities, their contribution to the development of society, rights, dignity and needs;
2. Ensure that all persons with disabilities have the right to decide, on an equal basis with others and without discrimination, where they wish to live and have the right to fully participate in community life;
3. Ensure that persons with disabilities have access to the physical environment, transport, information and communications;
4. Ensure, on an equal basis with others and without discrimination, an inclusive educational system at all levels and lifelong learning;
5. Ensure that persons with disabilities have access to work and employment without discrimination in a work environment that is open, inclusive and accessible;
6. Ensure that persons with disabilities have an adequate standard of living, financial assistance and social security;
7. Ensure to persons with disabilities effective health care;
8. Enable persons with disabilities' full inclusion in cultural activities and collaboration in the area of accessibility of cultural materials on an equal basis with others;
9. Ensure persons with disabilities' participation in sports and cultural activities;
10. Ensure that persons with disabilities can participate in the religious and spiritual activities of their communities on an equal basis with others;
11. Strengthen the position of organizations of persons with disabilities;
12. Detecting and preventing violence and discrimination against persons with disabilities.

## **2.2. Monitoring of the UNCRPD**

### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

According to Article 28 of the Equalization of Opportunities for persons with Disabilities Act (Official Gazette, 94/2010), the Council for Persons with Disabilities of the Republic of Slovenia (hereinafter: Council) shall be an independent tripartite body; it shall be composed of representatives of DPOs, representatives of professional institutions in the field of protection of persons with disabilities and representatives of the Government of the Republic of Slovenia. The tasks of the Council shall include promotion and monitoring the implementation of the Act Ratifying the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities, too.

The Act provides that “the ministry responsible for the protection of persons with disabilities shall perform professional, administrative and technical tasks for the Council” and that “funds for the work of the Council shall be provided from the budget of the Republic of Slovenia”.

Until the establishment of the Council in 2013, the Government Council for the Disabled will perform its functions.

Big efforts to protect, promote and monitor the UNCRPD are provided by NSIOS whose mission is the systemic implementation of human rights of disabled people and their legal representatives as well as full inclusion and equality of disabled people in all social areas. In this sense NSIOS is also constantly pursuing to examine Slovenian legislation and provide initiatives for its amendments in accordance with the interests of the disabled; to participate in the preparation of new legislation and to verify whether the interests of disabled people and their organisations are adequately taken into account in the proposed laws. NSIOS also encourages the provision of equal opportunities for disabled persons in the society and is always asserting the principle “nothing about disability without disabled”.

### **2.2.2. The involvement of civil society in the monitoring process (Article 33.3)**

Civil society and in particular persons with disabilities and their representative organizations are involved and fully participate in the monitoring process through the Government Council for persons with disabilities of the Republic of Slovenia. They may also submit proposals directly to the drafts of Acts, to the Programmes and are participating at working groups.

The Government Council for Persons with Disabilities ensures that persons with disabilities are given due consideration in all national programme documents and gives expert opinions on proposed acts and implementing regulations.

Besides, the Council discusses all legal acts concerning the status of persons with disabilities in different stages of drawing up and adoption, it monitors the implementation of adopted legal acts and draws attention to problems and deficiencies that arise in the process. Within international cooperation the Council keeps itself informed of new developments in the EU concerning persons with disabilities (reports of ministries, NSIOS and representative organisations of persons with disabilities). The Council considers expert reports of institutions operating in the field of protection of persons with disabilities. It draws up opinions and positions on documents the relevant ministries prepare for the Government and on initiatives and proposals submitted to it by disability organisations, social economy organisations, professional institutions and individuals.

The Council is tripartite – it consists of representatives of representative disability organisations, Government representatives and experts. Of fifteen members, five are representatives of organisations of persons with disabilities.

Under the Slovenian Act on disability organizations adopted in 2002, Article 4 on Engagement to consult disability organisations provides that "Disability organizations participate in shaping the national policies and measures for providing equal opportunities and equal treatment of persons with disabilities. National authorities consult disability organizations on all matters from previous paragraph" Furthermore Article 10 states that, disability organizations among other define interests and defend the needs of persons with disabilities on all levels concerning the life of disabled persons and contribute to the awareness of general public and have an impact on changes in favour of disabled persons, plan, organize and perform program

Representative and other disability organizations functioning on national level can join into a national council of disability organizations - National Council of Organisations of Persons

with Disabilities. The goal of the Council is to coordinate the interests of all persons with disabilities in the country, respecting the autonomy of each disability organization and to represent them in the dialogue between professional associations, national authorities, public institutions and other stakeholders. The National Council proposes candidates for the representatives of persons with disabilities in the authorities of national institutions and authorities of international organizations and cooperation, and performs other commonly agreed activities.

The government and line ministries consistently respect this provision and consult the representatives of representative disability organizations on all important issues. Also public discussions on preparatory acts are being held at the same time.

### **2.3. Collecting statistics and/or developing indicators (Article 31)**

Statistics and data are collected by different institutions, for example by Ministry of Labour, Family and Social Affairs; the Employment Service of Slovenia; the Pension and Disability Insurance Institute of the Republic of Slovenia; the Statistical Office of Republic of Slovenia; the Fund for the Promotion of the Employment of the Disabled; the Health Insurance Institute of Slovenia; the Social Protection Institute of the Republic of Slovenia; the University Rehabilitation Institute – Soča, etc.

## Spain

### 2.1. National Implementation of the UNCRPD

#### 2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

The focal point for the UNCRPD is the Ministry of Foreign Affairs and Cooperation as well as the Ministry of Health, Social Services and Equality, through the Directorate-General for Disability Support Policies, which is responsible for the coordination of both.

The government coordination mechanism to protect, promote and monitor compliance with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) is the National Disabilities Council. The National Disabilities Council was designated in 2009 as the body of reference for the promotion and monitoring of international legal instruments in matters of the human rights of persons with disabilities, and in particular the implementation of the UNCRPD but it existed before that date and it was used by the government as an instrument for the coordination between all the Ministries.

This is a consulting body made up equally of representatives of all of the ministries and representatives of persons with disabilities. It was created in 2004 by Royal Decree 1865/2004<sup>16</sup>, which regulates the National Disabilities Council. It is assigned to the Ministry of Education, Social Policy and Sport and formalises the participation of the associative movement of people with disabilities, their families and the General State Administration in the definition and coordination of a coherent disability policy.

In particular, promoting equal opportunities and non-discrimination of people with disabilities is the task of this Council. To do so, and on account of the adoption of the UN Convention, the original responsibilities of the National Council on Disability have been modified and extended through Royal Decree 1468/2007<sup>17</sup>, of 2 November by adding the functions of constituting reference body for promoting and monitoring legal international instruments regarding the human rights for people with disabilities. The last modifications of the National Council on Disability were introduced by the Royal Decree 1855/2009<sup>18</sup>, of 4 December. Furthermore, the Commission on Integral Policies on Disabilities was created in the Congress of Deputies.

Spain is made up of Autonomous Communities. Considering the distribution of competences between the central government and the autonomous regions, the Ministry of Health, Social Services and Equality holds periodic meetings with the general directors responsible for disability policies in each autonomous region, through the Directorate-General for Disability Support Policies. The Ministry thereby ensures coordination between both levels of administration. The approval and operation of a mechanism such as that of the joint work methodology between the national government and the general directorates of the autonomous

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<sup>16</sup> [www.mtas.es/sgas/Discapacidad/ConsejoDisca/RD1865-04.htm](http://www.mtas.es/sgas/Discapacidad/ConsejoDisca/RD1865-04.htm)

<sup>17</sup> [http://www.mtas.es/sgas/Discapacidad/ConsejoDisca/RD1865\\_04modif.pdf](http://www.mtas.es/sgas/Discapacidad/ConsejoDisca/RD1865_04modif.pdf)

<sup>18</sup> <http://www.boe.es/boe/dias/2009/12/26/pdfs/BOE-A-2009-20890.pdf>

regions in matters of disability encourage the putting into practice of the focal points and the obligations set forth in the UN Convention at the Spanish regional government level.

### **2.1.2. National strategies to implement the UNCRPD**

Spain ratified the UNCRPD and the Optional Protocol, and has been incorporated into national law.<sup>19</sup>

In Spanish Law, the evolution of disability towards a social model had already occurred before the coming into effect on 3 May 2008 of the Convention. This evolution started with the adoption of the Law 13/1982 of 7 April, on Social Integration of Disabled Persons (LISMI) and culminates with the adoption of the Law 51/2003, 2 December, on equal opportunities, non discrimination and universal accessibility of people with disabilities (LIONDAU) and its implementing rules.

The Law 26/2011 for the normative adaptation to the UN Convention made progress in many areas, amending regulations and modifying several Spanish laws in response to the Convention, and including important positive action measures in health, housing, employment and other areas.

The first step taken within the global strategy for implementing the UNCRPD, was the creation of an inter-ministerial working group to draw up an integral study of Spanish law, with the objective of adapting it to the Convention's provisions. This group was approved by the Council of Ministers on July 10, 2009. It was presided over by the Ministry of Health and Social Policies (currently the Ministry of Health, Social Services and Equality) and included all the ministries. It was advised by the CERMI (Spanish Committee of Representatives of Persons with Disabilities). The work group conclusions contained basic information for the first Spanish Report sent to the UN Committee of the CRPD on 3 May 2010.

A permanent inter-ministry work group continues working in different areas such as education, justice, culture, etc. Specific forums were created in these areas like the Inclusive Education Forum which is working in the modification of the university law and the Justice and Disabilities Forum which is analysing matters of the article 12 of the UNCRPD.

The UN Committee on the Rights of Persons with Disabilities considered the initial report of Spain (CRPD/C/ESP/1) at its 56<sup>th</sup> and 57<sup>th</sup> meetings, held on 20 September 2011, and adopted concluding observations at its 62<sup>nd</sup> meeting, held on 23 September 2011, that constitute a framework to continue with the work of implementing CRPD in Spain.

The Spanish Disability Strategy 2012-2020, approved in November 2011, has been elaborated taking into account the principal areas of concern and recommendations made by the Committee, as well as the general targets established in Europe 2020 and the specifics of the EU Disability Strategy 2010-2020.

The III Action Plan for Persons with Disabilities is still in force, and sets the government's strategy for 2009-2012 in matters of disabilities; this falls within the framework laid down by the UNCRPD.

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<sup>19</sup> [boe.es/aeboe/consultas/bases\\_datos/doc.php?id=BOE-A-2008-6996](http://boe.es/aeboe/consultas/bases_datos/doc.php?id=BOE-A-2008-6996)

The Spanish Strategy of Action for the Employment of People with Disabilities 2008-2012 is another governmental initiative in order to promote quality employment for persons with disabilities and prevent any kind of discrimination in the labour conditions.

The periodic meetings with the general directors of the autonomous regions' governments allow to promote the measures for compliance with the Convention within their areas of authority, as part of their action plans for persons with disabilities.

All of the mechanisms began early in their work of promoting, protecting and monitoring the UNCRPD. One reflection of this was the joint Declaration<sup>20</sup> supporting the UNCRPD, signed by the Ministry of Foreign Affairs and Cooperation, the Ministry of Labour and Social Affairs (currently the Ministry of Health, Social Policies and Equality), CERMI and the ONCE Foundation.

At the same time, the dissemination of the UNCRPD has been a priority in the actions undertaken. Thus, the Convention has been published and distributed in different accessible formats: Easy to read (Real Patronato de Discapacidad and the CNSE Foundation), audio format (ONCE Bibliographic Service), Spanish and Catalan sign language (Real Patronato de Discapacidad and the CNSE Foundation) and in Braille. Likewise, it has been translated into all of the official languages: Spanish, Basque, Galician and Catalan. All these formats are available at: <http://www.convenciondiscapacidad.es/convencionESPANA.html>

## **2.2. Monitoring of the UNCRPD**

### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

The Royal Decree 1855/2009<sup>21</sup>, which modified the regulation of the National Disabilities Council mentioned above, designates it as the body of reference for the promotion and monitoring of international legal instruments in matters of the human rights of persons with disabilities, and in particular the implementation of the UNCRPD. The National Disabilities Council created the CERMI (Spanish Committee of Representatives of Persons with Disabilities), applying the provisions of article 33.2, as the first independent civil society organization. This also fulfills the provisions of article 33.3, concerning the monitoring and follow-up of the Convention's application in Spain.

### **2.2.2 The involvement of civil society in the monitoring process (Article 33.3)**

The Ministry of Health, Social Services and Equality works very closely with civil society and promotes its involvement. Different mechanisms have been created, both on the Ministry's initiative and by the principal organizations of representatives of persons with disabilities. Among them are:

- The participation of the academic sector, through Madrid's Carlos III University, in the elaboration of reports relative to Spanish legislation that needs to be adapted to the provisions of the UNCRPD.
- The permanent link with the European Disability Forum (EDF) through the Social and International Relations Area of the ONCE Foundation, headquartered in Brussels.

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<sup>20</sup> <http://sid.usal.es/idocs/F3/LYN10297/3-10297.pdf>

<sup>21</sup> <http://www.boe.es/boe/dias/2009/12/26/pdfs/BOE-A-2009-20890.pdf>

- The web page<sup>22</sup> created by the CERMI to offer specialized information on the UNCRPD, which represents a fundamental instrument for promoting, disseminating and raising awareness of the principles of this agreement.

All projects on regulations and general plans concerning people with disabilities are consulted through the National Disability Council, in which organizations of people with disabilities and their families are represented.

People with disabilities have access to all public means of training that are of interest and likewise, they have programmes financed by Public Administrations and other collaborators that are undertaken by their organizations in order to favour their competence and skills.

Dialogue is open permanently by these Organizations and those who represent them.

### **2.2.3. Collecting statistics and/or developing indicators (Article 31)**

In Spain, the National Statistics Institute (INE in its Spanish initials) has been carrying out a macro survey on disabilities since 1986. The updated edition of this survey was published in 2008, under the title: Encuesta sobre Discapacidades, Autonomía personal y Situaciones de Dependencia<sup>23</sup> (Survey on Disabilities, Personal Autonomy and Dependent Situations).

As a consequence of Spain's ratification of the UNCRPD, and as relates to Article 31, the government initiated a project to include the disabilities indicator in all of the active population statistics produced by the INE.

A new yearly statistical operation called Employment of Persons with Disabilities (EPD 2008: Empleo de las Personas con Discapacidad<sup>24</sup>) was first published on 20 December 2010 as a pilot project. This data collection, elaborated by the Statistics National Institute of Spain (INE), focuses on the employment of people with disabilities, but also includes information about educational levels of people with disabilities aged 14-64. EPD is prepared through the exploitation of data from the Economically active population survey (EPA) and the National Database of people with disabilities (BEPD) with the collaboration of Spanish Committee of People with Disabilities and ONCE Foundation (Spanish National Organization of Blind).

The results became from the crossing statistics data of the two sources mentioned above (EPA and BEPD) so that it was possible to combine the socio-demographic and labour force information with the people who has recognized a legal disability situation equal or up to 33% in the Spanish legislation. The use of survey and administrative data have the advantage of less budget cost and also make less burden in the answers of the informers.

In December 2011, INE published the detail results for year 2009-2010 of the EPD statistical operation. INE also receives information about persons with disabilities and their situation

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<sup>22</sup> <http://www.convenciondiscapacidad.es>

<sup>23</sup> <http://www.ine.es/jaxi/menu.do?type=pcaxis&path=/t15/p418&file=inebase&L=0>

<sup>24</sup> <http://www.ine.es/jaxi/menu.do?type=pcaxis&path=%2Ft22%2Fp320%2Fa2008%2F&file=pcaxis&N=&L=0>



through bodies like Observatorio Estatal de la Discapacidad<sup>25</sup>, Real Patronato de la Discapacidad<sup>26</sup> and the information system named SID<sup>27</sup>.

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<sup>25</sup> <http://www.observatoriodeladiscapacidad.es/>

<sup>26</sup> <http://www.rpd.es/>

<sup>27</sup> <http://sid.usal.es/>

## **Sweden**

### **2.1. National Implementation of the UNCRPD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)**

The Division for Family and Social Services of the Ministry of Health and Social Affairs is responsible for the co-ordination of disability policy within the Government and has been appointed as the national focal point for matters related to the United Nations Convention on the Rights of Persons with Disabilities.

The Family and Social Services Division of the Ministry of Health and Social Affairs is also leading a working group within the Government consisting of civil servants representing the following ministries: Ministry of Employment, Ministry of Culture, Ministry of Justice, Ministry of Education and Research, Ministry of Health and Social Affairs, Ministry of Finance and the Ministry of Enterprise Energy and Communication. The purpose of this group is to mainstream disability policy within the Government.

Furthermore, The Swedish Agency for Disability Policy Coordination (Handisam) plays an important role in co-ordinating, monitor and accelerating disability policy by supporting the sectoral authorities tasked with implementing the national plan for disability policy.

#### **2.1.2. National strategies to implement the UNCRPD**

The current disability policy was established already in the year of 2000 when the Swedish Parliament passed the Government Bill “From patient to citizen: a national action plan for disability policy”. This decision by the Parliament represented a step of fundamental importance for Swedish disability policy. Since then the objective of disability policy has been a society that makes it possible for disabled people to fully participate in the life of the community. The aim is to mainstream a disability perspective in all sectors of society by identifying and removing obstacles to full participation for people with disabilities. Another goal is to prevent and fight discrimination against people with disabilities and to make it possible for boys and girls, men and women to lead independent lives and to make their own decisions about their own lives.

The ten-year action plan ended in 2010. The Government has decided a strategy for the future disability policy during 2011. The implementation of the UNCRPD forms the basis of the future disability policy. In the strategy the Government presents a number of strategic objectives for disability policy in nine priority areas for the coming five-year period: physical accessibility, IT policy, social policy, education policy, labour market policy, the judicial system, transport policy, public health policy, and culture, media and sport policy.

Within these areas the strategy defines the direction and give concrete form to how society’s measures will be implemented, coordinated and consolidated, and continuously monitored in order to develop disability policy.

### **2.2. Monitoring of the UNCRPD**

#### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

In October 2010, the Delegation for Human Rights in Sweden presented its final report with proposals on, inter alia, how the system for national implementation of human rights can be strengthened. One of the proposals of the Delegation was the establishment of a national institution for human rights. According to the proposal, such an institution should be provided with a broad mandate to protect and promote human rights according to all human rights conventions ratified by Sweden, including the CRPD. The Delegation's report features contributions from a wide range of actors in society and has also been the topic of a consultation process during the autumn of 2011. At present, the Delegation's proposals are being considered within the Government Offices as part of the elaboration of Sweden's third human rights action plan, which is planned to be finalised during 2012. The proposal of establishing a national human rights institution with the mandate to protect and promote the rights under the CRPD and other human rights conventions is being considered within that context.

In the meantime the responsibility of protecting and promoting the rights proclaimed in the CRPD lies within existing state agencies in accordance with their respective mandates. In that context, the Family and Social Services Division of the Ministry of Health and Social Affairs and the Agency for Disability Policy Coordination (Handisam) play an important role.

### **2.2.2. The involvement of civil society in the monitoring process (Art. 33.3)**

The Government has established a committee as a forum for mutual information and discussions (according to standard rules 17 and 18). The Minister for Elderly Care and Public Health at the Ministry of Health and Social Affairs, who is responsible for disability policies, is chairing the committee which is composed of members of the Swedish disability organisations together with State Secretaries from seven Ministries. Members of the committee meet four times a year and the agenda for the meetings are prepared jointly between the government and the disability movement.

The co-operation with people with disabilities and their representative organisations is of great importance. In an agreement between the Government, non-profit organisations in the social area and the Swedish Association of Local Authorities and regions, it is stated that the relationship between the Government and the non-profit organisations is to be characterised by responsibility and mutuality, be based on the circumstances of both and utilise the perspectives and expertise of both. The agreement also contains a description of the principles which should apply to cooperation between the disability movement and the Equality Ombudsman. At the moment the interacting between the Government and people with disabilities and their representative organisations are being under discussion in order to develop the dialogue in accordance with the Convention.

In almost all local municipalities there are local councils dealing with disability policies. The Swedish Agency for Disability Policy Coordination (Handisam) has the task to raise awareness about the UN Convention amongst people with disabilities, authorities, politicians and stakeholders throughout the municipalities and county councils. In 2010 Handisam was granted slightly more than 190 000 EUR for this purpose.

The leading principle is dialogue and before any major step is taken in the policymaking process the dialogue intensifies with different kinds of public debates. In the governments public inquires civil society and disability organisations are among the respondents.

The Swedish Disability Federation has been granted 5,3 millions SEK from The Swedish Inheritance Fund to run a project with the purpose of raising awareness about the UN Convention amongst people with disabilities, authorities, politicians and stakeholders. Disability organisations are also frequently used as bodies to which a proposed measure is referred to for consideration. Civil society usually produces shadow reports in connection to the Governments reports, which are given high priority. In almost all local municipalities there are local councils dealing with disability policies.

### **2.2.3. Collecting statistics and/or developing indicators (Article 31)**

Statistics Sweden (SCB) is a governmental administrative agency under the Ministry of Finance. The agency supplies statistics for decision making, debate and research to ministries and other customers. Besides producing and communicating statistical data, it is tasked with supporting and coordinating the Swedish system for official statistics. The agency also produces national population studies. Another state agency that produces reports related to people with disabilities is the Swedish National Institute of Public Health. The Institute works to promote health and prevent ill health and injury, especially for population groups most vulnerable to health risks. The institute produces reports on public health on a regular basis.

The definition of disability in Sweden is related to the environment and not to the diagnoses or level of impairment of the individual. The statistics that are provided in the field of disability can therefore be seen as somewhat scattered or fragmented. You would find rather precise statistics in connection to different support system or special support measures directed to a well defined group of persons. However, people with disabilities that are not entitled to, or chose not to receive support within the social service system or in the labour market, would be difficult to find within the existing statistics. Some groups within the disability sector, such as persons with minor cognitive disabilities or group of persons with psychiatric disabilities would therefore be very hard to define.

There are continuously a lot of individual studies made in the field of disability. This is of course an opportunity to extract trends or indication of problems also for a broader group of people. Still, there is a need to strengthen the provision of longitudinal statistics in the field of disability. One way of doing this is to use general population studies combined with a well defined screening process to distinguish if a person might be classified as a person with disability or not. Screening questions would probably also be able to roughly distinguish what kind of impairment is causing the disability.

To promote this work the government is planning to deal with related issues of methodology. The government is also considering ways to find indicators that will enable monitoring of this group and their performance/situation in those fields where statistics are underdeveloped.

The general strategy for Swedish disability policy is to include disability into all relevant political areas. Therefore there is also a need to measure the development of the society from the perspective of accessibility and inclusion of persons with disabilities. To promote this the governmental authority Handisam is developing a system of indicators that will measure the progress of accessibility for persons with disability in a broad range of areas.

There will always be a need for special studies as a complement to statistics based on the population. There have been initiatives to create a more holistic system for provision of statistics and data in the field of disability. A number of legal restrictions is however preventing interconnection of such a coherent statistical system. This is a difficult balance between protection of personal integrity and needs of data and a question that the government is continuously considering and investigating.

Furthermore, the Delegation for Human Rights and the Swedish Agency for Disability Policy Coordination have recently finished a project on indicators for the implementation of certain selected human rights. The project also includes indicators relating to the rights of persons with disabilities.

## **United Kingdom**

### **2.1. National Implementation of the UNCRPD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)**

The Office for Disability Issues (ODI)<sup>28</sup> is the designated focal point within the United Kingdom Government for matters relating to implementation of the Convention. It also fulfils a coordination role, liaising closely with other Government Departments and the UK's Devolved Administrations, (in Northern Ireland, Scotland, and Wales), on matters relating to the Convention. For example, ODI coordinated the UK's report on implementation of the Convention and continues working with other Government Departments and the Devolved Administrations on coordination issues with a view to avoiding duplication, and using existing co-ordination structures where appropriate.

The responsibility for actively implementing the Convention in respect of areas that fall within their policy remits rests with individual Devolved Administrations and Government Departments.

Ministers, ODI and officials in other Government Departments, regularly meet disabled people and their organisations to discuss a wide variety of issues including the Convention. Similar arrangements operate in the Devolved Administrations.

#### **2.1.2. National strategies to implement the UNCRPD**

The UK Government is developing an overarching Disability Strategy to coordinate work towards disability equality. Disabled people's rights as set out in the Convention will be an integral part of the Strategy. The Strategy will demonstrate the UK Government's commitment to overcoming the barriers which prevent disabled people from fulfilling their potential and having opportunities to play a full role in society. It is likely to focus on three main areas identified by disabled people:

- Realising aspirations: ensuring appropriate support and intervention for disabled people at key life transitions, to realise disabled people's potential and aspirations for education, work and independent living.
- Individual control: enabling disabled people to make their own choices and have the right opportunities to live independently; and
- Changing attitudes and behaviours: promoting positive attitudes and behaviours towards disabled people to enable participation in work, community life and wider society, tackling discrimination and harassment wherever they occur.

The aim is for the Strategy to be published later in 2012.

The Disability Strategy will mainly apply to England, except where issues are not devolved to Wales, Scotland and Northern Ireland. The devolved administrations will adopt their own strategic approaches to the achievement of disability equality.

### **2.2. Monitoring the UNCRPD**

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<sup>28</sup> <http://www.odi.gov.uk/>

### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Art. 33.2)**

The UK's four equality and human rights commissions, i.e. the Equality and Human Rights Commission (EHRC), the Scottish Human Rights Commission (SHRC), the Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission for Northern Ireland (ECNI)<sup>29</sup>, have been designated as the independent element of the UK's framework to promote, protect and monitor implementation.

The four Commissions, as the independent element of the UK framework, are developing their plans in respect of promoting, protecting and monitoring implementation of the Convention in the UK. The four Commissions meet regularly and where they consider it appropriate to do so, co-ordinate their activities. For example, in January 2010 the SCHR ran an event on the Convention in conjunction with the EHRC's Scotland Office and the Scottish Government.

The EHRC has information on its website about the Convention, and how its work relates to the Convention and its role within the framework to promote, protect and monitor implementation. The EHRC had worked to promote the Convention, for example by: hosting conferences to raise awareness of the Convention; publishing their 'Hidden in plain sight – Inquiry into disability related harassment' report (August 2011); producing 'What does it mean for you?' guidance about what the Convention can mean for disabled people and their organisations (published Summer 2010); and working with legal professionals and legal advisors to increase awareness and use of the Convention.

### **2.2.2. The involvement of civil society in the monitoring process (Article 33.3)**

The UK government recognises that the involvement and participation, of disabled people and their organisations is crucial for the success of the Convention. Departments and Devolved Administrations are actively encouraged to involve disabled people in policy development.

The UK government is developing a new Disability Strategy aimed at enabling disabled people to fulfill their potential and have opportunities to play a full role in society.

The 'Fulfilling Potential' discussion document published on 1 December 2011 asked disabled people, their organisations and those who support disabled people to explore how the new disability Strategy should be framed and what actions would be both realistic and have the greatest impact. <http://odi.dwp.gov.uk/odi-projects/fulfilling-potential.php>

The Strategy will build on previous involvement of disabled people including the Independent Living Strategy in England and Wales and the Roadmap as reported in previous UK contributions to HLG reports.

Scotland and Northern Ireland have involved disabled people and their organisations in the development of their own disability strategies covering areas where powers are devolved.

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<sup>29</sup> [www.equalityhumanrights.com/](http://www.equalityhumanrights.com/)  
<http://www.nihrc.org/>  
<http://scottishhumanrights.com/>  
<http://www.equalityni.org/site/default.asp?secid=home>

### **2.2.3. Collecting statistics and/or developing indicators (Article 31)**

In December 2011 the UK has published the baseline results of fieldwork conducted between June 2009 and March 2011 on the Life Opportunities Survey (LOS). This survey aims to collect information on disabled and non-disabled people's life opportunities, covering areas such as work, education, social participation and the use of public services. It also aims to identify the reasons why people do not take part in work or leisure activities that they would like to, or why people experience difficulties with using public services. The information provided will be used to help target policies and resources where they are needed. <http://odi.dwp.gov.uk/disability-statistics-and-research/life-opportunities-survey.php#how>



## **European Union**

### **2.1. Implementation of the UNCRPD**

#### **2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)**

On 26 November 2009, the Council of the European Union adopted the Decision<sup>30</sup> concerning the conclusion, by the European Union, of the UNCRPD. It designates the European Commission as a focal point, both vis-à-vis Member States to the extent of Union competence as well as to the Union's institutions. On the 2 December 2010, the Council adopted the Code of Conduct, which further specifies internal arrangements for the implementation and the representation of the EU.<sup>31</sup> Point 11 in the Code of Conduct further elaborates the role of the EU focal point. The adoption of the Code of Conduct enabled the EU completing the procedure of conclusion of the Convention by depositing its instruments of formal confirmation with the UN Secretary General in New York on 23 December 2010. As a party to the Convention, it is currently working on implementing the UNCRPD to the extent of the EU's competences. It also works to promote a stronger and better coordination within its services, with the other EU institutions and with the Member States. Coordination for the implementation of the UN CRPD within the EU institutions takes place within the ad-hoc committee of CPAS. The Council within its relevant working group allows for coordination with the Member States, also with the possible involvement of the Disability High Level Group.

The Code of Conduct sets out certain aspects of the coordination between the EU and the Member States, especially with regard to the coordination in establishing positions relating to the UNCRPD ( point 6), coordination of speaking and voting arrangements, and with respect to monitoring and reporting.

#### **2.1.2. Strategies to implement the UNCRPD**

On the 15 November 2010 the European Disability Strategy for the years 2010-2020 was adopted. It aims at ensuring effective implementation of the UN CRPD. It also marks a renewal of the EU's commitment to improve the situation of citizens with disabilities, sets the work plan and priorities for the coming years. The overall aim of the Strategy is to empower people with disabilities so that they can enjoy their full rights, and benefit fully from participating in society and in the European economy, notably through the Single market. It sets clear objectives to remove the barriers persons with disabilities meet in their everyday life.

The specific measures over the next decade are clustered around eight priority areas dealing with (1) Accessibility, (2) Participation, (3) Equality, (4) Employment, (5) Education and training, (6) Social protection, (7) Health, and (8) External Action.

The Strategy is accompanied by a Commission Staff Working Document that sets out a list of actions, with respect to each of the eight priority areas, for the first five years of the Strategy's

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<sup>30</sup> Council Decision 2010/48/EC, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:023:0035:0061:EN:PDF>

<sup>31</sup> Code of Conduct between the Council, the member States and the Commission setting out internal arrangements for the implementation by and representation of the EU relating to the UNCRPD

period (2010-2015).<sup>32</sup> Each action is also given an indicative timing. Progress in the implementation of those actions is subject to regular review, via the DHLG and the Commission's Inter-service group on Disability. The Commission will issue a progress report by the end of 2013. This, combined with the EU report to the UN Committee on the implementation of the Convention, due in 2013, will provide an opportunity to revise the Strategy and the actions. A further report is scheduled for 2016.

### **2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)**

Paragraph 13 of the Code of Conduct<sup>33</sup> setting out the intra-EU arrangement for the implementation of the UN Convention provides that the Commission shall propose in due course an appropriate framework (for one or several independent mechanisms), taking into account all relevant EU institutions, bodies and agencies<sup>34</sup>.

With a view to setting up a framework at EU level, the Commission has identified four separate existing EU institutions and bodies that currently exercise the tasks of promotion, protection and monitoring under their respective mandates:

- the European Parliament's Petitions Committee,
- the European Ombudsman,
- the European Commission,
- the EU Agency for Fundamental Rights (FRA).

They would form "**the EU framework**", together with the European Disability Forum (EDF), the EU wide representative organisation of persons with disabilities, in order to ensure the direct involvement of persons with disabilities and their representative organisations as required by art. 33.3 of the Convention<sup>35</sup>.

The Commission's proposal was presented to the member states in COHOM on 25 January 2012 and is still under discussion after a second COHOM meeting on 16 May 2012.

The EU framework's mandate covers areas of EU competence, and it is a complement to the national frameworks and independent mechanisms which bear the main responsibility for the promotion, protection and monitoring of the UNCPRD in the Member States.

The EU framework will carry out its tasks with respect to:

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<sup>32</sup> SEC(2010) 1324 final

<sup>33</sup> Code of Conduct between the Council, the Member States and the Commission setting out internal arrangements for the implementation by and representation of the European Union relating to the United Nations Convention on the Rights of Persons with Disabilities, OJ C 340, 15.12.2010, p. 11.

<sup>34</sup> Hereafter, the term "institution" will be used for simplicity, except where reference is made to the specific Treaty provisions.

<sup>35</sup> the Council, in point 23 of its conclusions on the European Disability Strategy, "*Support of the implementation of the European Disability Strategy 2010-2020*", 3099th Employment, Social Policy, Health and Consumer Affairs Council meeting Luxembourg, 17 June 2011 invited the Commission to involve civil society, in particular persons with disabilities and their representative organisations, in the implementation of the Convention at the EU level, as well as in the required monitoring and reporting activities.

- EU legislation and policy<sup>36</sup> in those areas where the Member States have transferred competences to the EU. This will be the main area of the framework's actions;
- the implementation of the Convention by EU institutions in their capacity as Public Administration (for example in relation to their employees and in their interaction with the public).

The Commission's proposal aims to ensure a simple, efficient and practical framework which, while respecting the separation of competences between the EU and the Member States, acts in complementarity with the frameworks and Independent Mechanisms established at member states' level, maximises the synergies between the work of existing bodies and institutions, and avoids an undue administrative and financial burden<sup>37</sup>.

Point 12 in the Code of Conduct sets out certain aspects of the monitoring and reporting, especially with regard to the respective competence of the EU and the Member States. It highlights the complementarity of EU and Member State reports and the need to work in the spirit of sincere cooperation. This means for instance providing each other with the reports for information, on a confidential basis, before submitting them to the Committee on the Right of Persons with Disabilities, and, on request, assisting each other with experts to the Delegations for the examination of the Reports by the Committee.

## **2.2 The involvement of civil society in the monitoring process (Article 33.3)**

In line with the principle of the EU Disability Strategy: "nothing about people with disabilities without people with disabilities" as well as with the Convention's obligation<sup>38</sup> to consult and involve representative organisations of disabled people when implementing the UN Convention, the Commission ensures participation of persons with disabilities, their families, their European representatives and relevant stakeholders in the development and implementation of disability policies.

People with disabilities are consulted through different channels and tools, such as, communications, consultation documents or participation in expert groups. Representatives of civil society and in particular of EU-level disability organisations are full members of the High Level Group on Disability where they have the possibility to raise their concerns, contribute to discussions, and co-draft policy documents.

In the development of the European Disability Strategy 2010-2020 there was extensive consultation with civil society, in particular representative organisations of persons with disabilities at European level. Besides the consultation with civil society in the DHLG, all NGOs active in the field of disability that are co-financed through the EU PROGRESS programme were invited to put forward their views as well as to dedicate part of their annual work programmes to activities related to the preparation of the new strategy, there was a consultative workshop with the main stakeholders, with participants representing civil society, sectoral business representatives and the social partners and public online consultation, where 101 replies on behalf of a wide variety of civil society organisations were received.

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<sup>36</sup> As illustrated in the EU declaration of competences annexed to Council Decision 2010/48 for conclusion of the Convention.

<sup>37</sup> As stated in the European Disability Strategy 2010-2020, Communication from the Commission to the European Parliament, The Council, the European Economic and Social Committee and the Committee of the Regions, "A renewed commitment to a barrier-free Europe", COM(2010) 636 final.

<sup>38</sup> Article 4.3

The yearly conference, the European Day of Persons with Disabilities, presents interested individuals and organisations advocating the rights of people with disabilities the opportunity to address their views to the European decision makers. In addition to the thematic discussion the conference expresses political commitment and offers networking possibilities. As the conference is organised by the Commission in partnership with EDF the positions of people with disabilities are considered at all stages. In 2011 the conference explored the way out of the financial and economic crisis from the perspective of persons with disabilities. Following up to the presentation of the Commission's proposals for the post-2013 Multiannual Financial Framework and the future of the EU's Cohesion Policy, it discussed how the European Union can support recovery for all in the context of Europe 2020. The European Day conference looked into how EU legislation, policies and funding can contribute both to promoting enjoyment of the rights enshrined in the UNCRPD and to finding a way out of the crisis.

The second edition of the Access City Award saw the participation of 114 cities from 23 EU countries – almost twice as many as for the inaugural edition in 2010. The project was endorsed by the EDF from the early phase of its preparation. Participation of civil society is an essential part of the Access City Award. First, the element of participation and involvement is reflected in the award criteria. One of the criteria looks at evidence of active involvement of people with disabilities, their representative organisations in the planning, implementation and maintenance of a city's accessibility policies and initiatives. In the selection procedure both at national level and also at the EU level, EDF representatives were actively involved.

The second Work Forum on the Implementation of the Convention of Persons with Disabilities, organised by the European Commission, took place in late October 2011. Civil society, DPO's in particular, was involved in the conception of the conference. The Forum focussed on the governance structures foreseen by Article 33, and in particular looked at how to coordinate the implementation of the Convention at both national and EU levels, analysing different aspects of coordination in three main sessions. The first session addressed implementation within the Member States; the second session was devoted to the coordination of the implementation at EU level; the third session, discussed issues of coordination in the process of reporting to the United Nations. The experience of the coordination with civil society in the preparation of parallel reports and the technical support provided by the International Disability Alliance were shared with participants.

The Work Forum benefited from active participation from a wide representation of Member States, from various Government Departments, NHRIs and a significant participation of people with disabilities largely through the European Disability Forum's (EDF) representative structures; it provided a platform for mutual learning, exchange of experience and provided an opportunity for constructive reflection and a dialogue on how to best involve persons with disabilities and their organisation.

The European Union also recognises that the empowerment of persons with disabilities needs sufficient financial support. The European Social Fund supports, among other things, projects to promote independent living, through staff training and modernising care systems. Furthermore, the Commission supports to running costs of various European organisations which have as their primary objectives to represent the interests of disabled people at Community level as well as organisations active in promoting equal opportunities for people with disabilities.

The European Union recognises the strength of European networks that lies in their capacity to gather and mobilise relevant members from different Member States into an open forum of discussion or exchange of expertise and experience able to inform and influence policy-making, as well as relaying EU action vis-à-vis network members.

Civil society has an important contribution to make towards effective implementation of the UN Convention. Making a difference requires a sustained, cohesive coalition capable of mobilising and analysing information, making that information available to key actors and mobilising many sources of influence. Representative organisations are in a central position to influence policy in the European Union and in the Member states through their national members. Influence is gained through the increased expertise and information which are important to policy formulation and implementation.

### **2.3. Collecting statistics and/or developing indicators (Article 31)**

Based on data provided by Eurostat, the Commission estimates that there are up to 80 million EU citizens with disabilities. They constitute one of the largest categories of vulnerable citizens in the EU.

Presently the proportion of persons with disabilities tends to be in the order of 10%<sup>39</sup> of the working age population across the Member States, with current demographic trends likely to lead to a further increase.

Available evidence suggests that persons with disabilities suffer explicit or concealed discrimination or are at risk of discrimination.

1) They are socially and economically disadvantaged:

- Employment rates for persons with very severe and severe degrees of disability are respectively 19,5% and 44,1%
- Incidence of poverty for persons with disabilities is 70% higher than average<sup>40</sup>

2) The limitations to the ability of persons with disabilities to work carry a significant risk of isolation and exclusion

- The "benefit trap" appears to be a significant obstacle for labour market participation of the persons with disabilities.

3) The limitations of opportunities of persons with disabilities to participate fully in education carry a significant disadvantage for personal development

- Measures to facilitate full inclusion of persons with disabilities at all levels of education would considerably improve their standing in the labour market and their social inclusion

As the likelihood of having an impairment or a long-standing health problem increases with age, the current demographic trend is likely to lead to a further increase of the prevalence of

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<sup>39</sup> According to the 2002 Labour Force Survey special module, Europe-wide average share of persons who see themselves as restricted in their functioning is 10.4% of the labour force. Further 5.2% have a long-standing health problem but do not see themselves as restricted. As incidence of disability increases with age, these proportions are higher among elderly persons.

<sup>40</sup> According to the 2004 EU-SILC data, over 17% of those aged 16-64 who were strongly limited in what they could do had income below the risk of poverty line compared to just over 10% of those not limited at all.

disability. Many areas mentioned above, such as content and structure of education, the norms for built environment and public spaces, leisure issues as well as social assistance are almost exclusively in the competence of the Member States. Often local authorities have a decisive role in monitoring these norms and delivering these services. The Member States are tackling these issues, but in different manners and to different degrees with very little coordination.

In order to ensure proper monitoring the collection of data is crucial. In this context and within Eurostat's annual work programme, activities in the European Statistical System (ESS)<sup>41</sup> will continue on further developing – through Partnership Health and in cooperation with international organisations – **Community statistics on disability and social integration** in order to provide the relevant and comparable statistical data needed to monitor the situation of people with disabilities.

More detailed statistical data on disability are also needed as part of health information in order to respond to the specific requirements inter alia those that result from the **Programme of Community Action in the field of Public Health (2003-2008)**<sup>42</sup>. Health information at Community level covers data ranging from health status - including disability – to health determinants, including demography, geography and socio-economic situations, personal and biological factors, and living, working and environmental conditions, paying special attention to inequalities in health. The development of the statistical element of health information is also integral part of Eurostat's annual work programme, with activities carried out in the context of Partnership Health and in cooperation with international organisations.

In general, the aim of producing comparable data on disability and on integration of people with disabilities into society can be achieved only by means of surveys that make use of common instruments. Health Interview Surveys (HIS) and Disability Interview Surveys (DIS) are widely accepted instruments that could provide comparable data for topics related to health, disability and social integration.

However, the main work related to disability statistics in 2007-2008 has been focused on development of the following initiatives:

*European health and social integration survey (EHSIS)*

The Council in its Resolution of 17 March 2008 on the situation of persons with disabilities in the European Union underlines that disability statistics are needed to establish a picture of the overall situation of persons with disabilities in Europe. Such statistical and research data allow informed disability policies to be formulated and implemented at the different levels of governance.

The Commission in its communication on a European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, {SEC(2010) 1323} {SEC(2010) 1324} emphasised that EU action will support and supplement Member States' efforts to collect statistics with a view to monitoring the situation of persons with disabilities. This action will be implemented through a call for tender (with 29/30 lots, one lot for each Member State, Norway and Iceland, plus a lot for coordination) to be launched in the second quarter of 2011.

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<sup>41</sup> European Statistical System, see:

[http://epp.eurostat.ec.europa.eu/portal/page?\\_pageid=1153.47169267,1153\\_47183518&\\_dad=portal&\\_schema=PORTAL](http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1153.47169267,1153_47183518&_dad=portal&_schema=PORTAL)

<sup>42</sup> Decision No 1786/2002/EC of the European Parliament and of the Council of 23 September 2002 adopting a programme of Community action in the field of public health (2003-2008), OJEC L 271/10

### *2011 LFS ad-hoc module on employment of disabled people*

The proposal was prepared by a Task Force. The aim of the module thus is to measure the extent of disabled people's participation in the labour market (and not to measure the prevalence of disabilities in general) following the current understanding of disability, in particular: 1) Limitation in work participation (in amount, type of work and transport to and from work) (3 variables), 2) Limitation in work participation related to health conditions or diseases (1 variables), 3) Limitation in work participation related to carrying out basic activities, 4) Use of or need for special assistance at work.

The common feature of these two actions is that the effort was made to incorporate/transfer the new concept of disability into questions and variables proposed. During the last three decades the conceptual approaches to the measurement of disability has changed. Three milestones in that evolution have to be mentioned 1) the medical model<sup>43</sup>; 2) the social model<sup>44</sup> and 3) the biosocial model<sup>45</sup>. The biosocial model incorporated into the International Classification of Functioning, Disability and Health (ICF, WHO 2001) attempts to bridge the gap between the medical and social models. The biosocial concept was followed also by the UN Convention on the Rights of Persons with Disabilities.

### *ANED, Academic Network of Disability expert*

The Commission supported in 2007 the establishment of an European Academic network of disability experts. The Network provides data collection, provides comments on policy papers and develops national and EU reports on the situation of persons with disabilities in Europe in a number of areas like employment, social inclusion and social protection, education, independent living, statistics and data collection. The network is also active on the development of indicators.

Particularly noteworthy are two key documents compiled by ANED, which have been thoroughly reviewed and updated in 2011:

- IDEE – Indicators of disability equality in Europe: the report includes presentation and discussion of 12 selected indicators; the main themes addressed are those of employment, post-compulsory education and household poverty. The study's key priorities were to populate and update a number of items of direct relevance to EU2020 indicators, and to present items of direct relevance to actions in the EU Disability Strategy (e.g. accessibility).
- Annotated review of European Union law and policy with reference to disability: the publication consists in a detailed review of EU legislation with reference to disability, from provisions in primary law to soft law instruments (Council recommendations, Parliament resolutions, or even studies or guidelines). The guiding principle for inclusion in the review was whether an instrument contributes to shaping European disability policy.

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<sup>43</sup> Disability regarded as 'a restriction or lack of ability to perform normal activities, which has resulted from the impairment of a structure or function of the body or mind (concepts and definitions based on the medical model resulted in the International Classification of Impairments, Disabilities and Handicaps (ICIDH) in 1980

<sup>44</sup> Disability results from interaction between individuals and non-inclusive society

<sup>45</sup> The ICF (WHO 2001) states that disability is a complex phenomenon that is both a problem at the level of a person's body and a complex and primarily social phenomenon i.e. it is a disadvantage experienced by an individual resulting from barriers to independent living or educational, employment or other opportunities that impact on people with impairments, ill health or activity limitations (difficulty seeing, hearing, walking ..)

Furthermore, ANED is developing an online tool with an overview of European and national instruments relative to disability and the rights of persons with disability. The tool will allow to identify availability and contents of the main instruments needed for the implementation of the UNCRPD.



## Civil society actions and strategies

### 2.1. Actions and strategies by civil society to implement the UNCRPD

**The Confederation of Family Organisations in the European Union** (COFACE) in 2011 dedicated several meetings of its working group *Inclusive policies for disabled and other dependent persons and their families* (COFACE-Disability) to the analysis of the UNCRPD. In particular, three policy positions were adopted:

- in April 2011, a policy position on [the Family Dimension of the UN Convention on the Rights of Persons with Disabilities](#). The position undertakes a systematic analysis of the family dimension of the Convention, illustrating the main implications of the CRPD for the improvement of the rights and wellbeing of persons with disabilities and their families. The position intends to raise awareness on the scope and relevance of the Convention among family organisations, policy makers and other representatives of civil society. A factsheet and a book containing the position and the full text of the Convention were produced.
- COFACE identified guidelines for an effective implementation of the right to inclusive education and published a policy [position on Inclusive education for persons with disabilities](#) in line with Article 24 of the UN Convention.
- In December, COFACE released a policy [position on Active ageing of Family Carers](#), in line with the European Year of Active Ageing and Intergenerational Solidarity. The position aims to stress the importance of the family carers and their specific needs, in line with the requirements of the Convention (among others in the Preamble and Art. 8 and Art. 28), to put families in the conditions of contributing to the full and equal realisation of the rights of persons with disabilities.

Some of COFACE member organisations (Unapei, UNAFTC, APF) also develop activities concerning the UNCRPD. Among them, APF and UNAFTC organised study days and held sessions (in other events such the Journées Nationales des Parents de l'APF) with a focus on the family dimension of the UN CRPD. Moreover, UNAPEI adopted an action plan to implement the UN CRPD and started to develop some awareness raising and information activities to implement the action plan.

**The European Disability Forum** (EDF) was active throughout the year at the European and international level and, in cooperation with its members, at the national level. In order to reinforce its capacity to promote the UNCRPD, it established an Advisory Group to the Board to provide technical expertise to the governing bodies on matters relating to implementation.

#### *Governance of the Convention at the EU level*

In May, EDF Annual General Assembly adopted the EDF strategy for implementation of the Convention. Implementation of *Article 33 CRPD “National implementation and monitoring”* has been identified as the main focus of EDF actions for 2011-2012.

Throughout 2011, EDF has held exchanges with the EU Fundamental Rights Agency, EQUINET, the European group of the National Human Rights Institutions, European Parliament, Commission, European Economic and Social Committee and NGOs, moving forward the agenda of good governance of the UNCRPD. EDF proposed the establishment of a European Disability Committee to replace and reinforce the current High Level Group as

coordination mechanism pursuant to article 33(1) of the UNCRPD. The EDF proposal was presented to the HLG members at one of the Group's meetings.

EDF also provided input to the EP resolution on the Disability Strategy 2010-2020, and contributed its expertise to the 2<sup>nd</sup> annual Work Forum on the implementation of the UNCRPD held in Brussels in October.

In December 2011, EDF was consulted by the Commission on its proposal for the establishment of the European independent monitoring framework pursuant to Article 33(2) CRPD. EDF found the proposal for a light-structured framework inadequate and voiced concerns that it would not comply with the CRPD standards and Paris Principles. At the same time, EDF drew the attention of the Council Human Rights Working Group (COHOM) to the shortcomings of the proposal and suggested a number of minimum conditions to be met.

In December, a High-Level Meeting on Disability was convened by the President of the Commission José Manuel Barroso. The meeting, co-chaired by the Commission and EDF Presidents, brought together the Presidents of the European Council and of the European Parliament, as well as EDF Executive Committee members. The meeting, to be reconvened in 2013, focused on the implementation of the Convention and ratification by the EU of the Optional Protocol, as well as the impact of the crisis on persons with disabilities.

#### *UNCRPD article-specific work at the European level*

In 2011, EDF started deepening its expertise of specific UNCRPD articles by contributing to legal debates at the international level: in January, it elaborated on UNCRPD *Articles 13 "Access to justice"* and *16 "Freedom from exploitation, violence and abuse"* in its third-party intervention to the European Court of Human Rights (ECtHR) on a case of disability hate crime; in July, it joined forces with other organisations to unwrap the protection standards of *Article 12 "Equal recognition before the law"* in a third-party intervention to the ECtHR on a case of forced sterilisations of women with disabilities; and in October, it addressed *Article 9 "Accessibility"* in a third-party intervention in a British Court of Appeal case on the rights of air passengers.

In May 2011, EDF joined forces with the European Network of Independent Living, International Disability Alliance, Mental Disability Advocacy Center, Open Society Foundation and Galway University to develop implementing guidelines for the right to live independently and being included in the community pursuant to *Article 19 UNCRPD*. Throughout the year, EDF participated in the activities of the expert group on transition from institutional to community-based services raising awareness on the right to live independently. It also discussed definition of community based services in its task force on service provision and quality control.

In March 2011, EDF and the European Trade Union Confederation co-organised a conference on the challenges in implementation of *Article 27 "Work and employment"*.

Throughout 2011, EDF campaigned in favour of legislation with regard to accessibility of websites for persons with disabilities, in order to implement *UNCRPD Articles 9 "Accessibility"* and *21 "Freedom of expression and opinion, and access to information"*. Mainstreaming of Article 9 has been an important priority in 2011: EDF actively monitored the commitment of the European Commission to ensure that any legislation produced under the Digital Agenda for Europe flagship of Europe 2020 is CRPD-compliant.

Implementation of the existing European legislation in light of Article 9 was also monitored: EDF issued a Toolkit on the Telecoms package, which contains many provisions in relation to accessibility of electronic communication products and services, to support its members in the transposition and implementation process at national level. EDF also followed the creation and developments of European standards by providing inputs to the standardisation mandates 376 and 420 European Accessibility Requirements for Public Procurement of Products and Services in the ICT domain and built environment, respectively.

To implement *Article 30(1)(b) "Participation in cultural life, recreation, leisure and sport"*, EDF monitored the developments in the cross-border provision of accessible television programmes in relation to implementation of the Audiovisual media Services Directive.

Throughout the autumn, EDF participated in an NGO campaign based on *Article 29 "Participation in political and public life"* and organised in its framework a roundtable at the European Parliament.

### **EDF members' work at the national level**

#### *Governance of the Convention at the national level*

In April, EDF launched a consultation with its members to better understand how the implementation of Article 33 UNCRPD was progressing in the Member States. The responses were received from organisations in 14 countries (Austria, Belgium, Czech Republic, Denmark, Germany, Hungary, Latvia, Lithuania, Romania, Slovakia, Slovenia, Spain and Sweden). The overall evaluation of the EDF members of the national efforts to set up an implementing and monitoring framework at the national level was rather negative. The focal points in most countries have been placed under the Ministry of Social Affairs and not allocated any additional resources to adequately do their work. The involvement of DPOs in the process has been described as inadequate; very few countries have taken steps to establish an independent mechanism that would be in full compliance with Paris Principles.

EDF participated and co-organised seminars on the implementation of the UNCRPD in Slovakia and Lithuania.

#### *Disability mainstreaming in the UN system*

EDF continued encouraging its members to make submissions to the international human right fora to mainstream disability issues throughout the UN system. This work is conducted in close cooperation with the International Disability Alliance. In 2011, EDF members from Austria, Denmark, Finland and Italy made written submissions to various UN Treaty Bodies and the Human Rights Council. These exercises have greatly improved the awareness of the EDF members about international human rights standards that can be used for the promotion of disability rights.

**The European Association of Service providers for Persons with Disabilities (EASPD)** and its member organizations across Europe have carried out several activities during 2011 with the purpose of promoting the implementation of the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

The importance of the UNCRPD has been stressed during the Executive Committee meeting in March 2011 and in the general Assembly of July 2011, where the UNCRPD has been

indicated as a reference document in all the work of the EASPD, very high on the EASPD agenda. This reference is also a milestone of the EASPD strategic choices for 2011 -2014.

#### *EASPD events and activities*

EASPD has organized a number of events and activities during 2011 with the objective of disseminating information on key articles of the UN Convention and facilitating the implementation at grassroots level. Among these are the following:

- 30th June-1st July 2011: EASPD organised a conference under the title “*Old? So what? Independent Living for Seniors with Disabilities*” bringing together stakeholders and experts from all over Europe to discuss independent living and individualized support in the mainstream services for elderly persons with disabilities.
- 3rd-4th October 2011 EASPD organized a closed seminar on the theme of deinstitutionalization in Western European countries. The seminar has been organized in cooperation with KVPS (the Service Foundation for Persons with Intellectual Disabilities) and was sponsored by Ray, Finland.
- 9th-10th November 2011: EASPD held in Brussels the final conference of the project *ImPaCT in Europe "Connect, Personalise, Care: Person Centred Technology for Greater Quality of Life"*, bringing together key stakeholders from across Europe to demonstrate how assistive technology can significantly support independence for people with disabilities in a person-centred way.
- 9th November 2011: EASPD celebrated its 15th anniversary by inviting members and friends to the European Parliament and renewing its commitment to the UNCRPD.
- During 2011 EASPD organised Provider Fora in Bulgaria, Estonia, Poland, Romania, Slovakia and Slovenia. In all these, the UNCRPD was presented to stakeholders and service providers. Specific Articles of the Convention, particularly within the fields of employment, education and independent living, were explored further.

EASPD has been involved in a number of projects during 2011. Amongst them are ImPaCT in Europe which finished the 31<sup>st</sup> of December 2011, and Pathway to Inclusion:

- ImPaCT in Europe was a two-year project which aimed to “accelerate the effective participation of target groups at risk of exclusion and improving their quality of life” by facilitating the development and implementation of PCT, stimulating the effective use of ICT-enabled services and competence building of the end users of PCT.
- EASPD is the promoter of the "Pathway to Inclusion" project to develop a sustainable network of all those committed to inclusive education.
- EASPD is partner of the project *INCLUSION – GALILEO* consortium, focusing on accessible solutions for people with limited mobility. The project will develop a satellite navigation system that will empower wheelchair users.

#### *Member organizations' events and activities for the implementation of the UNCRPD*

EASPD is a European network of service providers for persons with disabilities and has a great number of members across Europe. In 2011 these members have supported the implementation of the UNCRPD through numerous activities. Common for the service

provider organizations is that the UNCRPD is used as a guideline in their daily work providing services for persons with disabilities.

In cooperation with its members BAG:WfbM (Bundesarbeitsgemeinschaft Werkstätten für Behinderte Menschen) and Unapei (Union Nationale Des Associations De Parents et Amis de Personnes Handicapées Mentales), in 2011 EASPD has worked on the report "Analysis of the legal meaning of Article 27 of the UNCRPD". The Report deals with the role of sheltered workshops in light of the UNCRPD.

The main work for organizations in countries where the UNCRPD has not yet been ratified has focused on lobbying activities towards governments for ratification. To better reach this objective, in 2011 EASPD enlarged its membership to the Turkish organisation Dolunay Association of Adult Disability.

In countries where the Convention has been ratified the organizations have worked on promoting a correct implementation as well as internal and external awareness raising activities. Unfortunately, only a few organizations have been asked for involvement in the NRP's and few know the procedure of these.

Moreover EASPD developed a successful cooperation with AATE, the Association for the Advancement of Assistive Technology in Europe.

**The European Platform for Rehabilitation** (EPR) has undertaken a number of actions throughout 2011 that contribute to the implementation of the UN Convention on the rights of persons with disabilities (UNCRPD). EPR and its members have proactively engaged into the process of internalising the requirements and implications of the UN Convention in the delivery of services to persons with disabilities. At several occasions, the most relevant stakeholders at European and/or national level were involved in the discussions. EPR members are leading service providers to people with disabilities throughout Europe, and have undertaken actions to promote and implement the UNCRPD in practice.

- 2 March 2011: EPR organised in collaboration with Mrs. Frieda Brepoels, Member of the European Parliament, a Dinner Debate on 'the cross-border dimension of health and social services'. The rights of people with disabilities as well as a guarantee to quality of services were the starting points for the various speeches and discussions.
- EPR drafted an analytical paper on the EU Disability Strategy 2010 – 2020. Most emphasis was put on the implementation of the UNCRPD, and its implications for service providers in the domains of health, education, long term care, independent living, employment and rehabilitation.
- 16-17 June 2011: EPR organised a strategic workshop for directors on 'leadership in the rehabilitation sector'. The session highlighted different articles in the UN Convention, and looked into how directors and managers in the sector should use the Convention as overall guideline of their strategy and leadership.
- In the field of *Living independently and being included in the community* (Article 19), EPR promoted the International Classification of Functioning, Disability and Health (ICF) as a way to enhance a person's functioning and maximize participation in society in

general and in community in particular. EPR organized a benchmarking group (5-6 May in Hasselt) on the implementation of ICF within organizations from Germany, Portugal, Slovenia, the Netherlands and Belgium.

- During a two day training seminar (hosted by INTRAS in Valladolid on 21-22 September), professionals reflected on the growing need for specialised services throughout Europe to assist people with mental health problems.
- In 2011 the EPR Annual Conference was dedicated to ‘reintegration of young people with disabilities’. With a very high attendance of nearly 150 participants, this event – hosted by EPR Greek members in Athens - had a big impact on sharing experiences between rehabilitation professionals on the implementation of the UN Convention in this domain.
- Under the strand ‘accessibility’, the EPR organised as partner of the AEGIS project a final conference entitled “Accessibility Reaching Everywhere” (28 to 30 November in Brussels). The aim was to bring together people with disabilities as well as platform and application accessibility developers, representative organisations, the Assistive Technology industry, and policy makers.

### 3. ACCESSIBILITY LEGISLATION, REGULATIONS AND STANDARDS IMPLEMENTING ARTICLE 9 UNCRPD

#### **Austria**

The Austrian law contains no uniform competency regulation concerning disability. This is what is known as an overlap area. There are also several federal and regional laws containing legal rulings regarding accessibility which are of significance to persons with disabilities.

#### **a. Accessibility legislation: its place in the legal and regulatory framework**

On 6 July 2005 the Austrian Parliament adopted a disability equality package, including the Federal Disability Equality Act as well as Amendments to the Disability Employment Act and to the Federal Disability Act (in force since 1 January 2006). This anti-discrimination package offered for the first time enforceable protection against discrimination of people with disabilities and enshrines legal consequences if the prohibition of discrimination is violated (financial compensation).

One of the key elements of the Federal Disability Equality Act is the legal prohibition of discrimination on grounds of disability. If services, products, infrastructures, buildings or transport facilities/systems are not accessible, this may cause discrimination prohibited by law and can lead to financial compensation (for details see Chapter 1.9, 7 and 8 of "the Government Report on the Situation of People with Disabilities in Austria 2008, [www.bmask.gv.at](http://www.bmask.gv.at)).

The Austrian construction law falls into the legal competence of the nine Länder, which are the regional authorities. Until now it was not possible to harmonize this regional law in the field of technical regulations which could bring a higher standard of accessibility all over Austria. In Austria there is quite a numerous range of standard regulations concerning barrier-free buildings and accessibility. These so called ÖNORMEN (Austrian Standards) are very important for people with disabilities because they give an answer to technical aspects (what has to be done in a concrete situation). Often they are part of a legal act and – in that case – are legally binding.

The Advisory council for architectural culture („Baukulturbeirat“), which is a task force of qualified architects and representatives of all federal ministries, published in June 2011 the recommendation „Barrier-free Construction – Design for all“ ([www.bka.gv.at/site/6992/default.aspx](http://www.bka.gv.at/site/6992/default.aspx)).

#### **b. General law, technical regulations and standards**

Please see points e. and c.

#### **c. Role of national, European and international standards**

The Austrian Standards Institute ([www.as-institute.at/en](http://www.as-institute.at/en)) works out – in cooperation with disability experts – standards in the field of technical requirements on accessibility for people with disabilities. Observance of the Austrian standard „ÖNORM B 1600“ (Standardisation principles on barrier-free construction and design) has become mandatory for erecting new buildings of the federal administration and, among other things, also for the adaptation of transport facilities of the Austrian Federal Railways to suit the needs of disabled people. Other „ÖNORMEN“ apply to educational and training institutions, basic principles for planning special facilities for disabled or older people as well as barrier-free tourist facilities, technical aids, mobile wheelchair lifts, acoustic signals, tactile and visual platform paving and toilet facilities for people with disabilities. See the following list of outputs and publications, a rather complete list of Austrian Accessibility Standards:

- ÖNORM B 1600 „Barrierefreies Bauen – Planungsgrundlagen“ („Barrier-free construction – Design principles“);
- ÖNORM B 1601 „Spezielle Baulichkeiten für behinderte oder alte Menschen – Planungsgrundsätze“ („Special buildings for disabled or elderly people – Design principles“);
- ÖNORM B 1602 „Barrierefreie Schul- und Ausbildungsstätten und Begleiteinrichtungen“ („Barrier-free schools and training centers and institutions associated“);
- ÖNORM B 1603 „Barrierefreie Tourismuseinrichtungen – Planungsgrundlagen“ („Barrier-free tourism institutions – Design principles“);
- ÖNORM B 4970 „Anlagen für den öffentlichen Personennahverkehr – Planung“ („Facilities for short distance public transport – Design“);
- ÖNORM B 5410 „Sanitärräume im Wohnbereich – Planungsgrundlagen“ („Sanitary facilities in residential areas – Design principles“);
- ÖNORM EN 81-1 „Sicherheitsregeln für die Konstruktion und den Einbau von Aufzügen – Teil 1: Elektrisch betriebene Personen- und Lastenaufzüge“ („Safety rules for the construction and installation of lifts – Part 1: Electric passenger and freight elevators“);
- ÖNORM EN 81-2 „Sicherheitsregeln für die Konstruktion und den Einbau von Aufzügen – Teil 2: Hydraulisch betriebene Personen- und Lastenaufzüge“ („Safety rules for the construction and installation of lifts – Part 2: Hydraulic lifts and hoists“);
- ÖNORM EN 81-40 „Sicherheitsregeln für die Konstruktion und den Einbau von Aufzügen – Spezielle Aufzüge für den Personen- und Gütertransport – Teil 40: Treppenschrägaufzüge und Plattformaufzüge mit geneigter Fahrbahn für Personen mit Behinderung“ („Safety rules for the construction and installation of lifts - Special lifts for the movement of people and goods – Part 40: Stairlifts and inclined platform lifts with inclined roadway for people with disabilities“);
- ÖNORM EN 81-41 „Sicherheitsregeln für die Konstruktion und den Einbau von Aufzügen – Spezielle Aufzüge für den Personen- und Gütertransport – Teil 41: Vertikale Plattformaufzüge für Behinderte“ („Safety rules for the construction and installation of lifts – Special lifts for the movement of people and goods - Part 41: Vertical platform lifts for disabled people“);
- ÖNORM EN 81-72 „Sicherheitsregeln für die Konstruktion und den Einbau von Aufzügen – Besondere Anwendungen für Personen- und Lastenaufzüge – Teil 72: Feuerwehraufzüge“ („Safety rules for the construction and installation of lifts – Particular applications for passengers and goods lifts – Part 72: Firefighters lifts“);



- ÖNORM V 2104 „Technische Hilfen für blinde, sehbehinderte und mobilitätsbehinderte Menschen – Baustellen- und Gefahrenbereichsabsicherungen“ („Technical aids for blind, visually impaired and physically disabled people – construction and hazardous area hedges“);
- ISO 21542 „Building construction – Accessibility and usability of the built environment“.

#### **d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

In Austria the implementation of the UN Convention has not directly led to changes in accessibility legislation/regulation. However the public awareness about accessibility has increased because of the UNCRPD.

In January 2012 the Federal Ministry of Labour, Social Affairs and Consumer Protection presented the draft of a new National Disability Action Plan 2012-2020. This plan includes reference to accessibility with an own comprehensive chapter.

#### **e. Services regulated for accessibility**

Principally all private services are regulated for accessibility in Austria: if they are offered in public, all consumer transactions and the acts of the federal public administration are regulated by the disability equality law. This is the case for website providers, restaurant owners, food discounters, transport providers, federal ministries, public institutions, social insurance institutions, hospitals, medical services, private insurance companies and so on.

For instance the Austrian E-Government Act requires that all public websites must be barrier-free and accessible. With that it is necessary to publish also easy-to-read versions and sign language.

#### **f. Goods regulated for accessibility as part of a service**

The relevant Federal Disability Equality Act does not state technical provisions on the accessibility of goods.

#### **g. Goods regulated for accessibility**

Please see points e. and f.

#### **h. Enforcement of accessibility legislation**

According to the Federal Disability Equality Act a person who feels discriminated can – after passing a mandatory conciliation procedure – enforce damages by court when the discrimination is based on a lack of accessibility.

#### **i. Non-compliance and litigation**

The core element of protection against disability discrimination is the possibility to get a compensation of the material or immaterial damage suffered. The assertion of claims in court has to be preceded, however, by obligatory conciliation proceedings at the Federal Social Office (a body of the Federal Ministry of Labour, Social Affairs and Consumer Protection). Taking legal action without an attempt at conciliation is inadmissible. The deadlines for the

assertion of claims due to discrimination are extended by the duration of the conciliation process. The purpose of conciliation is to promote an out-of-court settlement. This is intended to avoid long and possibly expensive court cases. The option of free mediation by independent mediators is available within the framework of this conciliation procedure.

An easing of the burden of proof (rules on evidence which have a similar effect to a reversal of the burden of proof) applies to court cases. In the case of important and lasting harm to the general interests of the group of persons protected by the disability equality law, the umbrella body of the Austrian disability organisations (Österreichische Arbeitsgemeinschaft für Rehabilitation – ÖAR, a member of EDF) can initiate a class action on the basis of a recommendation by the Federal Disability Advisory Board.

Since the coming into force of the Federal Disability Equality Act 2006 until the end of 2011 there have been more than 1.000 conciliation procedures in Austria.

The Federal Disability Ombudsman, which was introduced in 2006 in combination with the disability equality law, is an independent body. It has the task of advising and supporting people with disabilities in cases of discrimination as well as raising public awareness of problems in equality or accessibility issues.

## Belgium

In Belgium, accessibility falls mainly within the competence of the federate entities. Any refusal to implement the reasonable accommodation for a person with disability is a form of discrimination in various legislations. The equality of treatment of persons with disabilities and the protection against discrimination are established in the Belgian Constitution (articles 10 and 11) and the laws made by the different levels of power.

### a. Accessibility legislation: its place in the legal and regulatory framework

At the federal level, the anti-discrimination legislation is being implemented in the three anti-discrimination laws of the 10<sup>th</sup> of May 2007 tending to combat certain forms of discriminations:

- the general law anti-discrimination;
- the anti-racism law;
- the law on gender.

Article 9 of the law of 10 May 2007 refers to the combat against certain forms of discriminations and stipulates that any indirect distinction based on one of the protected criteria constitutes indirect discrimination unless, in the event of indirect distinction on the basis of a disability, it is shown that no reasonable accommodation can be set up. Reasonable accommodation are appropriate measures, taken according to requirements in a concrete situation, to make it possible for a disabled person to reach, to take part and progress in the fields for which this law is in force, except if these measures impose with regard to the person who has to adopt them a disproportionate charge. This charge is not disproportionate when it is compensated adequately by measures existing within the framework of the followed public policy concerning disabled persons.

For further information on the measures implemented by the federal government concerning the accessibility of transport (railway, aviation, and maritime transport) see the Belgian report on the UNCRPD.<sup>46</sup>

### Flemish Region

- *The Flemish Urbanisation Regulation concerning the accessibility of public buildings of June 5th 2009 (in effect since March 1st 2010).*

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<sup>46</sup> Article 9 : « Des mesures d'accessibilité relatives au droit à la mobilité personnelle des personnes handicapées sont stipulées dans les contrats de gestion entre l'Etat fédéral et les trois sociétés du Groupe **SNCB**. Celles-ci s'engagent de garantir un accès équitable et non discriminatoire au transport ferroviaire et d'assurer l'utilisation optimale de celui-ci. Ces mesures comprennent notamment celles relatives à l'accessibilité par ascenseurs, rampes ou dispositifs équivalents d'un ensemble de gares. En matière de **transport aérien**, le règlement (CE) N°1107/2006 du Parlement européen et du Conseil du 5 juillet 2006 concernant les droits des personnes handicapées et des personnes à mobilité réduite lorsqu'elles font des voyages aériens a été transposé dans la loi belge et établit des règles relatives à la protection et à l'assistance en faveur des personnes handicapées et des personnes à mobilité réduite. Quant au droit **maritime et fluvial belge**, il prévoit que les personnes handicapées ou à mobilité réduite jouissent d'un traitement non discriminatoire et de la fourniture gratuite d'une assistance spécialisée à leur intention, tant dans les terminaux portuaires qu'à bord des navires, ainsi qu'un dédommagement financier en cas de perte ou de dégradation de leur équipement de mobilité. »

This regulation replaces the federal law of 1975 and is a section of the framework decree on the built environment. It requires that the rules on accessibility are integrated in the procedures to obtain a building permit or urban authorization and non-compliance with these rules entails the refusal of the building permit. The Regulation applies to all building and/or renovating activities on publicly accessible constructions or parts thereof and when a building permit is required for the activity or a reporting duty exists.

The rules apply to new buildings, rebuilding, renovations or annexations of public buildings of public parts of buildings. Existing buildings are free of additional modifications as long as no changes are foreseen requiring a building permit. The legislation also foresees a compulsory advisory mechanism that will be implemented during 2012. To ensure a better congruity with common building practice, the regulation was slightly adapted in 2011.

- *The Decree holding the framework for the Flemish equal opportunities and equal treatment policy (July 10<sup>th</sup> 2008).*

This decree outlines the principles of the Flemish non-discrimination policy. It prohibits discrimination based on disability (among 18 other grounds), but also qualifies that the refusal of reasonable accommodations can be construed as discrimination.

In Flanders, several complementary measures were set in place to ensure a correct implementation of the accessibility legislation:

- distribution of a short brochure within the building and public sector
- organisation of trainings for architects and civil servants working in urbanisation
- the website [www.toegankelijkgebouw.be](http://www.toegankelijkgebouw.be) contains the Flemish manual on accessibility.
- ‘wenkenbladen’: These shortlists provide concrete and specific tips on how to enhance the accessibility of buildings and services. Some examples of ‘wenkenbladen’ are: banks, libraries, hotels, cultural centres, parks, playgrounds, swimming pools, sidewalks etc.

The Flemish government also carries out general information and awareness-raising campaigns:

- The campaign ‘Accessible Flanders’: this campaign wants to raise awareness of accessibility of public buildings. The website [www.toevla.be](http://www.toevla.be) contains information regarding the accessibility both of buildings, premises and tourist facilities such as town and city halls, schools, hotels, museums, socio-cultural centres, sports centres, cycle paths, footpaths and other tourist facilities.
- Accessible events: ‘Intro vzw’ provides tailor-made advice for events (music festivals, sport manifestations, etc) and support in the practical build-up of the event. In cooperation with volunteers and specialised organizations they also provides services such as personal assistance, feeling chairs, “ringleiding” (type of hearing aid), etc.
- Information point Accessible Travels: at this agency and on the website [www.accessinfo.be](http://www.accessinfo.be) (in 4 languages) travellers can find reliable information on and propositions of accessible holidays.

## Région Wallonne

Any form of direct or indirect discrimination on the basis of disability is prohibited by the Walloon Government's Decree of the 6<sup>th</sup> of November 2008, relating to the fight against

certain forms of discrimination (later completed by the Decree of March 19, 2009).<sup>47</sup> It stipulates, in its Article 13, that reasonable accommodations have to be carried out in order to guarantee the respect of the principle of equal treatment with regard to disabled persons.

Since February 1999, the Walloon code of Regional planning, of Town planning and of the Inheritance (CWATUP) also fixed, in Articles 414 and 415, a series of rules relating to the accessibility of persons with mobility reduced to spaces and buildings or parts of buildings open to the public or for collective use.

By the “*Code wallon de l’Action sociale et de la Santé*”, of the 21<sup>st</sup> December 2011, the Walloon Government takes care to ensure the full and complete participation of disabled persons in social and economic life, some are the origin, nature or the degree of their disability. The Walloon Government also provides for the implementation of such programmes to « *rendre accessibles aux personnes handicapées les établissements et installations destinés au public, les lieux d’éducation, de formation et de travail ainsi que la voirie* » (article 268). Furthermore, the “*Code wallon de l’Action sociale et de la Santé*” stipulates that disabled persons accompanied by assistance dogs are admitted everywhere except in places that have received an exemption from the authority.

By its decree of 4 February 2004, the Walloon Government laid down the conditions and the procedures of intervention of material aid to disabled persons' integration.

In concrete terms, the Walloon Agency for disabled persons' Integration (AWIPH) grants interventions for individual requests for installation of the residence and of the post and for technical aid encouraging the social and professional integration of disabled persons.

Disabled persons accompanied by assistance dogs are admitted everywhere except in the places having received an exemption from the authority<sup>48</sup>.

Various associations published booklets and guides concerning the accessibility the majority of which received financial support from the Ministry of social Affairs and from the Health of the Walloon Region.<sup>49</sup> Moreover, the ASBL ANLH carries out a database on technical aid (Access AT: [www.accesat.be](http://www.accesat.be))

Lastly, the AWIPH support of the initiatives intended to disseminate information on technical aid. Disabled persons can obtain this information while applying to the Regional office close to their residence but also to the CICAT (Coordination of Information and Councils in technical Aid).

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<sup>47</sup> Ce décret se base notamment sur les principes établis dans la directive européenne 2000/78/CE portant sur la création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail.

<sup>48</sup> Livre IV du Code wallon de l’Action sociale et de la Santé – volet décretaal

<sup>49</sup> As examples of publications:

- The event accessible by the ASBL Year 2000
- Tourism in Belgium for persons with mobility reduced by the Touring Club (2002)
- The dimension accessible by the architecture school of Cambre (March 2004)
- Accessibility by the cabinet of the Minister for social Affairs and of the Health of the Walloon Region
- Gardens accessible to persons with mobility reduced by the ASBL Nature and Progress (2004)
- Booklet of information on accessibility for the attention of the elected representatives, for the attention of the architects and for the attention of the contractors by the Cabinet of the Minister for social Affairs and of the Health of the Walloon Region (March 2004)
- Reference frame on accessibility by the (CAWAB) Collective Accessibilité Wallonnie Brussels comprising 21 associations representative of disabled persons.

The CICAT and regional offices work closely with resource and evaluation centres specializing in technical aids, so that disabled persons can make an informed choice based on their needs as well as offers available on the market.

### German-speaking Community

There are two legal bases in the German-speaking community (both are currently under revision):

- a. *Erlass der Regierung vom 12. Juli 2007 zur Festlegung der Bestimmungen zur behindertengerechten Gestaltung von bezuschussten Infrastrukturen* (Government Order of 12 July 2007 laying down the legal provisions governing facilities for the disabled in subsidised infrastructures): Since the effective date of the Order (2 December 2007), all projects covered by the Order must meet the technical requirements relating to facilities for the disabled if they are to be eligible for subsidies from the German-speaking Community.
- b. *Dekret vom 19. März 2012 zur Bekämpfung bestimmter Formen von Diskriminierung* (Decree of 19 March 2012 for combating certain Forms of Discrimination): the Decree is intended to implement various European directives in the German-speaking Community. It goes beyond the requirements of the EU directives in that it follows federal Belgium legislation by including additional aspects of discrimination in its definition of discrimination and defining both direct and indirect discrimination.

The following guidelines are also available:

1. The DPB has prepared a set of guidelines, *Zugänglichkeit zum Wahlbüro!* (Access to the polling station), which uses text, drawings and photographs to describe requirements for parking spaces, access ways and polling booths.
2. Another set of guidelines is called *Praktischer Leitfaden für Ausrichter von öffentlichen Veranstaltungen* (Practical guidelines for organisers of public events), using drawings, photographs and text to explain how to make events accessible.
3. The *Eurecard-Label* is a service card that provides proof of a disabled person's entitlement to the cross-border use of services and concessions in the tourism, culture and sports sectors
4. The *Eurewelcome-Label* confirms accessibility in the sense of making visitors feel welcome (adopting a respectful, obliging and helpful attitude to all visitors, with or without special needs) and encourages greater accessibility through the voluntary reduction of physical barriers as an official label recognising the social benefits of a service as part of brand image.
5. The DPB published on its website detailed information on the accessibility of buildings and public events. This is a guideline for architects and event organisers on how to be accessible for an as large as possible group of people and in particular for people with disabilities.

In addition, the German-speaking Community also provides training in accessible construction for architects and their clients and craftspersons. The *Dienststelle für Personen mit Behinderung* (Office for People with Disabilities) inspects infrastructure projects to determine their accessibility. Continual efforts are also being made to raise awareness among private developers.

### Brussels-Capital Region:

La Région de Bruxelles-Capitale a mis en place un coordinateur régional en matière d'accessibilité globale dans la cellule égalité des chances et la diversité du ministère de la région de Bruxelles-capitale. Ce coordinateur conseil le gouvernement bruxellois et doit développer un plan d'action sur l'accessibilité globale (avec un budget de 50 000 euros). Il travaille en collaboration avec une plate-forme qui regroupe un grand nombre d'acteurs concernés (autorités publiques, associations, ...) et qui a pour tâche de relayer les informations en la matière et de coordonner les actions nécessaires.

## **b. General law, technical regulations and standards**

### Flemish Region

The requirements are found in the Flemish Urbanisation Regulation. This however only provides norms for those elements that can be read on a building plan (for e.g. height and width of doors, not the visual markings). The additional handbook however contains additional options and/or improvements (in order to go beyond what is legally required).

### Walloon region

The requirements are found in the Walloon Code of Regional planning and heritage (CWATUPE, articles 414 and 415).

## **c. Role of national, European and international standards**

### Flemish Region

Accessibility legislation in the Flemish Region makes use of CEN, EN and BIN (Belgian norms) standards.

## **d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

### Flemish Region

No changes were made to the equality and antidiscrimination legislation.

The ratification however did inspire the equality mainstreaming policy; in the framework of objectives for disability mainstreaming (created via the open method of coordination) 2 important generic objectives were included:

1. the existing legislation will be examined on its conformity with the UN Convention on the Rights of Persons with Disabilities;
2. the impact of the UN Convention on the Rights of Persons with Disabilities will be examined for every policy domain within the Flemish Government.

This framework of objectives will be evaluated at the end of 2014, and will hopefully foster legislative and/or policy changes where necessary.

### Région Wallonne

La Ministre de la Santé, de l'Action sociale et de l'Egalité des chances a été chargée par le Gouvernement wallon de réaliser un screening de la législation et de la réglementation wallonnes afin de vérifier que ces normes sont compatibles avec la Convention relative aux droits des personnes handicapées, adoptés à New York le 13 décembre 2006 et, le cas échéant, de procéder aux adaptations nécessaires comme le prévoit l'article 4 de ladite convention.

#### German-speaking Community

At the moment, the Government Order of the German-speaking Community dating 12 July 2007 is under revision in order to better meet the provisions of the UN Convention of the Right of Persons with Disabilities. The Parliament of the German-speaking Community has approved a decree to combat certain forms of discrimination. It prohibits discrimination based on disability (among several other reasons), but also defines the refusal of reasonable accommodations as a form of discrimination.

#### **e. Services regulated for accessibility**

##### Etat fédéral

##### Banques

Ces dernières années, les banques ont pris des mesures afin de rendre leurs services plus accessibles aux personnes handicapées :

##### *Mesures pour les malvoyants*

Pour les personnes ayant des problèmes de vue, des extraits de compte en braille sont prévus par plusieurs banques. Ensuite, certaines institutions ont adapté leurs systèmes de PC banking aux personnes malvoyantes, et proposent une application qui permet de relier le système de PC banking à un logiciel sonore spécial et des lecteurs de cartes vocaux adaptés. Cette application permet aussi d'agrandir les caractères se trouvant à l'écran.

Fin 2011 l'une de ces institutions a mis à la disposition de ses clients quelque 800 guichets automatiques avec accompagnement vocal pour les retraits d'argent. Ces guichets sont adaptés pour les clients ayant des problèmes de vue et qui ne peuvent donc utiliser les écrans tactiles. Les appareils dotés d'une technologie vocale sont reconnaissables à leur autocollant en braille.

##### *Accessibilité des bâtiments*

La législation régionale existante en la matière vise à améliorer l'accès des personnes à mobilité réduite aux bâtiments accessibles au public. Elle s'applique tant aux nouvelles constructions qu'aux rénovations nécessitant un permis d'urbanisme. L'obtention de celui-ci dépend du respect des dispositions de la législation en vigueur. Ainsi, un nouveau comptoir d'accueil doit comporter au moins une partie modulaire accessible à tous. Un espace doit être dégagé de part et d'autre du comptoir. Par ailleurs, une partie de celui-ci doit être plus basse.

De leur côté, de nombreux guichets automatiques respectent les normes ADA (Americans with Disabilities Act), lesquelles permettent une meilleure accessibilité de ces guichets aux



moins valides. Ces normes ont notamment trait à la hauteur du clavier et de l'écran des appareils. Elles sont prises en compte lors de la construction des guichets automatiques.

### Chemins de fer

Conformément au contrat de gestion de la Société nationale des Chemins de fer belge (SNCB), la politique d'accessibilité est élaborée en concertation avec le Conseil supérieur national des personnes handicapées (CSNPH). Le CSNPH est le seul interlocuteur agréé en la matière. Le CSNPH mène un travail de fond afin d'amener la SNCB à rendre accessible son réseau et ses services. Il s'agit d'un "travail de fourmis" dont les aspects concrets sont discutés au sein d'un groupe de travail commun à la SNCB et au CSNPH

### Aéroports

Au niveau des déplacements aériens, Brussels International Airport (BIA) relève de la compétence fédérale. Le Conseil Supérieur National des Personnes Handicapées (CSNPH) a profité de l'entrée en vigueur de la directive européenne EU1107 pour commencer à participer au groupe de travail Personnes à Mobilité Réduite, mis en place par BIA.

### Flemish Region

The Flemish Urbanisation Regulation does not regulate services as such, only the accessibility of public buildings. There is however a subsidization regulation in vigour in certain policy domains within the Flemish government that has a specific focus on accessibility. For example, touristic facilities can receive governmental funding only when they comply with the accessibility norms. Another example exists in elderly care. Elderly homes can get a specific accreditation when in compliance with accessibility norms. This accreditation is however not compulsory.

### Région Wallonne

Le gouvernement wallon prévoit la mise en œuvre des programmes visant notamment à '*rendre accessibles aux personnes handicapées les établissements et installations destinés au public, les lieux d'éducation, de formation et de travail ainsi que la voirie*' (article 8 du décret du 06 avril 1995 relatif à l'intégration des personnes handicapées).

L'Agence wallonne pour l'intégration des personnes handicapées (AWIPH) a mis en place un programme d'initiatives spécifiques destiné au financement de projets développés par des services experts en matière d'accessibilité et de mobilité. Ce programme a notamment pour objectif l'information, la sensibilisation et la promotion de l'accessibilité et de la mobilité auprès du grand public, des architectes, de la société civile, des entreprises, des hommes de métier et des autorités publiques.

Par ailleurs, ce sont les articles 414 et 415 du CWATUPE<sup>50</sup> qui définissent la liste des lieux soumis à la réglementation en faveur de l'accessibilité en Wallonie.

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<sup>50</sup> <http://dgo4.spw.wallonie.be/DGATLP/DGATLP/pages/DGATLP/Dwnld/CWATUPE.pdf>

## **f. Goods regulated for accessibility as part of a service**

### Flemish Region

There is no regulation on accessibility of goods at the level of the Flemish Region.

### Région Wallonne

Pour l'accessibilité aux bâtiments se référer à la question e.

Pour favoriser le degré d'accessibilité des médias, depuis 2002, le gouvernement wallon s'est engagé à rendre la majorité des sites Web de la Région wallonne accessibles aux personnes déficientes visuelles. La mise en œuvre de cette politique a été intégrée en 2005 dans le volet wallon du Plan national de lutte contre la fracture numérique. On compte, pour l'instant, 27 sites symbolisés par le label « *AnySurfer* » ou « *BlindSurfer* ».

En matière de transports publics, le contrat de gestion 2005-2010 conclu entre la Région wallonne, la Société Régionale Wallonne du Transport (SRWT) et la Société de Transport en commun (TEC) prévoit, en termes d'objectifs spécifiques, la généralisation progressive des bus à plancher surbaissé et les quais adaptés aux personnes à mobilité réduite.

Plus particulièrement, le groupe TEC s'est engagé à exécuter le plan de renouvellement du matériel roulant, adopté par le Conseil d'administration de la SRWT du 7 octobre 2004, en acquérant notamment systématiquement des bus répondant aux normes d'accessibilité optimale.

## **g. Goods regulated for accessibility**

### Flemish Region

There is no compulsory regulation for the accessibility of manufactured goods. However EU-norms (BIN, EN and CEN) are enforced on a voluntary basis – with the exception of elevators in publicly accessible buildings, which are required to comply with EU-norms.

The Flemish Regulation on accessibility of public buildings does however foresee norms for doors as well as for parking places.

The '*wenkenbladen*' (documents that provide concrete and specific tips on how to enhance the accessibility of buildings and services) can be a useful tool. Some examples of '*wenkenbladen*' are: banks, libraries, hotels, cultural centres, parks, playgrounds, swimming pools, sidewalks etc.

## **h. Enforcement of accessibility legislation**

### Flemish Region

The regulation enforces certain criteria to obtain a building permit. If the building plans do not comply with the legislation, the permit is not granted. If later on it is shown that these adaptations with regards to accessibility were not put in place, the general sanctions of

building violations apply. These can be a financial penalty, administrative sanctions or remedial actions (restore the original state (break down) or execute certain adaptations).

### Région Wallonne

Pour porter plainte pour discrimination ou simplement pour s'informer, il est possible de s'adresser directement à l'un des 12 Espaces Wallonie<sup>51</sup> qui sont désormais compétents pour entendre et traiter les plaintes pour discriminations en apportant une information claire et directe.

L'AWIPH analyse les contrats de gestion des autres Organismes d'Intérêt Public (OIP) wallons en termes de prise en compte des besoins des personnes handicapées. C'est ainsi que depuis peu, l'AWIPH a relevé que le service public wallon de l'emploi et de la formation (FOREM) a édité sur son site Web une page spécifique « Travail et Handicap » ; l'entièreté du site a obtenu le label 'AnySurfer'. L'Agence wallonne à l'exportation et aux investissements étrangers (AWEX) dispose notamment d'un immeuble totalement accessible et de mobiliers de bureau adaptés. Le Fonds du Logement des familles nombreuses de Wallonie (FLW) a également obtenu le label 'AnySurfer' pour son site Web.

Le Port automne de Liège a été attentif à l'accessibilité de ses dernières acquisitions immobilières. Des actions sont également entreprises afin d'améliorer l'accessibilité du port de plaisance. Dans le cadre de l'organisation de réunions avec les riverains des sites dont elle a la charge, la Société publique d'aide à la qualité de l'environnement (SPAQUE) reste attentive à trouver des lieux de réunion accessible à tous. L'ensemble des locaux de la Société wallonne des aéroports (SOWAER) est accessible aux personnes à mobilité réduite.

Dans le cadre du programme «Destination 2015» proposé par le Commissariat général au Tourisme et Wallonie-Bruxelles Tourisme apparaît une action spécifique intitulée "Tourisme pour tous - Accessibilité pour les PMR". Cette action comporte un double enjeu: clarifier les informations et rendre le secteur touristique davantage accessible.

Par ailleurs, L'AWIPH et la Commission Wallonne de la Personne Handicapée ont participé activement aux consultations officielles opérées en 2011 et en 2012 dans le cadre des révisions du CWATUPE (Code wallon de l'Aménagement du Territoire, de l'Urbanisme, du Patrimoine et de l'Energie) et du Code wallon du logement.

Enfin, dans le cadre du plan global d'égalité des chances approuvé par le Gouvernement wallon le 24 février 2011, il a été prévu de désigner des personnes de contact dans chacune des administrations pour veiller à la prise en compte des besoins des personnes en situation de handicap, notamment en matière d'accessibilité.

### German-speaking Community

An examination regarding the fulfilment of the accessibility requirements is conducted by a jury before granting the project. The jury consists of a representative of the '*Dienststelle für Personen mit Behinderung*' (DPB) and an external expert, both designated by the

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<sup>51</sup> <http://www.wallonie.be/vlw/n-14-decembre/les-essentiels/vous-etes-discrimine-e.html>

management board of the DPB. An additional member is a civil servant of the Ministry of German-speaking Community.

**i. Non-compliance and litigation**

Flemish Region

Non-compliance with accessibility or the lack of reasonable accommodation can be construed as a manifestation of discrimination before the court on the basis of the decree holding the framework for the Flemish equal opportunities and equal treatment policy of 10 July 2008.

## **Bulgaria**

In December 2007 the Council of Ministers of the Republic of Bulgaria adopted a strategy on providing equal opportunities for people with disabilities 2008 – 2015, which is consistent with the European tendencies regarding equal treatment. The main goals of the strategy served as a basis for the drafting of an action plan on providing equal opportunities for people with disabilities 2008 – 2009, including planned activities in the fields of rehabilitation and social integration, persons in charge and deadlines for implementation.

One of the goals of the strategy and the action plan is the establishment of an environment, adapted to the needs of people with disabilities, which includes rendering public, residential buildings, outdoor areas and workplaces wheelchair-accessible, provision of accessible transport and accessible information and communications.

### **a. Accessibility legislation: its place in the legal and regulatory framework**

There are legal provisions in the Integration of people with disability Act, Spatial Development Act and Protection against Discrimination Act. There are norms in the fields of: architectural environment, accessible transport, tourism, and information and communications.

The Protection Against Discrimination Act, in article 5, states that “Harassment on the grounds referred to in Article 4 (1)<sup>52</sup>, sexual harassment, incitement to discrimination, persecution and racial segregation, as well as the building and maintenance of an architectural environment hampering the access to public places of people with disabilities shall be considered discrimination.”

The rules on the provision of an accessible living and architectural environment are regulated in detail in the Integration of People with Disabilities Act. The above mentioned law contains a section with rules on the spatial development of urban territories for the population, including people with disabilities. It is an obligation of the Ministry of Regional Development and Public Works to create conditions for accessible living for disabled people. It is an obligation of the Transport Ministry to make transport services wheelchair-accessible. Auxiliary means, devices and facilities as well as medical products for people with disabilities are provided by the Social Assistance Agency. One of the obligations of the State Agency for Youth and Sports and the Ministry of Education and Science is to create, in cooperation with the municipalities, the sport federations and the sport clubs, conditions for social integration of people with disabilities. The Culture Ministry, in cooperation with the municipalities, is obliged to provide conditions for integrating disabled people in the area of culture. The municipalities, within their competence, are responsible for providing accessible living and architectural environment, while the Bulgarian National Television, the Bulgarian National Radio and the Bulgarian News Agency are obliged to provide information, accessible for people with disabilities.

In connection with the provision of labour conditions and civil service positions for people with disabilities, the Civil Servants Act stipulates that the appointment body shall provide

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<sup>52</sup> Article 4 (1) - Any direct or indirect discrimination on grounds of gender, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, convictions, political affiliation, personal or social status, disability, age, sexual orientation, marital status, property status, or on any other grounds established by law or by an international treaty to which the Republic of Bulgaria is a party, shall be banned.

access for people with disabilities to the buildings, where the administration works, by overcoming the respective architectural and other barriers. Six test centres have been established in the country: in the cities of Sofia, Varna, Plovdiv, Bourgas, Veliko Turnovo and Montana. The tests are computer-based and are held in real time. Candidates with visual impairment sit for the exam in specially-equipped halls with screen reader and speech synthesizer while sign language interpretation is provided for people with hearing impairment and the test is held in wheelchair accessible halls.

#### **b. General law, technical regulations and standards**

There are requirements in legislation like the Integration of people with disabilities Act, the Spatial Development Act, the Ordinance for accessible architectural environment with clear standards and also the Protection against discrimination Act.

The main guidelines in the Republic of Bulgaria regarding the provision of physical access to public buildings and areas as well as to residential buildings are contained in Ordinance No. 4 on the Provision of Accessible Environment in Urban Territories.

#### **c. Role of national, European and international standards**

The Republic of Bulgaria has undertaken all necessary measures at national level for the implementation of Regulation (EC) No. 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when traveling by air as administrative and criminal liability is envisaged for the people having violated the requirements of the regulation. The Commission for the Protection of Competition monitors the fulfillments of the commitments of the tour operators and the tourist agents under Regulation (EC) No. 1107/2006 in its capacity of a national body in charge of the implementation of this regulation.

In air transport, there are effective requirements regarding airport infrastructure and multiple requirements for accessibility for people with disabilities are implemented at community and national level.

There are provisions for the implementation of Regulation (EO) N1371/2007 of the European Union for rights and obligations of travelers.

#### **d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

The Republic of Bulgaria ratified the UN CRPD on 26 January 2012 and there is an expert group elaborating a biannual action plan for its implementation, which may include measures of legislative changes; these will be connected to accessibility to some extent. The draft action plan has to be finished in 6 months period.

#### **e. Services regulated for accessibility**

The Ordinance on Administrative Servicing contains a requirement under which the administrations shall provide convenient and easy access for people with disabilities to the administrative servicing unit by adapting service premises and the access to them. For example, the desks for administrative servicing at the head office of the Maritime Shipping Administration Executive Agency and the territorial units in the cities of Varna, Rousse, Bourgas and Lom have been made wheelchair accessible. A portal for blind people has been created within the official website of the Transport Ministry.

The Transport Ministry, within its competences, has drafted a special programme, Generally Accessible Transport, on the provision of wheelchair accessible transport. The programme is implemented through the Road Administration Executive Agency and the Railway Administration Executive Agency, in coordination with the Finance Ministry, as its main goal is providing greater access for people with disabilities to transport services. With a view to achieving the above goal, the losses upon intra and intercity carriage are covered under the national budget while carriers are compensated for free of charge travel and reduced fares for certain groups of citizens, including people with disabilities, within the executive budget.

#### **f. Goods regulated for accessibility**

There is Consumer Protection Act which regulates the protection of consumers, the powers of State bodies and the activity of consumer associations in this area. The purpose of this Act is to ensure protection of the fundamental consumer rights. There is a Commission for Consumer Protection which organizes National campaigns for safety of the products.

According to Article 168 on Medicinal Products in the Human Medicine Act the packaging of a medicinal product shall consist of immediate and/or outer packaging and of a patient brochure. When a medicinal product is allowed for use, its name on the outer packaging, the pharmaceutical form and the content of the active substance per dosing unit shall also be printed in Braille.

#### **g. Enforcement of accessibility legislation**

In the Protection against discrimination Act there is stated that a refusal to provide goods or services, as well as the provision of goods and services of a lower quality or on less favourable terms on the grounds referred to in Article 4 (1) shall not be allowed.

The Commission for Protection against Discrimination shall:

- ascertain violations of this or other Acts regulating equal treatment, the perpetrator of the violation and the aggrieved person;
- decree prevention and termination of the violation and restoration of the original situation;
- impose the sanctions envisaged and implement administrative enforcement measures;
- issue mandatory directions for compliance with this or other Acts regulating equal treatment and etc.

There are fines in many legislative pieces as it is stated for example in the Integration of people with disabilities Act etc. In the Protection against discrimination act measures are administrative.

#### **h. Non-compliance and litigation**

There is an Ombudsman Act which regulates the legal status, organization and activities of the Ombudsman. The Ombudsman shall intervene by the means provided for in this Act, when citizens' rights and freedoms have been violated by actions or omissions of the State and municipal authorities and the administrations thereof, as well as by the persons commissioned to provide public services.

Complaints and alerts to the Ombudsman may be submitted by natural persons, irrespective of

their citizenship, gender, political affiliation, or religious beliefs. Complaints and alerts may be written or oral, and may be submitted in person, by post or by other conventional means of communication.



## Cyprus

### a. Accessibility legislation: its place in the legal and regulatory framework

The rights of persons with disabilities for access to goods and services are protected in Cyprus by the general law “The Persons with Disabilities Law 2000-2007”. In particular, under Article 6 of this law, unequal treatment of a person - based on disability and being unjustified - for the provision of goods, facilities and services is considered to be discrimination.

Apart from the above general law, the right of persons with disabilities to accessibility is also protected in specific national laws:

- Public Buildings: Regulation 61.H of the Construction of houses and roads legislation (1999) whereby all new buildings should be accessible to persons with disabilities. Responsible for the control of good implementation are the local authorities, by whom no building permit is issued unless the plan abides by the regulation.
- Telecommunications: 2004 Law for the Regulation of Electronic Communications and Postal Services.
- Health Services: 2001 – 2006 Law for the Use of Medicines.
- Sea Transport Services: 2004 Law for Merchant Shipping.
- Elevator requirements: 2002 Law for Basic Requirements for Specific Goods.
- Television and Radio Information: 1998-2011 Law for Radio and Television Stations.
- Employment to the Wider Public Sector: 2009 Law for the Recruitment of Persons with Disabilities in the Wider Public Sector; 1988 Law for the Recruitment of Blind Trained Telephone Operators in the Public Sector.
- Public Education: The Law for Education and Training of Children with Special Needs 113(I)/1999 is the legislative framework which regulates all matters regarding the education of children with special educational needs (SEN) attending public schools. Children with disabilities are entitled to “free appropriate public education” along with students who are not disabled; the state is responsible for making education as well as schools accessible to them. There is also a 2006 Law for the Conduct of University Induction Examinations and the provision of reasonable adjustments.
- Social Protection: Various Laws for the provision of financial assistance, allowances, pensions etc.
- Public Procurement: 2006 Law for Public Contracts for Goods and Services.

### b. General law, technical regulations and standards

As explained in point a., the general law “The Persons with Disabilities Law 2000-2007” provides (article 6) for general accessibility requirements regarding equal treatment of persons with disabilities in the fields of provision of goods and services. In article 7 it also states the requirement for compliance with the technical requirements for public transport as defined in specific law and regulations; Furthermore, in article 8, the Law provides for accessibility requirements in the fields of telecommunications and information.

A new legislation concerning the EU directive for safety in use and accessibility of the buildings is under process to be adopted. A Guide of about 80 pages for the “Safety in use and Accessibility” of the built environment is about to be issued, including technical regulation and technical standards. A special Annex is included, concerning schools, banks, hotels and

touristic settlements, restaurants and cafeterias, beaches. There is an annex concerning pavements and walkways.

**c. Role of national, European and international standards**

All national regulations developed keep up with the European standards. All projects financed through the Structural Funds are monitored and approved by the Accessibility Bureau of the Ministry of Communications and Works, so as to comply with the latest European accessibility requirements and an Accessibility Certificate is issued.

**d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

The ratification by the Republic of Cyprus of the UN Convention on the Rights of Persons with Disabilities has not yet led to any changes in accessibility legislation.

A new legislation concerning the protection of the parking places for Blue badge holders is under preparation. The legislation concerns all parking places both in public and private buildings and provides for a higher fine than the existing one.

In addition, the existing 1999 Regulation for Construction of houses and roads is under amendment process in order to be harmonised with the EU directive concerning the “safety in use and accessibility of buildings” which comprises very detailed accessibility requirements.

**e. Services regulated for accessibility**

- Public Health
- Public Education
- Employment
- Social Protection (financial assistance, pensions, allowances etc)
- Public buildings
- Public buses
- Airport services
- Sea transport services
- Hotels
- Telecommunications
- Television and Radio Information
- Public Procurement

**f. Goods regulated for accessibility as part of a service**

The Ministry of Education and Culture following the directive of the aforementioned legislation provides the following:

Access to school buildings

- Schools increase access for individual pupils by making ‘reasonable adjustments’. For instance, lessons are held on the ground floor if one of the pupils uses a wheelchair and the school does not have a lift.
- Other changes to the physical environment that schools make to increase access include: lighting and paint schemes to help visually impaired children, lifts and

ramps to help physically impaired children, carpeting and acoustic tiling of classrooms to help hearing impaired pupils.

- The state provides transportation to all disabled children who do not attend neighbouring schools.
- In many cases the vehicles used for transportation have the relevant equipment to suit the child's needs.
- Assistants are also provided on school transport if needed.
- The Ministry of Education and Culture also provides schools with special equipment such as wheelchairs, walking aids etc. to be used by disabled children.

### Access to the curriculum

1. The curriculum is made accessible with the use of assistive technology. Examples of technology that children with SEN use include: touch-screen computers, joysticks and trackballs, easy-to-use keyboards, interactive whiteboards, text-to-speech software, Braille-translation software, software that connects words with pictures or symbols etc.
2. Information that is normally provided in writing (such as handouts, timetables and textbooks) is made more accessible by providing it in Braille, in large print, on audiotape, using a symbol system.
3. Lessons provide opportunities for all pupils to achieve and are responsive to pupil diversity.
4. Sign language interpreters are provided to deaf children who need it.
5. Teachers allow additional time to disabled pupils to finish an exam, or use equipment in practical work.
6. Teachers allow for the mental effort expended by some disabled pupils, for example using lip reading.
7. Home schooling by special educators or classroom teachers is also available if a child cannot go to school because of health problems.
8. School visits, are made accessible to all pupils irrespective of impairment.
9. Other adjustments that help children to have better access to the curriculum include: changes to teaching and learning arrangements, classroom organisation, timetabling and support from other pupils.

### **g. Goods regulated for accessibility**

Buses, tactile pavement plaques, elevators, W.C. equipment, automatic doors, special ramps, parking areas, wheelchairs are regulated for accessibility.

### **h. Enforcement of accessibility legislation**

The Technical Services of the Local Authorities are responsible for the control of good implementation of the Construction Regulations during application for construction licence procedure.

In the new regulation in process, of “safety in use and accessibility”, an accessibility statement in the form of detailed questionnaire concerning accessibility requirements would be necessary. This way the architects are informed and at the same time they are committed in applying accessibility in to their projects.

If there is a complaint about any misuse concerning accessibility, the local authority is responsible to restore it.

**i. Non-compliance and litigation**

Any citizen with disabilities can bring a case on non-compliance with accessibility provisions to court according to the general law “The Persons with Disabilities Law 2000-2007”. Article 9 of the law provides that any person that without reasonable cause acts or fails to act in a manner which amounts to discrimination against a person with disabilities shall be guilty of an offence punishable with a fine up to €6.800 or with imprisonment not exceeding six months or with both sentences. In the case of a legal entity committing discrimination the fine can be up to €1.960.

Also, any persons with disabilities or an organisation representing persons with disabilities can bring a case of discrimination because of non compliance with accessibility provisions to the Office of the Ombudsman and Protection of Human Rights which can issue recommendations for corrective actions.

## Czech Republic

### a. Accessibility legislation: its place in the legal and regulatory framework

With the active cooperation of organisations of persons with disabilities, in the past fifteen years numerous laws have entered into force which have created a solid legislative framework to ensure accessibility and use not only for public buildings, but also transport infrastructure and vehicles intended for public transport.

In connection with the creation of a barrier-free environment, certain basic regulations are worth mentioning, in particular the Building Act<sup>53</sup> and its Implementing Decrees.

The Building Act features significant modifications compared to previous provisions; barrier-free solutions and usage of buildings are recognised to be in public interest. The Building and Construction Authority can, under the provisions of the Act, order the owner of the construction, building site or developed area to arrange for its barrier-free access and usage. In addition, only such products, materials and constructions may be used in the building which will enable the due usage of the building including its barrier-free usage if the building has been designed as such.

The Implementing Decree on Building Documentation<sup>54</sup> comprises conditions and requirements for clearly defined and controllable solutions of buildings in terms of barrier-free access and usage by persons with limited mobility and orientation, both in the text as well as drawings sections.

The Decree on General Land Use Requirements<sup>55</sup> determines conditions for designing public areas so as to allow their barrier-free usage.

The Decree on General Technical Requirements for Barrier-Free Usage of Constructions<sup>56</sup> specifies general technical requirements for buildings and their parts so as to ensure their usage by persons with mobility related, visual, hearing and mental disability, the elderly, pregnant women, and persons accompanying a child in a pram or a child under the age of three.

On 14 July 2004, the Czech Government adopted the Governmental Plan for Funding the National Development Programme Mobility for All<sup>57</sup>. This programme focuses on the elimination of barriers in transport and buildings intended for public usage implemented before the date of entry into force of the Building Act which imposed the duty of barrier-free access.

The programme aims to create continuous and coherent barrier-free access routes in cities and municipalities so as to improve the accessibility of transport and buildings for persons with disabilities. In the programme, an invitation to submit plans for barrier-free access routes is announced twice a year. The plans are discussed and assessed by the Steering Committee and Assessment Committee of the programme. In its meetings, the Steering Committee, consisting

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<sup>53</sup> Act No. 183/2006 Coll., on Special Planning and Building Code, as amended.

<sup>54</sup> Decree No. 499/2006 Coll., on Building Documentation.

<sup>55</sup> Decree No.501/2006 Coll., on General Land Use Requirements.

<sup>56</sup> Decree No. 398/2009 Coll., on General Technical Requirements for Barrier-Free Usage of Constructions.

<sup>57</sup> Resolution of the Government of the Czech Republic of 14 July 2004 No. 706.

of representatives of each department, deals not only with the evaluation of plans but also with issues of the concept, promotion and funding of the whole programme.

For the section of the Ministry of Culture, an obligation results from the Resolution to provide funding of investment undertakings in 2009 - 2015 leading to the elimination of barriers in the buildings of cultural facilities, i.e. in the buildings of museums, art galleries, theatres, cinemas, etc. amounting to approximately CZK 10 million annually.

The promotion of accessibility of cultural services for persons with disabilities is regarded a priority even in the fundamental strategic document for libraries, the Library Development Concept 2004 – 2010. The measures are implemented both in form of the continuous funding of the Library and Printing Office for the Blind K. E. Macana, a contributory institution of the Ministry of Culture, and by announcing grant tenders.

The scope of activity of the Ministry of Regional Development includes the programme "Barrier-Free Municipalities" whose purpose is to provide state support to investment and non-investment plans concerning the elimination of barriers in the buildings of urban and municipal authorities and in the social care facilities incorporated in the all-embracing chains of barrier-free routes in municipalities and cities. The state support is a system of investment or non-investment subsidies covering up to 50 % of the actually incurred costs of the undertaking in the relevant year. The following activities are referred to in particular:

- elimination of barriers in entrances and exits of buildings,
- elimination of barriers inside buildings,
- barrier-free adjustments of sanitary and social facilities in public premises,
- acquisition and application of lifting and transport technologies and systems.

In conformity with the conditions leading to the elimination of barriers to accessibility for persons with disabilities, police stations and additional premises used by the Czech Police have been subjected to gradual adjustments as well. Older premises of the district departments of the Czech Police which have not been adjusted yet are equipped with button signalling for persons with limited mobility and orientation leading to the office of the supervisor or security guard.

While renovating premises such as the previously and newly established contact and coordination centres, barrier-free entrances are built and parking space provided. In the existing premises, entrance doors are being adjusted, additional entrance platforms installed where the construction allows, and entrances for persons with disabilities are signed accordingly.

Premises of service rooms must be adjusted for internal communication, including the appropriate equipment for contact with persons with disabilities. Moreover, the venues designed for imparting information to the public must be equipped, besides other things, with induction loop system and signed with the international symbol of hearing disability.

Within the administration of the Ministry of Industry and Trade, legislative regulations were issued in recent years to institutionalize testing of aids and devices, and certification of selected products for buildings and constructions.

Regarding transport structures, the principle of non-discrimination focuses mainly on accessibility of transport routes for passengers with limited mobility and orientation. Solutions of all constructions in terms of their barrier-free accessibility and usage are contained in Implementing Decrees to the Building Act<sup>58</sup>. Issues of the barrier-free usage have also been incorporated in technical standards: ČSN 73 6110 Design of Local Communications (2006), ČSN 73 6425 Bus, Trolleybus and Tram Stops, Part 1: Design of Stops (2007).

The Ministry of Transport has participated actively in the preparation of the European Parliament and of the Council Regulation on the Rights of Passengers in Bus and Coach Transport<sup>59</sup> which will come into force on 1 March 2013. This Regulation is, inter alia, targeted at persons with limited mobility in consequence of disability, and it was adopted with a view to enabling such persons to travel by bus and coach at a comparable level with other citizens.

In railroad transport, the accessibility for persons with disabilities is incorporated in all programmes. By construction, update or renovation, the railroad constructions are designed and realized so as to meet the requirements of barrier-free accessibility according to the Decree on General Technical Requirements for Barrier-Free Usage of Constructions<sup>60</sup>.

The update and operation of nation-wide railways incorporated in the European rail system are subject to principles of the directly applicable EU regulation which is the Commission Decision on Technical Specifications for Interoperability Relating to Persons with Limited Mobility and Orientation in Trans-European Conventional and High-Speed Rail System<sup>61</sup>.

Mobility issues as such, including recommendations how to solve issues of mass transport (low-floor means of transport, equipment of stops, or traffic islands, adjustment of pavements and other movable or immovable facilities of cities and municipalities to suit persons with disabilities) are the subject of "Mobility Issues in an Aging Population" published by the Centre for Traffic Research and designed for staff of state administration<sup>62</sup>.

The right to equal treatment and the prohibition of discrimination are defined by the Anti-Discrimination Act<sup>63</sup>. Paragraph 3 of Article 2 understands direct discrimination as such action or inaction, where an individual is treated less favourably than another person is treated or would be treated in a comparable situation, on the basis of race, ethnic origin, nationality, gender, sexual orientation, age, disability, religion, belief or opinion. Moreover, paragraph 5 determines discrimination as the action of treating an individual less favourably on the basis of her or his alleged origin as set out in paragraph 3.

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<sup>58</sup> Implementing Decree No. 398/2009 Coll., No. 499/2006 Coll., No. 501/2006 Coll., No. 503/2006 Coll. to Act No. 183/2006 Coll., on Special Planning and Building Code, as amended.

<sup>59</sup> Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the Rights of Passengers in Bus and Coach Transport and amending Regulation (EC) No 2006/2004.

<sup>60</sup> Decree No. 398/2009 Coll., on General Technical Requirements for Barrier-Free Usage of Constructions.

<sup>61</sup> Commission Decision 2008/164/EC of 21 December 2007 concerning Technical Specifications of Interoperability Relating to Persons with Reduced Mobility in Trans-European Conventional and High-Speed Rail System.

<sup>62</sup> Published by NOVAPRESS, Brno, ISBN-978-80-87342-05-3.

<sup>63</sup> Act No. 198/2009 Coll., on Equal Treatment and on Legal Means of Protection against Discrimination and on Amendment to Some Acts, as amended.

Afterwards, paragraph 2 of Article 3 of the referred Act defines indirect discrimination on the basis of disability also as the refusal or omission to take appropriate measures to enable the person with disability to access a certain job, to carry out certain work tasks or functional or other procedures at work, to utilise vocational counselling, or to participate in other specialized learning, or to take advantage of services intended for the general public, unless such measure would impose a disproportionate burden.

While making a decision whether a particular measure does not impose a disproportionate burden, in particular the level of merit is taken into consideration which the implementation of the given measure will bring to persons with disabilities, the acceptability of the financial burden of the measures for individuals or legal entities who are in charge of such implementation, the availability of financial and other assistance to give effect to the measures, and the eligibility of alternative action to meet the needs of persons with disabilities. A measure is not considered to impose a disproportionate burden if an individual or a legal entity is obliged to give effect to such measure under special regulation.

**b. General law, technical regulations and standards**

Please see point a. above.

**c. Role of national, European and international standards**

Current Czech legislation in the field of the barrier-free use of building is entirely comparable with the standards in force in EU countries.

**d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

An important step helping to improve accessibility was the approval of an amendment to the Act on Public Administration Information Systems taking into account the needs and requirements of persons with disabilities. This Act was implemented by a decree on the form of disclosure of information related to public administration by means of websites for people with disabilities, which defined accessibility rules in detail.

1 April 2011 was the effective date of the Government Regulation on the Determination of Minimum Values and Indicators for Quality and Safety Standards and on the Proving Method in Connection with the Provision of Public Services in Passenger Transport<sup>64</sup>, which implements the Act on Public Services in Passenger Transport<sup>65</sup> and defines the share of vehicles in public transport which must allow the transport of persons with limited mobility and orientation. The purpose is to enhance access for persons with disabilities to public transport provided by the state, regions or municipalities.

The Department of Transport, in cooperation with the Road and Motorway Directorate of the Czech Republic provides barrier-free usage of motorway and speedways constructions in places accessible to pedestrians, which means in particular rest areas and the surroundings of emergency call boxes, as part of its competence of a Special Building and Construction

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<sup>64</sup> Government Regulation No. 63/2011 Coll. on the Determination of Minimum Values and Indicators for Quality and Safety Standards and on the Proving Method in Connection with the Provision of Public Services in Passenger Transport.

<sup>65</sup> Act No. 194/2010 Coll., on Public Services in Passenger Transport and on Amendment to Some Acts, as amended.



Authority for the respective land communications. The review of norms, technical regulations and model sheets of land communications concerning the issues of barrier-free usage of land communications are prepared in cooperation with the appointed representatives of non-governmental organizations, in particular with the Czech National Disability Council.

Since 2009, the barrier-free usage of the premises of schools and school facilities has been regulated by a separate Decree of the Ministry of Regional Development on General Technical Requirements for Barrier-Free Usage of Constructions<sup>66</sup>.

The scope of activity of the Health Department includes Decree on Requirements for Material and Technical Equipment of Health Care Facilities<sup>67</sup> which determines, in addition to the above conditions, that the basic operating areas of inpatient departments must be equipped so that they can be used by patients with limited mobility and orientation.

**e. Services regulated for accessibility**

Please see above.

**f. Goods regulated for accessibility as part of a service**

Please see above.

**g. Goods regulated for accessibility**

Please see above.

**h. Enforcement of accessibility legislation**

The administration examines accessibility requirements before granting permits or allowing marketing of products.

**i. Non-compliance and litigation**

Non-compliance of accessibility legislation could be brought to court or to other relevant bodies by individuals, NGO's, public authorities, state bodies etc.

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<sup>66</sup> Decree No. 398/2009 Coll., on General Technical Requirements for Barrier-Free Usage of Constructions.

<sup>67</sup> Decree No. 221/2010 Coll., on Requirements for Material and Technical Equipment of Health Care Facilities.

## Denmark

### a. Accessibility legislation: its place in the legal and regulatory framework

In Denmark accessibility is covered by the legal and regulatory framework.

For instance, for electronic communication networks and services the designated Universal Service Provider must provide, in accordance with sections 6 – 8 of the Executive Order 701 of 26 June 2008 on Universal Service, a number of specified services for disabled end-users on further specified terms and conditions. These services include a text telephony service and a related 24-hour call center. The pricing of USO-products for disabled end-users is regulated. Provision of public pay telephones is regulated in section 6 of the Electronic Communications Networks and Services (ECNSA) and Executive Order 710 of 25 July 1996. There is a specific provision allowing the use of hearing-aids in the executive order.

For passenger ships, MSC/Circ.735 “Recommendation on the design and operation of passenger ships to respond to elderly and disabled persons’ needs” is mandatory.

In Denmark, accessibility to buildings is regulated through building legislation (the Building Act and Danish Building Regulations), which covers new building, refurbishment and renovation of existing buildings. The Danish Building Regulations are regularly updated.

Stricter accessibility requirements in connection with conversions in existing buildings were introduced in 2008, making such buildings subject to the requirement of level-free access, etc. With effect from 2 February 2008, the 2008 Buildings Regulations introduced a host of new requirements for accessibility for persons with disabilities, and existing accessibility requirements were significantly tightened.

The Building Regulations list the following requirements:

- level-free access to all units on the entrance floor of a building
- level-free access to all units on the floors of a building, parking spaces for people with disabilities, accessible passage from the car park to the building
- disabled toilets (open to the public)
- lifts that can be operated by people in wheelchairs
- induction loop systems in rooms with common activities, mobile/wireless induction loops or other forms of installations (e.g. in conference rooms and at desks)
- establishment of wheelchair spaces at permanently mounted spaces
- available signs and information in buildings

Further, several projects have been started at the Danish Building Research Institute (SBI), generally to help determine the extent to which it can be ensured that already existing provisions on accessibility are observed, so that accessibility to buildings is enhanced and improved. Thus, the projects are to be part of an overall assessment of whether additional

tools for observing accessibility provisions can improve accessibility to buildings for persons with disabilities.

The Building Regulations requirements on accessibility also apply for publicly subsidised housing as regulated in the Danish Act on Social Housing, etc. The Act sets out special requirements for housing accessibility, and funding is annually earmarked for refurbishing existing housing with a general view to increasing housing accessibility in the sector. To this end, a project has been launched to map accessibility in the more than 550,000 homes in the social housing sector. The project is presented on the Internet portal, [www.danmarkbolig.dk](http://www.danmarkbolig.dk). In the portal, persons with disabilities can find information on the accessibility of individual homes, and thus obtain help to find the homes best suited to their disabilities.

The Act on Social Housing, etc. lays down specific provisions on layout and design of social housing for persons with disabilities.

For more information in English about accessibility and article 9 in a Danish context: [http://www.sm.dk/Temaer/sociale-omraader/Handicap/Documents/Engelsk\\_FNs\\_rapport\\_22082011.doc.pdf](http://www.sm.dk/Temaer/sociale-omraader/Handicap/Documents/Engelsk_FNs_rapport_22082011.doc.pdf)

#### **b. General law, technical regulations and standards**

In relation to accessibility of electronic communication networks and services, the European Universal Service Directive 2002/22/EC as amended by Directive 2009/136/EC has been implemented in the Danish Act no. 169 of 3 March 2011 on Electronic Communications Networks and Services (ECNSA).

See above regarding the Building Regulation.

#### **c. Role of national, European and international standards**

For ships IMO standards are used. If there are no IMO standards for a subject, the Danish government would propose development of an international standard.

#### **d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

As mentioned in “State of play” the only change in legislation found to necessary before the ratification was an amendment to make sure that Denmark met the provisions of Article 29 of the Convention, which require state parties to guarantee persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others.

In 2010 the requirement of accessible signs and information was introduced in connection with the implementation of the UN Convention on the Rights of Persons with Disabilities. Further, the Danish Building Research Institute performs a range of communications tasks on the building legislation on behalf of the Danish Enterprise and Construction Authority. The

tasks include advisory services, knowledge dissemination and preparation of directions, instructions and checklists.

#### **e. Services regulated for accessibility**

Services regulated for accessibility include a text telephony service and a related 24-hour call center. There are provisions for public pay telephones, as well as for passenger transport in passenger ships.

For more information in English about accessibility and article 9 in a Danish context:  
[http://www.sm.dk/Temaer/sociale-omraader/Handicap/Documents/Engelsk\\_FNs\\_rapport\\_22082011.doc.pdf](http://www.sm.dk/Temaer/sociale-omraader/Handicap/Documents/Engelsk_FNs_rapport_22082011.doc.pdf)

#### **f. Goods regulated for accessibility as part of a service**

The Universal Service Provider for electronic communication networks and services (point a.) provides hardware and software needed to use the text telephony service. Passenger ships are regulated for accessibility.

For more information in English about accessibility and article 9 in a Danish context:  
[http://www.sm.dk/Temaer/sociale-omraader/Handicap/Documents/Engelsk\\_FNs\\_rapport\\_22082011.doc.pdf](http://www.sm.dk/Temaer/sociale-omraader/Handicap/Documents/Engelsk_FNs_rapport_22082011.doc.pdf)

#### **g. Goods regulated for accessibility**

Provision of public pay telephones is regulated in section 6 of the ECNSA and Executive Order 710 of 25 July 1996. There is a specific provision allowing use of hearing-aids in the executive order.

Passenger ships are regulated for accessibility.

For more information in English about accessibility and article 9 in a Danish context:  
[http://www.sm.dk/Temaer/sociale-omraader/Handicap/Documents/Engelsk\\_FNs\\_rapport\\_22082011.doc.pdf](http://www.sm.dk/Temaer/sociale-omraader/Handicap/Documents/Engelsk_FNs_rapport_22082011.doc.pdf)

#### **h. Enforcement of accessibility legislation**

The Danish Business Authority enforces compliance with legislation regarding electronic communication networks and services. Non-compliance may be fined.

Accessibility requirements are examined before granting permits; there may be fines if a service or product is found not complying with existing regulations.

#### **i. Non-compliance and litigation**

Non-compliance with accessibility legislation may be brought before the Danish Business Authority. Decisions made by the Danish Business Authority may be appealed to the Telecommunications Complaint Board.

Non-compliance will result in the permit to operate a passenger ship being withheld or withdrawn. Non-compliance may also result in the case be brought to court.

## **Estonia**

Estonia has done the necessary preparations needed for ratification of the UNCRPD but ratification has not entered into force yet.. So far the rights of people with disabilities, accessibility included, have been regulated and ensured by several provisions of law and included in strategic development plans of Estonian ministries.

### **a. Accessibility legislation: its place in the legal and regulatory framework**

Legislation for buildings in Estonia, e.g. Building Act (adopted in 2002, latest review in 2011), also covers accessibility: if required by the purpose, buildings' parts intended for public use have to be accessible to and usable by persons with reduced mobility and by visually impaired and hearing impaired persons.

The Ministry of Economic Affairs and Communications is also developing different guidelines in different areas (e.g. building environment guidelines, universal design).

Access of disabled persons to public buildings is regulated by Regulation No. 14 Requirements to Guarantee Mobility of Persons with Physical, Visual and Hearing Disabilities in Public Buildings issued by the Minister of Economic Affairs and Communications in 2002. Similar requirements of access to residential buildings are the objective of one of the measures stipulated in the Development Plan for Residential Issues in Estonia for 2007-2013. The Estonian Housing Economy Development Plan 2008-2013 (approved by the Government in 2008) stipulates several direct activities to improve accessibility under the strategic development trend of guaranteeing housing availability, e.g. supporting the adaptation of housing to special needs and preparation of guidelines with respect to technical solutions in order to guarantee persons with physical disabilities access to residential buildings.

There are no legislative amendments planned for adoption in near future in the built environment sector because adequate legislation has been developed and it has come into force.

Estonia also has a Public Transport Act (adopted on 2000, last redaction on 2011), according to which disabled children, people with profound disabilities aged 16 and over, and persons accompanying people with severe or profound visual disabilities or guide dogs accompanying such persons are allowed to travel by public transport free of charge. The Transport Development plan for 2006-2013 stipulates that access to transport services and infrastructure has to be guaranteed for people with reduced mobility. This is done by development and maintenance of infrastructure. A new transport development plan for the next period is being drafted.

Local governments are responsible for arranging of transportation for persons with disabilities according to the Social Welfare Act (adopted on 1995, latest review in 2011); this is done by offering social transport and the service of adapted taxis.. The new Traffic Act (enforced in 2011) enacts specific requirements for people with visual and mobility disability on moving on pavements, also some exclusive rights of disabled drivers with reduced mobility and the drivers who are servicing a person with reduced mobility or a blind person. The Traffic Act is elaborated on that topic by a regulation of the Minister of Social Affairs.

The Electronic Communications Act (adopted in 2004, latest review in 2011) takes into consideration also the interests of different social groups, including persons with special needs. The access of disabled persons to information technologies is also prescribed in the Information Society Development Plan 2006-2013. This focuses on how to exploit the opportunities created by ICT wisely and to use them to improve overall quality of life. The Plan stipulates that particular attention should be paid to the inclusion of social groups with special needs into society, supporting regional development and local initiatives. One of the groups given high priority is people with disabilities. The goals and principles that were set in the Estonian Broadband Strategy 2005-2007 are also considered in the Strategy of Information Society 2006-2013. One of them is to make all public sector websites accessible to people with special needs.

The Ministry of Social Affairs of Estonia has prepared a Development Plan for Children and Families for 2011-2020 in 2011. Many activities in it are directed to improving the quality of life of children with disabilities and their families, including accessibility of services etc. The goal is to make it possible for every member of society to live their lives to the full with the help of the opportunities offered by ICT, and participate actively in public life. People with disabilities are included also in National Health Plan 2009-2020 and the Development Plan for the Education System 2007-2013. Furthermore, the Government takes actions to attain equalization of opportunities for persons with disabilities.

Lack of accessibility can be seen as discrimination according to the Equal Treatment Act, if existing legislation is disregarded or not obeyed in the sphere of education or employment.

#### **b. General law, technical regulations and standards**

General accessibility requirements are provided by general law, most of them for physical accessibility by Regulation No. 14 Requirements to Guarantee Mobility of Persons with Physical, Visual and Hearing Disabilities in Public Buildings issued by the Minister of Economic Affairs and Communications on 2002. Technical regulations and standards can specify the requirements for special products.

#### **c. Role of national, European and international standards**

Estonia does not have general national accessibility standards in addition to the abovementioned legislation, these issues are rather dealt with in different development plans and plans of action, e.g. for transport sector, design, health, education etc. Different European standards and best practices have been used as models for developing these plans. Principles of universal design are also mainstreamed to promote accessibility to different services – employment, buildings, transportation, medical services, information and communication, education, leisure, culture etc.

EC Regulation No 181/2011 of the European Parliament and of the Council concerning the rights of passengers in bus and coach transport will come into force in Estonia on 1st of March 2013. Regulation No 1371/2007 of the European Parliament and of the Council on rail passengers' rights and obligations is implemented partially due to the need for large-scale and long-term investments.

UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities (adopted in 1993, approved by Estonian Government in 1995) are also obeyed as an

international document. This guide has established an important framework for the implementation of universal design principles in Estonian society. Some international standards may be adopted by some enterprises in their economy sector, not nationally.

**d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

Estonia has not completed the ratification process of the UN Convention on the Rights of Persons with Disabilities yet. During the preparation process for the ratification, that has been conducted in the last years, there has been no need for changes in accessibility legislation. Still, the UNCRPD is used as an instrument and basis for policy-making.

**e. Services regulated for accessibility**

Service providers have to follow legislation that is mentioned above.

Requirements on health protection (including requirements for spaces, indoor furniture, indoor climate, lighting, maintenance, territory, etc.) for the facilities where social welfare services are provided are imposed by the Minister of Social Affairs with several regulations.

Possibilities of vocational education for persons with disabilities are ensured by the Regulation No. 25 by the Minister of Education and Science since 2006: conditions and procedures of vocational education of persons with special needs.

Requirements for the environment of children with disabilities (public buildings, streets, vehicles) are also stipulated in the Child Protection Act. In other respects legislation is based on the principle of equal treatment and children with disabilities are not differentiated from children without disabilities.

Requirements for work, tools and workplace adjustments for employees with disabilities are imposed in the Occupational Health and Safety Act and also in the Labour Market Services and Benefits Act.

Public libraries are bound by the Public Libraries' Act to offer free home service for persons with limited mobility, if needed. Interpreter for deaf party of a proceeding are enabled according to the Code of Civil Procedure and Code of Criminal Procedure.

Requirements imposed on accommodation, children's and health institutions, etc. do not differentiate between persons with disabilities and persons without disabilities. Therefore there are neither special requirements nor legislation imposed on them in addition to the ones mentioned above. Generally, there are no different rules or regulations for public or private service providers.

**f. Goods regulated for accessibility as part of a service**

There is Regulation No. 14 Requirements to Guarantee Mobility of Persons with Physical, Visual and Hearing Disabilities in Public Buildings issued by the Minister of Economic Affairs and Communications in 2002. It regulates access of disabled persons to public buildings and has imposed some requirements for goods used by it, including ramps, stairs, handrails, signs, bathrooms, mailboxes, box-offices, ATMs, ticket machines, counters, doors,



gates, elevators, fixture, fitment, equipment, lighting, upholstery materials and colors, flooring, toilet-bowls, washbasins etc.

**g. Goods regulated for accessibility**

Please see answer f.

**h. Enforcement of accessibility legislation**

The enforcement of accessibility legislation has administrative nature and all the mentioned types of enforcement power fines, examining accessibility requirements before granting permits or allowing marketing of products can be applied, if necessary. Enforceability of accessibility legislation could be better in Estonia. A lot of relevant tasks are directed to local governments (e.g. construction supervision, social transportation etc.) and the capability of local governments to accomplish its duties varies in different regions. The compliance with accessibility legislation is monitored also by the Chancellor of Justice (Ombudsman) who can also pay inspection visits, if necessary.

**i. Non-compliance and litigation**

A case of non-compliance with accessibility legislation can be brought to court, to the Chancellor of Justice (Ombudsman) or to the Gender Equality and Equal Treatment Commissioner. The Gender Equality and Equal Treatment Commissioner is an independent and impartial expert who acts independently, monitors compliance with the requirements of the Gender Equality Act and Equal Treatment Act. The Commissioner provides opinions concerning possible cases of discrimination. The Commissioner can be called upon by natural persons, the Chancellor of Justice by a legal entity or a natural person. The Chancellor accepts applications that explain what sections of the legislation or situation are not in conformity with the Constitution and the law according to the opinion of the applicant. He also can perform inspection in public institutions. The Chancellor proposes to harmonise the situation with the Constitution and the law. If the position of the Chancellor is not met or if the institution does not respond to the inquiry, he may submit a report to the body that monitors the activity of the institution, or to the Government or the Parliament. The Chancellor of Justice has the right to conduct conciliation. His position is final and can not be challenged in court.

## **Finland**

The Ministry for Foreign Affairs has, in May 2011, set up a working group to prepare the measures necessitated by the ratification of the Convention and its Optional Protocol in Finland. The work of the working group and other related work are still ongoing, and the points below have to be interpreted accordingly.

### **a. Accessibility legislation: its place in the legal and regulatory framework**

In Finland, lack of accessibility is not specifically defined as discrimination. Discrimination on the grounds of disability and health, among other reasons, is, however, banned under the Non-Discrimination Act. Discrimination can be direct or indirect. In practice, lack of accessibility may become direct or indirect discrimination, but only in the following contexts:

1. conditions for access to self-employment or means of livelihood, and support for business activities;
2. recruitment conditions, employment and working conditions, personnel training and promotion;
3. access to training, including advanced training and retraining, and vocational guidance;
4. membership and involvement in an organisation of workers or employers or other organisations whose members carry out a particular profession, including the benefits provided by such organisations.

Moreover, the Non-Discrimination Act binds the employer to take any reasonable steps to help a person with disabilities to gain access to work or training, to cope at work and to advance in their career. In assessing what constitutes reasonable, particular attention must be devoted to the costs of the steps, the financial position of the person commissioning work or arranging training, and the possibility of support from public funds or elsewhere towards the costs involved.

The Ministry of Justice has formed a working group to revise Non-Discrimination Act during this governmental period (2011-2014).

Finland's Disability Policy Programme 2010-2015 calls for strong inputs in the accessibility of the Finnish society over the next few years. With this programme, the aim is to strengthen the social, cultural, ecological and economic sustainability of the society as well as its justice and fairness. The objective is to ensure the design, realisation and implementation of services, environments and products in such a way that all people can use them.

Some of the measures included in the programme require the removal of existing barriers, whereas others call for functioning solutions for the future. The former set of measures is represented by the measure obligating all sectors of administration to reconstruct inaccessible facilities by the year 2020. The latter measures include the development of the monitoring of an accessible communications policy as well as the further development of accessibility of the electronic services of public administration and accessibility of public transport. Examples of the latter kind of measures also include guidance for accessible planning, development of legislation concerning new buildings, harmonisation of the interpretation of the accessibility legislation, the work to develop new and innovative solutions as well as the development of accessibility in relation to work and learning environments, social and health services and sports and culture.

The objective is to ensure continuous accessible chains of action. This means, for example, that one has the possibility to move smoothly and seamlessly between home, workplace, school, places of service and leisure activities as well as their near environments. This means also that all these facilities, places and means of transport between them as well as information about them must be accessible. The prerequisite for a non-discriminatory social development is that the principles of design for all are realised in the various parts of the action chain under the responsibility of various sectors of administration. Awareness about accessibility and the strengthening of accessibility should be raised to a similar kind of mainstreaming development in society that we currently have in terms of environmental awareness.

### *Built environment*

The Land Use and Building Act (132/1999) defines the objectives land use planning in Finland. The first objective is to promote a safe, healthy, pleasant, socially functional living and working environment which provides for the needs of various population groups, such as children, the elderly and the disabled. The Act states that a building must, in so far as its use requires, also be suitable for people whose capacity to move or function is limited. The Land Use and Building Decree (895/1999) provides further regulations to ensure accessibility in different types of buildings. These include administrative and service buildings as well as commercial and service premises in other buildings to which everyone must have access for reasons of equality, and residential buildings with their building sites. This Section also covers buildings with work space which, for purposes of equality, must be designed and built so that they provide persons with restricted ability with sufficient opportunity to work, taking into account the nature of the work.

The Finnish Building Code lays out technical regulations and guidelines which supplement the Land Use and Building Act. The Building Code applies to new constructions; renovation and refurbishment are mainly outside the scope of the Building Code. Particularly the following decrees set out the requirements for the accessibility of public and residential buildings; F1 Barrier-free building (2005), F2 Safety in use of buildings (2001), G1 Housing design (2005).

<http://www.ymparisto.fi/default.asp?contentid=68171&lan=en>).

At present, lack of accessibility in the built environment is mainly dealt with as a technical issue.

There are various guidelines concerning physical accessibility of buildings, as well as guide books on how to interpret building standards. The following organisations have given voluntary recommendations on the accessibility of communications, which are based on international standards:

- Advisory Committee on Information Management in Public Administration (JUHTA, Ministry of the Interior)
- Finnish Information Society Development Centre (TIEKE)
- Finnish Federation of the Visually Impaired (FFVI)

Finnish Design for All Network promotes accessibility of built environments, accessibility of communication and services, as well as usability of products. The DfA web portal includes

information, studies, tools and links to various areas of the accessibility.  
<http://dfasuomi.stakes.fi/EN/index.htm>.

### *Transport*

The Ministry of Transport and Communications is preparing a transport policy report which is to be submitted to Parliament in spring 2012. The section concerning public transport emphasises the importance of accessibility in accordance with the accessibility strategy published by the Ministry in 2003. In recent years, accessibility has been stressed mainly in the conditions for transport purchases (railways) and in different legislative undertakings.

Technical regulations on transport equipment are mainly derived from European Union legislation and the Finnish legislation has been harmonised to better coincide with the legislation in other EU countries. There are technical regulations concerning equipment both for road traffic (city buses, railways) and water-born traffic (larger vessels).

Also the general legislation concerning passenger traffic is based on the EU legislation which the new Finnish Act for Public Transport (869/2009) only complements. The new act includes not only the obligation to set regional targets for the standard of the services (including accessibility), but also the obligation for certain quality of services by bus-service operators (including the obligation to report on the accessibility of services).

In Finland, the EU legislation on passenger rights applies. Provisions on the rights of persons with disabilities and persons with reduced mobility are included in the European Parliament and Council Regulations No 1107/2006 on air traffic, No 1371/2007 on train traffic, No 1177/2010 on water-born traffic and No 181/2011 on bus traffic. These regulations grant persons with disabilities the access to the above mentioned services, as well as and the arrangement of necessary assistance. However, the set of rights covered by different types of transport varies.

The only legislation that is solely national is the legislation concerning taxi traffic. The aim of the legislation has traditionally been to secure a sufficient level of services suitable for persons with disabilities. There are several regulations promoting the mobility of persons with disabilities. These regulations concern the training and education of taxi drivers and entrepreneurs (disability knowledge and skills), the granting of taxi licenses (there must be enough vehicles suitable for persons with disabilities), vehicles (there are different quotas and definitions for accessible taxis and taxis for persons with disabilities) and price (special supplements for assistance).

### *Information society*

The Communications Market Act includes regulations on the public service obligation for the provision of general telecommunication services and on a decree on the minimum requirements for public telecommunication services provided for persons with hearing, speech and vision disorders.

The Act on Television and Radio Operations was amended as of 1 July 2011 so that national commercial channels were obliged to subtitle even Finnish and Swedish programmes. The decree complementing the act defines the percentage values for the increased need for

subtitling in 2011–2016. According to the effective decree, the public service broadcasting company YLE must subtitle all its programmes by 2016 (excluding music, sports and children's programmes).

The Government is carrying out the Action Programme towards a barrier-free information society for 2011-2015. The primary target groups of the Action Programme include government actors, product developers, service providers, R&D centres and different kinds of organisations. In addition, the programme can be used as a guideline by any other information society actor. The programme represents a step forward in implementing a barrier-free information society, and it will play a major role in developing the Finnish information society and communications policy over the next years.

The Action Programme aims at coordinating the development of information society accessibility; increasing people's information society skills and capabilities; developing increasingly multi-channel services and technology-neutral communications; improving the usability of hardware, software and auxiliary devices; improving the accessibility and comprehensibility of online content; supporting research and development activities and improving the accessibility in public procurements. The measures and targets of the Action Programme are defined annually by a working group monitoring the implementation of the programme.

#### *Assistive technology*

Services for assistive technology are regulated by several different pieces of legislation. Municipalities bear the main responsibility for providing the services. The National Insurance Institute of Finland, insurance and employee insurance companies, employment administration and State Treasury pay for the assistive devices that they are responsible for.

Disabled students and other students in need of special support are entitled to receive – free of charge – special assistive devices and services which they need to allow them to take part in their classes. Such aids are for example computers, lifts or special desks. Severely disabled students at upper secondary school or in grades 7-10 of comprehensive school are entitled to the assistive devices required for their studies (such as computers and low vision aids), under condition that these are specified in a special vocational training plan approved in accordance with the individual rehabilitation plan the Social Insurance Institution of Finland (KELA) assumes has been drawn up.

#### **b. General law, technical regulations and standards**

See point a.

#### **c. Role of national, European and international standards**

See point a.

With regard to the design of lifts suitable for disabled users, the Building Code F1 'Barrier-free building' (2005) refers to the EU Directive on lifts (95/16/EC), the EU Directive on machinery (98/37/EC) and the Standard EN 81-70:2003.

#### **d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

The Ministry for Foreign Affairs has, in May 2011, set up a working group to prepare the measures necessitated by the ratification of the Convention and its Optional Protocol in Finland. Its work is still ongoing.

**e. Services regulated for accessibility**

See point a.

**f. Goods regulated for accessibility as part of a service**

See point a.

**g. Goods regulated for accessibility**

See point a.

The City Council of Helsinki has decided that the municipal public transport system (buses, trams and metro as well as stops and stations) must be accessible for all people.

**h. Enforcement of accessibility legislation**

See point a.

Before granting a building permit, the local building control authority examines the compliance of the plans with the accessibility legislation. The building control authority may also require a more detailed separate report on accessibility as a precondition for the building permit.

**i. Non-compliance and litigation**

In Finland, complaints can be made by anyone to the Chancellor of Justice and to the Parliamentary Ombudsman. The Chancellor of Justice supervises the lawfulness of the actions of Government ministers and public officials. He also monitors the implementation of basic rights and liberties and human rights. The Parliamentary Ombudsman of Finland monitors public authorities and officials to ensure that they observe the law and fulfill their duties in the discharge of their functions.

For example, the Parliamentary Ombudsman decisions 657/4/03 and 619/4/03 concern access to the voting site. Even though the Ombudsman did not find any unlawfulness in these two cases, the two central election boards in question were reminded that persons with physical disabilities need to be ensured both voting secrecy and unimpeded access to the voting site. The legal basis was the Constitution of Finland (731/1999), Section 6: Everyone is equal before the law. No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, *disability* or other reason that concerns his or her person.) The decisions of the Chancellor of Justice and the Parliamentary Ombudsman are not subject to appeal.

## France

### I. Contexte général de l'accessibilité:

La loi n°2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées garantit l'accès aux droits fondamentaux de toute personne handicapée, et retient le principe d'une cité accessible à tous en 2015 dans la plus grande autonomie possible. La France s'est fixé un objectif ambitieux: rendre l'ensemble des aspects de la vie quotidienne totalement accessible à toutes les formes de handicap d'ici 2015.

La loi du 11 février 2005 instaure l'accessibilité du cadre bâti, des transports et des nouvelles technologiques. L'accessibilité, jusqu'alors physique, est renforcée par l'inclusion des nouvelles technologies. Si ces textes s'adressent prioritairement aux personnes handicapées, ils concernent en fait la société dans son entier.

A ce stade, la question de l'accessibilité suscite davantage de l'inquiétude que de la mobilisation de la part des propriétaires concernés. Le sentiment général des associations est également à l'inquiétude : elles craignent que l'éloignement des dates butoirs ne démobilise les propriétaires et que les tentatives de contourner les obligations légales se multiplient. Les difficultés rencontrées sont principalement au nombre de deux :

- l'accessibilité est largement ressentie par les propriétaires et exploitants comme une contrainte technique supplémentaire et un coût supplémentaire : la mise en œuvre de cette politique nécessite un effort important de pédagogie, de mobilisation et d'accompagnement ;
- la réglementation en matière d'accessibilité est désormais très complète mais elle est également très complexe : sa mise en œuvre suppose donc une attention particulière en matière de formation.

Les objectifs de la France pour atteindre cet objectif d'accessibilité en 2015 sont :

- de faire partager le sens et les objectifs de la politique de mise en accessibilité par toute la société ;
- d'améliorer la formation et développer les connaissances sur l'accessibilité et la conception universelle ;
- d'accompagner, y compris financièrement, les collectivités locales dans la mise en accessibilité de leur patrimoine ;
- d'améliorer l'accès aux biens et aux services, dans une logique d'accès aux droits.

Concrètement, dans le cadre de la 2ème Conférence nationale du handicap de juin 2011 le Gouvernement a retenu des mesures<sup>68</sup> volontaristes visant en particulier à :

- accompagner le déploiement de l'accessibilité aux lieux de travail, aux vecteurs numériques et aux nouvelles technologies, par le lancement d'un plan métiers du handicap orienté vers le développement des métiers de l'accessibilité et de la conception universelle ;

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<sup>68</sup> L'ensemble des mesures est consultable à l'adresse : [http://www.solidarite.gouv.fr/IMG/pdf/Dossier\\_de\\_presse\\_conference\\_handicap-2.pdf](http://www.solidarite.gouv.fr/IMG/pdf/Dossier_de_presse_conference_handicap-2.pdf)

- améliorer l'accès aux soins des personnes handicapées, tant sur l'accessibilité de l'offre que des lieux de soins ;
- permettre l'accès du plus grand nombre à la culture et aux loisirs ;
- sensibiliser l'ensemble de la société à la conception universelle.

## **II . Principaux domaines concernés :**

### **1. Domaine des transports :**

Dans le domaine des transports, la loi introduit le concept de la chaîne du déplacement, qui éclaire la notion d'accessibilité. Cette chaîne comprend le cadre bâti, la voirie, les espaces publics, les systèmes de transport et leur intermodalité. Pour atteindre ce résultat, elle prévoit l'élaboration de documents de planification et de programmation des mesures à prendre et des travaux à réaliser : les schémas directeurs d'accessibilité (SDA) pour les transports et les plans d'accessibilité de la voirie et des espaces publics (PAVE) pour la voirie et les espaces publics. Elle instaure la concertation comme principe de base dans tous les processus d'élaboration des documents de programmation et de planification spécifiques à l'accessibilité ( PAVE<sup>69</sup> et SDA<sup>70</sup>) ou portant sur l'organisation globale des déplacements tels que les plans de déplacements urbains (PDU).

Concernant la politique d'accessibilité des services de transports, la loi impose :

- un objectif de résultat : la mise en accessibilité de tous les services de transports collectifs d'ici février 2015. Lorsqu'il s'avère techniquement impossible (ITA<sup>71</sup>) de mettre en accessibilité les réseaux existants, doivent être mis à disposition des personnes handicapées ou à mobilité réduite des « transports de substitution » adaptés à ces personnes.
- un objectif de moyens : la loi oblige les acteurs à améliorer l'accessibilité de l'infrastructure des services de transport et du matériel roulant dans certaines occasions :
  - les travaux réalisés sur les arrêts de bus ou sur les gares doivent intégrer les prescriptions techniques d'accessibilité ;
  - les matériels roulants achetés pour l'extension des réseaux ou le renouvellement des flottes doivent être accessibles ;
  - les rénovations à mi-vie du matériel ferroviaire doivent intégrer l'accessibilité aux personnes handicapées ou à mobilité réduite.
- une procédure de dépôt de plainte : la loi de 2005 et les décrets qui en découlent prévoient que chaque autorité organisatrice de transport (AOT) mette en place une procédure de « dépôt de plainte » concernant les obstacles à la libre circulation des personnes à mobilité réduite. Il

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<sup>69</sup> PAVE : plans de mise en accessibilité de la voirie et des espaces publics

<sup>70</sup> SDA : schémas directeurs d'accessibilité

<sup>71</sup> ITA : impossibilité technique avérée



ne s'agit pas d'une « plainte » au sens pénal du terme mais d'un signalement des obstacles rencontrés.

Enfin, l'octroi d'aides publiques favorisant le développement des systèmes de transport collectif est subordonné à la prise en compte de l'accessibilité.

Pour conforter la mobilisation dans le domaine du transport, l'État apporte l'appui de son réseau scientifique et technique en publiant des guides méthodologiques et des recueils de bonnes pratiques, en conduisant des programmes de recherche et d'innovation dans les transports terrestres (PREDIT) et en organisant des journées de formation et d'échanges.

Il s'est également doté d'instances spécifiques :

- **le comité interministériel du handicap** a été créé pour définir, coordonner et évaluer les politiques menées par l'État. Il réunit tous les ministres concernés par la politique du handicap ;
- **l'observatoire interministériel de l'accessibilité et de la conception universelle**, qui réunit les représentants de tous les acteurs de l'accessibilité; il a pour mission d'évaluer l'accessibilité du cadre de vie, d'identifier les obstacles à la mise en œuvre des prescriptions législatives, de repérer les difficultés rencontrées au quotidien par les personnes handicapées et à mobilité réduite et de constituer un centre de ressources capitalisant, valorisant et diffusant les bonnes pratiques en matière d'accessibilité et de confort d'usage pour tous.

En application de l'article L. 114-2-1 de l'action sociale et de la famille, l'État doit organiser tous les trois ans une conférence nationale du handicap. La seconde en date du 8 juin 2011 a été l'occasion de dresser le bilan d'application de la loi dans toutes ses dimensions, de mesurer le chemin parcouru depuis la première conférence nationale de 2008 et de mieux identifier les domaines dans lesquels les progrès doivent encore être confirmés.

Les premiers résultats des politiques volontaristes des autorités organisatrices et des opérateurs sont déjà visibles et de bonnes expériences existent dans les départements.

Plus spécifiquement, d'un point de vue sectoriel :

- Concernant le réseau autoroutier concédé : l'accessibilité des personnes handicapées est actuellement diversement prise en compte, en fonction des maîtres d'ouvrage. Néanmoins, la loi imposant une accessibilité de l'ensemble des services en 2015, les sociétés concessionnaires d'autoroutes ont mis en place des programmes afin que l'échéance soit respectée sur l'ensemble du réseau autoroutier. Concernant l'accès aux aires de services, le renouvellement massif des bâtiments accueillant du public prévue dans les années à venir facilitera l'intégration des prescriptions réglementaires.

## **2. Domaine du bâti :**

Le décret n° 2006-555 du 17 mai 2006 relatif à l'accessibilité aux personnes handicapées des établissements recevant du public, des installations ouvertes au public et des bâtiments d'habitation, a été pris pour application de cette loi. Il introduit les exigences réglementaires concernant l'accessibilité des bâtiments d'habitation collectifs (BHC) neufs et existants, des

maisons individuelles (MI) neuves, ainsi que des établissements recevant du public et des installations ouvertes au public (ERP-IOP) neufs et existants. Il définit les performances à atteindre par un bâtiment pour être accessible, ainsi que les actions qui doivent pouvoir y être réalisées par un usager handicapé. Ces exigences sont traduites en seuils réglementaires dans des arrêtés d'application parus en 2006 et 2007.

Depuis l'entrée en vigueur de cette loi, tous les bâtiments d'habitation collectifs neufs présentent des caractéristiques permettant leur utilisation par une personne handicapée.

De plus, les prestations offertes par l'ensemble des établissements neufs recevant du public sont accessibles dès la construction. Des règles supplémentaires sont définies pour certains types d'établissements spécifiques recevant du public. En outre, les ERP existants sont soumis à une obligation de mise en accessibilité à l'horizon 2015.

L'ensemble de ces dossiers font l'objet d'une instruction dans une commission consultative départementale de sécurité et d'accessibilité, à laquelle participent des associations de personnes handicapées, des représentants d'exploitant d'ERP et des représentants des services de l'État. Cette commission a pour objectif de prendre en considération la spécificité du projet et les potentielles contraintes de mise en accessibilité notamment pour les ERP existants.

Lorsque le montant des travaux réalisés dépasse 80% de la valeur de celui-ci, l'obligation de mise en accessibilité porte sur l'ensemble des parties communes ainsi que sur les logements touchés par les travaux dans la limite des contraintes du cadre bâti existant. De ce fait, toute réhabilitation lourde, entraîne la création d'un nouveau bâtiment d'habitation accessible moyennant de potentielles dérogations instruites par la commission consultative départementale de sécurité et d'accessibilité sus-mentionnée.

En 2007, le Ministère de l'enseignement supérieur et de la recherche a fait réaliser un guide méthodologique destiné à toutes les universités, puis, en 2009, un cahier des charges-cadre afin que les 148 établissements d'enseignement supérieur concernés fassent réaliser leur diagnostic d'accessibilité.

Par ailleurs, les constructions neuves et les réhabilitations lourdes inscrites dans les contrats de projets Etats-Régions (CPER) 2007 - 2013 contribuent à la mise en accessibilité du parc immobilier universitaire.

Le réseau des œuvres universitaires et scolaires, engagé depuis 2008 dans la mise en accessibilité de l'intégralité de ces structures, a en outre créé des résidences dédiées aux handicaps lourds à Grenoble, Toulouse, Nancy, Versailles et Créteil.

Enfin, un plan de rénovation de l'immobilier universitaire, opération Campus, a été lancé en 2008. Celui-ci permettra aux 10 campus lauréats de se rendre conformes aux normes d'accessibilité.

Le ministère des sports et le pôle ressources sport et handicap accompagnent les collectivités territoriales et les maîtres d'œuvre dans la prise en compte de l'accessibilité dans les **équipements sportifs**. Ce dernier développe à cet effet des guides pratiques en matière d'accessibilité.

Un guide relatif aux piscines est déjà téléchargeable sur le site du pôle. Un guide relatif aux gymnases sera publié très prochainement et d'autres guides sont en préparation : stades, bases nautiques. Ces guides présentent d'une part les obligations réglementaires, d'autre part des préconisations.

### **3. Domaine de la culture :**

#### **3.1 Accès au domaine de la culture :**

L'action des autorités françaises s'est traduite par plusieurs types d'interventions :

##### **– la formation à l'accessibilité :**

A cette fin, le Ministère de la Culture et de la Communication a déterminé la liste des diplômes, titres et certifications concernés par l'obligation de formation à l'accessibilité du cadre bâti aux personnes handicapées. L'ensemble des écoles nationales supérieures d'architecture intègre désormais cette thématique.

Au delà des diplômes d'architecture, cette obligation a été étendue aux professionnels participant à l'aménagement du cadre bâti et notamment aux designers d'objet et aux créateurs industriels, aux designers d'espace ou encore de la communication (graphique, multimédia).

Par ailleurs, une formation continue des professionnels est indispensable afin d'avoir une meilleure compréhension des enjeux de l'accessibilité. Ainsi, a été mis en œuvre, depuis 2006, un accompagnement des professionnels de la culture qui repose sur un plan de formation à la mise en conformité du cadre bâti. L'intérêt de ces formations est double :

- former les professionnels du cadre bâti du ministère aux besoins des personnes handicapées et à la nouvelle réglementation,
- sensibiliser les associations représentatives des personnes handicapées à la problématique de préservation du patrimoine.

##### **– La mise à disposition de guides pratiques :**

Le Ministère de la Culture et de la Communication a entrepris la réalisation d'une série de guides pratiques de l'accessibilité. Trois ouvrages ont d'ores et déjà été publiés :

- un premier de portée générale (2007),
- un deuxième consacré au spectacle vivant (2009),
- un troisième dédié à l'accueil des personnes handicapées mentales dans les lieux de culture (2010).

Cette collection s'enrichira prochainement de guides portant notamment sur les expositions accessibles, les bibliothèques et handicap et le cinéma et l'audiovisuel et handicap.

##### **– L'accessibilité aux établissements culturels :**

Un objectif en cours de réalisation est de rendre les établissements culturels accessibles à tous et pour tous.

Ainsi, depuis la loi du 11 février 2005, le Ministère de la culture et de la communication agit pour que soient rendus accessibles les établissements nationaux d'enseignement supérieur

« culture », les établissements nationaux « patrimoines », les établissements nationaux de diffusion de la création artistique et les établissements territoriaux.

– **Une mobilisation accrue des établissements publics « culture » :**

La Réunion des établissements culturels pour l'accessibilité (RECA) regroupe une vingtaine d'établissements publics engagés dans la réalisation de mesures permettant d'améliorer l'accueil des personnes handicapées dans les établissements culturels.

– **L'accès à la création artistique :**

La constitution de réseaux pour l'accès à la création artistique est encouragée et soutenue. Le ministère de la culture et de la communication a inscrit la prise en compte de l'accessibilité au sein de la directive nationale d'orientation des directions régionales des affaires culturelles, qui déclinent en région le soutien aux associations œuvrant en faveur de l'accès aux pratiques artistiques des personnes handicapées.

Cette action s'est développée au plan national dans les secteurs du théâtre et de la musique notamment par le soutien aux associations œuvrant en faveur de l'accès aux pratiques artistiques des personnes handicapées : l'Association Musique et situations de handicap (MESH), le Centre de Ressource Théâtre et Handicap (CRTH), Accès Culture.

Enfin, en 2007, le prix « musées pour tous, musées pour chacun » a été créé afin de distinguer une réalisation d'excellence en matière d'accessibilité pour les visiteurs handicapés, quel que soit le type de handicap. Cette réalisation prend la forme d'aménagements durables, de documents d'aide à la visite ou encore d'actions de médiation permettant ou facilitant l'accessibilité. En 2010, le Ministre de la Culture et de la Communication a exprimé son souhait de voir ce prix étendu à l'ensemble du champ des institutions culturelles du ministère. Ainsi, a été mis en place le prix « patrimoines pour tous, patrimoines pour chacun » afin d'impliquer l'ensemble des établissements patrimoniaux (Archives, musées de France, monuments historiques, Villes et Pays d'Art et d'Histoire) dans la mise en place d'une accessibilité généralisée de référence en direction de toutes personnes en situation de handicap.

### **3.2 Accès aux médias :**

Des solutions volontaires se sont développées sous l'impulsion du Gouvernement français et du Conseil supérieur de l'audiovisuel, en accord avec les professionnels du secteur.

En France, de nombreuses dispositions ont été introduites dans la réglementation audiovisuelle afin de rendre les programmes télévisés accessibles aux personnes souffrant d'un handicap.

S'agissant des personnes sourdes ou malentendantes, la loi n° 2005-102 du 11 février 2005 a posé le principe général d'adaptation de la totalité des programmes télévisés des principales chaînes, à l'exception des messages publicitaires et de quelques dérogations justifiées par les caractéristiques de certains programmes, dans un délai maximum de cinq ans suivant la publication de la loi.

Plus récemment, des dispositions relatives à l'adaptation des programmes télévisés aux personnes aveugles ou malvoyantes par le recours à la technique dite de l'audiodescription ont également été introduites par la loi n° 2009-258 du 5 mars 2009 relative à la communication

audiovisuelle et au nouveau service public de la télévision dans la loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication.

L'article 7 de la directive du 10 mars 2010 encourage le développement de l'accessibilité des services de médias audiovisuels aux personnes souffrant de déficiences visuelles ou auditives. Le Conseil supérieur de l'audiovisuel a décidé, dans le cadre de sa délibération n° 2010-57 du 14 décembre 2010 relative à la protection du jeune public, à la déontologie et à l'accessibilité des programmes sur les services de médias audiovisuels à la demande, de recommander aux éditeurs et distributeurs de SMAD de rendre les programmes accessibles aux personnes sourdes, malentendantes, aveugles ou malvoyantes.

### **3.3 Accès à la lecture :**

La loi du 1<sup>er</sup> août 2006 relative aux droits d'auteur et droits voisins dans la société de l'information, loi dite DADVSI, a introduit dans le code de la propriété intellectuelle une nouvelle exception au droit de reproduction et de représentation des auteurs et des titulaires de droits voisins au bénéfice des personnes handicapées.

Cette exception permet, sans autorisation préalable, ni rémunération des ayants droit, la reproduction et la représentation d'œuvres protégées sur des supports adaptés aux personnes handicapées, effectuées à des fins non lucratives par des personnes morales et par des établissements ouverts au public. Cette disposition permet l'accès aux supports physiques comme numériques. Pour exemple, la Bibliothèque nationale de France a inauguré, fin mars 2010, une plate-forme sécurisée de dépôt et de transfert des fichiers numériques ayant servi à l'impression des œuvres (PLATON).

Enfin, Frédéric Mitterrand, Ministre de la Culture et de la Communication et Roselyne Bachelot, Ministre des Solidarités et de la Cohésion sociale, ont traité de l'accessibilité au cinéma et à l'audiovisuel pour les personnes en situation de handicap à l'occasion d'une séance de travail de la Commission Nationale Culture Handicap le 26 janvier 2012. A cette occasion, le Ministre de la Culture et de la Communication a annoncé aux associations représentant les personnes en situation de handicap plusieurs mesures dont notamment:

- la mise en place d'une aide incitative du CNC pour que le sous-titrage et l'audio-description des films s'imposent progressivement dès leur sortie en salle ;
- le lancement de deux missions : l'une sur les métiers de l'audiodescription, l'autre sur la coordination de l'information sur les oeuvres sous-titrées et audio-décrites;
- la mise en place d'un groupe de travail afin d'accompagner la petite et moyenne exploitation cinématographique dans la mise en accessibilité des cinémas;
- la rédaction en cours d'un nouvel ouvrage de la collection Culture et Handicap consacré précisément à l'accessibilité au cinéma.

### **III- Mesures envisageables**

Six ans après le vote de la loi du 11 février 2005, et afin d'assurer le rendez-vous de 2015, la priorité de la France en matière d'accessibilité concerne les secteurs suivants :

- les lieux de travail des secteurs publics et privés accessibles aux travailleurs handicapés,
- les nouvelles technologies d'information, de communication et de consommation,

- la santé,
- la formation de l'ensemble des professionnels concernés par la thématique du handicap,
- la culture et les loisirs,
- les transports.

La mesure la plus importante consiste à faire de l'accessibilité un « mot d'ordre » ou un principe général de société de « l'accès à tout pour tous ». Ce principe s'applique à l'ensemble de la population d'une société. Cette accessibilité doit pouvoir s'appuyer sur 4 piliers indispensables qu'une politique publique doit prévoir :

- L'accessibilité pour tous sans exclusion. La loi prend en compte toutes les formes de handicap, et concerne les personnes handicapées et les personnes à mobilité réduite, y compris de manière temporaire.
- L'accessibilité de l'ensemble de la chaîne des déplacements. Pour la première fois, une loi considère de façon intégrée le cadre bâti, les espaces publics, la voirie, les systèmes de transport et leur inter-modalité. L'enjeu est bien d'éliminer tout obstacle dans le cheminement des personnes atteintes d'une quelconque déficience.
- Des changements progressifs jusqu'en 2015. La loi impose des résultats selon un calendrier précis de mise en œuvre et elle prévoit des sanctions.
- **Une accessibilité concertée.** La loi est le fruit de la concertation avec les associations représentant les personnes handicapées.

En effet, s'il est « aisé » de concevoir des infrastructures et bâtiments neufs en tenant compte des handicaps, reprendre des infrastructures existantes peut s'avérer économiquement réducteur dans certains cas. Par exemple, sur autoroute, l'aménagement de certains refuges permettant l'accès aux postes d'appels d'urgence n'est matériellement pas possible ou nécessiterait des investissements colossaux. Ainsi des mesures devraient être prises pour pallier ce type de situation. Par ailleurs, la difficulté réside davantage dans les moyens qui peuvent être débloqués par les différents maîtres d'ouvrages afin de réaliser les travaux nécessaires. Cette question ne se pose pas sur le réseau autoroutier concédé, mais elle peut devenir cruciale pour d'autres maîtres d'ouvrages.

L'ensemble de ces acteurs doivent dépasser le seul critère de coût lié à la mise en accessibilité des biens et des services. Au-delà de cet aspect financier, c'est l'ensemble d'une société qui est rendue accessible non pas à une catégorie de population mais à l'ensemble de la population constituant cette société. C'est un investissement à long terme d'intérêt national, voire européen, qui doit permettre une société inclusive pour une population.

Dans le domaine des transports, il est important de favoriser la concertation avec les associations comme avec les professionnels, tout au long des projets et de choisir un mode d'organisation permettant d'intégrer au mieux les avis, contraintes et revendications de chacun et :

- communiquer vers les maîtres d'ouvrage en utilisant par exemple la presse professionnelle, en diffusant des guides et en valorisant les bonnes pratiques ;
- attirer leur attention sur le traitement des espaces de transition entre le bâti, la voirie et les transports et l'entretien et l'exploitation des aménagements ;
- promouvoir la formation des services techniques et des professionnels qui interviennent sur l'espace public et la formation en général;

- sensibiliser les citoyens dans le cadre de comités de quartiers, de démarches de plans de mobilité et par l'utilisation de cartes de Gulliver ;
- associer le plus possible les réseaux scientifiques et les constructeurs.

Plus spécifiquement, dans le domaine routier, un manque de normalisation a été constaté concernant les bandes de guidage pour les personnes aveugles ou mal-voyantes. Différents systèmes sont actuellement testés par plusieurs maîtres d'ouvrage, mais la diversité des systèmes ne facilite pas leur reconnaissance et usage par les personnes handicapées. Il serait donc utile que les expérimentations puissent rapidement converger pour permettre une harmonisation des pratiques.

Enfin, les pouvoirs publics doivent règlementer pour les constructions neuves. L'existant doit être amélioré en cas de modification dans des mesures raisonnables.

Dans le domaine du bâti, deux grands axes prioritaires pourraient être développés à l'avenir :

- La formation des professionnels aux notions d'accessibilité ;
- La prise en compte des besoins réels des usagers en favorisant la concertation dès l'amont des projets.

Les petites et moyennes entreprises doivent avoir une meilleure connaissance des besoins des personnes en situation de handicap et mieux inclure la notion de conception universelle dans les biens et services. Elles doivent travailler en concertation avec les associations de personnes handicapées et à mobilité réduite, comme c'est actuellement le cas dans plusieurs villes européennes.

Concernant les constructeurs ou opérateurs de transport, le développement de la formation aux métiers liés à l'accessibilité des personnes en situation de handicap doit se poursuivre par la mise en place de nouveaux cursus de formation par exemple, voire l'émergence de nouveaux métiers.

La mise en place de plans de communication est indispensable, d'une part pour mieux faire connaître les besoins des personnes handicapées et à mobilité réduite et d'autre part, faire évoluer les mentalités.

Pour le transport maritime, depuis l'entrée en vigueur de la réglementation française sur l'accessibilité, de nombreuses PME ont su se positionner sur des marchés en ce qui concerne:

- la décoration intérieure (contraste pour les malvoyants)
- l'éclairage
- les affichettes et panneaux en braille etc...

Les petites et moyennes entreprises, par leur réactivité et leur capacité d'innovation, doivent être le support d'une politique de mise en accessibilité dans le domaine du bâti.

## Germany

Equal access to the physical environment, means of transport, services and facilities as well as to information and communication technologies are essential conditions enabling people with and without disabilities to live together in a self-determined way in all areas of life.

In its schemes on accessibility, Germany pursues a broad approach with particular emphasis on the creation of accessibility in all areas of life. The Federal Republic of Germany has a number of laws and regulations on accessibility to implement the constitutional dictate of Article 3, para. 3, sentence 2 of the Basic Law that “No person shall be disfavoured because of disability”.

Under the provisions of the Act on Equal Opportunities for Persons with Disabilities (BGG) providing for the prohibition of discrimination against disabled persons by public authorities and the creation of accessibility as well as under the equal opportunities legislation of the federal states, the government and the states are obliged to ensure comprehensive accessibility.

The goal of the Equal Opportunities Act is: constructional and other facilities, means of transport, technical utensils, information processing systems, acoustic and visual sources of information and communication facilities as well as other designed areas of life are to be accessible to and useable by persons with disabilities without particular obstacles in the customary manner and as a matter of principle without the assistance of others. In the sense of “design-for-all“, the special focus lies on the characteristic “usable .... as a matter of principle without the assistance of others”. This particularly strengthens the self-determination and personal responsibility of persons with disabilities. The regulations for the creation of accessibility are the core element of the Federal Act on Equal Opportunities for Persons with Disabilities which acted as model for the equal opportunity legislation of the 16 federal states. Moreover, the requirements of this Act are also relevant for other areas, e.g. the provision of benefits and services in the field of rehabilitation. This applies, in particular, also to rehabilitation services provided by the social insurance funds. Ten years after their introduction, the effectiveness of the provisions and instruments of the Equal Opportunities Act shall be reviewed. An evaluation to this effect is scheduled for 2013. On the basis of this evaluation, a potential need for amendments will be decided on.

The creation of accessibility is a dynamic process which can only be gradually implemented, taking account of the principle of proportionality and the means that are available. The standards of accessibility to be called on are subject to constant change. Specifically for individual regulatory areas, they are established by recognised technical regulations (such as the DIN standards of the German Institute for Standardisation) and - on the basis of the Act on Equal Opportunities for Persons with Disabilities - also via programmes, plans and agreed goals. Because, due to the long lifespan of current infrastructure facilities and vehicles, any necessary adjustments can only be made step by step, constructional and other facilities, means of transport, information processing systems and communication facilities are being successfully designed such that they can be used by persons with disabilities without particular difficulty and as a matter of principle without the assistance of others.

The access to justice for people with disabilities is guaranteed by German law. Corresponding provisions are, for example, contained in the Courts Constitution Act (GVG) and the Code of Criminal Procedure (StPO). The German Sign Language has been recognised as a language in its own right. In all proceedings before German courts and in administrative procedures with federal authorities, persons with hearing and speech impairments have the right to choose to



communicate either through German Sign Language, sound-accompanying signs or through other technical communication aids. Any costs arising in this regard are to be borne by the authorities or courts.

Blind and visually disabled persons participating in administrative procedures have the right that documents enabling them to exercise their rights be made accessible to them. The form of such documents depends on the possibilities of perception of the persons involved. Documents can, for example, be made accessible by being read out, with the help of sound recording devices, in Braille or capital letters, electronic form or by other means. The persons concerned are not to be charged with additional costs associated with the provision of these documents. The same applies to court proceedings.

In the Coalition Agreement of the Federal Government for the 17<sup>th</sup> legislative period it was agreed to draw up a National Action Plan (NAP) to implement the UN Convention. It was adopted by the Federal Government on 15 June 2011. With the NAP, a long-term overall strategy was drawn up for the implementation of the Convention. It is a package of measures rather than a legislative package and, in particular, aimed at closing existing gaps between the legal situation and the practice. More than 200 plans, projects and activities show that inclusion is a process that includes all areas of life. An important measure, for example, is ensuring access to medical care. All persons with disabilities are to be provided with unlimited access to every kind of health care and health services. The NAP therefore includes the objective of making a sufficient number of medical practices accessible over the next ten years. Together with the federal states and the medical profession, the federal government is going to develop an overall concept to give incentives for the creation of barrier-free access to or barrier-free equipment of practices and hospitals. The federal government's action plan is supplemented by other action plans of the federal states, municipalities, rehabilitation providers, disability and social organisations as well as providers of services for persons with disabilities and private sector companies. Some of these plans have already been adopted.

Accessibility and taking account of the “design-for-all“ have become increasingly important criteria for companies, also with a view to the demographic trend of an ageing society. Accessibility opens up new consumer groups and thus, in addition to enhancing the participation of disabled persons, also new market opportunities for companies. Public relations and the provision of information on the implementation of accessibility in different areas of life are of crucial importance. Market research is therefore a major precondition for the development and supply of barrier-free goods and services. In this context it is important to identify products and services of special interest and to promote market research in these areas in a targeted way. Such research must include persons with disabilities. Many products are developed on the basis of scientific innovation or as a result thereof. Therefore, the training of experts involved in product development should contain elements to raise awareness of the subjects “accessibility” and “design-for-all”.

With regard to information and the stimulation of change in the public's mindset, a lot of importance has been attached to the dissemination of good examples. For the above mentioned reasons, small and medium-sized enterprises (SME) should participate in this process. Since 2009, the Federal Ministry of Economics and Technology has organised conferences, particularly with SMEs, to make companies aware of the “design-for-all”. A lot of good examples could be identified and published as a result. In 2012, further conferences will be held on this topic. But goods and services for persons with disabilities are not only in high demand by companies but also by the public sector - e.g. in social assistance.

Retail quality labels could support this process. In Germany, the government-supported initiative „Economic Factor Age“ developed the “Generation-Friendly Shopping” quality mark in cooperation with the German Retail Federation (Deutscher Handelsverband) and other institutions and organisations. The quality mark is awarded to stores catering to the needs of persons with a handicap, for example by ensuring an optimal design of their store entrance and arrangement of goods and by labelling their products with clearly legible price tags. Suitable measures should be adopted to sensitize consumer counselling services for accessibility as an distinctive characteristic of products and services. The involvement of people with disabilities is crucial for the success and acceptance of these measures.

## Greece

The Greek constitutional law (article 4) defines that all people are equal before the law and that all Greek women and men have equal rights and obligations. According to that article, the same principles apply also to disable people.

### Facilitation and accessibility

The General Secretary of Public Administration and Electronic Government with its circular letters mention the necessity of serving people with disability in priority and urging all public sector services to ensure accessibility to disable people.

Circulars of the Ministry of Interior define that public sector services, institutions and local authorities' services should provide for the accessibility of the built environment to people with disabilities. The Law 2831/2000 contains special clauses for the buildings to be accessible by people with disabilities. These clauses are related to issues such as the accessibility to entry-exit points of buildings, to sidewalks, elevators, post mail boxes and etc.

The Ministry of Environment, Physical Planning and Public Works has organised a "Committee of Accessibility" which recommend to the Minister issues that have to do with the implementation of the Law 2831/2000. Among others, members of this Committee are people from the National Confederation of Disabled People (ESAMEA).

The Athens Urban Transport Organisation's (OASA- [www.oasa.gr](http://www.oasa.gr)) provides information about the accessibility to and the use of all means of transport (bus, trolley, metro, tram, train). In addition, the related infrastructure such as airports, bus and railway stations are accessible to people with disabilities. Most of city's transportation means are equipped with ramps in order to facilitate the boarding of people with disabilities using a wheel-chair.

Although there is no specific legislation about the e-accessibility and the participation of disable people in electronic government society, institutions or disability organisations develop websites in order to cover the special needs of this category of people.

A network of sports facilities accessible for athletes with disabilities has been developed; a network of sidewalks refurbished with ramps and tactile guide and also an accessible beach in Athens are available to disabled people.

More steps should be taken as well in the direction of comprehensive and systematic promotion of accessibility across the full range of policies and to raise awareness in particular of the sensitive group of children.

All Greek authorities, ministries etc. promote the right of disable people to accessibility in all areas of their daily and professional life. Article 9 of the UNCRPD is a guideline and all efforts are made under its principles.

#### **a. Accessibility legislation: its place in the legal and regulatory framework**

Circulars of the Ministry of Interior define that public sector services, institutions and local authorities' services should be provided for the accessibility of the built environment to people with disabilities. The Law 2831/2000 contains special clauses for buildings to be

accessible by people with disabilities. These clauses are related to issues such as the accessibility to entry-exit points of buildings, to sidewalks, elevators, post mail boxes and etc.

The Ministry of Environment, Physical Planning and Public Works has organised a “Committee of Accessibility” which recommend to the Minister issues that have to do with the implementation of the Law 2831/2000.

**b. General law, technical regulations and standards**

The existing legislation covers the basic requirements for the development of goods, products and services accessible to disabled people. Then, circulars produced by the Ministries, formulate, where appropriate, special conditions that must be followed for the development and implementation of accessible goods / services. For example, Law 2831/2000 Article 28 refers to special arrangements to accommodate people with disabilities to buildings, new and existing, and in public spaces. The Ministry of Public Works with a series of circulars required public bodies to take appropriate measures to implement the law. These circulars define technical details.

**c. Role of national, European and international standards**

The Greek legislation on accessibility follows international standards and has been defined from regulations produced by international bodies, e.g. mainly E.U., U.N, CoE. Although current legislation covers this issue, it seems there is a need for updating it after the upcoming ratification of the U.N. Convention on rights for people with disabilities.

**d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

Signing the U.N. Convention has not yet led to any changes regarding accessibility legislation, but it is expected that the ratification will affect current legislation, although it already covers all main topics that should be included in legislation regarding accessibility.

**e. Services regulated for accessibility**

The law 2831/2000 Article 28 provides special arrangements to accommodate people with disabilities.

More specifically, paragraph 1 defines that areas of new buildings should ensure both horizontal and vertical access by people with disabilities. These buildings are the buildings used by the public: public Services, public entities, private legal entities of the public sector, civil society organizations, local authorities first and second tier or uses, rollup public, education, health and social care, offices and trade as well as in parking lots of these buildings.

**f. Goods regulated for accessibility**

The Athens Urban Transport Organisation’s (OASA-[www.oasa.gr](http://www.oasa.gr)) provides information about the accessibility to and the use of all means of transport (bus, trolley, metro, tram, train). In addition, the related infrastructure such as airports, bus and railway stations are accessible to disabled people. Most of the city’s means of transport are equipped with ramps in order to facilitate the boarding of people with disabilities using wheel-chairs. Besides means of transport, all goods and services either produced for or provided to the public should be

harmonised with internal legislation and E.U. directives and regulations, e.g. telephones, ATM's, doors, elevators, tables etc.

**g. Enforcement of accessibility legislation**

For particular buildings, the responsible departments for the implementation of accessibility in public spaces are the units of Accessibility and the Technical Services of the Municipalities. Other bodies responsible for implementation of accessibility in public buildings are the units of accessibility of the ministries, public entities, regions and local authorities, first and second degree. Monitoring of the implementation of accessibility works carried out by the Inspector General of Public Administration, who in that jurisdiction, directs and coordinates all the control mechanisms of the state to determine the motivation and compliance of public bodies and municipalities in implementing the projects accessibility. In particular, the control and policing of points of accessibility of public spaces and parking spaces shall be the responsibility of the concerned municipal police.

**h. Non-compliance and litigation**

Complaints may be submitted with a signed claim to the Ombudsman. A claim could be brought either by any directly concerned natural or legal person or association of persons. After the investigation, the Ombudsman, if required by the nature of the case may draw the conclusion which informs the relevant minister and the competent services, and mediates in any suitable way to solve the problem.

At the same time, any person can go to court, asking either the compliance of public or private entities with existing legislation on accessibility or to claim compensation for any damage.

## **Hungary**

### **a. Accessibility legislation: its place in the legal and regulatory framework**

The Hungarian law on the rights and equal opportunities of persons with disabilities (ACT XXVI of 1998 7/A. §) recognised the equal right to accessible public services. To implement this law the accessibility of public services is obligatory. The legislation defines accessibility in a complex way, so not just the accessibility of buildings is obligatory but the accessibility of information and services are also obligatory. This obligation refers to governmental, self-governmental and private public service providers; the earliest connecting deadline was 31. December 2008, and the latest was 31. December 2013.

The law declares in a separate paragraph, that people with disabilities must be provided with equal chances to access information of general interest, furthermore to information that refers to the rights of people with disabilities and (refers to) the services provided for them.

Paragraph 27 shows the human right viewpoint of the law, and declares: “Any person that has been treated unfairly on the grounds of his/her disability, he/she shall be entitled to all the rights that are to be enforced when personal rights are violated”. This refers to all the rights named/declared under the law, so if there is a lack of accessibility, - after the deadline expires - the defaulter can be sued.

### **b. General law, technical regulations and standards**

The Hungarian law on the rights and equal opportunities of persons with disabilities (ACT XXVI of 1998) recognises the right of accessible services and the requirements of suppliers. The law on Hungarian Sign Language and the use of Hungarian Sign Language (ACT CXXV of 2009) recognises the ICT accessibility of deaf people. The Hungarian law about the construction and protection of the built environment (ACT LXXVIII of 1997) and its implementation regulation, the governmental regulation about the national settlement planning and building requirements (253/1997.) contain the technical specifications of the physical accessibility.

We try to build the most modern requirements in the tendering packages during the implemented accessibility projects financed by EU and national resources. (About this we inform more in the answer belongs to the point c).

### **c. Role of national, European and international standards**

In 2007, the legal predecessor of the Ministry of National Resources has put forward a Manual aiming to realize equal accessibility, which was updated in 2009 based on the new building acts. This expert document on architecture contains a broader system of requirements than the effective legislative provisions in the field of realizing accessibility, such as the W3C recommendation on web accessibility or other ICT standards where no relevant legal regulation has been formulated yet. The application of the Manual in cases of development projects financed by the European Union is obligatory.

### **d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

Hungary ratified the UN Convention on the Rights of Persons with Disabilities and the related Optional Protocol in 2007. The main impact of the ratification is the declaration of the law on Hungarian Sign Language and the use of Hungarian Sign Language (ACT CXXV of 2009). This law recognises –inter alia– the communication rights of deaf and deaf-blind people and their rights to free sign language interpreting service, and learning through Sign Language, and TV programmes have to be subtitled, and during formal –judicial, police, etc. –processes obligatory to use Sign Language interpreter.

This Convention inspired the modification of the governmental regulation about the national settlement planning and building requirements (253/1997.) in 2009, which enlarge the technical and architectural specifications in connection with the physical accessibility.

We will take into consideration the principles of the Convention when reviewing the Hungarian law on the rights and equal opportunities of persons with disabilities (ACT XXVI of 1998). On the basis of the professional trends, national and international experiences we will update the legislation about the accessibility.

#### **e. Services regulated for accessibility**

The accessibility obligation of the ACT XXVI of 1998 refers to the further public services:

- all public power activity- including all kinds of authority, governmental, administrative and judicial activity- furthermore the activity of the parliament, organisations subordinate to the parliament, the Constitutional Court, parliamentary commissioners, the prosecution, home defence and security organisations practicing their competence.
- public media, education, public education and collection, culture, science, social, child welfare, child protection, health, sport, youth, and employment services, cares and activities provided by institutions run by the state.
- all activities of local and minority governments practicing their competence- including especially the authority and other administrative activities- and according to the 2nd point services, cares and activities provided by local and minority governments, NGOs and parochial institutions, and institutions financed by them.
- service activity provided in all kinds of customer services, furthermore
- service activity based on all kinds of authority permit or authority obligation, that serves the public care of a settlement or a part of a settlement, is not restricted and cannot be restricted.

#### **f. Goods regulated for accessibility as part of a service**

There is no legislation in force in connection with the accessibility of the goods.

#### **g. Goods regulated for accessibility**

There is no accessibility legislation for manufactured goods in Hungary at the moment.

#### **h. Enforcement of accessibility legislation**

In accordance with the legal regulations in force, compliance with accessibility provisions during the construction of a new building or the reconstruction of an already existing one is

verified by the building authorities in each case in advance. In principle, granting a building permit must be denied in all cases where fulfilling the requirements is not guaranteed. In practice however, it poses a serious problem that the experts of the building authority are not well-informed enough about accessibility requirements and numerous mistakes derive from inefficient construction.

The effective provisions do not impose classic sanctions on accessibility legislation. Non-compliant providers will first and foremost have to face the previously mentioned possibility of litigation. Moreover, the Equal Treatment Authority may investigate whether maintainers have fulfilled legal obligations in a given case. In cases of a violation, the Authority may impose a fine.

In our plans, reviewing the legal framework to provide accessibility will also extend to the legal consequences of non-compliance.

#### **i. Non-compliance and litigation**

The Hungarian law on the rights and equal opportunities of persons with disabilities (ACT XXVI of 1998 27. paragraph) declared “Any person has been treated unfairly on the grounds of his/her disability, he/she shall be entitled to all the rights that are to be enforced when personal rights are violated”. This means in practice, that the defaulter can be sued because of violation of individual rights.

Furthermore, in the case of breaking the law considering the accessibility legislation, plaintiffs can turn to the Commissioner of Fundamental Rights (ombudsman) and to the Equal Treatment Authority.

According to the Hungarian law on the rights and equal opportunities of persons with disabilities (ACT XXVI of 1998 25. paragraph (7)) “The National Council on Disability Affairs and the national organisations for advocating the rights of persons with disabilities may initiate court proceedings against anybody violating the rights of persons with disabilities as encoded in legislation in order to enforce such rights, even if it is not possible to establish the identity of the particular disabled person who has experienced the insult.”



## **Ireland**

### **a. Accessibility legislation: its place in the legal and regulatory framework**

Equality (anti-discrimination) legislation, the Equal Status Acts 2000 to 2008, provides that anyone selling goods, providing services, selling or letting accommodation, educational institutions and clubs must do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities, where without these it would be impossible or unduly difficult to access goods, services, accommodation etc. This is subject to nominal cost.

The Disability Act 2005 obliges public bodies to make their buildings, services communications, and information as well as heritage sites accessible for people with disabilities and is supported by statutory codes of practice and also practical guidelines. It also establishes requirements for a complaints process with appeals to the national Ombudsman. Programmes of works have been undertaken and committed in sectoral plans (disability action plans produced by key Government Departments under the Disability Act).

Part M of the Building Regulations also covers accessibility and applies to new buildings (other than private houses) which have to have mandatory Disability Access Certificates; and over time to public areas of public sector buildings.

### **b. General law, technical regulations and standards**

Legislation provides specific requirements for the public sector as stated above and provides for the Disability Access Certificate for all sectors. It is also a subject of regulations, i.e. in the case of new buildings, Part M of the Building Regulations sets out general requirements, and the accompanying Technical Guidance Document lists specifications for particular aspects of a building (e.g. doorway and corridor widths) that would satisfy the accessibility specifications.

### **c. Role of national, European and international standards**

2011 Irish legislation on the legal requirement for Energy Suppliers in relation to Universal Design is set out in Section 3 (3) of The European Communities (Internal Market in Electricity and Gas) (Consumer Protection) Regulations of 2011 (S.I. No. 463 of 2011). This section states that suppliers must apply the principles of Universal Design to:

- all products and services offered or provided to final customers, and
- communications with final customers.

In early 2012 the National Standards Authority of Ireland (NSAI) produced the first global guidance standard for Energy suppliers in Ireland. This was specifically based on the universal design of how the energy suppliers (electricity and gas) communicate to their customers – verbal, written and electronic based communication. The National Disability Authority's Centre for Excellence in Universal Design and the office of the Commission for Energy Regulation in Ireland co-chaired the production of this guidance standard with all the key stakeholders from energy suppliers in Ireland and diverse user group representations from age, size ability and disability.

#### **d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

Since signing the Convention, updating and strengthening of Building regulations, and introduction of mandatory Disability Access Certificates for new buildings have occurred as part of the National Disability Strategy, the key vehicle for advancing policies in relation to people with disabilities.

#### **e. Services regulated for accessibility**

Equality legislation covers both public and private sectors. The Equal Status Acts 2000 to 2008 apply to people who:

- Buy and sell a wide variety of goods,
- Use or provide a wide range of services,
- Obtain or dispose of accommodation,
- Attend at, or are in charge of, educational establishments,
- There are separate provisions on discriminatory clubs.

Disability legislation is specific to the public sector only. The Disability Act 2005 regulates for access to public buildings and heritage sites and access to services and information provided by public bodies.

Regulations for the building sector, Part M of the Building Regulations, apply to both public and private sectors.

#### **f. Goods regulated for accessibility as part of a service**

Equality legislation states “goods and services” without specifying the nature of those goods and services. Disability legislation provides for accessibility to be taken into account in public procurement of goods and services, again without specifying the nature of goods involved.

#### **g. Goods regulated for accessibility**

The Public Transport Regulation Act 2009 specifically requires that improved access to transport systems and in particular to public transport services by people with disabilities be achieved.

In 2010 the Irish government introduced S.I. No. 248/2010, the Taxi Regulation Act 2003 (Wheelchair Accessible Hackneys and Wheelchair Accessible Taxis - Vehicle Standards) Regulations 2010. This regulation covers:

- applications for the grant of a wheelchair accessible hackney or a wheelchair accessible taxi licence;
- applications for the renewal of a licence ; and
- renewal of a wheelchair accessible hackney or a wheelchair accessible taxi licence.

The Merchant Shipping Act 2010 covers passenger vessels to ensure that they are accessible to people with disabilities. This is based on the EU Regulation 1177/2010 on the rights of passengers travelling by Sea and Inland Waterways.

The Irish statutory Centre for Excellence in Universal Design is working with the National Standards Authority in relation to universal design standards for services. Work to date has included recent adoption of a SWIFT standard for improved energy services to customers, including those with disabilities. The national regulatory body for the energy sector is working to achieve compliance.

#### **h. Enforcement of accessibility legislation**

For accessibility of goods and services generally (equality legislation), the Equality Authority provides advice and information and can guide complainants, the Equality Tribunal adjudicates on complaints, and can make an award of monetary compensation to the complainant, to be paid by the offending organisation.

Disability legislation governing access to public services, premises and information provides that individuals can appeal to a statutory Inquiry Officer, or ultimately to the Ombudsman, who can recommend that appropriate action be taken by the public body.

With regard to accessibility of new buildings, an award of a Disability Access Certificate is required before the building can be occupied. This is the role of Local Authorities.

#### **i. Non-compliance and litigation**

Individuals can bring a complaint to the Equality Tribunal (for complaints regarding general accessibility of goods/services) and the remedy is usually damages awarded to the complainant. Awards may be appealed to the Courts. The Equality Authority can join the complainant in taking the case.

Individuals can bring a complaint, under the Disability Act, on accessibility of public services to the head of the Public Body who must then appoint a statutory Inquiry Officer to investigate the complaint and advise on remedial steps to be taken. Should the complainant be dissatisfied with the outcome of this process they have the right to refer it to the Ombudsman.

## Italy

### a. Accessibility legislation: its place in the legal and regulatory framework

General provisions on accessibility of infrastructures (built environment) are included in the law n. 104/1992 (Statutory law to promote the assistance, the social integration and rights of persons with disabilities), which provides for all designs of public buildings and private buildings open to the public to comply with the legislation regarding the removal of architectural barriers. Authorizations to build depend on the same legislation.

The Consolidated Building Act (*Testo Unico Edilizia*, approved by *Decreto del Presidente della Repubblica* n. 380/2001 and related provisions (e.g. law n. 13/1989) provides for the removal of architectural barriers in private and public buildings and relevant sanctions.

Detailed technical regulations on accessibility of public buildings and private buildings open to the public are included in Presidential Decree n. 503 of 24 July 1996.

Law n. 4/2004<sup>72</sup> provides for specific measures aimed at enhancing access to ICT tools and devices for persons with disabilities. The Law states that measures to favour ICT accessibility belong to the measures to implement equality principles enshrined in the Constitutional Law (art. 3). Therefore it regards the granting of equality conditions.

Law n. 104/1992 establishes that municipalities should identify suitable ways to provide individual transport for persons with disabilities who are not able to use public transport, by drawing up mobility plans foreseeing alternative services.

Law n. 37/1974 provides for guide dogs to be allowed free of charge on public transport. Recent public means of transport such as train buses and coaches are equipped with special facilities for passengers with disabilities and with reduced mobility. All European directives and regulations concerning accessibility of public transport have been implemented, in particular Regulation (EC) n. 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air which is expected to pave the way for similar regulations in the field of bus and maritime transport.

It should be noted also that Decree of the Ministry of Cultural Heritage and Activities of 28 March 2008 adopted the Guidelines for the elimination of architectural barriers in places of cultural interest.

In the Italian law accessibility is designed primarily to overcome architectural barriers as well as all physical obstacles that are a source of discomfort for the mobility of everyone and especially for those who have a reduced or impaired mobility, permanently or temporarily; limiting or preventing anyone from convenient and safe use of parts, equipment or components or represented by the lack of measures and indicators that allow the orientation and recognition of places and sources of danger to anyone and in particular for the blind, partially-sighted and deaf.

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<sup>72</sup> For the English version see the following link: [http://www.pubbliaccesso.it/normative/law\\_20040109\\_n4.htm](http://www.pubbliaccesso.it/normative/law_20040109_n4.htm)

The concept of architectural barrier is, therefore, very extensive and articulated and includes elements of different nature, which may cause perceptual or physical limitations, such as particular conformations of the objects and places that may be a source of disorientation, fatigue, discomfort or distress. Architectural barriers are therefore not only narrow steps or passages, but also slippery, uneven or bumpy paths and roads, stairs without handrails, steep ramps, lobbies without seating systems or protection from the weather, the lack of guidance or indications that helps identify any source of danger, and so on. Physical barriers are an obstacle to "anyone", not only for particular categories of persons with disability, but for all potential users.

Specific initiatives are adopted by the regions on the base of their responsibility (since 2001) for local governance of social policies.

#### **b. General law, technical regulations and standards**

See item a.

Regarding L. 4/2004 and ICT accessibility the Law is accompanied by an implementation regulation and technical rules contained in secondary norms (Regulation DPR 75/2005 for English version see [http://www.pubbliaccesso.it/normative/implementation\\_regulations.htm](http://www.pubbliaccesso.it/normative/implementation_regulations.htm) and Ministerial Decree 8 July 2005 <http://www.pubbliaccesso.it/normative/DM080705-en.htm>) which set technical requisites and guidelines. So, on the one hand, the Law provides for principles, and guidelines regarding training, responsibilities of e.g. public managers regarding ICT procurement etc.; on the other hand, implementation regulation gives operative indications concerning the assessment of accessibility etc.

#### **c. Role of national, European and international standards**

See item a.

Regarding L. 4/2004 and ICT accessibility, international guidelines such as WCAG (Web Content Accessibility Guidelines released by W3C) are taken into account as point of reference. Under this aspect it is worth mentioning that in consideration of the release of the WCAG 2.0, the technical requisites (Annex A of DM 5 July 2004) are undergoing a revision (already notified to European Commission according to EC Directive 98/34).

#### **d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

Italy is in the first phase, checking the effectiveness of national legislation in relation to the principles of the UNCRPD. The national Law n. 18/2009 provides the establishment of a National Observatory in order to monitor the condition of people with disabilities. The National Observatory, which met for its official session on December 16th, 2010, to monitor the condition of people with disabilities will also assure the implementation of the activities provided by the Article 33.2 of the UN Convention. On July 2011 six working groups, of which one has to examine issues related to accessibility, were formed within the Observatory, in order to deal with all major areas of reference set by the UN Convention.

#### **e. Services regulated for accessibility**

Transport, education, tourism, cultural activities, electoral services.

Regarding ICT accessibility Law 4/2004 mainly targets public administrations websites and public procurement of ICT devices. (The compliance to accessibility provisions is also stated in the Digital Administration Code legislative Decree 2005/82 as modified by legislative Decree 235/2010 as compulsory obligation for public administration websites).

As for Digital tools used in Education (Digital content for education and learning) specific provisions are contained in the Ministerial decree 30 April 2008 – only in Italian <http://www.pubbliaccesso.it/normative/DM300408.htm>)

#### **f. Goods regulated for accessibility as part of a service**

Article. 7 of Law no. 104/1992 provides that the National Health Service is obliged to ensure assistance and the supply of any equipment, tool, prostheses and technical aids necessary for the treatment of impairments, in order to make sure that poor persons with disabilities have the opportunity to benefit from equipment and help to promote personal mobility. In this area, reference can be made to Ministerial Decree 27 August 1999, n. 332, dealing with types and modes of prostheses and services free of charge, by the NHS. For the other types of equipment, tool, prostheses and technical aids not specifically listed under that provision, is possible to obtain a tax advantage.

#### **g. Goods regulated for accessibility**

People with disabilities can obtain a special license to drive a vehicle adapted to their specific needs, after authorization by a Local Medical Committee (ASL), responsible for ensuring the driving capacity (Article 116, c. 5, *Codice della Strada*). Moreover, Article 27 of Law no. 104/1992 introduces a 20% subsidy on costs to modify the driving systems, and several forms of tax benefits are listed for the purchase of a vehicle for people with disabilities or their families (reduced VAT, income tax deduction, exemption from payment of road fees and exemption from property transfers). In addition regions introduced contributions for purchasing vehicles for people with disabilities.

At the national level, regarding the possibility for people with disabilities to benefit from aids, equipment, technology for mobility, Decree of the President of the Republic n. 917 of December 22, 1986 (*Approvazione del T.U. sulle imposte dei redditi*) provides the possibility to deduct 19% of the costs incurred for the purchase of necessary means for personal mobility, and ICT and technical means designed to promote personal autonomy and the possibility of real integration of disabled people. E.g.: wheelchairs, artificial limbs, guide dogs for blind people, vehicles adapted to the needs of people with disabilities. Furthermore, a special VAT (4% instead of 20%) is reserved for orthopedic appliances or special vehicles with engines or other mechanism of propulsion, stair lifts, prostheses and aids related to permanent functional impairment (Law n. 263 of May 29, 1989). Law n. 30 of 28 February 1997 establishes a special VAT for purchasing technical and ICT aids designed to promote the autonomy of people with disabilities.

#### **h. Enforcement of accessibility legislation**

Law no. 104 of February 5, 1992, states that any project to be implemented in public or private buildings (when open to public) are subject to control by the municipality which has to verify their compliance to local regulations.

Regarding ICT accessibility, art. 9 of DPR 75/2005 (implementation regulation of L. 4/2004) states that each administration has to appoint a person responsible for ICT accessibility and it foresees a monitoring activity by a public body (former CNIPA, now DigitPA). Disciplinary sanctions can be applied to public managers who do not respect the requirements of the law.

More recently (December 2009), in order to have a more effective compliance to the law leveraging on users involvement in a full Web 2.0 way, the “Observatory for the Accessibility of Public Administration Websites” has been launched. Through the portal [www.accessibile.gov.it](http://www.accessibile.gov.it), any citizen can complain regarding lack of accessibility (or usability) of public websites, but he/she can also give evidence to good practices. Through the website is also possible to monitor how the reports are handled until the cases are solved. Moreover, [www.accessibile.gov.it](http://www.accessibile.gov.it) has become a tool to spread the culture of web accessibility by giving space to news, examples, guidelines and good practices.

#### **i. Non-compliance and litigation**

In order to ensure equality and non discrimination of people with disabilities in every field of social life, including accessibility, Italy adopted Law no. 67, March 1, 2006 (*Measures for the judicial protection of persons with disabilities who are victims of discrimination*). In defining the concept of anti-discrimination, Article 2 refers to the principle of equal treatment from which it follows that there can be no discrimination against persons with disabilities.

As for the procedural aspects of the protection, article 3 refers to article 44 of Legislative Decree no. 286, July 25, 1998 (*Consolidated text of provisions governing immigration and the status of the foreigner*). According to art. 44, when dealing with any form of discrimination from a single person or a public administration, anyone can file a case in civil courts to obtain the adoption of any necessary measure to remove the effects of that discrimination.

Non-execution of judge’s orders can imply imprisonment until three years. The procedure ends with the executive order to terminate any behavior, conduct or act of discrimination, and to undertake any necessary measure to remove the effects of discrimination.

The intervention of the court is therefore not limited to modifying what had already happened, but also aimed to prevent discrimination in the future, thanks to positive actions for substantial equality of all people with disabilities.

Associations entitled to protect the rights of persons with disabilities (art. 4), identified by the Decree of the President of the Council of Ministers 21 June 2007, n. 181 (*Associations and entities qualified to act for judicial protection of persons with disabilities, victims of discrimination*) can also act on behalf of the disabled person after delegation of the party concerned, under form of public act or private writing (Art. 4, paragraph 1). In case of collective discrimination, associations and organizations are empowered to act without delegation (Art. 4, paragraph 3).

## Latvia

### a. Accessibility legislation: its place in the legal and regulatory framework

At the national level any discrimination is prohibited by the Constitution. However non-discrimination principles on the grounds of disability have been incorporated into different national laws, for example regarding access to education, consumer rights, health sector, social security, employment, etc.. Thus the responsibility regarding accessibility falls into scope of respective branch ministries.

Policy planning documents relevant for the topic, approved in 2011:

Action Plan for Implementing the Basic Principles on Policy for Elimination of Disability and its Consequences 2005-2015”, adopted in 2006. The plan includes measures to foster equal rights of persons with disabilities in different spheres of life.

On 25 May 2011, the Cabinet of Ministers approved “*The Electronic Government Development Plan for 2011–2013*”<sup>73</sup> has been prepared in 2011 (order No.218) covering measures to: reduce the administrative burden and increase efficiency of the organizational process in the public administration; develop electronic services tailored to the needs of population and enterprises; develop state information systems and the ICT infrastructure, fostering internet access; facilitate public involvement in the policy-making process. It is developed for further implementation of Information Society Development Guidelines and continuity of e-Government Development Programme 2005-2009 and developed with regard to the objectives set in the Malmö Declaration and European eGovernment Action Plan 2011-2015.

The plan comprises 192 measures and its aim is to provide available public services to citizens in a convenient and simple way, through electronic data exchange between public administration and local government entities, while increasing government efficiency and reducing its costs. It is planned to create and develop more than 220 e-services within the framework of the Plan, including for citizens with disabilities. Implementation of the Plan is proceeding according to the time schedule approved in the Plan. In 2011 20 e-services have been developed, in 2012 there are planned to develop more than 150 e-services.

In line with National development documents setting the objectives to facilitate the e-skills to benefit from the digital society on 18<sup>th</sup> May 2011, the Cabinet of Ministers approved the “Electronic Skills Development Plan for 2011-2013” (order No.207)<sup>74</sup> taking into account the objectives set in the “Digital Agenda for Europe” as well as related national policy documents. The Plan is a short-term policy planning document and its aim is to promote the development of an information society allowing the population of Latvia to learn general e-skills commensurate with their education and professional activity levels during the period from year 2011 to 2013. The plan sets the objectives to raise the awareness and motivation of the necessity of e-skills as one of the eight key competences which are fundamental for individuals in a knowledge-based society.

The main target groups of the Plan are government employees, the unemployed and job seekers, retirees, long- term social care institution residents, disabled persons, prisoners according to Digital Agenda for Europe *Action 066: Implement by 2011 long-term e-skills and digital literacy policies and promote relevant incentives for SMEs and disadvantaged groups.*

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<sup>73</sup> <http://polsis.mk.gov.lv/view.do?id=3718>

<sup>74</sup> <http://polsis.mk.gov.lv/view.do?id=3662>



Measures for facilitating e-skills of other target groups are foreseen in other national development planning documents.

The Plan's implementation has started. One of the tasks in the Plan is to hold the annual European E-skills Week with the aim to promote e-skills and ICT profession by involving and informing all groups of population, including entrepreneurs.

## **b. General law, technical regulations and standards**

### **Built environment**

The accessibility of the built environment in construction policy is regulated by the Construction law, which defines „accessibility of the environment” and also determines that a structure shall be designed and constructed so as to ensure the accessibility of the environment.

Currently there are two regulations of the Cabinet of Ministers in force- Regulation No 567 „Regulation on Latvian Building code LBN 208-08 „Public buildings and structures”” and Regulation No409 „Regulation on Latvian Building code LBN 211-98 „Multi-storey Multi-apartment Residential Buildings”” that include requirements of ensuring physical accessibility for persons with disabilities. In Regulation No567 the chapter “*Accessibility in public buildings for people with disabilities*” provides ensuring requirements of physical accessibility in public buildings. In Regulation No409 the chapter “*Requirements of comfort for disabled persons*” provides requirements of physical accessibility in residential buildings, if there are anticipated apartments for families having disabled people with movement impairments.

### **Transport**

#### Public transport

Currently an intensive work is underway to incorporate the main requirements for passenger rights into national law in accordance with the European Parliament and Council Regulation of 16 February 2011 (EU) No 181/2011 on bus passengers' rights and amending Regulation (EC) No 2006/2004, including, inter alia, provisions for disabled persons and persons with reduced mobility.

Procedures for the provision and use of public transportation services are determined in the Regulations “The order of provision and utilization of public transport services” which determine that all information in a bus about bus stop place shall be accessible in visual form and carried in audio form. Categories of passengers who have the right to pay lower fees for public transportation services provided along basic routes in a network of routes, as the procedure of paying lower fees and the amount by which the said fees are to be lowered are determined in the Regulation “Categories of passengers who have the right to pay lower fees for public transportation services provided along basic routes in a network of routes”.

Environmental requirements established in the assignment of the planning architecture and referred to the Cabinet Regulations „General Building Regulations” are taken into consideration when designing and building the state roads network.

The national standard LVS 448:2008 “Railway applications. Passenger platforms for 1520 mm railway lines” lay down general requirements, which is harmonised with the EC decision 2008/164/EC of 21 December 2007, concerning the technical specification of interoperability relating to “persons with reduced mobility” in the trans-European conventional and high-speed rail system. Standard requirements provide the upgrade of platforms height from 200 mm to 550 mm height from the rail surface.

### Air transport

In the field of aviation Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air including European Civil Aviation Conference (ECAC) Doc 30 is applicable to the Republic of Latvia. Latvian Civil Aviation Agency exercises the supervising of application.

### Sea transport

The Directive 2003/24, which amends Directive 98/18/EC on safety rules and standards for passenger ships engaged on domestic voyages, has been implemented by the Regulations of the Cabinet of Ministers No145 “Regulations Regarding the Safety of Ro-Ro Passenger Ships and High-Speed Passenger Craft” adopted on 14 February 2006. The Directive includes specific requirements for persons with reduced mobility, in particular access to the ship, signs, messages relay systems, alarms and additional requirements, designed to ensure mobility on board ships. The issue of accessibility to new ships for international services Latvia as member state of the International Maritime Organisation should follow to the Recommendation on the Design and Operation of Passenger Ships to Respond to Elderly and Disabled Persons' Needs regulated by the International Maritime Organisation.

In Latvia the European Parliament and Council Regulation (EU) No 1177/2010 on the rights of passengers travelling by sea and inland waterway was adopted on November 24, 2010, (will be applied from 18/12/2012) therefore amending Regulation (EC) No 2006/2004.

In the issue of accessibility to new ships for international services Latvia as member state of the International Maritime Organisation should follow to the Recommendation on the Design and Operation of Passenger Ships to Respond to Elderly and Disabled Persons' Needs regulated by the International Maritime Organisation.

### **ICTs and communications**

In the field of information and communication technologies, Universal service directive 2002/22/EC and its amendment 2009/136/EC is transposed in the Electronic communications law and Electronic mass media law, ensuring the principle of equivalence of choice and access, access to European single emergency number 112, must carry obligations.

The Postal Law stipulates that secograms (postal items, which contains notifications or printed papers prepared in a special manner, using the writing system for the blind – Braille, as well as other information carriers addressed to the blind) are exempted from payment for postal services.

Regulations of the Cabinet of Ministers, No.171 “Procedures by which Institutions Place Information on the Internet” (adopted 6 March 2007) prescribes the procedures, by which institutions shall place information on the Internet in order to ensure availability thereof. In addition, in websites of institutions must be a section “easy to read”, hence covering more citizen groups that are able to comprehend the information. In the regulations there defined a range of technical requirements for websites, that gives the possibility to perceive the information in several ways (in written form, as well as in the form of pictures and sound). And websites shall provide for a possibility to select the font size<sup>75</sup>.

The Electronic Documents Law foresees that state and local authorities are obliged to accept electronically signed documents from individuals and legal entities, therefore, for many

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<sup>75</sup> <http://www.likumi.lv/doc.php?id=154198>

services persons can apply by sending a digitally signed request to the official e-mail of the competent authority. Many of them a person can also receive electronically.

In order to reduce the administrative burden on enterprises and citizens and ensure good governance principles in accordance with the State Administration Structure Law and the Administrative Procedure Law, the Ministry of Environmental Protection and Regional Development examining drafts of regulatory acts and policy planning documents developed by other ministries and giving official opinions afterwards, urges institutions to include principles of electronically available services both applying and receiving, also including advantages (faster or cheaper receive for the electronic channel) etc, and to reduce the administrative burden on businesses and citizens. In 2011, there are given 146 official opinions on legislation and policy planning documents developed by other ministries.

The Ministry of Environmental Protection and Regional Development developing its own legislation, takes into consideration mentioned principles and includes them into the policy and regulatory acts.

To provide the observation of principles stated by State Administration Structure Law, the regulations of the Cabinet of Ministers, No.357 „Procedures by which institutions cooperating provide information electronically, as well as provide and certify the trueness of such information” (approved on 13<sup>th</sup> April, 2010) prescribes procedures, basic principles and available methods for cooperation between institutions electronically providing the information at their disposal and confirmation of such information.

The regulations of the Cabinet of Ministers Nr.792 (adopted on 11th October, 2011) "Regulations on action program" Infrastructure and Services" appendix 3.2.2.2 activity "Development of Public Internet Access Points"" provides for development of new public Internet access points or significant improvement of existing public Internet access points in local governments, in order to increase possibilities for Internet access to widest range of society groups, promoting access to electronic and other services, and information provided by public administration and commercial companies. The available total funding for the activity is 3 million LVL. Implementation of the activity ensures the Ministry of Environmental Protection and Regional Development as the responsible authority and the State Regional Development Agency as a cooperation authority.

Within the framework of the activity it is planned to create around 547 new or improve existing public internet access points – in each city (except Riga), municipality or municipality's territorial unit (town, rural territory) not more than one public Internet access points.

Mentioned regulations on the implementation of 3.2.2.2 activity has set a criterion for provision of horizontal priority "Equal Opportunities" - a project being appraised on this criterion, the project will receive extra points if it foresees specific actions to ensure equal opportunities, including providing services to persons with functional disabilities.

### **c. Role of national, European and international standards**

When developing national standards international and best practices are being used to develop national standards. European Standards foreseen in EU Regulation are being incorporated and adopted as national standards.

**d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

Currently the future strategic document “Basic Principles of Implementation of the Convention on the Rights of Persons with Disabilities for 2013-2019” is being elaborated in close cooperation with line ministries and DPO’s, it is foreseen that this document will also include certain proposals for measures and amendments to the legal acts to promote accessibility.

**e. Services regulated for accessibility**

See above.

Additional amendments to the legal acts regarding access to goods and services are under debate currently.

**f. Goods regulated for accessibility as part of a service**

See above.

**g. Goods regulated for accessibility**

See above.

**h. Enforcement of accessibility legislation**

Supervision (control) exists regarding construction process.

**i. Non-compliance and litigation**

In case of discrimination or non-compliance individual person or an NGO can file a case in court.

## **Lithuania**

### **a. Accessibility legislation: its place in the legal and regulatory framework**

The Law on Equal Opportunities (Official Gazette, 2008, No. 76-2998) prohibits all types of direct and indirect discrimination on grounds of age, sexual orientation, disability, race, ethnicity, religion or beliefs at work, educational institutions and in the sphere of services and goods.

According to Article 8 of this act, following the principle of equal opportunities, sellers or manufacturers of goods and providers of services must, irrespective of consumers' gender, race, nationality, language, origin, social status, faith, beliefs, views, age, sexual orientation, disability, ethnicity or religion:

- i. create equal conditions for all consumers to obtain the same products, goods and services including provision with housing and applying equal terms and guarantees for the same products, goods and services of the same value;
- ii. while providing information on or while advertising products, goods or services to consumers, ensure that such information does not convey humiliation or scorn or restriction of rights or giving privileges on the grounds of gender, race, nationality, language, origin, social status, faith, beliefs, views, age, sexual orientation, disability, ethnicity or religion and that such information does not form a public attitude that an individual has an advantage or disadvantage due to the aforementioned grounds.

Provisions of the Law of Social Integration of the Disabled require those with duties under the Law to make adjustments to special needs of disabled in the fields of: provision of information, health care, accessibility, education, transport, etc.

The Law also provides that the Ministry of Environment is responsible for the preparation of construction technical regulations for the adaptation of environment to the needs of the disabled and for supervising the implementation of such regulations.

In the 11 Article of The Law of Social Integration of the Disabled for provision of accessibility are responsible:

- For adaptation of facilities for disabled persons' special needs are responsible local authorities;
- For territorial planning and design of buildings and public works buildings, housing and the environment, public transport facilities for passenger service, and their infrastructure, information environmental adaptation are responsible local authorities, owners and users of the objects.

Article 34 of the Republic of Lithuania Law on Education establishes that access to education shall be ensured for persons with special needs by adapting the school environment and by providing special pedagogical, psychological and special assistance.

The Law On Fundamentals of Protection of the Rights of the Child (Official Gazette, 1996, no. 33-807) provides that public buildings, streets and transportation means, which are to be used by a disabled child, shall be adapted to the special needs of a disabled child. The Law also provides that adapted accommodations shall be installed within institutions intended for these children. State and municipal executive institutions shall ensure according to their

competence and potential that requirements indicated in parts one and two of this article, would be implemented.

The Law on Construction stipulates that during the design, construction, reconstruction or major renovation of buildings (except blocks of flats under renovation) and engineering constructions, it is necessary to adapt them to the special needs of disabled according to the Law of Social Integration of the Disabled.

The responsibilities to provide reasonable accommodation for disabled persons are embedded in The Law on Equal Opportunities. In The Law on Equal Opportunities there is embedded that employers „shall take appropriate measures to enable a person with disabilities to have access to employment, to work, to seek career or to undergo training, including reasonable accommodation, if those measures shall not cause disproportionate burden to employer“. This provision regulates only employer's duty, but not in the area such as social protection, education, provision of goods and services.

In Lithuania there is a Programme for the Adaptation of Housing of the Disabled (hereinafter referred to as the Programme) which also contributes to improvement of accessibility for the disabled. The purpose of the Programme is to seek independence and social integration of the disabled, meeting their special needs and adapting housing and its environment to their special needs. The Programme is targeted at disabled with physical impairment and having difficulty moving around the house who need an adaptation of housing.

Article 14 of The Law on Education of Republic of Lithuania establishes that access to education shall be ensured for persons with special needs by providing special pedagogical, psychological and special assistance.

## **b. General law, technical regulations and standards**

Information regarding accessibility in Lithuanian legislation is provided in point a.

Adaptation of constructions and territories to disabled people's needs in Lithuania is enshrined in construction technical regulations (CTR): Orders of the Minister of Environment on Construction Technical Regulations:

- CTR 2.03.01:2001-Constructions and Territories. Requirements for needs of the Disabled;
- CTR 2.02.02:2004-The Buildings of Public Service;
- CTR 2.02-01-2004-Residential Buildings;
- CTR 2.02.09:2005-Deatched Residential Buildings;
- CTR 2.06.02:2001-Bridges and Tunnels. General Requirements;
- CTR 2.06.01:1999-Transport Systems of Cities, Towns and Villages;
- CTR 1.05.06:2010-Designing of the Structure;
- CTR 1.07.01:2010-Documents authorising construction works
- CTR 1.07.01:2010-Completion of Construction

In Lithuania the Information Society Development Committee under the Ministry of Transport and Communications prepared Methodological Recommendations for the development and testing of web sites adapted to the needs of disabled people. According to the aforementioned Recommendations, state and municipal authorities are obliged to adapt web sites for disabled. The Information Society Development Committee once a year performs an analysis to ascertain whether the web pages are adapted for the disabled.

### **c. Role of national, European and international standards**

Lithuania does not develop purely national accessibility standards. All European Standards and several international ones in the area of accessibility are adopted as national standards.

Accessibility for disabled and persons with reduced mobility to transport services are regulated by European Union regulations which are binding in Lithuania:

- Regulation of the European Parliament and of the Council concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004;
- Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations;
- Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air;
- Regulation of the European Parliament and of the Council on the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004.

### **d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

Measures to improve access to the environment for people with disabilities are included in the National Programme for Social Integration of the Disabled 2003-2012 and its implementation measures. New National Programme for Social Integration of the Disabled 2013-2019 are being prepared now. Measures for improving accessibility are going to be included in it. In 2011 workshops on universal design were organized in Lithuania for architects, designers and other specialists. The material for workshops was prepared according to international documents (including the UNCRPD).

### **e. Services regulated for accessibility**

See point a.

In Lithuania lawyers, notaries and bailiffs must ensure that disabled persons have access to their services. The bailiff's office should be established on the first floor of the building. If there is a lift for disabled, the office can be on other floors of the building. Anyway, access to services provided by lawyers, notaries and bailiffs has to be ensured. The Lithuanian Chamber of Bailiffs and the Ministry of Justice are responsible for controlling that offices meet all requirements regarding accessibility for disabled people.

### **f. Goods regulated for accessibility as part of a service**

According to Lithuanian national law, when implementing equal treatment, a seller or producer of goods or a service (commercial or public) provider, without regard to gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion, must:

1. provide consumers with equal access to the same products, goods and services, including housing, as well as apply equal conditions of payment and guarantees for the same products, goods and services or for products, goods and services of equal value;

2. when providing consumers with information about products, goods and services or advertising them, ensure that such information does not convey humiliation, contempt or restriction of rights or extension of privileges on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion and that it does not form public opinion that these qualities make a person superior or inferior to another.

**g. Enforcement of accessibility legislation**

A person who considers himself wronged by failure to apply equal treatment shall have the right to appeal to the Equal Opportunities Ombudsman. An appeal to the Equal Opportunities Ombudsman shall not preclude the possibility of defending rights in court. Associations or other legal persons which have, in accordance with the legal act regulating their activities, the defence and representation in court of persons discriminated against on a particular ground as one of their activities may, on behalf of the person discriminated against, represent him in judicial or administrative procedures in the manner prescribed by laws. In the course of the investigation or upon completion of the investigation, the Equal Opportunities Ombudsperson may take a decision:

1. to refer the investigation material to a pre-trial investigation institution or the prosecutor if features of a criminal act have been established;
2. to address an appropriate person or institution with a recommendation to discontinue the actions violating equal rights and to amend or repeal a legal act related thereto;
3. to hear cases of administrative offences and impose administrative sanctions;
4. to dismiss the complaint if the violations indicated in it have not been corroborated;
5. to terminate the investigation if the complainant withdraws his complaint or when there is a lack of objective evidence about the committed violation or when the complainant and offender conciliate or when acts that violate equal rights cease to be performed or when a legal act that violates equal rights is amended or repealed;
6. to admonish for committing a violation;
7. to suspend the investigation if the person, whose complaint or actions, in reference to which a complaint has been made, are under investigation, is ill or away;
8. temporarily, until taking the final decision, to ban an advertisement if there is sufficient evidence that the displayed or intended to be displayed advertisement can be recognised as inciting ethnic, racial, religious hatred or hatred on the basis of sex, sexual orientation, disability, beliefs or age and would do serious harm to the public interests, would humiliate human honour and dignity and would pose threat to the principles of public morals;
9. to impose an obligation on operators of advertising activity to terminate an unauthorised advertisement and to establish the terms and conditions for the discharge of this obligation.

In Lithuania, the Department for the Affairs of Disabled at the Ministry of Social Security and Labour (hereinafter – Department) inspects buildings' compliance with design solutions, which should fulfil the requirements to meet the needs of disabled. In the case of renovated (modernized) buildings, the Department for the Affairs of Disabled doesn't inspect buildings' compliance with design solutions. According to the CTR (Construction Technical Regulation) "Completion of Construction" in the Commission for completion of constructions should be involved representative or authorised person of the Department, who inspects that constructions would be adapted to the needs of disabled. If there are violations of the CTR,



the responsible body shall be punished according to the Republic of Lithuania Code of Administrative Violations. Sanctions are applied by The State Territorial Planning and Construction Inspectorate under the Ministry of Environment or the Court.

The following institutions control that the requirements set in legislation are properly implemented: municipalities and the State Territorial Planning and Construction Inspectorate under the Ministry of Environment according to their competence.

#### **h. Non-compliance and litigation**

Victims of discrimination have the right to appeal to the Equal Opportunities Ombudsman or defend their rights in court. Associations or other legal persons which can, in accordance with the legal act regulating their activities, defend and represent in court persons discriminated against on a particular ground, may, do so in judicial or administrative procedures in the manner prescribed by laws.

The Equal Opportunities Ombudsman does not have litigation powers and cannot represent victims of discrimination in court.

A person who has suffered discrimination has the right to claim compensation for economic and non-economic damages from the persons guilty thereof in the manner prescribed by laws.

## **Luxembourg**

### **a. Accessibility legislation: its place in the legal and regulatory framework**

There is an accessibility act dated March 2001 (*Loi du 29 mars 2001 portant sur l'accessibilité des lieux ouverts au public*) which regulates the accessibility of the built environment. The regulations, that are specified in a grand-ducal regulation dated November 2001 (*Règlement grand-ducal modifié du 23 novembre 2001 portant exécution des articles 1 et 2 de la loi du 29 mars 2001 portant sur l'accessibilité des lieux ouverts au public*), only apply to public or publicly funded buildings and facilities which have been newly built or substantially renovated.

Furthermore, there is the 2008 (22 July 2008) act regarding the accessibility of public spaces to persons with disabilities who are accompanied by an assistance dog (22 July 2008) and the 2008 Grand-Ducal regulation (19 December 2008) regarding the limitations to the access of persons with disabilities accompanied by assistance dogs to those places.

Lack of accessibility has been considered discrimination since the 2006 act on equal treatment (*Loi du 28 novembre 2006 sur l'égalité de traitement*) but only in regard to workplace discrimination. Since the ratification of the Convention by the Grand-Duchy of Luxemburg (*Loi du 28 juillet 2011*) steps have been undertaken to incorporate the concept of reasonable accomodation, as well as the denial of reasonable accomodation as a form of discrimination, into relevant legal documents.

### **b. General law, technical regulations and standards**

Cf. point c.

Furthermore a series of accessibility measures aim to guarantee that persons with disabilities enjoy equal opportunities and the full participation in all aspects of life. These various measures are the following:

- National accessibility concept and the label "Accessibility Plus"
- The Standards Guide (Guide des normes) which is a reference document on accessible construction and which gives clear explanations of the legal provisions
- The label "EureWelcome" resulting from an interregional collaboration supported by INTERREG
- ECA – European concept for Accessibility
- ECA for Administrations

The question of accessibility is a constant concern in Luxembourg.

### **c. Role of national, European and international standards**

In the Grand-Duchy, the legislator develops its own national standards (cf. accessibility act and regulation). In the context of accessibility there is also compilation of non-mandatory norms (cf. "Guide des normes"). Those norms and directives coexist with the legal standards and they go more into details than the legal standards.

If there is more precise information needed on a special subject where there are no clear legal provisions, the authorities tend to turn to the relevant DIN rules of the "Deutsches Institut für

Normung e.V.”. This is often the case regarding the installation of special lifts, tactile materials for the floor or road traffic signal systems for blind persons.

These are the relevant DIN rules:

- DIN EN 81-70:2003 + A1:2004: Safety rules for the construction and installations of lifts - Particular applications for passenger and goods passengers lifts - Part 70: Accessibility to lifts for persons including persons with disability;
- DIN 32984: 2011-10: Tactile materials for the floor at public places
- DIN 32981: 2002-11: Additional equipment for road traffic signal systems to ensure that they can also be used by blind persons

#### **d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

During the first trimester 2012 the Luxemburg Government has accepted and presented a new national 5-year action Plan for the implementation of the UN-CRPD. This action plan announces some major changes in accessibility legislation during the next 5 years. These changes will mainly broaden the scope of the 2001 accessibility act.

#### **e. Services regulated for accessibility**

As indicated in point a., presently, the regulations only apply to public or publicly funded buildings and facilities which have been newly built or substantially renovated. The exhaustive enumeration of those services can be found in art.1 and 2 of the following grand-ducal regulation: "Règlement grand-ducal modifié du 23 novembre 2001 portant exécution des articles 1 et 2 de la loi du 29 mars 2001 portant sur l'accessibilité des lieux ouverts au public".

#### **f. Goods regulated for accessibility as part of a service**

Some of the legal and regulatory provisions relate to the accessibility of goods, as e.g. those about the parking lots, the toilets, bathtubs, kitchen worktops or the telephone booths. (cf. *Règlement grand-ducal modifié du 23 novembre 2001 portant exécution des articles 1 et 2 de la loi du 29 mars 2001 portant sur l'accessibilité des lieux ouverts au public*)

#### **g. Goods regulated for accessibility**

The accessibility of doors, elevators, stairs and other central elements of a building is regulated in the 2011 accessibility act and its corresponding regulation (“règlement”). As for goods like busses or trains, the government makes sure of their accessibility by integrating accessibility criteria in their public calls for tender.

#### **h. Enforcement of accessibility legislation**

Currently, the enforcement is of administrative nature. There is one administration department « *service national de la sécurité dans la fonction publique* » that is responsible for examining compliance with the provisions of the 2001 accessibility act. As the provisions of that particular act apply to public or publicly funded buildings and facilities, a permit to build an edifice or to exploit a service in such a building is only granted if the conditions set out in the accessibility act are fulfilled.

**i. Non-compliance and litigation**

In Luxembourg, in case of a persisting disagreement with the administration, you may bring the matter before the Mediator (Ombudsman). As the 2001 Accessibility Act applies to public or publicly funded buildings and facilities, one can of course call upon the ombudsman if one feels victim of a case of noncompliance with the relevant act.

At the present day, the bill provides no consequences, no penalty and no fines, for non-compliance with accessibility legislation. But that is most likely going to change in the near future. As a matter of fact, the accessibility legislation and the accessibility standards are going to be revised and that will probably be one of the modifications.

## **Malta**

### **a. Accessibility legislation: its place in the legal and regulatory framework**

Articles 12 and 13 of the Equal Opportunities (Persons with Disability) Act (Cap. 413) provide for rules on access of disabled people on an equal basis with others with regards to access to premises and the provision of goods, services and facilities.

The Act also allows for the test of reasonableness which takes into consideration the nature and cost of the required accommodation, the financial resources of the person or organisation required to carry out the accommodation, and the availability of public funds to cover the expenses (Article 20).

### **b. General law, technical regulations and standards**

Rule on Access for all are provided for by the Equal Opportunities (Persons with Disability) Act, (Cap. 413), while in relation to physical accessibility to buildings this is monitored through the 'Access for All Guidelines' referred to in point e.

### **c. Role of national, European and international standards**

The 'Access for All Design Guidelines' which deal with accessibility to buildings were developed locally with reference to accessibility standards used in other countries.

### **d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

Bill no. 85 of 2011 "Various Laws (Disability Matters) (Amendment) Act, 2011", which is currently being debated in the Maltese Parliament, is aimed at bringing Maltese legislation in line with UNCRPD, thus paving the way to Malta's ratification thereof. The Bill includes amendments to the Equal Opportunities (Persons with Disability) Act (Cap. 413) and it will further strengthen existing legislation, by including 'and use' in the provision of goods, services and facilities (Article 15 of the Equal Opportunities (Persons with Disability) Act (Cap. 413)).

### **e. Services regulated for accessibility**

As mentioned above, Articles 12 and 13 of the Equal Opportunities (Persons with Disability) Act (Cap. 413) refer to physical accessibility of buildings as well as access to the provision of goods, facilities, and services.

Indeed, Article 12 refers to access to premises it shall be unlawful for any person to discriminate against another person on the grounds of the disability of such other person or a disability of any of his family members by refusing amongst other to allow access to, or the use of any premises, or of any facilities within such premises

On the other hand, Article 13 refers to the provision of goods and services to qualified persons with disability and stipulates the following:

- (1) Save as provided for in sub-article (3), no qualified person with a disability shall, on the grounds of disability, be excluded from participation in or be denied the benefits

of the programmes or activities of any person or body in relation to the goods, facilities or services to which this article applies or be discriminated against by any person or body providing such goods, facilities or services which the qualified person seeks to obtain or use.

- (2) This article applies to the provision (whether on payment or not) of goods, facilities and services to the public or any article of the public and includes in particular, but without prejudice to the generality of the foregoing -
- (a) access to and use of any place which members of the public or a section of the public are permitted to enter;
  - (b) the provision of property rights and of housing;
  - (c) accommodation in a hotel, boarding house or similar establishment;
  - (d) facilities by way of banking, insurance or for grants, loans, credit or finance;
  - (e) participation in occupational and other pension schemes;
  - (f) facilities for education;
  - (g) facilities for entertainment, sports or recreation;
  - (h) facilities for transport or travel by land, sea or air;
  - (i) the services of any profession or trade, or of any local or other public authority;
  - (j) membership of associations, clubs or other organisations;
  - (k) enjoyment of civic rights and performance of civic duties; and
  - (l) such other facilities and services as the Minister may prescribe by regulations made under this Act.
- (3) The provisions of sub-articles (1) and (2) of this article shall not apply where compliance with such provisions in relation to a qualified person with a disability would be impracticable or unsafe and could not be made practicable and safe by reasonable modification to rules, policies or practices, or the removal of architectural, communication or transport barriers or the provision of auxiliary aids or services.

(Please see also point d. regarding the addition of ‘use’ in Article 13 through the Disability Matters Amendment Bill.)

**f. Goods regulated for accessibility as part of a service**

Kindly refer to point e.

**g. Goods regulated for accessibility**

In general, manufactured goods are not regulated for accessibility in Malta.

In terms of access to buildings, the ‘Access for All Design Guidelines’ produced by the National Commission Persons with Disabilities covers accessibility of buildings, including all areas and facilities within, as well as outside areas.

These Guidelines are constantly updated and a third edition will become operational as of 1 June 2012. The overriding objective remains that of providing a comprehensive guide to the achievement of a physical environment that is inclusive, accessible and adheres to the principles of universal design. In brief, the main aim is towards the achievement of an environment that does not inherently feature obstacles and barriers to anyone, irrespective of ability, age or physical condition. It is acknowledged that no set of guidelines can hope to take

account of all imaginable possibilities encountered in the physical environment; cognisant of the fact that essentially all buildings and physical environments are unique. In this context, these guidelines aspire to provide general guidance to the minimum standards of most of the elements and structures likely to form part of the physical environment and that would allow a disabled person to independently enter and make use of the facility. In essence, they provide a framework to direct creative efforts in providing an accessible environment in new and existing buildings.

#### **h. Enforcement of accessibility legislation**

In relation to accessibility of buildings to be used by the public (including places of work), the National Commission Persons with Disability assesses development applications submitted to the Malta Environment and Planning Authority in order to assess their conformity with the Access for All Design Guidelines. If the application is not compliant with such Guidelines, the National Commission Persons with Disability can object to the granting of building permit and inform the Malta Environment and Planning Authority accordingly.

Also, as previously mentioned, Articles 12 and 13 of the Equal Opportunities (Persons with Disability) Act (Cap. 413) provide for access to premises and also the provision of goods and services to qualified persons with a disability. In this regard, by virtue of Articles 32 and 33 of the Act, the National Commission Persons with Disability may initiate investigations or deal with complaints on the breach of the provisions of the Equal Opportunities (Persons with Disability) Act (Cap. 413). Procedure for the Investigation of Complaints Regulations (LN 13/01 and LN3/02) lays down the procedure to be adopted by the National Commission for Persons with Disability in investigating complaints including the possibility to formally request remedial action. This happens when the Commission concludes that an unlawful act constitutes a breach of any provision of the Act; in the event of non compliance there is the possibility of appealing to the Civil Courts to order the necessary remedial action to be undertaken immediately.

#### **i. Non-compliance and litigation**

As stated in the previous reply, Articles 32, 33 and 34 of the Equal Opportunities (Persons with Disability) Act (Cap. 413) stipulates the rules for the dealing with complaints, investigations and enforcement of the provisions of the Act

Articles 33 and 34 of the Act and Procedure for the Investigation of Complaints Regulations (LN 13/01 and LN3/02) provide for the situations when the National Commission for Persons with Disability may refer an alleged discrimination to the Civil Courts. Such referral by the Commission does not prevent any person having a legal interest in the matter to, either personally or through his/her legal representative, bring a civil action related to an alleged unlawful act of discrimination and make a request for compensation of damages thereto.

Moreover, the proposed Disability Matters Amendments Bill, which is currently in Parliament, proposes to also allow disability NGOs the power to seek remedial action.

## **The Netherlands**

### **a. Accessibility legislation: its place in the legal and regulatory framework**

In the Netherlands there is legislation which deals with accessibility in various domains, such as:

The Act on equal treatment on the ground of disability or chronic disease (Wgbh/cz). This Act combats discrimination of persons with a disability in the fields of education, labour, housing and public transport. The three domains first mentioned are in force. The last domain will be in force after technical regulations will be published in 2012. An important element in this Act is the duty to provide for reasonable accommodation, when needed and appropriate. The lack of doing so is considered to be forbidden discrimination.

The Act on social support (Wmo). This Act compels local authorities to promote participation of all citizens including persons with disabilities. Where (physical or social) inaccessibility occurs, the authorities have to provide compensation. Domains include housing, mobility, leisure.

The 2003 Building Code (Bouwbesluit) regulates usability (including accessibility) of new or renewed public buildings. The regulations cover functional requirements depending on the use of the building or parts of it.

Several Acts regulate the public transport system. Regulations for accessibility are part of these general acts. Due to lifetime cycle of buildings, buses, trains, trams, metro and ferries a stepwise approach to full accessibility is chosen.

The Act on sheltered Workplaces (WSW) guarantees and effectuates the right to employment for those who are only capable to work in an adapted environment. The WSW aims to protect and to stimulate the capacity to work under regular conditions. The local authorities are concerned that as much indicated inhabitants as possible find jobs under adapted conditions. Besides several reintegration measures might be used.

A regulation based on the Media act (Mediawet) rules that since 2011 95 % of the Dutch-language programmes of the national public broadcasting service are subtitled for persons with hearing impairments; programmes of commercial broadcasters should be subtitled for 50 % of the Dutch-language programmes. Most of the programmes in other languages are subtitled for the general public. Apart from this, the Netherlands government considers the accessibility of the media for persons with visual impairments of utmost importance. So far the choice has been not to regulate this via the Media act. The government has chosen to approach the national public as well as commercial broadcasters to underline the importance of sufficient accessibility for persons with visual impairments and also requested them to provide information about what measurements already have been or will be taken to reach this goal. The results so far are very positive.

Several regulations support the participation of pupils with a disability in education. Such regulations include the earlier mentioned building code, the provision of (technical) aids and a special budget for indicated pupils with a disability who attend regular education at the level of primary, secondary and vocational education. Institutions for higher education have a legal duty to provide for education for all students with disabilities, who meet the admission



demands for all. The earlier mentioned Wgbh/cz obliges them to provide for reasonable accommodation, when needed and appropriate.

Besides legislation, there are also several guidelines, handbooks and action plans with respect to accessibility. In the list below, some of them are mentioned:

### Buildings

- Guidelines for layout and design of governmental buildings - In general buildings in use by the government will be accessible according to the standards of the International Accessibility Symbol.
- The hallmark living (Keurmerk Wonen) gives guidelines of the layout of neighbourhoods (including accessibility like lowered kerbstones).
- The Handbook on accessibility gives instructions to designers on size and measurements for accessible buildings and public space outdoor (publ. by Misset in cooperation with user organizations)
- Guidelines on the construction and design of specific buildings like schools, catering industry, shops. These guidelines give examples to implement the Building code mentioned above.

### Public Transport

- Voertuigenreglement (as an implementation of directive 2001/85/EC) regulates accessibility of buses.
- Several Handbooks governing voluntary adjustments in or on bus stops, taxis, walking routes and train-transport (the latter still in progress).
- A Memorandum gives standards and guidelines for railway stations. It also contains standards on accessibility.
- Implementation schedule on accessibility: schedule in which the accessibility of railway stations and trains will be improved. For instance, the minister of Transport will send an Action Plan to Parliament in spring 2012 concerning the full accessibility of trains by 2030.

### Access to the internet

- Guidelines on accessible internet sites including accessibility. The Ministry of the Interior and Kingdom Affairs integrated accessibility into basic guidelines used for public websites ([www.webrichtlijnen.overheid.nl](http://www.webrichtlijnen.overheid.nl)) The Web Guidelines are based on the principle of 'universal design'. A website that complies with the Web Guidelines is accessible to all users (search engines, browsers, mobile phones) and people with disabilities. Moreover, implementation of web guidelines when building a new website does not cost more than building them from the same site without web guidelines. For government websites the web guidelines are already mandated since September 2006. For provinces, water boards and municipalities the web guidelines are mandatory since 2010.

#### **b. General law, technical regulations and standards**

Accessibility requirements are not provided in general law. See point a.

**c. Role of national, European and international standards**

The Dutch Normalisation Institute develops standards in the field of accessibility. Special attention is paid to implementing the ISO/CEN-Guide on design for all.

**d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

Until now legislation and regulations have not been changed as a consequence of implementing the UN CRPD. Accessibility is a factor that has been given attention in several domains. For instance, the code on equal treatment in public transport on the basis of disability or chronic disease was already in progress, independently of article 9 of the UN-convention.

**e. Services regulated for accessibility**

See point a. In addition, some initiatives of close cooperation between government and civil society can be mentioned.

On December 3, 2009, the then Minister of Health, opened the information point "AllesToegankelijk.nl" (All Accessible). In "all accessible" both entrepreneurs and organizations of people with disabilities, government and research institutes work together to improve the accessibility of goods and services for people with disabilities. "All Accessible" is an important part in spreading knowledge and increasing awareness and support towards an accessible Netherlands.

"All Accessible" provides information and is also a platform that connects supply and demand accessible to everyone who want to know more about accessibility and focuses specifically on entrepreneurs.

**f. Goods regulated for accessibility as part of a service**

This is not applicable in the Netherlands.

**g. Goods regulated for accessibility**

See point a.

**h. Enforcement of accessibility legislation, non-compliance and litigation**

In the Netherlands, cases concerning the non-compliance of accessibility legislation can be brought to court as well as to a quasi-judicial body, i.e. the Dutch Equal Treatment Commission. This Commission is an independent organisation that was established in 1994 to promote and monitor compliance with equal treatment legislation. The Commission also gives advice and information about the standards that apply. When the Commission (CGB) receives a request for an opinion about alleged differentiation, it investigates whether the equal treatment law has been violated.

Everyone in the Netherlands can ask the Commission for an opinion or advice about a specific situation concerning unequal treatment. Petitioning the Commission is free of charge and legal representation is not required. The Commission does not have to wait for petitions to be

filed; it is also entitled to investigate on its own initiative in specific areas where systematic or persistent patterns of discrimination are suspected. Unlike court verdicts the opinions of the Commission are not legally binding. In practice the opinions have a great moral significance and are followed up in most cases.

One can also bring a case to court for unequal treatment as a consequence of lack of accessibility, for instance when there is no reasonable accommodation provided to make the service/good accessible. Depending on the specific circumstances of the individual case, various remedies are available, e.g. damages, enforcing accessibility etc.

## Poland

### a. Accessibility legislation: its place in the legal and regulatory framework

On 1 August 1997 the Sejm of the Republic of Poland adopted a Resolution – Charter of Rights of Persons with Disabilities, whereby it reiterates the rights conferred by the Constitution of the Republic of Poland, Convention on the Rights of the Child and the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities. This document defines the rights of persons with disabilities to live a life that is independent, self-reliant, active and free from any aspects of discrimination. It provides a list of ten rights<sup>76</sup> pointing at the crucial areas where vigorous action needs to be taken by the Government and local authorities to carry into effect the rights of persons with disabilities. In particular it calls for action to ensure access to goods and services allowing full participation in public life, school education, work conditions accommodated as necessary, life in environment free of functional barriers including access to public offices, polling stations, public utilities, use of means of transport at ease, access to information and communication.

Accessibility requirements are considered mainly as technical issues. The general accessibility requirements are set up in various legal acts and the special, more detailed accessibility requirements of technical nature are defined in legal regulations.

Legal obligations and rules on accessibility for persons with disabilities concern mainly the built environment and various services.

The definition of reasonable accommodation regarding employment has been included in the Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities and lack of such reasonable accommodation is considered as violation of the rule of equal treatment in employment - in the light of antidiscrimination provisions of the Act – Labour Code.

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<sup>76</sup> The list, included into the **Resolution – Charter of Rights of Persons with Disabilities**, mentions disabled persons` right to:

1. access to goods and services which enable them to fully participate in the social life
2. access to medical treatment and care, early diagnosis, medical rehabilitation and education
3. access to comprehensive rehabilitation aiming at social adaptation
4. education in integrated systems or in special schools or to education on an individual basis, if necessary
5. psychical and pedagogical assistance and other kind of specialized assistance enabling personal development
6. work on the open labour market or in an adjusted environment when such a requirement results from their disability
7. social security - taking into account the necessity of bearing higher costs related to disability and taking these costs into account in the tax system
8. life in functional barrier-free environment, including:
  - access to public buildings
  - use of public transport
  - access to information
  - possibility of interpersonal communication
9. a self-governing representation and to consult draft legislation concerning people with disabilities
10. full participation in public, social, cultural, artistic and sports life as well as in recreation and tourism appropriately to individual needs and interest.

In 2011, provisions concerning needs of persons with disabilities, particularly persons with reduced mobility, were included in special regulations: on the technical conditions to be met by buildings and facilities of the underground (issued according to the Act – Law on Construction) and by trams and trolleybuses and their necessary equipment (issued according to the Act – Transportation Law). The Act on Public Collective Transport, which came into force on 1 March 2011, determines the rules of organization and operation of regular passenger carriage in public road, railway, other rail vehicle (for example tram), rope, cable and field, sea and inland waterway transport, carried out on Polish territory and in border areas. It obliges to take into account the needs of persons with disabilities and persons with reduced mobility as concerns defining requirements for means of transport and organization of transport services. The Act provides that transport plans should be prepared by the Minister of Infrastructure and self-government bodies on any level, taking into account inter alia the need for sustainable development of public transport, in particular the needs of disabled persons and persons with reduced mobility, in the field of transport services.

#### **b. General law, technical regulations and standards**

Provisions obligating to ensure access for persons with disabilities to various buildings or services are included in general law, i.e. in the legal acts, and the special accessibility requirements are defined in legal regulations, implementing these acts. For example:

- The Act on Spatial Planning and Management and the Act - Law on Construction introduced the obligation to consider the needs of persons with disabilities when planning and building any new buildings and other constructions of public use and multi-family dwelling-houses and also when modernizing or remodelling existing ones. Technical standards that buildings and related installations should fulfil are set out in the regulation implementing the Act – Law on Construction in force since 1995. The special technical and construction provisions concerning public roads, road engineering facilities, railway structures and railway crossings with public roads, which ensure that they are accessible for persons with disabilities, are included in other various regulations implementing the Act - Law on Construction.
- There are also other special technical provisions defining accessibility requirements included in regulations implementing various acts, such as the Regulation on the technical conditions to be met by the hotel facilities and other facilities in which hotel services are provided, implementing the Act on Tourism Services.
- Special requirements concerning school buses are defined in the Regulation of Minister of Infrastructure on the technical conditions for vehicles and the scope of their necessary equipment, issued by virtue of the Act – Road Traffic Law.
- Provisions concerning needs of persons with disabilities were included in the Regulation of the Ministry of Infrastructure on technical conditions to be met by trams and trolleybuses and their necessary equipment (issued according to the Act – Transportation Law).

#### **c. Role of national, European and international standards**

The accessibility legislation in Poland mainly makes use of international or European standards. For example:

- Poland applies provisions of the Regulations No. 107 of the United Nations Economic Commission for Europe (UN/ECE) on uniform provisions concerning the approval of

vehicles category M2 and M3 with respect to their general construction. Appendix 8 of the Regulations sets out requirements for technical equipment facilitating access for passengers with reduced mobility which are harmonized in this respect with the applicable requirements of the EU Directive 2001/85/EC. These requirements should be applied by the 42 countries that are parties to the Agreement, done at Geneva on 20 March 1958.

- Websites (particularly of public administration bodies) should meet the requirements of e-accessibility defined by W3C Consortium in guidelines WCAG 1.0 and WCAG 2.0.

For information on Polish standards see point g. below.

#### **d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

The awareness on accessibility has been raised thanks to dissemination of information concerning not only provisions of the UN Convention on the Rights of Persons with Disabilities but also other EU documents as well as the Recommendation Rec(2006)5 of the Committee of Ministers of the Council of Europe to member states on the “Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015”. This might probably contribute to:

- better implementation of the provisions concerning needs of persons with disabilities and persons with reduced mobility, included in EU regulations and national special regulations adopted in accordance with the EU legislation regarding rights of passengers (in 2011 the technical conditions to be met by buildings and facilities of underground and by trams and trolley buses and their necessary equipment were defined in two regulations of the Minister of Infrastructure);
- improvement of access for persons with disabilities to enjoyment of the right to vote (the new Act-Election Code entered into force on 1 August 2011; the Act provides, inter alia, for: ensuring the accessibility of information concerning election and the accessibility of polling stations for people with reduced mobility, the possibility for a voter with a severe or moderate degree of disability to vote by post or to delegate somebody to vote on his/her behalf, possibility to vote using overlays to vote cards prepared in Braille).

#### **e. Services regulated for accessibility**

The Act on Spatial Planning and Management and the Act - Law on Construction introduced the obligation to consider the needs of persons with disabilities in new construction projects, but also when modernizing existing buildings as well as multi-family dwelling housing. Technical standards that buildings and related installations (including parking lots) should fulfil are set out in the regulation implementing the Act – Law on Construction in force since 1995. These standards are to be applied when planning, building or remodelling.

The services in the following areas are regulated by additional legal provisions ensuring accessibility for persons with disabilities:

- public transport (the Act – Transportation Law, according to which carriers are obliged to ensure proper conditions of safety and hygiene as well as comfort and due

services for users, and should undertake actions facilitating the use of means of transport by travellers, particularly by persons with reduced mobility and disabled persons; the Act on Public Collective Transport, which obliges to take into account the needs of persons with disabilities and persons with reduced mobility as concerns defining requirements for means of transport and organization of transport services; the Act – Air Law, which - in Annex No 2 to the Act - set up the system of fines for breach of provisions of the Regulation (EC) No 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air; this system of fines came in force on 18 September 2011),

- telecommunication (the Act - Telecommunication Law provides that telecom operators are obliged to ensure disabled persons access to services of general access, also by providing the necessary facilities particularly for blind and dim-sighted persons, persons using hearing aids, deaf or dumb persons and wheelchair users. Special requirements in this field are included in the regulation implementing provisions of the Act),
- post (the Act – Postal Law introduces an obligation for operators providing general access postal services to undertake adaptations enabling persons with disabilities' access to services),
- audio-visual media (since 1 July 2011 the amended Act on Radio and Television Broadcasting obliges television broadcasters to ensure the availability of programs for persons with visual or hearing impairments by introducing appropriate facilities such as audio description, subtitling for the deaf and sign language translations; at least 10% of the quarterly time of broadcasting, with the exception of advertising and telesales, should have such facilities),
- health (the Regulation of the Minister of Health of 2 February 2011 on requirements to be met with regard to technical and sanitary facilities and equipment of health care institutions, issued according to the Act of 15 April 2011 on Medical Activity),
- education (the Act on System of Education provides that the system ensures any citizen the right to education and sets up various obligations for public authorities to enable people's enjoyment of this right; for example it sets up an obligation for local self-government to provide students with disabilities, in the age 5-21, free transportation and care during transport to the nearest school),
- higher education (The Act – Higher Education Law stipulates that among main tasks of university or other school is creating conditions for people with disabilities to participate fully in the process of education and research; terms and procedure of recruitment for entrance exams should take into account the specific needs of candidates who are disabled, and the statute of study have to specify how to adapt the organization and proper implementation of the educational process to the specific needs of students who are disabled, including adapting the conditions of study to the type of disability. Moreover, the Act provides (in art. 164.3) that didactic classes for students may also be conducted with the use of methods and techniques of distance education. This creates possibilities particularly for persons with reduced mobility to use e-learning courses. There is a special scholarship for disabled students, in the amount depending on student's degree of disability, available irrespective to social scholarship),
- hotel industry (the Regulation on the hotel facilities and other facilities in which hotel services are provided, issued according to the Act on Tourism Services),
- information provided by entities implementing public tasks (the Act on Informatization of Activities of Entities Performing Public Tasks - by the virtue of the amendment of the Act, which came into force in June 2010, the definition of minimal

requirements for ICT systems, on which Council of Ministers is authorized to issue regulations, was completed bearing in mind the need to ensure access to information resources for persons with disabilities; the Act on Access to Public Information),

- sports facilities (there is an obligation, introduced by the Act - Law on Construction, to take into account the needs of persons with disabilities when planning and building any new sports buildings and facilities, in a way similar to other constructions of public use, and also when modernising or remodelling existing ones),
- contacts between persons with disabilities and public administration organs or services (the Act of 18 August 2011 on sign language and other means of communication).

A number of universities establish their standards for actions enabling persons with various kinds of disabilities to study. Some activities in this area are financially supported by the State Fund for Rehabilitation of Persons with Disabilities (PFRON).

#### **f. Goods regulated for accessibility as part of a service**

Ensuring accessibility of services is a matter of general law (i.e. of the legal acts). And the special accessibility requirements are defined in legal regulations, implementing these acts, that have more technical nature, or often in the Polish standards.

The Act on System of Education provides that the system ensures any citizen the right to education and sets up various obligations for public authorities to enable people enjoyment of this right. There are available manuals and auxiliary books for blind students (in Braille) and for partially-sighted students (in enlarged print), as well as manuals for special education of students with mental retardation and deaf students.

#### **g. Goods regulated for accessibility**

There are, *inter alia*, special accessibility legal provisions concerning:

- construction of school busses (defined in the Regulation of Minister of Infrastructure on the technical conditions for vehicles and the scope of their necessary equipment, issued by virtue of the Act – Road Traffic Law),
- technical conditions to be met by trams and trolleybuses and their necessary equipment, taking into account needs of persons with disabilities (included in the Regulation of the Ministry of Infrastructure issued according to the Act – Transportation Law).

Goods are manufactured in Poland in accordance with the Polish standards issued by the Polish Normalization Committee. There are for example several Polish standards defining requirements for technical aids for persons with disabilities manufactured as medical devices in accordance with the provisions of Directive 93/42/EEC.

The classification of technical aids that are used by persons with disabilities, based on their basic function, has been introduced by the Polish Standard PN-EN ISO 9999:2007. The classification covers the following eleven classes: aids for individual therapy; aids for exercising; orthotics and prostheses; aids for personal care and protection; personal mobility aids; household aids; equipment and adaptation of home and other premises; aids enabling communication and information; aids to use the products and goods; aids and equipment to improve the environment, tools and machines; aids for recreation.



Polish standards associated with the accessibility of transport regards to "Technical aids for the blind and visually impaired. Sound signaling on pedestrian crossings with traffic lights. PN-Z-80100:2004 "and "Accessibility of objects and facilities for persons with disabilities. Signs of public information PZ-Z-80101:2007".

#### **h. Enforcement of accessibility legislation**

Enforcement of accessibility requirements is done mainly in the field of construction and technical equipment and has administrative nature.

Construction supervision, i.e. control and monitoring system of construction processes, is exercised by the General Inspector of Construction Supervision (on the central level) and bodies of architectural and construction supervision (on voivodship and powiat levels) as well as of specialized construction supervision which control *inter alia* compliance of architectural and construction solutions with relevant legal provisions, standards and principles of technical knowledge.

The Act - Law on Construction provides that buildings must be designed and constructed in the manner specified in the regulations, providing, among others, conditions necessary for persons with disabilities, in particular wheelchair users, to use buildings and other constructions of public use and multi-family dwelling-houses. As concerns such buildings, derogations from the technical and construction provisions may not result in reducing the accessibility for persons with disabilities.

A construction project must be approved by the competent authority. The project should include information concerning accessibility for persons with disabilities. Any deviation from the approved construction project, related to ensuring the conditions necessary for use of the building by persons with disabilities, constitute a significant deviation from the project and as such require a decision on changing the building permit.

It is necessary to notify the relevant construction supervision body of completion of the construction which requires a building permit. The construction supervision inspectorate can then carry out the mandatory inspection of construction. The check includes, among other things, verifying compliance with the architecture and construction project in providing the conditions necessary for use of the building by persons with disabilities, as concerns public use buildings and multi-family dwelling housing. If irregularities are found, apart from the refusal of the decision to permit the use of an object, it shall impose a fine provided for in the Act - Law on Construction.

The General Inspector of Construction Supervision and voivodship inspectors of construction supervision are relevant authorities for construction products. A construction product may be placed on the market if it is suitable for use in the performance of works, to the extent corresponding to its functional characteristics and intended purpose and enables meeting basic requirements by the construction object. Who is marketing a construction product not suitable for use in the performance of works, is subjected to a fine.

Technical devices (for example lifts and lifting platforms for persons with disabilities), defined in the Act on technical inspection, are subjected to technical inspection during their designing, manufacturing (including manufacturing materials and components), installation,

repairing and modernizing, marketing and operating. The factory manufacturing technical devices should have the appropriate permission issued by the competent technical inspection authority.

Who allows to operate technical devices without obtaining the decision of the competent body of technical inspection unit on the release of device for use or marketing, or against the decision to suspend operation of a technical device or withdraw from the market, is subjected to a fine (according to the Code of Procedure in Cases of Misconduct) or penalty of restriction of liberty.

The Office of Electronic Communication has introduced the Senior Certificate and Certificate “Without Barriers” for telecommunication companies who offer special services for the elderly and persons with disabilities.

#### **i. Non-compliance and litigation**

A case on non-compliance of accessibility legislation, considered as violation of the rule of non-discrimination and equal treatment, may be brought, by the individual person or by an NGO, to court or to the Ombudsman, officially called the Human Rights Defender.

The Human Rights Defender, who safeguards human rights and freedoms specified in the Constitution and other legislative acts, as well as safeguards implementation of the rule of equal treatment, investigates whether there has been an infringement on the legal regulations or rules of social coexistence and justice as a result of action or neglect by the bodies, organizations or institutions obliged to comply with and implement such freedoms and rights. After investigation of a case, the Human Rights Defender may, among others:

- address the motion to the body, organization or institution, if he considers its action as an infringement of the human and civil freedoms and rights,
- request to start civil legal proceedings or take part in such ongoing proceedings with the rights of a public prosecutor.

Community organizations, including non-governmental organizations representing the interests of persons with disabilities, are granted with special procedural rights in the Polish law:

- According to the Code of Civil Procedure, in cases regarding the protection of consumers, the community organizations whose statutory objectives include the protection of equal status and the principle of non-discrimination may, upon the consent of the citizens, institute actions on behalf of the citizens, and may, upon the consent of the claimant, join the proceedings at any stage thereof. Such organisations, even if they do not participate in proceedings, may present to the court an opinion which is essential to the case in the form of a resolution passed by their duly authorised bodies.
- According to the Administrative Procedure Code, in a case concerning an individual person, a community organization shall have the right to file a demand to initiate proceedings and to be admitted to participate in proceedings if the statutory objectives of that organization justify it and it is in the social interest. A state administration agency, acknowledging the demand of the community organization as well-founded, shall decide on initiating the proceedings ex officio, or on admitting the organization

to participate in the proceedings. Denial to initiate proceedings or to admit the community organization to participation in the proceedings may be subjected to complaint. The community organization shall participate in proceedings enjoying all the rights of the party to the proceedings.

Furthermore, a state administration agency, initiating the proceedings in a case concerning an individual person, shall notify a community organization of the proceedings if it decides that the organization can be interested in these proceedings on account of its statutory objectives and if it is in the social interest. A community organization even if it does not participate in the proceedings may, with the approval of a state administration agency, submit its opinion in the case, expressed in the resolution or in the declaration of its statutory body, to that agency.

Any person against whom the principle of equal treatment has been infringed is entitled to compensation. In matters of breach of the principle of equal treatment provisions of the Act - Civil Code apply.

## **Portugal**

### **a. Accessibility legislation: its place in the legal and regulatory framework**

Portugal has an anti-discrimination law, Law No. 46/2006 of 28th August, which legislates on matters relating to discrimination in general, and also with discrimination in the areas of accessibility.

However, in technical terms, the issues of accessibility are legislated by Decree-Law No. 163/2006 of 8th August.

### **b. General law, technical regulations and standards**

See point g.

### **c. Role of national, European and international standards**

The Portuguese legislation in the field of accessibility has national concepts, but also complies with European standards. It should be noted in the introduction of the European Card in Portuguese legislation, the European Directive on buses, measures the European Concept of Accessibility of the European Commission, Air Transport - new rights for people with reduced mobility.

### **d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

The ratification of UN Convention on the Rights of Persons with Disabilities is after the entry into force of legislation that regulates accessibility. Thus, it is the intention of Portugal to make changes to Decree-Law No. 163/2006 of 8th August

### **e. Services regulated for accessibility**

By 2006, the existing legislation in Portugal on accessibility was applicable only to government services. With the entry into force of Law No. 46/2006 of 28th August and Decree-Law No. 163/2006 of 8th August, the government departments and private entities have become the subject of regulation.

### **f. Goods regulated for accessibility as part of a service**

The Decree-Law No. 163/2008 of 8th August contains a set of technical standards to improve accessibility for people with reduced mobility, in particular, on public roads, buildings and establishments in general, and also buildings, establishments and facilities for specific use and, finally, accessible routes.

### **g. Goods regulated for accessibility**

The legislation in force in Portugal on accessibility laws in general and abstract. However, the transport, telecommunications and other services conform to technical standards applicable to each sector.

### **h. Enforcement of accessibility legislation**

Complaints relating to discrimination in the area of accessibility, and taking into account the Law No 46/2006 of 28th August and Decree-Law No. 163/2006 of 8th August, can be treated in an administrative form, which is the submission of a complaint, the process of opening a misdemeanour procedure and, if confirmed, imposing a fine. They can also be treated with legal recourse to the courts.

**i. Non-compliance and litigation**

Individual citizens, non-governmental organizations of disabled persons or other entities can file complaints for violation of legislation on accessibility, which can be from the civil courts in general or even with the Ombudsman.

## **Romania**

### **a. Accessibility legislation: its place in the legal and regulatory framework**

The Law no. 448/2006 Regarding the Protection and Promotion of the Rights of Disabled Persons, with further completions and modifications, (<http://www.anph.ro/eng/news.php?ida=5>) has a chapter (chapter IV) dedicated to accessibility: that foresees in view of ensuring the access of disabled persons to the physical, informational and communicational environment.

### **b. General law, technical regulations and standards**

- The Norm 051/2001 for the adaptation of the civil buildings and the urban space to the needs of persons with disabilities was approved by the Order no 649/2001 of Minister of Public Work, Transport and Home. In the present the Norm is the subject of modifications, the deadline for the new Norm is the end of 2012.
- The Norm sets the minimum quality conditions required by the users (persons with disabilities) from the civil buildings, buildings for public utility and the afferent urban space, in accordance with Law 10/1995 (the Law of quality in constructions).
- The Guide regarding the designing the web pages for the authorities and institutions of central and local public administration. The Guide is addressed to public administrations using ICT.
- <http://www.mcsi.ro/Minister/Domenii-de-activitate-ale-MCSI/Tehnologia-Informatiei/Ghiduri-IT-%281%29/Realizarea-paginilor-web-pentru-autoritatile-si-in>

### **c. Changes in legislation/regulation linked to the implementation of the UN CRPD**

Romania will harmonize the national legislation with the UN Convention on the Rights of Persons with Disabilities by the end of 2012.

### **d. Services regulated for accessibility**

#### Physical environment:

- The public utility buildings, the ways of access, the dwelling buildings constructed using public funds, the common transportation means and their stations, the cabs, the railway transport wagons for the travellers and the platforms of the main stations, the parking spaces, the public streets and roads, the public telephones, the informational and communicational environment shall be adapted according to the legal provisions in the field, so as to allow the free access of disabled persons.
- The buildings in the patrimony and the historical buildings shall be adapted, observing the architectonic characteristics, according to the specific legal provisions.
- The authorities provided by law shall issue the building permit for the public utility buildings subject to the observance of the legal provisions in this field, so as to allow the free access of disabled persons.

#### Transport:

- In order to facilitate the free access of disabled persons to transport and travel, the local public administration authorities shall take measures for:
  - i. the adaptation of all the common transportation means in circulation;

- ii. the adaptation of all the stations of common transportation means according to the legal provisions, including the marking by tactile pavement of the access spaces to the entry door in the means of transport;
  - iii. the mounting of the bill boards corresponding to the needs of the persons with a visual and hearing handicap in public transportation means;
  - iv. the printing in capital letters and contrasting colours of the routes and numbers of the transportation means.
- All the taxi operators shall ensure at least a car adapted to the transport of the disabled persons using the wheel chair.
- The refusal of taxi drivers to ensure the transport of the disabled person and walking device shall be deemed as discrimination.
- adapting the pedestrian crossings on the public roads and streets according to the legal provisions, including the marking by tactile pavement;
- the installation of visual and sound signalling systems at the intense traffic crossroads.
- guide dogs accompanying persons with a severe disability shall have a free and free of charge access to all the public places and in the means of transport.
- The railway infrastructure administrators and the railway transport operators shall:
  - i. adapt at least one wagon and the main train stations in order to allow the access of the disabled persons using the wheel chair;
  - ii. mark by a contrasting tactile pavement the ways to the embarking platforms, counters or other utilities.
- In the parking spaces next to public utility buildings and in the organized ones, at least 4% of the total number of parking lots shall be adapted, reserved and signalled by an international sign, but not less than two lots, for the free of charge parking of the means of transport for disabled persons.
- The disabled persons or the legal representatives thereof, upon request, may benefit from a card-permit for free parking lots. The vehicle transporting a disabled person owning a card-permit shall benefit from free of charge parking.
- In the parking spaces of the public field and as close to the domicile as possible, their administrator shall distribute free of charge parking lots to the disabled persons who requested and need such parking.

#### Communications and informational environment:

- Publication houses shall make available the electronic matrixes used for printing magazines and books to the authorized legal persons requesting them to transform them in a format accessible to the persons with sight or reading deficiencies, according to the copyright and related rights, as subsequently amended and supplemented.
- Public libraries shall establish sections with books in formats accessible to the persons with sight or reading deficiencies.
- Telecom operators shall:
  - i. adapt at least one booth to a public telephone battery according to the legal provisions in force;
  - ii. provide information on the cost of services in forms accessible to disabled persons.
- Banking services operators shall make available to disabled persons at their request, account statements and other information in accessible formats.
- The employees of the operators of banking and mail services shall assist in the filling in of forms, at the request of disabled persons
- The owners of hotels spaces shall:
  - i. adapt at least one room for the housing of the disabled person using the wheel chair;

- ii. mark by tactile pavement or carpets the entry, the reception desk and own the tactile map of the building;
  - iii. mount elevators with tactile signs.
- The local and central authorities and institutions shall ensure, for the direct relations with the persons with a hearing or deafblind handicap, authorized interpreters of the mimic and gesture language or of the specific language of the deafblind person.
- The public local and central authorities and the private law or public local and central institutions shall provide information and documentation services accessible to disabled persons.
- The public relation services shall display and dispose of information accessible to the persons with a visual, hearing and mental handicap
- The public authorities shall take measures for:
  - i. - making accessible their own web pages, in view of improving the accessing of electronic documents by the persons with a sight and mental handicap;
  - ii. - the use of pictograms in all the public services;
  - iii. - the adaptation of telex and telefax telephones for the persons with a hearing handicap.

In the purchase of equipment and software, the public institutions shall take into account the observance of the accessibility criterion.

**e. Goods regulated for accessibility**

The public authorities shall take measures for:

- making accessible their own web pages, in view of improving the accessing of electronic documents by the persons with a sight and mental handicap;
- the use of pictograms in all the public services;
- the adaptation of telex and telefax telephones for the persons with a hearing handicap.

In the purchase of equipment and software, the public institutions shall take into account the observance of the accessibility criterion.

Telecom operators shall:

- adapt at least one booth to a public telephone battery according to the legal provisions in force

The railway infrastructure administrators and the railway transport operators shall:

- adapt at least one wagon and the main train stations in order to allow the access of the disabled persons using the wheel chair

Visual and sound signalling systems at the intense traffic crossroads.

All the taxi operators shall ensure at least a car adapted to the transport of the disabled persons using the wheel chair.

The local public administration authorities shall take measures for:

- the adaptation of all the common transportation means (buses, trams) in circulation.



**f. Enforcement of accessibility legislation**

The Law no. 448/2006 Regarding the Protection and Promotion of the Rights of Disabled Persons, with further completions and modifications is mentioning in Chapter IX / Legal Responsibility the facts which are deemed as minor offences and sanctioned by fines: <http://www.anph.ro/eng/news.php?ida=5> (e.g. the parking of other means of transport on the parking lots adapted, reserved and signalled through an international sign for disabled persons; the issuance of disability degree certificates breaching the criteria, etc).

The Social Inspection, a governmental structure, is responsible with the control of the implementation of accessibility.

**g. Non-compliance and litigation**

A person can bring a case on non-compliance of accessibility legislation to court. The claim can be brought by an individual, or an NGO. The court can decide to give a sanction by fine and by binding to make the service accessible.

## **Slovakia**

### **a. Accessibility legislation: its place in the legal and regulatory framework**

#### Railway transport

The issue of access for persons with disabilities to railway transport services is governed by regulation (EC) no. 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (hereinafter referred to as the "Regulation"). The regulation lays down the obligation for railway undertakings or the infrastructure manager to provide disabled persons and persons with reduced mobility the right to carriage on a non-discriminatory basis. Disabled persons and persons with reduced mobility are entitled to information on the accessibility of rail services and on the conditions of access to carriages and on facilities in trains. It also establishes the obligation for railway undertakings and infrastructure managers in accordance with the technical specifications for interoperability (TSI) to ensure the accessibility of stations, platforms and other facilities for disabled persons and persons with reduced mobility. The TSI PRM also applies fully in the purchase of new and the upgrading of existing rolling stock. They establish the obligation to ensure accessibility of vehicles for people with reduced mobility and disabled persons. Station managers are obliged to provide assistance to persons with reduced mobility and disabled persons for the purpose of boarding/alighting from a service for which they have purchased a transport ticket. In the case of the complete or partial loss of or damage to mobile equipment or other special equipment used by disabled persons or persons with reduced mobility, no limit on compensation is applied from the side of the railway undertaking.

#### Road transport

On 10 November 2011 there entered into force technical regulation "TP 10/2011 – Design of barrier-elimination measures for persons with reduced mobility and orientation on roads", which is the methodology for creating barrier-free measures, lays down requirements for the design of barrier-elimination measures for persons with reduced mobility and orientation on roads and provides specimen graphic prints of barrier-elimination measures for persons with reduced mobility and orientation, with a description and reasoning for the use of specific solutions. Severely disabled persons are entitled to exemption from paying for motorway toll stickers. Under § 6(6)(ch) of Act no. 135/1961 Coll. on roads, as amended, no payment is made in the case of motor vehicles and vehicle combinations for which a financial contribution is provided to persons with severe disability for increased costs associated with the operation of a passenger motor vehicle under § 8 of Act no. 447/2008 Coll. on financial contributions for compensation of severe disability and amending certain laws.

#### Electronic communications and postal services

Government Resolution no. 360 of 13.5.2009 approved the National Policy for Electronic Communications for 2009 to 2013, which sets out the strategy for the development of electronic communications networks and services in the Slovak Republic, in particular in the field of the harmonisation of the regulatory framework, the development of competition, use of the frequency spectrum, privacy and security, crisis management and critical infrastructure, international cooperation and development of innovative services. In accordance with the National Policy for Electronic Communications for 2009 – 2013 and with the Strategy for the Transition from Analogue to Digital Terrestrial TV and Radio Broadcasting in Slovakia, 2011 saw the digitalisation of terrestrial television. Digital technology provides possibilities on the basis of which even persons with severe disabilities benefit from television in such a degree

that was not achievable with analogue solutions. Digital television broadcasting allows such services as closed captioning and narration, and allows greater functionality in the form of advanced electronic programme guides.

In the framework of the transition to digital broadcasting in accordance with § 67 (4) of the Digital Broadcasting Act, from 15.3.2011 to 31.8.2011 the MTCRD SR provided a one-time non-repayable grant to purchase equipment for receiving digital television, regardless of reception platform, in Slovakia. Grant applications could be submitted by severely disabled persons who are beneficiaries of payment in material distress, or persons assessed jointly with beneficiaries.

The standing of disabled persons is covered by Act no. 351/2011 Coll. on electronic communications, which entered into effect on 1.11.2011. The act, in the field of regulating consumer relations in electronic communications in certain cases, specifically emphasises the standing of disabled customers. This concerns in particular the extension of obligations on undertakings providing electronic communications to provide information for disabled persons on services intended for them, the obligation to take measures to ensure equal access to services for end users with disabilities. There is also the possibility here for the SR Telecommunications Regulatory Authority to impose an obligation to provide free information on cost control for an electronic communications service provided to a disabled customer. In the case of universal service, the SR Telecommunications Regulatory Authority may impose the obligation to lease or sell, if a disabled user so requests, a specially equipped telecommunications terminal appropriate to his disability for the price of a standard telecommunications terminal, or to ensure barrier-free access to selected public payphones.

On the basis of an intergovernmental agreement, the Universal Postal Convention (SR Ministry of Foreign Affairs Notice no. 50/2010 Coll. on the acceptance of Acts of the Universal Postal Union), the Slovak Postal Service (Slovenská pošta, a. s. hereinafter referred to as “Slovak Post”), provides a domestic and international Postal Service for visually impaired users for free posting of items identified as a “blind literature” weighing up to 7000 g. The content of these items may be documents prepared for the blind (Braille script) or pressed relief Latin (Klein script), blocks with Braille labels, audio recordings on electromagnetic and optical media, special papers for the blind, but only if they are posted by an institution for the blind, or if they are addressed to such an institution.

#### Construction and housing policy

The main policies, principles and requirements ensuring a barrier-free environment and accessibility of buildings in the Slovak Republic are incorporated into the following generally binding legal regulations:

- Act no. 50/1976 Coll. on zoning and the building code (the Building Act) as amended;
- Decree no. 532/2002 Coll. laying down details on general technical requirements for construction and general technical requirements for buildings used by persons with reduced mobility and orientation (which replaced the previous Decree no. 192/1994 Coll.).

#### Education

Accessibility in education pursuant to Article 9 of the Convention on the Rights of Persons with Disabilities (hereinafter referred to as the “Convention”) is codified in Act no. 365/2004 Coll. on equal treatment in certain areas and protection against discrimination, amending certain other laws (the Antidiscrimination Act) as amended at all levels of education. Its principle is reflected in generally binding legal regulations of the education sector, governing

the admission of pupils to schools and their education. The basic right to accessibility of education for pupils with disabilities in schools providing pre-primary, primary and secondary levels of education is laid down in the provisions of § 6 (3) and § 9 (4) of Act no. 596/2003 Coll. on central government in education and school authorities and on the amendment of certain acts, as amended. The provisions of § 144(2) and (3) of Act no. 245/2008 Coll. on education (the Schools Act) and on the amendment of certain acts as amended guarantee their right to specific forms and methods in education corresponding to their needs and the right to use special textbooks and special didactic and compensatory aids, sign language, Braille and alternative ways of communicating. Further particulars regarding the admission of pupils with disabilities to schools, their graduation and the organisational arrangements of their education, besides the above-mentioned Act no. 245/2008 Coll. on education (the Schools Act) and on the amendment of certain acts as amended, are governed also in particular by its following implementing regulations: SR Ministry of Education Decree no. 320/2008 Coll. on primary schools as amended by Decree no. 224/2011 Coll., SR Ministry of Education Decree no. 282/2009 Coll. on secondary schools as amended by Decree no. 268/2011 Coll., SR Ministry of Education Decree no. 318/2008 Coll. on the completion of study at secondary schools as amended by SR Ministry of Education, Science, Research and Sport Decree no. 209/2011 Coll.

### Culture

An important step in creating stable elements in the care of culture for people with disabilities and of the accessibility of cultural services is SR Act of Parliament no. 434 of 26 October 2010 on the granting of subsidies by the Ministry of Culture of the Slovak Republic (hereinafter the “Ministry of Culture”). The act provides for the purpose, scope, method and conditions for granting subsidies by the Ministry of Culture. In § 2 – Purpose of granting subsidies – as follows: paragraph (1). The Ministry may in the respective budgetary year provide subsidy from the state budget for these purposes: in point f) – cultural activities of disabled or otherwise disadvantaged groups. Promotion of the availability of cultural services is often dependent on the creation of financial mechanisms and limits in this field.

## **b. General law, technical regulations and standards**

### Railway transport

In the code of carriage of a passenger rail carrier there is codified its obligation in connection with the infrastructure manager to provide free assistance upon boarding/alighting from a train if the passenger gives prior notification of their intended destination.

### Road transport

On 10 November 2011 there entered into effect the technical regulation “TP 10/2011 – Design of barrier-elimination measures for persons with reduced mobility and orientation on roads”

### Water transport

The issue of non-discrimination and the exercise of rights of persons with disabilities and persons with reduced mobility in water transport is governed by Regulation (EU) No 1177/2010 of the European Parliament and of the Council.

### Construction and housing policy

The main policies, principles and requirements ensuring a barrier-free environment and accessibility of buildings in the Slovak Republic are incorporated into the following generally binding legal regulations:

- Act no. 50/1976 Coll. on zoning and the building code (the Building Act) as amended;
- Decree no. 532/2002 Coll. laying down details on general technical requirements for construction and general technical requirements for buildings used by persons with reduced mobility and orientation (which replaced the previous Decree no. 192/1994 Coll.).

The provisions of the Building Act relating to basic requirements for constructions are taken from Council Directive 89/106/EEC (from Annex 1). The act mandated also general technical requirements for buildings used by persons with reduced mobility and orientation, which are detailed in Decree no. 532/2002 Coll.. Zoning documentation, architectural designs and construction projects must meet the conditions specified by this Decree, whereby the attributes of barrier-free access in the most basic features will be achieved; typological principles for making environments and buildings accessible are set out in a manner compatible with standards of other European countries.

General technical requirements for buildings used by persons with reduced mobility and orientation apply, irrespective of the building owner, to

- apartment buildings and other buildings for housing,
- an apartment, if it is to be used by a person with reduced mobility and orientation (a special-purpose apartment),
- a house, if it is to be used by a person with reduced mobility and orientation (a special-purpose house),
- a non-residential building in the part intended for use by the public,
- a building in which there is envisaged the employment of persons with reduced mobility and orientation (building with a sheltered workplace),
- an engineering construction in a part intended for use by the public.

### **c. Role of national, European and international standards**

#### Water transport

The issue of non-discrimination and the exercise of rights of disabled persons and persons with reduced mobility in water transport is governed by international European standards.

#### Electronic communications and postal services:

The MTCRD SR in connection with the rights of disabled people was actively involved in the commenting process, voting and translation of European standards adopted in the system of Slovak Technical Standards, listed in the attached Table 1.

#### Construction and housing policy

The provisions of the Building Act relating to basic requirements for constructions are taken from Council Directive 89/106/EEC (from Annex 1). The act mandated also general technical requirements for buildings used by persons with reduced mobility and orientation, which are detailed in Decree no. 532/2002 Coll.. Zoning documentation, architectural designs and construction projects must meet the conditions specified by this Decree, whereby the attributes of barrier-free access in the most basic features will be achieved; typological principles for making environments and buildings accessible are set out in a manner compatible with standards of other European countries.

#### Education

Accessibility in education is codified in national legislation in accordance with European standards.

**d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

Electronic communications and postal services

In accordance with the Convention on the Rights of Persons with Disabilities, Slovak Post is making barrier-free entrances for persons with reduced mobility and orientation in newly-opened post offices in accordance with the SR Ministry of Environment Decree no. 532/2002 Coll. laying down details on general technical requirements for construction and general technical requirements for buildings used by persons with reduced mobility and orientation (§ 57). Slovak Post at its leased and own premises in which barrier-free entrances have not been constructed is gradually making them and will continue to do so in the framework of the planned reconstruction and modernisation of post offices. Slovak Post also provides persons with disabilities, by agreement, all financial services and pension payments by means of a postman.

**e. Services regulated for accessibility**

Railway transport

The Regulation and Rail Transport Act provide for the provision of access to railway transport services for disabled persons and persons with reduced mobility on a non-discriminatory basis.

Air transport

The issue of non-discrimination and the application of rights of persons with disabilities and persons with reduced mobility in air transport was addressed by Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006, which creates rules for the protection and provision of assistance services for persons with disabilities and persons with reduced mobility in air transport, with the aim of protecting them against discrimination and of ensuring that they are provided assistance services.

Construction and housing policy

General technical requirements for buildings used by persons with reduced mobility and orientation apply, irrespective of the building owner, to:

- apartment buildings and other buildings for housing,
- an apartment, if it is to be used by a person with reduced mobility and orientation (a special-purpose apartment),
- a house, if it is to be used by a person with reduced mobility and orientation (a special-purpose house),
- a non-residential building in the part intended for use by the public,
- a building in which there is envisaged the employment of persons with reduced mobility and orientation (building with a sheltered workplace),
- an engineering construction in a part intended for use by the public.

Social affairs

The commitments made by signing the Convention are reflected in Act no. 447/2008 Coll. on financial contributions to compensate for severe disability and on the amendment of certain acts, in particular through the provision of a financial contribution for personal assistance, where personal assistance ensures also help by means of interpreting in sign language,

articulation and tactile interpreting, as well as by means of a financial contribution for transport, a financial contribution for the acquisition of aids, a financial contribution for purchasing a passenger motor vehicle, a financial contribution to offset increased expenses associated with the operation of a passenger motor vehicle, a financial contribution for purchasing lifting equipment, a financial contribution for modification of an apartment, a financial contribution for modification of a house, a financial contribution for modification of a garage. In accordance with the Social Services Act (§ 9 of Act no. 448/2008 Coll.) providers of social services, both public and non-public (private) are required to meet general technical requirements for construction and general technical requirements for buildings used by persons with reduced mobility and orientation under a special regulation (the Building Act and implementing decree). Compliance with the barrier-free accessibility in the provision of social services is one of the criteria for evaluating the quality of a social service provided. In the interest of ensuring accessibility for persons with disabilities to various services in the framework of social services an interpreting service is provided (in sign language, articulation and tactile interpreting), escort and reading services (§§ 43 and 44 of the Social Services Act) to these people by professional social services staff.

<http://www.employment.gov.sk/legislativa.html> (Social Services Act)

### Healthcare

The availability of health care in relation to severely disabled persons in Slovakia is not regulated, but is based comprehensively on an anti-discrimination approach. With regard to the needs of severely disabled persons, the obligation for compliance of the material and technical equipment of healthcare facilities pursuant to barrier-free access and movement within these facilities is established by Edict of the Ministry of Health of the Slovak Republic no. 09812/2008-OL on minimum requirements for staffing and material-technical equipment of individual types of healthcare facilities as amended, laid down under § 8(2) of Act no. 578/2004 Coll. on healthcare providers, health care workers, professional organisations in health care and amending certain laws as amended. The edict is published in the Journal of the SR Ministry of Health part 32-51, of 28 October 2008, Volume 56, link: <http://www.health.gov.sk/?vestniky-mz-sr>. This legislative material obliges healthcare facilities to provide barrier-free access and to enable patients with reduced mobility and orientation to move via horizontal communications, ramps or elevators. At individual departments there must be at least one shower cabinet accessible for persons with reduced mobility and also for a wheelchair with an immobile patient. Toilets for patients must have a door that can be opened outwards and at least one toilet cubicle must be accessible for patients with reduced mobility and orientation. The basic material equipment and instrumentation of a department must include at least one bed for persons with reduced mobility, including an antidecubitus bed. Through the law on the scope and conditions of payment for medicinal products, medical aids and dietary foods on the basis of public health insurance the Ministry of Health of the Slovak Republic sets out the scope and terms of payment for medicinal products, medical aids and dietary foods on the basis of public health insurance. In relation to people with disabilities, this consists primarily in maintaining the greatest affordability through regulation of the amount of supplementary payments, by setting prescription, indicative and quantitative restrictions that reflect the special needs of these patients.

### Education

A support service for enabling or improving the accessibility of education for pupils with disabilities is the legislatively established position of teaching assistant at a nursery school,

primary school and secondary school, including special schools. During higher education students with disabilities have the possibility to use the assistance of a coordinator for education of students with disabilities.

**f. Goods regulated for accessibility as part of a service**

Railway transport

The Regulation and Rail Transport Act provide for the provision of access to railway transport services for disabled persons and persons with reduced mobility on a non-discriminatory basis.

Education

Textbooks and textbook transcripts in formats suitable for pupils with visual impairments (textbooks in Braille, electronic textbooks).

**g. Enforcement of accessibility legislation**

As regards the issue of enforceability of rights in the field of access for persons with disabilities, anyone has the right to seek court protection of their rights, if they feel that their rights have been infringed through non-compliance with the principle of equal treatment on the grounds of their disability. They may also demand that the party who failed to comply with the principle of equal treatment refrain from such conduct, and, if possible, rectify the unlawful state or provide adequate redress. If adequate redress were not to be satisfactory, the aggrieved party may claim non-pecuniary damages in cash (§ 9 of Act no. 365/2004 Coll. the Antidiscrimination Act), as well as damage compensation.

Everyone has the right to protection of their rights also out of court, for example through mediation, by lodging complaints with public authorities, or by means of the Office of the Ombudsman.

Authorities are also involved in the enforceability of law in the field of access to products, facilities, services or an environment with regard to persons with disabilities. The competent authorities may impose fines for failure to comply with obligations imposed in relevant legislation, carry out compliance checks, and may refuse to issue or may revoke a licence.

For example, under § 43 of Act no. 514/2009 Coll. on rail transport as amended, the competent authority may impose on a rail undertaking a fine in the case that it fails to comply with the rights of passengers under a special regulation (Regulation of the European Parliament and Council. 137/2007 on the rights and obligations of rail passengers), or if it does not create conditions to improve passenger comfort and ease of movement and travel of select groups of passengers, passengers with child pushchairs and transport of guide dogs, for example through the fact that it does not provide guidance and information essential for passengers on rail vehicles for their safe carriage according to the carriage contract, including passengers with impaired hearing or sight.

In the field of construction, it is worth mentioning that the Building Act sets out basic general technical requirements for buildings used by persons with reduced mobility. The intention pursued is not simply the constitutionality of legislation, but also the possibility of better control and enforceability of law from the side of building authorities, since pursuant to § 43e of the Building Act “general technical requirements for construction, including general



technical requirements for buildings used by persons with reduced mobility and orientation specify requirements for the zoning-technical solution of a construction, the building-technical and purpose solution of buildings, under which legal persons, individuals, central and local governments are obliged to proceed in siting, designing, permitting, implementing, approving, using and removing buildings”.

Implementing legislation, Decree no. 532/2002 Coll. lays down details on general technical requirements for construction and on general technical requirements for buildings used by persons with reduced mobility and orientation.

#### Railway transport

Supervision over the application of Regulation (EC) No 1371/2007 of the European Parliament and of the Council on rail passengers’ rights and obligations is carried out by the Railway Regulatory Authority. If the case of a violation of the carriage code, the person affected has the right to turn with their complaint directly to the carrier, or to the Slovak Trade Inspectorate.

#### Water transport

As a result of Regulation (EU) No 1177/2010 of the European Parliament and of the Council, Act no. 338/2000 Coll. on inland waterway vessels is to be amended.

#### Education

The task of supervision over compliance with accessibility in education is performed by the State Schools Inspectorate.

#### Culture

The Ministry of Culture promotes the availability of library, museum and gallery services for persons with disabilities by means of implementing measures deriving from the government strategy papers: Strategy for Development of Slovak Libraries for 2008 – 2013 – measure no. 3.7: support for the availability of libraries for disadvantaged groups, including persons with disabilities (the document was approved in SR Government Resolution no. 943 of 7 November 2007), as well as by means of the Strategy for Development of Museums and Galleries to 2011 (the document was approved in SR Government Resolution no. 1078 of 20 December 2006). In objectives 4.1 and 4.5 there are detailed the measures supporting equal opportunities for disadvantaged groups including people with disabilities.

### **h. Non-compliance and litigation**

#### Judicial system

“A person who has knowledge that accessibility legislation is being violated has the right to file a complaint to state authorities performing supervision and monitoring and to seek redress – this may concern, for example, barrier-free access issues, availability of websites for the visually impaired, etc. If the rights of a person are directly violated, that person is entitled to file at the competent court litigation to protect their rights, most usually a claim for protection against discrimination under the Anti-Discrimination Act.

There applies the general rule that anyone can claim their rights at court, if they are or have been subject to infringement of their rights, legally protected interests or freedoms through a failure to comply with the principle of equal treatment. In court proceedings a person may

require an offender to refrain from such conduct, if possible to rectify the unlawful state or provide adequate redress.

If through a violation of accessibility regulations, constituting a breach of the principle of equal treatment, there could be infringed the rights, legally protected interests and freedoms of a large or uncertain number of persons, or if through such a violation a public interest could otherwise be seriously endangered, the right to claim protection of the right at court pertains also to a legal entity established by law or whose aim or subject of activity is protection against discrimination. A legal person may seek in particular a decision that the principle of equal treatment has been infringed, and that the party who failed to comply with the principle of equal treatment refrain from such conduct and, if possible, rectify the unlawful state.

Protection of rights in connection with legislation and its potential conflict with international treaties by which the Slovak Republic is bound may be appealed by a person, for example through a complaint to the Ombudsman, who is entitled to submit to the Constitutional Court of the Slovak Republic a petition for commencing proceedings on the accordance of legislation if a generally binding legal regulation contravenes a fundamental right or freedom awarded to a natural person or legal person.”.

#### Education

Any failure to comply with a right to accessibility in education of persons with disabilities is dealt with by an organisation at a higher management level, including the Ministry of Education, Science, Research and Sport of the Slovak Republic, the State Schools Inspectorate, the courts.

#### Culture

The Ministry of Culture is committed to protecting human dignity, fundamental rights and freedoms, to prohibiting the incitement of hatred and to preventing the spread of specific types of programmes by means of legislative measures. For the field of electronic media and video-on-demand, the protection of human dignity, fundamental rights and freedoms, the prohibition of incitement of hatred and prevention of the spread of specific types of programmes are permanently ensured by the provisions of § 19 of Act no. 308/2000 Coll. on broadcasting and retransmission and on the amendment of Act no. 195/2000 Coll. on telecommunications, as amended (hereinafter referred to as the “Broadcasting Act”). Under § 19(1) of the Broadcasting Act a video-on-demand service, a programme service and components thereof may not:

- b) through the manner of their production and content infringe the human dignity and fundamental rights and freedoms of others,
- c) promote violence and overtly or covertly incite hatred, denigrate or defame on the basis of gender, race, colour, language, faith and religion, political or other opinion, national or social origin, nationality or ethnic group,
- d) promote war or describe cruel or otherwise in human conduct in a manner that inappropriately trivialises them, excuses them or approves of them,
- e) depict without justification scenes of real violence, where there is unduly emphasised the actual course of dying or where there are depicted persons exposed to physical or mental suffering that is considered to be an infringement of human dignity; this applies even if the persons concerned have consented to such depiction.

The Council for Broadcasting and Retransmission (hereinafter referred to as the “Council”) as the supervisory authority may impose on a broadcaster or a video-on-demand service provider

for a breach of obligations laid down in § 19 of the Broadcasting Act an obligation to broadcast a notice of the violation of the act, or to suspend provision of the programme, for at most 30 days. For a breach of such obligation the Council may concurrently impose on a broadcaster of a television programme service a fine from €319 to €65 969, a broadcaster of a radio programme service a fine from €497 to €49 790, an Internet broadcaster a fine from €500 to €60 000 and a video-on-demand service provider a fine from €500 to €40 000. If a broadcaster, despite the imposition of repeated penalties, deliberately and seriously violates obligations laid down in § 19(1)(b) or (c) of the Broadcasting Act, the Council can revoke its licence.

## Slovenia

### a. Accessibility legislation: its place in the legal and regulatory framework

Slovenia has undertaken to respect prohibition of discrimination in relation to disability in all areas of human life, including accessibility. The basic rights for equalising opportunities arise from the Constitution of the Republic of Slovenia, in which Article 14 is worded as follows: “...everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status, disability or any other personal circumstance”. The constitution explicitly emphasises the right to equality of persons with disabilities before the law and that nobody shall be discriminated against due to disability (Sendi and others, 2008<sup>77</sup>).

The umbrella act regulating the area of protection of persons with disabilities is the 2010 Equalisation of Opportunities for Persons with Disabilities Act (ZIMI)<sup>78</sup>. The first chapter of the Act – elimination of discrimination against persons with disabilities – covers the area of access of buildings and facilities in public use, public transport, residence and goods / services provided by public. For this area, the strategic document “Action Programme for Persons with Disabilities 2017–2013”<sup>79</sup> and the document “National guidelines to improve built environment, information and communications accessibility for people with disabilities”<sup>80</sup> are crucial.

On 7 December 2005 the Government adopted national Guidelines to improve accessibility for persons with disabilities to physical environment and information and communication, which are a comprehensive set of measures to be implemented by 2025. The objectives laid down in the National guidelines are based on a number of acts adopted by the Republic of Slovenia (such as in the area of environmental planning, building construction, accessibility to apartments, working environment and equipment, air and road transport, electronic communications, etc.). Access to services of public and private sectors and to the physical environment is considered to be the right of persons with disabilities and of all other functionally impaired persons. By this project the state aims at establishing accessible environment for living and work of all people and at providing all groups of people with equal opportunities both in the areas of education, culture and recreation and in the area of decision-making.

The technical aspect of managing the built environment, space and communications is regulated with the following: the Spatial Management Act<sup>81</sup>, the Construction Act (ZGO-1)<sup>82</sup>,

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<sup>77</sup> R. Sendi, B. Černič Mali, B. K. Kebler, B. Tominc, S. Mijukič, B. Kobal, S. Smolej and M. Nagode, (2008). *Ukrepi za uresničevanje pravic invalidov do dostopa brez ovir, končno poročilo* (Measures for the implementation of the rights of persons with disabilities for obstacle-free access, final report). Ljubljana: Urban planning institute of the Republic of Slovenia.

<sup>78</sup> Official Gazette of the Republic of Slovenia, No. 94/2010

<sup>79</sup> Available at: [http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti\\_pdf/api\\_07\\_13.pdf](http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/api_07_13.pdf) (10 December 2010).

<sup>80</sup> Official Gazette of the Republic of Slovenia, No. 113/2005

<sup>81</sup> Official Gazette of the Republic of Slovenia, No. 110/2002 (8/2003 corr.), amendments: Official Gazette of the Republic of Slovenia, No. 58/2003-ZZK-1 (Land Register Act), 33/2007-ZPNaèrt (Spatial Planning Act) 108/2009-ZGO-1C (Act amending the Construction Act), 79/2010 Odl.US (Ruling of the Constitutional Court): U-I-85/09-8, 80/2010-ZUPUDPP (Spatial Planning of Arrangements of National Significance Act).

<sup>82</sup> Official Gazette of the Republic of Slovenia, No. 110/2002, amendments: Official Gazette of the Republic of Slovenia, No. 97/2003 Odl.US (Ruling of the Constitutional Court): U-I-152/00-23, 41/2004-ZVO-1

the Rules on the requirements for free access to, entry to and use of public buildings and facilities and multi-apartment buildings<sup>83</sup>, and the SIST ISO/TR 9527 National standard – building construction: needs of persons with disabilities and other functionally impaired persons in buildings<sup>84</sup> and the Use of Slovenian Sign Language Act<sup>85</sup>.

Accessibility is also one of the objectives of the housing policy, based on the implementation of the National Housing Programme<sup>86</sup>.

#### **b. General law, technical regulations and standards**

The majority of provisions on accessibility are determined in the sectoral legislative provisions, while more detailed technical requirements are given in regulations or standards.

Example:

The Construction Act regulates the conditions for construction of all kinds of works, sets out the essential requirements and the fulfilment thereof regarding the characteristics of works, prescribes the method and conditions for pursuit of the activities (Article 1 of ZGO-1), while the Rules on railway stations and stops facilities<sup>87</sup> specify the equipment of railway stations and stops that enables passengers and other persons equal, independent and safe access to trains and movement at train stations.

#### **c. Role of national, European and international standards**

The Slovenian legislation is developed on the grounds of European recommendations and directives, and UN recommendations and documents from the area of human rights and provision of equal opportunities to persons with disabilities for inclusion in society and for overcoming obstacles.

Example:

With the Construction Act, Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market has been transposed into Slovenian law (Official Gazette of the Republic of Slovenia, No. 376 of 27 December 2006, p. 36); also, the Directive of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications has been transposed (Official Gazette of the Republic of Slovenia, No. 255 of 30 September 2005, p.22) (Article 2 of the Construction Act).

#### **d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

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(Environment Protection Act), 45/2004, 47/2004, 62/2004 Odl.US (Ruling of the Constitutional Court): U-I-1/03-15, 102/2004-official consolidated text (14/2005 corr.), 92/2005-ZJC-B (Act Amending Public Roads Act), 93/2005-ZVMS (Veterinary Compliance Criteria Act), 111/2005 Odl.US (Ruling of the Constitutional Court): U-I-150-04-19, 120/2006 Odl.US (Ruling of the Constitutional Court): U-I-286/04-46, 126/2007, 57/2009 Skl.US (Constitutional Court Order): U-I-165/09-8, 108/2009, 61/2010-ZRud-1 (Mining Act), (62/2010 corr.).

<sup>83</sup> Official Gazette of the Republic of Slovenia, No. 97/2003, amendments: Official Gazette of the Republic of Slovenia, No. 77/2009 Odl.US (Ruling of the Constitutional Court): U-I-138/08-9.

<sup>84</sup> Official Gazette of the Republic of Slovenia, No. 92/1999, amendments: Official Gazette of the Republic of Slovenia, No. 97/2003

<sup>85</sup> Official Gazette of the Republic of Slovenia, No. 96/2002.

<sup>86</sup> Official Gazette of the Republic of Slovenia, No. 43/2000.

<sup>87</sup> Official Gazette of the Republic of Slovenia, No. 53/2002, amendments: 61/2007-ZVZelP (Railway Traffic Safety Act), 72/2009.

Ratification of the UN Convention on the Rights of Persons with Disabilities initiated the preparation and adoption of the Equalisation of Opportunities for Persons with Disabilities Act, the Electronic Communications Act<sup>88</sup> and amendments to the Vocational Rehabilitation and Employment of Disabled Persons Act<sup>89</sup>.

**e. Services regulated for accessibility**

Unhindered movement of functionally impaired persons is guaranteed by Article 17 of the Construction Act (ZGO-1). The Act determines that all works in public use that are newly constructed, and works in public use that are reconstructed, must ensure that functionally impaired persons are able to access, enter and use the works without physical obstructions or communicational barriers.

The second paragraph of Article 17 lays down that every newly constructed or reconstructed works in public use, whose construction is carried out pursuant to the provisions of this Act and that does not have all its premises on the ground floor must be equipped with at least one lift or other appropriate device for such purposes.

With regard to the reconstruction of works in public use that are protected in accordance with regulations on cultural heritage, the essential requirements attained for the works may differ from those prescribed, but only under the condition that the deviation is not such that because of it there would be a threat to the safety of the works, to the lives and health of people, to traffic, to neighbouring works or to the environment (Article 17(3) of ZGO-1).

With regard to apartment buildings with more than ten apartments constructed pursuant to the provisions of this act, the requirement for ensuring unhindered access, entry and use must be fulfilled by at least one-tenth of all the apartments, and all joint premises intended for such apartments (Article 17(4) of ZGO-1).

Access, entry and use without physical obstructions or communicational barriers shall be ensured through project design and construction (Article 17(5) of ZGO-1).

In Article 2, the ZGO-1 defines that works in public use are works whose use is intended for all under the same conditions; such works are divided in terms of manner of use into public areas and non-residential buildings intended for public use. A public area is an area whose use is intended for all under the same conditions. A non-residential building intended for public use is a building whose use is intended for all under the same conditions. Public infrastructure works are civil engineering works that form a network serving a specific type of public utility of national or local importance or forms a network of general benefit to the public.

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<sup>88</sup> Official Gazette of the Republic of Slovenia, Nos. [43/2004](#), [86/2004-ZVOP-1](#) (Personal Data Protection Act), [129/2006](#), [13/2007](#)-official consolidated text, [102/2007-ZDRad](#) (Digital Broadcasting Act), [110/2009](#), [33/2011](#).

<sup>89</sup> Vocational Rehabilitation and Employment of Disabled Persons Act (ZZRZI), Official Gazette of the Republic of Slovenia, Nos. [63/2004](#), [72/2005](#), [100/2005](#)-official consolidated text, [114/2006](#), [16/2007](#)-official consolidated text, [14/2009](#) Odl.US (Ruling of the Constitutional Court) : U-I-36/06-18, [84/2011](#) Odl.US (Ruling of the Constitutional Court): U-I-245/10-13, U-I-181/10-6, Up-1002/10-7, [87/2011](#).

The Use of Slovenian Sign Language Act, adopted in 2002, grants deaf persons the right to use Slovenian sign language, to be informed in techniques adjusted to their needs and lays down the scope and method of exercising the right to a sign language interpreter.

**f. Goods regulated for accessibility as part of a service**

The legislation referred to in point a. determines: accessibility of services provided in works in public use (in point e. in more detail); accessibility of public transport; public use of the Slovenian sign language (interpretation), and the right to assistive devices.

**g. Goods regulated for accessibility**

Based on legislation and public tenders, goods from the areas stated in point f. are adapted to and accessible to persons with disabilities, for example: books, medicinal products, public toilets, automated teller machines, phone booths, buses, vessels, aeroplanes, public transport ticket machines (in Ljubljana), and lifts.

**h. Enforcement of accessibility legislation**

The legislation contains penal provisions for non-implementing legal provisions and their violations; the transgressions are adjudicated by inspection services.

Example of penal provision:

Article 164 of the Construction Act determines that a fine of EUR 1,500 to EUR 30,000 shall be imposed upon a legal person if it "...fails to ensure that functionally impaired persons are able to access, enter and use a facility in public use of which it is the investor without physical obstructions or communicational barriers."

In article 96, the ZGO-1 lays down that in the procedure of issuing a permit for use, the relevant administrative body shall deny the issue of the permit if it establishes, inter alia, that the construction is non-compliant and the changes that arose during construction caused change in the location's conditions or other conditions and elements determined by the building permit that could affect health conditions, the environment, the safety of the works or a change in the prescribed essential requirements, provision of unhindered access and movement of functionally impaired persons.

**i. Non-compliance and litigation**

The right to judicial protection is declared in Article 23 of the Constitution, under which "Everyone has the right to have any decision regarding his rights, duties and any charges brought against him made without undue delay by an independent, impartial court constituted by law." (Kresal Šoltes, 2007<sup>90</sup>).

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<sup>90</sup> K. Kresal Šoltes (2007): *Uveljavljanje in varstvo pravic* (Enforcement and protection of rights) in Barbara Kresal et al. (editor): *Vodnik po pravicah invalidov v slovenski zakonodaji*, (Guide to the rights of persons with disabilities in Slovenian law pp. 139-148. Ljubljana: Institute for Labour Law at the Faculty of Law, University of Ljubljana.

Anyone who believes that his right(s) were violated by an act or action of a state authority, local self-government body or bearer of public authorities, can turn to the Ombudsman, her four deputies or professional associates.

The Ombudsman can:

- warn the authority that has violated the right(s) to rectify the violation or the irregularity committed or even propose that it compensate for the damage caused;
- submit proposals for amendments to laws and other regulations to the Government or the Parliament;
- propose to all authorities that fall within her competence that they improve their operation and relations with clients;
- give her opinion on any case involving the violation of rights and freedoms. It does not matter what kind of proceeding is involved, or what phase the proceeding is at before the authority concerned.

The Ombudsman has no statutory powers in relation to the private sector and cannot intervene in cases in which rights are violated by, for example, a private company. In such cases, she can put pressure on state authorities, local self-government bodies and bearers of public authorities responsible for supervising the work of a private undertaking (Ombudsman's website<sup>91</sup>).

The Advocate of the Principle of Equality prevents and eliminates discrimination in Slovenia. He examines petitions or complaints concerning alleged cases of discrimination. He issues legally non-binding opinions on whether a person has been discriminated against in a certain situation (subject to unequal treatment because of personal circumstances). At the same time, he recommends to the offender ways to eliminate the violation, its causes and consequences. Through such non-formal intervention, the Advocate tries to eliminate the violation and provides help to improve future practice. When an issue cannot be resolved in this way, the Advocate may ask inspection authorities to prosecute for minor offences. A proceeding before the Advocate is cost-free and confidential. The Advocate also provides assistance to persons who were discriminated against during legal and other proceedings, i.e. by giving advice on legal remedies and how to use them before other state authorities. Anyone has the right to ask the Advocate for advice on whether their actions could result in discrimination, on how to act in order to avoid discrimination or how to more effectively respect the right to equal treatment. In addition, the Advocate provides general information on discrimination issues and the situation in this area in Slovenia (website of the Office for Equal Opportunities<sup>92</sup>).

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<sup>91</sup> Available at: <http://www.varuh-rs.si/> (9 February 2012).

<sup>92</sup> Available at: <http://www.uem.gov.si/> (9 February 2012).



## Spain

### a. Accessibility legislation: its place in the legal and regulatory framework

The idea of integral accessibility that is promoted under the Law of Equal Opportunities, Non-Discrimination and Universal Accessibility of People with Disabilities (hereinafter referred to as LIONDAU; Ley de Igualdad de Oportunidades, No Discriminación y Accesibilidad Universal de las Personas con Discapacidad), means that the built environment has to be considered as a chain in which all links must be accessible, so that the accomplishment of the activities of a person with disability are not interrupted or impeded because one of the links in the chain, an environment or a space, is not accessible and does not let them advance along their journey by themselves.

The First National Plan of Accessibility contains the commitment of Governments in relation to the promotion of accessibility, which will be developed in successive three-year periods until 2012.

The Spanish Disability Strategy 2012-2020, approved in November 2011, is inspired by principles of Law 26/2011, 1 August, for the normative adaptation to the Convention on the Rights of Persons with Disabilities and Law 51/2003, 2 December, of equal opportunities, non discrimination and universal accessibility of people with disability (LIONDAU) that defines the concept of Universal Accessibility. One of the main objectives of this Strategy is Accessibility understood as the right of persons with disabilities to access the physical environment, transport, information technology and communications systems, and other facilities and services with the same conditions than the rest of the population. The first strategic measure on accessibility is to support the “European Accessibility Act” mentioned in the EU Disability Strategy 2010-2020.

In the Spanish legislative system, Autonomous Communities (Regional Governments) have the competencies for the development of laws to be applied within their territory. In particular, every Autonomous Community has its own accessibility legislation, which includes technical guidelines for its implementation.

Furthermore, in order to harmonize and to establish a general framework to be considered by all the regional authorities, the national government has issued the Law 51/2003 of equal opportunities, non discrimination and universal accessibility for people with disabilities.

In this Law 51/2003, lack of accessibility is seen as indirect discrimination. The technical issues related with its implementation are specified in several royal decrees and orders.

- Royal Decree 1417/2006, of 1 December, that establishes the Arbitral System for resolving complaints on equal opportunities, non discrimination and accessibility on the basis of disability.
- Royal Decree 366/2007 of 16 March, which sets forth the conditions of accessibility and non-discrimination of people with disabilities in their relations with the General State Administration.
- Royal Decree 505/2007 of 20 April, which sets forth the basic conditions of accessibility and non-discrimination of people with disabilities for accessing and using public spaces and buildings.
- Royal Decree 1494/2007, of 12 November, by which the Regulations on basic conditions for access for persons with disabilities to technologies, products and services related to the information society and social communication media are passed.

- Royal Decree 1544/2007, of 23 November, by which the basic conditions of accessibility and non-discrimination for access to and the use of means of transportation by people with disabilities are regulated.
- Royal Decree 173/2010, of 19 February, amending the Technical Building Code, approved by Royal Decree 314/2006 of March 17, in terms of accessibility and non discrimination of persons with disabilities.
- Royal Decree 422/2011, of 25 March, by which the Regulation on basic conditions for participation of persons with disabilities in political life and electoral processes are regulated.

All these regulations are available in both Spanish and English at <http://sid.usal.es/spanishlawsondisability>

Work is currently underway on the two Royal Decrees that are missing in order to complete the development of the LIONDAU, in accordance with what is foreseen in the aforementioned Law:

- Basic conditions of accessibility and non-discrimination for access to and the use of goods and services at the public's disposal.
- Training curriculum on universal access and the training of professionals.

#### **b. General law, technical regulations and standards**

In those areas where accessibility is regulated by a law as a general framework, its technical requirements are specified by different pieces of law within the Spanish legal system: Royal Decrees and Orders. Examples of these are listed under point g.

Besides, some technical standards are recognised as mandatory by law. An example of this is the UNE EN 81-70-2004 on accessibility to lifts for persons including persons with disability, which is included in the Spanish Technical Building Code, the normative framework that establishes the safety and habitability requirements of buildings set out in the Building Act.

#### **c. Role of national, European and international standards**

European standards are adopted and translated in Spain by AENOR, the Spanish Association for Standardization and Certification. AENOR also elaborates its own standards applicable only in Spain.

Some references ([www.aenor.es](http://www.aenor.es)):

- UNE 41510:2001 Accesibilidad en el urbanismo.
- UNE 41522:2001 Accesibilidad en la edificación. Accesos a los edificios.
- UNE 41520:2002 Accesibilidad en la edificación. Espacios de comunicación horizontal.
- UNE 41523:2001 Accesibilidad en la edificación. Espacios higiénico-sanitarios.
- UNE 41524:2010 Accesibilidad en la edificación. Reglas generales de diseño de los espacios y elementos que forman el edificio. Relación, dotación y uso.
- UNE 41500:2001 IN Accesibilidad en la edificación y el urbanismo. Criterios generales de diseño.
- UNE 200007:2007 IN Accesibilidad en las interfaces de las instalaciones eléctricas de baja tensión.
- UNE 153030:2008 IN Accesibilidad en televisión digital.
- UNE 139801:2003 Aplicaciones informáticas para personas con discapacidad. Requisitos de accesibilidad al ordenador. Hardware.

- UNE 139803:2004 Aplicaciones informáticas para personas con discapacidad. Requisitos de accesibilidad para contenidos en la Web.
- UNE-EN 81-70:2004 Reglas de seguridad para la construcción e instalación de ascensores. Aplicaciones particulares para los ascensores de pasajeros y de pasajeros y cargas. Parte 70: Accesibilidad a los ascensores de personas, incluyendo personas con discapacidad.
- UNE-EN 81-70:2004/A1:2005 Reglas de seguridad para la construcción e instalación de ascensores. Aplicaciones particulares para los ascensores de pasajeros y de pasajeros y cargas. Parte 70: Accesibilidad a los ascensores de personas, incluyendo personas con discapacidad.
- UNE-CEN/TS 81-82:2008 EX Reglas de seguridad para la construcción e instalación de ascensores. Ascensores existentes. Parte 82: Mejora de la accesibilidad a los ascensores de personas, incluyendo personas con discapacidad.
- UNE 139802:2009 Requisitos de accesibilidad del software
- UNE 170002:2009 Requisitos de accesibilidad para la rotulación.
- UNE 170002:2009 ERRATUM: 2009. Requisitos de accesibilidad para la rotulación.
- UNE 41501:2002 Símbolo de accesibilidad para la movilidad. Reglas y grados de uso.
- UNE-ISO/IEC 24751-1:2012 Tecnologías de la información. Adaptabilidad y accesibilidad individualizadas en aprendizaje electrónico, en educación y formación. Parte 1: Marco y modelo de referencia.
- UNE-ISO/IEC 24751-2:2012 Tecnologías de la Información. Adaptabilidad y accesibilidad individualizadas en aprendizaje electrónico, en educación y formación. Parte 2: Necesidades y preferencias para la prestación digital del "acceso para todos".
- UNE-ISO/IEC 24751-3:2012 Tecnologías de la Información. Adaptabilidad y accesibilidad individualizadas en aprendizaje electrónico, en educación y formación. Parte 3: Descripción de recurso digital "acceso para todos".

#### **d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

Spain has signed and ratified the UN Convention on the Rights of Persons with Disabilities. Taking this into consideration, relevant legislation has been revised and, when necessary, modified in order to comply with the Convention. All modifications came into force by adoption of the Law 26/2011 on the normative adaptation to the International Convention on the Rights of Persons with Disabilities, dated 1 August 2011 (Available at: <http://www.boe.es/boe/dias/2011/08/02/pdfs/BOE-A-2011-13241.pdf> )

In Spain everything regarding accessibility for people with disabilities concerning guides, orientations, etc. that have been drawn up in this field, have used the obligations set forth in Art. 9 of the UN Convention as a reference.

#### **e. Services regulated for accessibility**

The scope of the Law 51/2003 of equal opportunities, non discrimination and universal accessibility for people with disabilities, modified by the mentioned Law 26/2011, applies to the following services:

- Telecommunications and information society
- Urban built environment, infrastructures and buildings
- Transports
- Goods and services available to the public
- Communication with the public administration
- Access to justice
- Cultural heritage, in accordance with heritage legislation.

#### **f. Goods regulated for accessibility as part of a service**

Accessibility to goods used in the provision of services is considered under the scope of the Law 51/2003, as above listed. Details about its technical implementation are still under study.

#### **g. Goods regulated for accessibility**

- Technologies, services and products related with the information society and social communication means. Regulated by Royal Decree 1494/2007 ([http://www.boe.es/aeboe/consultas/bases\\_datos/doc.php?id=BOE-A-2007-19968](http://www.boe.es/aeboe/consultas/bases_datos/doc.php?id=BOE-A-2007-19968) )
- Means of transport, including buses, stations, etc. Regulated by Royal Decree 1544/2007 ([http://www.boe.es/aeboe/consultas/bases\\_datos/doc.php?id=BOE-A-2007-20785](http://www.boe.es/aeboe/consultas/bases_datos/doc.php?id=BOE-A-2007-20785) )
- Most of construction products, such as doors, etc., are regulated in the relevant accessibility legislation of the Autonomous Communities. Furthermore, provisions for accessibility in goods related with urban built environment, such as street furniture, as stated in Law 51/2003, are regulated by the Royal Decree 505/2007 ([http://www.boe.es/aeboe/consultas/bases\\_datos/doc.php?id=BOE-A-2007-9607](http://www.boe.es/aeboe/consultas/bases_datos/doc.php?id=BOE-A-2007-9607) )

#### **h. Enforcement of accessibility legislation**

The Law 51/2003 includes provisions in this regard under Chapter III “Promotion and defence”. In particular, the law provides for two mechanisms of enforcement:

1. A system for infractions and sanctions for equal opportunities, non-discrimination and universal accessibility of persons with disabilities, passed to keep watch over the degree of fulfilment and efficiency of what has been set forth in both the LIONDAU and in the development of these regulations. Eleventh final provision, specified by Law 49/2007.
2. An arbitrating system. Article 17 of Law 51/2003, specified by Royal Decree 1417/2006.

Besides, accessibility legislation issued by the Autonomous Communities has its own system for infractions and sanctions. Apart from this, within the procedures for public works contracts (build environment and building), administrations has to examine accessibility requirements before granting permits.

#### **i. Non-compliance and litigation**

Any individual, NGO or state body can bring a claim to court. Besides to the arbitrating system above mentioned, claims can be brought to the Permanent Specialised Office (Oficina Permanente Especializada), a body of the National Disability Council, under the scope of the Spanish Ministry of Health, Social Services and Equality.

## **Sweden**

### **a. Accessibility legislation: its place in the legal and regulatory framework**

In Sweden lack of accessibility is seen as discrimination in the area of employment and of higher education.

The Swedish Discrimination Act prohibits discrimination in cases where the employer, by taking reasonable support and adaptation measures, can see to it that an employee, a job applicant or a trainee with a disability is put in a comparable situation to people without such a disability.

The Discrimination Act also prohibits discrimination in cases where an education provider, by taking reasonable measures regarding the accessibility and usability of the premises, can see to it that a person with a disability who is applying or has been accepted for education under the Higher Education Act (1992:1434) or for education that can lead to a qualification under the Act concerning authority to award certain qualifications (1993:792), is put in a comparable situation to people without such a disability.

A new Planning and Building Act entered into force in Sweden on 2 May 2011. The Act replaces regulation from 1987 and 1994 and includes significant improvements. For increased accessibility an assessment of the accessibility and usability of a building for people with impaired mobility or orientation is to be made at the planning permission stage. This will ensure that accessibility is provided for correctly from the very start.

The National Board of Housing, Building and planning is responsible for the general supervision of the planning and building administration within the country. The National Board issues for example regulations and general recommendations on the removal of easily eliminated obstacles.

### **b. General law, technical regulations and standards**

Accessibility requirements are provided both in general law and in technical regulations or standards. See under e. about the Planning and building Act (PBL) which includes accessibility and usability for persons with impaired movement or orientation as one of several technical requirements for construction works.

The work on standardisation is a basic precondition in the accessibility work in Sweden for example in the work on e-inclusion. Handisam has produced a proposed action plan for e-inclusion that highlights initiative areas within various policy areas, with the aim of contributing towards everyone being able to share in the information society and for this to be as easy as possible. Proposals for a future structure for following up e-accessibility have been prepared in an investigation.

Within the accessibility work, according to the Government, the State should set a good example in order to effectively achieve results. Authorities under the Government should therefore formulate and conduct their activities bearing in mind the goals of the disability policy. The Ordinance on the government authorities' responsibility for the implementation of the disability policies provides support for this work. According to the Ordinance (2001:526), government authorities must, by conducting inventories and drawing up action plans, work to

make their premises, their operations and information more accessible to persons with disabilities. The Ordinance has been important for the accessibility work, although other measures have also been of importance, such as regulations regarding easily eliminated obstacles.

The Act on Housing Adaptation Grants instructs the municipalities to provide grants for adaptation in order to increase the accessibility to and usability of existing housing for persons with disabilities or elderly people. Sweden's Government allocates approximately SEK 40 million annually in grants for the conversion of public meeting areas and non-governmental cultural premises. Around half of the total of 100 projects in 2009 used the funds they had been granted to make the premises accessible and usable for persons with disabilities.

Stringent demands are stipulated as regards the form and function of public information symbols, in order for them to make life easier for citizens. The Swedish Institute of Assistive Technology has developed graphic symbols in a national standard in order to increase the use of non-verbal information presentation in buildings and other public locations, particular consideration has been given to persons with various disabilities. This relates particularly to disabilities that affect vision, cognitive capacity or movement. They should be seen as part of the work of making society accessible for many more people. The symbols that are included in the new Swedish standard conform to the requirements for form and function that exist for the standardisation of public information symbols. All have been tested for comprehension in accordance with an international ISO standard for test methods (ISO 9186-1).

### **c. Role of national, European and international standards**

The Swedish National Guidelines for Public Sector Websites give public sector organisations practical advice and examples on how to procure, create and evaluate websites and eServices in order to improve accessibility, usability, search ability and comply with the international standards and EU i2010 goals. The guidelines have had a huge impact on the accessibility and usability of public websites and eServices in Sweden.

EU law places demands on transporters and station managers regarding rights for persons with disabilities or reduced mobility; the Regulation on rail passengers' rights and obligations and the Regulation concerning the rights of disabled persons and persons with reduced mobility when travelling by air. These legal instruments establish that persons with disabilities and persons with reduced mobility are entitled to travel with the relevant form of transport and to receive assistance in conjunction with their journey.

For shipping, the Swedish Maritime Administration has issued national regulations and general advice about the adaptation of passenger vessels with regard to persons with disabilities. There is also EU legislation that regulates technical requirements for vehicles within the various transport types, which is intended for example to ensure that they are accessible to persons with disabilities.

### **d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

In recent years, the government has intensified the work in the fields of an accessible civil service, easily eliminated obstacles in the built environment and accessible public transport.

The Swedish government is investigating the possibility to include discrimination on grounds of inaccessibility on other areas than working life and higher education.

**e. Services regulated for accessibility**

The Swedish Planning and Building Act (PBL) includes accessibility and usability for persons with impaired movement or orientation as one of several technical requirements for construction works. The requirements apply to buildings, plots, public locations and areas with facilities other than buildings. Swedish building regulations also contain detailed requirements regarding accessibility in housing. In all new and converted accommodation, for example, there must be accessible wet rooms. All new buildings must, for example, have accessible entrances, and newly built accommodation must have a turning area for indoor wheelchairs. The building regulations also require lifts in new and converted housing buildings of more than three floors, and for storage areas, mailboxes, laundry rooms, waste areas, refuse disposal and other accommodation supplements to be accessible and usable. The requirement for lifts also exists for buildings that contain working premises to which the general public have access, as well as public premises.

A new Planning and Building Act entered into force on 2 May 2011. An assessment of the accessibility and usability of a building for people with impaired mobility or orientation is to be made at the planning permission stage. This will ensure that accessibility is provided for correctly from the very start. The municipalities are responsible for the requirements in the Planning and Building Act being satisfied on a local level. In order to drive through developments locally and regionally, the Government has supported municipalities in the creation of indicators and systems for open comparisons of accessibility and accessibility work for persons with disabilities.

More and more municipalities are already working voluntarily to observe accessibility issues in the production of detailed plans, in-depth overview plans and regular overview plans. The Swedish National Board of Housing, Building and Planning has been working since 2006 on guidance for municipalities regarding overview planning, for example via a series of publications that include accessibility. The National Board is responsible for the general supervision of the planning and building administration within the country. The National Board issues for example regulations and general recommendations on the removal of easily eliminated obstacles.

The Government and Parliament have decided on specific transport policy goals and funds for achieving an accessible and usable transport system. Among the 13 prioritised areas, the accessibility goal has been specified as follows: The transport system must be designed so that it can be used by persons with disabilities.

The Disability and Public Transportation Act (1979:558) contains provisions to the effect that the body that supervises public transport and the body that plans and exercises such transport must ensure that the services and the means of transport that are used are accessible to persons with disabilities as far as possible.

The Special Transport Services Act (SFS 1997:736) regulates an obligation for each municipality to arrange passenger transport for individuals who, due to a disability that is not only temporary, have significant difficulties in moving about themselves or in travelling by public transport.

Local and regional public transport is the responsibility of the country's municipalities, that are performing comprehensive work to adapt public transport to the needs of persons with disabilities. Public transport vehicles are accessible to an increasingly great extent: two-thirds of the buses operating local services are low-floor vehicles, and more than half of the buses have automatic stop announcements.

The State is speeding up the work in the municipalities by providing state grants for vehicles, terminals, stops, training, information and payment systems, pedestrian and cycle paths, wheelchair lifts, lifts, co-ordination measures, etc. As a rule, the State pays half the costs for each measure.

Over the past 10 years, government authorities have conducted a range of projects aimed at promoting the issue of making public transport accessible, as well as to integrate the work of the State, municipalities and the private sector. This relates to both physical measures in the infrastructure and vehicles, as well as 'softer' initiatives such as training personnel in how to treat persons with disabilities in an appropriate manner. These projects have been conducted in collaboration with the disabled people's movement.

There have also been major improvements aimed at increasing accessibility in the road transport system. More than half of all bus-stops in the national road network have been converted to make it possible for more and more persons with disabilities to travel by bus.

Identification of obstacles in the physical environment, both indoors and outdoors, and in both private and public properties, is performed by the municipalities. Various tools for analysing accessibility at an overall level are being developed in municipalities and regions.

A concrete example of measures that have been implemented are the regulations regarding public procurement. The Public Procurement Act stipulates that the technical specifications in tender documentation should, where possible, be determined with regard to the criteria in respect of accessibility for persons with disabilities or be formulated with a view to the needs of all users. The specifications should ensure that the properties of materials, goods and services are suitable for the area of application, both in the works contract and the service and supply contract.

The National Board of Health and Welfare has investigated whether persons with disabilities can apply for care and support on the same terms as the rest of the population. This has taken place by means of charting accessibility to Sweden's social welfare offices and healthcare centers. In this context, accessibility also refers to how accessible the environment is, as well as how usable services and products are for persons with disabilities. The conclusions of the charting process are that accessibility is high for persons with mobility disabilities, which indicates that the national regulations and the targeted information efforts in recent years have been effective. In the majority of healthcare centers and social welfare offices, however, there are major deficiencies as regards accessibility for persons with other types of disability, in particular impaired vision, impaired hearing and cognitive disabilities. This means that the Government needs to become clearer in its communication of what accessibility is.

The Government has implemented measures to drive through developments in order to break the cycle of isolation entailed by the inability to use IT. In addition to increased access to



broadband and new technical solutions, the Government has invested in increased usability and accessibility of established and new services for persons with disabilities.

For example, the Swedish Post and Telecom Agency (PTS) is developing electronic services for persons with disabilities in conjunction with affected players. PTS has conducted trials with 'streaming' talking books and talking newspapers on mobile phones. In a report that was submitted to the Government in autumn 2009, the Swedish Agency for Disability Policy Coordination, Handisam, submitted a proposed action plan for e-Inclusion, in the report "Rätt från början" ["Right from the beginning"]. Several measures from the action plan have already been implemented within various policy areas.

The Electronic Communications Act (2003:389) aims at ensuring that private individuals, legal entities and public authorities shall have access to secure and efficient electronic communications. Universal services shall always be available for everybody on equivalent terms throughout Sweden at affordable prices.

If it is necessary for the universal services to be available at affordable prices, the party that is considered appropriate for this may be ordered to, at an affordable price, provide access for people with disability to services according to the same extent and on equivalent terms as for other end-users and satisfy the needs of people with disability for such special services.

Access to universal services shall be safeguarded through procurement by the State if this is called for especially having regard to the costs for the provision of the service or the network.

The Discrimination Act (2008:567) also grants that a job applicant or a trainee with a disability is put in a comparable situation to people without such a disability. The provision is applicable in cases concerning the digital work environment.

#### **f. Goods regulated for accessibility as part of a service**

The Swedish National Guidelines for Public Sector Websites takes an integrated approach to usability, accessibility and standardization. The Guidelines support the procurement, development, and maintenance of a website or eService by a public administration so that it offers equal opportunity usage for all citizens. The guidelines contain criteria which cover the entire lifecycle of a website or eService. The guidelines are intended for several target groups and give recommendations concerning strategic planning as well as design, development and administration. As follows from the principle of mainstreaming accessibility, the Guidelines present web accessibility as an integral part of the overall development process.

#### **g. Enforcement of accessibility legislation**

The Planning and Building Act specifies sanctions for transgressions of the requirements for construction works, including accessibility in new and altered buildings, as a fixed sum and/or prohibition on the use of the building or a part thereof, until the faults have been rectified.

In the event of transgressions, the municipal building committee decides whether the consequences are to be financial fines and/or demands to rectify the deficient accessibility solutions. Financial fines are not earmarked for accessibility-improving measures.

## **h. Non-compliance and litigation**

The Equality Ombudsman supervises compliance with the law and is entitled to bring a case in the courts on behalf of an individual who considers himself or herself to have been discriminated against. Certain non-profit organisations are also entitled to take legal action. The Equality Ombudsman must also work to ensure that discrimination that is linked to disability does not occur in any area of social life, and work to achieve equal rights and opportunities regardless of disability. The Ombudsman must, through advice and in other ways, contribute to the person who has been subjected to discrimination being able to utilise his or her rights. Furthermore, the authority is tasked for example with providing information and training, suggesting constitutional amendments to counteract discrimination, as well as implementing other suitable measures.

## United Kingdom

### a. Accessibility legislation: its place in the legal and regulatory framework

Accessibility legislation is in force in the UK, with this issue generally being treated as an aspect of discrimination law. In England, Scotland and Wales, section 20 of the Equality Act 2010 builds on all previous discrimination legislation. It formally recognises the rights of disabled people to access everyday services, whether they are paid for or not. It consolidates and expands the previous duty on public authorities to think about the implications of their programmes and policies from the perspective of race, gender and disability. It imposes a duty to make reasonable adjustments for disabled people in specified circumstances. A tribunal or court can determine that non-compliance with this duty is unlawful discrimination.

The duty to make reasonable adjustments applies in the following areas:

- Services and public functions (Part 3 and Schedule 2)
- Premises (Part 4 and Schedule 4)
- Work (Part 5 and Schedule 8)
- Education (Part 6 and Schedule 13)
- Associations (Part 7 and Schedule 21)
- Each of the Parts mentioned above (Schedule 21)

The duty comprises three requirements:

- 1) changing the way things are done, such as changing a rule or policy;
- 2) making changes to a physical feature, such as providing a ramp to allow wheelchair users access to a building; and
- 3) providing auxiliary aids and services, such as providing special computer software or providing a different service.

In each case, the duty applies where a disabled person is put at a substantial disadvantage in comparison with a person who is not disabled. The duty holder then has to take reasonable steps to avoid the disadvantage.

Information on the Equality Act 2010 Act can be found at: at  
<http://www.legislation.gov.uk/ukpga/2010/15/contents/enacted>

The Disability Discrimination Act 1995 provides similar protection in Northern Ireland.

The UK has guidelines and voluntary standards covering a wide range of areas, e.g. the “Lifetime Homes” standard which defines standards and guidelines to ensure homes are accessible to everyone. All social housing will be built to these standards from 2011, with the aim that all housing will be by 2013<sup>93</sup>. Building Regulations in England and Wales impose certain accessibility requirements on domestic and non-domestic buildings.<sup>94</sup>

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<sup>93</sup> Information on the Lifetime Homes standard can be found at:  
<http://www.communities.gov.uk/publications/housing/lifetimehomesneighbourhoods>

<sup>94</sup> Information can be found in Approved Document M at :  
<http://www.planningportal.gov.uk/england/professionals/en/400000000988.html>

Information on the Public Service Accessibility Regulations 2000 for public transports can be found at  
<http://www.dft.gov.uk/topics/access/buses-and-coaches/legislation/> and at  
<http://www.dft.gov.uk/topics/access/rail/rail-vehicles/>

UK airports like others in the EU, must comply with EU Regulation 1107/2006, which require that they provide services to ensure that disabled passengers can move through the airport, board, disembark and transit between flights.

The Communications Act 2003 sets minimum targets for subtitling, signing and audio description on television channels. The Code of Television Access Services produced by the UK communications regulator Ofcom gives guidance on these targets and how access to television services can be improved for people with hearing or visual impairments<sup>95</sup>.

Regulations similarly exist covering Scotland and Northern Ireland.

The “Five Principles for Improving Provision of Information for Disabled People” sets out guidelines on how disabled people’s access to information on public services can be improved<sup>96</sup>.

### **b. General law, technical regulations and standards**

As above, all service providers are required to comply with the provisions of the Equality Act 2010 or the Disability Discrimination Act 1995 in Northern Ireland. There are, however, some areas such as transport and buildings where there are also specific technical regulations and standards in place. Meeting a specific technical regulation may not be sufficient to meet the wider provisions of the Equality Act 2010 and the Equality Act 2010 does not set specific technical regulations or standards.

### **c. Role of national, European and international standards**

European accessibility standards have been developed and are used in the context of the following EU mandates:

- Mandate 283 - Mandate to the European Standards Bodies for a guidance document in the field of safety and usability of products by people with special needs (e.g. elderly and disabled).
- Mandate 273 - Mandate to the European Standards Bodies for standardization in the field of information and communications technologies (ICT) for disabled and elderly people.
- Mandate 292 - Mandate to the European Standards Bodies for a guidance document in the field of safety of consumers and children - Product information.
- Mandate 293 - Mandate to the European Standards Bodies for a guidance document in the field of safety of consumers and children - Child safety.
- M/376: Standardization Mandate to CEN, CENELEC and ETSI in support of European Accessibility Requirements for Public Procurement of Products and Services in the ICT Domain (PDF) (7 December 2005)
- M/420: Standardization Mandate to CEN, CENELEC and ETSI in support of European Accessibility Requirements for Public Procurement in the Built Environment (PDF) (21 December 2007).

BSI (the national standards body) refers to the following legislation when developing British Standards:

- Equality Act 2010
- UN Convention on the Human Rights of Disabled People
- EU Employment Equality Directive.

There are also the following relevant EU resolutions:

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<sup>95</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/ctas.pdf>

<sup>96</sup> Information on the five principles can be found at: <http://odi.dwp.gov.uk/common/publications-index.php>

- EU Policy (1) CoE Resolution ResAp (2001)1 “on the introduction of the principles of universal design into the curricula of all occupations working on the built environment” (“Tomar Resolution”) “Universal design” ResAP(2007)3 “Achieving full participation through Universal Design”
- Recommendation Rec(2006)5 of the Committee of Ministers to member states on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015 EU Disability Action Plan (DAP) 2008-2009

#### **d. Changes in legislation/regulation linked to the implementation of the UN CRPD**

The reasonable adjustments duty in the Equality Act 2010, and previously for England, Scotland and Wales the Disability Discrimination Act 1995, are in accordance with the provisions of Article 9 of the UN Convention on the Rights of Persons with Disabilities. The Equality Act 2010 continues to build on the good work already achieved – one example of a significant change to the reasonable adjustment duty is a single threshold for the ‘trigger point’ of when a disabled person is put at a ‘substantial disadvantage’.

#### **e. Services regulated for accessibility**

In the UK, all service providers in both the public and private sectors are under a duty to make reasonable adjustments in certain circumstances where a disabled person is put at a ‘substantial disadvantage compared to non-disabled people’. Reasonable steps must be taken to avoid the disadvantage or to adopt a reasonable alternative method of providing the service.

The duty for service providers is anticipatory. This means that a service provider cannot wait until a disabled person wants to use its services but must think in advance (and on an ongoing basis) about what disabled people with a range of impairments might reasonably need. This is because the relationship between, for example, a shop and its customers is transitory and, whilst a service provider can reasonably be expected to anticipate such things as ramps for mobility-impaired customers, it would not be expected to provide personalised adjustments in the same way as is expected of employers.

However, section 20 of the Act recognises the need to strike a balance between the rights of disabled people and the interests of service providers. Thus, the reasonable adjustment duty only requires service providers to make adjustments that are reasonable in all the circumstances, depending on a number of factors including the size and nature of the organisation, the financial resources available to it and the nature of the services provided.

Section 20 of the Act specifically provides that the duty to make reasonable adjustments does not require a service provider to take a step that would fundamentally alter the nature of the service they provide.

#### **f. Goods regulated for accessibility as part of a service**

The duty to make reasonable adjustments applies to the provision of both goods and services under Part 3 of the Equality Act 2010. To the extent that the provision of a service includes access to goods, that is covered by the duty.

#### **g. Goods regulated for accessibility**

In general, manufactured goods are not regulated for accessibility in the UK. However, the requirement for services to be accessible means that that goods used in providing a service must be accessible or the service provider must provide an alternative way of accessing their service. For example, a bank would need to ensure that its ATMs are accessible or provide ATM services in a reasonable alternative manner; a bath manufacturing company is not required to manufacture accessible baths but must ensure that their sales processes are accessible.

Public Transport Accessibility is covered by a number of regulations:

- The Public Service Accessibility Regulations 2000 and its amendments require improved accessibility of buses and coaches. All single-decker buses, double-decker buses, and coaches on scheduled services must comply by 2016, 2017 and 2020 respectively - <http://www.dft.gov.uk/topics/access/buses-and-coaches/legislation/>
- Since December 1998, all new and refurbished rail vehicles have had to meet Rail Vehicle Accessibility Regulations - All rail vehicles, both heavy and light rail, must be accessible by no later than 1 January 2020 - <http://www.dft.gov.uk/topics/access/rail/rail-vehicles/>
- UK airports like others in the EU, must comply with EU Regulation 1107/2006, which require that they provide services to ensure that disabled passengers can move through the airport, board, disembark and transit between flights - [http://europa.eu/legislation\\_summaries/transport/mobility\\_and\\_passenger\\_rights/124132\\_en.htm](http://europa.eu/legislation_summaries/transport/mobility_and_passenger_rights/124132_en.htm)  
The Civil Aviation Authority promotes and enforces compliance of air regulations within the UK.
- Part M (Access to and use of buildings) of the Building Regulations 2010 sets out minimum requirements to ensure that a broad range of people are able to access and use facilities within buildings. <http://www.planningportal.gov.uk/buildingregulations/approveddocuments/partm/>
- The Communications Act 2003 sets minimum targets for subtitling, signing and audio description on television channels. The Code of Television Access Services produced by the UK communications regulator Ofcom gives guidance on these targets and how access to television services can be improved for people with hearing or visual impairments. <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/ctas.pdf>
- The BSI (British Standards Institution) Group is the UK's National Standards Body. It works with manufacturing and service industries, businesses, the UK and other national governments and consumers to facilitate the production of British, European and international standards including those relating to disability accessibility.
- BSI also runs a consumer network including a representative who focuses on 'Design for All'. There is a Disabled Experts' Reference Group (DERG), who provides advice and input to standards in development. <http://www.bsigroup.com/en/Standards-and-Publications/How-to-get-involved/Disabled-Experts-Reference-Group/>
- ISO Guide 71 (also known as CEN/CENELEC Guide 6) provides Guidelines for standards developers to address the needs of older persons and persons with disabilities. [http://www.iso.org/iso/catalogue\\_detail?csnumber=33987](http://www.iso.org/iso/catalogue_detail?csnumber=33987)
- The BS 8878 Web Accessibility Code of Practice published in November 2010 presents a fully up-to-date, detailed guide for businesses and organizations to make their web products more accessible to disabled and older users - <http://shop.bsigroup.com/en/ProductDetail/?pid=00000000030180388BS> 8878 Web accessibility. Code of Practice.

#### **h. Enforcement of accessibility legislation, non-compliance and litigation**

The Equality Act 2010 provides for enforcement where an individual disabled person considers that they have been discriminated against because of a failure to comply with the duty to make reasonable adjustments. Depending on the circumstances, the individual may bring a claim before a tribunal or court. Remedies can include damages, declarations, quashing orders, mandatory orders and injunctions. This means that the tribunal or court can

require that certain adjustments are made in order to make the service or goods accessible to the claimant.

In addition, the Equality and Human Rights Commission, an independent statutory body with a remit including the elimination of discrimination and the reduction of inequality, has enforcement powers in this regard under the Equality Act.

Accessibility legislation in the UK is enforced by the application of case law, brought by individuals or bodies on behalf of individuals when they believe their rights have been infringed or a law broken in regards to them accessing a product or service.

## European Union

The European Commission is committed to removing the economic and social barriers that prevent people with disabilities from enjoying their rights and full and complete participation in all areas of life.

Equality of opportunity for people with disabilities is at the centre of the multiannual European Disability Strategy 2010-2020 which was adopted on 15 November 2010<sup>97</sup>, and its predecessor the EU Disability Action Plan 2003-2010<sup>98</sup>.

The overarching goal of the EU Strategy is the continuous and sustainable improvement in the situation of persons with disabilities in economic, social and participatory terms.

The European Disability Strategy 2010-2020<sup>99</sup> provides the key elements of accessibility policies in the EU. It defines 'accessibility' as meaning that people with disabilities have access, on an equal basis with others, to the physical environment, transportation, information and communications including technologies and systems (ICT), and other facilities and services in line with Art. 9 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD), to which the EU is a party.

### *Accessibility concept*

Accessibility is considered as a wide concept that includes the prevention and elimination of obstacles that pose problems for persons with disabilities in using products, services and infrastructures. General accessibility measures address in a anticipatory manner the most common problems that persons with disability face. Accessibility and Reasonable accommodation are two related concepts that have to be understood within the "social model of disability". They are both contributing to solutions to ensure equal access for person with disabilities when interacting with goods and services and performing a task.

Accessibility targets the general group of person with disabilities addressing their most common needs and needs to be complemented by measures of reasonable accommodation, namely appropriate measures to be taken, where needed in a particular case, to enable a person with a disability to have access to a product or a service that target a particular individual with a disability.

Achieving accessibility requires acting on the design and functioning of the product, service or infrastructure itself to be "more usable" by persons with disabilities in general while taking into account the diversity of requirements coming from various impairments. Accessibility is thus mostly preventive and proactive while reasonable accommodation is often reactive.

The implementation of accessibility is often supported by general guidelines or standards that describe how products or services should be built.

### *EU policy background*

In the EU, persons with disabilities and older persons constitute a substantial and strongly growing part of the population that can benefit from accessibility measures. Older persons often have chronic illnesses that have associated impairments. Furthermore, even with good

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<sup>97</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0636:EN:NOT>

<sup>98</sup> <http://ec.europa.eu/social/main.jsp?catId=430&langId=en>.

<sup>99</sup> COM (2010) 636



health, mobility and dexterity are reduced and the functional performance of the senses diminishes. This leads to activity limitations. Over 32 % of those between 55 and 65 years of age report a disability. That figure increases to over 40 %, 60 % and 70 % for each additional ten years.

While the ageing of the population can raise the visibility of the market potential of products with good accessibility features in the most commercial areas, particularly health care, there are other areas where the economic potential is often overlooked by industry. Industry's response is limited and disabled persons do not benefit from the opportunities created by the single market as much as other citizens do. But also the myriad of national, regional and local accessibility rules and regulations does not make things easier for industry. These can *de facto* act as obstacles to the free movement of goods, persons and services in the EU and to potential economies of scale.

#### Addressing accessibility at EU level

At EU level, accessibility has been addressed mainly in three thematic policy areas: ICT, transport and built environment. It has been a core element of the EU policy since the nineties. Accessibility was already addressed in the European Disability Action plan 2003 -2010.

At EU level there are various legislative acts that contain certain accessibility provisions regulating some goods and services. The detailed list of EU legal acts addressing accessibility is contained in the Declaration of Competences annexed to the Council Decision on the conclusion by the EU of the UN Convention on the Rights of Persons with Disabilities (UNCRPD)<sup>100</sup>. In general, accessibility is not the main purpose of these legal instruments, but one of the many issues addressed:

- There are some legal instruments that contain general accessibility provisions like the Structural Funds Regulation<sup>101</sup> or the Public Procurement Directives<sup>102</sup>. Some legal instruments, like the Copyright Directive, are of enabling nature and permit the Member States to develop exceptions in national legislation that aim to improve accessibility for persons with disabilities but do not impose obligations<sup>103</sup>.
- There are some acts that require specific products to be accessible. This is the case of lifts<sup>104</sup> and vehicles with more than eight seats<sup>105</sup> or even for some specific groups of persons with disabilities, like the Braille requirement for packaging of medicines<sup>106</sup>.
- There are some sector regulations that have some general provisions for persons with disabilities addressing accessibility to some extent or indirectly, like the eCommunication package in the area of Information and Communication Technologies<sup>107</sup> and the various Regulations on the rights of persons with reduced mobility<sup>108</sup> in the area of transport.

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<sup>100</sup> See Annex II in the document available at

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:023:0035:0061:EN:PDF>

<sup>101</sup> Regulation (EC) No 1083/2006 and COM(2011) 615 final

<sup>102</sup> Directives 2004/17/EC and 2004/18/EC.

<sup>103</sup> Directive 2001/29/EC.

<sup>104</sup> Directive 95/16/EC

<sup>105</sup> Directive 2001/85/EC

<sup>106</sup> [Directive 2004/27/EC](#)

<sup>107</sup> [http://ec.europa.eu/information\\_society/policy/ecommm/eu-rules/index\\_en.htm](http://ec.europa.eu/information_society/policy/ecommm/eu-rules/index_en.htm)

<sup>108</sup> [http://europa.eu/legislation\\_summaries/transport/mobility\\_and\\_passenger\\_rights/l24132\\_en.htm](http://europa.eu/legislation_summaries/transport/mobility_and_passenger_rights/l24132_en.htm)

With regard to ICT, in addition to the eCommunication package, the EU has invested significantly in RTD work. There are a number of Directives that address disability issues and that provide for possibility to address accessibility matters either in the terminals, the networks, the services including broadcasting services.

Furthermore, the eAccessibility policy has focused on the web and the promotion of Design for All. Accessibility to ICT is also dealt with in the Digital Agenda<sup>109</sup>.

In the transport sector significant attention at EU level has been given to provide assistance to passengers with reduced mobility, while less work has been done on the accessibility side (accessibility of vehicles and transport infrastructures such as stations, bus stops). However in the rail area specific accessibility legislation is developed to address the accessibility of rail vehicles and stations that are part of the Trans-European network. The recent White Paper on transport refers to accessibility of the transport infrastructures beyond the service provision to persons with reduced mobility.

In the area of the built environment, some RTD projects and studies have been undertaken and accessibility has emerged in the policy discussions in the context of the lead market initiative for sustainable construction. Information on accessibility is gathered as part of social sustainability that includes some regulatory and standardisation aspects. EU transnational projects on accessibility address for example the training of professionals in accessible design, the development of tools for carrying out a detailed accessibility audit of buildings or accessibility in tourism infrastructures and services.

#### EU standardisation on accessibility

Since a number of years the Commission has been investing in the development of common voluntary standards on accessibility in specific areas. Currently, European standardisation organisations are working on preparing standards under three mandates given by the European Commission.

The first two Mandates address accessibility in the sense of point 2 (a) of article 9 of the Convention:

- Mandate 376 focuses on accessibility standards for ICT goods and services, and the standards are intended to be used in public procurement proceedings.
- Mandate 420 aims at developing accessibility standards for the built environment also intended to be used in public procurement.

. The third Mandate addresses accessibility in the sense of article 4 (f) of the Convention:

- Mandate 473 aims at including accessibility following "Design for all" (or Universal Design) in relevant mainstream standards and to develop process standards for manufactures and services providers on how to include accessibility in their product development cycle and service provision.

#### Horizontal instruments fostering accessibility

##### *Public procurement*

The current Public Procurement Directive allows for the integration of social considerations and specifically states the use of "Design for All" and accessibility requirements whenever

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<sup>109</sup> COM(2010) 245

possible in the technical specifications in the contract documentation for public bids.<sup>110</sup> The Commission has issued a legislative proposal in 2011 making accessibility compulsory in public procurement in the EU.

### *Structural Funds*

The General Regulation<sup>111</sup> on the European Regional development Fund, the European Social Fund and the Cohesion Fund, one of the largest financial instruments of the EU, places emphasis on addressing the issue of accessibility in its Article 16: "*The Member States and the Commission shall take appropriate steps to prevent any discrimination on the basis of gender, race or ethnic origin, religion or belief, disability, age or sexual orientation during the various stages of implementing the Funds and, in particular, access to them. Accessibility for disabled persons shall be one of the criteria to be observed in defining operations co-financed by the Funds and to be taken into account during the various stages of implementation*".

The Commission has made a toolkit for using EU Structural and Cohesion funds and Ensuring accessibility and non-discrimination of people with disabilities. It includes examples of the prevention of discrimination on the basis of disabilities and accessibility for disabled persons as a horizontal principle, and also refers to a number of specific areas for potential action, including in the fields of transport, ICT and access to finance.

### *Research*

Research activities in the area of accessibility to the built environment, transport and ICT have been in place since the early 90s. Only in the area of eAccessibility (addressing both accessibility to mainstream products and services and assistive solutions) there has been a budget of over 200 Million Euros and with over 200 projects. The current 7<sup>th</sup> Frame work programme addresses the area of eAccessibility. . The budget for the 7<sup>th</sup> Frame work programme and for deployment activities under the Competitive and innovation Programme are over 100 Million Euros.

### *Antidiscrimination Legislation*

The European Directive establishing a general framework for equal treatment in employment and occupation contains an article on the obligation of employers to provide reasonable accommodation for disabled persons.<sup>112</sup> No reference is made in this context to accessibility.

However the 2008 Commission proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of inter alia disability, states that in order to guarantee the compliance with the principle of equal treatment in relation to person with disabilities, the measures necessary to enable persons with disabilities to have effective non-discriminatory access (meaning accessibility) among other to goods and services which area available to the public shall be provided by anticipation including through appropriate modifications or adjustments. However such measures should not impose a disproportionate burden, nor require a fundamental alteration or require the provision of alternatives thereto.<sup>113</sup>

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<sup>4</sup> Directive 2004/18/EC of 31 March 2004 of the European Parliament and of the Council on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts

<sup>111</sup> Article 16 of the COUNCIL REGULATION (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999, OJ L 210, 31.7.2006, p.25

<sup>112</sup> Article 5 of Directive 2000/78

<sup>113</sup> Art 4 COM (2008) 426

Notwithstanding this previous obligation, reasonable accommodation shall be provided unless it would impose a disproportionate burden.

*On going EU developments on accessibility*

In the European Disability Strategy 2010-2020, the Commission has proposed to use legislative and other instruments, such as standardisation, to foster accessibility to complement on going activities. The Commission is preparing the development by the end of 2012 of a 'European Accessibility Act', *which could include the development of specific standards for particular sectors to substantially improve the proper functioning of the internal market for accessible goods and services.*

To that end the European Commission has issued a contract for a study on the potential socio-economic impacts of possible new legal measures by the EU to improve accessibility of goods and services for people with disabilities. This study will serve as a basis for *exploring the merits of adopting EU regulatory measures to substantially improve the proper functioning of the internal market for accessible products and services, including measures to step up the use of public procurement.*

The Commission work programme for 2012 describes this initiative as Proposal for a Directive to improve the market of goods and services that are accessible for persons with disabilities and elderly persons, based on a "design for all" approach. This business friendly initiative will include binding measures to promote procurement and harmonisation of accessibility standards.

The objective of this initiative is the improvement of the functioning of the Internal Market in relation to accessible goods and services in creating economies of scale and remedying market failures improving the effectiveness of accessibility legislation to create an EU level playing field.

It is expected that this will stimulate innovation in the accessibility field through the development and use of European standards, increasing also the incentives in the markets by increasing public procurement of accessible goods and services;

Improving the availability in the market of accessible goods and services as well as increased competition among industry on accessibility will improve the inclusion and participation of persons with disabilities in the European society and economy.

## ANNEX 1: STATE OF PLAY

Dates of signatures and ratification					
Country	Signature		Ratification*/Formal confirmation		Reporting 1 <sup>st</sup> Report submitted to TINT October 2010  July 2011  October 2011 September 2011 August 2011  May 2010  October 2010  3 March 2009 18 August 2010  26 September 2011 31 August 2010  23 September 2009  15 December 2008 24 April 2008 26 May 2010 7 August 2009 November 2011
	UN Convention	Optional Protocol	UN Convention	Optional Protocol	
AT	30 March 2007	30 March 2007	25 September 2008	25 September 2008	
BE	30 March 2007	30 March 2007	2 July 2009	2 July 2009	
BG	27 September 2007	18 December 2008	<b>26 January 2012</b>		
CY	30 March 2007	30 March 2007	<b>27 June 2011</b>	<b>27 June 2011</b>	
CZ	30 March 2007	30 March 2007	28 September 2009		
DE	30 March 2007	30 March 2007	24 February 2009	24 February 2009	
DK	30 March 2007		23 July 2009		
EE	25 September 2007		<b>14 April 2012**</b>		
EL	30 March 2007	27 September 2010	<b>11 April 2012**</b>		
ES	30 March 2007	30 March 2007	3 December 2007	3 December 2007	
FI	30 March 2007	30 March 2007			
FR	30 March 2007	23 September 2008	18 February 2010	18 February 2010	
HU	30 March 2007	30 March 2007	20 July 2007	20 July 2007	
IE	30 March 2007				
IT	30 March 2007	30 March 2007	3 March 2009	3 March 2009	
LT	30 March 2007	30 March 2007	18 August 2010	18 August 2010	
LU	30 March 2007	30 March 2007	<b>26 September 2011</b>	<b>26 September 2011</b>	
LV	18 July 2008	22 January 2010	1 March 2010	31 August 2010	
MT	30 March 2007	30 March 2007			
NL	30 March 2007				
PL	30 March 2007				
PT	30 March 2007	30 March 2007	23 September 2009	23 September 2009	
RO	26 September 2007	25 September 2008	<b>31 January 2011</b>		
SE	30 March 2007	30 March 2007	15 December 2008	15 December 2008	
SI	30 March 2007	30 March 2007	24 April 2008	24 April 2008	
SK	26 September 2007	26 September 2007	26 May 2010	26 May 2010	
UK	30 March 2007	26 February 2009	8 June 2009	7 August 2009	
EU	30 March 2007		23 December 2010		

§ Dates in **bold** show developments under 2011 and 2012

\* Ratification means the deposit of the instrument of ratification with the Secretary-General of the United Nations

\*\* The Internal procedure achieved, but the instruments of ratification not yet deposited with the Secretariat General of the UN.

## **ANNEX 2: RESPONSIBLE AUTHORITIES AND CONTACT PERSONS**

This annex contains an overview of responsible authorities, focal points, coordination mechanisms and contact points. The data were provided by the Member States in reply to the following questions:

\* Who is responsible for the implementation (putting into practice) of the UN Convention, *i.e.* the focal point foreseen in article 33(1) of the Convention?

\* Have you established a coordination mechanism foreseen in article 33(1) of the Convention?

### **Austria**

**Focal Point at federal level:** Federal Ministry of Labour, Social Affairs and Consumer Protection (mail to: [behindertenrechtskonvention@bmask.gv.at](mailto:behindertenrechtskonvention@bmask.gv.at))

**Coordination mechanism:** Federal Ministry of Labour, Social Affairs and Consumer Protection (Website: [www.bmask.gv.at](http://www.bmask.gv.at))

**Independent mechanism:** Independent Committee on monitoring the implementation of the CRPD in Austria (Chair: Marianne Schulze)

Office of the Austrian CRPD Monitoring Committee  
c/o Federal Ministry of Labour, Social Affairs and Consumer Protection  
A-1010 Vienna, Stubenring 1  
Fax: +43 1 718 94 70 2706  
e-Mail: [buero@monitoringausschuss.at](mailto:buero@monitoringausschuss.at)  
Website: [www.monitoringausschuss.at](http://www.monitoringausschuss.at)

### **Contact:**

Max Rubisch  
Federal Ministry of Labour, Social Affairs and Consumer Protection (CRPD Focal Point)  
A-1010 Vienna, Stubenring 1  
E-Mail: [max.rubisch@bmask.gv.at](mailto:max.rubisch@bmask.gv.at), Tel. +43-1-711 00-6262

Andreas Reinalter  
Federal Ministry of Labour, Social Affairs and Consumer Protection (CRPD Focal Point)  
A-1010 Vienna, Stubenring 1  
E-Mail: [andreas.reinalter@bmask.gv.at](mailto:andreas.reinalter@bmask.gv.at), Tel. +43-1-711 00-2255

### **Belgium**

#### **Focal Points:**

- Federal level : Federal Public Service Sociale Security – DG Strategy & Research
- Flanders: Gelijke Kansen in Vlaanderen (Equal Opportunities in Flanders)
- Walloon region: Agence Wallonne pour l'Intégration des Personnes handicapées (Agency for Integration of Persons with Disabilities)

- Brussels-Capital region: Cel Gelijke Kansen en Diversiteit (Equal Opportunities and Diversity Body)
- Commission of the French speaking Community COCOF: Service Personne Handicapée Autonomie Recherchée (PHARE)
- Joint Community Commission COCOM : Administration COCOM
- French-Speaking community : WBI Service multilatéral mondial (WBI Multilateral World Service)
- German-speaking community: Dienststelle für Personen mit Behinderung (Office for People with Disabilities)

**Coordination mechanism:** Federal Public Service Sociale Security – DG Strategy & Research

**Independent mechanisms:** Centre for Equal Opportunities and Opposition to Racism

**Contacts:**

- Federal level + interfederal coordination mechanism: Greet van Gool - Federal Public Service Social Security, DG Strategy, International Affairs & Research – Mail: [greet.vangool@minsoc.fed.be](mailto:greet.vangool@minsoc.fed.be); CoordinationmechanismUNCRPD@minsoc.fed.be
- Flanders: Marian Vandenbossche – Gelijke Kansen in Vlaanderen– Mail: [marian.vandenbossche@dar.vlaanderen.be](mailto:marian.vandenbossche@dar.vlaanderen.be)
- Walloon Region: Jean-Marc HURDEBISE – AWIPH - Agence wallonne pour l’intégration des Personnes handicapées - Mail : [jm.hurdebise@awiph.be](mailto:jm.hurdebise@awiph.be)
- Brussels Capital Region : Melissa De Schuiteneer - Cel Gelijke Kansen en Diversiteit - Mail: [mdeschuiteneer@mbhg.irisnet.be](mailto:mdeschuiteneer@mbhg.irisnet.be)
- Commission of the French speaking Community COCOF : DEBACKER Philippe – Service PHARE –Mail : [pdebacker@cocof.irisnet.be](mailto:pdebacker@cocof.irisnet.be)
- Joint Community Commission COCOM - Edith Poot - Administration COCOM – Mail: [epoot@ggc.irisnet.be](mailto:epoot@ggc.irisnet.be)
- French-Speaking community : FAURE Marien – WBI Service multilatéral mondial – Mail : m.faure@wbi.be
- German-speaking community: Joel Arens - DPB - Dienststelle für Personen mit Behinderung – Mail : joel.aren@dpb.be
- Independant mechanism: Centre for Equal Opportunities and Opposition to Racism – Mail: [epost@cntr.be](mailto:epost@cntr.be)

**Bulgaria**

**Focal Point:** Integration of People with Disabilities Department at Ministry of Labour and Social Policy

**Coordination mechanism:** None established

**Independent mechanism:** None established

**Contact:**

Joanna Germanova

Ministry of Labour and Social Policy

Directorate “Policy for people with disabilities, equal right and social benefits”

2 Triaditza street, 1051 Sofia, Bulgaria  
Email: [jpetrova@mlsp.government.bg](mailto:jpetrova@mlsp.government.bg), Tel.: + 359 2 8119 658

Nadezhda Harizanova  
Integration of People with Disabilities' Department  
Directorate "Policy for people with disabilities, equal right and social benefits"  
Ministry of Labour and Social Policy  
2 Triaditza street, 1051 Sofia, Bulgaria  
Email: [nharizanova@mlsp.government.bg](mailto:nharizanova@mlsp.government.bg), Tel.: + 359 2 8119 656

Ministry of Labour and Social Policy  
National Council for Integration of People with Disabilities.  
Council of Ministers, regional governors, regional government in cooperation with civil society.

Ministry of Youth, Education and Science, Ministry of Health, Ministry of Regional Development and Republic Works, Ministry of Justice, Ministry of Culture, Ministry of transport, ICT, Ministry of economy, energetic and tourism, State Agency for Child Protection, Agency for People with Disabilities, Social Assistance Agency, National Statistical Institute and regional government.

## **Cyprus**

**Focal Point:** Department for Social Inclusion of Persons with Disabilities at Ministry of Labour and Social Insurance

**Coordination mechanism:** The Pancyprian Council for the Persons with Disabilities.

**Independent mechanism:** Ombudsman and Commissioner for the Protection of Human Rights.

### **Contact:**

Christina Flourentzou-Kakouri  
Department for Social Inclusion of Persons with Disabilities  
1430 Nicosía, Cyprus  
Tel: 00357 22 815120, Fax: 00357 22 482737  
e-mail: [cflourentzou@dsid.mlsi.gov.cy](mailto:cflourentzou@dsid.mlsi.gov.cy)

## **Czech Republic**

**Focal Point:** Ministry of Labour and Social Affairs

**Coordinating mechanism:** Ministry of Labour and Social Affairs  
Ministry of Foreign Affairs  
Government Board for People with Disabilities  
Czech National Disability Council

**Independent mechanism:** none established



**Contact:**

Stefan Culik  
Ministry of Labour and Social Affairs  
Na Poricnim pravu 1  
128 01 Prague 2  
Czech Republic  
Tel: +42 22192 2693  
E-mail: [Stefan.Culik@mpsv.cz](mailto:Stefan.Culik@mpsv.cz)

**Denmark**

**Focal Point:** The Ministry of Social Affairs and Integration

**Coordination:** The Inter-ministerial Committee of Civil Servants on Disability Matters

**Independent mechanism:** The Danish Institute for Human Rights

**Contact:**

Anne Bækgaard ([aba@sm.dk](mailto:aba@sm.dk)) or Thomas Falslund Johansen ([tfj@sm.dk](mailto:tfj@sm.dk))  
Ministry of Social Affairs and Integration  
Holmens Kanal 22, DK-1060 København K  
+45 33 92 93 00

The Danish Disability Council

Civil society: involvement through representative organizations (“Danske Handicaporganisationer”/Danish Council of Organisations of Disabled People,  
Each sector Ministry is responsible of implementing necessary changes etc. in their area (the principle of sector responsibility)

**Estonia**

**Focal Point:** Ministry of Social Affairs.

**Coordination mechanism:** Ministry of Social Affairs (network of all the ministries yet to be formed)

**Independent mechanism:** none established, to be formed by the Estonian Chamber of Disabled People

**Contact:**

Aile Rahel Ausna  
Social Welfare Department, Ministry of Social Affairs, Gonsiori 29, 15027 Tallinn, Estonia.  
E-mail: [rahel.ausna@sm.ee](mailto:rahel.ausna@sm.ee); Tel: +372 626 9228

Ministry of Foreign Affairs

Ministries (Ministry of Education and Research, Ministry of Justice, Ministry of Culture, Ministry of Internal Affairs, Ministry of Economic Affairs and Communications, Ministry of Finance) and non-governmental organizations (Estonian Chamber of Disabled People,

Estonian Union of People with Visual Impairment, Estonian Association of Hard Hearing, Estonian Union of Persons with Mobility Impairment, Association of Estonian Cities, Association of Municipalities of Estonia  
Estonian National Council of People with Disabilities

## **Finland**

**Focal Point:** none established

**Coordination mechanism:** none established

**Independent mechanism:** none established

**Contact:**

Satu Sistonen, Legal Officer (until May 2012)  
Ministry of Foreign Affairs  
Unit for human right courts and conventions  
Email: [satu.sistonen@formin.fi](mailto:satu.sistonen@formin.fi)

Eveliina Pöyhönen  
Ministerial Adviser  
Social Inclusion Team  
Department for Promotion of Welfare and Health  
Ministry of Social Affairs and Health  
P.O. Box 33, FI-00023 Government, Finland  
[Email: eveliina.poyhonen@stm.fi](mailto:eveliina.poyhonen@stm.fi)  
Tel. +358 9 160 74133, +358 50 570 2186

## **France**

**Focal point:** All administrations, services and bureaus working on the implementation of disability policy (not formally appointed yet as focal points)

**Coordination mechanism:** Interministerial committee of disability, chaired by the Prime Minister

**Independent mechanism:** Not appointed yet (see Chapter 2)

**Contact:**

Pascal FROUDIERE  
European and International Affairs Unit  
DIRECTORATE GENERAL FOR SOCIAL COHESION  
Ministry for Solidarity and Social Cohesion  
Phone : +33 (0)1 40 56 80 14  
E-Mail : [pascal.froudiere@social.gouv.fr](mailto:pascal.froudiere@social.gouv.fr)

## **Germany**

**Focal Point:** Federal Ministry of Labour and Social Affairs

**Coordination Mechanism:** Federal Government Commissioner for Matters relating to  
Persons with Disabilities

**Monitoring Mechanism:** German Institute for Human Rights  
CRPD National Monitoring Mechanism  
Zimmerstrasse 26/27, 10969 Berlin, Germany  
Tel.: 0049-30-259359-450  
E-Mail: [monitoring-stelle@institut-fuer-menschenrechte.de](mailto:monitoring-stelle@institut-fuer-menschenrechte.de)  
Fax: 0049-30-259359-459  
[www.institut-fuer-menschenrechte.de/en/monitoring-mechanism.html](http://www.institut-fuer-menschenrechte.de/en/monitoring-mechanism.html)

**Contact:**

André Necke  
Desk officer, Federal Ministry of Labour and Social Affairs,  
email: [andre.necke@bmas.bund.de](mailto:andre.necke@bmas.bund.de)  
Tel. +49-30-527-1780

Barbara Braun  
Desk officer, Federal Ministry of Labour and Social Affairs,  
email: [barbara.braun@bmas.bund.de](mailto:barbara.braun@bmas.bund.de)  
Tel. +49-30-527-2433

**Greece**

**Focal point:** None established

**Coordination mechanism:** none established

**Independent mechanism:** none established

**Contact:**

1. Stelakatos Michael,  
Ministère des Affaires Etrangères  
Zalokosta 3, Athènes  
e-mail: [m.stelak@mfa.gr](mailto:m.stelak@mfa.gr)  
Tel. : +30 210 368 33 19

2. Nikolsky Dimitrios  
Ministry of Health and Social Solidairty  
Aristotelous 17, Athens  
e-mail: [d.nikolsky@yyka.gov.gr](mailto:d.nikolsky@yyka.gov.gr)  
Tel: +30 210 5227700

**Hungary**

**Focal Point:** Ministry of National Resources

**Coordination mechanism:** not established

**Independent mechanism:** National Council on Disability Issues

**Contact:**

Mr Roland KISGYÓRI  
Deputy Head of Department  
Email: roland.kisgyori@nefmi.gov.hu  
Ministry of National Resources

**Ireland**

**Focal Point:** will be confirmed following ratification

**Coordination mechanism:** will be confirmed following ratification

**Independent mechanism:** will be confirmed following ratification

**Contact:**

Richard Godfrey  
Disability Policy Division  
Department of Justice and Equality  
Email: rcgodfrey@justice.ie  
Tel: +353 1 4790212

**Italy**

**Focal Point:** Ministry of Labour and Social Policies - Directorate general for inclusion and social policies,

**Coordination mechanism:** Ministry of Labour and Social Policies- Directorate general for inclusion and social policies

**Independent mechanism:** National Observatory for monitoring the condition of people with disabilities (Law 18/2009)

**Contact:**

Alfredo Ferrante, [aferrante@lavoro.gov.it](mailto:aferrante@lavoro.gov.it), [disabili@lavoro.gov.it](mailto:disabili@lavoro.gov.it)  
Head of Unit for persons with disabilities  
Directorate general for inclusion and social policies  
Ministry of Labour and Social Policies  
Via Fornovo, 8  
00192 Roma - IT  
Tel +39 06.4683.4659-4457

**Latvia**

**Focal Point:** The Ministry of Welfare

**Coordination mechanism:** The National Council of Disability Affairs ( NCDA)

**Independent mechanism:** The Ombudsman office (also the NCDA and working groups)

**Contact:**

Liene Kaulina-Bandere, Tel:+37167021608, Liene.Bandere@lm.gov.lv

Elina Celmina, Tel: +371 67021612, Elina.Celmina@lm.gov.lv

Equal Opportunities Policy Division

Ministry of Welfare

28 Skolas Str.Riga, LV-1331

Latvia

fax +371 67021607

## **Lithuania**

**Focal Point:** Ministry of Social Security and Labour

**Sub-Focal points:** The Ministry of Education and Science, the Ministry of Transport and Communications, the Ministry of Health, the Ministry of Environment, the Ministry of Economics, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of the Interior, the Ministry of Culture, the Department of Physical Education and Sports under the Government of the Republic of Lithuania, the Department of Statistics, Information Society Development Committee under the Ministry of Transport and Communications.

**Coordinating mechanism:** Ministry of Social Security and Labour

**Independent mechanism:** The Council for the Affairs of Disabled at the Ministry of Social Security and Labour and the Office of Equal Opportunities Ombudsperson.

**Contact:**

Egle Caplikiene, [Egle.Caplikiene@socmin.lt](mailto:Egle.Caplikiene@socmin.lt)

Head of Equal Opportunities Division,

Tel: +370 5 266 42 61,

Rūta Jakubauskienė, [ruta.jakubauskiene@socmin.lt](mailto:ruta.jakubauskiene@socmin.lt)

Chief Specialist of Equal Opportunities Division

Tel: +370 5 266 42 74

## **Luxembourg**

**Focal point:** Ministry of Family Affairs and Integration

**Coordination mechanism:** Ministry of Family Affairs and Integration

**Independent mechanism:**

Task of promoting and monitoring: Consultative Commission of Human Rights (of the Grand Duchy of Luxembourg) jointly with the Centre for Equal Treatment  
Task of protecting: National Ombudsman

**Contact:**

Pierre Biver  
Conseiller de Direction  
Ministry of Family Affairs & Integration  
12-14 avenue Emile Reuter  
L-2919 Luxembourg  
[pierre.biver@fm.etat.lu](mailto:pierre.biver@fm.etat.lu)

**Malta**

**Focal Point:** Ministry for Justice, Dialogue and the Family

**Coordination mechanism:** Ministry for Justice, Dialogue and the Family

**Independent mechanism:** National Commission Persons with Disability (KNPD)

**Contact:**

For implementation: Anne-Marie Callus, Kummissjoni Nazzjonali Persuni b'Dizabilità,  
Bugeia Institute, Braille Street, St Venera

The National Commission Persons with Disability (KNPD) established by the Equal Opportunities (Persons with Disability) Act (includes representatives of the main Government Ministries and also the voluntary sector working in the field).

**The Netherlands**

**Focal Point:** The Ministry of Health, Welfare and Sport (VWS)

**Coordination mechanism:** Proposed network of representatives from all layers of government.

**Independent mechanism:** National Human Rights Institute

**Contact:**

Nicolette Damen  
Ministry of Health, Welfare and Sport  
PO Box 20350  
NL 2500 EJ The Hague  
Tel: + 31 70 340 7284  
E: [nicolette.damen@minvws.nl](mailto:nicolette.damen@minvws.nl)

Léon Poffé  
Ministry of Health, Welfare and Sport

PO Box 20350  
NL 2500 EJ The Hague  
Tel: + 31 70 340 6016E: [lr.poffe@minvws.nl](mailto:lr.poffe@minvws.nl)

## **Poland**

**Focal Point:** Ministry of Labour and Social Policy

**Coordination mechanism:** none established

**Independent mechanism:** none established

**Contact:**

Joanna Maciejewska, [joanna.maciejewska@mpips.gov.pl](mailto:joanna.maciejewska@mpips.gov.pl)  
Ministry of Labour and Social Policy,  
Department of Economic Analyses and Forecasts,  
Nowogrodzka 1/3/5, 00-513 Warsaw, Poland  
Tel: (48 22) 66 11 704, fax. (48 22) 66 11 243

Małgorzata Kiełducka, [malgorzata.kielducka@mpips.gov.pl](mailto:malgorzata.kielducka@mpips.gov.pl)  
Ministry of Labour and Social Policy, Office of the Government Plenipotentiary for Disabled  
Persons,  
Nowogrodzka 1/3/5, 00-513 Warsaw, Poland  
Tel: +48 22 529 06 12, fax. +48 22 529 06 02

## **Portugal**

**Focal point:** to be designated

**Coordination mechanism:** National Institute for the Rehabilitation (waiting for  
Governmental designation)

**Independent mechanism:** to be designated

**Contact:**

José Madeira Serôdio (PhD)  
National Institute for the Rehabilitation  
Av. Conde de Valbom 63  
1069-178 Lisbon  
Portugal  
Tel: 00351 21 792 95 00  
Fax: 00351 21 792 95 95  
E-mail: José.M.Serodio@inr.mtss.pt

## **Romania**

**Focal Point:** Ministry of Labor, Family and Social Protection / General Directorate for the Protection of Persons with Handicap

**Coordination mechanism:** Ministry of Labor, Family and Social Protection / General Directorate for the Protection of Persons with Handicap

**Independent mechanism:** none established

**Contact:**

Gabriela Dobre

General Directorate for the Protection of Persons with Handicap

Ministry of Labor, Family and Social Protection

194, Calea Victoriei, 1<sup>st</sup> District, Bucharest, Romania

Tel: +4 021 212 54 38

Fax: +4 021 212 54 43

[gabriela.dobre@anph.ro](mailto:gabriela.dobre@anph.ro)

**Slovak Republic**

**Focal Point:** none established

**Coordination mechanism:** none established

**Independent mechanism:** none established

With regard to the fact that the SR Government through a vote of no confidence by the legislative body has lost the mandate to carry out its function, the contact point together with the coordination mechanism in the framework of central government will be established only after the early parliamentary elections in June 2012.

**Contact:** (will be confirmed after the establishment of coordination mechanism)

Ministry of Labour, Social Affairs and Family of the Slovak Republic

Spitalska 4-6

816 43 Bratislava

Slovakia

Tel.: +421 2 2046 1055

Fax.: +421 2 2046 1075

[dana.podobna@employment.gov.sk](mailto:dana.podobna@employment.gov.sk)

**Slovenia**

**Focal Point:** Ministry of Labour, Family and Social Affairs, Directorate for persons with disability

**Coordination mechanism:** None established

**Independent mechanisms:** Government Council for Persons with Disabilities;



[National Council of Disabled People's Organisation of Slovenia \(NSIOS\)](#)

**Contact:**

Cveto Uršič,  
Ministry of Labour and Social Affairs, general director, Directorate for disabled  
Kotnikova 28, 1000 Ljubljana, SLOVENIA, tel: + 386 1 369 75 38, fax: +386 1 369 75 64  
[cveto.ursic@gov.si](mailto:cveto.ursic@gov.si)

Governmental Council for Persons with Disabilities  
Relevant ministries  
Slovenian National Council of disabled people's organizations

**Spain**

**Focal Point :** Ministry of Foreign Affairs and Cooperation as well as the Ministry of Health, Social Services and Equality<sup>114</sup>, through Directorate-General for Disability Support Policies, which is responsible for the coordination of both.

**Coordination:** National Disability Council (General State Administration, Associations of common public interest, experts advisors).

**Independent Mechanism:** CERMI (Spanish Committee of Representatives of Persons with Disabilities) created by the National Disability Council

**Contact:**

Ignacio Tremiño  
[dgdiscapacidad@mssi.es](mailto:dgdiscapacidad@mssi.es)  
General Director of Disability Support Policies. Ministry of Health, Social Policy and Equality  
Paseo de la Castellana 67-6ª planta  
tel: + 34 918226502/03

Eva Mendoza  
[eva.mendoza@maec.es](mailto:eva.mendoza@maec.es)  
Humans Rights Office - Ministry of Foreign Affairs and Cooperation (MAEC)

**Sweden**

**Focal Point:** Ministry of Health and Social Affairs

**Coordinating mechanisms:** Social Services Division of the Ministry of Health and Social Affairs; Swedish Agency for Disability Policy Coordination

**Independent mechanism:** none established

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<sup>114</sup> The recent ministerial reorganization undertaken by the Spanish government, under which social policies, and therefore the UNCRPD, have been assigned to the new Ministry of Health, Social Services and Equality.

**Contact:**

Malin Ekman Aldén, [malin.ekman-alden@social.ministry.se](mailto:malin.ekman-alden@social.ministry.se)  
Ministry of Health and Social Affairs Social Services Division  
Tel: +46 8 405 11 15

**UK**

**Focal Point:** Office for Disability Issues (ODI)

**Coordinating mechanism:** Office for Disability Issues (ODI)

**Independent mechanisms:** UK's four equality and human rights Commissions i.e. the Equality and Human Rights Commission (EHRC), the Scottish Human Rights Commission (SHRC), the Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission for Northern Ireland (ECNI)

**Contact:**

Stephen Thrower, [Stephen.thrower@dwp.gsi.gov.uk](mailto:Stephen.thrower@dwp.gsi.gov.uk)  
UN Convention and International Team,  
Ground Floor, Caxton House  
Tothill Street  
London SW1H 9NA  
Tel: +44 20 7449 5072,  
Fax: +44 20 7449 5087

Department for Work and Pensions; Office for Disability Issues

**European Union**

**Focal point:** European Commission

**Coordination mechanism:** none established

**Independent mechanism:** none established

**Contact:**

Johan ten Geuzendam,  
Head of Unit,  
D3 Rights of Persons with Disabilities  
European Commission  
DG Justice  
Rue Luxembourg 46 - 1049 Brussels

## **ANNEX 3: WEBSITES**

### **Belgium**

Federal Ministry of Social Security: [www.socialsecurity.fgov.be/](http://www.socialsecurity.fgov.be/)

Flemish administration for 'Equal Opportunities in Flanders' : [www.gelijkekansen.be](http://www.gelijkekansen.be)

Walloon Agency for Integration of Persons with Disabilities : [www.awiph.be/](http://www.awiph.be/)

Brussels Joint Community Commission : [www.bico.irisnet.be](http://www.bico.irisnet.be)

Office of the German-speaking Community for Persons with Disabilities: [www.dpb.be](http://www.dpb.be)

### **Cyprus**

Ministry of Labour and Social Insurance: [www.mlsi.gov.cy](http://www.mlsi.gov.cy)

Department for Social Inclusion of Persons with Disabilities: [www.mlsi.gov.cy/dsid](http://www.mlsi.gov.cy/dsid)

### **Czech Republic**

Ministry of Labour and Social Affairs: [www.mpsv.cz](http://www.mpsv.cz)

Czech National Disability Council: [www.nrzp.cz](http://www.nrzp.cz)

### **Denmark**

Ministry of Social Affairs and Integration: [www.ism.dk](http://www.ism.dk)

### **Estonia**

Ministry of Social Affairs: [www.sm.ee](http://www.sm.ee)

The Estonian Chamber of Disabled People [www.epikoda.ee](http://www.epikoda.ee)

### **Finland**

Electronic Treaty Data Base [www.finlex.fi](http://www.finlex.fi)

Ministry of Foreign Affairs [formin.finland.fi](http://formin.finland.fi)

### **France**

Ministry for Solidarity and Social Cohesion: <http://www.solidarite.gouv.fr/>

### **Germany**

Federal Ministry of Labour and Social Affairs:

[www.bmas.de](http://www.bmas.de)

Portal for persons with disabilities, their family, administrations and enterprises

[www.einfach-teilhabe.de](http://www.einfach-teilhabe.de)

Federal Commissioner:

[www.behindertenbeauftragter.de](http://www.behindertenbeauftragter.de)

Monitoring Mechanism:

[www.institut-fuer-menschenrechte.de/en/monitoring-mechanism.html](http://www.institut-fuer-menschenrechte.de/en/monitoring-mechanism.html)

### **Greece**

Ministry of Health and Social Security: [www.mohaw.gr](http://www.mohaw.gr),

National Confederation of People with Disabilities: [www.esaea.gr](http://www.esaea.gr)

### **Hungary**

<http://www.szmm.gov.hu>

### **Ireland**

<http://www.justice.ie/en/JELR/Pages/Disability%20Policy>

### **Italy**

Ministry for Social Solidarity  
[www.solidarietasociale.gov.it](http://www.solidarietasociale.gov.it)

### **Latvia**

Ministry of Welfare  
[www.lm.gov.lv](http://www.lm.gov.lv)

### **Lithuania**

Ministry of Social Security and Labour and Department of Disabled People  
[http://www.ndt.lt/id-teises\\_aktai.html](http://www.ndt.lt/id-teises_aktai.html); <http://www.socmin.lt/>

### **Luxembourg**

Ministry of Family Affairs and Integration  
<http://www.mfi.public.lu/>

### **Malta**

National Commission Persons with Disability (NCPD) website <http://www.knpd.org>.

### **The Netherlands**

[www.rijksoverheid.nl/onderwerpen/gehandicapten/gelijke-behandeling](http://www.rijksoverheid.nl/onderwerpen/gehandicapten/gelijke-behandeling) (Dutch)  
[www.rijksoverheid.nl](http://www.rijksoverheid.nl)

### **Poland**

Ministry of Labour and Social Policy websites: [www.mpips.gov.pl](http://www.mpips.gov.pl),  
<http://www.niepelnosprawni.gov.pl/dokumenty-organizacji-narodow-zj/konwencja-o-prawach/>

### **Portugal**

The Ministry of Solidarity and Social Security  
The National Institute for Rehabilitation, I.P. [www.inr.pt](http://www.inr.pt)

### **Romania**

National Authority for Persons with Handicap: [www.anph.ro](http://www.anph.ro)

### **Slovakia**

Ministry of Labour, Social Affairs and Family of the Slovak Republic  
[www.employment.gov.sk](http://www.employment.gov.sk)

### **Slovenia**

<http://www.mddsz.gov.si/en/legislation/>  
<http://www.mddsz.gov.si/en/publications/>

### **Spain**

Ministry of Health, Social Services and Equality: [www.msssi.es](http://www.msssi.es)  
Ministry of Foreign Affairs and Cooperation: [www.maec.es](http://www.maec.es)  
Comité Español de Representantes de Personas con discapacidad (CERMI): [www.cermi.es](http://www.cermi.es)

## **Sweden**

Government's home page: [www.sweden.gov.se](http://www.sweden.gov.se)

Contains an Easy Read version of the Convention, Braille and sign language.

## **UK**

[www.officefordisability.gov.uk](http://www.officefordisability.gov.uk)

Contains English language Easy Read version of the Convention.

## **European Union**

Until April: <http://ec.europa.eu/social/main.jsp?catId=429&langId=en>

After May 2011 [http://ec.europa.eu/justice/policies/intro/policies\\_intro\\_en.htm](http://ec.europa.eu/justice/policies/intro/policies_intro_en.htm)

## **Other relevant websites**

<http://www.un.org/disabilities/>

[www.easpd.eu](http://www.easpd.eu)

[www.handicap.dk](http://www.handicap.dk)

[www.nrozp.sk](http://www.nrozp.sk)

[www.cnditalia.it](http://www.cnditalia.it)

[www.superando.it](http://www.superando.it)

[www.edf-feph.org/](http://www.edf-feph.org/)

[www.epr.eu](http://www.epr.eu)

[www.enil.eu](http://www.enil.eu)

[www.coface-eu.org](http://www.coface-eu.org)

<http://www.un-convention.info/index.html>

Independent (part funded by the UK Government) UK website dedicated to promoting disabled persons human rights.

## **ANNEX 4: NORWAY'S CONTRIBUTION TO THE 5<sup>TH</sup> HIGH LEVEL GROUP REPORT ON THE IMPLEMENTATION OF THE UNCRPD**

### **Ratification of CRPD.**

Norway signed the CRPD on 30. March 2007, the day of opening for signature. Norwegian legislation complies with the Convention, with the exception that a new act on legal capacity and guardianship has not yet been implemented. The new act was necessary to bring our legislation i compliance with article 12 of the CRPD. A new administration has to be set up to administer a more professionalized system of supportive guardians. Since legal capacity and guardianship concerns a civil right, the Government deems that the new legislation has to be implemented before ratification. The Government aims at ratifying the CRPD and will submit a proposition to the Parliament in the near future.

### **National implementation and monitoring**

Each government ministry is responsible for disability matters within its field of competence. Norwegian policy has for many years had the same goals as the CRPD. The Ministry of Children, Equality and Social Inclusion coordinates the government's disability policy and functions as focal point for CRPD matters. That ministry chairs the government's committee of state secretaries on disability matters. 11 ministries are represented.

The Equality and Anti-discrimination Ombud is responsible for promoting, protecting and monitoring the important Anti-discrimination and Accessibility Act. The Ombud has these functions also as concerns CEDAW and CERD. In addition the Ombud has a special responsibility for monitoring living conditions for persons with disabilities.

There are a number of mechanisms for participation of persons with disabilities and their representative organizations in disability issues.

On national level:

- Regular meetings on political level between the Government and representatives of the organizations of persons with disabilities several times a year.
- Additional Meetings on political and administrative level between individual ministries and umbrella organizations or individual organizations from time to time and on specific issues.
- The National Disability Council is a forum for consultation between the government, disability organizations and experts on disability issues.

On County Council and Municipal level:

- Each County Council and Municipal Council is obliged by law the have an advisory Council on Disability matters to ensure participation of persons with disability on important matters, including accessibility, discrimination and services. In addition to representatives of persons with disabilities representative of the County or Municipal Council often take part in these advisory councils.

Norwegian disability organizations receive an annual government subsidy of more than NOK 100 million.

Formal decisions on the implementation on article 33 of CRPD will be taken in connection with its ratification.

### **Collecting statistics and /or developing indicators.**

Statistic Norway (SSB) has the overall responsibility for meeting the need for statistics on Norwegian society and is also responsible for coordinating all official statistics in Norway. There is no established official definition on disability to be used in preparation of all statistics. Thus disability is defined according to the purpose of the statistics. Eurostat has developed a questionnaire, (European Disability and Social Integration Module) which partly has been integrated in the living condition survey on health.(Health Interview Survey) However, SSB prepare several statistics which include markers on disability, some of them may also be disaggregated on gender and age. Some examples: The Labour Force Survey, the Population and Housing Census, and Living Conditions Survey on Health in Norway. Norway also conducts the EU-Silc, which might be disaggregated on disability.

### **Accessibility in national law.**

In Norway accessibility legislation is found both in legislation concerning technical issues and as part of antidiscrimination legislation. Necessary links are made between the two when covering the same aspects of accessibility.

Accessibility requirements were first introduced in the building legislation in 1976. The requirements have been strengthened and expanded by later revisions. The latest revision was (made) in 2010 when universal design replaced accessibility as the defined objective in the building legislation, widening the scope of requirements and the required quality of accessibility to buildings and constructions.

Universal design is also required in legislation concerning city planning/outdoor environments, transport and public procurement. An Anti-Discrimination and Accessibility Act has been effective in Norway since 2009. It protects people with disabilities from discrimination and requires that public and private undertakings that offer goods or services to the general public are obliged to ensure the universal design of the undertaking's normal function provided this does not entail an undue burden for the undertaking. This covers the physical environment as well as the undertakings ICT services.

Requirements for further accessibility to services and goods and strengthened requirements for ICT services are under preparation for inclusion in the Anti-Discrimination and Accessibility Act.

Norway signed the UN convention on the Rights of Persons with Disabilities in 2003. The convention has been carefully examined to decide if more accessibility legislation should be introduced to comply with the convention. This has verified that the existing and pending Norwegian plans, policies and legislation in the field of accessibility are in line with the convention.

The premises of all public and private services directed towards the public in new buildings must be universally designed according to the building legislation. There are no exceptions to this requirement. In addition sectorial legislation has specific and more extensive requirements concerning universal design and accessibility, i.e. schools and universities, selected public offices and transport.

The Anti-Discrimination and Accessibility Act requires universal design of the undertaking's normal function provided this does not entail an undue burden for the undertaking. This requirement is also effective for services located in existing/old buildings, and covers all services directed towards the public.

The Public Procurement Act requires that all services and products purchased by providers of public services should be evaluated in accordance with universal design. There are no exceptions to this requirement except products and services where universal design is not relevant. All providers of services directed towards the public must comply with the Anti-Discrimination and Accessibility Act which requires that the physical means used in providing the service, including ICT, should be universally designed.

Concrete regulations concerning products are effective for some products, mainly those used in environments which should be accessible to the public. Examples of this are busses, ships and other means of transport affected by EU-regulations. In addition construction products such as elevators, electric switches, water-taps etc should be universally designed according to building regulations. A number of other products are covered by national standards and comparable guidelines. The scope of these standards is wide, covering ICT, out-door areas, infrastructure and more.

To support the implementation of national laws on universal design and accessibility and stimulate the work towards a universally designed society the Norwegian Government has launched action plans. The plan in operation is "Norway universally designed by 2025 The Norwegian government's action plan for universal design and increased accessibility 2009-2013.

Products for private use (with the exception of technical aids), are as a rule not covered by accessibility regulations. A national project conducted by the Norwegian Design Council is in operation to increase the use of universal design when designing products for the private sphere. Typical products dealt with in this project are toothbrushes, cutlery and kitchen equipment, packaging, internet design, cars etc.

Since it has been decided to use universal design when implementing accessibility in Norway, a number of new national standards have been developed. In addition existing standard have been reviewed and revised to cover the level of accessibility required by universal design. New standards has been developed amongst others for buildings, out-door areas, ICT and transport. A standard for goods and services is pending. International standards are used or included in national standards when relevant.

The various laws requiring universal design differs slightly when it comes to enforcement, but in general the enforcement is done administratively. A breach of the law can, if not corrected, result in fines or injunction to correct situation. If a case is not resolved the parties it may be brought to court.

The Anti-Discrimination and Accessibility Act is enforced by The Equality and Anti-Discrimination Ombud. Anyone affected can bring a claim to the Ombud.

The law enforcement role of the Ombud includes making statements in connection with complaints regarding violations of laws and regulations that are within the working scope of



the Ombud. The Equality and Anti-Discrimination Tribunal will try appeals based on the Ombuds statements. Parties may take the case to court if the Tribunal's conclusion is not accepted.

The Norwegian policies on universal design and accessibility take into account views expressed by NGOs and other parties. Representatives from interest organizations for people with disabilities participate in all relevant committees and panels.

Links: [Norway universally designed by 2025 The Norwegian government's action plan for universal design and increased accessibility 2009-2013.](#)

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**COUNCIL DIRECTIVE 2000/78/EC**  
**of 27 November 2000**  
**establishing a general framework for equal treatment in employment and occupation**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 13 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the Opinion of the European Parliament <sup>(2)</sup>,

Having regard to the Opinion of the Economic and Social Committee <sup>(3)</sup>,

Having regard to the Opinion of the Committee of the Regions <sup>(4)</sup>,

Whereas:

- (1) In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States and it respects fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community law.
- (2) The principle of equal treatment between women and men is well established by an important body of Community law, in particular in Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions <sup>(5)</sup>.
- (3) In implementing the principle of equal treatment, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.
- (4) The right of all persons to equality before the law and protection against discrimination constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human

Rights and Fundamental Freedoms, to which all Member States are signatories. Convention No 111 of the International Labour Organisation (ILO) prohibits discrimination in the field of employment and occupation.

- (5) It is important to respect such fundamental rights and freedoms. This Directive does not prejudice freedom of association, including the right to establish unions with others and to join unions to defend one's interests.
- (6) The Community Charter of the Fundamental Social Rights of Workers recognises the importance of combating every form of discrimination, including the need to take appropriate action for the social and economic integration of elderly and disabled people.
- (7) The EC Treaty includes among its objectives the promotion of coordination between employment policies of the Member States. To this end, a new employment chapter was incorporated in the EC Treaty as a means of developing a coordinated European strategy for employment to promote a skilled, trained and adaptable workforce.
- (8) The Employment Guidelines for 2000 agreed by the European Council at Helsinki on 10 and 11 December 1999 stress the need to foster a labour market favourable to social integration by formulating a coherent set of policies aimed at combating discrimination against groups such as persons with disability. They also emphasise the need to pay particular attention to supporting older workers, in order to increase their participation in the labour force.
- (9) Employment and occupation are key elements in guaranteeing equal opportunities for all and contribute strongly to the full participation of citizens in economic, cultural and social life and to realising their potential.
- (10) On 29 June 2000 the Council adopted Directive 2000/43/EC <sup>(6)</sup> implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. That Directive already provides protection against such discrimination in the field of employment and occupation.
- (11) Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social

<sup>(1)</sup> OJ C 177 E, 27.6.2000, p. 42.

<sup>(2)</sup> Opinion delivered on 12 October 2000 (not yet published in the Official Journal).

<sup>(3)</sup> OJ C 204, 18.7.2000, p. 82.

<sup>(4)</sup> OJ C 226, 8.8.2000, p. 1.

<sup>(5)</sup> OJ L 39, 14.2.1976, p. 40.

<sup>(6)</sup> OJ L 180, 19.7.2000, p. 22.

- protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.
- (12) To this end, any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community. This prohibition of discrimination should also apply to nationals of third countries but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and occupation.
- (13) This Directive does not apply to social security and social protection schemes whose benefits are not treated as income within the meaning given to that term for the purpose of applying Article 141 of the EC Treaty, nor to any kind of payment by the State aimed at providing access to employment or maintaining employment.
- (14) This Directive shall be without prejudice to national provisions laying down retirement ages.
- (15) The appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with rules of national law or practice. Such rules may provide, in particular, for indirect discrimination to be established by any means including on the basis of statistical evidence.
- (16) The provision of measures to accommodate the needs of disabled people at the workplace plays an important role in combating discrimination on grounds of disability.
- (17) This Directive does not require the recruitment, promotion, maintenance in employment or training of an individual who is not competent, capable and available to perform the essential functions of the post concerned or to undergo the relevant training, without prejudice to the obligation to provide reasonable accommodation for people with disabilities.
- (18) This Directive does not require, in particular, the armed forces and the police, prison or emergency services to recruit or maintain in employment persons who do not have the required capacity to carry out the range of functions that they may be called upon to perform with regard to the legitimate objective of preserving the operational capacity of those services.
- (19) Moreover, in order that the Member States may continue to safeguard the combat effectiveness of their armed forces, they may choose not to apply the provisions of this Directive concerning disability and age to all or part of their armed forces. The Member States which make that choice must define the scope of that derogation.
- (20) Appropriate measures should be provided, i.e. effective and practical measures to adapt the workplace to the disability, for example adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources.
- (21) To determine whether the measures in question give rise to a disproportionate burden, account should be taken in particular of the financial and other costs entailed, the scale and financial resources of the organisation or undertaking and the possibility of obtaining public funding or any other assistance.
- (22) This Directive is without prejudice to national laws on marital status and the benefits dependent thereon.
- (23) In very limited circumstances, a difference of treatment may be justified where a characteristic related to religion or belief, disability, age or sexual orientation constitutes a genuine and determining occupational requirement, when the objective is legitimate and the requirement is proportionate. Such circumstances should be included in the information provided by the Member States to the Commission.
- (24) The European Union in its Declaration No 11 on the status of churches and non-confessional organisations, annexed to the Final Act of the Amsterdam Treaty, has explicitly recognised that it respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and that it equally respects the status of philosophical and non-confessional organisations. With this in view, Member States may maintain or lay down specific provisions on genuine, legitimate and justified occupational requirements which might be required for carrying out an occupational activity.
- (25) The prohibition of age discrimination is an essential part of meeting the aims set out in the Employment Guidelines and encouraging diversity in the workforce. However, differences in treatment in connection with age may be justified under certain circumstances and therefore require specific provisions which may vary in accordance with the situation in Member States. It is therefore essential to distinguish between differences in treatment which are justified, in particular by legitimate employment policy, labour market and vocational training objectives, and discrimination which must be prohibited.
- (26) The prohibition of discrimination should be without prejudice to the maintenance or adoption of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular religion or belief, disability, age or sexual orientation, and such measures may permit organisations of persons of a particular religion or belief, disability, age or sexual orientation where their main object is the promotion of the special needs of those persons.

- (27) In its Recommendation 86/379/EEC of 24 July 1986 on the employment of disabled people in the Community <sup>(1)</sup>, the Council established a guideline framework setting out examples of positive action to promote the employment and training of disabled people, and in its Resolution of 17 June 1999 on equal employment opportunities for people with disabilities <sup>(2)</sup>, affirmed the importance of giving specific attention *inter alia* to recruitment, retention, training and lifelong learning with regard to disabled persons.
- (28) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.
- (29) Persons who have been subject to discrimination based on religion or belief, disability, age or sexual orientation should have adequate means of legal protection. To provide a more effective level of protection, associations or legal entities should also be empowered to engage in proceedings, as the Member States so determine, either on behalf or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.
- (30) The effective implementation of the principle of equality requires adequate judicial protection against victimisation.
- (31) The rules on the burden of proof must be adapted when there is a *prima facie* case of discrimination and, for the principle of equal treatment to be applied effectively, the burden of proof must shift back to the respondent when evidence of such discrimination is brought. However, it is not for the respondent to prove that the plaintiff adheres to a particular religion or belief, has a particular disability, is of a particular age or has a particular sexual orientation.
- (32) Member States need not apply the rules on the burden of proof to proceedings in which it is for the court or other competent body to investigate the facts of the case. The procedures thus referred to are those in which the plaintiff is not required to prove the facts, which it is for the court or competent body to investigate.
- (33) Member States should promote dialogue between the social partners and, within the framework of national practice, with non-governmental organisations to address different forms of discrimination at the workplace and to combat them.
- (34) The need to promote peace and reconciliation between the major communities in Northern Ireland necessitates the incorporation of particular provisions into this Directive.
- (35) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.

- (36) Member States may entrust the social partners, at their joint request, with the implementation of this Directive, as regards the provisions concerning collective agreements, provided they take any necessary steps to ensure that they are at all times able to guarantee the results required by this Directive.
- (37) In accordance with the principle of subsidiarity set out in Article 5 of the EC Treaty, the objective of this Directive, namely the creation within the Community of a level playing-field as regards equality in employment and occupation, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the action, be better achieved at Community level. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAS ADOPTED THIS DIRECTIVE:

#### CHAPTER I

#### GENERAL PROVISIONS

##### Article 1

##### Purpose

The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

##### Article 2

##### Concept of discrimination

1. For the purposes of this Directive, the 'principle of equal treatment' shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.
2. For the purposes of paragraph 1:
  - (a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;
  - (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:
    - (i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or

<sup>(1)</sup> OJ L 225, 12.8.1986, p. 43.

<sup>(2)</sup> OJ C 186, 2.7.1999, p. 3.

(ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.

3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

4. An instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.

5. This Directive shall be without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others.

#### Article 3

##### Scope

1. Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

- (a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- (c) employment and working conditions, including dismissals and pay;
- (d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

2. This Directive does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

3. This Directive does not apply to payments of any kind made by state schemes or similar, including state social security or social protection schemes.

4. Member States may provide that this Directive, in so far as it relates to discrimination on the grounds of disability and age, shall not apply to the armed forces.

#### Article 4

##### Occupational requirements

1. Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

2. Member States may maintain national legislation in force at the date of adoption of this Directive or provide for future legislation incorporating national practices existing at the date of adoption of this Directive pursuant to which, in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos. This difference of treatment shall be implemented taking account of Member States' constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination on another ground.

Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos.

#### Article 5

##### Reasonable accommodation for disabled persons

In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.

#### Article 6

##### Justification of differences of treatment on grounds of age

1. Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate

aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

Such differences of treatment may include, among others:

- (a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;
- (b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;
- (c) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.

2. Notwithstanding Article 2(2), Member States may provide that the fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits, including the fixing under those schemes of different ages for employees or groups or categories of employees, and the use, in the context of such schemes, of age criteria in actuarial calculations, does not constitute discrimination on the grounds of age, provided this does not result in discrimination on the grounds of sex.

#### *Article 7*

##### **Positive action**

1. With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the grounds referred to in Article 1.
2. With regard to disabled persons, the principle of equal treatment shall be without prejudice to the right of Member States to maintain or adopt provisions on the protection of health and safety at work or to measures aimed at creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working environment.

#### *Article 8*

##### **Minimum requirements**

1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.
2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.

## CHAPTER II

### REMEDIES AND ENFORCEMENT

#### *Article 9*

##### **Defence of rights**

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.
2. Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.
3. Paragraphs 1 and 2 are without prejudice to national rules relating to time limits for bringing actions as regards the principle of equality of treatment.

#### *Article 10*

##### **Burden of proof**

1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.
2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.
3. Paragraph 1 shall not apply to criminal procedures.
4. Paragraphs 1, 2 and 3 shall also apply to any legal proceedings commenced in accordance with Article 9(2).
5. Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case.

#### *Article 11*

##### **Victimisation**

Member States shall introduce into their national legal systems such measures as are necessary to protect employees against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.

*Article 12***Dissemination of information**

Member States shall take care that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force in this field, are brought to the attention of the persons concerned by all appropriate means, for example at the workplace, throughout their territory.

*Article 13***Social dialogue**

1. Member States shall, in accordance with their national traditions and practice, take adequate measures to promote dialogue between the social partners with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct and through research or exchange of experiences and good practices.

2. Where consistent with their national traditions and practice, Member States shall encourage the social partners, without prejudice to their autonomy, to conclude at the appropriate level agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect the minimum requirements laid down by this Directive and by the relevant national implementing measures.

*Article 14***Dialogue with non-governmental organisations**

Member States shall encourage dialogue with appropriate non-governmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on any of the grounds referred to in Article 1 with a view to promoting the principle of equal treatment.

## CHAPTER III

**PARTICULAR PROVISIONS***Article 15***Northern Ireland**

1. In order to tackle the under-representation of one of the major religious communities in the police service of Northern Ireland, differences in treatment regarding recruitment into that service, including its support staff, shall not constitute discrimination insofar as those differences in treatment are expressly authorised by national legislation.

2. In order to maintain a balance of opportunity in employment for teachers in Northern Ireland while furthering the reconciliation of historical divisions between the major religious communities there, the provisions on religion or belief in this Directive shall not apply to the recruitment of teachers in

schools in Northern Ireland in so far as this is expressly authorised by national legislation.

## CHAPTER IV

**FINAL PROVISIONS***Article 16***Compliance**

Member States shall take the necessary measures to ensure that:

- (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;
- (b) any provisions contrary to the principle of equal treatment which are included in contracts or collective agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations are, or may be, declared null and void or are amended.

*Article 17***Sanctions**

Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 2 December 2003 at the latest and shall notify it without delay of any subsequent amendment affecting them.

*Article 18***Implementation**

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 2 December 2003 at the latest or may entrust the social partners, at their joint request, with the implementation of this Directive as regards provisions concerning collective agreements. In such cases, Member States shall ensure that, no later than 2 December 2003, the social partners introduce the necessary measures by agreement, the Member States concerned being required to take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

In order to take account of particular conditions, Member States may, if necessary, have an additional period of 3 years from 2 December 2003, that is to say a total of 6 years, to implement the provisions of this Directive on age and disability discrimination. In that event they shall inform the Commission forthwith. Any Member State which chooses to use this additional period shall report annually to the Commission on the steps it is taking to tackle age and disability discrimination and on the progress it is making towards implementation. The Commission shall report annually to the Council.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

*Article 19*

**Report**

1. Member States shall communicate to the Commission, by 2 December 2005 at the latest and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

2. The Commission's report shall take into account, as appropriate, the viewpoints of the social partners and relevant non-governmental organisations. In accordance with the principle of gender mainstreaming, this report shall, *inter alia*, provide an assessment of the impact of the measures taken on women and men. In the light of the information received, this

report shall include, if necessary, proposals to revise and update this Directive.

*Article 20*

**Entry into force**

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

*Article 21*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 27 November 2000.

*For the Council*

*The President*

É. GUIGOU

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JUDGMENT OF THE COURT (Second Chamber)

6 December 2012 (\*)

(Equal treatment in employment and occupation – Directive 2000/78/EC – Prohibition against any discrimination on grounds of age or disability – Compensation on termination of employment – Social plan providing for a reduction in the amount of redundancy compensation paid to disabled workers)

In Case C-152/11,

REFERENCE for a preliminary ruling pursuant to Article 267 TFEU from the Arbeitsgericht München (Germany), made by decision of 17 February 2011, received at the Court on 28 March 2011, in the proceedings

Johann Odar

v

Baxter Deutschland GmbH,

THE COURT (Second Chamber),

composed of: A. Rosas, acting President of the Second Chamber, U. Löhmus, A. Ó Caoimh, A. Arabadjiev (Rapporteur) and C.G. Fernlund, Judges,

Advocate General: E. Sharpston,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 18 April 2012,

after considering the observations submitted on behalf of:

- Dr Odar, by S. Saller and B. Renkl, Rechtsanwälte,
- Baxter Deutschland GmbH, by C. Grundmann, Rechtsanwältin,
- the German Government, by T. Henze, J. Möller and N. Graf Vitzthum, acting as Agents,
- the European Commission, by J. Enegren and V. Kreuzschitz, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 July 2012,

gives the following

## Judgment

1 The reference for a preliminary ruling concerns the interpretation of Article 2 and paragraph (a) of the second subparagraph of Article 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

2 That reference was made in the context of proceedings involving Dr Odar and his former employer, Baxter Deutschland GmbH ('Baxter'), concerning the amount of compensation on termination of employment received by him under the Contingency Social Plan ('CSP') concluded by Baxter and its works council.

## Legal context

### European Union law

3 Recitals 8, 11, 12 and 15 in the preamble to Directive 2000/78 are worded as follows:

'(8) The Employment Guidelines for 2000 agreed by the European Council at Helsinki on 10 and 11 December 1999 stress the need to foster a labour market favourable to social integration by formulating a coherent set of policies aimed at combating discrimination against groups such as persons with disability. They also emphasise the need to pay particular attention to supporting older workers, in order to increase their participation in the labour force.

...

(11) Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.

(12) To this end, any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community. ...

...

(15) The appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with rules of national law or practice.

Such rules may provide, in particular, for indirect discrimination to be established by any means including on the basis of statistical evidence.'

4 Article 1 states that 'the purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment'.

5 Article 2, entitled 'Concept of discrimination', provides:

'1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or

(ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.'

6 Article 3 of Directive 2000/78, entitled 'Scope', provides in paragraph 1:

'Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

...

(c) employment and working conditions, including dismissals and pay;

...'

7 Article 6 of the same directive, entitled 'Justification of differences of treatment on grounds of age', provides in paragraph 1:

'Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

Such differences of treatment may include, among others:

(a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;

...'

8 Article 16 of that directive provides:

'Member States shall take the necessary measures to ensure that:

(a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;

(b) any provisions contrary to the principle of equal treatment which are included in contracts or collective agreements ... are, or may be, declared null and void or are amended.'

German law

German legislation

9 Directive 2000/78 was transposed into German law by the General Law on equal treatment (Allgemeines Gleichbehandlungsgesetz) of 14 August 2006 (BGBl. 2006 I, p. 1897) ('the AGG'). That law provides, in Paragraph 1, headed 'Object of the law':

'The object of this law is to prevent or eliminate any discrimination on grounds of race, ethnic origin, sex, religion or belief, disability, age or sexual orientation.'

10 Paragraph 10 of the AGG, headed 'Permissible difference of treatment on grounds of age', provides:

'Paragraph 8 notwithstanding, a difference of treatment on grounds of age is also permissible if it is objective and reasonable and justified by a legitimate aim. The means of achieving that aim must be appropriate and necessary. Such differences of treatment may include in particular the following:

...

(6) differences in benefits in "social plans" within the meaning of the Law on the organisation of businesses [Betriebsverfassungsgesetz], if the parties have established a compensation scheme which is graduated according to age or length of service and under which the opportunities on the employment market, which depend essentially on age, have been clearly taken into account by a relatively strong emphasis on age, or if the parties have excluded from the benefits of the social plan workers who are financially secure because they are entitled to a pension, after receiving unemployment benefit where applicable.'

11 Paragraphs 111 to 113 of the Law on the organisation of businesses, in the version of 25 September 2001 (BGBl. 2001 I, p. 2518) require arrangements to be put in place in order to alleviate the adverse consequences on workers arising from an operation to restructure an undertaking. Thus, employers and works councils are obliged to conclude social plans to that effect.

12 Paragraph 112 of the Law on the organisation of businesses, entitled 'Agreement on structural changes in the undertaking and social plan', provides in paragraph 1:

'If the management and the works council arrive at an agreement to balance the interests in connection with planned structural changes to the undertaking, the agreement shall be in writing and signed by both parties. The same shall apply in the event of an agreement providing for compensation or mitigation of the economic consequences for the workers resulting from the planned changes to the undertaking (social plan). The social plan shall have the same effects as a works agreement ...'

13 Under Paragraph 127 of the Social Security Code (Sozialgesetzbuch), which is found in Book III of that code, regular unemployment benefits are paid for a limited period, determined according to the age of the worker and duration of contributions. A worker is entitled to unemployment benefit corresponding to 12 months' salary before he turns 50, 15 months' salary after turning 50, 18 months' salary after turning 55 and 24 months' salary upon turning 58.

#### The Contingency Social Plan and the Supplementary Social Plan

14 On 30 April 2004 Baxter concluded a CSP with the company's works council, paragraph 6(1)(1.1) to (1.5) of which reads as follows:

‘1. Compensation on termination of employment (except in cases of “early retirement”)

1.1 Employees to whom, in spite of every endeavour, no acceptable job can be offered by Baxter in Germany and for whom there is no question of early termination of employment under paragraph 5 and who leave the company (as a result of redundancy for operational reasons or by mutual agreement), shall receive taxable gross compensation in euros in accordance with the following formula:

Compensation = (age factor x length of service x gross monthly pay) (“standard formula compensation”)

1.2 Age factor table

Age

Age factors

Age

Age factors

Age

Age factors

Age

Age factors

Age

Age factors

18

0.35

28

0.60

38

1.05

48

1.30

58

1.70

19

0.35

29

0.60

39

1.05

49

1.35

59

1.50

20

0.35

30

0.70

40

1.10

50

1.40

60

1.30

21

0.35

31

0.70

41

1.10

51

1.45

61

1.10

22

0.40

32

0.80

42

1.15

52

1.50

62

0.90

23

0.40

33

0.80

43



1.15

53

1.55

63

0.60

24

0.40

34

0.90

44

1.20

54

1.60

64

0.30

25

0.40

35

0.90

45

1.20

55

1.65

26

0.50

36

1.00

46

1.25

56

1.70

27

0.50

37

1.00

47

1.25

57

1.70

...

1.5 In the case of workers who are more than 54 years old and are made redundant on operational grounds or by mutual agreement, the compensation calculated under paragraph 6(1)(1.1) will be compared with that generated by the following formula:

Months until earliest possible beginning of pension x 0.85 x gross monthly pay ("special formula compensation")

Should [the standard formula compensation] be greater than [the special formula compensation] the smaller amount will be payable. However, the

smaller amount must not be less than one half of [the standard formula compensation].

If the figure given by [the special formula compensation] is nil, one half of [the standard formula compensation] will be payable.'

15 On 13 March 2008, Baxter concluded a supplementary social plan ('SSP') with the competent central works council. Paragraph 7 of that plan, relating to compensation, reads as follows:

'Employees covered by this [CSP] and whose employment relationship ends as a result of the operational change will receive the following benefits:

7.1 Compensation: Employees will receive a single payment under paragraph 6(1) [CSP].

7.2 Clarification: With regard to paragraph 6(1.5) of the [CSP], the parties agree on the following clarification: "earliest possible beginning of pension" means the date on which the employee can claim for the first time one of the statutory retirement pensions, including a pension with reductions on the ground that it is drawn early.

...'

The dispute in the main proceedings and the questions referred for a preliminary ruling

16 The applicant in the main proceedings, Dr Odar, is an Austrian national who was born in 1950. He is married with two dependent children. He is recognised as being severely disabled, with his degree of disability being 50%. Dr Odar was employed by Baxter or its legal predecessors from 17 April 1979, most recently holding the post of marketing director.

17 Baxter terminated its employment relationship with Dr Odar by letter of 25 April 2008 and offered him further employment at its premises in Munich-Unterschleißheim (Germany). Dr Odar accepted that offer but subsequently decided to resign on 31 December 2009 after the parties agreed that his resignation would not reduce his entitlement to compensation.

18 The order for reference indicates that, under the German retirement pension scheme, Dr Odar may claim an ordinary old-age pension as of age 65, that is, as from 1 August 2015, as well as a retirement pension for severely disabled persons at age 60, in his case from 1 August 2010.

19 Baxter paid Dr Odar compensation under the CSP of EUR 308 253.31 (gross). Application of the standard formula would have generated a compensation figure of EUR 616 506.63 (gross). In using the special formula and

basing itself on an assumption of earliest possible beginning of pension, namely 1 August 2010, Baxter calculated compensation totalling EUR 197 199.09 (gross). It accordingly paid him the minimum guaranteed amount, that is to say, 50% of EUR 616 506.63.

20 By letter of 30 June 2010, Dr Odar brought an action before the Arbeitsgericht München (Employment Court, Munich), asking that Baxter be ordered to pay him further compensation of EUR 271 988.22 (gross), which corresponds to the difference between the compensation actually paid to him and the amount that he would have received if he had been 54 years old (the period of service being the same) on the date of termination of his employment. Dr Odar submits that the calculation of the compensation due to him under the CSP discriminates against him because of his age and his disability.

21 The referring court seeks clarification as to whether the third sentence of Paragraph 10(6) of the AGG and Paragraph 6(1)(1.5) of the CSP are compatible with Directive 2000/78. It observes that, if the former provision of national law is incompatible with European Union law and, consequently, does not apply, Dr Odar's action before it must be upheld. The rule laid down in the latter provision cannot be based on a rule which is incompatible with that directive.

22 In those circumstances, the Arbeitsgericht München decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'1. Is a national rule which provides that different treatment on the ground of age may be lawful if, in the framework of an occupational social security scheme, the management and the works council have excluded from social plan benefits workers who are financially secure because they are entitled to a pension, after drawing unemployment benefit where applicable, contrary to the prohibition of discrimination on the ground of age, laid down by Articles 1 and 16 of [Directive 2000/78] or is that unequal treatment justified under [the second subparagraph of] Article 6[(1)(a)] of [the directive]?

2. Is a national rule which provides that different treatment on the ground of age may be lawful if, in the framework of an occupational social security scheme, the management and the works council have excluded from social plan benefits workers who are financially secure because they are entitled to a pension, after drawing unemployment benefit where applicable, contrary to the prohibition of discrimination on the ground of disability laid down by Articles 1 and 16 of [Directive 2000/78]?

3. Is a rule of an occupational social security scheme under which, in the case of workers older than 54 years of age who are made redundant on operational grounds, an alternative calculation will be made of the compensation on the basis of the earliest possible date on which their pension will begin – by comparison with the more normal method of calculation, which takes account

in particular of the length of service – and the smaller amount of compensation, though still at least one half of the normal sum in compensation, will be paid, contrary to the prohibition of discrimination on the ground of age laid down by Articles 1 and 16 of [Directive 2000/78], or is that unequal treatment justified under [the second subparagraph of] Article 6[(1)(a)] of [Directive 2000/78]?

4. Is a rule of an occupational social security scheme under which, in the case of workers older than 54 years of age who are made redundant on operational grounds, an alternative calculation will be made of the compensation on the basis of the earliest possible date on which their pension will begin – by comparison with the more normal method of calculation, which takes account in particular of the length of service – and the smaller amount of compensation, though still at least one half of the normal sum in compensation, will be paid, the alternative method of calculation taking into account a retirement pension on the ground of disability, contrary to the prohibition of discrimination on the ground of disability laid down by Articles 1 and 16 of [Directive 2000/78]?’

The questions referred for a preliminary ruling

The first two questions

23 By its first two questions, which it is appropriate to consider together, the referring court asks, in essence, whether Articles 2(2) and 6(1) of Directive 2000/78 must be interpreted as precluding national legislation providing that different treatment on the ground of age may be lawful if, in the framework of an occupational social security scheme, the management and the works council have excluded from social plan benefits workers who are financially secure because they are entitled to a pension, after drawing unemployment benefit where applicable.

24 In that regard, it should be remembered at the outset that, according to the Court’s settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, *inter alia*, Joined Cases C-188/10 and C-189/10 *Melki and Abdeli* [2010] ECR I-5667, paragraph 27; Case C-599/10 *SAG ELV Slovensko and Others* [2012] ECR I-0000, paragraph 15; and Case C-378/10 *VALE Építési* [2012] ECR I-0000, paragraph 18).

25 It is clear that that is precisely the case here.

26 The first two questions relate to a situation, envisaged by the third sentence of Paragraph 10(6) of the AGG, in which the management and the works council have excluded from social plan benefits workers who are financially secure because they are entitled to a pension, after drawing unemployment benefit where applicable.

27 Yet there is nothing in the order for reference indicating that the main proceedings concern such a situation. On the contrary, the referring court has observed that, unlike the possibility provided for in that provision of the AGG, the CSP does not allow for workers approaching retirement to be excluded from compensation on termination of employment; nor does it allow for unemployment benefits received by the worker to be taken into account. As is apparent from the case-file, Dr Odar received compensation on termination of employment, but that compensation was reduced pursuant Paragraph 6(1)(1.5) of the CSP, read in conjunction with Paragraph 7(7.2) of the SSP, which he has challenged with his action before the referring court.

28 It is thus quite clear that the question of the compatibility of the third sentence of Paragraph 10(6) of the AGG with Directive 2000/78 is abstract and purely hypothetical in relation to the dispute in the main proceedings.

29 In those circumstances, it is not necessary to give an answer to the first and second questions put by the referring court.

#### The third question

30 By its third question, the referring court asks, in essence, whether Articles 2(2) and 6(1) of Directive 2000/78 must be interpreted as precluding rules of an occupational social security scheme under which, in the case of workers older than 54 years of age who are made redundant on operational grounds, a calculation is to be made of the compensation on the basis of the earliest possible date on which their pension will begin – unlike the standard method of calculation, which takes account in particular of the length of service – with the result that the compensation paid to those workers is lower than the compensation resulting from the application of that standard method, though still at least one half of the standard amount.

31 Regarding, first, the question whether the national legislation at issue comes within the scope of Directive 2000/78, it must be pointed out that it is apparent both from its title and the preamble and from its content and purpose that Directive 2000/78 seeks to lay down a general framework in order to guarantee equal treatment ‘in employment and occupation’ to all persons, by offering them effective protection against discrimination on one of the grounds covered by Article 1 of that directive, which include age.

32 More specifically, it follows from Article 3(1)(c) that Directive 2000/78 is to apply within the limits of the areas of competence conferred on the European Union ‘to all persons, as regards both the public and private sectors, including

public bodies', in relation to inter alia 'employment and working conditions, including dismissals and pay'.

33 In providing for a reduction in the amount of compensation on termination of employment for workers older than 54 years of age, Paragraph 6(1)(1.5) of the CSP affects the conditions of termination of employment of those workers within the meaning of Article 3(1)(c) of Directive 2000/78. Such a provision therefore comes within the scope of that directive.

34 According to the Court's settled case-law, where they adopt measures which fall within the scope of Directive 2000/78, which gives specific expression, in the domain of employment and occupation, to the principle of non-discrimination on grounds of age, the social partners must respect the directive (Case C-447/09 *Prigge and Others* [2011] ECR I-0000, paragraph 48, and Case C-132/11 *Tyrolean Airways Tiroler Luftfahrt* [2012] ECR I-0000, paragraph 22).

35 Regarding the question whether the rules in question provide for a difference in treatment based on age within the meaning of Article 2(1) of Directive 2000/78, it should be observed that Paragraph 6(1)(1.5) of the CSP has the effect, in respect of workers over 54 years of age who have been made redundant on operational grounds or whose employment relationship has been terminated by mutual agreement between the undertaking and the worker, that the compensation calculated using the standard formula is compared to the compensation calculated using the special formula, with the lower amount being granted to the worker in question, that worker being nevertheless guaranteed to receive at least half of the amount resulting from the application of the standard formula.

36 Pursuant to those provisions, Dr Odar was paid the amount of EUR 308 357.10, corresponding to half of the standard formula compensation. All other things being equal, had he been 54 years old at the time his employment was terminated, he would have been entitled to compensation of EUR 580 357.10. The fact that he was older than 54 thus led to the application of the comparative method and the payment of an amount lower than that to which he would have been entitled if he had not been older than 54. It thus appears that the calculation method provided for in the CSP in the event of termination of employment on operational grounds does give rise to a difference in treatment on the basis of age.

37 Next, it is necessary to examine whether that difference in treatment may be justified under the first subparagraph of Article 6(1) of Directive 2000/78. That provision states that a difference in treatment on grounds of age does not constitute discrimination if, within the context of national law, it is objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

38 The referring court observes, in relation to the aim of the national measures at issue in the main proceedings, that the wording of Paragraph 6(1)(1.5) of the CSP does not shed any light on which objectives are being pursued. It is apparent from the case-file submitted to the Court, however, that they are identical to the rule in the third sentence of Paragraph 10(6) of the AGG. As observed by the referring court, the detailed rules decided upon for the application of the social plan by management and workers must be such as effectively to promote achievement of the objective referred to in the that provision of the AGG, and not undermine disproportionately the interests of disadvantaged age groups.

39 According to Article 112 of the Law on the organisation of businesses, in the version in force on 25 September 2001, the meaning and purpose of a social plan are to offset or alleviate the adverse consequences on workers arising from an operation to restructure the undertaking concerned. In its written observations, the German Government stated in that regard that compensation paid under a contingency social plan is not aimed specifically at facilitating reintegration into employment.

40 A difference in the compensation paid under a contingency social plan on grounds of age pursues an objective based on the view that, since the economic disadvantages will manifest themselves in the future, certain workers who will not be faced with such disadvantages resulting from loss of their employment, or only to a limited extent compared with others, may, as a rule, be excluded from entitlement to compensation.

41 The German Government observes that a social plan must provide for a distribution of limited resources, so that it may fulfil its 'transitional function' in respect of all workers, not just older workers. Such a plan cannot, in principle, jeopardise the survival of the undertaking or the remaining posts. The third sentence of Paragraph 10(6) of the AGG also makes it possible to limit the scope for abuse by preventing workers who intend to retire from claiming a severance allowance which is intended to support them while seeking new employment.

42 That national provision is thus aimed at granting compensation for the future, protecting younger workers and facilitating their reintegration into employment, whilst taking account of the need to achieve a fair distribution of limited financial resources in a social plan.

43 Such objectives are capable of justifying, by way of derogation from the general rule prohibiting discrimination on grounds of age, differences in treatment relating, inter alia, to 'the setting of special conditions on ... employment and occupation, including dismissal and remuneration conditions, for young people [and] older workers ... in order to promote their vocational integration or ensure their protection' within the meaning of the second subparagraph of Article 6(1) of Directive 2000/78.



44 Moreover, the aim of preventing compensation on termination from being claimed by persons who are not seeking new employment but will receive a replacement income in the form of an occupational old-age pension must be considered to be legitimate (see, to that effect, Case C-499/08 *Ingeniørforeningen i Danmark* [2010] ECR I-9343, paragraph 44).

45 In those circumstances, objectives such as those pursued by Paragraph 6(1)(1.5) of the CSP must, in principle, be held to be capable of justifying differences in treatment on grounds of age, 'objectively and reasonably' and 'within the context of national law', as provided for by the first subparagraph of Article 6(1) of Directive 2000/78.

46 It is still necessary to ascertain whether the means employed are appropriate and necessary and do not go beyond what is required to achieve the objective pursued.

47 It should be borne in mind that the Member States and, as necessary, the social partners at national level have broad discretion in choosing not only to pursue a particular aim in the field of social and employment policy, but also in defining measures to implement it (see, to that effect, Case C-141/11 *Hörnfeldt* [2012] ECR I-0000, paragraph 32).

48 As to whether the provisions of the CSP and the SSP at issue are appropriate, it should be observed that the reduction in compensation granted to workers who, on the date of termination of their employment, are financially secure, does not seem unreasonable in the light of the purpose of such social plans, which is to enhance protection for workers for whom the transition to new employment is challenging due to their limited financial means.

49 Therefore, it must be considered that a provision such as Paragraph 6(1)(1.5) of the CSP does not appear to be manifestly inappropriate for attaining the legitimate employment policy objective pursued by the German legislature.

50 As to whether those provisions are necessary, it is true that Paragraph 7(7.2) of the SSP provides that the earliest possible beginning of pension for the purposes of Paragraph 6(1)(1.5) of the CSP means the date on which the worker can claim for the first time one of the statutory retirement pensions, including a pension with reductions on the ground that it is drawn early.

51 However, as observed in paragraph 27 above, the CSP provides only for a reduction in the amount of compensation on termination granted to those workers.

52 It should be observed, firstly, that Paragraph 6(1)(1.5) of the CSP provides that the compensation granted to the worker concerned corresponds to whichever amount is lowest of the amounts calculated using the standard formula or the special formula, with the recipient having nevertheless the

guarantee that the amount actually paid to him will be at least equal to half of the amount calculated using the standard formula. Moreover, as emerges from the table reproduced in paragraph 14 above, the age factor, which is one of the coefficients in the standard formula and the special formula, increases progressively from the age of 18 (0.35) until 57 (1.70). It is only as of age 59 that that factor starts to decrease (1.50), reaching its lowest level at age 64 (0.30). Secondly, the fourth subparagraph of that provision provides that, even if the use of the special formula gives a result of nil, the worker concerned will be entitled to one half of the standard formula compensation.

53 In the light of the assessment made by the referring court, it must be observed that Paragraph 6(1)(1.5) of the CSP is the result of an agreement negotiated between employees' and employers' representatives exercising their right to bargain collectively which is recognised as a fundamental right. The fact that the task of striking a balance between their respective interests is entrusted to the social partners offers considerable flexibility, as each of the parties may, where appropriate, opt not to adopt the agreement (see, to that effect, Case C-45/09 Rosenblatt [2010] ECR I-9391, paragraph 67).

54 In the light of the foregoing, the answer to the third question is that Articles 2(2) and 6(1) of Directive 2000/78 must be interpreted as not precluding rules of an occupational social security scheme under which, in the case of workers older than 54 years of age who are made redundant on operational grounds, a calculation is to be made of the compensation on the basis of the earliest possible date on which their pension will begin – unlike the standard method of calculation, which takes account in particular of the length of service – with the result that the compensation paid to those workers is lower than the compensation resulting from the application of that standard method, though still at least one half of the standard amount.

The fourth question

55 By its fourth question, the referring court asks, in essence, whether Article 2(2) of Directive 2000/78 must be interpreted as precluding rules of an occupational social security scheme under which, in the case of workers older than 54 years of age who are made redundant on operational grounds, the compensation to which they are entitled is calculated on the basis of the earliest possible date on which their pension will begin – unlike the standard formula, under which account is taken inter alia of the length of service – with the result that the compensation paid is lower than the standard formula compensation, although still at least one half thereof, and that alternative calculation method takes account of the possibility of receiving an early retirement pension on the ground of disability.

56 Regarding, firstly, the question whether Paragraph 6(1)(1.5) of the CSP, read in conjunction with Paragraph 7(7.2) of the SSP, provides for a difference in treatment for the purposes of Article 2(1) of Directive 2000/78, it should be observed that the amount of compensation on termination paid to the worker

is reduced pursuant to Paragraph 7(7.2), taking account of the earliest possible beginning of pension. Moreover, eligibility to receive a retirement pension is subject to a minimum age requirement and that age is different for severely disabled persons.

57 As observed by the Advocate General in point 50 of her Opinion, the first component in the special formula calculation will always be lower for a severely disabled worker than for a non-disabled worker of the same age. In the present case, the fact that the calculation is based, in an ostensibly neutral manner, on the pensionable age, leads to a situation where severely disabled workers, who are eligible for a pension at 60 rather than 63 in the case of non-disabled workers, receive less compensation on termination of employment because of their serious disability.

58 As evidenced by Dr Odar's observations and acknowledged by Baxter at the hearing, had Dr Odar not been severely disabled, he would have received EUR 570 839.47 in compensation on termination.

59 It follows that Paragraph 6(1)(1.5) of the CSP, read in conjunction with Paragraph 7(7.2) of the SSP, the application of which has the effect of the compensation on termination paid to severely disabled workers being lower than that paid to non-disabled workers, gives rise to a difference in treatment based indirectly on disability for the purposes of the combined provisions of Articles 1 and 2(2)(a) of Directive 2000/78.

60 It is appropriate, secondly, to consider whether, in a context such as that governed by the provision at issue in the main proceedings, severely disabled workers in an age bracket approaching retirement are in a comparable situation, within the meaning of Article 2(2)(a) of Directive 2000/78, to that of non-disabled workers in the same age bracket. The German Government submits that the respective starting points for those two categories of workers are objectively different in terms of their entitlement to receive a pension.

61 It must be noted that workers in age brackets approaching retirement are in a situation comparable to that of other workers concerned by the social plan, since their employment relationship with their employer ends for the same reason and in the same circumstances.

62 The advantage granted to severely disabled workers consisting in entitlement to claim a retirement pension as from three years earlier than non-disabled workers does not place them in a different situation in relation to those workers.

63 It is accordingly necessary to examine, in the light of Article 2(2)(b) of Directive 2000/78, whether the difference in treatment between those two categories of workers is objectively and reasonably justified by a legitimate aim and whether the means employed are appropriate and do not go beyond what is necessary to achieve that aim, as pursued by the German legislature.

64 It has been held above in paragraphs 43 to 45 that objectives such as those pursued by Paragraph 6(1)(1.5) of the CSP must, in principle, be held to be capable of justifying differences in treatment on grounds of age, 'objectively and reasonably' and 'within the context of national law', as provided for by the first subparagraph of Article 6(1) of Directive 2000/78. Furthermore, as is apparent from paragraph 49 above, such a national provision does not appear to be manifestly inappropriate for attaining the legitimate employment policy objective pursued by the German legislature.

65 In order to examine whether Paragraph 6(1)(1.5) of the CSP, read in conjunction with Paragraph 7(7.2) of the SSP, goes beyond what is necessary to achieve the aims pursued, it is necessary to place the provision in the context of which it forms a part and to consider the adverse effects it is liable to cause for the workers concerned.

66 Baxter and the German Government state, in essence, that the lower amount of compensation on termination received by Dr Odar is justified in the case of severely disabled workers by the advantage they have consisting in entitlement to claim a retirement pension as from three years earlier than non-disabled workers.

67 That line of reasoning cannot be upheld, however. Firstly, there is discrimination based on disability when the disputed measure is not justified by objective factors unrelated to such discrimination (see, by analogy, Case C-226/98 Jørgensen [2000] ECR I-2447, paragraph 29; Joined Cases C-4/02 and C-5/02 Schönheit and Becker [2003] ECR I-12575, paragraph 67; and Case C-313/02 Wippel [2004] ECR I-9483, paragraph 43). Moreover, such a line of reasoning, if accepted, would undermine the effectiveness of the national provisions providing for that advantage, the rationale for which is generally to take account of the specific difficulties and risks faced by severely disabled workers.

68 It thus appears that management and the workers, in pursuing the legitimate objective of a fair distribution of limited financial resources allocated to a social plan which is proportionate to the needs of the workers concerned, omitted to take account of relevant factors affecting, in particular, severely disabled workers.

69 They disregarded the risks faced by severely disabled people, who generally face greater difficulties in finding new employment, as well as the fact that those risks tend to become exacerbated as they approach retirement age. Severely disabled people have specific needs stemming both from the protection their condition requires and from the need to anticipate possible worsening of their condition. As observed by the Advocate General in point 68 of her Opinion, regard must be had to the risk that disabled workers may throughout their lives have financial requirements arising from their disability

which cannot be adjusted and/or that, with advancing age, those financial requirements may increase.

70 It follows that, in ultimately paying a severely disabled worker compensation on termination on operational grounds which is lower than the amount paid to a non-disabled worker, the measure at issue in the main proceedings has an excessive adverse effect on the legitimate interests of severely disabled workers and therefore goes beyond what is necessary to achieve the social policy objectives pursued by the German legislature.

71 Therefore, the difference in treatment resulting from Paragraph 6(1)(1.5) of the CSP cannot be justified under Article 2(2)(b)(i) of Directive 2000/78.

72 In the light of the foregoing considerations, the answer to the fourth question is that Article 2(2) of Directive 2000/78 must be interpreted as precluding rules of an occupational social security scheme under which, in the case of workers older than 54 years of age who are made redundant on operational grounds, the compensation to which they are entitled is calculated on the basis of the earliest possible date on which their pension will begin – unlike the standard formula, under which account is taken inter alia of the length of service – with the result that the compensation paid is lower than the standard formula compensation, although still at least one half thereof, and that alternative calculation method takes account of the possibility of receiving an early retirement pension on the ground of disability.

#### Costs

73 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. Articles 2(2) and 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as not precluding rules of an occupational social security scheme under which, in the case of workers older than 54 years of age who are made redundant on operational grounds, a calculation is to be made of the compensation on the basis of the earliest possible date on which their pension will begin – unlike the standard method of calculation, which takes account in particular of the length of service – with the result that the compensation paid to those workers is lower than the compensation resulting from the application of that standard method, though still at least one half of the standard amount.

2. Article 2(2) of Directive 2000/78 must be interpreted as precluding rules of an occupational social security scheme under which, in the case of workers older

than 54 years of age who are made redundant on operational grounds, the compensation to which they are entitled is calculated on the basis of the earliest possible date on which their pension will begin – unlike the standard formula, under which account is taken inter alia of the length of service – with the result that the compensation paid is lower than the standard formula compensation, although still at least one half thereof, and that alternative calculation method takes account of the possibility of receiving an early retirement pension on the ground of disability.

[Signatures]

\* Language of the case: German.

**Action brought on 20 June 2011 — European Commission  
v Italian Republic****(Case C-312/11)**

(2011/C 226/36)

*Language of the case: Italian***Parties***Applicant:* European Commission (represented by: J. Enegren and C. Cattabriga, acting as Agents)*Defendant:* Italian Republic**Form of order sought**

The applicant claims that the Court should:

- declare that, by not placing all employers under an obligation to make reasonable accommodation for all disabled persons, the Italian Republic has failed to fulfil its obligation to implement, fully and correctly, Article 5 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;
- order the Italian Republic to pay the costs.

**Pleas in law and main arguments**

1. By not placing all employers under an obligation to make reasonable accommodation for all disabled persons, the Italian Republic has failed to fulfil its obligation to implement, fully and correctly, Article 5 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.
2. Article 5 of Directive 2000/78 places Member States under an obligation of general application to make reasonable accommodation to enable persons with a disability to have access to, to participate in, or to advance in employment, or to undergo training. Those measures must apply — consistently with the principle of proportionality and depending upon the specific circumstances — to all disabled persons and must concern all aspects of the employment relationship and all employers.
3. There is no trace in the Italian legislation of measures implementing that general obligation. Admittedly, there are the provisions of Law No 68/1999, which, in a number of areas, offer a level of assurance and facilitation which is higher even than that required under Article 5 of Directive 2000/78. However, those provisions do not concern all disabled persons; they are not enforceable against all employers; they do not concern all the various aspects of the employment relationship; or they merely indicate an objective which requires subsequent implementing measures if it is to be achieved.

**Reference for a preliminary ruling from the Hof van Cassatie van België (Belgium) lodged on 30 June 2011 — Prorail NV v Xpedys NV and Others**

(Case C-332/11)

(2011/C 269/59)

*Language of the case: Dutch*

**Referring court**

Hof van Cassatie van België

**Parties to the main proceedings**

*Appellant:* Prorail NV

*Respondents:* Xpedys NV

FAG Kugelfischer GmbH

D B Schenker Rail Nederland NV

Nationale Maatschappij der Belgische Spoorwegen NV

**Question referred**

Must Articles 1 and 17 of Council Regulation (EC) No 1206/2001<sup>(1)</sup> of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, in the light, inter alia, of European legislation concerning the recognition and enforcement of judgments in civil or commercial matters, and of the principle expressed in Article 33(1)<sup>(2)</sup> that a judgment given in a Member State is to be recognised in the other Member States without any special procedure being required, be interpreted as meaning that the court which orders an investigation by a judicial expert whose task is to be carried out partly in the territory of the Member State to which the court belongs, but partly also in another Member State, must, for the direct performance of the latter part of the task, make use only and therefore exclusively of the method created by Regulation No 1206/2001 as referred to in Article 17 thereof, or as meaning that the judicial expert assigned by that country may also be charged with an investigation which is to be partly carried out in another Member State of the European Union, outside the provisions of Regulation No 1206/2001?

<sup>(1)</sup> OJ 2001 L 174, p. 1.

<sup>(2)</sup> Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

**Reference for a preliminary ruling from the Hof van Cassatie van België (Belgium) lodged on 30 June 2011 — Koninklijke Federatie van Belgische Transporteurs en Logistieke Dienstverleners (Febetra) v Belgische Staat**

(Case C-333/11)

(2011/C 269/60)

*Language of the case: Dutch*

**Referring court**

Hof van Cassatie van België

**Parties to the main proceedings**

*Appellant:* Koninklijke Federatie van Belgische Transporteurs en Logistieke Dienstverleners (Febetra)

*Respondent:* Belgische Staat

**Questions referred**

1. Must Article 37 of the TIR Convention and the second subparagraph of Article 454(3) of Commission Regulation (EEC) No 2454/93<sup>(1)</sup> of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code be interpreted as meaning that, in the absence of an official finding as to the place where the offence or irregularity was committed, and of any proof to the contrary furnished within the specified period by the guarantor, the Member State where the existence of the offence or irregularity is detected is deemed to be the Member State where the offence or irregularity was committed, even if it is possible, on the basis of the place where the TIR carnet was accepted and where the goods were sealed, without further investigation, to ascertain via which Member State situated at the external border of the Community the goods were unlawfully introduced into the Community?
2. If the first question is answered in the negative, must the same Articles, in conjunction with Articles 6(1) and 7(1) of Council Directive 92/12/EEC<sup>(2)</sup> of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, be interpreted as meaning that the Member State situated at the external border of the Community where the goods were unlawfully introduced is also competent to collect the excise duty when the goods have in the meantime been taken to another Member State, where they were discovered, confiscated and forfeited?

<sup>(1)</sup> OJ 1993 L 253, p. 1.

<sup>(2)</sup> OJ 1992 L 76, p. 1.

**Reference for a preliminary ruling from the Sø- og Handelsret (Denmark) lodged on 1 July 2011 — HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab DAB**

(Case C-335/11)

(2011/C 269/61)

*Language of the case: Danish*

**Referring court**

Sø- og Handelsret

**Parties to the main proceedings**

*Applicant:* HK Danmark, acting on behalf of Jette Ring

*Defendant:* Dansk almennyttigt Boligselskab DAB



**Questions referred**

1. (a) Is any person who, because of physical, mental or psychological injuries, cannot or can only to a limited extent carry out his work in a period that satisfies the requirement as to duration specified in paragraph 45 of the judgment of the Court of Justice in Case C-13/05 *Navas* <sup>(1)</sup> covered by the concept of disability within the meaning of the directive?
  - (b) Can a condition caused by a medically diagnosed incurable illness be covered by the concept of disability within the meaning of the directive?
  - (c) Can a condition caused by a medically diagnosed temporary illness be covered by the concept of disability within the meaning of the directive?
2. Should a permanent reduction in functional capacity which does not entail a need for special aids or the like but means only that the person concerned is not capable of working full-time be regarded as a disability in the sense in which that term is used in Council Directive 2000/78/EC <sup>(2)</sup>?
3. Is a reduction in working hours among the measures covered by Article 5 of Directive 2000/78/EC?
4. Does Council Directive 2000/78/EC preclude the application of a provision of national law under which an employer is entitled to dismiss an employee with a shortened notice period where the employee has received his salary during periods of illness for a total of 120 days during a period of 12 consecutive months, in the case of an employee who must be regarded as disabled within the meaning of the directive, where
  - (a) the absence was caused by the disability
 

or
  - (b) the absence was due to the fact that the employer did not implement the measures appropriate in the specific situation to enable a person with a disability to perform his work?

<sup>(1)</sup> [2006] ECR I-6467.

<sup>(2)</sup> OJ 2000 L 303, p. 16.

**Reference for a preliminary ruling from the Cour d'appel de Lyon (France), lodged on 1 July 2011 — Receveur principal des douanes de Roissy Sud, Receveur principal de la recette des douanes de Lyon Aéroport, Direction régionale des douanes et droits indirects de Lyon, Administration des douanes et droits indirects v Société Rohm & Haas Electronic Materials CMP Europe GmbH, Rohm & Haas Europe s. à r.l., Société Rohm & Haas Europe Trading APS-UK Branch**

(Case C-336/11)

(2011/C 269/62)

*Language of the case: French*

**Referring court**

Cour d'appel de Lyon

**Parties to the main proceedings**

*Appellants:* Receveur principal des douanes de Roissy Sud, Receveur principal de la recette des douanes de Lyon Aéroport, Direction régionale des douanes et droits indirects de Lyon, Administration des douanes et droits indirects

*Respondents:* Société Rohm & Haas Electronic Materials CMP Europe GmbH, Rohm & Haas Europe s. à r.l., Société Rohm & Haas Europe Trading APS-UK Branch

**Question referred**

Should the combined nomenclature [set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, <sup>(1)</sup> as amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006 <sup>(2)</sup> and Commission Regulation (EC) No 1214/2007 of 20 September 2007 <sup>(3)</sup>] be interpreted as meaning that polishing pads, intended for a polishing machine for working semiconductor materials — as such coming under tariff heading 8460 — imported separately from the machine, in the form of discs perforated in the centre, made up of a hard polyurethane layer, a layer of polyurethane foam, an adhesive layer and a protective plastic film, which do not contain any metal part or any abrasive substance and are used to polish 'wafers', in association with an abrasive liquid, and must be replaced at a frequency determined by their level of wear, come under tariff heading 8466 [...], as parts or accessories suitable for use solely or principally with the machines classified under headings 8456 to 8465, or, on the basis of their constituent material, under tariff heading [3919], as self-adhesive flat shapes made of plastic?

<sup>(1)</sup> OJ 1987 L 256, p. 1.

<sup>(2)</sup> OJ 2006 L 301, p. 1.

<sup>(3)</sup> OJ 2007 L 286, p. 1.

**Reference for a preliminary ruling from the Sø- og Handelsret (Denmark) lodged on 1 July 2011 — HK Danmark, acting on behalf of Lone Skouboe Werge v Pro Display A/S in liquidation**

(Case C-337/11)

(2011/C 269/63)

*Language of the case: Danish*

**Referring court**

Sø- og Handelsret

**Parties to the main proceedings**

*Applicant:* HK Danmark, acting on behalf of Lone Skouboe Werge

*Defendant:* Pro Display A/S in liquidation

## SCHLUSSANTRÄGE DER GENERALANWÄLTIN

Juliane Kokott

vom 6. Dezember 2012(1)

Verbundene Rechtssachen C-335/11 und C-337/11

HK Danmark, handelnd für Jette Ring

gegen

Dansk Almennyttigt Boligselskab DAB

und

HK Danmark, handelnd für Lone Skouboe Werge

gegen

Pro Display A/S in Konkurs

(Vorabentscheidungsersuchen des Sø- og Handelsretten [Dänemark])

„Gleichbehandlung in Beschäftigung und Beruf – Richtlinie 2000/78/EG – Verbot der Diskriminierung wegen einer Behinderung – Begriff der Behinderung – Abgrenzung Krankheit und Behinderung – Angemessene Vorkehrungen für Menschen mit Behinderung – Mittelbare Diskriminierung – Rechtfertigung“

### I – Einleitung

1. Wann liegt eine Behinderung im Sinne der Richtlinie 2000/78/EG zur Festlegung eines allgemeinen Rahmens für die Verwirklichung der Gleichbehandlung in Beschäftigung und Beruf(2) vor, und wie ist der Begriff der Behinderung von dem der Krankheit abzugrenzen? Diese Frage steht im Mittelpunkt der vorliegenden Vorabentscheidungsverfahren. Der Gerichtshof ist somit aufgerufen, seine in der Rechtssache Chacón Navas(3) erarbeitete Definition des Behinderungsbegriffs zu präzisieren.

2. Darüber hinaus geht es darum, was unter angemessenen Vorkehrungen für Menschen mit Behinderung zu verstehen ist, die der Arbeitgeber nach Art. 5 der Richtlinie 2000/78 zu ergreifen hat. Schließlich fragt das vorlegende Gericht danach, ob eine wegen Krankheitsfehlzeiten verkürzte Kündigungsfrist eine Diskriminierung wegen einer Behinderung darstellen kann.

### II – Rechtlicher Rahmen

#### A – Völkerrecht

3. In dem Übereinkommen der Vereinten Nationen vom 13. Dezember 2006 über die Rechte von Menschen mit Behinderungen(4) heißt es in der Präambel, Buchst. e: „in der Erkenntnis, dass das Verständnis von Behinderung sich ständig

weiterentwickelt und dass Behinderung aus der Wechselwirkung zwischen Menschen mit Beeinträchtigungen und einstellungs- und umweltbedingten Barrieren entsteht, die sie an der vollen, wirksamen und gleichberechtigten Teilhabe an der Gesellschaft hindern“.

4. Art. 1 Abs. 2 des Übereinkommens enthält folgende Begriffsbestimmung:

„Zu den Menschen mit Behinderungen zählen Menschen, die langfristige körperliche, seelische, geistige oder Sinnesbeeinträchtigungen haben, welche sie in Wechselwirkung mit verschiedenen Barrieren an der vollen, wirksamen und gleichberechtigten Teilhabe an der Gesellschaft hindern können.“

B – Unionsrecht

5. Der 20. Erwägungsgrund der Richtlinie 2000/78 bestimmt:

„Es sollten geeignete Maßnahmen vorgesehen werden, d. h. wirksame und praktikable Maßnahmen, um den Arbeitsplatz der Behinderung entsprechend einzurichten, z. B. durch eine entsprechende Gestaltung der Räumlichkeiten oder eine Anpassung des Arbeitsgeräts, des Arbeitsrhythmus, der Aufgabenverteilung oder des Angebots an Ausbildungs- und Einarbeitungsmaßnahmen.“

6. Gemäß Art. 2 Abs. 2 Buchst. b der Richtlinie 2000/78 liegt eine mittelbare Diskriminierung vor, „wenn dem Anschein nach neutrale Vorschriften, Kriterien oder Verfahren Personen mit einer bestimmten Religion oder Weltanschauung, einer bestimmten Behinderung, eines bestimmten Alters oder mit einer bestimmten sexuellen Ausrichtung gegenüber anderen Personen in besonderer Weise benachteiligen können, es sei denn:

i) diese Vorschriften, Kriterien oder Verfahren sind durch ein rechtmäßiges Ziel sachlich gerechtfertigt, und die Mittel sind zur Erreichung dieses Ziels angemessen und erforderlich, oder

...“

7. Art. 5 der Richtlinie 2000/78 sieht unter der Überschrift „Angemessene Vorkehrungen für Menschen mit Behinderung“ Folgendes vor:

„Um die Anwendung des Gleichbehandlungsgrundsatzes auf Menschen mit Behinderung zu gewährleisten, sind angemessene Vorkehrungen zu treffen. Das bedeutet, dass der Arbeitgeber die geeigneten und im konkreten Fall erforderlichen Maßnahmen ergreift, um den Menschen mit Behinderung den Zugang zur Beschäftigung, die Ausübung eines Berufes, den beruflichen Aufstieg und die Teilnahme an Aus- und Weiterbildungsmaßnahmen zu ermöglichen, es sei denn, diese Maßnahmen würden den Arbeitgeber unverhältnismäßig belasten. Diese Belastung ist nicht unverhältnismäßig, wenn

sie durch geltende Maßnahmen im Rahmen der Behindertenpolitik des Mitgliedstaates ausreichend kompensiert wird.“

#### C – Nationales Recht

8. Die Umsetzung der Richtlinie 2000/78 in das dänische Recht ist durch das Forskelsbehandlingslov(5) erfolgt. Nach § 7 dieses Gesetzes besteht die Möglichkeit, bei Verstoß gegen das Diskriminierungsverbot oder Unterlassung der erforderlichen Maßnahmen durch den Arbeitgeber Schadensersatz geltend zu machen.

9. Das Funktionærlov(6) regelt die rechtliche Beziehung zwischen Arbeitgeber und Arbeitnehmer/Angestelltem.

10. § 5 FL Abs. 2 enthält eine besondere Bestimmung zur Kündigung eines Arbeitsverhältnisses wegen Krankheit des Arbeitnehmers und bestimmt:

„Durch schriftliche Vereinbarung kann jedoch für das einzelne Dienstverhältnis bestimmt werden, dass dem Angestellten mit einer Kündigungsfrist von 1 Monat zum Monatsende gekündigt werden kann, wenn der Angestellte innerhalb eines Zeitraums von 12 aufeinanderfolgenden Monaten Lohn während Krankenzeiten von insgesamt 120 Tagen bezogen hat. Die Kündigung ist nur gültig, wenn sie in unmittelbarem Anschluss am Ende der 120 Krankheitstage und noch während der Erkrankung des Angestellten erklärt wird, wohingegen es die Gültigkeit der Kündigung nicht berührt, dass der Angestellte nach der Kündigung die Arbeit wieder aufgenommen hat. ...“

#### III – Sachverhalt und Ausgangsverfahren

11. Die vorliegenden Vorabentscheidungsverfahren gehen zurück auf zwei von dem Handels- og Kontorfunktionærernes Forbund Danmark (HK)(7) für die Arbeitnehmerinnen Jette Ring und Lone Skouboe Werge im Jahr 2006 erhobene Klagen, mit denen Schadensersatz nach dem dänischen Gleichbehandlungsgesetz wegen Diskriminierung aufgrund einer Behinderung geltend gemacht wurde. Für beide Arbeitsverhältnisse war die Geltung des § 5 Abs. 2 FL vereinbart worden.

#### A – Rechtssache C-335/11

12. Im Fall Ring liegt dem nationalen Verfahren folgender Sachverhalt zugrunde:

13. Frau Ring war seit dem Jahr 2000 bei der Firma Dansk Almennyttigt Boligselskab (DAB) als Mitarbeiterin im Kundencenter beschäftigt. Zwischen Juni 2005 bis zur Kündigung im November 2005 war sie krankheitsbedingt während mehrerer Zeiträume abwesend; die Fehlzeiten betragen zusammen über 120 Tage. Die für die Fehlzeiten vorgelegten ärztlichen Bescheinigungen verwiesen vornehmlich auf chronische Rückenbeschwerden, die u. a. anderem auf

Arthroseveränderungen an den Lendenwirbeln zurückzuführen waren und sich in konstanten Schmerzen im Lendenwirbelbereich äußerten. Nachdem die behandelnden Ärzte von einer Versteifung der Lendenwirbel durch natürliches Zusammenwachsen ausgingen, bestanden keine weiteren Behandlungsoptionen. Mögliche Maßnahmen zur Linderung dieser Beschwerden während der Arbeitszeit von Frau Ring, etwa die Anschaffung eines höhenverstellbaren Tisches für ihren Arbeitsplatz oder das Angebot einer Teilzeittätigkeit, erfolgten nicht. Grundsätzlich bot DAB jedoch Teilzeitstellen an.

14. Aufgrund der akkumulierten Fehlzeiten wurde Frau Ring mit nach § 5 Abs. 2 FL verkürzter Kündigungsfrist gekündigt. Unmittelbar nach der Kündigung von Frau Ring gab DAB eine Anzeige für eine Teilzeitstelle mit einer vergleichbaren Aufgabenbeschreibung für ein nahe gelegenes Regionalbüro auf. Frau Ring trat eine neue Stelle als Empfangssekretärin bei einer anderen Firma an, bei der ihr ein höhenverstellbarer Tisch zur Verfügung gestellt und ihre tatsächliche Arbeitszeit auf 20 Stunden pro Woche festgelegt wurde. Die Anstellung erfolgte in Vollzeit nach der dänischen Flexjob-Regelung mit 50 % Lohnkostenerstattung(8).

B – Rechtssache C-337/11

15. Im Fall Skouboe Werge hat das Sø- og Handelsret folgenden Sachverhalt mitgeteilt:

16. Frau Skouboe Werge war seit dem Jahr 1998 als Verwaltungsassistentin bei der Firma Pro Display beschäftigt. Nachdem sie im Dezember 2003 bei einem Verkehrsunfall ein Schleudertrauma erlitten hatte und drei Wochen krankgeschrieben war, nahm sie zunächst ihre Vollzeittätigkeit bei Pro Display wieder auf. Als gegen Ende des Jahres 2004 deutlich wurde, dass Frau Skouboe Werge noch immer unter den Nachwirkungen des Schleudertraumas litt, erhielt sie eine Krankmeldung für vorläufig vier Wochen, aufgrund deren sie nur ca. vier Stunden pro Tag arbeitete. Im Januar 2005 meldete sich Frau Skouboe Werge wegen anhaltender Beschwerden für die volle Arbeitszeit krank. Daraufhin wurde ihr unter Anwendung der 120-Tage-Regelung des § 5 Abs. 2 FL mit einer Kündigungsfrist von einem Monat zum 31. Mai 2005 gekündigt.

17. Die Beschwerden von Frau Skouboe Werge äußerten sich in verschiedenen Symptomen, insbesondere durch auf die Schultern ausstrahlende Schmerzen im Nacken, Kieferprobleme, Müdigkeit, Konzentrations- und Erinnerungsstörungen, Formulierungsschwierigkeiten, übermäßige Lärmempfindlichkeit, niedrige Stressschwelle und Schwindel. Im Juni 2006 wurde Frau Skouboe Werge daher aufgrund der Einschätzung ihrer Arbeitsfähigkeit auf ca. acht Stunden pro Woche bei langsamem Tempo eine vorgezogene Altersrente bewilligt. Zudem wurde durch Entscheidung der Behörde für Arbeitsunfälle und Berufskrankheiten der Grad der Behinderung von Frau Skouboe Werge auf 10 % und die Verminderung ihrer Erwerbsfähigkeit auf 65 % festgesetzt.

18. In den Ausgangsverfahren vertrat HK die Ansicht, dass eine Kündigung der Arbeitnehmerinnen mit verkürzter Kündigungsfrist nach der Regelung des § 5 Abs. 2 FL ausgeschlossen gewesen sei, da dies gegen das Diskriminierungsverbot wegen Behinderung gemäß der Richtlinie 2000/78 verstoße. Dem vorlegenden Gericht stellt sich daher die Frage, wie „Behinderung“ im Sinne der Richtlinie 2000/78 zu definieren ist.

#### IV – Vorabentscheidungsersuchen und Verfahren vor dem Gerichtshof

19. Mit Beschlüssen vom 29. Juni 2011, in der Kanzlei des Gerichtshofs eingegangen am 1. Juli 2011, hat der Sør- og Handelsret die Verfahren jeweils ausgesetzt und dem Gerichtshof folgende Fragen zur Vorabentscheidung vorgelegt:

1. a) Ist jede Person, die aufgrund physischer, mentaler oder psychischer Beeinträchtigungen während eines Zeitraums, der hinsichtlich der Dauer die Anforderung gemäß Randnr. 45 des Urteils des Gerichtshofs in der Rechtssache C-13/05 (Chacón Navas) erfüllt, ihre Arbeit nicht oder nur in begrenztem Umfang ausüben kann, vom Begriff der Behinderung im Sinne der Richtlinie umfasst?

b) Kann ein Zustand, der durch eine ärztlich diagnostizierte unheilbare Krankheit verursacht ist, vom Begriff der Behinderung im Sinne der Richtlinie umfasst sein?

c) Kann ein Zustand, der durch eine ärztlich diagnostizierte vorübergehende Krankheit verursacht ist, vom Begriff der Behinderung im Sinne der Richtlinie umfasst sein?

2. Ist eine dauerhafte Funktionsbeeinträchtigung, die keinen Bedarf an besonderen Hilfsmitteln oder Ähnlichem zur Folge hat und die allein oder im Wesentlichen darin besteht, dass die betreffende Person nicht zu einer Vollzeittätigkeit in der Lage ist, als Behinderung in dem Sinne anzusehen, in dem dieser Ausdruck in der Richtlinie 2000/78 verwendet wird?

3. Gehört eine Herabsetzung der Arbeitszeiten zu den von Art. 5 der Richtlinie 2000/78 umfassten Maßnahmen?

4. Verbietet es die Richtlinie 2000/78, eine nationale Rechtsvorschrift, nach der ein Arbeitgeber einem Arbeitnehmer mit verkürzter Kündigungsfrist kündigen darf, wenn der Arbeitnehmer innerhalb von zwölf aufeinanderfolgenden Monaten Lohn während Krankheitszeiten von insgesamt 120 Tagen bezogen hat, auf einen Arbeitnehmer anzuwenden, der als behindert im Sinne der Richtlinie anzusehen ist, wenn

a) die Abwesenheit durch die Behinderung verursacht ist?

oder

b) die Abwesenheit darauf zurückzuführen ist, dass der Arbeitgeber nicht die geeigneten und im konkreten Fall erforderlichen Maßnahmen ergriffen hat, um einer Person mit einer Behinderung die Ausübung ihres Berufs zu ermöglichen?

20. Mit Beschluss vom 4. August 2011 hat der Präsident des Gerichtshofs die Rechtssachen C-335/11 und C-337/11 zu gemeinsamem schriftlichem und mündlichem Verfahren sowie zu gemeinsamer Entscheidung verbunden.

21. Neben den Parteien des Ausgangsrechtsstreits haben die Regierungen Dänemarks, Irlands, Polens und des Vereinigten Königreichs sowie die Europäische Kommission am schriftlichen und mündlichen Verfahren vor dem Gerichtshof teilgenommen. Darüber hinaus haben die Regierungen Belgiens und Griechenlands schriftliche Erklärungen abgegeben.

#### V – Würdigung

22. Die erste und die zweite Frage des Sø- og Handelsret sind zusammen zu beantworten, da beide die Definition des Behinderungsbegriffs betreffen (dazu unter A). Die dritte Frage hat die Ausgestaltung und den Umfang von Vorkehrungen, die der Arbeitgeber nach Art. 5 der Richtlinie 2000/78 zu ergreifen hat, zum Gegenstand (dazu unter B). Zuletzt ist die vierte Frage und damit die Verkürzung der Kündigungsfrist wegen krankheitsbedingten Fehlens als diskriminierende Vorschrift zu prüfen (dazu unter C).

#### A – Erste und zweite Vorlagefrage

##### 1. Definition des Behinderungsbegriffs

23. Die Richtlinie 2000/78 enthält selbst keine Definition des Begriffs Behinderung.

24. Der Gerichtshof war bereits in der Rechtssache Chacón Navas aufgerufen, diesen Begriff unionsautonom zu definieren. Danach erfasst der Begriff Behinderung eine „Einschränkung, die insbesondere auf physische, geistige oder psychische Beeinträchtigungen zurückzuführen ist und die ein Hindernis für die Teilhabe des Betreffenden am Berufsleben bildet“(9). Zudem muss es wahrscheinlich sein, dass die Einschränkung von langer Dauer ist(10).

25. Im Jahr 2010 – und damit einige Jahre nach dem Urteil in der Rechtssache Chacón Navas – ratifizierte die Europäische Union das Übereinkommen der Vereinten Nationen über die Rechte von Menschen mit Behinderungen. Das UN-Übereinkommen verweist zunächst in seiner Präambel darauf, dass der Begriff der Behinderung dynamisch zu verstehen ist und sich das Verständnis von Behinderung ständig weiterentwickelt(11). Art. 1 des Abkommens enthält dann eine Begriffsdefinition. Danach zählen zu den „Menschen mit Behinderungen ... Menschen, die langfristige körperliche, seelische, geistige oder

Sinnesbeeinträchtigungen haben, welche sie in Wechselwirkung mit verschiedenen Barrieren an der vollen, wirksamen und gleichberechtigten Teilhabe an der Gesellschaft hindern können“.

26. Aus Art. 216 Abs. 2 AEUV folgt, dass die von der Union geschlossenen internationalen Übereinkünfte die Unionsorgane und die Mitgliedstaaten binden. Die von der Union geschlossenen internationalen Übereinkünfte sind ab ihrem Inkrafttreten wesentlicher („integraler“) Bestandteil der Unionsrechtsordnung.(12) Daher sind Bestimmungen des abgeleiteten Unionsrechts nach Möglichkeit in Übereinstimmung mit den völkerrechtlichen Verpflichtungen der Union auszulegen(13).

27. Der Begriff der Behinderung nach der Richtlinie 2000/78 dürfte daher nicht hinter dem Schutzbereich zurückbleiben, den das UN-Übereinkommen eröffnet. Nach der Definition des UN-Übereinkommens ergibt sich das Hindernis für die Teilhabe an der Gesellschaft aus der „Wechselwirkung mit verschiedenen Barrieren“. Insofern könnte sich in bestimmten Konstellationen ergeben, dass die Definition des Urteil Chacón Navas hinter der Definition des UN-Übereinkommens zurückbleibt und völkerrechtskonform auszulegen wäre.

28. In den vorliegenden Fällen liegt der Kern des Problems allerdings nicht im Bereich des Definitionselements „Barrieren“. Das vorlegende Gericht möchte wissen, ob ein Zustand, der durch eine ärztlich diagnostizierte unheilbare oder vorübergehende heilbare Krankheit verursacht ist, vom Begriff der Behinderung erfasst sein kann. Weder die Definition des Urteils Chacón Navas noch jene des UN-Übereinkommens geben aus sich selbst heraus eine Antwort auf die Fragen des vorlegenden Gerichts. Denn abgesehen von dem Erfordernis einer langfristigen Einschränkung enthalten beide Definitionen keine expliziten Kriterien für die Abgrenzung von Behinderung und Krankheit.

29. Zur Beantwortung der Fragen des vorlegenden Gerichts ist im Folgenden daher die Abgrenzung von Krankheit und Behinderung zu erörtern.

## 2. Abgrenzung von Behinderung und Krankheit

30. In seinem Urteil Chacón Navas hat der Gerichtshof festgestellt, dass Arbeitnehmer nicht schon in den Schutzbereich der Richtlinie 2000/78 fallen, sobald sich bei ihnen irgendeine Krankheit manifestiert(14). Der Gerichtshof unterscheidet damit zwischen Krankheit und Behinderung. Denn eine „Krankheit“ ist in der Richtlinie nicht als eigenes verbotenes Diskriminierungsmerkmal aufgeführt.

31. Der Gerichtshof hat aber nur eine „Krankheit als solche“ vom Anwendungsbereich der Richtlinie ausgenommen(15). Dem Urteil Chacón Navas ist nicht zu entnehmen, dass eine Krankheit als Ursache einer Behinderung die Qualifizierung als Behinderung entfallen lässt. Schließlich hat der Gerichtshof auch in seinem zweiten Urteil zu einer behinderungsbedingten Diskriminierung präzisiert, dass dem Urteil Chacón Navas nicht zu entnehmen ist, dass der



sachliche Geltungsbereich dieser Richtlinie restriktiv ausgelegt werden müsse(16).

32. Insbesondere ist nicht ersichtlich, dass die Richtlinie 2000/78 nur Behinderungen erfassen will, die angeboren sind oder von Unfällen herrühren. Für den Anwendungsbereich der Richtlinie je nach Ursache der Behinderung zu differenzieren, wäre willkürlich und würde damit selbst dem Ziel der Richtlinie, die Gleichbehandlung zu verwirklichen, widersprechen.

33. Es ist also zu trennen zwischen der Krankheit als möglicher Ursache der Beeinträchtigung und der daraus resultierenden Beeinträchtigung. Umfasst vom Schutz der Richtlinie ist auch die aus einer Krankheit resultierende dauerhafte Einschränkung, die zu einem Hindernis für die Teilhabe am Berufsleben führt.

34. In den vorliegenden Fällen geht es um körperliche Beeinträchtigungen, die sich u. a. in Schmerzen und Unbeweglichkeit äußern. Die Abgrenzung von Krankheit und Behinderung ist vorliegend daher einfacher als in dem Fall, den der oberste Gerichtshof der Vereinigten Staaten von Amerika zu entscheiden hatte, in dem dieser festgestellt hat, dass auch eine symptomlose HIV-Infektion eine Behinderung im Sinne des Anti-Discrimination Act darstellen kann(17). Ob die Beschwerden einer Person in einem konkreten Sachverhalt eine Einschränkung darstellen, unterliegt der Beurteilung des mitgliedstaatlichen Gerichts.

35. Dem Wortlaut der Richtlinie 2000/78 sind keine Anhaltspunkte für eine Begrenzung des Anwendungsbereichs auf einen bestimmten Schweregrad der Behinderung zu entnehmen(18). Da diese Frage jedoch weder vom vorlegenden Gericht gestellt wurde, noch zwischen den Verfahrensbeteiligten erörtert wurde, ist sie hier nicht abschließend zu entscheiden.

36. Für das Vorliegen einer Behinderung ist darüber hinaus ausschlaggebend, dass die Einschränkung wahrscheinlich von „langer Dauer“ ist(19). Das UN-Übereinkommen spricht insofern davon, dass es sich um eine „langfristige“(20) Beeinträchtigung handeln muss. Inhaltlich erkenne ich hierin keinen Unterschied.

37. Die lange Dauer wird bei einer Einschränkung, die auf einer unheilbaren Krankheit beruht, in der Regel zu bejahen sein. Aber auch eine im Prinzip heilbare Krankheit kann einen so langen Verlauf bis zur vollständigen Heilung nehmen, dass die Einschränkung von langer Dauer ist. Und auch bei einer grundsätzlich heilbaren Krankheit kann eine langfristige Einschränkung zurückbleiben. Gerade bei chronischen Krankheiten kann sich der Übergang von einer (behandelbaren) Krankheit zu einer voraussichtlich dauerhaften Einschränkung, die dann erst den Charakter einer Behinderung hat, als fließender Prozess darstellen. Erst wenn die Prognose einer dauerhaften Einschränkung vorliegt, ist von einer Behinderung zu sprechen.

38. Allein aus der Feststellung, ob eine Krankheit an sich heilbar oder unheilbar, dauerhaft oder vorübergehend ist, kann daher kein definitiver Schluss auf das spätere Vorliegen einer dauerhaften Einschränkung gezogen werden.

3. Bedarf an besonderen Hilfsmitteln

39. Das vorliegende Gericht fragt darüber hinaus, ob die Annahme einer Behinderung die Notwendigkeit besonderer Hilfsmittel voraussetzt oder ob es genügt, dass die Ableistung der vollständigen Arbeitszeit nicht mehr möglich ist.

40. Der Begriff der Behinderung nach der Richtlinie setzt nicht die Notwendigkeit besonderer Hilfsmittel voraus.

41. Art. 5 der Richtlinie 2000/78 macht deutlich, dass zunächst das Bestehen einer Behinderung festgestellt werden muss, um anschließend die geeigneten und erforderlichen Maßnahmen zu ergreifen. Der 20. Erwägungsgrund liefert Anhaltspunkte dafür, was unter entsprechenden Maßnahmen zu verstehen sein kann, und nennt u. a., dass der „Arbeitsplatz der Behinderung entsprechend einzurichten“ ist. Die Notwendigkeit besonderer Einrichtungen und Hilfsmittel ist also Folge der Feststellung der Behinderung und nicht Teil der Definition des Behinderungsbegriffs.

42. Auch vor dem Hintergrund von Sinn und Zweck der Richtlinie kann die Notwendigkeit besonderer Hilfsmittel als Teil der Definition nicht überzeugen. Behinderungen im Sinne der Richtlinie können auf physischen, psychischen oder seelischen Beeinträchtigungen beruhen. Die Forderung nach der Notwendigkeit besonderer Hilfsmittel scheint aber nur vom Leitbild eines Menschen geprägt, der körperliche Beeinträchtigungen hat. Würde man Hilfsmittel als zwingendes Element des Behinderungsbegriffs verlangen, wären schon die in der Richtlinie explizit angesprochenen seelischen oder psychischen Beeinträchtigungen nicht erfasst, da sie in der Regel auch keine Hilfsmittel erforderlich machen. Ein solches Erfordernis würde auch gerade diejenigen Behinderten benachteiligen, deren Behinderung nicht durch ein Hilfsmittel ausgeglichen oder gemildert werden kann und die bereits aus diesem Grund in der Regel eher schwerer betroffen sind als andere.

43. Im Ergebnis kommt es daher allein darauf an, ob ein Hindernis für die Teilhabe am Berufsleben vorliegt.

44. DAB und Pro Display haben vorgetragen, dass nur als behindert angesehen werden könne, wer vollständig vom Berufsleben ausgeschlossen sei, weshalb eine nur reduzierte Arbeitsleistung für die Einstufung als Behinderung nicht ausreiche. Dies überzeugt nicht. Schon nach allgemeinem Sprachverständnis umfasst der Begriff „Hindernis für die Teilhabe am Berufsleben“ auch nur partielle Schranken und nicht nur einen generellen „Ausschluss“ vom Berufsleben.

45. Für eine Einbeziehung von Menschen, deren Hindernis für die Teilnahme am Berufsleben darin liegt, dass sie nicht Vollzeit arbeiten können, spricht auch der 17. Erwägungsgrund der Richtlinie. Dieser sieht vor, dass der Schutzbereich der Richtlinie solche Arbeitnehmer erfasst, die grundsätzlich „für die Erfüllung der wesentlichen Funktionen des Arbeitsplatzes ... kompetent, fähig oder verfügbar“ sind. Die Richtlinie zielt folglich gerade auf den Schutz solcher Personen ab, die grundsätzlich am Arbeitsleben – wenn auch eventuell in begrenztem Umfang bzw. durch besondere Vorkehrungen – teilhaben können. Somit setzt die Anwendbarkeit der Richtlinie keinen Ausschluss der betroffenen Person vom Berufsleben voraus.

46. Als Zwischenergebnis ist folglich festzuhalten, dass der Begriff Behinderung eine Einschränkung umfasst, die insbesondere auf physische, geistige oder psychische Beeinträchtigungen zurückzuführen ist und die ein Hindernis für die Teilhabe des Betreffenden am Berufsleben darstellt. Für die Definition der Behinderung ist es unerheblich, dass die Beeinträchtigung durch eine Krankheit verursacht wurde; allein entscheidend ist, ob die Einschränkung von langer Dauer ist. Auch eine Funktionsbeeinträchtigung von langer Dauer, die keinen Bedarf an besonderen Hilfsmitteln zur Folge hat und die allein oder im Wesentlichen darin besteht, dass die betreffende Person nicht zu einer Vollzeittätigkeit in der Lage ist, ist als Behinderung im Sinne der Richtlinie 2000/78 anzusehen.

#### B – Dritte Vorlagefrage

47. Mit seiner dritten Vorlagefrage möchte der Sør- og Handelsret wissen, ob zu den angemessenen Vorkehrungen für Menschen mit Behinderung auch eine Herabsetzung der Arbeitszeit gehören kann.

48. Art. 5 Satz 1 der Richtlinie 2000/78 sieht vor, dass angemessene Vorkehrungen zu treffen sind, um die Anwendung des Gleichbehandlungsgrundsatzes auf Menschen mit Behinderung zu gewährleisten. Das bedeutet, dass der Arbeitgeber die „geeigneten und im konkreten Fall erforderlichen Maßnahmen“ zu ergreifen hat, um den Menschen mit Behinderung den Zugang zur Beschäftigung, die Ausübung eines Berufs, den beruflichen Aufstieg und die Teilnahme an Aus- und Weiterbildungsmaßnahmen zu ermöglichen. Die Verpflichtung des Arbeitgebers entfällt, wenn ihn die Maßnahmen unverhältnismäßig belasten würden.

49. Ziel dieser Vorschrift ist es, nicht nur die Gleichbehandlung, sondern die Gleichstellung eines behinderten Menschen durchzusetzen und ihm dadurch die Ausübung eines Berufs zu ermöglichen.

50. Art. 5 der Richtlinie 2000/78 selbst legt lediglich fest, dass die Maßnahmen „geeignet und im konkreten Fall erforderlich“ sein müssen, um den Zugang zur Beschäftigung etc. zu ermöglichen.

51. Jedoch erläutert der 20. Erwägungsgrund der Richtlinie die Vorschrift näher. Danach sind „wirksame und praktikable Maßnahmen“ vorzusehen, „um den Arbeitsplatz der Behinderung entsprechend einzurichten, z. B. durch eine entsprechende Gestaltung der Räumlichkeiten oder eine Anpassung des Arbeitsgeräts, des Arbeitsrhythmus, der Aufgabenverteilung oder des Angebots an Ausbildungs- und Einarbeitungsmaßnahmen“.

52. Die Herabsetzung der Arbeitszeiten könnte von dem dort explizit aufgeführten Beispiel der „Anpassung des Arbeitsrhythmus“ erfasst sein. DAB und Pro Display sind allerdings der Auffassung, dass „Arbeitsrhythmus“ sich gerade nicht auf die Arbeitszeiten, sondern lediglich auf die Arbeitsleistung und das Arbeitstempo oder die Verteilung der Arbeitsaufgaben unter den Mitarbeitern beziehe.

53. Selbst wenn man der Auffassung ist, dass die Herabsetzung der Arbeitszeiten nicht unter die „Anpassung des Arbeitsrhythmus“ fällt, ist meiner Ansicht nach die Herabsetzung der Arbeitszeit von Art. 5 der Richtlinie erfasst.

54. Denn es geht schon aus dem Wortlaut des 20. Erwägungsgrundes hervor, dass dieser nur eine beispielhafte Aufzählung enthält und nicht abschließend zu verstehen ist. Allein aus der Tatsache, dass die Herabsetzung der Arbeitszeit dort nicht ausdrücklich aufgeführt ist, kann nicht geschlossen werden, dass sie von Art. 5 der Richtlinie nicht erfasst ist.

55. DAB und Pro Display verweisen darüber hinaus darauf, dass der Begriff der Arbeitszeiten in der Richtlinie nicht erwähnt und auch in den Vorarbeiten zur Richtlinie nicht diskutiert worden sei. Auch sei der Begriff der Herabsetzung der Arbeitszeit so eng mit der Teilzeitrichtlinie(21) verknüpft, dass entsprechende Anträge nur nach dieser zu beurteilen seien.

56. Der Unionsgesetzgeber hat jedoch den Wortlaut von Art. 5 weit gefasst. Er spricht allgemein von Maßnahmen, die Menschen mit Behinderung den Zugang zur Beschäftigung ermöglichen. Eine Herabsetzung der Arbeitszeit kann zweifelsohne geeignet sein, einem Menschen mit Behinderung die Ausübung eines Berufs zu ermöglichen.

57. Insofern stützt auch der 20. Erwägungsgrund ein weites Verständnis von Art. 5. Aus ihm folgt nämlich, dass entgegen der Ansicht von DAB und Pro Display nicht nur physische, sondern auch organisatorische Maßnahmen umfasst sind. Die „entsprechende Gestaltung der Räumlichkeiten“ oder die „Anpassung des Arbeitsgeräts“ beziehen sich auf die Beseitigung physischer Schranken, wohingegen mit der „Anpassung des Arbeitsrhythmus, der Aufgabenverteilung oder des Angebots an Ausbildungs- und Einarbeitungsmaßnahmen“ Maßnahmen mit organisatorischem Charakter erwähnt sind. Dies entspricht insbesondere dem Verständnis von Behinderung nach dem UN-Übereinkommen, wonach für eine Einschränkung nicht nur physische, sondern auch sonstige, insbesondere gesellschaftliche Barrieren relevant sind.

58. Auch Sinn und Zweck der Richtlinie 2000/78 sprechen für eine Einbeziehung von Teilzeitbeschäftigung. Diese verlangt individuell abgestimmte Maßnahmen zu einer Gleichstellung und damit einer verbesserten Teilhabe von Menschen mit Behinderung am Berufsleben<sup>(22)</sup>. Entscheidend muss daher sein, ob eine bestimmte Maßnahme dazu führen kann, dass ein Mensch mit Behinderung einen Beruf ergreifen oder seinen Beruf weiterhin ausüben kann. Vor diesem Hintergrund entspricht es gerade Sinn und Zweck der Richtlinie, behinderte Arbeitnehmer, die zumindest teilweise arbeiten können, nicht gänzlich vom Arbeitsmarkt auszuschließen, sondern ihnen durch das Angebot einer Teilzeitbeschäftigung eine adäquate Teilhabe am Berufsleben zu ermöglichen. Es ist nicht zu erkennen, dass die Richtlinie nur Maßnahmen wie den Einbau eines Aufzugs oder rollstuhlgerechter Sanitäreinrichtungen – was ebenfalls aufwändig und kostenträchtig sein kann – verlangt, aber eine Reduzierung der Arbeitszeit nicht erfasst sein kann.

59. Zwar ist der Einwand von DAB und Pro Display nicht von der Hand zu weisen, dass eine Teilzeittätigkeit unter bestimmten Umständen einen starken Eingriff in das Rechtsverhältnis zwischen Arbeitgeber und Arbeitnehmer darstellt und zu einer Belastung für den Arbeitgeber führen kann. Dies kann aber ebenso für die beispielhaft aufgeführte Anpassung der Räumlichkeiten gelten. Aus diesem Grund stellt Art. 5 Satz 2 die Verpflichtung des Arbeitgebers aber auch unter die Bedingung, dass die Maßnahmen den Arbeitgeber nicht unverhältnismäßig belasten dürfen. Insofern fordert die Richtlinie einen angemessenen Ausgleich zwischen den Interessen des behinderten Arbeitnehmers, Maßnahmen zu seiner Unterstützung zu erfahren, und des Arbeitgebers, der Eingriffe in seine Betriebsorganisation sowie wirtschaftliche Einbußen nicht ohne Weiteres hinnehmen muss.

60. Als Zwischenergebnis ist somit festzuhalten, dass eine Herabsetzung der Arbeitszeit zu den von Art. 5 der Richtlinie 2000/78 umfassten Maßnahmen gehören kann. Es obliegt dem nationalen Gericht, im Einzelfall festzustellen, ob eine solche Maßnahme zu einer unverhältnismäßigen Belastung des Arbeitgebers führt.

#### C – Vierte Vorlagefrage

##### 1. Erster Teil der vierten Vorlagefrage

61. Mit dem ersten Teil der vierten Vorlagefrage will der Sø- og Handelsret wissen, inwieweit eine nationale Rechtsvorschrift im Widerspruch zur Richtlinie 2000/78 steht, die eine Kündigung mit verkürzter Frist bei krankheitsbedingtem Fehlen erlaubt, sofern sie auch in Konstellationen angewendet wird, in denen die Abwesenheit durch die Behinderung verursacht ist.

62. Die Richtlinie 2000/78 verbietet gemäß Art. 1 in Verbindung mit Art. 2 Abs. 2 die unmittelbare oder mittelbare Diskriminierung wegen Behinderung in Beschäftigung und Beruf. Eine unmittelbare Diskriminierung liegt danach vor, wenn eine Person wegen einer Behinderung in einer vergleichbaren Situation

eine weniger günstige Behandlung erfährt als eine andere Person. Eine mittelbare Diskriminierung ist zu bejahen, wenn dem Anschein nach neutrale Vorschriften, Kriterien oder Verfahren Personen mit einer Behinderung gegenüber anderen Personen in besonderer Weise benachteiligen können, es sei denn, dies kann gerechtfertigt werden. Der sachliche Geltungsbereich der Richtlinie umfasst gemäß Art. 3 Abs. 1 Buchst. c explizit die Entlassungsbedingungen. Im Folgenden ist daher zunächst zu prüfen, ob in der verkürzten Kündigungsfrist eine unmittelbare oder mittelbare Benachteiligung zu sehen ist und gegebenenfalls, ob eine solche gerechtfertigt werden kann.

a) Benachteiligung

63. Vorab möchte ich aber zunächst den Prüfungsgegenstand präzisieren: Das vorliegende Gericht fragt nur nach der Unionsrechtskonformität der Bestimmung, aus der sich die Verkürzung der Kündigungsfrist wegen Krankheitsfehlzeiten ergibt.

64. Eine andere, nach der Fallkonstellation naheliegende Frage wäre, inwiefern Fehlzeiten, die mit einer Behinderung oder behinderungsbedingten Krankheit in Zusammenhang stehen, überhaupt ein zulässiger Kündigungsgrund sein können. Der Gerichtshof hat bereits festgestellt, dass die Richtlinie einer Kündigung entgegensteht, die unter Berücksichtigung der Verpflichtung des Arbeitgebers, angemessene Vorkehrungen zu treffen, nicht dadurch gerechtfertigt ist, dass die betreffende Person für die Erfüllung der wesentlichen Funktionen ihres Arbeitsplatzes nicht verfügbar ist<sup>(23)</sup> Im Gegenschluss könnte hieraus gefolgert werden, dass eine Kündigung zulässig ist, wenn die erforderlichen Vorkehrungen zur Anpassung des Arbeitsplatzes für den Arbeitgeber eine unverhältnismäßige Belastung darstellen würden oder der Arbeitnehmer wegen seiner Fehlzeiten für die wesentlichen Funktionen des Arbeitsplatzes nicht verfügbar ist. Meiner Ansicht nach dürfte mit dieser Feststellung des Gerichtshofs die Frage der Zulässigkeit einer Kündigung aufgrund behinderungsbedingter Krankheitsfehlzeiten jedoch noch nicht abschließend geklärt sein. In Beantwortung der vorgelegten Frage befasse ich mich im Folgenden aber ausschließlich mit der Verkürzung der Kündigungsfrist.

65. Wenn ein Arbeitnehmer mit Behinderung wegen einer „allgemeinen“ Krankheit fehlt, führt die Berücksichtigung der Krankheitszeiten für die Verkürzung der Kündigungsfrist nicht zu einer Benachteiligung im Vergleich zu einem Arbeitnehmer ohne Behinderung. Denn die Wahrscheinlichkeit, an einer Krankheit wie beispielsweise einer Grippe zu erkranken, hängt in der Regel nicht mit der Behinderung zusammen und trifft Arbeitnehmer mit und ohne Behinderung gleichermaßen.

66. Im vorliegenden Zusammenhang geht es aber um Fehlzeiten, die auf einer Behinderung beruhen. § 5 Abs. 2 FL ist auf den ersten Blick neutral, da er sich auf alle Arbeitnehmer bezieht, die wegen Krankheit mehr als 120 Tage gefehlt haben. Er führt daher nicht zu einer unmittelbaren Diskriminierung Behinderter. Denn diese Bestimmung knüpft weder direkt an das verbotene

Differenzierungskriterium der Behinderung an, noch nimmt sie eine Ungleichbehandlung aufgrund eines Kriteriums vor, das mit der Behinderung untrennbar verbunden ist. Eine Behinderung führt nämlich nicht in jedem Fall zwangsläufig zu Erkrankungen und Krankheitsfehlzeiten, so dass nicht von einer Untrennbarkeit gesprochen werden kann.

67. Hierin liegt jedoch eine mittelbare Benachteiligung. Sofern die Krankheit nämlich mit einer Behinderung zusammenhängt, werden ungleiche Sachverhalte gleich behandelt. Arbeitnehmer mit einer Behinderung haben in der Regel ein viel höheres Risiko an einer mit ihrer jeweiligen Behinderung zusammenhängenden Krankheit zu erkranken als Arbeitnehmer ohne eine Behinderung. Diese kann nur eine „allgemeine“ Krankheit treffen. An einer solchen können aber Arbeitnehmer mit Behinderung darüber hinaus auch noch erkranken. Die Bestimmung zur verkürzten Kündigungsfrist ist somit eine Vorschrift, die Arbeitnehmer mit einer Behinderung gegenüber Arbeitnehmern ohne eine Behinderung mittelbar benachteiligt.

68. Der Einwand einiger Verfahrensbeteiligter, aufgrund des Anspruchs der Arbeitnehmer, die Art ihrer Erkrankung nicht offenlegen zu müssen, sei eine Differenzierung zwischen „allgemeinen“ Krankheiten und solchen, die auf der Behinderung beruhen, nicht praktikabel, überzeugt nicht. Denn es gibt Möglichkeiten, wie beides miteinander in Einklang gebracht werden kann, etwa über einen Vertrauensarzt.

#### b) Rechtfertigung

69. Nach Art. 2 Abs. 2 Buchst. b Ziff. i ist eine Vorschrift wie § 5 Abs. 2 FL gerechtfertigt, wenn durch sie ein legitimes Ziel verfolgt wird und die Mittel zur Erreichung dieses Ziels angemessen und erforderlich sind. Diese Formulierung enthält die allgemeinen im Unionsrecht anerkannten Anforderungen an die Rechtfertigung einer Ungleichbehandlung(24).

70. Die Regelung muss also geeignet sein zur Erreichung eines legitimen Ziels. Sie muss darüber hinaus erforderlich sein, d. h. das angestrebte legitime Ziel darf nicht durch ein milderes, gleich geeignetes Mittel erreicht werden können. Schließlich muss die Regelung auch verhältnismäßig im engeren Sinne sein, d. h., sie darf keine Nachteile verursachen, die außer Verhältnis zu den angestrebten Zielen stehen(25).

71. Bei der Prüfung dieser Kriterien ist zu beachten, dass in der Rechtsprechung anerkannt ist, dass die Mitgliedstaaten über einen weiten Ermessensspielraum bei der Wahl der Maßnahmen zur Erreichung ihrer Ziele im Bereich der Arbeits- und Sozialpolitik verfügen(26).

72. Der Vorlagebeschluss enthält keine Informationen zu den Zielen, die mit § 5 Abs. 2 FL verfolgt werden. Dies macht eine Beurteilung schwierig. Es wird daher Sache des vorliegenden Gerichts sein, die Rechtfertigung der streitigen Regelung abschließend zu beurteilen.

73. Die dänische Regierung hat vorgetragen, § 5 Abs. 2 FL versuche einen gerechten Interessenausgleich zwischen Arbeitgebern und Arbeitnehmern im Falle langer Abwesenheiten wegen Krankheit herzustellen. Letztlich diene er aber insbesondere den Interessen der Arbeitnehmer. Durch die verkürzte Kündigungsfrist im Falle einer langen Krankheitsabwesenheit würde für den Arbeitgeber ein Anreiz geschaffen, einem erkrankten Arbeitnehmer nicht zum frühestmöglichen Zeitpunkt zu kündigen, sondern ihn erst einmal weiterzubeschäftigen, weil der Arbeitgeber wisse, dass bei sehr langen Fehlzeiten dann im Ausgleich die Kündigungsfrist verringert ist.

74. Diese verfolgten Ziele sind legitim, und die Regelung ist angesichts des Ermessensspielraums der Mitgliedstaaten auch nicht offensichtlich ungeeignet(27), um sie zu erreichen. Eine alternative, aber weniger einschneidende Maßnahme müsste sich in das übrige System der arbeitsrechtlichen Regelungen einfügen können. Ob ein solches Mittel vorstellbar ist, ist daher ohne weitere Informationen schwer zu beurteilen.

75. Entscheidend ist, ob die durch die verkürzte Kündigungsfrist in ihrer gegenwärtigen Form bedingten Nachteile für Arbeitnehmer mit Behinderung in einem angemessenen Verhältnis zu den angestrebten Zielen stehen, ob sie also nicht zu einer übermäßigen Beeinträchtigung der Betroffenen führt. Dieses verlangt, dass ein gerechter Ausgleich zwischen den verschiedenen widerstreitenden Interessen gefunden wird(28). Insofern ist fraglich, ob eine angemessene Regelung nicht auch den Schweregrad der Behinderung und die Wiedereinstellungschancen des betroffenen Arbeitnehmers mit in den Blick nehmen müsste. Je schwerer die Behinderung und je schwieriger die Suche nach einer neuen Beschäftigung sein wird, desto wichtiger ist die Länge der Kündigungsfrist für den Arbeitnehmer. Dies im Einzelnen zu beurteilen, ist Sache des vorlegenden Gerichts.

76. Als Ergebnis des ersten Teils der vierten Vorlagefrage ist somit festzuhalten, dass die Richtlinie 2000/78 dahin auszulegen ist, dass sie einer nationalen Regelung entgegensteht, nach der ein Arbeitgeber einem Arbeitnehmer wegen Krankheitsfehlzeiten mit verkürzter Kündigungsfrist kündigen darf, wenn die Krankheit auf der Behinderung beruht. Das gilt nicht, wenn die Benachteiligung gemäß Art. 2 Abs. 2 Buchst. b Ziff. i der Richtlinie 2000/78 durch ein legitimes Ziel sachlich gerechtfertigt ist und die Mittel zur Erreichung dieses Ziels angemessen und erforderlich sind.

## 2. Zweiter Teil der vierten Vorlagefrage

77. Mit dem zweiten Teil der vierten Vorlagefrage möchte das vorlegende Gericht schließlich wissen, ob die Richtlinie 2000/78 einer Verkürzung der Kündigungsfrist entgegensteht, wenn die Abwesenheit des Arbeitnehmers darauf zurückzuführen ist, dass der Arbeitgeber nicht die angemessenen Vorkehrungen gemäß Art. 5 der Richtlinie getroffen hat, um einer Person mit einer Behinderung die Ausübung ihres Berufs zu ermöglichen.



78. Im Rahmen der Frage, welche Vorkehrungen angemessen im Sinne von Art. 5 der Richtlinie sind, findet bereits eine Verhältnismäßigkeitsprüfung statt. Hierbei wird unter Abwägung der Interessen des behinderten Arbeitnehmers und seines Arbeitgebers geklärt, ob die zu treffenden Vorkehrungen dem Arbeitgeber zuzumuten sind. Trifft nun der Arbeitgeber diese ihm zumutbaren angemessenen Vorkehrungen nicht, kommt er also seiner Verpflichtung aus Art. 5 der Richtlinie nicht nach, darf ihm hieraus kein rechtlicher Vorteil entstehen. Die Verpflichtung des Art. 5 der Richtlinie 2000/78 würde leer laufen, wenn die Unterlassung von verhältnismäßigen Maßnahmen eine Benachteiligung eines behinderten Arbeitnehmers rechtfertigen könnte. Nach Sinn und Zweck dieser Vorschrift können daher aus der Unterlassung einer Maßnahme resultierende Fehlzeiten des Arbeitnehmers eine Verkürzung der Kündigungsfrist nicht rechtfertigen.

79. Beruht die Anwendung der verkürzten Kündigungsfrist auf Fehlzeiten des Arbeitnehmers, die dadurch verursacht wurden, dass der Arbeitgeber angemessene Vorkehrungen nach Art. 5 der Richtlinie 2000/78 nicht ergriffen hat, stellt dies daher eine nicht zu rechtfertigende Benachteiligung dar.

#### VI – Ergebnis

80. Nach alledem schlage ich dem Gerichtshof vor, die Vorlagefragen wie folgt zu beantworten:

1. a) Der Begriff Behinderung im Sinne der Richtlinie 2000/78/EG zur Festlegung eines allgemeinen Rahmens für die Verwirklichung der Gleichbehandlung in Beschäftigung und Beruf umfasst eine Einschränkung, die insbesondere auf physische, geistige oder psychische Beeinträchtigungen zurückzuführen ist und die ein Hindernis für die Teilhabe des Betroffenen am Berufsleben darstellt.

b) Für die Definition der Behinderung ist es unerheblich, dass die Beeinträchtigung durch eine Krankheit verursacht wurde; allein entscheidend ist, ob die Einschränkung wahrscheinlich von langer Dauer ist.

c) Auch eine Funktionsbeeinträchtigung von langer Dauer, die keinen Bedarf an besonderen Hilfsmitteln zur Folge hat und die allein oder im Wesentlichen darin besteht, dass die betreffende Person nicht zu einer Vollzeittätigkeit in der Lage ist, ist als Behinderung im Sinne der Richtlinie 2000/78 anzusehen.

2. Eine Herabsetzung der Arbeitszeit kann zu den von Art. 5 der Richtlinie 2000/78 umfassten Maßnahmen gehören. Es obliegt dem nationalen Gericht, im Einzelfall festzustellen, ob eine solche Maßnahme zu einer unverhältnismäßigen Belastung des Arbeitgebers führt.

3. Die Richtlinie 2000/78 ist dahin auszulegen, dass sie einer nationalen Regelung entgegensteht, nach der ein Arbeitgeber einem Arbeitnehmer wegen

Krankheitsfehlzeiten mit verkürzter Kündigungsfrist kündigen darf, wenn die Krankheit auf der Behinderung beruht. Das gilt nicht, wenn die Benachteiligung gemäß Art. 2 Abs. 2 Buchst. b Ziff. i der Richtlinie 2000/78 durch ein legitimes Ziel sachlich gerechtfertigt ist und die Mittel zur Erreichung dieses Ziels angemessen und erforderlich sind. Beruht die Anwendung der verkürzten Kündigungsfrist jedoch auf Fehlzeiten des Arbeitnehmers, die dadurch verursacht wurden, dass der Arbeitgeber keine angemessenen Vorkehrungen nach Art. 5 der Richtlinie 2000/78 ergriffen hat, stellt dies eine nicht zu rechtfertigende Benachteiligung dar.

1 – Originalsprache: Deutsch.

2 – Richtlinie 2000/78/EG des Rates vom 27. November 2000 zur Festlegung eines allgemeinen Rahmens für die Verwirklichung der Gleichbehandlung in Beschäftigung und Beruf, ABl. L 303, S. 16, im Folgenden: Richtlinie 2000/78.

3 – Urteil vom 11. Juli 2006, Chacón Navas (C-13/05, Slg. 2006, I-6467).

4 – Ratifiziert von der Europäischen Union am 23. Dezember 2010; im Folgenden: UN-Übereinkommen. Siehe Beschluss des Rates 2010/48/EG vom 26. November 2009 über den Abschluss des Übereinkommens, ABl. 2010, L 23, S. 35.

5 – Lov om forbud mod forskelsbehandling på arbejdsmarkedet (Gesetz über die Gleichbehandlung auf dem Arbeitsmarkt).

6 – Lov om retsforholdet mellem arbejdsgivere og funktionærer (Funktionærlov (Angestelltengesetz)), im Folgenden: FL.

7 – Verband der Handels- und Büroangestellten Dänemark.

8 – Bei der flexjob-Regelung handelt es sich um eine dänische Regelung staatlicher Lohnzuschüsse bei Beschäftigung von Menschen mit dauerhaft verminderter Arbeitsfähigkeit.

9 – Urteil Chacón Navas (zitiert in Fn. 3, Randnr. 43).

10 – Ebd., Randnr. 45.

11 – So auch Generalanwalt Geelhoed in seinen Schlussanträgen in der Rechtssache Chacón Navas (zitiert in Fn. 3, Nr. 66).

12 – Vgl. in diesem Sinne Urteile vom 10. September 1996, Kommission/Deutschland (C-61/94, Slg. 1996, I-3989, Randnr. 52), vom 12. Januar 2006, Algemene Scheeps Agentuur Dordrecht (C-311/04, Slg. 2006, I-609, Randnr. 25), vom 3. Juni 2008, Intertanko u. a. (C-308/06, Slg. 2008, I-4057, Randnr. 42), sowie vom 3. September 2008, Kadi und Al Barakaat International Foundation/Rat und Kommission (C-402/05 P und C-415/05 P, Slg. 2008, I-6351,

Randnr. 307), und vom 21. Dezember 2011, Air Transport Association of America u. a. (C-366/10, noch nicht in der amtlichen Sammlung veröffentlicht, Randnr. 50).

13 – Vgl. Urteile Kommission/Deutschland (zitiert in Fn. 12, Randnr. 52), vom 14. Juli 1998, Bettati (C-341/95, Slg. 1998, I-4355, Randnr. 20), vom 9. Januar 2003, Petrotub und Republica (C-76/00 P, Slg. 2003, I-79, Randnr. 57), und vom 14. Mai 2009, Internationaal Verhuis- en Transportbedrijf Jan de Lely (C-161/08, Slg. 2009, I-4075, Randnr. 38).

14 – Urteil Chacón Navas (zitiert in Fn. 3, Randnr. 46).

15 – Ebd., Randnr. 57.

16 – Urteil vom 17. Juli 2008, Coleman (C-303/06, Slg. 2008, I-5603, Randnr. 46).

17 – US Supreme Court, Bragdon v. Abbott, 524 US 624 [1998], § 12102 Abs. 1 (A) des ADA 1990 bejaht dann eine Behinderung, wenn „a physical ... impairment that substantially limits one or more of [an individual's] major life activities“ vorliegt.

18 – Auch der Europäische Gerichtshof für Menschenrechte hat eine Erkrankung an Diabetes mellitus Typ I, die von den nationalen Behörden als geringfügig eingestuft wurde, als Behinderung für die Zwecke des Diskriminierungsschutzes anerkannt, EGMR, Urteil vom 30. April 2009 (Glor/Schweiz, Nr. 13444/04).

19 – Urteil Chacón Navas (zitiert in Fn. 3, Randnr. 45).

20 – In der englischen Sprachfassung: „long-term [...] impairments“, in der französischen Sprachfassung: „incapacités [...] durables“.

21 – Richtlinie 97/81/EG des Rates vom 15. Dezember 1997 zu der von UNICE, CEEP und EGB geschlossenen Rahmenvereinbarung über Teilzeitarbeit, ABl. L 14, S. 9.

22 – Siehe Erwägungsgründe 8, 9, 11 und 16 der Richtlinie 2000/78.

23 – Urteil Chacón Navas (zitiert in Fn. 3, Randnr. 51).

24 – Siehe bereits meine Schlussanträge vom 6. Mai 2010, Andersen (C-499/08, Slg. 2010, I-9343, Nr. 42).

25 – Urteile vom 12. Juli 2001, Jippes u. a. (C-189/01, Slg. 2001, I-5689, Randnr. 81), vom 7. Juli 2009, S.P.C.M. u. a. (C-558/07, Slg. 2009, I-5783, Randnr. 41), und

vom 8. Juli 2010, Afton Chemical (C-343/09, Slg. 2010, I-7023, Randnr. 45 und die dort angeführte Rechtsprechung).

26 – Vgl. aus dem Bereich der Altersdiskriminierung Urteile vom 16. Oktober 2007, Palacios de la Villa (C-411/05, Slg. 2007, I-8531, Randnr. 68), und vom 12. Oktober 2010, Rosenblatt (C-45/09, Slg. 2010, I-9391, Randnr. 41).

27 – Vgl. hierzu Urteile Palacios de la Villa (zitiert in Fn. 26, Randnr. 72) und vom 12. Januar 2010, Petersen (C-341/08, Slg. 2010, I-47, Randnr. 70).

28 – Vgl. hierzu meine Schlussanträge in der Rechtssache Andersen (zitiert in Fn. 24, Nr. 68) und meine Stellungnahme vom 2. Oktober 2012, Kommission/Ungarn (C-286/12, noch nicht in der amtlichen Sammlung veröffentlicht, Nr. 78).

CONCLUSIONS DE L'AVOCAT GÉNÉRAL Mme  
JULIANE KOKOTT  
présentées le 6 décembre 2012 (1)  
Affaires jointes C-335/11 et C-337/11

HK Danmark, handelnd für Jette Ring  
contre  
Dansk Almennyttigt Boligselskab DAB

et

HK Danmark, handelnd für Lone Skouboe Werge  
contre  
Pro Display A/S in Konkurs  
(demande de décision préjudicielle formée par le Sø- og Handelsretten  
[Dänemark])

«Égalité de traitement en matière d'emploi et de travail – Directive 2000/78/CE –  
Interdiction des discriminations en raison d'un handicap – Notion de handicap –  
Distinction entre maladie et handicap – Aménagements raisonnables en faveur  
des personnes handicapées – Discrimination indirecte – Justification »

## I – Introduction

1. Quand peut-on parler de handicap au sens de la directive 2000/78/CE portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail (2) et comment la notion de handicap peut-elle être distinguée de la maladie ? Ces questions sont au coeur de la procédure préjudicielle qui nous intéresse ici. La Cour est donc appelée à préciser la définition de la notion de handicap qui ressort de son arrêt Chacón Navas (3).

2. Il est en outre question de ce que recouvre la notion d'aménagements raisonnables en faveur des personnes handicapées, que l'employeur est tenu de prévoir en application de l'article 5 de la directive 2000/78. Enfin, la juridiction de renvoi souhaite savoir si la réduction du délai de préavis de licenciement motivée par des absences pour cause de maladie peut constituer une discrimination en raison d'un handicap.

## II – Le cadre juridique

### A – Le droit international

3. On peut lire ce qui suit dans le préambule de la Convention des Nations unies du 13 décembre 2006 relative aux droits des personnes handicapées (4), sous e): «Reconnaissant que la notion de handicap évolue et que le handicap résulte de l'interaction entre des personnes présentant des incapacités et les barrières comportementales et environnementales qui font obstacle à leur pleine et effective participation à la société sur la base de l'égalité avec les autres».

4. L'article 1er, deuxième alinéa de la convention, énonce la définition suivante :

«Au sens de la Convention des Nations Unies, on entend par personnes handicapées des individus qui présentent des incapacités physiques, mentales, intellectuelles ou sensorielles durables dont l'interaction avec diverses barrières peut faire obstacle à leur pleine et effective participation à la société sur la base de l'égalité avec les autres».

B – Le droit de l'Union

5. Selon le vingtième considérant de la directive 2000/78 :

«Il convient de prévoir des mesures appropriées, c'est-à-dire, des mesures efficaces et pratiques destinées à aménager le poste de travail en fonction du handicap, par exemple en procédant à un aménagement des locaux ou à une adaptation des équipements, des rythmes de travail, de la répartition des tâches ou de l'offre de moyens de formation ou d'encadrement».

6. Conformément à l'article 2, paragraphe 2, sous b), de la directive 2000/78, une discrimination indirecte se produit «lorsqu'une disposition, un critère ou une pratique apparemment neutre est susceptible d'entraîner un désavantage particulier pour des personnes d'une religion ou de convictions, d'un handicap, d'un âge ou d'une orientation sexuelle donnés, par rapport à d'autres personnes, à moins que:

i) cette disposition, ce critère ou cette pratique ne soit objectivement justifié par un objectif légitime et que les moyens de réaliser cet objectif ne soient appropriés et nécessaires, ou que

...»

7. L'article 5 de la directive 2000/78 prévoit ce qui suit sous l'intitulé «Aménagements raisonnables pour les personnes handicapées»:

«Afin de garantir le respect du principe de l'égalité de traitement à l'égard des personnes handicapées, des aménagements raisonnables sont prévus. Cela signifie que l'employeur prend les mesures appropriées, en fonction des besoins dans une situation concrète, pour permettre à une personne handicapée d'accéder à un emploi, de l'exercer ou d'y progresser, ou pour qu'une formation

lui soit dispensée, sauf si ces mesures imposent à l'employeur une charge disproportionnée. Cette charge n'est pas disproportionnée lorsqu'elle est compensée de façon suffisante par des mesures existant dans le cadre de la politique menée dans l'État membre concerné en faveur des personnes handicapées».

#### C – Le droit national

8. La directive 2000/78 a été transposée en droit danois par la Forskelsbehandlingslov(5). L'article 7 de cette loi prévoit la possibilité de demander une réparation en cas de non-respect de l'interdiction de discrimination ou lorsque l'employeur n'a pas pris les mesures requises.

9. La Funktionærlov (6) régit la relation juridique entre employeurs et travailleurs/employés.

10. Son article 5, paragraphe 2 contient une disposition spéciale s'agissant du licenciement pour cause de maladie du salarié ; il prévoit que :

«Le contrat de travail écrit peut toutefois prévoir que la durée du préavis ne sera que d'un mois à effet du dernier jour du mois suivant si, au cours des douze derniers mois, le travailleur salarié a été absent pour cause de maladie avec maintien de la rémunération pendant 120 jours. Le licenciement est valable s'il intervient immédiatement à l'issue de la période de 120 jours d'absence pour cause de maladie et que le travailleur salarié est toujours en arrêt maladie; le fait que le travailleur salarié retourne sur son lieu de travail après la décision de licenciement est sans incidence sur sa validité».

#### III – Les faits et la procédure au principal

11. Les procédures préjudicielles présentement soumises à la Cour ont pour origine deux recours introduits en 2006 par le Handels- og Kontorfunktionærernes Forbund Danmark (HK)(7) agissant au nom des salariées Jette Ring et Lone Skouboe Werge, réclamant une réparation conformément à la loi danoise anti-discrimination, pour discrimination en raison d'un handicap. L'application de l'article 5, paragraphe 2 de la FL avait été convenue pour les deux contrats de travail.

#### A – L'affaire C-335/11

12. Dans l'affaire Ring, la procédure au principal a pour origine les faits suivants:

13. Mme Ring était employée depuis 2000 par l'entreprise Dansk Almennyttigt Boligselskab (DAB) en tant qu'employée chargée de l'accueil des clients. Entre juin 2005 jusqu'à son licenciement en novembre 2005, elle a été absente à plusieurs reprises pour maladie; les périodes d'absence représentaient au total plus de 120 jours. Les certificats médicaux produits pour justifier les

absences font état de douleurs chroniques au niveau du dos dues notamment à un développement d'arthrose au niveau des lombaires, se traduisant par des douleurs lombaires constantes. Les médecins traitants étant partis du principe d'une rigidification des vertèbres lombaires par un processus naturel de soudure, il n'y avait pas d'autres possibilités de traitement. Aucune mesure destinée à soulager ces douleurs, telle l'achat d'un bureau ajustable en hauteur pour son poste de travail ou l'offre d'un emploi à temps partiel, n'a été prise pendant la période au cours de laquelle Mme Ring a travaillé pour DAB, et ce bien que DAB propose en principe des postes à temps partiel.

14. En raison de la durée cumulée de ses absences, Mme Ring a été licenciée avec un préavis réduit en application de l'article 5, paragraphe 2 de la FL. Immédiatement après le licenciement de Mme Ring, DAB a fait passer une annonce d'offre d'emploi à temps partiel, pour des fonctions comparables à celles qu'elle exerçait, dans un bureau régional situé à proximité. Mme Ring a commencé un nouveau travail en qualité d'hôtesse d'accueil auprès d'une autre société, laquelle a mis à sa disposition une table de travail ajustable en hauteur et fixé son temps de travail hebdomadaire à 20 heures. Elle a été embauchée à temps plein suivant le régime danois des horaires flexibles avec une compensation de 50% de son salaire (8).

#### B – Affaire C-337/11

15. Dans l'affaire Skouboe Werge, le Sør- og Handelsret a exposé les éléments de fait suivants:

16. Mme Skouboe Werge travaillait depuis 1998 en tant qu'assistante de direction pour la société Pro Display. Après avoir été victime en décembre 2003 d'une entorse cervicale à la suite d'un accident de la circulation, après lequel elle avait été en arrêt maladie pendant trois semaines, elle a tout d'abord repris son activité à temps plein chez Pro Display. Lorsqu'il est apparu, à la fin de l'année 2004, que Mme Skouboe Werge souffrait encore des séquelles de son entorse cervicale, elle a été mise en arrêt maladie pour quatre semaines, période où elle ne devait travailler que quatre heures par jour environ. En janvier 2005, Mme Skouboe Werge s'est mise en arrêt maladie à temps plein, en raison de douleurs persistantes. Elle a ensuite été informée de son licenciement avec un préavis d'un mois prenant fin le 31 mai 2005, en application de la règle des 120 jours de l'article 5, paragraphe 2, de la FL.

17. Les troubles de Mme Skouboe Werge se manifestaient par différents symptômes, en particulier des douleurs à la nuque irradiant vers les épaules et les avants-bras, des problèmes à la mâchoire, un état d'asthénie, des troubles de la concentration et des pertes de mémoire, des difficultés d'élocution, une hypersensibilité aux bruits, une faible résistance au stress et des pertes de connaissance. À compter de juin 2006, après que sa capacité à travailler eut été évaluée à environ huit heures par semaine à un rythme lent, Mme Skouboe Werge a bénéficié d'une pension de retraite anticipée. En outre, par une



décision de l'autorité compétente en matière d'accidents du travail et de maladies professionnelles, le taux de lésion de Mme Skouboe Werge a été fixé à 10 % et le taux de perte de revenus à 65 %.

18. Dans la procédure au principal, HK a fait valoir que ces salariées ne pouvaient valablement être licenciées avec un préavis réduit en vertu de l'article 5, paragraphe 2, de la FL, au motif qu'il s'agissait d'une discrimination en raison du handicap prohibée par la directive 2000/78. La juridiction de renvoi s'interroge donc sur la définition de la notion de «handicap» au sens de la directive 2000/78.

#### IV – Les questions préjudicielles et la procédure devant la Cour

19. Par ordonnances du 29 juin 2011, parvenues à la Cour le 1er juillet 2011, le Søg- og Handelsret a sursis à statuer et saisi la Cour des questions suivantes:

1a) La notion de «handicap», au sens de la directive, est-elle applicable à toute personne qui, en raison d'atteintes physiques, mentales ou psychiques, ne peut accomplir son travail pendant une période satisfaisant à la condition de durée visée au point 45 de l'arrêt de la Cour du 16 juillet 2006, *Navas*, ou ne peut le faire que de façon limitée?

1b) Un état pathologique causé par une maladie médicalement constatée comme incurable peut-il relever de la notion d'handicap au sens de cette directive?

1c) Un état pathologique causé par une maladie médicalement constatée comme curable peut-il relever de la notion d'handicap au sens de cette directive?

2) Une incapacité permanente ne nécessitant pas l'utilisation d'équipements spéciaux ou autres et qui se traduit pour l'essentiel par le fait que la personne qui en est atteinte n'est pas en mesure de travailler à plein temps, relève-t-elle de la notion d'handicap au sens de la directive 2000/78?

3) La réduction du temps de travail peut-elle constituer l'une des mesures visées par l'article 5 de la directive 2000/78?

4) La directive 2000/78 fait-elle obstacle à l'application d'une loi nationale suivant laquelle un employeur peut mettre fin au contrat de travail avec un préavis réduit si le travailleur, qui doit être considéré comme handicapé au sens de ladite directive, a été en arrêt maladie avec maintien du salaire pendant 120 jours en tout au cours des douze derniers mois lorsque:

a. les absences du travailleur sont la conséquence de son handicap?

ou que

b. les absences du travailleur sont imputables au fait que l'employeur n'a pas pris les mesures concrètes nécessaires pour qu'une personne handicapée puisse exercer son emploi?

20. Par ordonnance du Président de la Cour du 4 août 2011, les affaires C-335/11 et C-337/11 ont été jointes aux fins de la procédure écrite et orale, ainsi que de l'arrêt.

21. Outre les parties au principal, les gouvernements du Danemark, de l'Irlande, de la Pologne et du Royaume-Uni ainsi que Commission européenne ont participé à la procédure écrite orale devant la Cour. Par ailleurs, les gouvernements de Belgique et de Grèce ont présenté des observations écrites.

#### V – Appréciation

22. Il convient de répondre conjointement à la première et à la deuxième questions du Søg og Handelsret, dans la mesure où elles concernent toutes deux la définition de la notion de handicap (ci-après sous A.). La troisième question porte sur les modalités et l'ampleur des aménagements que l'employeur doit prévoir conformément à l'article 5 de la directive 2000/78 (ci-après sous B). Pour finir, il conviendra d'aborder la quatrième question et donc d'examiner si la réduction du délai de préavis en raison d'absences pour maladie est une disposition discriminatoire (ci-après sous C.).

#### A – La première et la deuxième questions

##### 1. Définition de la notion de handicap

23. La directive 2000/78 ne fournit elle-même aucune définition de la notion de handicap.

24. La Cour a déjà été appelée, dans l'arrêt Chacón Navas, à donner une définition de cette notion propre au droit de l'Union. Selon cet arrêt, la notion de handicap doit être entendue comme visant «une limitation, résultant notamment d'atteintes physiques, mentales ou psychiques et entravant la participation de la personne concernée à la vie professionnelle» (9). Il doit en outre être probable que cette limitation soit de longue durée (10).

25. En 2010 – soit quelques années après l'arrêt Chacón Navas – l'Union européenne a ratifié la Convention des Nations unies relative aux droits des personnes handicapées. La convention de l'ONU précise tout d'abord dans son préambule que la notion de handicap n'est pas figée et que la définition du handicap évolue en permanence (11). L'article 1er de la convention définit ensuite cette notion. Selon ce texte, on entend par «personnes handicapées des individus qui présentent des incapacités physiques, mentales, intellectuelles ou sensorielles durables dont l'interaction avec diverses barrières peut faire obstacle à leur pleine et effective participation à la société sur la base de l'égalité avec les autres».

26. Il découle de l'article 216, paragraphe 2, TFUE que les accords conclus par l'Union lient les institutions de l'Union et les États membres. Les accords internationaux conclus par l'Union font partie intégrante de l'ordre juridique de l'Union à compter de leur entrée en vigueur(12). Pour cette raison, les dispositions du droit de l'Union dérivé doivent faire l'objet, si possible, d'une interprétation conforme aux obligations de droit public de l'Union (13).

27. La notion de handicap au sens de la directive 2000/78 ne devrait donc pas être en retrait par rapport à l'étendue de la protection offerte par la convention de l'ONU. Selon la définition de la convention de l'ONU, l'obstacle à la participation à la société de la personne handicapée résulte de «l'interaction avec diverses barrières». Il se pourrait donc, dans certains cas de figure, que la définition de l'arrêt Chacón Navas soit en retrait par rapport à la définition de la convention de l'ONU et qu'il y ait lieu de l'interpréter conformément au droit international.

28. Dans les affaires qui nous intéressent ici, le noeud du problème ne se rapporte toutefois pas aux «barrières» dont il est question dans cette définition. La juridiction de renvoi souhaite savoir si un état pathologique causé par une maladie médicalement constatée comme incurable ou curable peut relever de la notion de handicap. Ni la définition qui ressort de l'arrêt Chacón Navas ni celle de la convention de l'ONU ne permettent par elles-mêmes de répondre aux questions de la juridiction de renvoi. En effet, mise à part l'exigence d'une limitation de longue durée, ces deux définitions n'exposent aucun critère explicite permettant de distinguer le handicap de la maladie.

29. Pour répondre aux questions de la juridiction de renvoi, il convient par conséquent d'aborder maintenant la question de la distinction entre maladie et handicap.

## 2. La distinction entre maladie et handicap

30. Dans son arrêt Chacón Navas, la Cour a constaté que la directive 2000/78 ne protège déjà pas les travailleurs atteints d'une maladie quelconque (14). La Cour opère donc une distinction entre maladie et handicap. En effet, la «maladie» n'est pas évoquée dans la directive comme un motif de discrimination propre.

31. Cependant, la Cour n'a exclu du champ d'application de la directive que la «maladie en tant que telle» (15). On ne saurait déduire de l'arrêt Chacón Navas qu'une maladie, cause de handicap, fait obstacle à la qualification de handicap. Enfin, dans son deuxième arrêt concernant une discrimination en raison d'un handicap, la Cour a également précisé que l'arrêt Chacón Navas ne saurait être interprété en ce sens que la portée *ratione personae* de cette directive devrait être interprétée de manière restrictive (16).

32. En particulier, il n'apparaît pas que la directive 2000/78 vise à couvrir uniquement les handicaps de naissance ou d'origine accidentelle. Il serait arbitraire que la directive puisse s'appliquer en fonction de l'origine du handicap, sans compter que cela irait à l'encontre de l'objectif même de la directive qui est de mettre en œuvre l'égalité de traitement.

33. Il convient donc de distinguer entre la maladie comme possible cause d'incapacité et l'incapacité qui en résulte. La limitation permanente résultant d'une maladie et faisant obstacle à la participation à la vie professionnelle relève également de la protection de la directive.

34. Les affaires dont il est ici question concernent des atteintes ou incapacités physiques, qui se manifestent notamment par des douleurs et une certaine immobilité. La distinction entre maladie et handicap est donc ici plus aisée que dans l'affaire soumise à la Cour suprême des États-Unis, dans laquelle celle-ci a constaté que, même en l'absence de tout symptôme, une infection au virus HIV pouvait constituer un handicap au sens de l'Anti-Discrimination Act (17). La question de savoir si les troubles dont souffre une personne constituent concrètement une limitation relève de l'appréciation de la juridiction de l'État membre.

35. Le libellé de la directive 2000/78 ne contient aucun élément qui permettrait de limiter son champ d'application à un certain degré de gravité du handicap (18). Cette question n'ayant toutefois ni été posée par la juridiction de renvoi, ni discutée entre les parties à la procédure, elle n'a pas à être résolue ici de manière définitive.

36. L'existence d'un handicap suppose en outre que la limitation soit probablement de «longue durée» (19). La convention de l'ONU évoque à cet égard la nécessité d'incapacités «durables» (20). Nous n'y voyons aucune différence quant au contenu.

37. Dans le cas d'une limitation ayant pour origine une maladie incurable, cette condition de longue durée sera en général remplie. Cependant, même une maladie en principe curable peut nécessiter un laps de temps tellement long avant la guérison complète qu'elle implique une limitation de longue durée. De surcroît, même une maladie en principe curable peut avoir pour séquelle une limitation durable. Dans le cas précis des maladies chroniques, le passage d'une maladie (susceptible d'être traitée) à une limitation probablement permanente – qui prendra alors le caractère d'un handicap – peut être à peine perceptible. Ce n'est qu'une fois que cette limitation permanente est diagnostiquée que l'on peut parler d'un handicap.

38. La seule constatation du caractère intrinsèquement curable ou non, permanent ou provisoire d'une maladie n'autorise donc aucune conclusion définitive quant à l'existence ultérieure d'une limitation de longue durée.

3. Le besoin d'équipements spéciaux

39. La juridiction de renvoi demande en outre si la reconnaissance d'un handicap est subordonnée à la nécessité pour l'intéressé d'utiliser des équipements spéciaux ou s'il suffit qu'il ne soit plus en mesure de travailler à plein temps.

40. La notion de handicap au sens de la directive n'est pas subordonnée à la nécessité d'utiliser des équipements spéciaux.

41. Il ressort clairement de l'article 5 de la directive 2000/78 que l'existence d'un handicap doit d'abord être constatée pour que les mesures appropriées requises soient prises. Le vingtième considérant livre un certain nombre d'éléments sur ce qu'il convient d'entendre par mesures raisonnables, et précise notamment qu'il convient d'aménager «le poste de travail en fonction du handicap». La nécessité d'installations et d'équipements spéciaux est donc une conséquence de la constatation du handicap et non un élément de sa définition.

42. Le sens et la finalité de la directive ne semblent pas non plus suggérer que le besoin d'équipements spéciaux serait un élément de la définition du handicap. Les handicaps au sens de la directive peuvent avoir pour origine des atteintes physiques, psychiques ou mentales. Cette insistance sur le besoin d'équipements spéciaux semble toutefois correspondre uniquement à l'image de la personne souffrant d'atteintes physiques. En exigeant l'utilisation d'équipements spéciaux comme élément nécessaire de la notion de handicap, les atteintes mentales ou psychiques explicitement évoquées dans la directive seraient d'emblée exclues, car elles ne nécessitent pas en règle générale d'équipements spéciaux. Une telle exigence aurait également pour effet de désavantager précisément les personnes dont le handicap ne peut être compensé ou atténué par un équipement spécial et qui, ne serait-ce que pour cette raison, sont plutôt plus gravement touchées que d'autres.

43. En définitive, tout dépend donc uniquement de la question de savoir s'il existe une entrave à la participation à la vie professionnelle.

44. DAB et Pro Display ont fait valoir que seule une personne totalement exclue de la vie professionnelle peut être considérée comme handicapée, de sorte qu'une simple réduction de la capacité de travail n'est pas suffisante aux fins de la qualification de handicap. Un tel raisonnement ne parvient pas à nous convaincre. Ne serait-ce que d'après son sens généralement admis, l'idée d'une «entrave à la participation à la vie professionnelle» recouvre également des limitations simplement partielles et non pas seulement une «exclusion» pure et simple de la vie professionnelle.

45. Le dix-septième considérant de la directive tend également à plaider pour une application de la directive aux personnes ne pouvant participer à la vie professionnelle parce qu'elles ne sont pas en mesure de travailler à temps plein. Ce considérant expose que la directive protège les travailleurs qui seraient en principe «compétent[s], ...capable[s] [ou] disponible[s] pour remplir les fonctions

essentielles du poste concerné». La directive vise donc précisément à protéger des personnes qui peuvent en principe participer à la vie professionnelle - ne serait-ce que dans une mesure limitée ou moyennant des aménagements spécifiques. L'application de la directive n'est donc pas subordonnée à l'exclusion de l'intéressé de toute vie professionnelle.

46. Il convient donc de considérer à titre de conclusion intermédiaire que la notion de «handicap» doit être entendue comme visant une limitation, résultant notamment d'atteintes physiques, mentales ou psychiques et entravant la participation de la personne concernée à la vie professionnelle. Peu importe, aux fins de la définition du handicap, que cette atteinte ait pour origine une maladie; la seule question décisive est de savoir si la limitation est de longue durée. Une incapacité de longue durée ne nécessitant pas l'utilisation d'équipements spéciaux et qui se traduit pour l'essentiel par le fait que la personne qui en est atteinte n'est pas en mesure de travailler à plein temps relève également de la notion d'handicap au sens de la directive 2000/78.

#### B – Troisième question

47. Par sa troisième question, le SØ- og Handelsret souhaite savoir si la réduction du temps de travail peut également constituer un aménagement raisonnable en faveur des personnes handicapées.

48. L'article 5, paragraphe 1, de la directive 2000/78, prévoit que des aménagements raisonnables sont prévus afin de garantir le respect du principe de l'égalité de traitement à l'égard des personnes handicapées. Cela signifie que l'employeur doit prendre «les mesures appropriées, en fonction des besoins dans une situation concrète», pour permettre à une personne handicapée d'accéder à un emploi, de l'exercer ou d'y progresser, ou pour qu'une formation lui soit dispensée. L'employeur n'est dispensé de cette obligation que si ces mesures lui imposeraient une charge disproportionnée.

49. Cette disposition n'a pas seulement pour objectif que la personne handicapée soit traitée de manière égale mais également qu'elle soit mise sur un pied d'égalité, et donc qu'elle puisse ainsi exercer un métier.

50. L'article 5 de la directive 2000/78 énonce simplement que les mesures doivent être appropriées, en fonction des besoins dans une situation concrète, pour permettre à l'intéressé d'accéder à un emploi, etc.

51. Le vingtième considérant de la directive précise cependant cette disposition. Il convient en effet selon lui de prévoir «des mesures efficaces et pratiques» «destinées à aménager le poste de travail en fonction du handicap, par exemple en procédant à un aménagement des locaux ou à une adaptation des équipements, des rythmes de travail, de la répartition des tâches ou de l'offre de moyens de formation ou d'encadrement».

52. La réduction du temps de travail pourrait correspondre à l'exemple explicitement évoqué de «l'adaptation des rythmes de travail». DAB et Pro Display sont toutefois d'avis que les rythmes de travail ne visent précisément pas le temps de travail mais simplement la prestation de travail et sa cadence ou encore la répartition des tâches entre employés.

53. Même si l'on admettait que la réduction du temps de travail ne correspond pas à l'adaptation des rythmes de travail, nous sommes d'avis que la réduction du temps de travail relève des mesures visées à l'article 5 de la directive.

54. En effet, il ressort du libellé du vingtième considérant que celui-ci énumère simplement un certain nombre d'exemples, dont la liste ne saurait être considérée comme exhaustive. On ne saurait déduire du seul fait que la réduction du temps de travail n'y est pas expressément mentionnée qu'une telle mesure ne relève pas de l'article 5 de la directive.

55. DAB et Pro Display font en outre observer que la directive n'évoque pas le temps de travail et que cette notion n'a pas été discutée dans le cadre des travaux préparatoires à la directive. Ils estiment que la discussion sur la notion de réduction du temps de travail, en raison de son lien si étroit avec la directive sur le temps de travail (21), doit également nécessairement être examinée sur le fondement de celle-ci.

56. Cependant, le législateur de l'Union a conçu largement le libellé de l'article 5. Ce texte évoque de façon générale des mesures permettant aux personnes handicapées d'accéder à un emploi. Il ne fait aucun doute qu'une réduction du temps de travail peut permettre à une personne handicapée de pouvoir exercer un métier.

57. Le vingtième considérant de la directive plaide également en faveur d'une interprétation large de son article 5. Il en ressort en effet que, contrairement à la thèse de DAB et Pro Display, les mesures envisagées ne sont pas seulement d'ordre matériel mais également d'ordre organisationnel. L'«aménagement des locaux» ou l'«adaptation des équipements» visent à éliminer les limitations physiques tandis que l'«aménagement des rythmes de travail, de la répartition des tâches ou de l'offre de moyens de formation ou d'encadrement» relève plutôt des mesures d'organisation. Cela correspond notamment à la notion de handicap telle qu'elle ressort de la convention de l'ONU, qui considère que la limitation peut résulter non seulement de barrières physiques, mais également d'autres barrières, notamment sociales.

58. Le sens et la finalité de la directive 2000/78 plaident également pour la prise en compte de l'activité à temps partiel. La directive réclame des mesures individualisées afin d'assurer l'égalité et donc une meilleure participation des personnes handicapées à la vie professionnelle (22) Le point déterminant sera donc l'aptitude d'une mesure déterminée à permettre à une personne handicapée d'exercer un métier ou de continuer à l'exercer. Dans ces conditions,

il est tout à fait conforme au sens et à la finalité de la directive de ne pas exclure totalement du marché du travail des travailleurs handicapés capables de travailler au moins une partie du temps, mais au contraire de leur permettre de participer de façon appropriée à la vie professionnelle en leur offrant un emploi à temps partiel. Il n'apparaît pas que la directive exige uniquement des mesures telles que l'installation d'un ascenseur ou d'installations sanitaires accessibles en fauteuil roulant – ce qui peut également être lourd et coûteux – mais que des mesures telles que la réduction du temps de travail seraient exclues.

59. L'objection de DAB et Pro Display, selon laquelle une activité à temps partiel constitue, dans certaines circonstances, une grave ingérence dans les rapports juridiques entre employeur et salarié et peut s'avérer une charge pour l'employeur, n'est certes pas sans fondement. Mais cela vaut également pour l'adaptation des locaux citée à titre d'exemple. C'est pourquoi l'article 5, deuxième phrase, subordonne toutefois cette obligation de l'employeur à la condition également que les mesures ne constituent pas pour lui une charge disproportionnée. La directive exige à cet égard un équilibre approprié entre les intérêts du travailleur handicapé à bénéficier de mesures de soutien et ceux de l'employeur qui ne peut être tenu d'accepter sans condition toute ingérence dans l'organisation de son entreprise ou un préjudice économique.

60. Il convient donc de conclure à ce stade qu'une réduction du temps de travail peut faire partie de mesures visées à l'article 5 de la directive 2000/78. Il appartient à la juridiction nationale de constater au cas par cas si une telle mesure peut impliquer une charge disproportionnée pour l'employeur.

## C – Quatrième question

### 1. Première partie de la quatrième question

61. Dans la première partie de sa quatrième question, le SØ- og Handelsret souhaite savoir dans quelle mesure une disposition nationale prévoyant qu'un employeur peut mettre fin au contrat de travail avec un préavis réduit en cas d'absences pour maladie, dès lors qu'elle s'applique également lorsque ces absences sont la conséquence du handicap, est incompatible avec la directive 2000/78.

62. La directive 2000/78 prohibe, conformément aux dispositions combinées de son article 1er et de son article 2, paragraphe 2, la discrimination directe ou indirecte fondée sur un handicap, en matière d'emploi et de travail. Selon ce texte, il y a discrimination directe lorsqu'une personne, en raison d'un handicap, est traitée de manière moins favorable qu'une autre dans une situation comparable. Une discrimination indirecte se produit lorsqu'une disposition, un critère ou une pratique apparemment neutre est susceptible d'entraîner un désavantage particulier pour des personnes handicapées par rapport à d'autres personnes, à moins que cela puisse être justifié. Le champ d'application matériel de la directive comprend explicitement, conformément à son article 3, paragraphe 1, sous c), les conditions de licenciement. Il convient par conséquent



d'examiner tout d'abord ci-après la question de savoir si la réduction du délai de préavis peut être qualifiée de discrimination directe ou indirecte et, le cas échéant, si elle peut être justifiée.

a) Le désavantage

63. Il nous faut cependant avant toutes choses préciser l'objet de notre analyse: la juridiction de renvoi pose uniquement la question de la conformité au droit de l'Union de la disposition prévoyant la réduction du délai de préavis en cas d'absences pour maladie.

64. Une autre question qui pourrait se poser au regard des faits au principal serait de savoir dans quelle mesure les périodes d'absence liées à un handicap ou à une maladie elle-même liée à un handicap peuvent en tout état de cause constituer un motif valable de licenciement. La Cour a déjà constaté que la directive s'oppose à un licenciement qui, compte tenu de l'obligation de prévoir des aménagements raisonnables pour les personnes handicapées, n'est pas justifié par le fait que la personne concernée n'est pas disponible pour remplir les fonctions essentielles de son poste (23). On pourrait en déduire à l'inverse que le licenciement est admis lorsque les aménagements nécessaires pour adapter le poste de travail représenteraient une charge disproportionnée pour l'employeur ou que le salarié, du fait de ses absences, n'est pas disponible pour remplir les fonctions essentielles de son poste. Nous sommes d'avis que cette constatation de la Cour n'a toutefois pas encore éclairci de façon définitive la question de l'admissibilité d'un licenciement motivé par des absences en raison d'une maladie elle-même liée à un handicap. Cependant, pour répondre à la question posée, nous nous intéresserons maintenant uniquement à la réduction du délai de préavis de licenciement.

65. En cas d'absence d'un travailleur handicapé ayant pour cause une «maladie ordinaire», la prise en compte des périodes d'absence pour maladie pour réduire le délai de préavis n'est pas un désavantage par comparaison à une personne sans handicap. En effet, en règle générale, la probabilité d'attraper une maladie telle que la grippe n'est pas liée au handicap et concerne de la même manière les travailleurs handicapés ou non.

66. Il est toutefois question en l'occurrence d'absences liées à un handicap. L'article 5, paragraphe 2, de la FL est à première vue neutre, car il concerne tous les travailleurs ayant été absents plus de 120 jours pour maladie. Il ne crée donc pas de discrimination directe au détriment des personnes handicapées. En effet, ce texte ne se réfère pas directement au critère distinctif prohibé du handicap et ne prévoit pas non plus une différence de traitement sur la base d'un critère qui serait indissociablement lié au handicap. Un handicap, en effet, n'entraîne pas nécessairement des maladies et des absences pour maladie, de sorte que l'on ne peut parler d'un tel lien indissociable.

67. On peut toutefois y voir une discrimination indirecte. En effet, dès lors que la maladie est liée à un handicap, des situations non comparables sont

traitées de la même manière. En règle générale, les travailleurs handicapés sont plus exposés au risque d'une maladie liée à leur handicap que les travailleurs qui n'ont aucun handicap. Ces derniers peuvent souffrir uniquement d'une maladie «ordinaire». Les travailleurs handicapés peuvent toutefois en outre être aussi atteints d'une telle maladie. La disposition prévoyant la réduction du délai de préavis de licenciement est donc une disposition qui désavantage indirectement les travailleurs handicapés par rapport aux travailleurs qui ne le sont pas.

68. L'objection, soulevée par certaines des parties, selon laquelle, en raison du droit du travailleur de ne pas divulguer la nature de sa maladie, il ne serait pas possible de distinguer entre les maladies «ordinaires» et les maladies liées au handicap, ne nous convainc pas. Il est en effet possible de concilier ces deux aspects, en ayant recours par exemple à un médecin-conseil.

#### b) Justification

69. En vertu de l'article 2, paragraphe 2, sous b), point i) de la directive, une disposition telle que l'article 5, paragraphe 2, de la FL est justifiée lorsqu'elle poursuit un objectif légitime et que les moyens de réaliser cet objectif sont appropriés et nécessaires. Cette formulation reprend les conditions, généralement admises en droit de l'Union, de justification d'une inégalité de traitement (24).

70. La réglementation doit donc être apte à réaliser un objectif légitime. Elle doit en outre être nécessaire, c'est-à-dire que l'objectif légitime visé ne doit pas pouvoir être atteint par un moyen plus modéré, tout aussi approprié. Enfin, la réglementation doit également être proportionnée au sens le plus strict, c'est-à-dire qu'elle ne doit entraîner aucun inconvénient qui serait démesuré par rapport aux buts visés (25).

71. Il convient de ne pas perdre de vue dans la vérification de ces critères qu'il est admis dans la jurisprudence que les États membres disposent d'une marge d'appréciation importante dans le choix des mesures permettant d'atteindre leurs objectifs dans le domaine de la politique sociale et de l'emploi (26).

72. L'ordonnance de renvoi ne donne aucun élément sur les objectifs poursuivis par l'article 5, paragraphe 2 de la FL. Il est donc difficile de se prononcer. Il appartiendra dès lors au juge de renvoi d'apprécier de manière définitive la réglementation litigieuse.

73. Le gouvernement danois a fait valoir que l'article 5, paragraphe 2, de la FL s'efforçait d'établir un juste équilibre entre les employeurs et les travailleurs en cas de longues absences pour maladie. Il servirait en définitive plus particulièrement les intérêts du travailleur. Le délai de préavis réduit en cas de longue absence pour maladie est censé inciter l'employeur à ne pas licencier le travailleur malade dès que possible mais d'abord à continuer à l'employer,

l'employeur sachant qu'en cas d'absence de très longue durée le délai de préavis est en contrepartie réduit.

74. Ces objectifs sont légitimes et la réglementation n'est pas non plus, compte tenu de la marge d'appréciation des États membres, manifestement inappropriée (27), pour réaliser ces objectifs. Une mesure alternative mais moins restrictive devrait pouvoir s'insérer dans la globalité du régime juridique applicable aux relations de travail. L'existence d'une telle possibilité, en l'absence d'éléments supplémentaires, est donc difficile à évaluer.

75. La question décisive est de savoir si les inconvénients liés au délai de préavis réduit dans sa forme actuelle que subit le travailleur handicapé sont proportionnés aux objectifs poursuivis, c'est-à-dire s'ils n'entraînent pas une restriction excessive pour les intéressés. Pour cela, il faut trouver un juste équilibre entre les différents intérêts en présence.(28) On peut se demander à cet égard si une réglementation appropriée ne devrait pas également tenir compte du degré de gravité du handicap et des chances pour le travailleur concerné de retrouver un emploi. Plus le handicap sera sévère et plus la recherche d'un nouvel emploi sera difficile, plus la durée du délai de préavis sera importante pour le travailleur. Il appartient à la juridiction de renvoi d'en décider concrètement.

76. Pour conclure sur cette première partie de la quatrième question, il convient donc de constater que la directive 2000/78 doit être interprétée en ce sens qu'elle s'oppose à une réglementation nationale prévoyant que l'employeur peut licencier avec un préavis réduit un travailleur en cas d'absences pour maladie, lorsque la maladie est liée au handicap. Il en va différemment si ce désavantage, conformément à l'article 2, paragraphe 2, sous b), i) de la directive, peut être objectivement justifié par un objectif légitime et que les moyens de réaliser cet objectif sont appropriés et nécessaires.

## 2. Deuxième partie de la quatrième question

77. Par la deuxième partie de sa quatrième question, la juridiction de renvoi souhaite savoir, pour finir, si la directive 2000/78 s'oppose à la réduction du délai de préavis lorsque les absences du travailleur sont imputables au fait que l'employeur n'a pas pris les mesures visées à l'article 5 de la directive pour qu'une personne handicapée puisse exercer son emploi.

78. Pour déterminer quels aménagements sont raisonnables au sens de l'article 5 de la directive, on procède déjà à un examen de la proportionnalité. Dans ce cadre et moyennant la mise en balance des intérêts du travailleur handicapé et de son employeur, on répond à la question de savoir si l'on peut raisonnablement attendre de l'employeur qu'il prenne les mesures requises. Si l'employeur ne procède pas à ces aménagements que l'on peut attendre de lui, il ne s'acquitte pas des obligations qui lui incombent en vertu de l'article 5 de la directive et ne saurait en tirer aucun avantage juridique. L'obligation qui découle de l'article 5 de la directive serait vide de sens si le fait de ne pas

prendre des mesures proportionnées pouvait justifier le désavantage qui en découle pour la personne handicapée. Il résulte du sens et de la finalité de cette disposition que les absences du travailleur qui sont liées à ce défaut de mesures ne sauraient justifier une réduction du délai de préavis de licenciement.

79. Il s'ensuit que si l'application du délai de préavis réduit est fondée sur des absences du travailleur qui s'expliquent par le fait que l'employeur n'a pas procédé aux aménagements raisonnables requis à l'article 5 de la directive 2000/78, un tel désavantage ne peut être justifié.

## VI – Conclusion

80. À la lumière de ces considérations, nous proposons à la Cour de répondre comme suit aux questions préjudicielles:

1a) La notion de handicap au sens de la directive 2000/78/CE portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail vise une limitation résultant notamment d'atteintes physiques, mentales ou psychiques et entravant la participation de la personne concernée à la vie professionnelle.

1b) Peu importe, aux fins de la définition du handicap, que l'atteinte ait pour origine une maladie; la seule question décisive est de savoir s'il est probable que cette limitation soit de longue durée.

1c) Une incapacité de longue durée ne nécessitant pas l'utilisation d'équipements spéciaux et qui se traduit pour l'essentiel par le fait que la personne qui en est atteinte n'est pas en mesure de travailler à plein temps, relève également de la notion d'handicap au sens de la directive 2000/78.

2. La réduction du temps de travail peut constituer l'une des mesures visées par l'article 5 de la directive 2000/78. Il appartient à la juridiction nationale de vérifier concrètement si une telle mesure impose à l'employeur une charge disproportionnée.

3. La directive 2000/78 doit être interprétée en ce sens qu'elle s'oppose à une réglementation nationale prévoyant que l'employeur peut licencier avec un préavis réduit un travailleur en cas d'absences pour maladie, lorsque la maladie est liée au handicap. Il en va différemment si ce désavantage, conformément à l'article 2, paragraphe 2, sous b), i) de la directive, peut être objectivement justifié par un objectif légitime et que les moyens de réaliser cet objectif sont appropriés et nécessaires. Cependant, si l'application du délai de préavis réduit est fondée sur des absences du travailleur qui s'expliquent par le fait que l'employeur n'a pas procédé aux aménagements raisonnables requis par l'article 5, paragraphe 2, de la directive 2000/78, un tel désavantage ne peut être justifié.

1 – Langue originale: l'allemand.

- 2– Directive 2000/78/CE du Conseil, du 27 novembre 2000, portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail, JO L 303, p. 16, ci-après la «directive 2000/78».
- 3– Arrêt du 11 juillet 2006, Chacón Navas, (C-13/05, Rec. p. I-6467).
- 4 – Convention ratifiée par l'Union européenne le 23 décembre 2010, ci-après la «convention de l'ONU»; voir la décision 2010/48/CE du Conseil du 26 novembre 2009 concernant la conclusion, par la Communauté européenne, de la convention des Nations unies relative aux droits des personnes handicapées, JO 2010, L 23, p. 35.
- 5 – Lov om forbud mod forskelsbehandling på arbejdsmarkedet (loi relative au principe de non-discrimination sur le marché du travail).
- 6 – Lov om retsforholdet mellem arbejdsgivere og funktionærer Funktionærlov (loi relative aux employés, ci-après la «FL»).
- 7 – Syndicat des employés de commerce et employés de bureau du Danemark.
- 8 – Ce régime de travail flexible est un dispositif danois de subventions salariales versées par l'État pour l'emploi de personnes atteintes d'une incapacité durable.
- 9– Arrêt Chacón Navas (précité, note 3, point 43).
- 10– Ibidem, point 45.
- 11 – Voir également dans le même sens les conclusions de l'avocat général Geelhoed sur l'affaire Chacón Navas (précitée, note 3, point 66).
- 12– Voir, en ce sens, arrêts du 10 septembre 1996, Commission/Allemagne (C-61/94, Rec. p. I-3989, point 52), du 12 janvier 2006, Algemene Scheeps Agentuur Dordrecht (C-311/04, Rec. p. I-609, point 25), du 3 juin 2008, Intertanko e. a. (C-308/06, Rec. p. I-4057, point 42), et du 3 septembre 2008, Kadi et Al Barakaat International Foundation/Conseil et Commission (C-402/05 P et C-415/05 P, Rec. p. I-6351, point 307, et du 21 décembre 2011, Air Transport Association of America e. a. (C-366/10, non encore publié au Recueil, point 50).
- 13– Arrêts Commission/Allemagne (précité note 12, point 52), du 14 juillet 1998, Bettati (C-341/95, Rec. p. I-4355, point 20), du 9 janvier 2003, Petrotub et Republica (C-76/00 P, Rec. p. I-79, point 57), et du 14 mai 2009, Internationaal Verhuis- en Transportbedrijf Jan de Lely (C-161/08, Rec. p. I-4075, point 38).
- 14– Arrêt Chacón Navas (précité, note 3, point 46).

15– Ibidem, point 57.

16– Arrêt du 17 juillet 2008, Coleman (C-303/06, Rec. p. I-5603, point 46).

17 – US Supreme Court, Bragdon v. Abbott, 524 US 624 [1998], une situation de “physical . . . impairment that substantially limits one or more of [an individual’s] major life activities” relève du handicap au sens de l’article 12102, paragraphe 1 (A) de l’ADA 1990.

18 – La Cour européenne des droits de l’homme a également considéré comme un handicap, aux fins de l’interdiction des discriminations, la pathologie du diabetes mellitus de type I, affection qualifiée de mineure par les autorités nationales, CEDH, arrêt du 30 avril 2009 (Glor/Suisse, n° 13444/04) concernant l’article 14 de la CEDH, dans lequel le diabète a été considéré comme un handicap.

19– Arrêt Chacón Navas (précité, note 3, point 45).

20 – Dans la version anglaise: «long-term [...] impairments» dans la version française: «incapacités [...] durables».

21– Directive 97/81/CEE du Conseil, du 15 décembre 1997 concernant l’accord-cadre sur le travail à temps partiel conclu par l’UNICE, le CEEP et la CES, JO L 14, p. 9.

22 – Voir les huitième, neuvième, onzième et seizième considérants de la directive 2000/78.

23– Arrêt Chacón Navas (précité, note 3, point 51).

24– Voir déjà dans le même sens nos conclusions du 6 mai 2010, Andersen (C-499/08, Rec. p. I-9343, point 42).

25 – Arrêts du 12 juillet 2001, Jippes e. a. (C-189/01, Rec. p. I-5689, point 81), du 7 juillet 2009, S.P.C.M. e. a. (C-558/07, Rec. p. I-5783, point 41), et du 8 juillet 2010, Afton Chemical (C-343/09, Rec. p. I-7023, point 45 et la jurisprudence citée).

26 – Voir, dans le domaine de la discrimination en raison de l’âge, arrêts du 16 octobre 2007, Palacios de la Villa (C-411/05, Rec. p. I-8531, point 68), et du 12 octobre 2010, Rosenbladt (C-45/09, Rec. p. I-9391, point 41).

27 – Voir sur ce point arrêts Palacios de la Villa (précité, note 26, point 72) et du 12 janvier 2010, Petersen (C-341/08, Rec. p. I-47, point 70).

28 – Voir sur ce points nos conclusions dans l’affaire Andersen (précitée, note 24, point 68) et nos conclusions du 2 octobre 2012 dans l’affaire Commission/Hongrie (C-286/12, non encore publiées au Recueil, point 78).

JUDGMENT OF THE COURT (Grand Chamber)

17 July 2008 (\*)

(Social policy – Directive 2000/78/EC – Equal treatment in employment and occupation – Articles 1, 2(1), (2)(a) and (3) and 3(1)(c) – Direct discrimination on grounds of disability – Harassment related to disability – Dismissal of an employee who is not himself disabled but whose child is disabled – Included – Burden of proof)

In Case C-303/06,

REFERENCE for a preliminary ruling under Article 234 EC from the Employment Tribunal, London South (United Kingdom), made by decision of 6 July 2006, received at the Court on 10 July 2006, in the proceedings

**S. Coleman**

v

**Attridge Law**

and

**Steve Law,**

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Lenaerts and A. Tizzano, Presidents of Chambers, M. Ilešič, J. Klučka, A. Ó Caoimh (Rapporteur), T. von Danwitz and A. Arabadjiev, Judges,

Advocate General: M. Poiares Maduro,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 9 October 2007,

after considering the observations submitted on behalf of:

- Ms Coleman, by R. Allen QC and P. Michell, Barrister,
- the United Kingdom Government, by V. Jackson, acting as Agent, and N. Paines QC,
- the Greek Government, by K. Georgiadis and Z. Chatzipavlou, acting as Agents,
- Ireland, by N. Travers, BL,
- the Italian Government, by I.M. Braguglia, acting as Agent, and W. Ferrante, avvocato dello Stato,
- the Lithuanian Government, by D. Kriaučiūnas, acting as Agent,
- the Netherlands Government, by H.G. Sevenster and C. ten Dam, acting as Agents,
- the Swedish Government, by A. Falk, acting as Agent,



- the Commission of the European Communities, by J. Enegren and N. Yerrell, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 31 January 2008,

gives the following

### **Judgment**

- 1 This reference for a preliminary ruling concerns the interpretation of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).
- 2 The reference was made in the course of proceedings between Ms Coleman, the claimant in the main proceedings, and Attridge Law, a firm of solicitors, and Mr Law, a partner in that firm (together, the 'former employer'), concerning Ms Coleman's claim of constructive dismissal.

### **Legal context**

#### *Community legislation*

- 3 Directive 2000/78 was adopted on the basis of Article 13 EC. Recitals 6, 11, 16, 17, 20, 27, 31 and 37 in the preamble to the directive are worded as follows:
  - '(6) The Community Charter of the Fundamental Social Rights of Workers recognises the importance of combating every form of discrimination, including the need to take appropriate action for the social and economic integration of elderly and disabled people.
  - ...
  - (11) Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.
  - ...
  - (16) The provision of measures to accommodate the needs of disabled people at the workplace plays an important role in combating discrimination on grounds of disability.
  - (17) This Directive does not require the recruitment, promotion, maintenance in employment or training of an individual who is not competent, capable and available to perform the essential functions of the post concerned or to undergo the relevant training, without prejudice to the obligation to provide reasonable accommodation for people with disabilities.
  - ...
  - (20) Appropriate measures should be provided, i.e. effective and practical measures to adapt the workplace to the disability, for example adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources.
  - ...
  - (27) In its Recommendation 86/379/EEC of 24 July 1986 on the employment of disabled people in the Community [OJ 1986 L 225, p. 43], the Council established a guideline

framework setting out examples of positive action to promote the employment and training of disabled people, and in its Resolution of 17 June 1999 on equal employment opportunities for people with disabilities [OJ 1999 C 186, p. 3], affirmed the importance of giving specific attention inter alia to recruitment, retention, training and lifelong learning with regard to disabled persons.

...

- (31) The rules on the burden of proof must be adapted when there is a prima facie case of discrimination and, for the principle of equal treatment to be applied effectively, the burden of proof must shift back to the respondent when evidence of such discrimination is brought. However, it is not for the respondent to prove that the plaintiff adheres to a particular religion or belief, has a particular disability, is of a particular age or has a particular sexual orientation.

...

- (37) In accordance with the principle of subsidiarity set out in Article 5 of the EC Treaty, the objective of this Directive, namely the creation within the Community of a level playing field as regards equality in employment and occupation, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the action, be better achieved at Community level. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.'

- 4 Article 1 of Directive 2000/78 states that '[t]he purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment'.

- 5 Article 2(1) to (3) of the directive, headed 'Concept of discrimination', states:

'1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or

(ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.

3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

...'

- 6 Article 3(1) of Directive 2000/78 provides:

'Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

...

- (c) employment and working conditions, including dismissals and pay;

...'

- 7 Article 5 of Directive 2000/78, headed 'Reasonable accommodation for disabled persons', provides:

'In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. ...'

- 8 Article 7 of Directive 2000/78, headed 'Positive action', is worded as follows:

'1. With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the grounds referred to in Article 1.

2. With regard to disabled persons, the principle of equal treatment shall be without prejudice to the right of Member States to maintain or adopt provisions on the protection of health and safety at work or to measures aimed at creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working environment.'

- 9 Article 10 of Directive 2000/78, headed 'Burden of proof', provides:

'1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.'

- 10 In accordance with the first paragraph of Article 18 of Directive 2000/78, Member States were required to adopt the laws, regulations and administrative provisions necessary to comply with that directive by 2 December 2003 at the latest. Nevertheless, the second paragraph of Article 18 states:

'In order to take account of particular conditions, Member States may, if necessary, have an additional period of three years from 2 December 2003, that is to say a total of six years, to implement the provisions of this Directive on age and disability discrimination. In that event they shall inform the Commission forthwith. Any Member State which chooses to use this additional period shall report annually to the Commission on the steps it is taking to tackle age and disability discrimination and on the progress it is making towards implementation. The Commission shall report annually to the Council.'

- 11 As the United Kingdom of Great Britain and Northern Ireland requested such an additional period for the implementation of the directive, that period did not expire until 2 December 2006 as regards that Member State.

### *National legislation*

- 12 The Disability Discrimination Act 1995 ('the DDA') essentially aims to make it unlawful to discriminate against disabled persons in connection, inter alia, with employment.
- 13 Part 2 of the DDA, which regulates the employment field, was amended, on the transposition of Directive 2000/78 into United Kingdom law, by the Disability Discrimination Act 1995 (Amendment) Regulations 2003, which came into force on 1 October 2004.
- 14 According to section 3A(1) of the DDA, as amended by those 2003 Regulations ('the DDA as amended in 2003'):
- '... a person discriminates against a disabled person if –
- (a) for a reason which relates to the disabled person's disability, he treats him less favourably than he treats or would treat others to whom that reason does not or would not apply, and
- (b) he cannot show that the treatment in question is justified.'
- 15 Section 3A(4) of the DDA as amended in 2003 none the less specifies that the treatment of a disabled person cannot be justified if it amounts to direct discrimination falling within section 3A(5), according to which:
- 'A person directly discriminates against a disabled person if, on the ground of the disabled person's disability, he treats the disabled person less favourably than he treats or would treat a person not having that particular disability whose relevant circumstances, including his abilities, are the same as, or not materially different from, those of the disabled person.'
- 16 Harassment is defined in section 3B of the DDA as amended in 2003 as follows:
- '(1) ... a person subjects a disabled person to harassment where, for a reason which relates to the disabled person's disability, he engages in unwanted conduct which has the purpose or effect of –
- (a) violating the disabled person's dignity, or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.
- (2) Conduct shall be regarded as having the effect referred to in paragraph (a) or (b) of subsection (1) only if, having regard to all the circumstances, including in particular the perception of the disabled person, it should reasonably be considered as having that effect.'
- 17 Under section 4(2)(d) of the DDA as amended in 2003, it is unlawful for an employer to discriminate against a disabled person whom he employs by dismissing him or by subjecting him to any other detriment.
- 18 Section 4(3)(a) and (b) of the DDA as amended in 2003 provides that it is also unlawful for an employer, in relation to employment by him, to subject to harassment a disabled person whom he employs or a disabled person who has applied to him for employment.

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 19 Ms Coleman worked for her former employer as a legal secretary from January 2001.
- 20 In 2002, she gave birth to a son who suffers from apnoeic attacks and congenital laryngomalacia and bronchomalacia. Her son's condition requires specialised and particular care. The claimant in the main proceedings is his primary carer.

- 21 On 4 March 2005, Ms Coleman accepted voluntary redundancy, which brought her contract of employment with her former employer to an end.
- 22 On 30 August 2005, she lodged a claim with the Employment Tribunal, London South, alleging that she had been subject to unfair constructive dismissal and had been treated less favourably than other employees because she was the primary carer of a disabled child. She claims that that treatment caused her to stop working for her former employer.
- 23 The order for reference states that the material facts of the case in the main proceedings have not yet been fully established, since the questions referred for a preliminary ruling arose only as a preliminary issue. The referring tribunal stayed that part of the action concerning Ms Coleman's dismissal, but held a preliminary hearing on 17 February 2006 to consider the discrimination plea.
- 24 The preliminary issue raised before that tribunal is whether the claimant in the main proceedings can base her application on national law, in particular those provisions designed to transpose Directive 2000/78, in order to plead discrimination against her former employer on the ground that she was subjected to less favourable treatment connected with her son's disability.
- 25 It is apparent from the order for reference that, should the Court's interpretation of Directive 2000/78 contradict that put forward by Ms Coleman, her application to the referring tribunal could not succeed under national law.
- 26 It is also apparent from the order for reference that, under United Kingdom law, where there is a preliminary hearing on a point of law, the court or tribunal hearing the case assumes that the facts are as related by the claimant. In the main proceedings, the facts of the dispute are assumed to be as follows:
- On Ms Coleman's return from maternity leave, her former employer refused to allow her to return to her existing job, in circumstances where the parents of non-disabled children would have been allowed to take up their former posts;
  - her former employer also refused to allow her the same flexibility as regards her working hours and the same working conditions as those of her colleagues who are parents of non-disabled children;
  - Ms Coleman was described as 'lazy' when she requested time off to care for her child, whereas parents of non-disabled children were allowed time off;
  - the formal grievance which she lodged against her ill treatment was not dealt with properly and she felt constrained to withdraw it;
  - abusive and insulting comments were made about both her and her child. No such comments were made when other employees had to ask for time off or a degree of flexibility in order to look after non-disabled children; and
  - having occasionally arrived late at the office because of problems related to her son's condition, she was told that she would be dismissed if she came to work late again. No such threat was made in the case of other employees with non-disabled children who were late for similar reasons.
- 27 Since the Employment Tribunal, London South, considered that the case before it raised questions of interpretation of Community law, it decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) In the context of the prohibition of discrimination on grounds of disability, does [Directive 2000/78] only protect from direct discrimination and harassment persons who are themselves disabled?
- (2) If the answer to Question (1) above is in the negative, does [Directive 2000/78] protect employees who, though they are not themselves disabled, are treated less

favourably or harassed on the ground of their association with a person who is disabled?

- (3) Where an employer treats an employee less favourably than he treats or would treat other employees, and it is established that the ground for the treatment of the employee is that the employee has a disabled son for whom the employee cares, is that treatment direct discrimination in breach of the principle of equal treatment established by [Directive 2000/78]?
- (4) Where an employer harasses an employee, and it is established that the ground for the treatment of the employee is that the employee has a disabled son for whom the employee cares, is that harassment a breach of the principle of equal treatment established by [Directive 2000/78]?

### **Admissibility**

- 28 While accepting that the questions put by the referring tribunal are based on an actual dispute, the Netherlands Government called into question the admissibility of the reference for a preliminary ruling on the basis that, given that these are preliminary questions raised at a preliminary hearing, all the facts at issue have not yet been established. It points out that, for the purposes of such a preliminary hearing, the national court or tribunal presumes that the facts are as related by the claimant.
- 29 It must be borne in mind that Article 234 EC establishes the framework for a relationship of close cooperation between the national courts or tribunals and the Court of Justice based on the assignment to each of different functions. It is clear from the second paragraph of that article that it is for the national court or tribunal to decide at what stage in the proceedings it is appropriate for that court or tribunal to refer a question to the Court of Justice for a preliminary ruling (see Joined Cases 36/80 and 71/80 *Irish Creamery Milk Suppliers Association and Others* [1981] ECR 735, paragraph 5, and Case C-236/98 *JämO* [2000] ECR I-2189, paragraph 30).
- 30 In the case in the main proceedings, the referring tribunal found that, if the Court of Justice should decide not to interpret Directive 2000/78 in accordance with Ms Coleman's submissions, her case would fail in the material respects. The referring tribunal therefore decided, as permitted under United Kingdom legislation, to consider whether that directive must be interpreted as being applicable to the dismissal of an employee in Ms Coleman's situation, before establishing whether, in fact, Ms Coleman did suffer less favourable treatment or harassment. It is for that reason that the questions referred for a preliminary ruling were based on the presumption that the facts of the dispute in the main proceedings are as summarised in paragraph 26 of this judgment.
- 31 Where, as here, the Court receives a request for interpretation of Community law which is not manifestly unrelated to the reality or the subject-matter of the main proceedings and it has the necessary information in order to give appropriate answers to the questions put to it in relation to the applicability of Directive 2000/78 to those proceedings, it must reply to that request and is not required to consider the facts as presumed by the referring court or tribunal, a presumption which it is for the referring court or tribunal to verify subsequently if that should prove to be necessary (see, to that effect, Case C-127/92 *Enderby* [1993] ECR I-5535, paragraph 12).
- 32 In those circumstances, the request for a preliminary ruling must be held to be admissible.

### **The questions referred for a preliminary ruling**

#### *The first part of Question 1, and Questions 2 and 3*

- 33 By these questions, which should be examined together, the referring tribunal asks, in essence, whether Directive 2000/78, and, in particular, Articles 1 and 2(1) and (2)(a), must be interpreted as prohibiting direct discrimination on grounds of disability only in respect of an employee who is himself disabled, or whether the principle of equal treatment and the prohibition of direct discrimination apply equally to an employee who is not himself disabled

but who, as in the present case, is treated less favourably by reason of the disability of his child, for whom he is the primary provider of the care required by virtue of the child's condition.

- 34 Article 1 of Directive 2000/78 identifies its purpose as being to lay down, as regards employment and occupation, a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation.
- 35 Article 2(1) of Directive 2000/78 defines the principle of equal treatment as meaning that there is to be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1, including, therefore, disability.
- 36 According to Article 2(2)(a), direct discrimination is to be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on the grounds, inter alia, of disability.
- 37 Article 3(1)(c) of Directive 2000/78 provides that the directive is to apply, within the limits of the areas of competence conferred on the Community, to all persons, as regards both the public and private sectors, including public bodies, in relation to employment and working conditions, including dismissals and pay.
- 38 Consequently, it does not follow from those provisions of Directive 2000/78 that the principle of equal treatment which it is designed to safeguard is limited to people who themselves have a disability within the meaning of the directive. On the contrary, the purpose of the directive, as regards employment and occupation, is to combat all forms of discrimination on grounds of disability. The principle of equal treatment enshrined in the directive in that area applies not to a particular category of person but by reference to the grounds mentioned in Article 1. That interpretation is supported by the wording of Article 13 EC, which constitutes the legal basis of Directive 2000/78, and which confers on the Community the competence to take appropriate action to combat discrimination based, inter alia, on disability.
- 39 It is true that Directive 2000/78 includes a number of provisions which, as is apparent from their very wording, apply only to disabled people. Thus, Article 5 provides that, in order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation is to be provided. This means that employers must take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.
- 40 Article 7(2) of Directive 2000/78 also provides that, with regard to disabled persons, the principle of equal treatment is to be without prejudice either to the right of Member States to maintain or adopt provisions on the protection of health and safety at work or to measures aimed at creating or maintaining provisions or facilities for safeguarding or promoting the integration of such persons into the working environment.
- 41 The United Kingdom, Greek, Italian and Netherlands Governments contend, in the light of the provisions referred to in the two preceding paragraphs and also of recitals 16, 17 and 27 in the preamble to Directive 2000/78, that the prohibition of direct discrimination laid down by the directive cannot be interpreted as covering a situation such as that of the claimant in the main proceedings, since the claimant herself is not disabled. Only persons who, in a comparable situation to that of others, are treated less favourably or are placed in a disadvantageous situation because of characteristics which are particular to them can rely on that directive.
- 42 Nevertheless, it must be noted in that regard that the provisions referred to in paragraphs 39 and 40 of this judgment relate specifically to disabled persons either because they are provisions concerning positive discrimination measures in favour of disabled persons themselves or because they are specific measures which would be rendered meaningless or could prove to be disproportionate if they were not limited to disabled persons only. Thus, as recitals 16 and 20 in the preamble to Directive 2000/78 indicate, the measures in question are intended to accommodate the needs of disabled people at the workplace and to adapt the workplace to their disability. Such measures are therefore designed specifically to facilitate and promote the integration of disabled people into the working environment and,

for that reason, can only relate to disabled people and to the obligations incumbent on their employers and, where appropriate, on the Member States with regard to disabled people.

- 43 Therefore, the fact that Directive 2000/78 includes provisions designed to accommodate specifically the needs of disabled people does not lead to the conclusion that the principle of equal treatment enshrined in that directive must be interpreted strictly, that is, as prohibiting only direct discrimination on grounds of disability and relating exclusively to disabled people. Furthermore, recital 6 in the preamble to the directive, concerning the Community Charter of the Fundamental Social Rights of Workers, refers both to the general combating of every form of discrimination and to the need to take appropriate action for the social and economic integration of disabled people.
- 44 The United Kingdom, Italian and Netherlands Governments also contend that it follows from the judgment in Case C-13/05 *Chacón Navas* [2006] ECR I-6467 that the scope *ratione personae* of Directive 2000/78 must be interpreted strictly. According to the Italian Government, in *Chacón Navas*, the Court opted for a strict interpretation of the concept of disability and its implications in an employment relationship.
- 45 The Court defined the concept of 'disability' in its judgment in *Chacón Navas* and, in paragraphs 51 and 52 of that judgment, it found that the prohibition, as regards dismissal, of discrimination on grounds of disability contained in Articles 2(1) and 3(1)(c) of Directive 2000/78 precludes dismissal on grounds of disability which, in the light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and available to perform the essential functions of his post. However, it does not follow from this interpretation that the principle of equal treatment defined in Article 2(1) of that directive and the prohibition of direct discrimination laid down by Article 2(2)(a) cannot apply to a situation such as that in the present case, where the less favourable treatment which an employee claims to have suffered is on grounds of the disability of his child, for whom he is the primary provider of the care required by virtue of the child's condition.
- 46 Although the Court explained in paragraph 56 of the judgment in *Chacón Navas* that, in view of the wording of Article 13 EC, the scope of Directive 2000/78 cannot be extended beyond the discrimination based on the grounds listed exhaustively in Article 1 of the directive, with the result that a person who has been dismissed by his employer solely on account of sickness cannot fall within the scope of the general framework established by Directive 2000/78, it nevertheless did not hold that the principle of equal treatment and the scope *ratione personae* of that directive must be interpreted strictly with regard to those grounds.
- 47 So far as the objectives of Directive 2000/78 are concerned, as is apparent from paragraphs 34 and 38 of the present judgment, the directive seeks to lay down, as regards employment and occupation, a general framework for combating discrimination on one of the grounds referred to in Article 1 – including, in particular, disability – with a view to putting into effect in the Member States the principle of equal treatment. It follows from recital 37 in the preamble to the directive that it also has the objective of creating within the Community a level playing field as regards equality in employment and occupation.
- 48 As Ms Coleman, the Lithuanian and Swedish Governments and the Commission maintain, those objectives, and the effectiveness of Directive 2000/78, would be undermined if an employee in the claimant's situation cannot rely on the prohibition of direct discrimination laid down by Article 2(2)(a) of that directive where it has been established that he has been treated less favourably than another employee is, has been or would be treated in a comparable situation, on the grounds of his child's disability, and this is the case even though that employee is not himself disabled.
- 49 In that regard, it follows from recital 11 in the preamble to the directive that the Community legislature also took the view that discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the Treaty, in particular, as regards employment.
- 50 Although, in a situation such as that in the present case, the person who is subject to direct discrimination on grounds of disability is not herself disabled, the fact remains that it is the disability which, according to Ms Coleman, is the ground for the less favourable treatment



which she claims to have suffered. As is apparent from paragraph 38 of this judgment, Directive 2000/78, which seeks to combat all forms of discrimination on grounds of disability in the field of employment and occupation, applies not to a particular category of person but by reference to the grounds mentioned in Article 1.

- 51 Where it is established that an employee in a situation such as that in the present case suffers direct discrimination on grounds of disability, an interpretation of Directive 2000/78 limiting its application only to people who are themselves disabled is liable to deprive that directive of an important element of its effectiveness and to reduce the protection which it is intended to guarantee.
- 52 As to the burden of proof which applies in a situation such as that in the present case, it should be observed that, under Article 10(1) of Directive 2000/78, Member States are required to take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it is for the respondent to prove that there has been no breach of that principle. According to Article 10(2), Article 10(1) does not prevent Member States from introducing rules on the burden of proof which are more favourable to plaintiffs.
- 53 In the case before the referring tribunal, it is therefore for Ms Coleman, in accordance with Article 10(1) of Directive 2000/78, to establish, before that tribunal, facts from which it may be presumed that there has been direct discrimination on grounds of disability contrary to the directive.
- 54 In accordance with Article 10(1) of Directive 2000/78 and recital 31 in the preamble thereto, the rules on the burden of proof must be adapted when there is a prima facie case of discrimination. In the event that Ms Coleman establishes facts from which it may be presumed that there has been direct discrimination, the effective application of the principle of equal treatment then requires that the burden of proof should fall on the respondents, who must prove that there has been no breach of that principle.
- 55 In that context, the respondents could contest the existence of such a breach by establishing by any legally permissible means, in particular, that the employee's treatment was justified by objective factors unrelated to any discrimination on grounds of disability and to any association which that employee has with a disabled person.
- 56 In the light of the foregoing considerations, the answer to the first part of Question 1 and to Questions 2 and 3 must be that Directive 2000/78, and, in particular, Articles 1 and 2(1) and (2)(a) thereof, must be interpreted as meaning that the prohibition of direct discrimination laid down by those provisions is not limited only to people who are themselves disabled. Where an employer treats an employee who is not himself disabled less favourably than another employee is, has been or would be treated in a comparable situation, and it is established that the less favourable treatment of that employee is based on the disability of his child, whose care is provided primarily by that employee, such treatment is contrary to the prohibition of direct discrimination laid down by Article 2(2)(a).

*The second part of Question 1, and Question 4*

- 57 By these questions, which should be examined together, the referring tribunal asks, in essence, whether Directive 2000/78, and, in particular, Articles 1 and 2(1) and (3) thereof, must be interpreted as prohibiting harassment related to disability only in respect of an employee who is himself disabled, or whether the prohibition of harassment applies equally to an employee who is not himself disabled but who, as in the present case, is the victim of unwanted conduct amounting to harassment related to the disability of his child, for whom he is the primary provider of the care required by virtue of the child's condition.
- 58 Since, under Article 2(3) of Directive 2000/78, harassment is deemed to be a form of discrimination within the meaning of Article 2(1), it must be held that, for the same reasons as those set out in paragraphs 34 to 51 of this judgment, that directive, and, in particular, Articles 1 and 2(1) and (3) thereof, must be interpreted as not being limited to the prohibition of harassment of people who are themselves disabled.

- 59 Where it is established that the unwanted conduct amounting to harassment which is suffered by an employee who is not himself disabled is related to the disability of his child, whose care is provided primarily by that employee, such conduct is contrary to the principle of equal treatment enshrined in Directive 2000/78 and, in particular, to the prohibition of harassment laid down by Article 2(3) thereof.
- 60 In that regard, it must nevertheless be borne in mind that, according to the actual wording of Article 2(3) of the directive, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.
- 61 With regard to the burden of proof which applies in situations such as that in the main proceedings, it must be observed that, since harassment is deemed to be a form of discrimination within the meaning of Article 2(1) of Directive 2000/78, the same rules apply to harassment as those set out in paragraphs 52 to 55 of this judgment.
- 62 Consequently, as is apparent from paragraph 54 of this judgment, in accordance with Article 10(1) of Directive 2000/78 and recital 31 in the preamble thereto, the rules on the burden of proof must be adapted when there is a prima facie case of discrimination. In the event that Ms Coleman establishes facts from which it may be presumed that there has been harassment, the effective application of the principle of equal treatment then requires that the burden of proof should fall on the respondents, who must prove that there has been no harassment in the circumstances of the present case.
- 63 In the light of the foregoing considerations, the answer to the second part of Question 1 and to Question 4 must be that Directive 2000/78, and, in particular, Articles 1 and 2(1) and (3) thereof, must be interpreted as meaning that the prohibition of harassment laid down by those provisions is not limited only to people who are themselves disabled. Where it is established that the unwanted conduct amounting to harassment which is suffered by an employee who is not himself disabled is related to the disability of his child, whose care is provided primarily by that employee, such conduct is contrary to the prohibition of harassment laid down by Article 2(3).

#### **Costs**

- 64 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

- 1. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, and, in particular, Articles 1 and 2(1) and (2)(a) thereof, must be interpreted as meaning that the prohibition of direct discrimination laid down by those provisions is not limited only to people who are themselves disabled. Where an employer treats an employee who is not himself disabled less favourably than another employee is, has been or would be treated in a comparable situation, and it is established that the less favourable treatment of that employee is based on the disability of his child, whose care is provided primarily by that employee, such treatment is contrary to the prohibition of direct discrimination laid down by Article 2(2)(a).**
- 2. Directive 2000/78, and, in particular, Articles 1 and 2(1) and (3) thereof, must be interpreted as meaning that the prohibition of harassment laid down by those provisions is not limited only to people who are themselves disabled. Where it is established that the unwanted conduct amounting to harassment which is suffered by an employee who is not himself disabled is related to the disability of his child, whose care is provided primarily by that employee, such conduct is contrary to the prohibition of harassment laid down by Article 2(3).**

[Signatures]

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\* Language of the case: English.

JUDGMENT OF THE COURT (Grand Chamber)

11 July 2006 (\*)

(Directive 2000/78/EC – Equal treatment in employment and occupation – Concept of disability)

In Case C-13/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Juzgado de lo Social No 33 de Madrid (Spain), made by decision of 7 January 2005, received at the Court on 19 January 2005, in the proceedings

**Sonia Chacón Navas**

v

**Eurest Colectividades SA,**

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Schiemann and J. Makarczyk, Presidents of Chambers, J.-P. Puissochet, N. Colneric (Rapporteur), K. Lenaerts, P. Kūris, E. Juhász, E. Levits and A. Ó Caoimh, Judges,

Advocate General: L.A. Geelhoed,

Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Eurest Colectividades SA, by R. Sanz García-Muro, abogada,
- the Spanish Government, by E. Braquehais Conesa, acting as Agent,
- the Czech Government, by T. Boček, acting as Agent,
- the German Government, by M. Lumma and C. Schulze-Bahr, acting as Agents,
- the Netherlands Government, by H. G. Sevenster, acting as Agent,
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the United Kingdom Government, by C. White, acting as Agent, and T. Ward, Barrister,
- the Commission of the European Communities, by I. Martínez del Peral Cagigal and D. Martín, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 March 2006,

gives the following

## Judgment

- 1 This reference for a preliminary ruling concerns the interpretation, as regards discrimination on grounds of disability, of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) and, in the alternative, possible prohibition of discrimination on grounds of sickness.
- 2 The reference was made in the course of proceedings between Ms Chacón Navas and Eurest Colectividades SA ('Eurest') regarding her dismissal whilst she was on leave of absence from her employment on grounds of sickness.

### Legal and regulatory context

#### *Community law*

- 3 The first paragraph of Article 136 EC reads:

'The Community and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.'

- 4 Article 137(1) and (2) EC confers on the Community the power to support and complement the activities of the Member States with a view to achieving the objectives of Article 136 EC, inter alia in the fields of integrating persons excluded from the labour market and combating social exclusion.

- 5 Directive 2000/78 was adopted on the basis of Article 13 EC in the version prior to the Treaty of Nice, which provides:

'Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.'

- 6 Article 1 of Directive 2000/78 provides:

'The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.'

- 7 That directive states in its recitals:

(11) Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.

(12) To this end, any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community. ...

...

(16) The provision of measures to accommodate the needs of disabled people at the workplace plays an important role in combating discrimination on grounds of disability.

(17) This Directive does not require the recruitment, promotion, maintenance in employment or training of an individual who is not competent, capable and available to perform the essential functions of the post concerned or to undergo the relevant training, without prejudice to the obligation to provide reasonable accommodation for people with disabilities.

...

(27) In its Recommendation 86/379/EEC of 24 July 1986 on the employment of disabled people in the Community [OJ 1986 L 225, p. 43], the Council established a guideline framework setting out examples of positive action to promote the employment and training of disabled people, and in its Resolution of 17 June 1999 on equal employment opportunities for people with disabilities, affirmed the importance of giving specific attention inter alia to recruitment, retention, training and lifelong learning with regard to disabled persons.'

8 Article 2(1) and (2) of Directive 2000/78 provides:

'1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or

(ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.'

9 Under Article 3 of that directive:

'1. Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

...

(c) employment and working conditions, including dismissals and pay;

...'

10 Article 5 of that directive reads:

'In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo

training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.'

- 11 The Community Charter of the Fundamental Social Rights of Workers, adopted at the meeting of the European Council held at Strasbourg on 9 December 1989, to which Article 136(1) EC refers, states in point 26:

'All disabled persons, whatever the origin and nature of their disablement, must be entitled to additional concrete measures aimed at improving their social and professional integration.

These measures must concern, in particular, according to the capacities of the beneficiaries, vocational training, ergonomics, accessibility, mobility, means of transport and housing.'

*National legislation*

- 12 Under Article 14 of the Spanish Constitution:

'Spanish people are equal before the law; there may be no discrimination on grounds of birth, race, sex, religion, opinion or any other condition or personal or social circumstance.'

- 13 Legislative Royal Decree No 1/1995 of 24 March 1995 approving the amended text of the Workers' Statute (Estatuto de los Trabajadores, BOE No 75 of 29 March 1995, p. 9654; 'the Workers' Statute') distinguishes between unlawful dismissal and void dismissal.

- 14 Article 55(5) and (6) of the Workers' Statute provides:

'5. Any dismissal on one of the grounds of discrimination prohibited by the Constitution or by law or occurring in breach of the fundamental rights and public freedoms of workers shall be void.

...

6. Any dismissal which is void shall entail the immediate reinstatement of the worker, with payment of unpaid wages or salary.'

- 15 It follows from Article 56(1) and (2) of the Workers' Statute that, in the event of unlawful dismissal, save where the employer decides to reinstate the worker, he loses his job but receives compensation.

- 16 As regards the prohibition of discrimination in employment relationships, Article 17 of the Workers' Statute, as amended by Law 62/2003 of 30 December 2003 laying down fiscal, administrative and social measures (BOE No 313 of 31 December 2003, p. 46874), which is intended to transpose Directive 2000/78 into Spanish law, provides:

'1. Regulatory provisions, clauses in collective agreements, individual agreements, and unilateral decisions by an employer, which involve direct or indirect unfavourable discrimination on grounds of age or disability, or positive or unfavourable discrimination in employment, or with regard to remuneration, working hours, and other conditions of employment based on sex, race, or ethnic origin, civil status, social status, religion or beliefs, political opinions, sexual orientation, membership or lack of membership of trade unions or compliance with their agreements, the fact of being related to other workers in the undertaking, or language within the Spanish State, shall be deemed void and ineffective.

...'

**The main proceedings and the questions referred for a preliminary ruling**

- 17 Ms Chacón Navas was employed by Eurest, an undertaking specialising in catering. On 14 October 2003 she was certified as unfit to work on grounds of sickness and, according to the

public health service which was treating her, she was not in a position to return to work in the short term. The referring court provides no information about Ms Chacón Navas' illness.

- 18 On 28 May 2004 Eurest gave Ms Chacón Navas written notice of her dismissal, without stating any reasons, whilst acknowledging that the dismissal was unlawful and offering her compensation.
- 19 On 29 June 2004 Ms Chacón Navas brought an action against Eurest, maintaining that her dismissal was void on account of the unequal treatment and discrimination to which she had been subject, stemming from the fact that she had been on leave of absence from her employment for eight months. She sought an order that Eurest reinstate her in her post.
- 20 The referring court points out that, in the absence of any other claim or evidence in the file, it follows from the reversal of the burden of proof that Ms Chacón Navas must be regarded as having been dismissed solely on account of the fact that she was absent from work because of sickness.
- 21 The referring court observes that, according to Spanish case-law, there are precedents to the effect that this type of dismissal is classified as unlawful rather than void, since, in Spanish law, sickness is not expressly referred to as one of the grounds of discrimination prohibited in relationships between private individuals.
- 22 Nevertheless, the referring court observes that there is a causal link between sickness and disability. In order to define the term 'disability', it is necessary to turn to the International Classification of Functioning, Disability and Health (ICF) drawn up by the World Health Organisation. It is apparent from this that 'disability' is a generic term which includes defects, limitation of activity and restriction of participation in social life. Sickness is capable of causing defects which disable individuals.
- 23 Given that sickness is often capable of causing an irreversible disability, the referring court takes the view that workers must be protected in a timely manner under the prohibition of discrimination on grounds of disability. Otherwise, the protection intended by the legislature would, in large measure, be nullified, because it would thus be possible to implement uncontrolled discriminatory practices.
- 24 Should it be concluded that disability and sickness are two separate concepts and that Community law does not apply directly to sickness, the referring court suggests that it should be held that sickness constitutes an identifying attribute that is not specifically cited which should be added to the ones in relation to which Directive 2000/78 prohibits discrimination. This follows from a joint reading of Articles 13 EC, 136 EC and 137 EC, and Article II-21 of the draft Treaty establishing a Constitution for Europe.
- 25 It was in those circumstances that the Juzgado de lo Social No 33 de Madrid decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
  - (1) Does Directive 2000/78, in so far as Article 1 thereof lays down a general framework for combating discrimination on the grounds of disability, include within its protective scope a ... [worker] who has been dismissed by her employer solely because she is sick?
  - (2) In the alternative, if it should be concluded that sickness does not fall within the protective framework which Directive 2000/78 lays down against discrimination on grounds of disability and the first question is answered in the negative, can sickness be regarded as an identifying attribute in addition to the ones in relation to which Directive 2000/78 prohibits discrimination?'

#### **The admissibility of the reference for a preliminary ruling**

- 26 The Commission casts doubt on the admissibility of the questions referred on the ground that the facts described in the order for reference lack precision.



- 27 In this respect, it must be observed that despite the absence of any indication of the nature and possible course of Ms Chacón Navas' sickness, the Court has enough information to enable it to give a useful answer to the questions referred.
- 28 It is apparent from the order for reference that Ms Chacón Navas, who was certified as unfit for work on grounds of sickness and was not in a position to return to work in the short term, was, according to the referring court, dismissed solely on account of the fact that she was absent from work because of sickness. It is also apparent from that order that the referring court takes the view that there is a causal link between sickness and disability and that a worker in the situation of Ms Chacón Navas must be protected under the prohibition of discrimination on grounds of disability.
- 29 The question principally referred concerns in particular the interpretation of the concept of 'disability' for the purpose of Directive 2000/78. The Court's interpretation of that concept is intended to enable the referring court to decide whether Ms Chacón Navas was, at the time of her dismissal, on account of her sickness, a person with a disability for the purpose of that directive who enjoyed the protection provided for in Article 3(1)(c) thereof.
- 30 The question referred in the alternative relates to sickness as an 'identifying attribute' and therefore concerns any type of sickness.
- 31 Euresit maintains that the reference for a preliminary ruling is inadmissible since the Spanish courts, in particular the Tribunal Supremo, have already ruled, in the light of Community legislation, that the dismissal of a worker who has been certified as unfit to work on grounds of sickness does not as such amount to discrimination. However, the fact that a national court has already interpreted Community legislation cannot render inadmissible a reference for a preliminary ruling.
- 32 As regards Euresit's argument that it dismissed Ms Chacón Navas without reference to the fact that she was absent from work on grounds of sickness because, at that time, her services were no longer necessary, it must be recalled that, in proceedings under Article 234 EC, which are based on a clear separation of functions between the national courts and the Court of Justice, any assessment of the facts in the case is a matter for the national court. Similarly, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of Community law, the Court is in principle bound to give a ruling (see, *inter alia*, Case C-326/00 *IKA* [2003] ECR I-1703, paragraph 27, and Case C-145/03 *Keller* [2005] ECR I-2529, paragraph 33).
- 33 Nevertheless, the Court has also stated that, in exceptional circumstances, it can examine the conditions in which the case was referred to it by the national court, in order to confirm its own jurisdiction (see, to that effect, Case 244/80 *Foglia* [1981] ECR 3045, paragraph 21). The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, *inter alia*, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 39, and Case C-35/99 *Arduino* [2002] ECR I-1529, paragraph 25).
- 34 Since none of those conditions have been satisfied in this case, the reference for a preliminary ruling is admissible.

## **The questions**

### *The first question*

- 35 By its first question, the referring court is asking, in essence, whether the general framework laid down by Directive 2000/78 for combating discrimination on the grounds of disability confers protection on a person who has been dismissed by his employer solely on account of sickness.
- 36 As is clear from Article 3(1)(c) of Directive 2000/78, that directive applies, within the limits of the areas of competence conferred on the Community, to all persons, as regards inter alia dismissals.
- 37 Within those limits, the general framework laid down by Directive 2000/78 for combating discrimination on grounds of disability therefore applies to dismissals.
- 38 In order to reply to the question referred, it is necessary, first, to interpret the concept of 'disability' for the purpose of Directive 2000/78 and, second, to consider to what extent disabled persons are protected by that directive as regards dismissal.
- Concept of 'disability'
- 39 The concept of 'disability' is not defined by Directive 2000/78 itself. Nor does the directive refer to the laws of the Member States for the definition of that concept.
- 40 It follows from the need for uniform application of Community law and the principle of equality that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the Community, having regard to the context of the provision and the objective pursued by the legislation in question (see, inter alia, Case 327/82 *Ekro* [1984] ECR 107, paragraph 11, and Case C-323/03 *Commission v Spain* [2006] ECR I-0000, paragraph 32).
- 41 As is apparent from Article 1, the purpose of Directive 2000/78 is to lay down a general framework for combating discrimination based on any of the grounds referred to in that article, which include disability, as regards employment and occupation.
- 42 In the light of that objective, the concept of 'disability' for the purpose of Directive 2000/78 must, in accordance with the rule set out in paragraph 40 of this judgment, be given an autonomous and uniform interpretation.
- 43 Directive 2000/78 aims to combat certain types of discrimination as regards employment and occupation. In that context, the concept of 'disability' must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life.
- 44 However, by using the concept of 'disability' in Article 1 of that directive, the legislature deliberately chose a term which differs from 'sickness'. The two concepts cannot therefore simply be treated as being the same.
- 45 Recital 16 in the preamble to Directive 2000/78 states that the 'provision of measures to accommodate the needs of disabled people at the workplace plays an important role in combating discrimination on grounds of disability'. The importance which the Community legislature attaches to measures for adapting the workplace to the disability demonstrates that it envisaged situations in which participation in professional life is hindered over a long period of time. In order for the limitation to fall within the concept of 'disability', it must therefore be probable that it will last for a long time.
- 46 There is nothing in Directive 2000/78 to suggest that workers are protected by the prohibition of discrimination on grounds of disability as soon as they develop any type of sickness.
- 47 It follows from the above considerations that a person who has been dismissed by his employer solely on account of sickness does not fall within the general framework laid down for combating discrimination on grounds of disability by Directive 2000/78.

Protection of disabled persons as regards dismissal

- 48 Unfavourable treatment on grounds of disability undermines the protection provided for by Directive 2000/78 only in so far as it constitutes discrimination within the meaning of Article 2(1) of that directive.
- 49 According to Recital 17 in the preamble to Directive 2000/78, that directive does not require the recruitment, promotion or maintenance in employment of an individual who is not competent, capable and available to perform the essential functions of the post concerned, without prejudice to the obligation to provide reasonable accommodation for people with disabilities.
- 50 In accordance with Article 5 of Directive 2000/78, reasonable accommodation is to be provided in order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities. That provision states that this means that employers are to take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, unless such measures would impose a disproportionate burden on the employer.
- 51 The prohibition, as regards dismissal, of discrimination on grounds of disability contained in Articles 2(1) and 3(1)(c) of Directive 2000/78 precludes dismissal on grounds of disability which, in the light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and available to perform the essential functions of his post.
- 52 It follows from all the above considerations that the answer to the first question must be that:
- a person who has been dismissed by his employer solely on account of sickness does not fall within the general framework laid down for combating discrimination on grounds of disability by Directive 2000/78;
  - the prohibition, as regards dismissal, of discrimination on grounds of disability contained in Articles 2(1) and 3(1)(c) of Directive 2000/78 precludes dismissal on grounds of disability which, in the light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and available to perform the essential functions of his post.

*The second question*

- 53 By its second question, the referring court is asking whether sickness can be regarded as a ground in addition to those in relation to which Directive 2000/78 prohibits discrimination.
- 54 In this connection, it must be stated that no provision of the EC Treaty prohibits discrimination on grounds of sickness as such.
- 55 Article 13 EC and Article 137 EC, read in conjunction with Article 136 EC, contain only the rules governing the competencies of the Community. Moreover, Article 13 EC does not refer to discrimination on grounds of sickness as such in addition to discrimination on grounds of disability, and cannot therefore even constitute a legal basis for Council measures to combat such discrimination.
- 56 It is true that fundamental rights which form an integral part of the general principles of Community law include the general principle of non-discrimination. That principle is therefore binding on Member States where the national situation at issue in the main proceedings falls within the scope of Community law (see, to that effect, Case C-442/00 *Rodríguez Caballero* [2002] ECR I-11915, paragraphs 30 and 32, and Case C-112/00 *Schmidberger* [2003] ECR I-5659, paragraph 75, and the case-law cited). However, it does not follow from this that the scope of Directive 2000/78 should be extended by analogy beyond the discrimination based on the grounds listed exhaustively in Article 1 thereof.

57 The answer to the second question must therefore be that sickness cannot as such be regarded as a ground in addition to those in relation to which Directive 2000/78 prohibits discrimination.

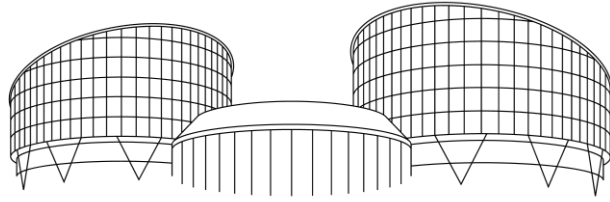
### **Costs**

58 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

- 1. A person who has been dismissed by his employer solely on account of sickness does not fall within the general framework laid down for combating discrimination on grounds of disability by Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.**
- 2. The prohibition, as regards dismissal, of discrimination on grounds of disability contained in Articles 2(1) and 3(1)(c) of Directive 2000/78 precludes dismissal on grounds of disability which, in the light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and available to perform the essential functions of his post.**
- 3. Sickness cannot as such be regarded as a ground in addition to those in relation to which Directive 2000/78 prohibits discrimination.**

[Signatures]



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

**CASE OF SÝKORA v. THE CZECH REPUBLIC**

*(Application no. 23419/07)*

JUDGMENT

STRASBOURG

22 November 2012

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Sýkora v. the Czech Republic,**

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Dean Spielmann, *President*,

Mark Villiger,

Karel Jungwiert,

Boštjan M. Zupančič,

Angelika Nußberger,

André Potocki,

Paul Lemmens, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 23 October 2012,

Delivers the following judgment, which was adopted on that date:

## PROCEDURE

1. The case originated in an application (no. 23419/07) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Czech national, Mr Milan Sýkora (“the applicant”), on 30 May 2007.

2. The applicant was represented by Mr D. Zahumenský, Ms B. Bukovská, and Mr J. Fiala, lawyers from the Mental Disability Advocacy Center in Brno. The Czech Government (“the Government”) were represented by their Agent, Mr Vít A. Schorm, of the Ministry of Justice.

3. The applicant alleged, in particular, that his right to liberty and private life had been violated on account of the removal of legal capacity from him and his subsequent detention in a psychiatric hospital.

4. On 29 June 2010 the application was communicated to the Government.

5. The applicant and the Government each submitted observations on the admissibility and merits. In addition, third-party comments were received from the Harvard Law School Project on Disability, which had been granted leave by the President of the Chamber to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1949 and lives in Brno. He is a person with a psycho-social disability. He has been treated in psychiatric hospitals in the past, most recently in 1995. He has not taken any medication for many years, because he considers that it has an adverse impact on his eyesight, and has used other methods to cope with his illness.

#### **A. Proceedings concerning the removal of the applicant's legal capacity**

7. In a judgment of 15 November 2000 the Brno Municipal Court (*městský soud*) deprived the applicant of his legal capacity at the request of the City of Brno, which maintained that the applicant had not collected his pension since 1996 because he did not have an identity card. The court based its decision on an expert report by Dr. H., who had concluded in 1998 that the applicant was suffering from paranoid schizophrenia. The applicant, although aware of the proceedings, was not summoned to appear before the court and the decision was not served on him, the court referring to an opinion of Dr. H., who was heard by the court and did not recommend that this be done. The applicant was represented by Ms. M., an employee of the court, who had never met him, did not participate at the hearing and took no substantive part in the proceedings. The judgment became final on 21 December 2000.

8. On an unspecified date the applicant became aware of the court's judgment and appealed. On 27 August 2001 the Brno Regional Court (*krajský soud*) quashed the first-instance decision and remitted the case to the Municipal Court which, in a judgment of 24 November 2004, again deprived the applicant of his legal capacity and appointed the City of Brno as his guardian.

9. It based its decision on a new expert report drawn up by Dr. H. on 20 May 2004 who, however, had not been able to examine the applicant because of his refusal to have any medical examinations. She concluded that there had been no improvement in the applicant's mental health since the first report. She reiterated her findings in the 1998 report that the applicant was unable to care for himself or to manage any property, and that he was dependent on others even for daily needs. The report further stated that the applicant's presence at the hearing would not be appropriate, because he did not understand the purpose of the proceedings and was denying his mental illness, but a court judgment could be sent to him. At a hearing, the expert stated that the notification of the court judgment to the applicant would not



worsen his health, but he would not understand. She thus recommended that the judgment not be sent to the applicant.

10. The court did not hear the applicant, who continued to be formally represented by a court employee. The judgment was not served on him and became final on 1 January 2005.

11. The applicant became aware of the judgment on 20 June 2006 and appealed on 4 July 2006. He stated that the court had not notified him about the institution and outcome of the incapacitation proceedings and that Dr. H had drawn up her expert opinion without examining him. The applicant was represented by a lawyer from the Mental Disability Advocacy Center (“the MDAC”).

12. On 25 October 2006 the Regional Court again quashed the Municipal Court’s judgment and sent the case back to it, disputing the relevance of the expert opinion which had been drawn up without the applicant being examined. It suggested that the Municipal Court should appoint a new expert.

13. On 19 September 2007 the Municipal Court decided not to deprive the applicant of his legal capacity, basing its decision on an expert report by Dr. B., who had concluded on 11 May 2007 that the applicant was mentally ill but did not show signs of schizophrenia, was not dangerous or aggressive and was fully capable of making legal assessments. The court heard the expert, the applicant, who was legally represented, and his guardian. The judgment became final on 23 November 2007.

14. In total the applicant was deprived of legal capacity from 21 December 2000 to 27 August 2001 and from 1 January 2005 to 25 October 2006, that is for two years and six months.

## **B. Proceedings for damages against the State**

15. On 15 January 2008, in two separate documents, the applicant requested the Ministry of Justice to award him non-pecuniary damages for the unreasonable length of incapacitation proceedings and violations of other procedural rights.

16. The Ministry joined the two requests of the applicant and on 1 September 2008 awarded him 102,000 Czech korunas (CZK, 4,602 euros (EUR)) in damages for the unreasonable length of proceedings. Regarding the rest of the applicant’s claims, the Ministry accepted that the judgments had not been served on the applicant and that his rights had therefore been violated. It stated, however, that a finding of a violation constituted in itself sufficient satisfaction for any non-pecuniary damage he might have sustained.

17. The applicant brought proceedings for damages at the Prague 2 District Court (*obvodní soud*), claiming violations of his procedural rights in the incapacitation proceedings.

18. On 12 November 2008 the District Court rejected the applicant's action. On the basis of established case-law it held that the alleged shortcomings in the incapacitation proceedings could not constitute irregular official conduct for which the State could be held responsible, because there had been a decision. The applicant could have claimed damages only for a decision that became final but was later quashed as illegal. That situation however did not arise in the present case.

19. On 10 December 2009 the Municipal Court upheld the judgment of the lower court.

20. On 16 February 2012 the Constitutional Court (*Ústavní soud*) dismissed a constitutional appeal by the applicant as manifestly ill-founded. It held that the legal opinion of the ordinary courts was not unconstitutional. It noted that by claiming damages for irregular official conduct the applicant had been trying to circumvent the fact that he had not met the conditions for claiming damages for an unlawful decision. Furthermore, the decisions for which the applicant was claiming damages had never become final and so could not have interfered with his rights.

### **C. The applicant's detention in the Brno-Černovice Psychiatric Hospital and the ensuing proceedings**

21. On 9 November 2005 the applicant had a verbal, non-violent argument with his partner, Ms J., who called the police and an ambulance. Although the police found no signs of violence and the applicant's partner confirmed that the applicant had not been aggressive, the ambulance doctor decided to take the applicant to a psychiatric hospital. The applicant disagreed but did not resist.

22. At his admission to the Brno-Černovice Psychiatric Hospital, the applicant was subjected to two specialist medical examinations. They both concluded that the applicant suffered from schizophrenia. The applicant insisted at the examinations that there were no reasons for his detention. Despite his warning that neuroleptic psychiatric medication had a negative effect on his eyesight, he was nevertheless ordered to take the medication, and when he refused it was administered by injection. As a result, according to the applicant, his eyesight deteriorated.

23. On 10 November 2005 the applicant complained about his treatment in a letter to the director of the hospital, but his letter was retained by the staff; he was informed of this on 14 November 2005. He has never received any reply from the director.

24. On 11 November 2005 the hospital notified the Municipal Court of the applicant's involuntary admission so that the court could start to review its lawfulness under Article 191a of the Code of Civil Procedure. On an unspecified date the hospital contacted the applicant's guardian (the City of Brno) which, on 14 November 2005, consented to his detention. The

employee who signed the consent had never met the applicant and did not inform him that consent had been given.

25. On an unspecified date the applicant was moved to a department with a more lenient regime, but was still not allowed to leave.

26. On 14 November 2005 he contacted the MDAC. On the same day, an MDAC lawyer stated to the Municipal Court that the applicant's involuntary detention was unlawful, and requested his release.

27. On 29 November 2005 the applicant was released from the hospital. He stated that he suffered from impaired vision and mental health for almost a year as a consequence of the treatment he received in the hospital.

28. On an unspecified date a judge of the Municipal Court informed the MDAC lawyer that the applicant had been deprived of legal capacity and that a power of attorney therefore had to be signed by his guardian. Due to the applicant's poor health after his release from the hospital, the applicant was able to visit his guardian in an office of the City of Brno only on 8 November 2006. The employee of the City of Brno he approached refused however to sign the power of attorney. On the same day, the applicant himself asked the Municipal Court for a further review of the lawfulness of his involuntary admission to the psychiatric hospital. On 24 November 2006 he was told in a letter that no proceedings in that regard had been instituted.

29. On 2 January 2007 the applicant complained to the President of the Municipal Court about delays in the proceedings. On 5 March 2007 he received a reply that no such proceedings had been instituted because his guardian had consented to his detention.

30. On 31 January 2007 the applicant lodged a constitutional appeal (*ústavní stížnost*) alleging a violation of his rights to liberty, fair hearing, respect for private life and non-discrimination due to his involuntary hospitalisation and removal of his legal capacity.

31. On 8 January 2009 the Constitutional Court dismissed his constitutional appeal for non-exhaustion of ordinary remedies. Regarding the proceedings on the review of the lawfulness of his involuntary hospitalisation, the court held that the applicant had not lodged a complaint under section 174a of the Act on Courts and Judges (no. 6/2002) requesting the court to set a date for action. Regarding the incapacitation proceedings, it held that at the time the constitutional appeal was lodged those proceedings were pending before the Municipal Court.

32. On 6 February 2009 the applicant lodged a new complaint of delays in the proceedings on the review of the lawfulness of his involuntary admission to the psychiatric hospital, and requested the court to set a date for action. On 13 March 2009 the Regional Court refused his request on the grounds that since the applicant was no longer detained no proceedings on lawfulness of his detention had been held, so there were no proceedings in which any delays could be found and which could be expedited.

33. On 21 May 2009 the applicant lodged a constitutional appeal, claiming that his psychiatric detention had never been reviewed by a court.

34. On 11 January 2012 the Constitutional Court dismissed his constitutional appeal as unsubstantiated, holding that the courts had rightly not instituted proceedings to review the applicant's detention, because his guardian had consented to it, and moreover when the applicant had requested the continuation of the proceedings he was no longer detained, which was another reason why the proceedings had had to be abandoned. It added that the applicant could institute civil proceedings for damages against the hospital, in which the lawfulness of its actions could be reviewed.

## II. RELEVANT DOMESTIC LAW

### **A. Civil Code (Act no. 40/1964) in force at the material time**

35. Under Article 10 § 1, if a natural person, because of a mental disorder which is not temporary, is totally unable to make legal decisions, the court will deprive him of legal capacity.

36. Under Article 26, if natural persons are legally incapacitated, their guardians act in their name.

### **B. Code of Civil Procedure (Act no. 99/1963)**

37. Under Article 191a a hospital which admits a patient against his or her will must inform an appropriate court within twenty-four hours; the court will review the lawfulness of the person's involuntary admission to the hospital.

### **C. The Public Health Care Act (Act no. 20/1966) in force at the material time**

38. Under section 23(4)(b) a person may be compulsorily medically treated and even hospitalised if he appears to show signs of a mental illness and endangers himself or his surroundings.

### **D. Act no. 82/1998 on State liability for damage caused in the exercise of public authority by an irregularity in a decision or the conduct of proceedings**

39. Under sections 7 and 8 individuals who suffer loss because of a final unlawful decision that is later quashed or changed are entitled to claim just satisfaction.

40. Section 13 provides that the State is also liable for damage caused by an irregularity in the conduct of proceedings, including non-compliance with the obligation to perform an act or to give a decision within the statutory time-limit.

### III. RELEVANT INTERNATIONAL INSTRUMENTS

#### **A. Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly on 13 December 2006 (Resolution A/RES/61/106)**

41. This Convention entered into force on 3 May 2008. It was ratified by the Czech Republic on 28 September 2009. The relevant parts of the Convention provide:

##### **Article 12**

##### **Equal recognition before the law**

“1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person’s circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person’s rights and interests. ...”

##### **Article 14**

##### **Liberty and security of person**

“1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

(a) Enjoy the right to liberty and security of person;

(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in

compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation.”

**B. Recommendation No. R (99) 4 of the Committee of Ministers of the Council of Europe on principles concerning the legal protection of incapable adults (adopted on 23 February 1999)**

42. The relevant parts of this Recommendation read as follows:

**Principle 3 – Maximum reservation of capacity**

“1. The legislative framework should, so far as possible, recognise that different degrees of incapacity may exist and that incapacity may vary from time to time. Accordingly, a measure of protection should not result automatically in a complete removal of legal capacity. However, a restriction of legal capacity should be possible where it is shown to be necessary for the protection of the person concerned.

2. In particular, a measure of protection should not automatically deprive the person concerned of the right to vote, or to make a will, or to consent or refuse consent to any intervention in the health field, or to make other decisions of a personal character at any time when his or her capacity permits him or her to do so. ...”

**Principle 6 – Proportionality**

“1. Where a measure of protection is necessary it should be proportional to the degree of capacity of the person concerned and tailored to the individual circumstances and needs of the person concerned.

2. The measure of protection should interfere with the legal capacity, rights and freedoms of the person concerned to the minimum extent which is consistent with achieving the purpose of the intervention. ...”

**Principle 9 – Respect for wishes and feeling of the person concerned**

“3. [This principle] also implies that a person representing or assisting an incapable adult should give him or her adequate information, whenever this is possible and appropriate, in particular concerning any major decision affecting him or her, so that he or she may express a view.”

**Principle 13 – Right to be heard in person**

“The person concerned should have the right to be heard in person in any proceedings which could affect his or her legal capacity.”

**Principle 14 – Duration, review and appeal**

“1. Measures of protection should, whenever possible and appropriate, be of limited duration. Consideration should be given to the institution of periodical reviews ...

3. There should be adequate rights of appeal. ...”

**Principle 16 – Adequate control**

“There should be adequate control of the operation of measures of protection and of the acts and decisions of representatives.”

**Principle 19 – Limitation of powers of representatives**

“1. It is for national law to determine which juridical acts are of such a highly personal nature that they can not be done by a representative.

2. It is also for national law to determine whether decisions by a representative on certain serious matters should require the specific approval of a court or other body...”

**Principle 22 – Consent**

“1. Where an adult, even if subject to a measure of protection, is in fact capable of giving free and informed consent to a given intervention in the health field, the intervention may only be carried out with his or her consent. The consent should be solicited by the person empowered to intervene.

2. Where an adult is not in fact capable of giving free and informed consent to a given intervention, the intervention may, nonetheless, be carried out provided that:

- it is for his or her direct benefit, and

authorisation has been given by his or her representative or by an authority or a person or body provided for by law.

3. ... Consideration should also be given to the need to provide for the authorisation of a court or other competent body in the case of certain serious types of intervention.”

**C. Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 March to 7 April 2006 and from 21 to 24 June 2006**

43. In this report the CPT also assessed the guardianship regime in the Czech Republic in connection with the admission of incapacitated persons to social care institutions and psychiatric hospitals. It noted that guardians have far-reaching powers with respect to their wards, and criticised the fact that they may also decide on the question of admission to a psychiatric hospital or a social care home (§ 149). It recommended that the Czech authorities consider incorporating the Council of Europe’s Principles Concerning the Legal Protection of Incapable Adults and, in particular, Principle 19 (2), into the legal norms governing guardianship in the Czech Republic (§ 154).

**D. Concluding Observations of the Human Rights Committee on the Czech Republic, 25 July 2007**

44. The Committee expressed concern that confinement in psychiatric hospitals can be based on mere “signs of mental illness”. It regretted that court reviews of admissions to psychiatric institutions do not sufficiently

ensure respect for the views of the patient, and that guardianship is sometimes assigned to attorneys who do not meet the patient. It concluded:

“The State party should ensure that no medically unnecessary psychiatric confinement takes place, that all persons without full legal capacity are placed under guardianship that genuinely represents and defends the wishes and interest of those persons, and that an effective judicial review of the lawfulness of the admission and detention of such person in health institutions takes place in each case.”

**E. Report of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, Doc. no. E/CN.4/2005/51, 11 February 2005**

45. In his report the Special Rapporteur emphasised that human rights must be supported by a system of accountability, and called for the introduction of appropriate safeguards against abuse of the rights of people with mental disabilities. He advocated that an independent review body must be made accessible to individuals with mental disabilities to periodically review cases of involuntary admission and treatment (§ 71). He was further concerned by the fact that guardianship had been overused and abused in the medical, as well as other, contexts, including at the most extreme level the compulsory admission of individuals with learning disabilities in psychiatric institutions (§ 79).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

46. The applicant complained that his admission and detention in the Brno-Černovice Psychiatric Hospital violated his right to liberty. He relied on Article 5 § 1 of the Convention, the relevant part of which reads:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

#### A. Admissibility

47. The Court first notes that the applicant was confined to a psychiatric hospital from 9 November 2005 to 29 November 2005, that is a total of twenty days, without his consent. While his confinement was confirmed



after five days by the guardian this does not alter the fact that the applicant was deprived of his liberty involuntarily and that his continued hospitalisation against his will constituted a deprivation of liberty within the meaning of that provision (see *Stanev v. Bulgaria* [GC], no. 36760/06, §§ 122-123, ECHR 2012; *D.D. v. Lithuania*, no. 13469/06, § 122, 14 February 2012; and *Shtukaturov v. Russia*, no. 44009/05, § 109, ECHR 2008).

48. The Government maintained that the applicant had lost his status as a victim after the Ministry of Justice had acknowledged that incorrect official procedure had taken place both as a result of delays in the proceedings and as a result of failure to serve courts' decisions on the applicant, and had awarded him CZK 102,000 (see paragraph 16 above). Even though the acknowledgement concerned the proceedings on legal capacity, this must be viewed in the context of the narrow inter-connection of these proceedings and the admission of the applicant to the hospital with the consent of his guardian.

49. The applicant disagreed, arguing that his right to liberty was not an issue in those proceedings, which concerned only his incapacitation.

50. The Court observes that while compensating the applicant for the unreasonable length of the incapacitation proceedings, the Ministry did not acknowledge a violation of the applicant's right to liberty. It cannot therefore be said that the authorities have acknowledged the breach of Article 5 of the Convention and afforded redress for it. As a result, the Government's objection must be dismissed.

51. The Government further argued that the applicant had failed to exhaust domestic remedies, pointing out that his first constitutional appeal had been dismissed for non-compliance with procedural requirements. Moreover, the applicant should have instituted proceedings for damages against the State on the basis that the Brno Municipal Court had failed to decide on the lawfulness of his involuntary admission to the hospital.

52. The applicant disagreed, maintaining that he could not claim compensation from the State for unlawful detention given that his detention had been based on the national law.

53. Regarding the dismissal of the applicant's first constitutional appeal for formal reasons, the Court notes that, subsequently, the applicant's second constitutional appeal was dismissed on the merits (see paragraph 33 above). It cannot therefore be said that the applicant failed to exhaust this remedy in compliance with the procedural requirements.

54. As regards the possibility of bringing an action for damages against the State, the Court recalls that the Constitutional Court, in its decision of 11 January 2012, found the approach of the courts in the applicant's case to have been lawful and constitutional. Moreover, the Government have failed to submit any example of a decision in which an action for damages in comparable circumstances was successful. The Court therefore concludes

that an action for damages was not a remedy which the applicant was required to exhaust, and dismisses the Government's objection of non-exhaustion of domestic remedies.

55. Lastly, the Government requested the Court to apply the admissibility criterion under Article 35 § 3 (b) of the Convention, maintaining that the applicant had suffered no significant disadvantage.

56. The Court does not accept that questions going to the lawfulness of a deprivation of liberty which lasted twenty days could constitute an "insignificant" disadvantage. It accordingly dismisses this objection.

57. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

### *1. Submissions of the parties and third-party intervener*

58. The applicant complained that his detention could not have been justified under Article 5 § 1 (e) of the Convention because he was not a person of unsound mind of a kind or degree warranting compulsory confinement. He stated that his detention had been neither lawful nor in accordance with a procedure prescribed by law. He had been detained on the basis of retrospective consent given by his guardian, who had never met him and had showed no interest in his hospitalisation. In his view, the Convention did not allow guardians to decide on questions of such fundamental importance without court approval and thus his detention could not be lawful as there had been no safeguards against his detention. The guardian's powers were total and unchecked.

59. The Government maintained that the applicant had a serious and long term mental disorder. He had been taken to the health care institution as a result of an emergency call by Ms J., who had reported that the applicant was being aggressive and that she had felt threatened by him. It can therefore be assumed that from the perspective of the medical specialists at the time of the confinement, the applicant's disorder had required hospitalisation, even though the aggressive behaviour had not been confirmed and Ms J. later described it as fabricated.

60. They added that the applicant's hospitalisation had been in compliance with the domestic law. As far as compliance with the procedural criteria in the light of the requirements of the Convention was concerned, the Government left that assessment to the Court's discretion.

61. The Harvard Law School Project on Disability, as third party to the proceedings, referred in their submissions to the Convention on the Rights

of Persons with Disabilities, which the Court should, in their view, take into account in interpreting the Convention.

## 2. *The Court's assessment*

62. The Court reiterates that in order to comply with Article 5 § 1, the detention in issue must first of all be “lawful”, including the observance of a procedure prescribed by law; in this respect the Convention refers back essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. Moreover, any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness. Furthermore, the detention of an individual is such a serious measure that it is only justified where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained. That means that it does not suffice that the deprivation of liberty is in conformity with national law; it must also be necessary in the circumstances (see *Stanev*, cited above, § 143).

The Court has outlined three minimum conditions for the lawful detention of an individual on the basis of unsoundness of mind under Article 5 § 1 (e) of the Convention: he must reliably be shown to be of unsound mind, that is, a true mental disorder must be established before a competent authority on the basis of objective medical expertise; the mental disorder must be of a kind or degree warranting compulsory confinement; and the validity of continued confinement must depend upon the persistence of such a disorder (see *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33; and *Stanev*, cited above, § 145).

63. Moreover, a detention cannot be considered “lawful” within the meaning of Article 5 § 1 if the domestic procedure does not provide sufficient guarantees against arbitrariness (see *H.L. v. the United Kingdom*, no. 45508/99, § 124, ECHR 2004-IX; *Shtukaturov*, cited above, § 113; and *L.M. v. Latvia*, no. 26000/02, § 54, 19 July 2011). In addition, deprivations of liberty must be subject to thorough scrutiny by the domestic authorities (*Župa v. the Czech Republic*, no. 39822/07, §§ 37 and 61, 26 May 2011).

64. In the *H.L. v. the United Kingdom* case the Court found that the detention had not been lawful because of the absence of safeguards, understood both in the sense of procedural safeguards and of substantive guarantees to prevent arbitrariness (§ 120).

65. Turning to the present case, the Court first observes that the applicant was admitted to the psychiatric hospital as an emergency case, the doctors acting on the belief that he had been aggressive to his partner. He underwent two independent medical examinations on his admission and both doctors concluded that the applicant suffered from a mental disorder. Therefore, his detention was initially based on an objective medical expertise. However, before deciding whether also the other above

mentioned Winterwerp criteria were complied with in the present case, the Court must establish whether the applicant's detention was "lawful", in particular whether the domestic procedure provided sufficient guarantees against arbitrariness (see *L.M. v. Latvia*, cited above, § 45).

66. The Court notes that no domestic court reviewed the lawfulness of the applicant's detention as would be the normal procedure in cases of involuntary hospitalisations (see § 37 above). The reason was that since the guardian gave consent to the applicant's detention the applicant was considered, as a matter of domestic law, to be in the psychiatric hospital voluntarily. As a result, he was deprived of his liberty for twenty days solely on the basis of the consent of his guardian. The requirements for involuntary hospitalisation, both substantive in section 23(4)(b) of the Public Health Care Act and procedural in the Code of Civil Procedure, did not apply.

67. The Court observes that the opinions and reports issued by the various international bodies indicate a trend in international standards to require that detentions of incapacitated persons be accompanied by requisite procedural safeguards, namely by way of judicial review (see Principles 3, 16, 19 and 22 in paragraph 42 above; the views of the international bodies in paragraphs 42-44 above; and also *Župa v. the Czech Republic*, cited above, §§ 37 and 61). Judicial review, instituted automatically or brought about by the ward or some other suitable person, of a guardian's consent to deprivation of liberty of their ward could provide, in view of the Court, a relevant safeguard against arbitrariness. The trend towards such judicial review has not yet found full implementation in most Council of Europe Member States (see the Comparative Law part in *Stanev*, cited above, §§ 91-95), and it is not available in the Czech Republic in circumstances like the present case.

68. The Court observes that the only possible safeguard against arbitrariness in respect of the applicant's detention was the requirement that his guardian, which was the City of Brno, consent to the detention. However, the guardian consented to the applicant's detention without ever meeting or even consulting the applicant. Moreover, it has never been explained why it would have been impossible or inappropriate for the guardian to consult the applicant before taking this decision, as referred to in the relevant international standards (see Principle 9 in paragraph 42 above). Accordingly, the guardian's consent did not constitute a sufficient safeguard against arbitrariness.

69. There were no other substantive safeguards protecting the applicant from detention than the guardian's consent, which was not sufficient as found above. Even the protection of section 23(4)(b) of the Public Health Care Act was inapplicable once the guardian gave his consent.

70. The Court considers that, even after the applicant's detention became voluntary under domestic law, it was not lawful as it was not accompanied

by sufficient guarantees against arbitrariness. It is thus not necessary to consider the other arguments of the applicant.

71. There has accordingly been a violation of Article 5 § 1 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

72. The applicant further complained that he did not have any opportunity to seek a judicial review of his detention. He relied on Article 5 § 4 of the Convention:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

### A. Admissibility

73. The Government repeated their objection of inadmissibility already raised under Article 5 § 1 (see paragraphs 48, 51 and 55 above). They further maintained that Article 5 § 4 of the Convention was applicable only when a person was in detention, and that therefore this complaint as far as it concerned proceedings after 29 November 2005 was incompatible *ratione materiae* with the Convention.

74. The applicant disagreed. He challenged the accuracy of the Government’s objection *ratione materiae*, and maintained furthermore that it was irrelevant, as his complaint concerned the absence of any opportunity to seek judicial review of his detention.

75. The Court has already rejected the Government’s objection as to the victim status of the applicant above (see paragraph 50 above). As to their view that any disadvantage to the applicant was insignificant, the Court does not accept that the absence of an opportunity for the applicant to seek judicial review of his detention, which goes to the essence of Article 5 § 4 of the Convention, can constitute an insignificant disadvantage and, accordingly, dismisses the Government’s objection.

76. The Court further agrees with the applicant that the question whether Article 5 § 4 applied to any proceedings after the applicant’s release is not relevant to the present complaint.

77. It finally considers that the Government’s objection of non-exhaustion of domestic remedies must be joined to the examination of the merits of the complaint (see *Rashed v. the Czech Republic*, no. 298/07, § 46, 27 November 2008).

78. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

79. The applicant complained that having been deprived of his legal capacity he had had no access to any judicial proceedings for a review of the lawfulness of his detention. He argued that Article 5 § 4 guaranteed this right to everyone, and therefore the consent of his guardian could not forfeit this right on his behalf without any safeguards. If that were the case the whole purpose of Article 5, which was to prevent arbitrary detentions, would be compromised.

80. The Government pointed out that under the domestic law the applicant had been admitted to the psychiatric hospital with the consent of his guardian. Moreover, his detention had not been particularly lengthy. Had it been a long-term detention the situation would have been different, as after the quashing of the Municipal Court's judgment depriving the applicant of his legal capacity, the applicant would no longer have been considered a patient detained by consent, and remedies in respect of his detention would have been available to him.

81. Article 5 § 4 of the Convention deals only with those remedies which must be made available during a person's detention with a view to that person obtaining speedy judicial review of the lawfulness of the detention leading, where appropriate, to his or her release (*Slivenko v. Latvia* [GC], no. 48321/99, § 158, ECHR 2003-X).

82. As to the substantive content of the provision, the Court has recently considered the requirements of Article 5 § 4 of the Convention in the case of *Stanev* (cited above). It recalled that Article 5 § 4 entitles detained persons to institute proceedings for a review of compliance with the procedural and substantive conditions which are essential for the "lawfulness" of their deprivation of liberty (§ 168). The remedy must be accessible to the detained person and must afford the possibility of reviewing compliance with the conditions to be satisfied if the detention of a person of unsound mind is to be regarded as "lawful" for the purposes of Article 5 § 1 (e). The Convention requirement for an act of deprivation of liberty to be amenable to independent judicial scrutiny is of fundamental importance in the context of the underlying purpose of Article 5 of the Convention to provide safeguards against arbitrariness; in the case of mental illness, special procedural safeguards may be called for in order to protect the interests of persons who, on account of their mental illness, are not fully capable of acting for themselves (§ 170, with further references). In the case of *Shtukaturov* (cited above), the Court found that a remedy which could only be initiated through the applicant's mother – who was opposed to his release – did not satisfy the requirements of Article 5 § 4 (§ 124).

83. Turning to the present case, the Court notes that the applicant's detention lasted twenty days, which cannot be considered too short to initiate judicial review (compare for example, *a contrario*, *Slivenko*, cited

above, § 158 and *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, § 45, Series A no. 182). Accordingly, Article 5 § 4 is applicable in the present case.

84. The Court observes that the domestic courts were not empowered to intervene in the applicant's psychiatric confinement, the applicant having been considered to be in the psychiatric hospital voluntarily because of the consent of his guardian (see paragraph 66 above), and the Government did not indicate any other adequate remedy available to the applicant.

85. In the light of these considerations, the Court concludes that there were no proceedings in which the lawfulness of the applicant's detention could have been determined and his release ordered.

86. Consequently, it dismisses the Government's objection of failure to exhaust domestic remedies, and finds that there has been a violation of Article 5 § 4 of the Convention.

### III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

87. The applicant complained that during his detention he had been subjected to medical treatment against his will which had negatively affected his health. He further complained that the total removal of his legal capacity had interfered with his right to private and family life and that the proceedings depriving him of legal capacity suffered from procedural deficiencies. He relied on Articles 6 and 8 of the Convention. The Court considers it appropriate to examine the complaints under Article 8, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

#### A. Admissibility

88. The Court first reiterates that under Article 35 § 1 it may only deal with a matter after all domestic remedies have been exhausted. Applicants must have provided the domestic courts with the opportunity, in principle intended to be afforded to Contracting States that have the primary responsibility for implementing and enforcing the guaranteed rights, of preventing or putting right the violations alleged against them. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *McFarlane v. Ireland* [GC], no. 31333/06,

§ 112, 10 September 2010; *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI; and *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V).

89. Regarding the complaint about the medical treatment in the psychiatric hospital, the Court notes that the applicant did not institute proceedings for damages against the hospital as he could have, at the latest from 25 October 2006, when the decision once to deprive him of legal capacity had been quashed. The Court considers that in these proceedings the question of compliance of the involuntary administration of medication with the applicant's rights would have been assessed and the actions of the psychiatric hospital could have been found unlawful and just satisfaction awarded to the applicant (see *Storck v. Germany*, no. 61603/00, §§ 24 and 40, ECHR 2005-V). The instant case, where the forced administration of medication lasted for twenty days, differs from the case of *X v. Finland* (no. 34806/04, § 220, 3 July 2012) where the Court did not consider a compensatory remedy sufficient, and required a preventive remedy because there the forced administration of medication lasted for almost a year. In failing to institute those proceedings, the applicant did not give the State the opportunity to put right the violations alleged against it before those allegations were submitted to the Convention institutions.

90. This part of the application must thus be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

91. Regarding the applicant's complaint about deprivation of legal capacity the Government maintained that he had lost his victim status. They referred to the decision of the Ministry of Justice acknowledging the violation of the applicant's rights by the failure to notify him of the judgments, which constituted sufficient just satisfaction given the limited time when the applicant had been deprived of his legal capacity and the not very severe consequences for the applicant.

92. The applicant argued that the consequences for him had been serious and that he had been deprived of his legal capacity for a substantial period of time.

93. The Court reiterates that an applicant may lose his victim status if two conditions are met: first, the authorities must have acknowledged, either expressly or in substance, the breach of the Convention and, second, they must have afforded redress for it. The alleged loss of the applicant's victim status involves an examination of the nature of the right in issue, the reasons advanced by the national authorities in their decision and the persistence of adverse consequences for the applicant after the decision. The appropriateness and sufficiency of redress depend on the nature of the violation complained of by the applicant (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, §§ 67 and 70, 2 November 2010).

94. In the instant case the Court observes that the Ministry acknowledged a violation of the applicant's rights because the judgments



depriving him of his legal capacity had not been delivered to him but awarded no just satisfaction for that. The Court takes the view that such redress is only partial and insufficient under the case-law to deprive the applicant of his status of a victim for two primary reasons. First, the lack of delivery of the judgments, even though crucial, is just one of the applicant's complaints. The other alleged violations were thus not acknowledged. Second, a mere acknowledgement of a violation without affording redress is insufficient to deprive the applicant of his status as a victim in the context of deprivation of his legal capacity, which is a serious interference with his rights (see, *mutatis mutandis*, *Radaj v. Poland* (dec.), nos. 29537/95 and 35453/97, 21 March 2002).

95. The Court adds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

### *1. The parties' submissions*

96. The applicant complained that the removal of his legal capacity had not been in accordance with the law, which was not sufficiently precise, nor was its application foreseeable. The law also had not provided sufficient procedural guarantees, only requiring that a decision must be based on an opinion of an expert who is, however, not even required to appear before the court.

97. Furthermore, the interference had not pursued any legitimate aim and was not necessary in a democratic society. The court depriving him of legal capacity had not established any valid reasons for doing so. Moreover, he had not benefited from adequate procedural safeguards: he had not participated in the proceedings, he had not been heard at them or even notified of them, he had not been adequately represented, he could not appeal and the decision had been based only on one opinion of an expert who had not examined him.

98. The Government maintained that the proceedings on legal capacity as a whole, in connection with the compensation proceedings, had resulted in the due protection of the applicant's rights against arbitrary interference and remedy of grievances caused to him. In the end, the proceedings had resulted in an explicit rejection of the application for removal of legal capacity and acceptance of the relevant arguments of the applicant. Any interference with the applicant's rights by the decisions of the first-instance court had been very limited, as for most of the time the applicant had not even been aware that he had been deprived of legal capacity.

99. They added that the applicant was a person with a serious mental illness, and the removal of his legal capacity had also protected his own interests, such as protecting him from entering into disadvantageous or fraudulent legal contracts, or from neglecting contact with social welfare authorities or health care. Moreover, because of his often unknown official and actual place of residence, delivery of documents and contact with him had been objectively very difficult for the authorities. The applicant himself had sometimes refused to give the authorities a usable delivery address. The applicant had generally distrusted and often refused to cooperate with the authorities and especially with the expert in the period before the second judgment of the Municipal Court, which had resulted in elaboration of the expert testimony without direct examination of the applicant.

## *2. The Court's assessment*

100. The Court notes that the applicant in the present case was initially deprived of legal capacity on 15 November 2000, on the request of the City of Brno, as he had not collected his pension for four years. The applicant, represented by a court employee who had never met him, was not summoned or present, although he was aware of the proceedings. The decision was quashed on 27 August 2001, and a fresh decision was taken on 24 November 2004. The new decision was taken on the basis of a fresh report, although the applicant had refused to be examined. The applicant, still nominally represented by a court employee, was not present and did not receive a copy of the judgment. The applicant, now represented by the MDAC, appealed on 4 July 2006, and on 25 October 2006 the first instance decision was quashed as the applicant had not been examined. In September 2007, the court decided not to deprive the applicant of his legal capacity. The applicant was thus deprived of his legal capacity for a total of two years and six months (see § 14 above).

101. The Court considers that the removal of the applicant's legal capacity for two and a half years over a period of six years constituted an interference with his private life within the meaning of Article 8 of the Convention, and notes that indeed there is no dispute between the parties on this point. It recalls that any interference with an individual's right to respect for his private life will constitute a breach of Article 8 unless it was "in accordance with the law", pursued a legitimate aim or aims under paragraph 2, and was "necessary in a democratic society" in the sense that it was proportionate to the aims sought.

102. In such a complex matter as determining somebody's mental capacity the authorities should enjoy a wide margin of appreciation. This is mostly explained by the fact that the national authorities have the benefit of direct contact with those concerned, and are therefore particularly well placed to determine such issues. However, whilst Article 8 of the Convention contains no explicit procedural requirements, the decision-

making process involved in measures of interference must be fair and such as to ensure due respect of the interests safeguarded by Article 8. The extent of the State's margin of appreciation thus depends on the quality of the decision-making process. If the procedure was seriously deficient in some respect, the conclusions of the domestic authorities are more open to criticism (see *Shtukaturov*, cited above, § 87-89). Regarding the procedural guarantees, the Court considers that there is a close affinity between the principles established under Articles 5 § 1 (e), 5 § 4, 6, and 8 of the Convention (see *Shtukaturov*, cited above, §§ 66 and 91).

103. Any deprivation or limitation of legal capacity must be based on sufficiently reliable and conclusive evidence. An expert medical report should explain what kind of actions the applicant is unable to understand or control and what the consequences of his illness are for his social life, health, pecuniary interests, and so on. The degree of the applicant's incapacity should be addressed in sufficient detail by the medical reports (see *Shtukaturov*, cited above, §§ 93-94).

104. The Court takes note of the applicant's contention that the measure applied to him had not been lawful and did not pursue any legitimate aim. However, in its opinion, it is not necessary to examine these aspects of the case, since the decision to remove legal capacity from the applicant was in any event disproportionate to the legitimate aim invoked by the Government for the reasons set out below (see *Shtukaturov*, cited above, § 86). In taking this approach, the Court notes also the fact that the Civil Code on the basis of which the applicant was deprived of his legal capacity will be superseded by a new Civil Code which takes effect on 1 January 2014. Consequently, the effect of any pronouncement by the Court on the current domestic provisions concerning deprivation of legal capacity would be limited.

105. The Court first considers, unlike the Government, that, even though only temporary, the removal of the applicant's legal capacity had serious consequences for him. In particular, once the authorities realised that he was subject to guardianship, he no longer benefitted from the guarantees available in domestic law to persons who were detained under the Public Health Care Act as in domestic law consent had been granted by the guardian without any reference being made to the applicant (see above, § 68).

106. The Court next notes that although the domestic courts ultimately decided not to deprive the applicant of his legal capacity (in the decision of 19 September 2007), the applicant was nevertheless substantially affected by the deprivation of capacity. In the second period, which lasted from 24 November 2004 until 25 October 2006, the applicant was detained, ultimately on the sole ground that the guardian had consented. The Court thus considers, unlike the Constitutional Court (see paragraph 20 above), that the first-instance decisions taken in this respect did seriously interfere with the applicant's rights (see *Berková v. Slovakia*, no. 67149/01, § 175,

24 March 2009 and *Shtukurov*, cited above, § 90). Furthermore, the applicant was not compensated for the alleged violations of his rights in the subsequent civil proceedings against the State for damages (see paragraph 94 above).

107. The Court observes that the Municipal Court did not hear the applicant, either in the first round or the second round of proceedings, and indeed he was not even notified formally that the proceedings had been instituted (see *Shtukurov*, cited above, §§ 69-73 and 91). The Court does not accept the Government's argument that the applicant's place of residence was unknown to the authorities and therefore it was difficult to deliver official mail to him. Nowhere in the case file is there anything to indicate that the Municipal Court made an attempt to inform the applicant of the proceedings and summon him to the hearings. In such circumstances it cannot be said that the judge had "had the benefit of direct contact with those concerned", which would normally call for judicial restraint on the part of this Court. The judge had no personal contact with the applicant (see *X and Y v. Croatia*, no. 5193/09, § 84, 3 November 2011).

108. As to the way in which the applicant was represented in the legal capacity proceedings, the Court is of the opinion that given what was at stake for him proper legal representation, including contact between the representative and the applicant, was necessary or even crucial in order to ensure that the proceedings would be really adversarial and the applicant's legitimate interests protected (see *D.D. v. Lithuania*, cited above, § 122; *Salontaji-Drobnjak v. Serbia*, no. 36500/05, §§ 127 and 144, 13 October 2009; and *Beiere v. Latvia*, no. 30954/05, § 52, 29 November 2011). In the present case, however, the representative never met the applicant, did not make any submissions on his behalf and did not even participate at the hearings. She effectively took no part in the proceedings.

109. Moreover, the judgments were not served on the applicant (see *X and Y v. Croatia*, cited above, § 89). The judgments expressly stated that they would not be delivered to the applicant, with a simple reference to the opinion of the court-appointed expert, even though in her second report the expert in fact stated that a judgment could be sent to the applicant. Even at the hearing she did not give any warnings about adverse effects if the applicant received the judgment, but merely recommended not sending it because he would not understand it.

110. The Court, however, considers that being aware of a judgment depriving oneself of legal capacity is essential for effective access to remedies against such a serious interference with private life. Whilst there may be circumstances in which it is appropriate not to serve a judgment on the person whose capacity is being limited or removed, no such reasons were given in the present case and, indeed, in the present case, when the applicant was aware of the judgment and was able to appeal, his appeal was successful. Therefore, had the Municipal Court respected the applicant's

right to receive the judgments, the interference would not have happened at all as the judgments would not have become final.

111. Finally, the Court observes that the 2004 decision was based only on the opinion of an expert who last examined the applicant in 1998 (see paragraph 9 above). In this context the Court cannot lose sight of the fact that development takes place in mental illness, as is also evidenced in the present case by the expert report on the applicant drawn up in 2007, on the basis of which the request to deprive the applicant of legal capacity was refused. Consequently, relying to a considerable extent on the medical examination of the applicant conducted six years earlier cannot form sufficiently reliable and conclusive evidence justifying such a serious interference with the applicant's rights (see, *mutatis mutandis*, *Stanev*, cited above, § 156). The Court notes that the expert attempted to examine the applicant between 2002 and 2004, but he refused to cooperate. Nevertheless, in the absence of strong countervailing considerations, this fact alone is not enough to dispense with a recent medical report involving direct contact with the person concerned.

112. Overall, the Court considers that the procedure on the basis of which the Municipal Court deprived the applicant of legal capacity suffered from serious deficiencies, and that the evidence on which the decision was based was not sufficiently reliable and conclusive.

113. In the light of these considerations, the Court finds that the interference with the applicant's private life was disproportionate to the legitimate aim pursued and there has been a violation of Article 8 of the Convention.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

114. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

115. The applicant claimed EUR 25,000 in respect of non-pecuniary damage.

116. The Government considered the claim excessive.

117. The Court is of the view that as a result of the circumstances of the case the applicant must have experienced considerable anguish and distress which cannot be made good by a mere finding of a violation of the Convention. Having regard to the circumstances of the case seen as a whole and deciding on an equitable basis, the Court awards the applicant EUR 20,000 for non-pecuniary damage.

118. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

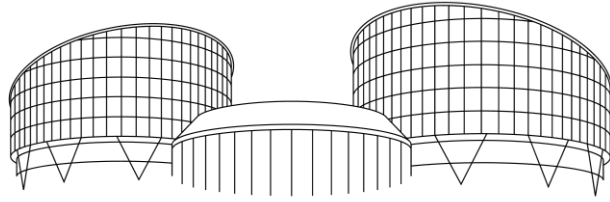
FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning Article 5 and 8 as far as it concerns the deprivation of applicant's legal capacity admissible, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
4. *Holds* that there has been a violation of Article 8 of the Convention;
5. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Czech korunas at the rate applicable at the date of settlement;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips  
Deputy Registrar

Dean Spielmann  
President



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

**CASE OF BUREŠ v. THE CZECH REPUBLIC**

*(Application no. 37679/08)*

JUDGMENT

STRASBOURG

18 October 2012

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*





**In the case of Bureš v. the Czech Republic,**

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Dean Spielmann, *President*,

Karel Jungwiert,

Boštjan M. Zupančič,

Ann Power-Forde,

Angelika Nußberger,

André Potocki,

Paul Lemmens, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 25 September 2012,

Delivers the following judgment, which was adopted on that date:

**PROCEDURE**

1. The case originated in an application (no. 37679/08) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Czech national, Mr Lukáš Bureš (“the applicant”), on 1 August 2008.

2. The applicant was represented by Ms B. Bukovská, Mr J. Fiala, Ms J. Marečková and Mr M. Matiaško, lawyers from the Mental Disability Advocacy Centre in Brno. The Czech Government (“the Government”) were represented by their Agent, Mr V.A. Schorm, of the Ministry of Justice.

3. The applicant alleged that he was ill-treated in a sobering-up centre in violation of Article 3 of the Convention and detained in a psychiatric hospital in violation of Article 5 of the Convention.

4. On 16 June 2010 the application was communicated to the Government.

5. The applicant and the Government each filed observations on the merits. In addition, third-party comments were received from the Harvard Law School Project on Disability, which had been granted leave by the President of the Chamber to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1985 and lives in Brno. He is a violoncello player and has been diagnosed as having a psycho-social disability. At the material time he weighed 64 kg and was 176 cm tall. In the past, he has been treated in Italian psychiatric hospitals as a voluntary patient. At the time of the events at issue, he was using Akineton, a calming psychiatric medication prescribed to him by his psychiatrist.

7. On 9 February 2007 the applicant inadvertently overdosed on Akineton. In the evening, he left his flat and went to buy some food. Being under the influence of the medication, he did not notice that he was wearing only a sweater, but no trousers or underwear. On the way he was stopped by a police patrol that assumed that he was a drug addict and called an ambulance, which took him to Brno-Černovice Psychiatric Hospital. The record drawn up by the ambulance staff states that the applicant was receiving psychiatric treatment and that he was calm during transport.

8. At the hospital he was examined by Dr V., who did not find any injuries on the applicant's body and sent him to the sobering-up centre in the same hospital at about 8 p.m. The applicant was calm during the medical examination. In the sobering-up centre he was again examined by Dr H., who confirmed that there were no injuries on the applicant's body when he was admitted to the centre.

9. On 10 February 2007 at 7:24 a.m. the applicant was transferred to the Intensive Psychiatric Care Unit where, according to the admission record, he had visible abrasions on the front of his neck, both wrists and both ankles, caused probably by friction against textile, and abrasions of an unspecified different type on his knees. He complained about his treatment in the sobering-up centre to the hospital authorities, but they did not take any action.

10. On 15 February 2007 the applicant was examined by a neurologist, who stated that as a result of the use of straps the applicant suffered severe paresis of the left arm and medium to severe paresis of the right arm. He began a course of intensive treatment at the Rehabilitation Unit.

11. The applicant remained in the hospital involuntarily until released on 13 April 2007.

12. However, because of his two-month hospitalisation, he was confused and was not able to fully take care of himself. He voluntarily returned to the hospital on 14 April 2007 and remained there until 1 July 2007.

#### **A. The applicant's treatment in the sobering-up centre**

13. The following facts are disputed by the parties.

14. According to the applicant, at 8.10 p.m. on 9 February 2007 he was strapped to a bed with leather straps around his wrists, knees and ankles by two male nurses, Mr M. and Mr H. While strapping him, they kneeled on his chest and verbally abused him. He remained strapped for the whole night, until 6.30 a.m. The staff did not check up on him during that time. As the straps were too tight, he struggled to breathe and as a result of insufficient blood circulation the nerves in his arms were damaged.

15. According to the Government the applicant was strapped to a bed for three intervals, namely, from 8.10 p.m. to 10 p.m., 4.30 a.m. to 5 a.m. and 6.30 a.m. to 7.15 a.m.

16. They submitted a record from the sobering-up centre containing the following information. When brought to the centre the applicant was intoxicated and was put to bed. He was unstrapped at 10 p.m. At 4.30 a.m. he attacked a nurse and was strapped again. Checks were carried out. The applicant was restless. At 6.30 a.m. he was checked on and again strapped. The record noted that he showed destructive behaviour. He was released at 7.15 a.m. and sent to the psychiatric hospital.

17. The version of the record submitted by the applicant and obtained from his medical files contains less information. The information about the release of the applicant at 10 p.m. is illegible. According to the Government, the version submitted by the applicant was an incomplete version sent to the psychiatric hospital as an accompanying document.

#### **B. Review of the lawfulness of the applicant's involuntary admission to the psychiatric hospital**

18. On 12 February 2007 the hospital informed the Brno Municipal Court (*městský soud*) that the applicant had been detained because he showed signs of a mental illness and was a danger to himself and his surroundings. He was described as –“restless, aggressive and suspected of intoxication by psycho-stimulants”.

19. On 16 February 2007 the court began reviewing the lawfulness of the applicant's involuntary admission under Article 191b of the Code of Civil Procedure. At the same time, it appointed an attorney, Ms P., to represent the applicant in the proceedings. On the same day a court employee visited the hospital and questioned the applicant's treating doctor, Dr V., in the absence of the applicant and his representative. Dr V. testified that the applicant had been admitted to the hospital due to his confusion, restlessness and inappropriate behaviour and that he had been intoxicated when admitted. He further stated that the applicant was only partly able to understand the proceedings. The court employee did not question or even see the applicant because Dr V. told her that contact with him “would not be entirely beneficial”.

20. On the same day and without any further evidence the court ruled that the applicant's involuntary admission had been lawful because he suffered from an illness that made him dangerous to himself and his surroundings. The decision was served on the applicant's representative only. The latter did not take part in the proceedings, not being aware of them as the decision on her appointment was sent to her together with the decision on the merits. The applicant never saw her during his detention.

21. After his release in July 2007, the applicant contacted a local office of the Mental Disability Advocacy Center ("the MDAC"). On 10 July 2007 an MDAC lawyer lodged an appeal on his behalf, applying at the same time for a waiver of the deadline for lodging the appeal.

22. On 20 August 2007 the Municipal Court granted the waiver. However, on 31 October 2007, the Brno Regional Court (*krajský soud*), terminated the appeal proceedings without deciding on the merits. It stated that the applicant had been released on 13 April 2007, that on 30 May 2007 the Municipal Court had stayed the proceedings on the applicant's continuing detention and that, therefore, the court did not have the authority to deal with the case.

23. In the meantime, on 23 July 2007, the applicant lodged an action for nullity (*žaloba pro zmatečnost*) under Article 229 § 1 c) of the Code of Civil Procedure seeking to have the Municipal Court's decision of 16 February 2007 quashed on the ground that he had been denied the right to participate in the proceedings and had not been properly represented. On 22 May 2008 the Municipal Court dismissed the applicant's action, finding, *inter alia*, that Ms P. had not been wholly inactive, referring to a letter of 26 February 2007 by which she had allegedly tried to establish contact with the applicant, but which, according to the applicant, had never been delivered to him. On 25 February 2009 the Regional Court upheld the decision.

24. On 5 February 2008 the applicant lodged a constitutional appeal challenging the decision of 31 October 2007 and alleging a violation of his rights to liberty, a fair trial and an effective remedy because the Regional Court had failed to rule on the merits of his appeal and thus the legality of his detention in the psychiatric hospital.

25. On 18 March 2008 the Constitutional Court (*Ústavní soud*) dismissed his appeal on the grounds that he had not exhausted all available remedies. It held that the applicant should have lodged a plea of nullity under Article 229 § 4 of the Code of Civil Procedure against the 31 October 2007 decision of the Regional Court.

### **C. Review of the lawfulness of the applicant's continuing detention**

26. After ruling on the lawfulness of the applicant's involuntary admission to the hospital, the Municipal Court continued proceedings under Article 191d of the Code of Civil Procedure to review the lawfulness of the

applicant's continuing detention. On 6 March 2007 a forensic psychiatric expert was appointed for these purposes. On 30 May 2007 the court terminated the proceedings without deciding on the merits, the applicant having been released in the meantime.

#### **D. Proceedings regarding the applicant's alleged inhuman and degrading treatment**

27. On 7 June 2007 the applicant filed a criminal complaint concerning the measure of restraint applied to him and alleged ill-treatment on the night from 9 to 10 February 2007 in the sobering-up centre of the psychiatric hospital.

28. He was questioned by the police on 29 June 2007 and gave a full account of the events. The police then questioned numerous other persons.

29. The male nurses on duty, Mr M. and Mr H., did not recall the applicant at all and were not able to provide any specific information about him. Mr. M noted that during the winter of 2007 checks had been always carried out in accordance with the instructions of the psychiatric hospital management.

30. The third nurse on duty that night, Ms K., stated that the applicant had been strapped to the bed because he had been restless and intoxicated by an unknown substance and had refused to undergo a blood test to identify the substance. She admitted that it was possible that regular checks every twenty minutes might not have been performed due to the high number of patients at the centre that night. She also alleged that the applicant had attacked a male nurse at 4.30 a.m. but she could not remember who exactly.

31. Dr H., who had been on duty at the sobering-up centre that night, confirmed that the applicant had had no injuries when he had been admitted. He noted that the applicant had been strapped to the bed due to his restlessness but that he and other staff had duly checked on him.

32. Nurse P. recalled that while she was taking over patients from Ms K. at around 6 a.m. in the morning of 10 February, the applicant's arms and legs had been strapped. They had tried releasing the straps one by one but because he defended himself each time a limb was released he was strapped again.

33. In his report of 10 December 2007 commissioned by the police, a forensic expert, Dr V., stated that the applicant had suffered bilateral severe paresis of the elbow nerves as a result of compression of the nerves and blood vessels. He confirmed that these injuries corresponded to the cause as described by the applicant. According to him, the injury on the applicant's left arm limited his ability to play the violoncello. He concluded that the injury would have a long-lasting effect which was unlikely to be permanent.

34. On 11 December 2007 the Brno-Komárov Municipal Police Directorate (*městské ředitelství policie*) terminated the criminal proceedings, finding that no criminal offence had been committed regarding the applicant's strapping on the night of 9 to 10 February 2007. It held that the applicant had suffered the injuries partly as a result of the staff's failure to check on him regularly but that the extent of the guilt of individual suspects could not be determined. It also held that the injuries had almost healed and that the applicant was partly responsible for them.

35. The applicant appealed, disputing the conclusions of the police, and requested that the doctors and nurses give evidence again.

36. On 12 February 2008 the Brno Municipal Prosecutors' Office (*městské státní zastupitelství*) dismissed the applicant's appeal. Without examining any additional evidence it stated that the strapping of the applicant on account of his aggressive behaviour at the time of his admission to the sobering-up centre had been in compliance with the law and the hospital's internal rules and he had been checked on every twenty minutes. The applicant had been strapped from 8.10 p.m. to 10 p.m., from 4.30 a.m. to 5 a.m. and from 6.30 a.m.

37. The applicant lodged a constitutional appeal claiming a violation of Articles 3, 6 § 1 and 13 of the Convention. He alleged that the investigation had not been effective because, *inter alia*, he had not been allowed to be present during the questioning of witnesses and put questions to them.

38. On 30 October 2008 the Constitutional Court dismissed his constitutional appeal as manifestly ill-founded. It held that there was no right to have a third person prosecuted so the applicant could claim his rights only in civil proceedings for damages and protection of his personality rights (*ochrana osobnosti*). It further found no violation of procedural obligations as developed by the Court under Article 3 of the Convention. It noted that the police had conducted a number of interviews and examined other evidence and that the investigation had also been independent and prompt. Lastly, it held that it had no jurisdiction to rule on the ill-treatment in the hospital because that was an instantaneous act, whereas it could only rule on interference with rights that was ongoing and that could be remedied by a decision on its part.

#### **E. Proceedings for protection of his personal rights**

39. On 8 December 2008 the applicant instituted proceedings for protection of his personality rights against Brno-Černovice Psychiatric Hospital, claiming a violation of his right to liberty, inhuman treatment and interference with his health and physical integrity.

40. On 19 January 2012 the Brno Regional Court rejected his claim, holding that the applicant's internment in the sobering-up centre and the use

of restraints had been necessary for his own protection and that of his surroundings.

41. The applicant appealed and the proceedings are pending.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Code of Civil Procedure (Act no. 99/1963)

42. Under Article 191a a health-care facility that admits a patient against his or her will must inform the competent court within twenty-four hours.

43. Under Article 191b § 1 a court has to review the lawfulness of an involuntary admission to a health-care facility within seven days. Article 191b § 2 provides that the patient has a right to be represented by counsel of his or her own choosing. If he or she does not have counsel, the court shall appoint him or her an attorney. In accordance with Article 191b § 3, the court shall assess evidence, hear the detained person, his or her treating doctor and other persons at the detained person's request unless it considers it unnecessary.

44. Under Article 191c an appeal can be lodged against a decision taken under Article 191b, but does not have a suspensive effect. The health-care facility can release the patient even if a court has declared that the involuntary admission was lawful.

45. Article 191d § 1 provides that if the court finds that the admission was lawful, it shall continue to review the lawfulness of the continued confinement. Pursuant to paragraph 2, the court shall appoint an expert to assess the necessity of the confinement. That expert must not be working in the health-care facility where the person is detained. In accordance with paragraph 3 the court shall hold a hearing and summon the patient and his or her counsel (provided that according to the treating doctor or written expert opinion the patient is able to follow and understand the meaning of the proceedings). At the hearing, the court shall hear the expert, the treating doctor if needed and the patient and assess any other relevant evidence. Its decision must be issued no later than three months from the decision by which the admission to the health care facility was approved.

46. Under Article 191f the patient, his or her counsel, guardian and other persons close to him may, before the expiration of the time for which his or her admission to the health-care facility was approved, request a new medical examination and release, if there is a reasoned presumption that continued confinement is not necessary.

47. Under Article 229 § 1 c) a final court decision may be challenged by an action for nullity on the ground that a party to the proceedings lacked legal capacity to act or could not attend the court and was not properly represented. Paragraph 4 provides that an action for nullity may also be

lodged against a final decision of an appellate court by which an appeal was dismissed or the appellate proceedings were terminated.

**B. The Public Health Care Act (Act no. 20/1996)**

48. Under section 23(4)(b) a person can be involuntarily hospitalised if he shows signs of a mental illness and is a danger to himself or his surroundings.

**C. Act no. 379/2005, on measures for the protection against damage caused by tobacco products, alcohol and other drugs**

49. Section 17(1) defines an alcohol and drug sobering-up centre as a health-care facility established by a regional self-governing unit.

50. Section 17(2) stipulates that should a health-care facility find that a person's life is not endangered by failure of basic vital functions but that he or she is under the influence of alcohol or another drug and cannot control his or her behaviour, thereby directly endangering him or herself or other persons, public order or property, or is causing public annoyance, that person shall undergo treatment and stay at the sobering-up centre for however long is necessary for the acute intoxication to subside.

**D. Guideline no. 1/2005 of the Journal of the Ministry of Health, on the use of measures of restraint on patients in psychiatric facilities in the Czech Republic**

51. This guideline stipulates, *inter alia*, the following:

“The use of measures of restraint must be considered as a last resort in cases when it is necessary for the protection of the patient, other patients, the patient's surroundings and staff of psychiatric facilities. They may be used only after all other possibilities have been exhausted. Any decision to restrain the patient must be sufficiently grounded. Restraint cannot be used to facilitate treatment or to deal with a restless patient. Potential causes of problematic behaviour, for example, pain, discomfort, side effects of medicinal products, stress, interpersonal problems between the caregivers and the patient, or other illnesses must always be identified. The use of measures of restraint is justified only if a removable cause of the patient's behaviour cannot be found or in situations when the risk arising from the patient's behaviour is unacceptably high. The benefit of the use of restraining means must outweigh the risks ...

2. Measures of restraint can be used only exceptionally and only when the patient behaves in a way which endangers himself and his surroundings, and not on an educational or corrective basis. In the case of each individual patient it is necessary to use the most gentle and appropriate means of restraint ...

5. A patient restrained by these means shall be checked on on a regular basis, intervals between the checks shall be specified, provisions shall be put in place to



prevent the patient hurting himself or suffering from dehydration, malnutrition, hypothermia and pressure ulcers, and to allow for personal hygiene. Measures of restraint should be used for the shortest time possible, and during checks the need for the measures and the possibility of using less restraint should be reassessed ...

6. The doctor shall decide on the use of measures of restraint, and make a record that shall always include: the name of the person who ordered the measure of restraint, the type of restraint used, the reason for using it, the time when restraint was employed and the time when it ended, the frequency of checks by the medical staff and the doctor, a description of the person's physical and mental condition ... A member of the medical staff shall inform the doctor of any change in the patient's symptoms. The record on the use of restraint shall be subsequently signed by the head doctor during the ward round."

#### **E. Psychiatrie, Guidelines for psychiatric treatment issued by the Czech Psychiatric Society, December 2006**

52. In its section on the use of restraints the Guidelines contain similar principles as the above-mentioned Guideline no. 1/2005 of the Journal of the Ministry of Health. In particular they state that mechanical restraints should be used only as a matter of last resort. Strapping to a bed should be applied only in cases of serious manifestations of distress endangering surroundings, auto-aggressive manifestations with immediate risk of self-harm or suicide or conditions that will with the highest probability result in these manifestations.

They also state that all circumstances connected with the use of restraints must be transparently and clearly documented. Every use of restraints must be recorded in a concrete way, including, *inter alia*, the time when the restraints were applied and removed and checks on the patient.

#### **F. Opinion of the Civil Law and Commercial Division of the Supreme Court, no. Cpjn 29/2006, as regards proceedings to determine the lawfulness of admission to and detention in a health-care facility**

53. On 14 January 2009 the Supreme Court adopted an opinion on this matter, because the courts had not been dealing with cases concerning proceedings to decide on the lawfulness of admission to a health-care facility (Article 191b of the Code of Civil Procedure) and continuing confinement therein (Article 191d of the Code of Civil Procedure) in a uniform manner.

It held, *inter alia*, that if the detained person is released there are no more reasons for continuing the proceedings either under Article 191b or 191d and both should be discontinued.

### III. RELEVANT INTERNATIONAL STANDARDS

#### **A. Articles on State Responsibility (noted by the UN General Assembly resolution no. 56/83 of 12 December 2001)**

54. The Articles, drawn up by the International Law Commission of the United Nations, are largely considered to contain rules of customary international law. They stipulate, *inter alia*, the following possibilities of attribution of a conduct to a State:

##### **Article 4. Conduct of organs of a State**

“1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.

2. An organ includes any person or entity which has that status in accordance with the internal law of the State.”

##### **Article 5. Conduct of persons or entities exercising elements of governmental authority**

“The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.”

In its commentary to Article 5, the International Law Commission explained that the rule dealt with situations when entities which were not considered organs of a State exercised functions of a public character normally exercised by State organs, and the conduct of the entity was related to the exercise of the governmental authority concerned. It gave the power of detention as an example of such a public function.

#### **B. Recommendation Rec(2004)10 of the Committee of Ministers of the Council of Europe to member states concerning the protection of the human rights and dignity of persons with mental disorders, 22 September 2004**

55. Article 27, entitled “Seclusion and restraint” stipulates:

“1. Seclusion or restraint should only be used in appropriate facilities, and in compliance with the principle of least restriction, to prevent imminent harm to the person concerned or others, and in proportion to the risks entailed.

2. Such measures should only be used under medical supervision, and should be appropriately documented.

3. In addition:

- i. the person subject to seclusion or restraint should be regularly monitored;
- ii. the reasons for, and duration of, such measures should be recorded in the person's medical records and in a register.

4. This Article does not apply to momentary restraint.”

**C. The CPT Standards (the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) concerning using restraints in psychiatric establishments (CPT/Inf/E (2002) 1- Rev. 2010)**

56. The CPT standards contain the following rules on restraining patients in psychiatric establishments:

“Involuntary placement in psychiatric establishments Extract from the 8th General Report [CPT/Inf (98) 12]

47. In any psychiatric establishment, the restraint of agitated and/or violent patients may on occasion be necessary. This is an area of particular concern to the CPT, given the potential for abuse and ill-treatment.

The restraint of patients should be the subject of a clearly-defined policy. That policy should make clear that initial attempts to restrain agitated or violent patients should, as far as possible, be non-physical (e.g. verbal instruction) and that where physical restraint is necessary, it should in principle be limited to manual control.

Staff in psychiatric establishments should receive training in both non-physical and manual control techniques vis-à-vis agitated or violent patients. The possession of such skills will enable staff to choose the most appropriate response when confronted by difficult situations, thereby significantly reducing the risk of injuries to patients and staff.

48. Resort to instruments of physical restraint (straps, strait-jackets, etc.) shall only very rarely be justified and must always be either expressly ordered by a doctor or immediately brought to the attention of a doctor with a view to seeking his approval. If, exceptionally, recourse is had to instruments of physical restraint, they should be removed at the earliest opportunity; they should never be applied, or their application prolonged, as a punishment ...

50. Every instance of the physical restraint of a patient (manual control, use of instruments of physical restraint, seclusion) should be recorded in a specific register established for this purpose (as well as in the patient's file). The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by patients or staff.

This will greatly facilitate both the management of such incidents and the oversight of the extent of their occurrence.”

“Means of restraint in psychiatric establishments for adults Extract from the 16<sup>th</sup> General Report [CPT/Inf (2006) 35]

43. As a general rule, a patient should only be restrained as a measure of last resort; an extreme action applied in order to prevent imminent injury or to reduce acute agitation and/or violence ...

52. Experience has shown that detailed and accurate recording of instances of restraint can provide hospital management with an oversight of the extent of their occurrence and enable measures to be taken, where appropriate, to reduce their incidence.

Preferably, a specific register should be established to record all instances of recourse to means of restraint. This would be in addition to the records contained within the patient's personal medical file. The entries in the register should include the time at which the measure began and ended; the circumstances of the case; the reasons for resorting to the measure; the name of the doctor who ordered or approved it; and an account of any injuries sustained by patients or staff. Patients should be entitled to attach comments to the register, and should be informed of this; at their request, they should receive a copy of the full entry."

**D. Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 March to 7 April 2006 and from 21 to 24 June 2006 (CPT/Inf (2007)32)**

57. The CPT visited also Brno-Černovice Psychiatric Hospital and stated, *inter alia*, as follows:

"118. At Brno Psychiatric Hospital ... [t]he restraints would be applied either on the patient's own bed or in a separate room close to the nurses' office. A protocol on the use of immobilisation was in force, but the protocol does not mention the surveillance intervals; it appears that the hospital staff had adopted a practice to monitoring an immobilised patient every twenty minutes.

The delegation was pleased to note that registers recording the use of restraints had been introduced on the wards of Brno Psychiatric Hospital, thus meeting a long-standing CPT recommendation. However, the delegation found that the entries were not always meticulously kept; the release time and, on occasion, the moment of application of the immobilisation were not recorded.

As indicated above (cf. paragraph 114), in the CPT's view, patients who are immobilised should always be subject to continuous, direct personal supervision by a member of staff. However, the delegation was told that a pilot project on ward 12 to have patients accompanied by a member of staff for the full duration of the immobilisation had failed due to a lack of staff. Nevertheless the CPT considers that hospital management should ensure the permanent presence of a staff member whenever a patient is immobilised.

The CPT recommends that in Brno Psychiatric Hospital:

- the register on restraints clearly records the duration of the measure, as well as all other events that occur during the period of restraint;
- the protocol on restraints be amended in order to include a paragraph on supervision of an immobilised patient.

Further, the CPT recommends that all patients who are immobilised are always subject to continuous, direct personal supervision by a member of staff.”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN ITS SUBSTANTIVE ASPECT

58. The applicant complained that he had been ill-treated in the sobering-up centre in violation of Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

59. The Government contested that argument.

#### A. Admissibility

60. The Government maintained that the applicant had failed to exhaust domestic remedies in that the civil proceedings against the hospital were pending and they constituted a sufficient remedy for the alleged wrongs. They referred to a number of cases of medical malpractice where the Court had required exhaustion of civil remedies.

61. The applicant disagreed, maintaining that he had been wilfully restrained in detention and that in those circumstances a civil claim for compensation was not an adequate remedy.

62. The Court considers that the issue of effectiveness of a civil remedy is closely linked to the substance of the present complaint and should be joined to the merits.

63. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

#### B. Merits

##### *1. Arguments of the parties*

64. The applicant complained that his strapping down for ten hours, with no medical justification and no regular checks, had caused him severe mental and physical suffering with long-lasting effects and had constituted inhuman treatment. Moreover, the use of restraints was not adequately and comprehensively recorded.

65. He maintained that under the applicable international and national legal and medical standards physical restraints could be used only as a matter of last resort and must be fully justified. Yet, as stated in the official reports, he had been calm when he had been transferred to the psychiatric hospital and had no history of aggressiveness. He had not needed to be strapped upon his arrival at the sobering-up centre. Moreover, his alleged restlessness could not justify such treatment, the purpose of which had rather been to ease the hospital staff's workload due to a staff shortage.

66. According to the applicant, the treatment had reached the minimum level of severity required for Article 3 of the Convention to come into play. The straps had been applied to his wrists, knees and ankles and had been so tight that he could not move, resulting in great pain and suffering. At times he had even thought that he would suffocate. The treatment had had a long-term negative effect on his health and he had been unable to finish his studies and pursue his career as a violoncello player.

67. The Government maintained that the acts of the medical staff in the sobering-up centre, who were not state agents, could not be attributed to the State. In any event, according to them, the restraining of the applicant had not reached the minimum threshold of severity required for application of Article 3 of the Convention. They considered that it was more appropriate to examine the complaint under Article 8 of the Convention. Actually, the strapping of the applicant had been necessary for the protection of his own health, it not having been possible to use a less severe measure, such as tranquilisation with medicines, because the applicant had refused to give a blood sample in order for the doctors to be able to identify the substance the influence of which he had been under.

## *2. The Court's assessment*

### **(a) The relevant facts**

68. Before examining the case, the Court will address the factual dispute between the parties concerning the duration of the applicant's strapping.

69. It observes that the police did not ascertain the actual duration of the strapping, referring to the applicant's version of the facts (see paragraph 34 above). However, the Brno Municipal Prosecutor established that the applicant was restrained from 8.10 p.m. to 10 p.m. on 9 February 2007, then on 10 February 2007 from 4.30 a.m. to 5 a.m. and again from 6.30 a.m. until his release from the sobering up-centre. Yet the prosecutor did not mention on what she had based her conclusions or give any reasons why the applicant's version of facts was not credible (see paragraph 36 above).

70. The Court observes that the applicant supported his description of events mainly by the sobering-up centre's record, which does not say that he was released at 10 p.m. but includes two illegible letters instead. Nevertheless, the Court considers plausible the Government's explanation

that this was a typing mistake which was remedied in the later edition of the document. The Court further observes that the document submitted by the applicant does not fully support his version of the facts either, as it states that restraints were applied at 4.30 a.m. In fact, if he had been restrained for the whole night it would not have been necessary to apply the restraints again at 4.30 a.m.

71. The Court notes, on the other hand, that the Government's version of facts is also open to doubt, being considerably undermined by the testimony of nurse P., who remembered that while taking over duty from Ms K. at 6 a.m. on 10 February, the applicant had been strapped to the bed by his arms and legs. This is precisely the time when, according to the Government, the applicant was not restrained.

72. Accordingly, even though the Court has some doubts about the exact duration of the applicant's strapping, and given that his version of the facts was not fully supported by any evidence, it will proceed to the examination of the case on the basis of the Government's description of the duration of the applicant's strapping.

**(b) Negative or positive obligations**

73. The Court must next consider the objection of the Government that the actions of the medical staff could not be attributed to the State.

74. The events complained of occurred during the applicant's detention in a sobering-up centre, which amounts to a "deprivation of liberty" within the meaning of Article 5 § 1 of the Convention, which is not disputed by the parties (see *Witold Litwa v. Poland*, no. 26629/95, § 46, ECHR 2000-III). A person in a sobering-up centre is within the complete control of its staff.

75. The Court has considered the treatment of persons, including the application of restraints to detainees in sobering-up centres, from the point of view of the negative obligations of the State (see *Wiktorko v. Poland*, no. 14612/02, 31 March 2009, and *Mojsiejew v. Poland*, no. 11818/02, 24 March 2009).

76. Under Czech law, sobering-up centres are public bodies established by regional self-governing units that are entitled by law to hold persons under the influence of alcohol or another drug who cannot control their behaviour, thereby directly endangering themselves or other persons, public order or property, or whose condition causes a public disturbance.

77. Even accepting the Government's contention that the medical staff in the sobering up-centre are not State agents, they nevertheless perform governmental authority of detention (compare § 54 above). The State is responsible for the well-being of detainees (*Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI, and *Moisejevs v. Latvia*, no. 64846/01, § 78, 15 June 2006) and cannot evade its responsibility by delegating its power to other entities.

78. The Court further considers crucial in the present case that what is at stake is not the applicant's injury as an unintended negative consequence of medical treatment, as submitted by the Government, but the use of the restraints itself. The applicant's injury was only incidental to the intentional treatment, which is the issue from the point of view of Article 3 of the Convention. The present case significantly differs from cases where voluntary medical treatment had negative consequences on the health of patients. The Court thus does not consider the string of case-law concerning medical negligence referred to by the Government relevant to the present case. More pertinent to the present case are cases concerning the use of restraints on persons in detention, which the Court has always considered from the point of view of negative obligations (see, for example, *Herczegfalvy*, cited above, § 83; *Istratii and Others v. Moldova*, nos. 8721/05, 8705/05 and 8742/05, 27 March 2007, § 57; and *Kashavelov v. Bulgaria*, no. 891/05, § 40, 20 January 2011).

79. Consequently, the Court considers that the State must be held directly responsible for the use of restraints on the applicant in the sobering-up centre and the Court will consider that treatment in the light of the negative obligations of the State.

80. It further follows from the above that the cases of medical malpractice referred to by the Government are neither relevant to the present case in the context of exhaustion of civil remedies. The application of restraints was not medical treatment that the detainee could refuse. The issue is thus not that the applicant objected to his medical treatment, but that restraints and force were applied to him that would only be allowed by Article 3 of the Convention if made strictly necessary by his own conduct (see *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336).

81. The Court reiterates that in cases where an individual has an arguable claim under Article 3 of the Convention, the notion of an effective remedy entails, on the part of the State, a thorough and effective investigation capable of leading to the identification and punishment of those responsible (see *Selmouni v. France* [GC], no. 25803/94, § 79, ECHR 1999-V, and in the context of a treatment in a psychiatric hospital including application of restraints, *Filip v. Romania* (dec.), no. 41124/02, 8 December 2005). Wilful ill-treatment of persons who are within the control of agents of the State cannot be remedied exclusively through an award of compensation to the victim (see *Krastanov v. Bulgaria*, no. 50222/99, § 60, 30 September 2004, and *Kopylov v. Russia*, no. 3933/04, § 130, 29 July 2010).

82. Accordingly, a criminal complaint was an adequate remedy in the present case for the applicant's complaint that he had been ill-treated in detention (see, *mutatis mutandis*, *Mojsiejew v. Poland*, no. 11818/02, § 41, 24 March 2009, where the Court reached the same conclusion regarding death in a sobering-up centre). Once the criminal proceedings had been



terminated, the applicant was not required under Article 35 § 1 of the Convention to pursue and await the outcome of the civil proceedings instituted by him. The Government's objection of non-exhaustion of domestic remedies must therefore be rejected.

**(c) General principles**

83. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances or the victim's behaviour (see, for example, *Labita v. Italy* [GC], no 26772/95, § 119, ECHR 2000-IV). Where allegations are made under Article 3 of the Convention, like in the present case, the Court must apply a particularly thorough scrutiny (see *Wiktorko*, cited above, § 48).

84. To fall under Article 3 of the Convention, ill-treatment must attain a minimum level of severity. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the gender, age and state of health of the victim. Further factors include the purpose for which the treatment was inflicted together with the intention or motivation behind it, as well as its context, such as an atmosphere of heightened tension and emotions (see *Gäfgen v. Germany* [GC], no. 22978/05, § 88, ECHR 2010).

85. The Court has recognised the special vulnerability of mentally ill persons in its case-law and the assessment of whether the treatment or punishment concerned is incompatible with the standards of Article 3 has, in particular, to take into consideration this vulnerability (see *Keenan v. the United Kingdom*, no. 27229/95, § 111, ECHR 2001-III, *Rohde v. Denmark*, no. 69332/01, § 99, 21 July 2005 and *Renolde v. France*, no. 5608/05, § 120, ECHR 2008 (extracts)).

86. In respect of persons deprived of their liberty, recourse to physical force which has not been made strictly necessary by their own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004). In the context of detention in a sobering-up centre, it is up to the Government to justify the use of restraints on a detained person. Regarding the use of restraining belts, the Court accepted that aggressive behaviour on the part of an intoxicated individual may require recourse to the use of restraining belts, provided of course that checks are periodically carried out on the welfare of the immobilised individual. The application of such restraints must, however, be necessary under the circumstances and its length must not be excessive (see *Wiktorko*, cited above, § 55).

87. The position of inferiority and powerlessness which is typical of patients confined in psychiatric hospitals calls for increased vigilance in reviewing whether the Convention has been complied with. Nevertheless, it is for the medical authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used, if necessary by force, to preserve the physical and mental health of patients who are entirely incapable of deciding for themselves and for whom they are therefore responsible. The established principles of medicine are admittedly in principle decisive in such cases; as a general rule, a measure which is a therapeutic necessity cannot be regarded as inhuman or degrading. The Court must nevertheless satisfy itself that the medical necessity has been convincingly shown to exist (see *Herczegfalvy v. Austria*, 24 September 1992, § 82, Series A no. 244).

**(d) Application in the present case of the above-mentioned principles**

*(i) The severity of the treatment*

88. The Court notes that the applicant was a young man of a fragile build, suffering from a mental illness. He was brought to the sobering-up centre in a state of intoxication, as a result of overdosing on medicine that was part of his treatment. He was thus in a particularly vulnerable position. Even though the applicant was calm during transport and admission to the hospital, he was immediately attached by restraining belts to his bed in the sobering-up centre due to his alleged restlessness. He was left in restraints for almost two hours. He was again restrained in the same way for half an hour at night on account of an alleged attack on a male nurse, and lastly for forty-five minutes the next morning for allegedly being destructive to his surroundings.

89. The Court must also take into account the serious consequences the treatment had on the applicant in evaluating whether it reached the minimum level of severity required for application of Article 3 of the Convention. It notes that an expert report commissioned by the police ten months after the treatment concluded that the applicant had suffered very severe bilateral paresis of the elbow nerves caused by the compression of nerves and blood vessels, that this injury still limited his ability to play the violoncello and that it would have a long-lasting effect which was unlikely to be permanent.

90. Accordingly, the Court considers that the strapping of the applicant must have caused him great distress and physical suffering and that Article 3 of the Convention is in principle applicable to the present case (see also the practice of the CPT, which considers the use of physical restraints an area of particular concern given the potential for abuse and ill-treatment).

*(ii) The justification of the treatment*

91. The Court will turn now to the examination of whether such treatment was justified in the present case and whether periodic checks were carried out.

92. According to the Government, the applicant's restriction was necessary for the protection of his own health although they did not indicate in what way the applicant's health was endangered. The Court notes that the record from the sobering up centre and the testimonies of the medical staff do not specify the extent or indeed existence of the danger the applicant posed to himself. They show that the reason for the applicant's restriction for two hours in the evening of 9 February 2007 was his restlessness. His restraint at night and in the morning was justified by his allegedly aggressive behaviour towards the medical staff.

93. The Court must determine whether the mere restlessness of a patient justifies his or her being restrained by straps to a bed for almost two hours, taking into account the current legal and medical standards on the issue (see *Herczegfalvy*, cited above, § 83).

94. The applicant was detained in a sobering-up centre, a health care facility that was part of a psychiatric hospital, the purpose of which is to treat persons under the influence of drugs. The fact that the applicant was a person suffering from a mental illness was or should have been known to the staff of the centre, as it was already stated in the record drawn up by the ambulance staff who had brought the applicant to the psychiatric hospital. Therefore the Court considers that the rules and standards on using restraints on patients with mental disabilities in psychiatric hospitals are relevant for the interpretation and application of Article 3 of the Convention to the facts of the present case.

95. The Court notes that both the European and national standards (see "Relevant domestic law" and "Relevant international standards" above) are unanimous in declaring that physical restraints can be used only exceptionally, as a matter of last resort and when their application is the only means available to prevent immediate or imminent harm to the patient or others. The Czech Guideline expressly states that restraints cannot be used when the patient is merely restless (see paragraph 51 above).

96. In line with these standards, the Court considers that using restraints is a serious measure which must always be justified by preventing imminent harm to the patient or the surroundings and must be proportionate to such an aim. Mere restlessness cannot therefore justify strapping a person to a bed for almost two hours.

97. The Court further observes that even though restraints should be used as a matter of last resort, no alternatives were tried in the applicant's case. He was restrained immediately on arrival at the sobering-up centre on account of his alleged restlessness, without any methods of calming him

down having been tried. Strapping was applied as a matter of routine. It thus cannot even be said that the domestic guideline was complied with.

98. Regarding the use of restraints as a result of the applicant's alleged aggressiveness at night and in the morning the Court agrees that attacking medical staff can be a sufficient reason for applying restraints. Nevertheless, it is not satisfied that it was conclusively established that the use of restraints was to prevent further attacks and that other means of trying to calm the applicant down, or less restrictive restraints, had been unsuccessfully tried. In this context the Court considers that it is unacceptable to use restraints as a punishment.

99. The Court observes that the two male nurses did not mention the alleged attack by the applicant at 4.30 a.m. to the police and there are no details about the nature of the attack anywhere in the case file. Ms K. only told the police that she did not remember which nurse had been attacked. The only details about any physical force used by the applicant were submitted by nurse P., who went on duty at 6 a.m. on 10 February and who reported that when any of the applicant's limbs had been unstrapped he had immediately started to defend himself and resist being strapped again. The Court, however, considers that using restraints can be hardly justified by the fact that a person resists their application.

100. The Court thus concludes that even though it is up to the Government to justify the use of restraints on a detained person (see *Wiktorko*, cited above, § 55) it has failed to show that the use of restraints on the applicant was necessary and proportionate in the circumstances.

101. In addition to this finding, the Court notes that the CPT recommended to Brno-Černovice Psychiatric Hospital that "patients who are immobilised should always be subject to continuous, direct personal supervision by a member of staff" after it found in its visit in 2005 that this was not the case (see paragraph 57 above).

102. The Court also notes that the domestic police investigation found that checks were not performed at regular intervals. The Court reiterates that restrained patients must be under close supervision. This obviously was not the case, which must have been one of the reasons for the damage to the applicant's health with long-lasting effect. The domestic authorities thus failed in their obligation to protect the health of persons deprived of their liberty (see *Keenan v. the United Kingdom*, no. 27229/95, § 111, ECHR 2001-III, and *Jasinskis v. Latvia*, no. 45744/08, § 60, 21 December 2010).

103. The Court further takes into account the European and national standards requiring proper recording of every use of restraints, which, among other things, facilitates any subsequent review of whether their use was justified. The Court has stressed the need for keeping proper medical notes in its case-law as well (see *Keenan*, cited above, § 114).

104. In the present case the Court finds the record kept about the use of restraints against the applicant very rudimentary. It does not contain any

information on when the restraints were first applied, merely stating that the applicant was released at 10 p.m., and that the restraints were again applied at 4.30 a.m., but not when they were removed. The record only states that the restraints were lastly applied at 6.30 a.m. and finished at 7.15 a.m. The record contains no explicit reasons for applying the restraints, save for the alleged attack on a male nurse at 4.30 a.m., yet even that is not clear from the record. Otherwise, there are only general notes about the applicant being restless, and at 6.30 a.m. as being aggressive towards his surroundings. There is no information about when checks were carried out.

105. In these circumstances the Court cannot but conclude that the records were far from satisfactory and it is evident that they undermined the proper establishment of the facts and hampered the domestic criminal investigation in the case.

106. Having regard to all the circumstances of the present case, the Court is of the view that the applicant has been subjected to inhuman and degrading treatment contrary to Article 3. There has accordingly been a substantive violation of Article 3 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN ITS PROCEDURAL ASPECT

107. The applicant maintained that his complaints about his ill-treatment in the sobering-up centre had not been effectively investigated in violation of Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

108. The Government contested that argument.

### A. Admissibility

109. The Government maintained that the applicant had failed to exhaust domestic remedies regarding some of his complaints concerning the alleged procedural violation of Article 3 of the Convention. In particular, in his complaint against the police authority’s decision on the termination of the investigation, he had failed to mention that the proceedings had failed to satisfy the requirement of promptness and independence and had not been public because he was not allowed to be present during the questioning of witnesses and put questions to them (see paragraph 35 above).

110. The applicant disagreed.

111. The Court notes that the applicant challenged the effectiveness of the investigation before the prosecutor and the Constitutional Court (see paragraphs 35 and 37 above). It further notes that the alleged lack of independence lies not only in the conduct of the police but of the

prosecuting authorities as a whole. Therefore the applicant could not have complained of it in his appeal to the prosecutor; that is, before the alleged deficiency had materialised.

112. Regarding the complaint of lack of promptness, the Court in turn, does not consider that mentioning it in the appeal to the prosecutor could have had any effect. The police had already terminated the investigation and thus the prosecutor could not have remedied any alleged delays in the conduct of the investigation by the police.

113. Lastly, regarding the complaint that the proceedings were not public, the Court notes that in his appeal the applicant requested that the medical staff be questioned again. It also notes that he complained of the lack of their public nature in his subsequent constitutional appeal.

114. Consequently, the Government's plea of non-exhaustion of domestic remedies must be rejected.

115. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

### *1. Arguments of the parties*

116. The applicant complained that the investigation had not been initiated on the authorities' own motion. He had complained to the hospital authorities but they had not forwarded his complaint to the prosecuting authorities. Furthermore, it had not been effective either in law or in practice as the prosecuting authorities had not made a serious attempt to find out what happened and base their decision on established facts. The investigation had concerned only the crime of causing bodily harm and not inhuman treatment, and the investigating authorities had failed to establish the person responsible for his injuries even though the police had found out that the restraints had been used unlawfully. He had been unable to be present when the witnesses had been questioned or to suggest gathering additional evidence. The investigation had not been independent or speedy, as the investigating authorities had heavily relied on the explanations of the hospital staff, the police had taken twenty-two days to question the applicant and it had commissioned a forensic report only three months and nineteen days after the receipt of the criminal complaint.

117. The Government maintained that the investigation had been effective in that the factual circumstances of the case had been clarified to the maximum extent possible and all possible investigative steps had been taken. It was only logical that the complaint had been investigated as the criminal offence of causing bodily harm and not inhuman treatment because

there had been no intentional offence and the offender, if any, could only have been someone from the medical staff and not a State authority, local self-governing authority or a court.

118. They noted that the investigation had been instituted immediately after the police had received the criminal complaint and had proceeded with promptness.

119. In the Government's opinion the observance of the principle of the public nature and transparency of the investigation had been sufficiently secured by the fact that the applicant was able to request to be allowed to inspect the investigation file and lodge a complaint against the police authority's decision on the setting aside of the case. They also noted that in that complaint he had not challenged the content of the depositions of the medical staff at all, nor had he claimed that he should have been able to put questions to them. The Government believed that given the context, this opportunity to participate in the investigation had been sufficient to secure the applicant's rights and that transparency of the investigation and the applicant's legitimate interests had not required that the applicant be present at the questioning of the medical staff.

120. Lastly, they opined that there was no hierarchical, institutional or close working relationship between the medical staff and the police authority that could raise any doubt about the independence and impartiality of the investigation.

## 2. *The Court's assessment*

### (a) **General principles**

121. The Court reiterates that Article 3 of the Convention requires States to put in place effective criminal-law provisions to deter the commission of offences against personal integrity, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. The domestic legal system, and in particular the criminal law applicable in the circumstances of the case, must provide practical and effective protection of the rights guaranteed by Article 3 (*Durđević v. Croatia*, no. 52442/09, § 51, 19 July 2011).

122. Where an individual makes a credible assertion that he has suffered treatment infringing Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). Even though the scope of the State's positive obligations might differ between cases where treatment contrary to Article 3 has been inflicted through the involvement of State agents and cases where violence is inflicted by private individuals, the requirements as to an official

investigation are similar (see *Denis Vasilyev v. Russia*, no. 32704/04, § 100, 17 December 2009).

123. In its case-law the Court has established that for an investigation to be considered effective it must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Mikheyev v. Russia*, no. 77617/01, § 108, 26 January 2006). The investigation must be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (*Denis Vasilyev v. Russia*, no. 32704/04, § 100, 17 December 2009). But the obligation on the States is not to elucidate all facts of the case but only those important for establishing the circumstances of the use of force and to determine whether official responsibility is engaged (see *Anusca v. Moldova*, no. 24034/07, § 40, 18 May 2010).

124. The investigation must further be independent, in that it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence (see *Durđević*, cited above, § 85).

125. There must be also a sufficient element of public scrutiny of the investigation. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 212-213, 24 February 2005). However, that does not mean that the victim's right to access to investigation in all its stages arises from the Convention, because the interests of other persons or the risk of jeopardising the achievement of the aim of the investigation can prevail over his interest (see, for example, *McKerr v. the United Kingdom*, no. 28883/95, 4 May 2001, § 129).

126. The investigation must also start promptly once the matter has come to the attention of responsible authorities and conducted with reasonable expedition.

127. Lastly, the authorities must act of their own motion once the matter has come to their attention (see *Isayeva and Others*, cited above, § 209).



**(b) Application in the present case of the above-mentioned principles**

128. The Court firstly observes that the police started the investigation promptly after the applicant had lodged his criminal complaint and it did not suffer from any unnecessary delays. The applicant was interviewed about two weeks after the police had received his criminal complaint. The interviews of other persons, collection of documents and drawing up of an expert report were carried out in the following months. The police closed the investigation within six months. Such length is not unreasonable to an extent that it would make the investigation ineffective. The Court adds that for the purpose of fulfilling the requirement of promptness, the investigation could not have been started when the applicant complained to the hospital staff, because they are not a state authority that could have instituted a criminal investigation.

129. Regarding the alleged lack of independence the Court does not consider that the present case can be compared to the situation in *Ergi v. Turkey* (28 July 1998, § 83, *Reports* 1998-IV) as suggested by the applicant, where the Court criticised the heavy reliance of the prosecuting authorities on a report by the gendarmerie, given that the gendarmes themselves were suspected of shooting the applicant's sister. However, in the present case, the prosecuting authorities based their conclusions on several witness testimonies, documents and an independent expert report.

130. Regarding the level of public scrutiny of the investigation, the Court observes that the applicant had access to the investigation file and could have lodged an appeal against the decision of the police to terminate the investigation. In his appeal, or indeed at any time, he was free to dispute the veracity of any evidence collected by the police or to suggest the taking of further evidence. The Court therefore finds that the applicant was involved in the procedure to the extent necessary to safeguard his legitimate interests and that it was not indispensable that he be present when the police took statements from the witnesses.

131. The Court further reiterates that it is not its task to interpret the domestic law, including the Criminal Code. Therefore, it will not express a view on whether the applicant's ill-treatment should have been investigated as the crime of torture and other inhuman or cruel treatment. It must concentrate on the purpose of the obligation of effective investigation, which is to secure an effective implementation of the domestic laws which protect the right not to be tortured and, in those cases involving State agents or bodies, to ensure their accountability (see *Kelly and Others v. the United Kingdom*, no. 30054/96, § 94, 4 May 2001) and to enable the facts to become known to the public (see *Siemińska v. Poland* (dec.), no. 37602/97, 29 March 2001).

132. It appears from the decision of the police that the main reason for the termination of the investigation was that they considered that no crime had been committed. This is explicitly stated in the decision of the

prosecutor, who considered the treatment of the applicant to have been in compliance with the law. Such conclusions are, however, hardly reconcilable with the obligation of States that the domestic legal system must provide practical and effective protection of the rights guaranteed by Article 3. The Court must take into account that the application of restraining belts on the applicant was a wilful act constituting inhuman and degrading treatment, as it has found above.

133. The Court is further struck by the resolute conclusion of the prosecutor that the applicant was aggressive at the time of his admission to the sobering-up centre and therefore he was restrained. It is not clear on what this statement is based, especially given that there is no single piece of evidence in the case file that would support such a conclusion. The written evidence and the statements mention only that the applicant was restless at the time of his admission, but not that he was aggressive. Furthermore, the prosecutor's conclusion that the applicant was checked on every twenty minutes also lacks any reasoning, which is particularly striking given that the police, on the basis of the same evidence, reached a different conclusion. Both these conclusions were crucial for the legal assessment of the events and had a direct bearing on the effectiveness of the investigation. In consequence, it cannot be said that it was thorough.

134. In view of these considerations, the Court concludes that the investigation in the present case did not provide the applicant with practical and effective protection of his rights guaranteed by Article 3. Consequently, there has been a procedural violation of Article 3 of the Convention.

### III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

135. The applicant complained that his involuntary admission and detention in Brno-Černovice Psychiatric Hospital violated his right to liberty. He relied on Article 5 § 1 of the Convention, which, in so far as relevant, reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants ...”

136. The Government contested that argument. They argued that the applicant had failed to exhaust domestic remedies and that he had been detained for two unrelated reasons, which had to be considered separately.

137. First, he had been detained in the sobering-up centre overnight from 9 to 10 February 2007. Detention in sobering-up centres involved deprivation of liberty for several hours maximum, and therefore the law did

not envisage any approval by a court. The appropriate legal tool was a subsequent reparatory remedy, namely, an action for the protection of personality rights under the Civil Code against the health care facility concerned, which the applicant had failed to lodge.

138. Secondly, the applicant had been detained in a psychiatric hospital, in which case court proceedings under Article 191b of the Code of Civil Procedure had been automatically instituted. The applicant, however, had failed to lodge a constitutional appeal in compliance with the procedural requirements. They remarked that in the months prior to the lodging of the applicant's constitutional appeal all the chambers of the Constitutional Court had adopted the approach of requiring previous recourse to an action for nullity. That approach had been subsequently confirmed by a decision of the plenary session of the Constitutional Court of 16 December 2008, no. 79/2009.

139. The applicant disagreed. First, he contested the division of his detention into two phases, holding that since 9 February 2007 he had been detained in the same psychiatric hospital, and that he had not been released from the sobering-up centre but transferred to a different unit of the hospital.

140. He then maintained that an action for nullity was not an effective remedy within the meaning of Article 35 of the Convention. Actually, such an action could not remedy the deficiencies alleged by him under Article 5 § 1 of the Convention. Moreover, lodging it would have no chance of success in view of the Opinion of the Supreme Court no. Cpjn 29/2006 (see paragraph 53 above).

141. The Court reiterates that Article 35 § 1 of the Convention requires not merely the use of the requisite remedies but that the complaint intended to be made subsequently to the Court must first have been made – at least in substance – to the appropriate domestic body, and in compliance with the formal requirements laid down in domestic law (see *Sabeh El Leil v. France* [GC], no. 34869/05, § 32, 29 June 2011).

142. The Court finds, and this is not in dispute between the parties, that a constitutional appeal as such was an effective remedy within the meaning of Article 35 § 1 of the Convention. It observes that the applicant's constitutional appeal was dismissed for non-exhaustion of remedies, namely, for failing to lodge an action for nullity, without a decision on its merits.

143. The Court reiterates that it is in the first place for the national authorities, and notably the courts, to interpret domestic law and that the Court will not substitute its own interpretation for theirs in the absence of arbitrariness. This applies in particular to the interpretation by domestic courts of rules of a procedural nature. Although procedural rules governing appeals must be adhered to as part of the concept of a fair procedure, in principle it is for the national courts to police the conduct of their own

proceedings (see *Tejedor García v. Spain*, 16 December 1997, § 31, *Reports* 1997-VIII, and *Matoušek v. the Czech Republic* (dec.), no. 32384/05, 7 September 2010).

144. On the other hand, the Court notes that on numerous occasions it has found a violation of Article 6 of the Convention because of lack of access to court, when a procedural rule was construed in a way that was unpredictable and in variance with the principle of legal certainty (see *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, §§ 53-54, ECHR 2002-IX), or the domestic court showed excessive formalism (see *Bulena v. the Czech Republic*, no. 57567/00, § 35, 20 April 2004). In these instances, it then dismissed the Government's objection to the admissibility of other complaints (see *Běleš and Others v. the Czech Republic* (dec.), no. 47273/99, 11 December 2001 and *Zvolský and Zvolská v. the Czech Republic* (dec.), no. 46129/99, 11 December 2001).

145. The Court, however, does not consider that such a situation arose in the present case. It notes that the Government extensively referred to the Constitutional Court's case-law, built up before the applicant lodged his constitutional appeal, where it had consistently required the lodging of an action for nullity before lodging a constitutional appeal. Therefore it cannot be said that its decision could not have been foreseen by the applicant (see, *a contrario*, *Faltejsek v. the Czech Republic*, no. 24021/03, § 32, 15 May 2008).

146. The Court also notes that the Opinion of the Supreme Court no. Cpjn 29/2006, relied on by the applicant, was adopted only on 14 January 2009 and thus could not have any relevance to the decision of the Constitutional Court given before.

147. In conclusion, the applicant failed to lodge a constitutional appeal in compliance with the procedural requirements, which were not applied arbitrarily, unforeseeably, or with excessive formalism.

148. Consequently, this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

#### IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

149. The applicant complained that he did not have access to a proper judicial review of his detention. He relied on Article 5 § 4 of the Convention, which reads as follows:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

150. The Government considered that the case-law on the applicability of Article 5 § 4 of the Convention was inconsistent and asked the Court to

clarify to which proceedings in the context of involuntary hospitalizations in the Czech Republic Article 5 § 4 applied. They maintained, however, that Article 5 § 4 ceased to apply once a person was released and this part of the application was therefore incompatible *ratione materiae* with the Convention.

151. The Government further raised the same inadmissibility plea on the grounds of non-exhaustion of domestic remedies, submitting the same arguments as in the context of Article 5 § 1 of the Convention.

152. The applicant disagreed and maintained that Article 5 § 4 continued to apply even after a detainee's release.

153. Regarding the objection of non-exhaustion of domestic remedies, the applicant referred to his submissions under Article 5 § 1.

154. The Court does not consider it appropriate in the context of the present case to examine the question of applicability of Article 5 § 4 to the appeal proceedings brought by the applicant after his release as the applicant's complaint about deficiencies in the judicial review of the lawfulness of his detention is in any event inadmissible for the following reason.

155. The Court held in *Knebl v. the Czech Republic* (no. 20157/05, § 77, 28 October 2010) that a constitutional appeal was an effective remedy that had to be exhausted for complaints that a procedure under Article 5 § 4 of the Convention did not provide guarantees appropriate to the kind of deprivation of liberty in question. The Court has no reason to hold otherwise in the present case.

156. In view of the conclusions above under Article 5 § 1 of the Convention, the Court concludes that the complaint under Article 5 § 4 must be also rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies since the applicant failed to lodge a constitutional appeal in compliance with the procedural requirements.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

157. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

158. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

159. The Government considered that amount excessive.

160. The Court is of the view that as a result of the circumstances of the case the applicant must have experienced considerable anguish and distress which cannot be made good by a mere finding of a violation of the Convention. Having regard to the circumstances of the case seen as a whole

and deciding on an equitable basis, the Court awards the applicant EUR 20,000 for non-pecuniary damage.

161. The applicant did not claim reimbursement of any costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

162. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

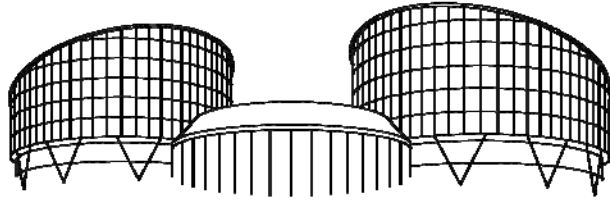
### FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to the exhaustion of domestic remedies and rejects it;
2. *Declares* the complaints concerning Article 3 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb;
4. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;
5. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Czech korunas at the rate applicable at the date of settlement;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek  
Registrar

Dean Spielmann  
President



**EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME**

SECOND SECTION

**CASE OF D.D. v. LITHUANIA**

*(Application no. 13469/06)*

JUDGMENT

STRASBOURG

14 February 2012

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*







**In the case of D.D. v. Lithuania,**

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President*,

Danutė Jočienė,

Dragoljub Popović,

Işıl Karakaş,

Guido Raimondi,

Paulo Pinto de Albuquerque,

Helen Keller, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 24 January 2012,

Delivers the following judgment, which was adopted on that date:

**PROCEDURE**

1. The case originated in an application (no. 13469/06) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Lithuanian national, Ms D.D. (“the applicant”), on 28 March 2006. The President of the Chamber acceded to the applicant’s request not to have her name disclosed (Rule 47 § 3 of the Rules of Court, as in force at the material time).

2. On 8 January 2008 the applicant, who had been granted legal aid, signed a power of attorney in favour of Mr H. Mickevičius, a lawyer practising in Vilnius, giving him authority to represent her before the Court. The Lithuanian Government (“the Government”) were represented by their Agent, Ms E. Baltutytė.

3. The applicant complained that her involuntary admission to a psychiatric institution was in breach of Article 5 §§ 1 and 4 of the Convention. She further alleged that she had been deprived of the right to a fair hearing, in breach of Article 6 § 1.

4. On 20 November 2007 the Court decided to give notice of the application to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. Written submissions were received from the European Group of National Human Rights Institutions and from the Harvard Project on Disability, which had been granted leave by the President to intervene as third parties (Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court, as in force at the material time).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1963 and currently lives in the Kėdainiai Social Care Home (hereinafter “the Kėdainiai Home”) for individuals with general learning disabilities.

#### A. The circumstances of the case

7. The facts of the case, as submitted by the parties, may be summarised as follows.

##### *1. The applicant’s psychiatric treatment, guardianship and care*

8. The applicant has had a history of mental disorder since 1979, when she experienced shock having discovered that she was an adopted child. She is classed as Category 2 disabled.

9. In 1980, the applicant was diagnosed with schizophrenia simplex. In 1984 she was diagnosed with circular schizophrenia. In 1999, the applicant was diagnosed with paranoid schizophrenia with a predictable course. She has been treated in psychiatric hospitals more than twenty times. During her most recent hospitalisation at Kaunas Psychiatric Hospital in 2004, she was diagnosed with continuous paranoid schizophrenia (*paranoidinė šizofrenija, nepertraukiama eiga*). The diagnosis of the applicant remains unchanged.

10. In 2000 the applicant’s adoptive father applied to the Kaunas City District Court to have the applicant declared legally incapacitated. The court ordered a forensic examination of the applicant’s mental status.

11. In their report (no. 185/2000 of 19 July 2000), the forensic experts concluded that the applicant was suffering from “episodic paranoid schizophrenia with a predictable course” (*šizofrenija/paranoidinė forma, epizodinė liga su prognozuojančiu defektu*) and that she was not able “to understand the nature of her actions or to control them”. The experts noted that the applicant knew of her adoptive father’s application to the court for her incapacitation and wrote that she “did not oppose it”. The experts also wrote that the applicant’s participation in the court hearing for incapacitation was “unnecessary”.

12. On 15 September 2000 the Kaunas City District Court granted the request by the applicant’s adoptive father and declared the applicant legally incapacitated. In a one-page ruling, the court relied on medical expert report no. 185/2000. Neither the applicant nor her adoptive father was present at the hearing. The Social Services Department of the Kaunas City Council was represented before the court.

13. On 17 May 2001 the applicant's adoptive father requested her admission to the Kėdainiai Home for individuals with general learning disabilities. The applicant's name was put on a waiting list.

14. On 13 August 2002 the Kaunas City District Court appointed D.G., the applicant's psychiatrist at the Kaunas out-patient health centre (*Kauno Centro Poliklinika*), as her legal guardian. The applicant was present at the hearing. Her adoptive father submitted that "he himself did not agree with being appointed her guardian because he was in disagreement with his daughter (*jis pats nepageidauja būti globėju, nes su dukra nesutaria*)". Nonetheless, he promised to take care of her in future and to help her financially.

15. By a decision of 24 March 2003, the director of the health care centre dismissed D.G. from her work for a serious violation of her working duties. The decision was based on numerous reports submitted by D.G.'s colleagues and superiors.

16. On 16 July 2003 D.G. wrote to the Kaunas City District Court asking that she be relieved of her duties as the applicant's guardian. She mentioned that she had only agreed to become the applicant's guardian because she had observed a strained relationship between the applicant and her adoptive father. However, D.G. claimed that the applicant's adoptive father had asked her to hand over the applicant's pension to him, even though the applicant had been receiving her pension and had been using the money perfectly well on her own for many years. D.G. also contended that the applicant's adoptive father had attempted to unlawfully appropriate the applicant's property.

17. On 1 October 2003 the Kaunas City District Court relieved D.G. of her duties as the applicant's guardian at her own request. In court D.G. had argued that as she was litigating for unlawful dismissal she could not take proper care of the applicant.

18. By letter of 9 December 2003, the Kaunas City Social Services Department suggested to the district court that the applicant's adoptive father be appointed her guardian, although the Department noted that relations between the two of them were tense.

19. On 21 January 2004 the Kaunas City District Court appointed the applicant's adoptive father as her legal guardian. The court relied on the request by the Kaunas City Council Department of Health, which was represented at the hearing. The applicant's adoptive father did not object to the appointment. The applicant was not present at the hearing.

20. Upon the initiative and consent of the applicant's adoptive father, on 30 June 2004 the applicant was taken to the Kaunas Psychiatric Hospital for treatment. The applicant complained that she had been treated against her will. A letter by the hospital indicates that the applicant's adoptive father had asked the hospital staff to ensure that her contacts with D.G. were limited on the ground that the latter had had a negative influence on the

applicant. However, on 3 September 2004 the prosecutor for the Kaunas City District dismissed the applicant's allegations, finding that she had been hospitalised due to deterioration in her mental state upon the order of her psychiatrist. The applicant had also expressed her consent to being treated.

21. On 8 July 2004 a panel designated by Kaunas City Council to examine cases of admission to residential psychiatric care (*Kauno miesto savivaldybės asmenų su proto negalia siuntimo į stacionarias globos įstaigas komisija*) adopted a unanimous decision to admit the applicant to the Kėdainiai Home.

22. On 20 July 2004 a medical panel of the Kaunas Psychiatric Hospital concluded that the applicant was suffering from "continuous paranoid schizophrenia" (*paranoidinė šizofrenija nepertraukiama eiga*). The commission also stated that it would be appropriate for the applicant to "live in a social care institution for the mentally handicapped".

23. On 28 July 2004 a social worker examined the conditions in which the applicant lived in her apartment in Kaunas city. The report reads that "the applicant is not able to take care of herself, does not understand the value of money, does not clean her apartment, is not able to cook on her own and wanders in the city hungry. Sometimes the applicant gets angry at people and shouts at them without a reason; her behaviour is unpredictable. The applicant does not have bad habits and likes to be in other persons' company". The social worker recommended that the applicant be placed in a social care institution because her adoptive father could not "manage" her.

24. On 2 August 2004 an agreement was concluded between the Kėdainiai Home, the Guardianship Department of Kaunas City Council and the Social Services Department of the Kaunas Regional Administration. On the basis of that agreement, the applicant was transferred from the Kaunas Psychiatric Hospital to the Kėdainiai Home, where she continued her treatment.

25. On 6 October 2004 the applicant signed a document stating that she agreed to be examined by the doctors in the Kėdainiai Home and to be treated there.

26. On 10 August 2004 the applicant's adoptive father wrote to the director of the Kėdainiai Home with a request that during the applicant's settling into the Kėdainiai Home she should be temporarily restricted from receiving visits by other people. The director granted the request. Subsequently, the Kaunas District Administration upheld the director's decision on the ground that the latter was responsible for the safety of patients in the Kėdainiai Home and thus was in a better position to determine what steps were necessary.

27. On 18 August 2004, upon the decision of the Kėdainiai Home director, D.G. was not allowed to visit the applicant. The applicant's medical record, which a treating psychiatrist signed the following day, states that "[the applicant] is acclimatising at the institution with difficulties, as

her former guardian and former doctor [D.G.] keeps calling constantly and telling painful matters from the past (...) [the applicant] is crying and blaming herself for being not good, for not preserving her mother, for having lived improperly. Verbal correction is not effective”.

28. According to a document signed by Margarita Buržinskienė on 23 February 2005, she had called the Kėdainiai Home to speak to the applicant but the employees had told her that, on the director’s orders, the applicant was not allowed to answer the phone (*vykdant direktorės nurodymą Daivos prie telefono nekviečia*).

29. On 15 June 2006 the applicant’s adoptive father removed her from institutional care and taken her to his flat. On 15 July 2006 the applicant left his home on her own. A police investigation was started following a report by the applicant’s adoptive father of the allegedly unlawful deprivation of the applicant’s liberty. She was eventually found and apprehended by the police on 31 October 2006, and was taken back to the Kėdainiai Home.

30. On 6 September 2007 the applicant left the Kėdainiai Home without informing its management. She was found by the police and taken back to the institution on 9 October 2007.

31. As can be seen from a copy of the record of the Kėdainiai Home’s visitors submitted by the Government, between 2 August 2004 and 25 December 2006 the applicant received one or more visitors on forty-two separate occasions. In particular, her adoptive father saw her thirteen times, her friends and other relatives visited her twenty-six times and she was visited by D.G. on twelve occasions.

## 2. *Proceedings regarding the change of the applicant’s guardianship*

32. On 15 July 2004 the applicant asked the Kaunas Psychiatric Hospital to initiate a change of guardianship from her adoptive father to D.G. The applicant wrote that her adoptive father had had her admitted to the psychiatric hospital by force and deception, thus depriving her of her liberty. The hospital refused her request as it did not have competence in guardianship matters.

33. The applicant states that a similar request was rejected by the Kėdainiai Home.

34. On 2 September 2005, assisted by her former guardian and then friend, D.G., the applicant brought an application before the courts, requesting that the guardianship proceedings be reopened and a new guardian appointed. She submitted that she had been unable to state her opinion as to her guardianship, because she had not been informed of and summoned to the court hearing during which her adoptive father had been appointed her guardian. The applicant relied on Article 507 § 3 of the Code of Civil Procedure and stated that her state of health in the previous year could not have been an obstacle to her expressing her opinion as to the appropriateness of the guardian proposed at the court hearing. She claimed

that in 2004 she had used to visit her friend in a village for a couple of weeks at a time. The applicant also noted that when she returned to Kaunas, her adoptive father had often threatened to have her committed to a mental asylum.

35. The applicant also argued that by appointing her adoptive father to be her guardian without informing her and without her being able to state her opinion as to his prospective appointment, in contravention of Article 3.242 of the Civil Code and Article 507 § 4 of the Code of Civil Procedure, the court had disregarded the strained relationship between the two of them. The applicant drew the court's attention to the ruling of the Kaunas City District Court of 13 August 2002, in which the applicant's adoptive father had himself stated that their relationship had been tense. The applicant drew the court's attention to Article 491 § 2 of the Code of Civil Procedure, stipulating that the court had to take all necessary measures to avoid a possible conflict between the incapacitated person and her potential guardian.

Lastly, she stated that she had only learned of her adoptive father's appointment in April 2004.

36. By a ruling of 29 September 2005 the Kaunas City District Court decided to accept the applicant's request for examination.

37. On 27 October 2005 the applicant wrote to the Chairman of the Kaunas City District Court. She complained of her incapacitation on her adoptive father's devious initiative without having being informed of the incapacitation proceedings. The applicant also pleaded that she had been unlawfully deprived of her liberty and involuntarily admitted to the Kėdainiai Home for an indefinite time and where she had been unable to obtain legal aid.

38. On 7 November 2005 judge R.A. of the Kaunas City District Court held a closed hearing in which the applicant, her guardian (her adoptive father) and his lawyer, and D.G. took part. The relevant State institutions were also represented at the hearing: the Kėdainiai Home, the Kaunas Psychiatric Hospital, the prosecutor and the Social Services Department of Kaunas City Council. The applicant's doctor did not take part in the hearing. The court noted that the doctor had been informed of it and had asked the court to proceed without him.

39. In her application form to the Court, the applicant alleged that at the beginning of the hearing the judge had ordered her to leave her place next to D.G. and to sit next to the judge. The judge had also ordered D.G. "to keep her eyes off the applicant". Given that this was not reflected in the transcript of the hearing, on 19 November 2005 D.G. had written to the court asking that the transcript be rectified accordingly.

40. According to the transcript of the hearing, at the beginning thereof D.G. requested that an audio recording be made. The judge refused the request. The applicant asked to be assisted by a lawyer. The judge refused

her request, deeming that her guardian was assisted by a lawyer before the court. Without the agreement of her guardian, a separate lawyer could not be appointed. The lawyer hired by the applicant's guardian was held to represent both the interests of the applicant and her guardian.

41. As the transcript of the hearing shows, the applicant went on to unequivocally state that she stood by her request that the guardianship proceedings be reopened. She argued that she had neither been informed of the proceedings as to her incapacitation, nor those pursuant to which her guardian had been appointed. The decisions had been taken while she had been in hospital. During the hearing, the applicant expressed her willingness to leave the Kėdainiai Home and stated that she was being kept and treated there by force. She submitted that she would prefer to live at her adoptive father's home and to attend a day centre (*lankys dienos užimtumo centras*). The applicant also argued that D.G. had been forced to surrender her duties as her guardian and to allow the applicant's adoptive father to become her guardian because of pressure from him with the aim of transferring the applicant's flat to him. The applicant also noted that in the Kėdainiai Home she was cut off from society and had been deprived of the opportunity to make telephone calls. Her friends could not visit her and she was not allowed to go to the cinema. In the Kėdainiai Home "she was isolated and saw only a fence". The other parties to the proceedings opposed the applicant's wish that the guardianship proceedings be reopened.

42. In her application to the Court, the applicant alleged that during a break in the hearing she had been ordered to follow the judge to her private office. When the applicant had refused, she had been threatened with restraint by psychiatric personnel. In private, the judge had instructed her not to say anything negative about her adoptive father and that, should she not comply, her friend D.G. would also be declared legally incapacitated. As stated in D.G.'s letter seeking rectification of the transcript (paragraph 39 above), after the break was announced the applicant had wished to stay in the hearing room. However, she had been taken away and had returned very depressed (*prislėgta*). Responding to a question by the judge as to her guardianship, the applicant replied: "I agree that [my adoptive father] should be my guardian, because God asks that people be forgiving. I just wish that he [would] take me [away] from [the Kėdainiai Home] to Kaunas, to his place... and let me see D.G. and my friends".

43. It appears from the transcript of the hearing that after the break, when giving her submissions to the court, the applicant agreed to keep her adoptive father as guardian, but insisted on being released from institutional care in order to live with her adoptive father. The relevant State institutions – the Kėdainiai Home, the Kaunas Psychiatric Hospital, the prosecutor, the Social Services Department of Kaunas City Council – and the applicant's guardian's lawyer each argued that the applicant's request for reopening was clearly unfounded and should be dismissed.



44. On 17 November 2005 the Kaunas City District Court refused to reopen the guardianship proceedings on the basis of Article 366 § 1 (6) of the Code of Civil Procedure, ruling that there were no grounds to change the guardian (see Relevant domestic law part below). The court noted that before appointing the applicant's adoptive father as her guardian, the Kaunas City Council Department of Health had prepared a report on the proposed appointment of the applicant's guardian and had questioned the applicant, who had not been able to provide an objective opinion about that appointment. The court confirmed that the applicant had not been summoned to the hearing of 21 January 2004, when her guardian was appointed, as the court had taken into consideration the applicant's mental state and, on the basis of the findings of the relevant health care officials, had not considered her involvement in the hearing necessary. The court further noted that the findings had disclosed tense relations between the applicant and her adoptive father. Even so, the applicant's adoptive father had been duly performing his duties. The court also referred to statements of the representatives of the Kaunas Psychiatric Hospital and the director of the Kėdainiai Home to the effect that the applicant's contact with D.G. had had a negative influence on her mental health.

45. The Kaunas City District Court proceeded to fine D.G. 1,000 Lithuanian litai (LTL) (approximately 290 euros (EUR)) for abuse of process. It noted that D.G. had filed numerous complaints before various State institutions and the courts of alleged violations of the applicant's rights. Those complaints had prompted several inquiries which had revealed a lack of substantiation. The court noted:

“... by such an abuse of rights, [D.G.] caused damage to the State, namely the waste of time and money of the court and the participants in the proceedings. The court concludes that [D.G.] has abused her rights ... and the vulnerability of the incapacitated person”.

46. D.G. appealed against the above decision. She noted, *inter alia*, that the 21 January 2004 ruling to appoint the applicant's adoptive father as her guardian had been adopted by judge R.A. The same judge had dismissed the applicant's request that the court proceedings be reopened, although this was explicitly prohibited by Article 370 § 5 of the Code of Civil Procedure.

The applicant also submitted a brief in support of D.G.'s appeal, arguing that persons admitted to psychiatric institutions should have a right to know the reasons for their admission. Moreover, they should be able to contact a lawyer who is independent from the institution to which they have been admitted.

47. The appeal by D.G. was dismissed by the Kaunas Regional Court on 7 February 2006 in written proceedings. The court did not rule on the plea that the district court judge R.A. had been partial.

48. On 11 May 2006 the Supreme Court declared D.G.'s subsequent appeal on points of law inadmissible, as it had not been submitted by a lawyer and raised no important legal issues.

49. By a ruling of 7 February 2007 the Kaunas City District Court, following a public hearing attended by social services representatives and the applicant's legal guardian, granted the guardian's request to be relieved from the duties of guardian and property administrator. The applicant's adoptive father had argued that he was no longer fit to be her guardian because of his old age (seventy-seven years at that time) and state of health. The Kėdainiai Home was appointed temporary guardian and property administrator. The applicant was not present at the hearing.

50. On 25 April 2007, the Kaunas City District Court held a public hearing and appointed the Kėdainiai Home as the applicant's permanent guardian and administrator of her property rights. The applicant was not present at that hearing; the court did not give reasons for her absence.

### 3. Criminal inquiry

51. On 1 February 2006 a criminal inquiry was opened on the initiative of some of the applicant's acquaintances, who alleged that the applicant had been the victim of Soviet-style classification of illnesses which was designed to repress those who fall foul of the regime. The complainants submitted that, as a result of the persistent diagnoses of schizophrenia, the applicant had been unlawfully deprived of her liberty, had been ill-treated and had been overmedicated in the Kėdainiai Home, and that her property rights had been violated by her guardian.

52. On 31 July 2006 the investigation was discontinued, no evidence having been found of an abuse of the applicant's interests, either pecuniary or personal. It was established that the immovable property belonging to the applicant had been let to a third person, with the proceeds used to satisfy the applicant's needs. The applicant had had a bank account opened in her name on 6 October 2005, and the deposit made on that date had since been left untouched. Moreover, the applicant's guardian had transferred to her account the sum received from the sale of their common property. There was thus no indication that the applicant's adoptive father had abused his position as guardian.

53. As regards the deprivation of the applicant's liberty, the prosecutor noted that the applicant had been admitted to an institutional care facility in accordance with the applicable legislation. The prosecutor acknowledged that the freedom of the applicant "to choose her place of residence [was] restricted (*laisvė pasirinkti buvimo vietą yra ribojama*)", but further noted that she was:

"... constrained to an extent no greater than necessary in order to take due care of her as a legally incapacitated person. The guardian of [the applicant] can change her place of residence without first obtaining a separate official decision; she is not unlawfully

hospitalised. Therefore, her placement in the Kėdainiai Home cannot be classified as an unlawful deprivation of liberty, punishable under Article 146 § 2 (3) of the Criminal Code”.

54. The prosecutor had also conducted an inquiry into an incident which had occurred at the Kėdainiai Home on 25 January 2005. After questioning the personnel of the Home, it was established that on that day the applicant had been placed in the intensive supervision ward (*intensyvaus stebėjimo kambarys*), had been given an additional dose of tranquilisers (2 mg of Haloperidol) and had been tied down (*fiksuota*) for fifteen to thirty minutes by social care staff.

55. The prosecutor noted the explanation of the psychiatrist at the Home, who admitted that the applicant’s restraint had been carried out in breach of the applicable rules, without the approval of medical personnel. However, after having read written reports on the incident produced by the social care personnel, he considered the tying down to have been undertaken in order to save the applicant’s life and not in breach of her rights.

56. Questioned by the prosecution as witnesses, social workers at the Kėdainiai Home testified that 25 January 2005 had been the only occasion on which the applicant had been physically restrained and placed in isolation. The measures had only been taken because at that particular time the applicant had shown suicidal tendencies.

57. The prosecutor concluded that the submissions made by the complainants were insufficient to find that the applicant’s right to liberty had been violated by unnecessary restraint or that she had suffered degrading treatment.

58. On 30 August 2006 the higher prosecutor upheld that decision.

#### 4. *Complaints to other authorities*

59. With the assistance of D.G., the applicant addressed a number of complaints to various State authorities.

60. On 30 July 2004, in reply to a police inquiry into the applicant’s complaint of unlawful detention in the Kėdainiai Home, the Kaunas City Council Social Services department wrote that “[in] the last couple of years, relations between the applicant and her adoptive father have been tense. Therefore, on the wish of both of them, until 21 January 2004 [the applicant’s] legal guardian was D.G. and not her adoptive father”.

61. The Ministry of Social Affairs also commissioned an inquiry, including conducting an examination of the applicant’s living conditions at the Kėdainiai Home and interviews with the applicant and the management of the Home. The commission established that the applicant’s living conditions were not exemplary (*nėra labai geros*), but it was promised that the inhabitants would soon move to new premises with better conditions. However, it was noted that the applicant received adequate care. The commission opined that it was advisable not to disturb the applicant, given

her vulnerability and instability. It was also emphasised that the State authorities were under an obligation to be diligent as regards supervision of how the guardians use their rights.

62. On 6 January 2005 D.G. filed a complaint with the police, alleging that the applicant had been unlawfully deprived of her liberty and of contact with people from outside the Kėdainiai Home. By letter of 28 February 2005, the police replied that no violation of the applicant's rights had been found. They explained that, in accordance with the internal rules of the Kėdainiai Home, residents could be visited by their relatives and guardians, but other people required the approval of the management. At the request of the applicant's guardian, the management had prohibited other people from visiting her.

63. On 17 May 2005 upon the inspection performed by food safety authorities out-of-date frozen meat (best before 12 May 2005) was found in the Kėdainiai Home. However, there was no indication that that meat would have been used for cooking. On 20 February 2006 the Kaunas City Governor's office inspected the applicant's living conditions in Kėdainiai and found no evidence that she could have been receiving food of bad quality.

64. On 28 April 2006 the applicant complained to the Ministry of Health about her admission to long-term care. By letter of 12 May 2006, the Ministry noted that no court decision to hospitalise the applicant had been issued, and that she had been admitted to the Kėdainiai Home after her adoptive father had entrusted that institution with her care.

65. On 6 October 2006, the Ministry of Health and Social Services, in response to the applicant's complaints of alleged violations of her rights, wrote to the applicant stating that it was not possible to investigate her complaints because she had left the Kėdainiai Home and her place of living was unknown. Prosecutors were in the middle of a pre-trial investigation into the circumstances of the applicant's disappearance from where she had previously been living.

66. By a decision of 18 December 2006, the Kaunas City District prosecutor discontinued a pre-trial investigation into alleged unlawful deprivation of the applicant's liberty.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

67. Article 21 of the Lithuanian Constitution prohibits torture or degrading treatment of persons. Article 22 thereof states that private life is inviolable.

68. The Law on Mental Health Care provides:

**Article 1**

“1. Main Definitions

...

5. “Mental health facility” means a health care institution (public or private), which is accredited for mental health care. If only a certain part (a “unit”) of a health care institution has been accredited to engage in mental health care, the term shall only apply to the unit. In this Law, the term is also applicable to psychoneurological facilities...”

**Article 13**

“The parameters of a patient’s health care shall be determined by a psychiatrist, seeking to ensure that the terms of their treatment and nursing offer the least restrictive environment possible.

The actions of a mentally ill person may be subject to restrictions only provided that the circumstances specified in section 27 of this Law are manifest. A note to that effect must be promptly made in the [patient’s] clinical record.”

**Article 19**

“In emergency cases, in seeking to save a person’s life when the person himself is unable to express his will and his life is seriously endangered, necessary medical care may be taken without the patient’s consent.

Where instead of a patient’s consent, the consent of his representative is required, the necessary medical care may be provided without the consent of such person provided that there is insufficient time to obtain it in cases where immediate action is needed to save the life of the patient.

In those cases when urgent action must be taken in order to save a patient’s life, and the consent of the patient’s representative must be obtained in lieu of the patient’s consent, immediate medical aid may be provided without the said consent, if there is not enough time to obtain it.”

69. Article 24 of the Law on Mental Health Care stipulated that if a patient applied with a request to be hospitalised, he or she could be hospitalised only provided that: 1) at least one psychiatrist, upon examining the patient, recommended that he or she had to be treated as an inpatient at a mental health facility; 2) he or she had been informed about his or her rights at a mental health facility, the purpose of hospitalisation, the right to leave the psychiatric facility and restrictions on the right, as specified in Article 27 of the law. The latter provision read that a person who was ill with a severe mental illness and refused hospitalisation could be admitted involuntarily to the custody of the hospital only if there was real danger that

by his or her actions he or she was likely to commit serious harm to his or her health or life or to the health or life of others. When the circumstances specified in Article 27 of that law did exist, the patient could be involuntarily hospitalised and given treatment in a mental health facility for a period not exceeding 48 hours without court authorisation. If the court did not grant the authorisation within 48 hours, involuntary hospitalisation and involuntary treatment had to be terminated (Article 28).

70. As concerns legal incapacity and guardianship, the Civil Code provides:

**Article 2.10. Declaration of incapacity of a natural person**

“1. A natural person who, as a result of mental illness or imbecility, is not able to understand the meaning of his actions or control them may be declared incapacitated. The incapacitated person shall be placed under guardianship.

2. Contracts on behalf and in the name of a person declared incapacitated shall be concluded by his guardian...

3. Where a person who was declared incapacitated gets over his illness or the state of his health improves considerably, the court shall reinstate his capacity. After the court judgement becomes *res judicata*, guardianship of the said person shall be revoked.

4. The spouse of the person, parents, adult children, a care institution or a public prosecutor shall have the right to request the declaration of a person’s incapacity by filing a declaration to the given effect. They shall also have the right to apply to the courts requesting the declaration of a person’s capacity.”

**Article 3.238. Guardianship**

“1. Guardianship shall be established with the aim of exercising, protecting and defending the rights and interests of a legally incapacitated person.

2. Guardianship of a person subsumes guardianship of the person’s property, but if necessary, an administrator may be designated to manage the person’s property.”

**Article 3.240. Legal position of a guardian or curator**

“1. Guardians and curators shall represent their wards under law and shall defend the rights and interests of legally incapacitated persons or persons of limited active capacity without any special authorisation.

2. The guardian shall be entitled to enter into all necessary transactions in the interests and on behalf of the represented legally incapacitated ward...”

**Article 3.241. Guardianship and curatorship authorities**

“1. Guardianship and curatorship authorities are the municipal or regional [government] departments concerned with the supervision and control of the actions of guardians and curators.

2. The functions of guardianship and curatorship in respect of the residents of a medical or educational institution or [an institution run by a] guardianship (curator) authority who have been declared legally incapacitated or of limited active capacity by a court shall be performed by the respective medical or educational establishment or guardianship (curator) authority until a permanent guardian or curator is appointed...”

**Article 3.242. Appointment of a guardian or a curator**

“1. Having declared a person legally incapacitated or of limited active capacity, the court shall appoint the person’s guardian or curator without delay.

...

3. Only a natural person with legal capacity may be appointed a guardian or a curator, [and] provided he or she gives written consent to that effect. When appointing a guardian or curator, account must be taken of the person’s moral and other qualities, his or her capability of performing the functions of a guardian or curator, relations with the ward, the guardian’s or curator’s preferences and other relevant circumstances...”

**Article 3.243. Performance of the duties of a guardian or a curator**

“...

6. After the circumstances responsible for the declaration of the ward’s legal incapacity or limited active capacity [are no longer in existence], the guardian or curator shall apply to the courts for the cancellation of guardianship or curatorship. Guardianship and curatorship authorities, as well as prosecutors, shall also have a right to apply to the courts for the cancellation of guardianship or curatorship.”

**Article 3.277. Placing under guardianship or curatorship**

“1. An adult person declared legally incapacitated by the courts shall be placed under guardianship by a court judgment.”

**Article 3.278. Monitoring of the guardian’s or the curator’s activities**

“1. Guardianship and curatorship authorities shall be obliged to monitor whether the guardian/curator is fulfilling his or her duties properly.”

71. The Code of Civil Procedure stipulates that rights and interests of [disqualified] natural persons protected by law shall be defended in court by their representatives (parents, foster-parents, guardians) (Article 38 § 2). A

prosecutor has the right to submit a claim to protect the public interest (Article 49).

72. Article 366 § 1 (6) of the Code of Civil Procedure provides that proceedings may be reopened if one of the parties to them was incapacitated and did not have a representative.

Article 370 § 5 stipulates that when deciding upon a request that proceedings be reopened, the judge who took the decision against which the request has been lodged may not participate.

73. An application to declare a person legally incapacitated may be submitted by a spouse of that person, his or her parents or full-age children, a guardianship/care authority or a public prosecutor (Article 463). The parties to the proceedings for incapacitation consist, besides the applicant, of the person whose legal capacity is at issue, as well as the guardianship (care) authority. If it is impossible, due to the state of health, confirmed by an expert opinion, of the natural person whom it has been requested to declare incapacitated, to call and question him or her in court or to serve him or her with court documents, the court shall hear the case in the absence of the person concerned (Article 464 §§ 1 and 2).

74. Article 491 § 2 of the Code of Civil procedure stipulates that the courts are obliged to take all measures necessary to ensure that the rights and interests of persons who need guardianship are protected.

75. Pursuant to Article 507 § 3 of the Code of Civil Procedure, a case concerning the establishment of guardianship and the appointment of a guardian shall be heard by means of oral proceedings. The guardianship authority, the person declared incapacitated, the person recommended to be appointed as guardian and any parties interested in the outcome of the case must be notified of the hearing.

The case is to be heard with the attendance of a representative of the guardianship authority, who is to submit the authority's opinion to the court. The person to be appointed the guardian must also attend.

The person declared incapacitated is entitled to give his or her opinion at the hearing, if his or her health allows, as regards the prospective appointment of the guardian. The court may hold that it is necessary that the person declared incapacitated attend the hearing.

Article 507 § 4 provides that in appointing a guardian his moral and other qualities, his capability to perform the functions of a guardian, his relationship with the person who requires guardianship, and, if possible, the wishes of the person who requires guardianship or care shall be taken into consideration.

76. The Law on Prosecutor's Office provides that prosecutors have the right to protect the public interest, either on their own initiative or if the matter has been brought to their attention by a third party. In so doing, prosecutors may institute civil or criminal proceedings.



77. In a ruling of 9 June 2003 the Supreme Court stated that a public prosecutor could submit an application for reopening of proceedings, if the court's decision had been unlawful and had infringed the rights of a legally incapacitated person having limited opportunity to defend his or her rights or lawful interests.

78. The Law on Social Services provides that the basic goal of social services is to satisfy the vital needs of an individual and, when an individual himself is incapable of establishing such conditions, to create living conditions for him that do not debase his dignity (Article 2 (2)).

79. The Requirements for residential social care institutions and the Procedure for admission of persons thereto, approved by Order No. 97 of the Minister of Social Security and Labour on 9 July 2002 and published in State Gazette (*Valstybės žinios*) on 31 July 2002, regulate the methods of admission to a social care institution. The rules provide that an individual is considered to be eligible for admission to such an institution, *inter alia*, if he or she suffers from mental health problems and therefore is not able to live on his or her own. The need for care is decided by the municipal council of the place of his or her residence in cooperation with the founder of the residential care institution (the county governor). Individuals are admitted to care institutions in the event that the provision of social services at their home or at a non-statutory care establishment is not possible. A guardian who wishes to have a person admitted to a residential care institution must submit a request in writing to the social services department of the relevant municipal council. The reasons for and motives behind admission must be indicated. An administrative panel of the municipal council, comprising at least three persons, is empowered to decide on the proposed admission. Representatives of the institution to which the person is to be admitted as well as the founder (the governor) must participate.

80. The Government submitted to the Court an application by the Kėdainiai Home of 6 October 2009 to the Kaunas City District Court for the restoration of capacity (*dėl neveiksnumo panaikinimo*) of an individual, G.P. The Kėdainiai Home had been G.P.'s guardian. The director of the Kėdainiai Home had noted that after G.P.'s condition had become better and he had become more independent, it had accordingly become necessary for the court to order a fresh psychiatric examination and make an order restoring G.P.'s legal capacity.

81. The Bylaws of the Kėdainiai Home (*Kėdainių pensionato gyventojų vidaus tvarkos taisyklės*), as approved by an order of the director dated 17 March 2003, provide that the institution shall admit adults who suffer from mental health problems and are in need of care and medical treatment. A patient may leave the institution for up to ninety days per year, but only to visit his or her court-appointed guardian. The duration and conditions of such leave must be confirmed in writing. The rules also stipulate that a patient is not allowed to leave the grounds of the facility without informing

a social worker. If a patient decides to leave the Kėdainiai Home on his or her own, the management must immediately inform the police and facilitate finding him or her. A patient may be visited by relatives and guardians. Other visitors are allowed only upon the management's approval. The patients may have personal mobile phones. They may follow a religion, attend church services and receive magazines.

82. In a ruling of 11 September 2007 in civil case No. 3K-3-328/2007, the Supreme Court noted that the person whom it is asked to declare incapacitated is also a party to the proceedings (Article 464 § 1 of the Code of Civil Procedure). As a result, he or she enjoys the rights of an interested party, including the right to be duly informed of the place and time of any hearing. The fact that the case had been heard in the absence of D.L. – the person whom the court had been asked to declare incapacitated – was assessed by the Supreme Court as a violation of her right to be duly informed of the place and time of court hearings, as well as of other substantive procedural rights safeguarding her right to a fair trial. The Supreme Court also found that by failing to hear the person concerned and without making sure that she had been aware of the proceedings, the first-instance court had breached the principle of equality of arms, as well as D.L.'s right to appeal against the decision to declare her incapacitated, because the decision had not been delivered to her. The Supreme Court also referred to Principle no. 13 of Recommendation No. R (99) 4 by the Committee of Ministers of the Council of Europe (see paragraph 85 below), stating that the person concerned should have the right to be heard in any proceedings which could affect his or her legal capacity. This procedural guarantee should be applicable to the fullest extent possible, at the same time bearing in mind the requirements of Article 6 of the European Convention on Human Rights. In this regard, the Supreme Court also referred to the Court's case-law to the effect that a mental illness could result in appropriate restrictions of a person's right to a fair hearing. However, such measures should not affect the very essence of that right (*Golder, Winterwerp*, both cited below, and *Lacárce Menéndez v. Spain*, no. 41745/02, 15 June 2006).

83. In the same ruling, the Supreme Court also emphasised that determining whether the person can understand his or her actions was not only a scientific conclusion, namely that of forensic psychiatry. It was also a question of fact which should be established by the court upon assessing all other evidence and, if necessary, upon hearing expert evidence. Taking into consideration the fact that the declaration of a person's incapacity is a very serious interference into his or her right to private life, one can only be declared incapacitated in exceptional cases.

### III. RELEVANT INTERNATIONAL DOCUMENTS

#### **A. Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly on 13 December 2006 (Resolution A/RES/61/106)**

84. This Convention entered into force on 3 May 2008. It was signed by Lithuania on 30 March 2007 and ratified on 18 August 2010. The relevant parts of the Convention provide:

##### **Article 12 Equal recognition before the law**

“1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person’s circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person’s rights and interests.

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.”

##### **Article 14 Liberty and security of person**

“1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

(a) Enjoy the right to liberty and security of person;

(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation.”

**B. Recommendation No. R (99) 4 of the Committee of Ministers of the Council of Europe on principles concerning the legal protection of incapable adults (adopted on 23 February 1999)**

85. The relevant parts of this Recommendation read as follows:

**Principle 2 – Flexibility in legal response**

“1. The measures of protection and other legal arrangements available for the protection of the personal and economic interests of incapable adults should be sufficient, in scope or flexibility, to enable suitable legal response to be made to different degrees of incapacity and various situations.

...

4. The range of measures of protection should include, in appropriate cases, those which do not restrict the legal capacity of the person concerned.”

**Principle 3 – Maximum reservation of capacity**

“1. The legislative framework should, so far as possible, recognise that different degrees of incapacity may exist and that incapacity may vary from time to time. Accordingly, a measure of protection should not result automatically in a complete removal of legal capacity. However, a restriction of legal capacity should be possible where it is shown to be necessary for the protection of the person concerned.

2. In particular, a measure of protection should not automatically deprive the person concerned of the right to vote, or to make a will, or to consent or refuse consent to any intervention in the health field, or to make other decisions of a personal character at any time when his or her capacity permits him or her to do so. ...”

**Principle 6 – Proportionality**

“1. Where a measure of protection is necessary it should be proportional to the degree of capacity of the person concerned and tailored to the individual circumstances and needs of the person concerned.

2. The measure of protection should interfere with the legal capacity, rights and freedoms of the person concerned to the minimum extent which is consistent with achieving the purpose of the intervention. ...”

**Principle 13 – Right to be heard in person**

“The person concerned should have the right to be heard in person in any proceedings which could affect his or her legal capacity.”

**Principle 14 – Duration review and appeal**

“1. Measures of protection should, whenever possible and appropriate, be of limited duration. Consideration should be given to the institution of periodical reviews.

...

3. There should be adequate rights of appeal.”

**C. The 25 June 2009 report on visit to Lithuania by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), visit from 28 to 30 April 2008**

86. This report outlines the situation of persons placed by the public authorities in social care homes for people with mental disorders or mental deficiency. Part C of the report (paragraphs 120, 125-132) analyses situation in the Skemai Residential Care Home.

87. The CPT noted that Lithuanian legislation does not provide for an involuntary placement procedure in social welfare establishments. At Skemai Residential Care Home, residents were admitted on their own application or that of their guardian through the competent district authority (Panevėžys District Administration). The decision on the placement was taken by the social affairs unit of Panevėžys District Administration on the basis of a report drawn up by a social worker and a medical certificate issued by a psychiatrist stating that the applicant’s mental health permitted his/her placement in a social welfare institution of this type. An agreement was then signed between the applicant and the authorised representative of the local government for an indefinite period.

That said, it appeared that even legally competent residents admitted on the basis of their own application were not always allowed to leave the home when they so wished. The delegation was informed that their discharge could only take place by decision of the social affairs unit of the Panevėžys District Administration. This was apparently due to the need to ascertain that discharged residents had a place and means for them to live in the community; nevertheless, this meant that such residents were *de facto* deprived of their liberty (on occasion for a prolonged period).

88. Specific reference was made to the situation of residents deprived of their legal capacity. Such persons could be admitted to the Skemai Home solely on the basis of the application of their guardian. However, they were

considered to be voluntary residents, even when they opposed such a placement. In the CPT's view, placing incapacitated persons in a social welfare establishment which they cannot leave at will, based solely on the consent of the guardian, entailed a risk that such persons will be deprived of essential safeguards.

89. It was also a matter of concern that all 69 residents who were deprived of their legal capacity were placed under the guardianship of the Home. In this connection, the delegation was surprised to learn that in the majority of these cases, the existing guardianship arrangements had been terminated by a court decision upon admission to the establishment and guardianship of the person concerned entrusted to the Home.

The CPT stressed that one aspect of the role of a guardian is to defend the rights of incapacitated persons *vis-à-vis* the hosting social welfare institution. Obviously, granting guardianship to the very same institution could easily lead to a conflict of interest and compromise the independence and impartiality of the guardian. The CPT reiterated its recommendation that the Lithuanian authorities strive to find alternative solutions which would better guarantee the independence and impartiality of guardians.

90. In the context of discharge from psychiatric institution procedures, the CPT recommended that the Lithuanian authorities took steps to ensure that forensic patients were heard in person by the judge in the context of judicial review procedures. For that purpose, consideration may be given to the holding of hearings at psychiatric institutions

91. Lastly, the CPT found that at the establishment visited the existing arrangements for contact with the outside world were generally satisfactory. Patients/residents were able to send and receive correspondence, have access to a telephone, and receive visits.

## THE LAW

### I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

#### A. The parties' submissions

92. The Government argued, first, that the present application had been entirely based on knowingly untrue facts and therefore should be declared inadmissible for "abuse of the right of individual petition", pursuant to Article 35 § 3 of the Convention. For the Government, the content of the present application was contrary to the purpose of the right of individual application, as the information provided therein was untrue or insidious. An

appropriate and carefully selected form of social care for the applicant had been portrayed as detention. Appropriate medical care and striving to save her life had been presented as her torture. The facts concerning the reopening of the guardianship proceedings were also untrue, as well as those related to the applicant's complaints of the alleged refusal of the Kėdainiai Home's management to allow the applicant to have personal visits and of the censorship of her communications.

93. Alternatively, the Government submitted that the application had been prepared in its entirety and lodged by D.G. and not by the applicant. They held highly critical views of D.G., claiming that she had been "not only deceiving the Court but also harming a vulnerable, mentally-ill person". The Government contended in the present case that the term "applicant" referred to D.D. only in a formal sense, as in reality the person whose will the application reflected had been D.G., and, moreover, that will had clearly contradicted the interests of D.D., who had been misled and manipulated by D.G. It followed that the application as a whole was incompatible *ratione personae* with the provisions of the Convention.

94. The applicant's lawyer considered that the Government's allegation of factual inaccuracy was best understood by reference to the fact that the parties to this application held diametrically opposed perspectives in relation to the facts presented. Both the applicant and the Government saw the same facts in a totally different light and held incompatible views on the way in which the rights of persons with psychosocial disabilities should be respected under the Convention.

95. As to the Government's second argument, the applicant's lawyer submitted that the application had been lodged with D.D.'s fully-informed consent. D.D. had been keenly aware of the proceedings and had spoken of them frequently. Attention had to be drawn to the vulnerability and isolation of persons in the applicant's position, as well as the fact that domestic legislation had denied her legal standing to initiate any legal proceedings whatsoever. Consequently, it was ironic that the Government had not recognised D.D.'s ability to represent herself in domestic proceedings, requiring by law that she did so via another person, but that before the Court the Government seemed to insist that the applicant should act alone.

Lastly, the applicant's lawyer pointed out that D.G. was the applicant's closest friend, former psychotherapist and her first guardian. Moreover, since 8 January 2008 the applicant had been represented before the Court by a legal team.

## **B. The Court's assessment**

96. The Court first turns to the Government's objection as to the applicant's victim status, and, in particular, their allegation that the application does not express the true will of D.D. In this connection, it

recalls that the existence of a victim of a violation, that is to say, an individual who is personally affected by an alleged violation of a Convention right, is indispensable for putting the protection mechanism of the Convention into motion, although this criterion is not to be applied in a rigid, mechanical and inflexible way throughout the proceedings (see *Poznanski and Others v. Germany*, (dec.), no. 25101/05, 3 July 2007).

97. Having regard to the documents presented, the Court notes that the original application form bears D.D.'s signature, without any indication that that signature could be forged (see, by converse implication, *Poznanski*, cited above). In paragraph 13 of the application, D.D. wrote that back in 2000, on her adoptive father's initiative, she had been unlawfully declared incapacitated and in 2004 admitted to the Kėdainiai Home "for an indefinite duration". She asked that, for the purposes of the proceedings before this Court, her adoptive father not be considered her legal representative, requesting that D.G. take on that role. After the application was communicated to the Government, the applicant was reminded that, in accordance with paragraph 4 (a) of Rule 36 of the Rules of Court, she had to designate a legal representative, which she did by appointing a lawyer, Mr H. Mickevičius. In his observations in reply to those of the Government, the applicant's lawyer followed the initial complaints as presented by D.D. In the light of the above, the Court holds that D.D. has validly lodged an application in her own name and thus has the status of "victim" in respect of the complaints listed in her application. The Government's objection as to incompatibility *ratione personae* should therefore be dismissed.

98. The Court further considers that the Government's objection as to the applicant's alleged abuse of the right to petition, on account of allegedly incorrect information provided in her application form, is closely linked to the merits of her complaints under Articles 3, 5, 6, 8 and 9 of the Convention. The Court thus prefers to join the Government's objection to the merits of the case and to examine them together.

99. Lastly, the Court observes that the applicant submitted several complaints under different Convention provisions. Those complaints relate to the proceedings concerning her involuntary admission to a psychiatric institution, the appointment of her guardian, her inability to receive personal visits, interference with her correspondence, involuntary medical treatment, and so forth. Whilst noting that the complaint as to the initial appointment of a guardian has been raised outside the six months time-limit (see paragraph 19 above), the Court sees fit to start with the complaint related to the court proceedings for a change of her legal guardian and then to examine the applicant's admission to the Kėdainiai Home and the complaints stemming from it.



## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE PROCEEDINGS FOR A CHANGE OF LEGAL GUARDIAN

100. The applicant complained that she had not been afforded a fair hearing in respect of her application for reopening of her guardianship proceedings and had not been able to have her legal guardian changed. In support of her complaints, the applicant cited Articles 6 § 1 and 8 of the Convention. In addition, relying upon Article 13 of the Convention, the applicant argued that she had not been afforded an effective remedy to complain of the alleged violations.

The Court considers that the applicant's complaints fall to be examined under of Article 6 § 1 of the Convention, which, in so far as relevant, provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

### A. Submissions by the parties

#### 1. *The applicant*

101. The applicant submitted that the blanket ban on her right of access to court went to the heart of her right to a fair hearing and had been in breach of Article 6 § 1 of the Convention. She pointed out that on 15 September 2000 she had been declared incapacitated during proceedings that had been initiated by her adoptive father. Solely on the basis of the medical report of 19 July 2000, the Kaunas City District Court had deemed that the applicant was not to be summoned. As a result she had not taken part in those proceedings. The local authority, whose presence had been obligatory, had not made a significant contribution during the hearing and had endorsed the conclusions of the medical report. The Kaunas District Court had not provided any reasons for its decision, other than reiterating the conclusions of the forensic experts. The district court had chosen not to assess other evidence which could have potentially shed light on the applicant's circumstances, such as that which could have arisen by summoning the applicant or other witnesses, or by questioning the authors of the psychiatric report in person. The judge had not found it necessary to examine whether any ulterior reasons had underlain the incapacitation request.

102. The applicant argued, further, that she had not been given the opportunity to participate in any of the guardianship proceedings. She had never been notified of or summoned to any of the four sets of proceedings concerning the appointment or discharge of her guardian/property

administrator. For the applicant, there had been no medical or other reasons relating to her health that would have precluded her from participating. Nonetheless, the courts had invariably based their decisions on the views of the local authority without examining the personal circumstances of the applicant. The proceedings had been very summary in nature, the hearings had been brief and the rationale underpinning judgments had been almost non-existent. On 15 September 2000 the Kaunas City District Court had appointed her adoptive father as her guardian without any involvement on her part. As a result, not only had she been unable to object to his appointment, but she had also been barred from appealing against that decision.

103. The applicant emphasised that the review proceedings in 2005 initiated by her with the assistance of D.G. had been the only opportunity that she had ever had to put her point of view across before a court of law. On this occasion, she had personally addressed the Kaunas City District Court on a number of issues of the utmost importance to her, such as her incapacitation, the identity of her guardian and her admission to an institution. However, the district court had chosen to dismiss her action on narrow procedural grounds.

104. The applicant's main objection with regard to the review proceedings lay in the district court's decision to turn down her express request to be provided with independent legal aid. The explanation that the applicant was already represented by her guardian's lawyer had misunderstood the competing interests of the two parties. The effect had been to severely prejudice the ability of the applicant to engage with the procedural aspects of the hearing on which the district court's decision had turned.

105. Lastly, the applicant argued that she had been financially able to afford to employ a lawyer to represent her at that or any other of the hearings. However, she had been denied access to her own money, and at many of the hearings her interests and those of the person with control over her funds had been divergent. She concluded that in view of her vulnerable position, the procedural complexity of the proceedings and the high stakes thereof, Article 6 § 1 of the Convention had required that she be provided with free legal aid.

## 2. *The Government*

106. As to the applicant's complaint that she had not been afforded a fair hearing in relation to her request that the proceedings by which her guardian was appointed be reopened, the Government referred to the Court's case-law to the effect that the right of access to court is not absolute and that the States have a certain margin of appreciation in assessing what might be the best policy in this field (*Golder v. the United Kingdom*, 21 February 1975, § 38, Series A no. 18). That was especially true as regards persons of

unsound mind, and the Convention organs had acknowledged that such restrictions were not in principle contrary to Article 6 § 1 of the Convention, where the aim pursued was legitimate and the means employed to achieve that aim were proportionate (*G.M. v. the United Kingdom*, no. 12040/86, Commission decision of 4 May 1987, Decisions and Reports (DR) 52, p. 269).

107. Turning to the particular situation of the applicant, the Government noted that domestic law did not allow a legally incapacitated person to lodge a petition seeking that his or her guardianship be changed. As the applicant had deemed that her adoptive father was not a suitable person to be her guardian, the authorities responsible for oversight of guardians (the Social Services Department of Kaunas City Council) or a public prosecutor could have submitted an application for reopening of the proceedings. Nevertheless, the Kaunas City District Court had accepted the applicant's request for reopening for examination and on 7 November 2005 had reviewed her case with a high degree of care.

108. The hearing of 7 November 2005 at the Kaunas City District Court had taken place in the presence of the applicant, her guardian (her adoptive father) and his lawyer, and D.G., as well as in the presence of the representatives of the relevant State authorities. Whilst admitting that at that hearing the applicant had asked to be assisted by a separate lawyer, the Government submitted that the court had not been able to grant the applicant's request because of the decision of 15 September 2000 declaring her legally incapacitated. Even so, the applicant's interests had been defended by the representative of the Kėdainiai Home, the representative of the Social Services Department and the public prosecutor.

109. The Government contended that during the hearing of 7 November 2005 the applicant had not sustained her request that D.G. be appointed as her new guardian. Contrary to what the applicant had stated to the European Court, in her submissions at the hearing at issue she had agreed to keep her adoptive father as her guardian, saying that she loved him, but had expressed her wish to be released from the Kėdainiai Home. For the Government, it appeared from the transcript of the hearing that this statement had been made by the applicant before the break, but not after, contrary to her allegation of being "threatened with restraint" for disobedience.

110. The Government pointed out that, pursuant to Article 507 § 3 of the Code of Civil Procedure, the appointment of a guardian required to be heard in the presence of a representative of the authority overseeing guardians, who was required to submit the authority's conclusions to the court, and the person to be appointed as guardian. Given that both of these persons had taken part in the hearing of 21 January 2004, the Kaunas City District Court in its decision of 17 November 2005 had reasonably found that the applicant had been properly represented at the hearing of 21 January 2004, and thus

the provision on which the applicant had based her request to reopen the proceedings had not been breached.

111. Lastly, in their observations of 15 September 2008 the Government noted that as regards incapacitation proceedings the ministries had prepared legislative amendments to the Civil Code and the Code of Civil Procedure, which would be submitted to Parliament. The proposed amendments provide for compulsory representation of a person facing incapacitation proceedings before a court by a lawyer.

In the light of the preceding arguments, the Government considered that the applicant's complaint was manifestly ill-founded.

### *3. The intervening parties*

112. The representatives of Harvard Law School submitted that in all cases a court or other judicial authority must ensure that a representative acts solely in the interests of the incapacitated person. In any case in which it is objectively apparent that the person being represented does not accept or assent to the steps taken by a representative, those matters must be explored by the judicial authorities. The judicial authorities must exercise thorough, additional supervision in all cases in which there is a filter between a person and a court, such as when a person is represented by another individual. This remains true even where the representative was appointed by a court.

113. The European Group of National Human Rights Institutions noted that the European Convention on Human Rights guaranteed rights and freedoms that must be protected regardless of an individual's level of capacity. They also saw it important to mention the Court's judgment in *Winterwerp v. the Netherlands* (24 October 1979, Series A no. 33), where the Court concluded that although mental illness may render legitimate certain limitations upon the exercise of the "right to access to court", it could not warrant the total absence of that right as embodied in Article 6 § 1.

## **B. The Court's assessment**

### *1. Admissibility*

114. The parties did not dispute the applicability of Article 6, under its "civil" head, to the proceedings at issue, and the Court does not see any reason to hold otherwise (see *Winterwerp*, cited above, § 73, and *Matter v. Slovakia*, no. 31534/96, § 51, 5 July 1999).

115. The Court notes that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It

further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

## 2. *Merits*

### (a) **General principles**

116. In most of the previous cases before the Court involving “persons of unsound mind”, the domestic proceedings concerned their detention and were thus examined under Article 5 of the Convention. However, the Court has consistently held that the “procedural” guarantees under Article 5 §§ 1 and 4 are broadly similar to those under Article 6 § 1 of the Convention (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 232, 17 January 2012 and the case-law cited therein). Therefore, in deciding whether the proceedings in the present case for the reopening of the guardianship appointment were “fair”, the Court will have regard, *mutatis mutandis*, to its case-law under Article 5 § 1 (e) and Article 5 § 4 of the Convention.

117. In the context of Article 6 § 1 of the Convention, the Court accepts that in cases involving a mentally-ill person the domestic courts should also enjoy a certain margin of appreciation. Thus, for example, they can make appropriate procedural arrangements in order to secure the good administration of justice, protection of the health of the person concerned, and so forth (see *Shtukaturov v. Russia*, no. 44009/05, § 68, ECHR 2008).

118. The Court accepts that there may be situations where a person deprived of legal capacity is entirely unable to express a coherent view or give proper instructions to a lawyer. It considers, however, that in many cases the fact that an individual has to be placed under guardianship because he lacks the ability to administer his affairs does not mean that he is incapable of expressing a view on his situation and thus of coming into conflict with the guardian. In such cases, when the conflict potential has a major impact on the person’s legal situation, such as when there is a proposed change of guardian, it is essential that the person concerned should have access to court and the opportunity to be heard either in person or, where necessary, through some form of representation. Mental illness may entail restricting or modifying the manner of exercise of such a right, but it cannot justify impairing the very essence of the right, except in very exceptional circumstances such as those mentioned above. Indeed, special procedural safeguards may prove called for in order to protect the interests of persons who, on account of their mental health issues, are not fully capable of acting for themselves (see, *mutatis mutandis*, *Winterwerp*, cited above, § 60).

119. The Court reiterates that the key principle governing the application of Article 6 is fairness. Even in cases where an applicant appears in court notwithstanding lack of assistance by a lawyer and manages to conduct his or her case in the face of all consequent difficulties, the question may

nonetheless arise as to whether this procedure was fair (see, *mutatis mutandis*, *McVicar v. the United Kingdom*, no. 46311/99, §§ 50-51, ECHR 2002-III). The Court also recalls that there is the importance of ensuring the appearance of the fair administration of justice and a party to civil proceedings must be able to participate effectively, *inter alia*, by being able to put forward the matters in support of his or her claims. Here, as with other aspects of Article 6, the seriousness of what is at stake for the applicant will be of relevance to assessing the adequacy and fairness of the procedures (see *P., C. and S. v. the United Kingdom*, no. 56547/00, § 91, ECHR 2002-VI).

**(b) Application to the present case**

120. Turning to the circumstances of the instant case, the Court again notes that it cannot examine the applicant's initial placement under guardianship (see paragraph 99 above). Even so, the Court cannot overlook the fact that back in 2000 the applicant did not participate in the court proceedings for her incapacitation. In particular, nothing suggests that the court notified the applicant of its own accord of the hearing at which her personal autonomy in almost all areas of life was at issue, including the eventual limitation of her liberty (see paragraph 12 above). Furthermore, as transpires from the decision of the Kaunas City District Court of 15 September 2000, it ruled exclusively on the basis of the medical panel's report, without having summoned the medical experts who authored the report for questioning. Neither did the court call to testify any other witnesses who could have shed some light as to the personality of the applicant. Accordingly, the applicant was unable to participate in the proceedings before the Kaunas City District Court in any form. Given that the potential finding of the applicant being of unsound mind was, by its very nature, largely based on the applicant's personality, her statements would have been an important part of the applicant's presentation of her case, and virtually the only way to ensure adversarial proceedings (see, *mutatis mutandis*, *Kovalev v. Russia*, no. 78145/01, §§ 35-37, 10 May 2007; also see Principle 13 of the Recommendation No. R (99) 4 by the Council of Europe).

121. The Court also notes that on 21 January 2004 the Kaunas City District Court appointed the applicant's adoptive father as her legal guardian. The applicant was again not summoned because the court apparently considered her attendance to be unnecessary.

122. Next, the Court turns to the proceedings regarding the change of the applicant's guardianship in 2005. The Court notes that there is no indication that at that moment in time the applicant was suffering from an incapacity of such a degree that her personal participation in the proceedings would have been meaningless. Although health care officials had considered that her involvement in the proceedings relating to her initial placement under

guardianship in 2000 was unnecessary, as she had apparently been unable to provide them with an objective opinion (see paragraph 11 above), she did in fact participate in the hearing relating to the change of guardian on 7 November 2005. Indeed, she not only stated unequivocally that she maintained her request that the guardianship proceedings be reopened and asked to be assisted by a lawyer but also made a number of other submissions about the proceedings and expressed a clear view on various matters. In particular, the applicant emphasised that she had not been summoned to the hearing during which her adoptive father had been appointed her guardian. She also expressed her desire to leave the Kėdainiai Home. Taking into account the fact that the applicant was an individual with a history of psychiatric troubles, and the complexity of the legal issues at stake, the Court considers that it was necessary to provide the applicant with a lawyer.

123. The Government argued that the Kaunas City District Court's finding that the applicant, who lacked legal capacity, had been properly represented by her adoptive father's lawyer had been correct and in compliance with domestic law. However, the crux of the complaint is not the legality of the decision under domestic law but the "fairness" of the proceedings from the standpoint of the Convention and the Court's case-law.

124. As emerges from the materials before the Court, the relationship between the applicant and her adoptive father has not always been positive. Quite the contrary, on numerous occasions the applicant had contacted State authorities claiming that there was a dispute between the two of them, which culminated in her being deprived of legal capacity and her liberty (see paragraphs 32, 33 and 60 above). What is more, the social services had also noted disagreement between the applicant and her adoptive father (see paragraph 18 above). Lastly, on at least one occasion the applicant's adoptive father had himself acknowledged their strained relationship (see paragraph 14 above). Accordingly, the Court finds merit in the applicant's argument that, because of the conflicting interests of her and her legal guardian, her guardian's lawyer could in no way have represented her interests properly. In the view of the Court, the interests of a fair hearing required that the applicant be granted her own lawyer.

125. The Government suggested that a representative of the social services and the district prosecutor attended the hearing on the merits, thus protecting the applicant's interests. However, in the Court's opinion, their presence did not make the proceedings truly adversarial. As the transcript of the hearing of 7 November 2005 shows, the representatives of the social services, the prosecutor, the doctors from the Kėdainiai Home and the Kaunas Psychiatric Hospital clearly supported the position of the applicant's adoptive father – that he should remain D.D.'s legal guardian.

126. Finally, the Court recalls that it must always assess the proceedings as a whole (see *C.G. v. the United Kingdom*, no. 43373/98, § 35, 19 December 2001). In particular, and turning to the spirit in which the hearing of 7 November 2005 was held, the Court notes that the judge refused a request by D.G. that an audio recording be made. Be that as it may, the Court is not able to overlook the applicant's complaint, although denied by the Government, that the judge did not allow her to sit near D.G., the only person whom the applicant trusted. Neither can the Court ignore the allegation that during the break the applicant was forced to leave the hearing room and to go to the judge's office, after which measure the applicant declared herself content (see paragraphs 41 and 42 above). Against this background, the Court considers that the general spirit of the hearing further compounded the applicant's feelings of isolation and inferiority, taking a significantly greater emotional toll on her than would have been the case if she would have had her own legal representation.

127. In the light of the above considerations and taking into account the events that preceded the examination of the applicant's request for reopening of her guardianship proceedings, the Court concludes that the proceedings before the Kaunas City District Court on 7 November 2005 were not fair. Accordingly, the Government's preliminary objection of abuse of application must be dismissed. The Court holds that there has been a violation of Article 6 § 1 of the Convention.

### III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

128. Under Article 5 § 1 of the Convention the applicant complained that her involuntary admission to the Kėdainiai Home had been unlawful. Article 5, in so far as relevant, provides:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(e) the lawful detention of persons ... of unsound mind...”

#### A. Submissions by the parties

##### 1. *The applicant*

129. The applicant maintained her claims. She alleged that her involuntary admission to the Kėdainiai Home after 2 August 2004 had



amounted to a “deprivation of liberty” within the meaning of Article 5 § 1 of the Convention.

130. With regard to the objective element of her complaint, the applicant argued that her liberty had been restricted on account of her complete confinement and the extreme degree of control over her daily life. The applicant, like other residents, had not been able to leave the grounds of the Kėdainiai Home. If a resident left without permission, the director was bound to inform the police immediately. The applicant had tried to abscond twice, in 2006 and 2007, only to be brought back by the police. Furthermore, the applicant had been entirely under the control of staff at the institution, who had been able to medicate her by force or coercion, place her in isolation or tie her down, as exemplified by the incident of 25 January 2005. According to the findings of the Prosecutor’s Office, on that day the applicant had been tied down to a bed in the isolation room and forcibly medicated, in contravention of the internal rules of the institution. It would be plain upon visiting the Kėdainiai Home that the vast majority of residents are heavily medicated.

131. Further, the applicant complained that all aspects of her life are controlled by the staff. Although in theory she is allowed to receive visits from people outside the institution, this right is subject to approval from the director. Upon her admission to the Kėdainiai Home in 2004, all visits other than those from her guardian had been restricted for a lengthy period of time.

The applicant submitted that she cannot decide whether or when to stay in bed, there is a limited range of activities for her to take part in, she is not free to make routine choices like other adults – for example, about her diet, daily activities and social contacts. She is subject to constant supervision.

132. With respect to the subjective element of her complaint, the applicant noted that her case was diametrically opposite to that of *H.M. v. Switzerland* (no. 39187/98, § 47, ECHR 2002-II), where the applicant had agreed to her admission to a nursing home. In the present case, the applicant’s views had not been sought, either at the time of her admission or during her continued involuntary placement in the Kėdainiai Home. However, under Lithuanian law it had, in fact, been irrelevant whether she had consented or not to her detention, because an individual lacking legal capacity and placed under guardianship becomes a non-entity under the law and loses the capacity to take any decisions. Even so, whilst she had been incapable *de jure*, she had still, in fact, been capable of expressing her consent. She had expressed strong objections about her continued involuntary admission to the institution, most emphatically by running away twice, in her arguments before the domestic court, in her correspondence with various State authorities and, finally, by submitting a complaint to the Court.

133. In sum, the applicant's involuntary admission to and continued residence in the Kėdainiai Home after 2 August 2004 constituted a "deprivation of liberty" within the meaning of Article 5 § 1 of the Convention.

134. Lastly, the applicant submitted that her admission to the Kėdainiai institution was not lawful. The authorities involved in placing her in a psychiatric institution or those supervising the guardian's activities failed to consider whether other less restrictive community-based arrangements would have been more suitable to address the applicant's mental health problems. Instead they simply acquiesced in the guardian's request to have the applicant placed in an institution. Most importantly, the applicant was excluded from this decision-making process altogether. Consequently, the applicant saw her detention as arbitrary, in contradiction with Article 5 § 1 (e) of the Convention.

## 2. *The Government*

135. The Government argued, first, that Article 5 of the Convention was not applicable to the instant case. They submitted that the Kėdainiai Home was an institution for providing social services and not forced treatment under a regime corresponding to that of a psychiatric institution. Whilst admitting that certain medical services continued to be provided in the Kėdainiai Home, the institution at issue was not primarily used for the purposes of hospitalisation or medical treatment. Having regard to the fact that the Kėdainiai Home had to take care of adults suffering from mental health problems, it followed that the limited restrictions on the applicant had corresponded to the nature of the facility and had been no more than normal requirements (*Nielsen v. Denmark*, 28 November 1988, § 72, Series A no. 144).

136. Turning to the particular situation of the applicant, the Government submitted that until September 2007 the applicant had lived in a part of the Kėdainiai Home called "Apytalaukis", which had been an open facility. Although its grounds had been fenced, the gates had not been locked and residents had been able to leave the territory as they wished. The doors of the building had stayed unlocked. The same conditions had remained after the applicant's resettlement, except that the grounds had not even been fenced. According to the personnel of the Kėdainiai Home, the applicant had not always adhered to the internal rules of the institution and had failed to inform the staff before leaving the grounds and going for a walk. Even so, this had neither been considered as absconding, nor had the applicant been sanctioned in any way. Also, similarly to the facts in *H.M. v. Switzerland* (cited above), and with the exception of the incident of 25 January 2005, the applicant had never been placed in a secure ward. Moreover, she had been free to maintain personal contacts, to write and receive letters, to practise her religion and to make phone calls.

137. As to the medical treatment the applicant had received in the Kėdainiai Home, the Government submitted that, except for the incident of 25 January 2005, she had not been forcefully medicated. Each time she had been required to take medicine a psychiatrist had talked to her and had explained the need for treatment. There had been periods when the applicant had refused to take medicine; those periods had always been followed by the deterioration of her mental health. However, after some time the applicant had usually accepted the doctors' arguments and had agreed to continue treatment. The social and medical care she had received in the Kėdainiai Home had had a positive effect on the applicant, because her mental state had stabilised. Since her admission to the Kėdainiai Home she had never been hospitalised, whereas prior to that she had used to be hospitalised at least once a year.

In sum, the limited restrictions to which the applicant had been subjected in the Kėdainiai Home had all been necessary due to the severity of her mental illness, had been in her interests and had been no more than the normal requirements associated with the responsibilities of a social care institution taking care of inhabitants suffering from mental health problems.

138. The Government also noted that the admission of the applicant to the Kėdainiai Home had stemmed from her guardian's decision and not from a decision of the State or the municipal authorities. The applicant's adoptive father, as her guardian, had been empowered to act on her behalf and with the aim of exercising and protecting her rights and interests. In addition, the involvement of the municipal and State authorities in examining the applicant's situation and state of mind had played an important role in verifying the best interests of the applicant and had provided necessary safeguards against any arbitrariness in the guardian's decisions.

139. Turning to the subjective element of the applicant's case, the Government submitted that the applicant was legally incapacitated and had thus lacked the decision-making capacity to consent or object to her admission. Her guardian and not the authorities had been able to decide on her place of residence.

140. In the light of the above considerations, the Government argued that this part of the application was incompatible *ratione materiae* with Article 5 § 1 of the Convention.

141. Alternatively, should the Court find that Article 5 § 1 was applicable to the applicant's complaints, the Government contended that they were not founded. The applicant's admission to the Kėdainiai Home had been lawful, given that it had been carried out in accordance with the procedure established by domestic law. Under the law, a person can be admitted to an institution at the request of the guardian, provided that the person is suffering from a mental disorder. The applicant was admitted to the hospital at the request of her official guardian in relation to a worsening

of her mental condition. Furthermore, in the view of the Government, the involvement of the authorities in the procedure for the applicant's admission had provided safeguards against any possible abuses.

142. In the further alternative, the Government submitted that even if the restrictions on the applicant's movement could be considered as falling within Article 2 of Protocol No. 4 to the Convention, those restrictions had been lawful and necessary.

## **B. The Court's assessment**

### *1. Admissibility*

143. The Government argued that the conditions in which the applicant is institutionalised in the Kėdainiai Home are not so restrictive as to fall within the meaning of "deprivation of liberty" as established by Article 5 of the Convention. However, the Court cannot subscribe to this thesis.

144. It reiterates that in order to determine whether there has been a deprivation of liberty, the starting point must be the concrete situation of the individual concerned. Account must be taken of a whole range of factors arising in a particular case such as the type, duration, effects and manner of implementation of the measure in question (see *Guzzardi v. Italy*, 6 November 1980, § 92, Series A no. 39; and *Ashingdane v. the United Kingdom*, 28 May 1985, § 41, Series A no. 93).

145. The Court further recalls that the notion of deprivation of liberty within the meaning of Article 5 § 1 does not only comprise the objective element of a person's confinement in a particular restricted space for a not negligible length of time. A person can only be considered to have been deprived of his liberty if, as an additional subjective element, he has not validly consented to the confinement in question (see, *mutatis mutandis*, *H.M. v. Switzerland*, cited above, § 46).

146. In the instant case the Court observes that the applicant's factual situation in the Kėdainiai Home is disputed. Be that as it may, the fact whether she is physically locked in the Kėdainiai facility is not determinative of the issue. In this regard, the Court notes its case-law to the effect that a person could be considered to have been "detained" for the purposes of Article 5 § 1 even during a period when he or she was in an open ward with regular unescorted access to unsecured hospital grounds and the possibility of unescorted leave outside the hospital (see *H.L. v. the United Kingdom*, no. 45508/99, § 92, ECHR 2004-IX). As concerns the circumstances of the present case, the Court considers that the key factor in determining whether Article 5 § 1 applies to the applicant's situation is that the Kėdainiai Home's management has exercised complete and effective control by medication and supervision over her assessment, treatment, care, residence and movement from 2 August 2004, when she was admitted to

that institution, to this day (*ibid.*, § 91). As transpires from the rules of the Kėdainiai Home, a patient therein is not free to leave the institution without the management's permission. In particular, and as the Government have themselves admitted in their observations on the admissibility and merits, on at least one occasion the applicant left the institution without informing its management, only to be brought back by the police (see paragraph 29 above). Moreover, the director of the Kėdainiai Home has full control over whom the applicant may see and from whom she may receive telephone calls (see paragraph 81 above). Accordingly, the specific situation in the present case is that the applicant is under continuous supervision and control and is not free to leave (see *Storck v. Germany*, no. 61603/00, § 73, ECHR 2005-V). Any suggestion to the contrary would be stretching credulity to breaking point.

147. Considerable reliance was placed by the Government on the Court's judgment in *H.M.* (cited above), in which it was held that the placing of an elderly applicant in a foster home in order to ensure necessary medical care as well as satisfactory living conditions and hygiene did not amount to a deprivation of liberty within the meaning of Article 5 of the Convention. However, each case has to be decided on its own particular "range of factors" and, while there may be similarities between the present case and *H.M.*, there are also distinguishing features. In particular, it was not established that H.M. was legally incapable of expressing a view on her position. She had often stated that she was willing to enter the nursing home and, within weeks of being there, she had agreed to stay, in plain contrast to the applicant in the instant case. Further, a number of safeguards – including judicial scrutiny – were in place in order to ensure that the placement in the nursing home was justified under domestic and international law. This led to the conclusion that the facts in *H.M.* were not of a "degree" or "intensity" sufficiently serious to justify a finding that H.M. was detained (see *Guzzardi*, cited above, § 93). By contrast, in the present case the applicant was admitted to the institution upon the request of her guardian without any involvement of the courts.

148. As to the facts in *Nielsen*, the other case relied on by the Government, the applicant in that case was a child, hospitalised for a strictly limited period of time of only five and a half months, on his mother's request and for therapeutic purposes. The applicant in the present case is a functional adult who has already spent more than seven years in the Kėdainiai Home, with negligible prospects of leaving it. Furthermore, in contrast to this case, the therapy in *Nielsen* consisted of regular talks and environmental therapy and did not involve medication. Lastly, as the Court found in *Nielsen*, the assistance rendered by the authorities when deciding to hospitalise the applicant was "of a limited and subsidiary nature" (§ 63), whereas in the instant case the authorities contributed substantially to the applicant's admission to and continued residence in the Kėdainiai Home.

149. Assessing further, the Court draws attention to the incident of 25 January 2005, when the applicant was restrained by the Kėdainiai Home staff. Although the applicant was placed in a secure ward, given drugs and tied down for a period of only fifteen to thirty minutes, the Court notes the particularly serious nature of the measure of restraint and observes that where the facts indicate a deprivation of liberty within the meaning of Article 5 § 1, the relatively short duration of the detention does not affect this conclusion (see *X v. Germany*, no. 8819/79, Commission decision of 19 March 1981, DR 24, pp. 158, 161; and *Novotka v. Slovakia* (dec.), no. 47244/99, 4 November 2003).

150. The Court next turns to the “subjective” element, which was also disputed between the parties. The Government argued that the applicant lacked *de jure* legal capacity to decide matters for herself. However, this does not necessarily mean that the applicant was *de facto* unable to understand her situation (see *Shtukurov v. Russia*, no. 44009/05, § 108, ECHR 2008). Whilst accepting that in certain circumstances, due to severity of his or her incapacity, an individual may be wholly incapable of expressing consent or objection to being confined in an institution for the mentally handicapped or other secure environment, the Court finds that that was not the applicant’s case. As transpires from the documents presented to the Court, the applicant subjectively perceived her compulsory admission to the Kėdainiai Home as a deprivation of liberty. Contrary to what the Government suggested, she has never regarded her admission to the facility as consensual and has unequivocally objected to it throughout the entire duration of her stay in the institution. On a number of occasions the applicant requested her discharge from the Kėdainiai Home by submitting numerous pleas to State authorities and, once she was given the only possibility to address a judicial institution, to the Kaunas City District Court (see paragraphs 34 and 37 above). She even twice attempted to escape from the Kėdainiai facility (see, *a fortiori*, *Storck*, cited above, § 73). In sum, even though the applicant had been deprived of her legal capacity, she was still able to express an opinion on her situation, and in the present circumstances the Court finds that the applicant had never agreed to her continued residence at the Kėdainiai Home.

151. Lastly, the Court notes that although the applicant’s admission was requested by the applicant’s guardian, a private individual, it was implemented by a State-run institution – the Kėdainiai Home. Therefore, the responsibility of the authorities for the situation complained of was engaged (see *Shtukurov*, cited above, § 110).

152. In the light of the foregoing the Court concludes that the applicant was “deprived of her liberty” within the meaning of Article 5 § 1 of the Convention from 2 August 2004 and remains so to this day.

153. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## 2. *Merits*

154. The Government argued that the applicant had been admitted to the Kėdainiai Home lawfully. The Court accepts that the applicant's involuntary admission was "lawful", if this term is construed narrowly, in the sense of the formal compatibility of the applicant's involuntary admission with the procedural and material requirements of domestic law (see paragraph 79 above). It appears that the only condition necessary for the applicant's admission was the consent of her official guardian, her adoptive father, who was also the person who had initially sought the applicant's admission to the Kėdainiai Home.

155. However, the Court reiterates that the notion of "lawfulness" in the context of Article 5 § 1 (e) has also a broader meaning. The notion underlying the term "procedure prescribed by law" is one of fair and proper procedure, namely that any measure depriving a person of his liberty should issue from and be executed by an appropriate authority and should not be arbitrary (see *Winterwerp*, cited above, § 45).

156. The Court also recalls that in *Winterwerp* (paragraph 39) it set out three minimum conditions which have to be satisfied in order for there to be "the lawful detention of a person of unsound mind" within the meaning of Article 5 § 1 (e): except in emergency cases, the individual concerned must be reliably shown to be of unsound mind, that is to say, a true mental disorder must be established before a competent authority on the basis of objective medical expertise; the mental disorder must be of a kind or degree warranting compulsory confinement; and the validity of continued confinement depends upon the persistence of such a disorder.

157. Turning to the present case, the Court notes that just a few weeks before her placement in the Kėdainiai Home on 2 August 2004, the applicant had been admitted to and examined at the Kaunas Psychiatric Hospital (see, by converse implication, *Stanev*, cited above, § 156). A medical panel of that hospital concluded that at that time the applicant suffered from "continuous paranoid schizophrenia". The doctors' commission deemed it appropriate for the applicant to live in a "social care institution for the mentally handicapped". The Court further observes that soon thereafter a social worker concluded that the applicant was not able to live on her own, as she could not take care of herself, did not understand the value of money, did not clean her apartment and wandered in the city hungry. The Court also notes the social worker's testimony as to the unpredictability of the applicant's behaviour, given that sometimes she would get angry at people and shout at them without a reason (see

paragraphs 22 and 23 above). That being so and recalling the fact that the applicant had a history of serious mental health problems since 1979, the Court is ready to find that the applicant has been reliably shown to have been suffering from a mental disorder of a kind and degree warranting compulsory confinement and the conditions as defined in *Wintertwerp* had thus been met in her case. Furthermore, the Court also considers that no other measures were available in the circumstances. As noted by the social worker, the applicant's adoptive father, who was her legal guardian, could not "manage" her (see paragraph 23 above). On this point the Court also takes notice of the fact that even being removed from institutional care and taken to her adoptive father's apartment, the applicant escaped and was found by the police only three months later (see paragraph 29 above). In these circumstances the Court concludes that the applicant's compulsory confinement was necessary (see *Stanev*, cited above, § 143) and no alternative measures had been appropriate in the circumstances of the case. The Court lastly observes, and it has not been disputed by the applicant, that in situations such as hers the domestic law did not provide that placement in a social care institution would be decided by a court (see, by converse implication, *Gorobet v. Moldova*, no. 30951/10, § 40, 11 October 2011).

158. In the light of the above, the Court cannot but conclude that the applicant's confinement to the Kėdainiai Home on 2 August 2004 was "lawful" within the meaning of Article 5 § 1 (e) of the Convention. Accordingly, there has been no violation of Article 5 § 1.

#### IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

159. The applicant complained that she is unable to obtain her release from the Kėdainiai Home. Article 5 § 4, relied on by the applicant, provides as follows:

"Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

##### A. Submissions by the parties

160. The applicant submitted that she had been admitted to the Kėdainiai Home upon her guardian's request and with the authorisation of an administrative panel. The lawfulness of her involuntary hospitalisation had not been reviewed by a court, either upon her admission or at any other subsequent time. Being deprived of her legal capacity, the applicant submitted that she is prevented from independently pursuing any judicial legal remedy to challenge her continued involuntary hospitalisation. In



relation to the possibility supposedly at the applicant's disposal of asking for a prosecutorial inquiry, this remedy could not be regarded *per se* as judicial review satisfying the requirements of Article 5 § 4. As for the possibilities identified by the Government, namely to ask social services or a prosecutor to initiate a review of the applicant's medical condition, these procedures were discretionary. In any event, the applicant had filed a number of complaints with the prosecutor's office and other authorities, which had unanimously concluded that her hospitalisation in the Kėdainiai Home had been carried out in accordance with the domestic law, thus being disinclined to take any action to override the will of her adoptive father, acting as her legal guardian. Once the Kėdainiai Home had become her guardian, it had been clear that that facility clearly had an interest in stifling any of the applicant's complaints and in keeping her in the institution. The applicant therefore submitted that her rights under Article 5 § 4 of the Convention had been breached.

161. The Government maintained that the applicant had had an effective remedy to challenge her hospitalisation at the Kėdainiai facility. Thus, she had been able to apply for release or complain about the actions of the medical staff through her guardians, who had represented her in dealings with third parties, including the courts. Further, the applicant had been able to ask the social services authorities or a prosecutor to initiate a review of her situation. For the Government, the applicant's complaint was unfounded.

## **B. The Court's assessment**

### *1. Admissibility*

162. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### *2. Merits*

163. Among the principles emerging from the Court's case-law on Article 5 § 4 concerning "persons of unsound mind" are the following:

(a) a person of unsound mind who is compulsorily confined in a psychiatric institution for an indefinite or lengthy period is in principle entitled, at any rate where there is no automatic periodic review of a judicial character, to take proceedings "at reasonable intervals" before a court to put in issue the "lawfulness" – within the meaning of the Convention – of his detention;

(b) Article 5 § 4 requires that the procedure followed have a judicial character and give to the individual concerned guarantees appropriate to the kind of deprivation of liberty in question; in order to determine whether a proceeding provides adequate guarantees, regard must be had to the particular nature of the circumstances in which such proceeding takes place;

(c) the judicial proceedings referred to in Article 5 § 4 need not always be attended by the same guarantees as those required under Article 6 § 1 for civil or criminal litigation. Nonetheless, it is essential that the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation. Special procedural safeguards may prove called for in order to protect the interests of persons who, on account of their mental disabilities, are not fully capable of acting for themselves (see *Megyeri v. Germany*, 12 May 1992, § 22, Series A no. 237-A; also see *Stanev*, cited above, § 171).

164. This is so in cases where the original detention was initially authorised by a judicial authority (see *X v. the United Kingdom*, 5 November 1981, § 52, Series A no. 46), and it is all the more true in the circumstances of the present case, where the applicant's placement in the Kėdainiai Home was initiated by a private individual, namely the applicant's guardian, and decided upon by the municipal and social care authorities without any involvement on the part of the courts.

165. The Court accepts that the forms of judicial review may vary from one domain to another and may depend on the type of the deprivation of liberty at issue. It is not within the province of the Court to inquire into what would be the best or most appropriate system of judicial review in this sphere. However, in the present case the courts were not involved in deciding on the applicant's placement in the Kėdainiai Home at any moment or in any form. It appears that, in situations such as the applicant's, Lithuanian law does not provide for automatic judicial review of the lawfulness of admitting a person to and keeping him in an institution like the Kėdainiai Home. In addition, a review cannot be initiated by the person concerned if that person has been deprived of his legal capacity. In sum, the applicant was prevented from independently pursuing any legal remedy of a judicial character to challenge her continued involuntary institutionalisation.

166. The Government claimed that the applicant could have initiated legal proceedings through her guardians. However, that remedy was not directly accessible to her: the applicant fully depended on her legal guardian, her adoptive father, who had requested her placement in the Kėdainiai Home in the first place. The Court also observes that the applicant's current legal guardian is the Kėdainiai Home – the same social care institution which is responsible for her treatment and, furthermore, the same institution which the applicant had complained against on many occasions, including in court proceedings. In this context the Court considers that where a person capable of expressing a view, despite having

been deprived of legal capacity, is deprived of his liberty at the request of his guardian, he must be accorded an opportunity of contesting that confinement before a court, with separate legal representation. Lastly, as to the prospect of an inquiry carried out by the prosecuting authorities, the Court shares the applicant's observation that a prosecutorial inquiry cannot as such be regarded as judicial review satisfying the requirements of Article 5 § 4 of the Convention (see *Shtukaturov*, cited above, § 124).

167. In the light of the above, the Court dismisses the Government's preliminary objection of abuse of application and holds that there has also been a violation of Article 5 § 4 of the Convention.

## V. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION

168. Relying on Articles 3 and 8 of the Convention, the applicant complained of having been physically restrained on 25 January 2005, when she had been tied to a bed in an isolation room, and of the overall standard of medical treatment in the Kėdainiai Home. She also argued that she had been given poor quality food.

The Court considers that in the particular circumstances of the present case these complaints fall to be examined under Article 3 of the Convention, which reads, in so far as relevant as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

### A. The parties' submissions

169. The applicant submitted that she had been forced to take medication provided by the Kėdainiai Home with little or no information about its use. On occasions she had refused medication, but had generally acquiesced to its administration because of persistent pressure from the staff. The incident of 25 January 2005 had exemplified that pressure at its worst, though the coercion is generally less dramatic and persistent.

170. The applicant also complained that at the Kėdainiai institution she had been given out-of-date products to eat.

171. The Government argued that the measures used in respect of the applicant had been therapeutic and necessary. Turning to the events of 25 January 2005, they submitted that the social workers had decided on their own to tie down the applicant as they had been afraid for her life. Although the exact length of time that the applicant had been tied up for was not clear, it could have lasted for only fifteen to thirty minutes and had not continued any longer than necessary. During the incident the applicant had been forcibly injected with 10 mg of Haloperidol, whilst the average

therapeutic dosage of the said medication is 12 mg. Haloperidol is a common antipsychotic medicament prescribed for individuals suffering from schizophrenia in order to eliminate the symptoms of psychosis. According to the generally accepted principles of psychiatry, medical necessity had fully justified the treatment in issue. The Government also drew the Court's attention to the prosecutor's decision of 31 July 2006 to discontinue the pre-trial investigation in connection with the applicant's forced restraint. They also noted the absence of any other similar incidents at the Kėdainiai Home in respect of the applicant. The Government summed up that even if the treatment of the applicant on 25 January 2005 had had unpleasant effects, it had not reached the minimum level of severity required under Article 3 of the Convention.

172. As to the applicant's complaint that she had been provided poor quality food, the Government submitted that although the authorities had found out-of-date meat in the Kėdainiai Home, the meat had been frozen and had never been used for cooking. A follow-up report of 20 February 2006 did not contain any evidence that the applicant had complained of failure to provide any medical assistance to her in respect of alleged food poisoning. For the Government, the applicant's accusations towards the care institution were unsubstantiated and hence manifestly ill-founded.

### **B. The Court's assessment**

173. Referring to its settled case-law the Court reiterates that the position of inferiority and powerlessness which is typical of patients admitted on an involuntary basis to psychiatric hospitals calls for increased vigilance in reviewing whether the Convention has been complied with. While it is for the medical authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used, if necessary by force, to preserve the physical and mental health of patients who are entirely incapable of deciding for themselves and for whom they are therefore responsible, such patients nevertheless remain under the protection of Article 3, whose requirements permit of derogation.

The established principles of medicine are admittedly in principle decisive in such cases; as a general rule, a measure which is a therapeutic necessity cannot be regarded as inhuman or degrading. The Court must nevertheless satisfy itself that the medical necessity has been convincingly shown to exist (see *Herczegfalvy v. Austria*, 24 September 1992, § 82, Series A no. 244).

174. In this case it is above all the applicant's restraint on 25 January 2005 which appears worrying. However, the evidence before the Court is not sufficient to disprove the Government's suggestion that, according to the psychiatric principles generally accepted at the time, medical necessity justified the treatment in issue. Moreover, the applicant's allegations that the

use of restraint measures had been unlawful were dismissed by the prosecutors and the Court sees no valid reason to dispute their findings (see paragraphs 54-58 above). The Court also notes the Government's affirmation that there were no more similar incidents in the Kėdainiai Home in which physical restraint and supplementary medication had been used in respect of the applicant.

175. Turning to the applicant's submission of allegedly poor quality food and food poisoning, the Court notes with concern that out-of-date meat was found at the Kėdainiai Home (see paragraph 63 above). However, that fact alone is not sufficient to substantiate the applicant's accusations of inhuman or degrading treatment, as directed towards the Kėdainiai institution, to such an extent that an issue under Article 3 of the Convention would arise.

176. The Court accordingly finds that the above complaints must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

## VI. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

### A. Censorship of correspondence

177. The applicant alleged that the Kėdainiai Home had censored her correspondence, in breach of Article 8 of the Convention, which reads insofar as relevant as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

#### *1. The parties' submissions*

178. The applicant argued that her correspondence, including that with the Court, and her telephone conversations, as illustrated by the incident of 18 January 2005, had been censored by the Kėdainiai Home. She also submitted that she had been denied books and newspapers.

179. The Government disputed the applicant's submissions and argued that the residents of the Kėdainiai Home were guaranteed the right to receive periodicals and personal correspondence. There were no requirements that the residents should send or receive their correspondence through the personnel of the facility.

180. As to the particular situation of the applicant, the Government underlined that there had been neither stopping nor censorship of any of her communications, such as telephone conversations or letters, including those with the Court. Such allegations were totally unsubstantiated and there was no proof that any acts of interception of communications had occurred. As regards the only specified incident involving the telephone call from Ms M. Buržinskienė on 18 January 2005, which the applicant had not been invited to answer, the Government noted that in the context of a more intensified deterioration of the applicant's health, the Kėdainiai Home personnel might have decided not to have the applicant temporarily disturbed. Nonetheless, since 2005 the applicant had possessed several of her own mobile phones and had used them at her own convenience and without hindrance. Furthermore, the applicant had not indicated either the addressees of her supposedly intercepted correspondence, or, at least, the approximate dates of such letters. Lastly, the Government submitted that the Kėdainiai Home had a room with newspapers, periodicals and books, to which all the residents, including the applicant, had unrestricted access.

Relying on the above considerations, the Government argued that the applicant's complaint was manifestly ill-founded.

## *2. The Court's assessment*

181. The Court recalls its case-law to the effect that telephone calls made from business premises, as well as from the home, may be covered by the notions of "private life" and "correspondence" within the meaning of Article 8 § 1 (see *Halford v. the United Kingdom*, 25 June 1997, § 44, *Reports of Judgments and Decisions* 1997-III). Turning to the applicant's situation, it observes that on 18 January 2005 the applicant was indeed prevented from receiving a telephone call from Ms Buržinskienė. However, taking into account the applicant's medical diagnosis and the explanations provided by the Government, the Court is not ready to hold that on that occasion the applicant's rights under Article 8 were limited more than was strictly necessary. The Court also notes that this part of the complaint has been raised out of time, as required by Article 35 § 1 of the Convention.

182. Furthermore, having examined the materials submitted by the parties, the Court finds the applicant's other complaints in this part of the application not sufficiently substantiated and therefore rejects them as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

## **B. Visits**

### *1. The parties' submissions*

183. The applicant further argued that her ability to build and sustain relationships had also been limited due to restrictions placed on her capacity to receive visitors and telephone calls. The applicant has had very little contact with members of the community outside the facility. Outsiders' visits are generally limited and most visitors may not be received in private. The director of the Kėdainiai Home had in the past restricted visits from outsiders after the applicant's institutionalisation, upon a request from her guardian. The list of visitors maintained by the Kėdainiai Home showed that between 2 August 2004 and 25 December 2006 only the applicant's adoptive father had visited her, with few exceptions. Before the applicant got her own mobile phone, she had had to use the facilities provided by the institution. At that time, she had only been able to receive calls through the Kėdainiai Home's switchboard. She relied upon the right to respect for private and family life under the above-cited Article 8 of the Convention.

184. The Government pointed out that the applicant, as with the other residents of the Kėdainiai Home, was entitled to unrestricted visits by her relatives and her court-appointed guardians. As to other visitors, such individuals could visit residents upon having obtained the management's permission, which was required in order to protect the interests and the safety of the residents of the institution.

185. The Government submitted that the applicant's adoptive father, as her guardian, had requested that the Kėdainiai Home prevent D.G.'s negative influence over the applicant and restrict her visits in order to avoid the applicant's destabilisation. Only once on 18 August 2004, in accordance with that request and also having the oral consent of the in-house psychiatrist, had D.G.'s permission to visit been denied. In that connection, the Government also referred to a doctor's report concerning the negative influence of D.G. over the applicant. Relying on the record of visitors to the Kėdainiai Home, the Government asserted that, contrary to what had been said by the applicant, she had received visitors. In contrast to what had been suggested by the applicant, it had not been her relatives, but rather her friends who had most often visited her.

186. In the light of the above, the Government submitted that the applicant's complaint was manifestly ill-founded.

### *2. The Court's assessment*

187. The Court reiterates that Article 8 of the Convention is intended to protect individuals from arbitrary interference by the State in their private and family life, home and correspondence. The Court does not consider it possible or necessary to attempt an exhaustive definition of the notion of

“private life”. However, it would be too restrictive to limit the notion to an “inner circle” in which the individual may live his own personal life as he chooses and to entirely exclude therefrom the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings (see *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B).

188. Turning to the applicant’s case, the Court notes that, except for one occasion on which D.G. was not allowed to see her on 18 August 2004, the applicant has not substantiated her pleas of social isolation and restrictions on having people visit her. Even assuming that these matters have been raised in time, the Court is not ready to disagree with the Government’s suggestion that that single restriction was aimed at the protection of the applicant’s mental health and was thus in compliance with the requirements of Article 8 of the Convention.

189. The applicant complained that by her admission to the Kėdainiai Home she had been segregated from society and cut off from social networks. Whilst acknowledging that because of her involuntary stay in the institution the applicant indeed could have faced certain restrictions in contacting others, the Court nonetheless observes that between 2 August 2004 and 25 December 2006 the applicant received one or more visitors on forty-two separate occasions. Of those visits, her friends, relatives and D.G. saw the applicant thirty-eight times (see paragraph 31 above). Lastly, the applicant had herself admitted that at one point she had got a mobile phone, which helped her to maintain contact with the outside world.

190. In the light of the foregoing, the Court considers that this part of the applicant’s complaint is manifestly ill-founded within the meaning of Article 35 § 3 and therefore inadmissible in accordance with Article 35 § 4 of the Convention.

## VII. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

191. The applicant complained that she had been prevented from practising her religion whilst resident in the Kėdainiai Home, in breach of Article 9 of the Convention.

192. The Government submitted that the applicant’s complaint was purely abstract in nature. It was not indicated in the applicant’s complaint when in particular she had been barred or impeded from practising her religion. Pursuant to the Bylaws of the Kėdainiai facility, the residents thereof had the right to practise their chosen religion and to attend a place of worship.



193. The Court has examined the above complaint as submitted by the applicant. However, having regard to all the material in its possession, it finds the complaint wholly unsubstantiated and therefore rejects it as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

## VIII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

194. Relying upon Article 13 of the Convention, the applicant also complained that she had had no effective domestic remedies at her disposal to seek redress for the alleged violations of which she had complained to the Court. Article 13 of the Convention provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

### A. The parties’ submissions

#### 1. *The applicant*

195. The applicant submitted at the outset that she is a very vulnerable individual. She is legally incapacitated with a history of mental health problems and has been admitted to a psychiatric institution against her will for an indeterminate period. The applicant’s guardian, who has the power to take decisions on all her aspects of life, is the care institution itself. In the applicant’s view, on account of her vulnerability, Article 13 of the Convention required that the State take supplementary measures to make sure that she could have benefited from effective remedies for the violations of her rights.

196. The applicant pointed out that she does not have independent standing to initiate any civil proceedings. Only once had she been successful in initiating court proceedings, namely those before the Kaunas District Court in 2005 concerning the change of guardianship. However, even then it had been not possible to pursue that remedy in full, given that the Kaunas District Court had decided to refuse the applicant’s request for legal assistance on the grounds that she had been represented by her legal guardian, who already had a lawyer.

197. The applicant further submitted that neither could she exercise her right to an effective domestic remedy through other persons. As concerns her guardian, who was her legal representative in accordance with the law, this remedy had been purely discretionary. More importantly, it was difficult to conceive how this remedy could have worked with regard to complaints challenging decisions taken by the guardian him, her or itself on the applicant’s behalf, such as the decision to hospitalise the applicant in the

institution, or the decision by the Kėdainiai Home to restrict visitors' access to the applicant.

198. The applicant also argued that she could not effectively act through the Social Services Department or the public prosecutor either. As concerns the first body, she emphasised the purely discretionary powers of the social services department and doubted the impartiality of an institution which had to a large degree been responsible for the appointment of her guardians and for her hospitalisation in the institution. As concerns the prosecutor, in the applicant's view, his decisions were not binding and, as practice had showed, the prosecutor had invariably rejected the applicant's complaints, mostly deferring to the decisions taken by the guardians or the social service authorities.

199. Lastly, the applicant submitted that decisions to remove incapacitation, although theoretically possible, were exceptional. Most importantly, the ability to bring an action to restore legal capacity did not belong to incapacitated persons themselves, but rather to their guardian. For most people, incapacitation is for life.

## *2. The Government*

200. The Government contested the applicant's arguments. Whilst acknowledging that the applicant had no independent standing in the domestic proceedings, the Government contended that she had been able to effectively act through her guardian, who had been her legal representative. They also pointed to the Kaunas City District Court's decision of 7 November 2007 to accept the applicant's application for change of her guardian for examination. For the Government, it could be presumed that the district court had reviewed the applicant's request to reopen the proceedings with a high degree of care because of the essence of the applicant's request – appointment of a guardian. Even though the court had refused the applicant's request to have separate legal assistance, that refusal had been based on domestic law, pursuant to which a guardian is the legal representative of an incapacitated person. Furthermore, the actions of the applicant's guardian had been supervised by the social services authorities, thus protecting the interests of the applicant.

201. The Government next argued that the protection of the rights and interests of the applicant fell within the notion of public interest. Thus the applicant had been able to apply to the prosecutor, who, in turn, had been entitled to file a civil claim or an administrative complaint. In this context the Government referred to the decisions of 3 September 2004 and 31 July 2006, by which the prosecutors had discontinued the official investigation into the complaints about alleged deprivation of liberty of the applicant. However, having considered the complaints to be unfounded, the prosecutors saw no reason to apply to the domestic courts in order to protect the public interest.

202. As to an effective remedy for the applicant to complain of the alleged violations of Articles 8 and 9 of the Convention regarding her living conditions, the Government contended that, pursuant to the Law on Social Services, the applicant could have complained to social care officials, and, in the event that they dismissed her complaint, to the courts. Various complaints made by the applicant regarding her allegedly inadequate living conditions and ill-treatment in the Kėdainiai Home had been investigated by a number of municipal officials and interdepartmental panels, which had found no violations of the applicant's rights. Moreover, neither a prosecutor nor the applicant's guardian had ever applied to the courts with a claim for damages for any alleged violations of the applicant's rights.

In sum, the applicant had had domestic remedies which were effective, available in theory and in practice, and capable of providing redress in respect of the applicant's complaints and which had offered reasonable prospects of success.

203. Lastly, the Government submitted that declaration of the recovery of a person's legal capacity upon the amelioration of his or her mental health was quite common practice in Lithuania. Such requests could be submitted by a social care institution, acting as a guardian, on its own motion. Moreover, a request to annul an incapacitation decision could also be lodged by a prosecutor in the public interest. Nonetheless, as regards the applicant, the circumstances warranting her incapacitation have never disappeared as no amelioration of her mental state has ever been established that would give her guardian, be it her adoptive father or the Kėdainiai Home, or the prosecutor grounds to apply to a court for the reinstatement of her legal capacity.

### **B. The Court's assessment**

204. The Court finds that this complaint is linked to the complaints submitted under Articles 5 and 6 of the Convention, and it should therefore be declared admissible.

205. The Court recalls its case-law to the effect that Article 5 § 4 provides a *lex specialis* in relation to the more general requirements of Article 13 (see *Chahal v. the United Kingdom*, 15 November 1996, § 126, *Reports of Judgments and Decisions* 1996-V). It also reiterates that the requirements of Article 13 are less strict than, and are here absorbed by, those of Article 6 (see, among many authorities, *Kamasinski v. Austria*, 19 December 1989, § 110, Series A no. 168). The Court further notes that, in analysing the fairness of the civil proceedings concerning the applicant's guardianship and the lawfulness of the applicant's involuntary placement in the Kėdainiai Home, it has already taken account of the fact that the applicant is deprived of legal capacity and thus is not able to initiate any legal proceedings before the domestic courts. When analysing the above

complaints, the Court has also noted that the other remedies suggested by the Government, be it a possibility to act through her guardians or a request by the applicant to complain to a prosecutor or her complaints to the social care authorities, have not been proved to be feasible in the applicant's case. This being so, having regard to its conclusions under Articles 5 § 4 and 6 of the Convention, the Court does not consider it necessary to re-examine these aspects of the case separately through the prism of the "effective remedies" requirement of Article 13.

#### IX. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

206. Relying upon Article 2 of the Convention, the applicant also complained that, due to overmedication, her life is at risk. Relying on Article 10 of the Convention, the applicant alleged that one of the reasons for her involuntary psychiatric hospitalisation had been her bold poetic expression. Finally, without citing any Article of the Convention or its Protocols, the applicant complained of a violation of her property rights by her State-appointed guardian.

207. Having examined the materials submitted by the parties, the Court finds that the applicant has not provided sufficient evidence to substantiate her claims. It notes that, according to the Government, the applicant had received and had had access to newspapers and reading materials (see paragraph 180 above). It further observes that the applicant's complaints as to alleged breach of her property rights were dismissed by the prosecutors (see paragraph 52 above). The Court therefore rejects this part of the application as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

208. Relying upon Article 3 of the Convention, the applicant complained of her involuntary hospitalisation and treatment in the Kaunas Psychiatric Hospital from 30 June 2004 to 2 August 2004. The Court notes, however, that the applicant submitted this complaint on 28 March 2006. Accordingly, this part of the application has not been lodged within six months of the final effective measure or decision, as required by Article 35 § 1 of the Convention. It must therefore be rejected pursuant to Article 35 § 4.

#### X. APPLICATION OF ARTICLE 41 OF THE CONVENTION

209. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### **A. Damage**

210. The applicant claimed 300,000 euros (EUR) in respect of non-pecuniary damage.

211. The Government submitted that the above claim was wholly unsubstantiated.

212. The Court notes that it has found a violation of Article 5 § 4 as well as a violation of Article 6 § 1 in the present case. As regards the non-pecuniary damage already sustained, the Court finds that the violation of the Convention has indisputably caused the applicant substantial damage. In these circumstances, it considers that the applicant has experienced suffering and frustration, for which the mere finding of a violation cannot compensate. Making its assessment on an equitable basis, the Court awards the applicant EUR 8,000 in respect of non-pecuniary damage.

### **B. Costs and expenses**

213. The applicant claimed the sum of EUR 16,609.85 for costs and expenses before the Court, broken down as follows: EUR 62 for secretarial costs; EUR 3,500 in relation to legal fees for preparation of the submissions made by the applicant's lawyer; and EUR 13,047.85 for fees for legal advice from *Interrights*.

214. The Government submitted that the sum was excessive.

215. The Court notes that the applicant was granted legal aid under the Court's legal aid scheme, under which the sum of EUR 850 has been paid to the applicant's lawyer to cover the submission of the applicant's observations and additional expenses.

216. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Ruling on an equitable basis and taking into account the sums already paid to the applicant by the Council of Europe in legal aid, the Court awards the applicant EUR 5,000.

### **C. Default interest**

217. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

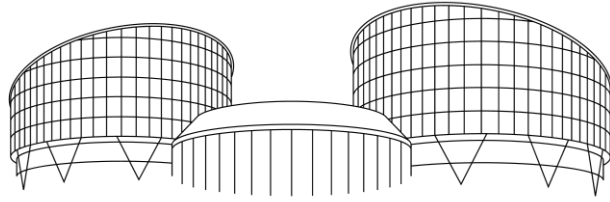
1. *Dismisses* the Government's objection concerning the applicant's victim status;
2. *Joins to the merits* the Government's preliminary objection of abuse of application and *dismisses* it;
3. *Declares* the complaints under Article 5 § 1 and 4 (concerning involuntary placement in the Kėdainiai Home and the applicant's inability to obtain judicial review of her continuous placement), Article 6 § 1 (concerning the proceedings for change of guardianship), and Article 13 (concerning the absence of effective remedies) admissible, and the remainder of the application inadmissible;
4. *Holds* that there has been no violation of Article 5 § 1 of the Convention as regards the lawfulness of the applicant's involuntary placement in the Kėdainiai Home;
5. *Holds* that there has been a violation of Article 5 § 4 of the Convention as regards the applicant's inability to obtain her release from the Kėdainiai Home;
6. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account the unfairness of the guardianship proceedings;
7. *Holds* that there is no need to examine the applicant's complaint under Article 13 of the Convention;
8. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
    - (i) EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage;
    - (ii) EUR 5,000 (five thousand euros) in respect of costs and expenses;
    - (iii) any tax that may be chargeable on the above amounts;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith  
Registrar

Françoise Tulkens  
President



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

**CASE OF STANEV v. BULGARIA**

*(Application no. 36760/06)*

JUDGMENT

STRASBOURG

17 January 2012

*This judgment is final but may be subject to editorial revision.*





**In the case of Stanev v. Bulgaria,**

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Nicolas Bratza, *President*,  
Jean-Paul Costa,  
Françoise Tulkens,  
Josep Casadevall,  
Nina Vajić,  
Dean Spielmann,  
Lech Garlicki,  
Khanlar Hajiyev,  
Egbert Myjer,  
Isabelle Berro-Lefèvre,  
Luis López Guerra,  
Mirjana Lazarova Trajkovska,  
Zdravka Kalaydjieva,  
Ganna Yudkivska,  
Vincent A. de Gaetano,  
Angelika Nußberger,  
Julia Laffranque, *judges*,

and Vincent Berger, *Jurisconsult*,

Having deliberated in private on 9 February and 7 December 2011,

Delivers the following judgment, which was adopted on the last-mentioned date:

**PROCEDURE**

1. The case originated in an application (no. 36760/06) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Bulgarian national, Mr Rusi Kosev Stanev (“the applicant”), on 8 September 2006.

2. The applicant, who had been granted legal aid, was represented by Ms A. Genova, a lawyer practising in Sofia, and Ms V. Lee and Ms L. Nelson, lawyers from the Mental Disability Advocacy Center, a non-governmental organisation based in Budapest. The Bulgarian Government (“the Government”) were represented by their Agents, Ms N. Nikolova and Ms R. Nikolova, of the Ministry of Justice.

3. The applicant complained about his placement in a social care home for people with mental disorders and his inability to obtain permission to leave the home (Article 5 §§ 1, 4 and 5 of the Convention). Relying on Article 3, taken alone and in conjunction with Article 13, he further

complained about the living conditions in the home. He also submitted that he had no access to a court to seek release from partial guardianship (Article 6 of the Convention). Lastly, he alleged that the restrictions resulting from the guardianship regime, including his placement in the home, infringed his right to respect for his private life within the meaning of Article 8, taken alone and in conjunction with Article 13 of the Convention.

4. The application was allocated to the Fifth Section of the Court (Rule 52 § 1 of the Rules of Court). On 29 June 2010, after a hearing on admissibility and the merits had been held on 10 November 2009 (Rule 54 § 3), it was declared admissible by a Chamber of that Section composed of Peer Lorenzen, President, Renate Jaeger, Karel Jungwier, Rait Maruste, Isabelle Berro-Lefèvre, Mirjana Lazarova Trajkovska and Zdravka Kalaydjieva, judges, and also of Claudia Westerdiek, Section Registrar. On 14 September 2010 a Chamber of the same Section, composed of Peer Lorenzen, President, Renate Jaeger, Rait Maruste, Mark Villiger, Isabelle Berro-Lefèvre, Mirjana Lazarova Trajkovska and Zdravka Kalaydjieva, judges, and also of Claudia Westerdiek, Section Registrar, relinquished jurisdiction in favour of the Grand Chamber, neither of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72).

5. The composition of the Grand Chamber was determined in accordance with the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

6. The applicant and the Government each filed written observations on the merits.

7. In addition, third-party comments were received from the non-governmental organisation Interights, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3).

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 9 February 2011 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Ms N. NIKOLOVA, Ministry of Justice,

Ms R. NIKOLOVA, Ministry of Justice,

*Co-Agents;*

(b) *for the applicant*

Ms A. GENOVA,

Ms V. LEE,

Ms L. NELSON,

*Counsel,*

*Advisers.*

The Court heard addresses by them. The applicant was also present.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1956 in Ruse, where he lived until December 2002 and where his half-sister and his father's second wife, his only close relatives, also live. On 20 December 1990 a panel of occupational physicians declared him unfit to work. The panel found that as a result of having been diagnosed with schizophrenia in 1975, the applicant had a 90% degree of disablement but did not require assistance. He is in receipt of an invalidity pension on that account.

#### **A. The applicant's placement under partial guardianship and placement in a social care home for people with mental disorders**

10. On an unspecified date in 2000, at the request of the applicant's two relatives, the Ruse regional prosecutor applied to the Ruse Regional Court (*Окръжен съд*) for a declaration of total legal incapacity in respect of the applicant. In a judgment of 20 November 2000 the court declared the applicant to be partially incapacitated on the ground that he had been suffering from simple schizophrenia since 1975 and his ability to manage his own affairs and interests and to realise the consequences of his own acts had been impaired. The court found that the applicant's condition was not so serious as to warrant a declaration of total incapacity. It observed, in particular, that during the period from 1975 to 2000 he had been admitted to a psychiatric hospital on several occasions. The court took into account an expert medical report produced in the course of the proceedings and interviewed the applicant. Furthermore, according to certain other people it interviewed, the applicant had sold all his possessions, begged for a living, spent all his money on alcohol and became aggressive whenever he drank.

11. That judgment was upheld in a judgment of 12 April 2001 by the Veliko Tarnovo Court of Appeal (*Апелативен съд*) on an appeal by the applicant, and was subsequently transmitted to the Ruse Municipal Council on 7 June 2001 for the appointment of a guardian.

12. Since the applicant's family members had refused to take on any guardianship responsibilities, on 23 May 2002 the Municipal Council appointed Ms R.P., a council officer, as the applicant's guardian until 31 December 2002.

13. On 29 May 2002 R.P. asked the Ruse social services to place the applicant in a social care home for people with mental disorders. She appended to the application form a series of documents including a psychiatric diagnosis. The social services drew up a welfare report on the applicant, noting on 23 July 2002 that he was suffering from schizophrenia, that he lived alone in a small, run-down annexe to his half-sister's house

and that his half-sister and his father's second wife had stated that they did not wish to act as his guardian. The requirements for placement in a social care home were therefore deemed to be fulfilled.

14. On 10 December 2002 a welfare placement agreement was signed between R.P. and the social care home for adults with mental disorders near the village of Pastra in the municipality of Rila ("the Pastra social care home"), an institution under the responsibility of the Ministry of Labour and Social Policy. The applicant was not informed of the agreement.

15. Later that day, the applicant was taken by ambulance to the Pastra social care home, some 400 km from Ruse. Before the Court, he stated that he had not been told why he was being placed in the home or for how long; the Government did not dispute this.

16. On 14 December 2002, at the request of the director of the Pastra social care home, the applicant was registered as having his home address in the municipality of Rila. The residence certificate stated that his address had been changed for the purpose of his "permanent supervision". According to the most recent evidence submitted in February 2011, the applicant was still living in the home at that time.

17. On 9 September 2005 the applicant's lawyer requested the Rila Municipal Council to appoint a guardian for her client. In a letter dated 16 September 2005 she was informed that the Municipal Council had decided on 2 February 2005 to appoint the director of the Pastra social care home as the applicant's guardian.

## **B. The applicant's stay in the Pastra social care home**

### *1. Provisions of the placement agreement*

18. The agreement signed between the guardian R.P. and the Pastra social care home on 10 December 2002 (see paragraph 14 above) did not mention the applicant's name. It stated that the home was to provide food, clothing, medical services, heating and, obviously, accommodation, in return for payment of an amount determined by law. It appears that the applicant's entire invalidity pension was transferred to the home to cover that amount. The agreement stipulated that 80% of the sum was to be used as payment for the services provided and the remaining 20% put aside for personal expenses. According to the information in the case file, the applicant's invalidity pension, as updated in 2008, amounted to 130 Bulgarian leva (BGN – approximately 65 euros (EUR)). The agreement did not specify the duration of the provision of the services in question.

## *2. Description of the site*

19. The Pastra social care home is located in an isolated area of the Rila mountains in south-western Bulgaria. It is accessible via a dirt track from the village of Pastra, the nearest locality 8 km away.

20. The home, built in the 1920s, comprises three buildings, where its residents, all male, are housed according to the state of their mental health. According to a report produced by the Social Assistance Agency in April 2009, there were seventy-three people living in the home, one was in hospital and two had absconded. Among the residents, twenty-three were entirely lacking legal capacity, two were partially lacking capacity and the others enjoyed full legal capacity. Each building has a yard surrounded by a high metal fence. The applicant was placed in block 3 of the home, reserved for residents with the least serious health problems, who were able to move around the premises and go alone to the nearest village with prior permission.

21. According to the applicant, the home was decaying, dirty and rarely heated in winter, and as a result, he and the other residents were obliged to sleep in their coats during winter. The applicant shared a room measuring 16 square metres with four other residents and the beds were practically side by side. He had only a bedside table in which to store his clothes, but he preferred to keep them in his bed at night for fear that they might be stolen and replaced with old clothes. The home's residents did not have their own items of clothing because clothes were not returned to the same people after being washed.

## *3. Diet and hygiene and sanitary conditions*

22. The applicant asserted that the food provided at the home was insufficient and of poor quality. He had no say in the choice of meals and was not allowed to help prepare them.

23. Access to the bathroom, which was unhealthy and decrepit, was permitted once a week. The toilets in the courtyard, which were unhygienic and in a very poor state of repair, consisted of holes in the ground covered by dilapidated shelters. Each toilet was shared by at least eight people. Toiletries were available only sporadically.

## *4. Recent developments*

24. In their memorial before the Grand Chamber the Government stated that renovation work had been carried out in late 2009 in the part of the home where the applicant lived, including the sanitary facilities. The home now had central heating. The diet was varied and regularly included fruit and vegetables as well as meat. Residents had access to television, books and games. The State provided them all with clothes. The applicant did not dispute these assertions.

### *5. Journeys undertaken by the applicant*

25. The home's management kept hold of the applicant's identity papers, allowing him to leave the home only with special permission from the director. He regularly went to the village of Pastra. It appears that during the visits he mainly provided domestic help to villagers or carried out tasks at the village restaurant.

26. Between 2002 and 2006 the applicant returned to Ruse three times on leave of absence. Each trip was authorised for a period of about ten days. The journey cost BGN 60 (approximately EUR 30), which was paid to the applicant by the home's management.

27. Following his first two visits to Ruse, the applicant returned to Pastra before the end of his authorised period of leave. According to a statement made by the director of the home to the public prosecutor's office on an unspecified date, the applicant came back early because he was unable to manage his finances and had no accommodation.

28. The third period of leave was authorised from 15 to 25 September 2006. After the applicant failed to return on the scheduled date, the director of the home wrote to the Ruse municipal police on 13 October 2006, asking them to search for the applicant and transfer him to Sofia, where employees of the home would be able to collect him and take him back to Pastra. On 19 October 2006 the Ruse police informed the director that the applicant's whereabouts had been discovered but that the police could not transfer him because he was not the subject of a wanted notice. He was driven back to the social care home on 31 October 2006, apparently by staff of the home.

### *6. Opportunities for cultural and recreational activities*

29. The applicant had access to a television set, several books and a chessboard in a common room at the home until 3 p.m., after which the room was kept locked. The room was not heated in winter and the residents kept their coats, hats and gloves on when inside. No other social, cultural or sports activities were available.

### *7. Correspondence*

30. The applicant submitted that the staff at the social care home had refused to supply him with envelopes for his correspondence and that as he did not have access to his own money, he could not buy any either. The staff would ask him to give them any sheets of paper he wished to post so that they could put them in envelopes and send them off for him.

### *8. Medical treatment*

31. It appears from a medical certificate of 15 June 2005 (see paragraph 37 below) that following his placement in the home in 2002, the

applicant was given anti-psychotic medication (carbamazepine (600mg)), under the monthly supervision of a psychiatrist.

32. In addition, at the Grand Chamber hearing the applicant's representatives stated that their client had been in stable remission since 2006 and had not undergone any psychiatric treatment in recent years.

**C. Assessment of the applicant's social skills during his stay in Pastra and conclusions of the psychiatric report drawn up at his lawyer's request**

33. Once a year, the director of the social care home and the home's social worker drew up evaluation reports on the applicant's behaviour and social skills. The reports indicated that the applicant was uncommunicative, preferred to stay on his own rather than join in group activities, refused to take his medication and had no close relatives to visit while on leave of absence. He was not on good terms with his half-sister and nobody was sure whether he had anywhere to live outside the social care home. The reports concluded that it was impossible for the applicant to reintegrate into society, and set the objective of ensuring that he acquired the necessary skills and knowledge for social resettlement and, in the long term, reintegration into his family. It appears that he was never offered any therapy to that end.

34. The case file indicates that in 2005 the applicant's guardian asked the Municipal Council to grant a social allowance to facilitate his reintegration into the community. Further to that request, on 30 December 2005 the municipal social assistance department carried out a "social assessment" (*социална оценка*) of the applicant, which concluded that he was incapable of working, even in a sheltered environment, and had no need for training or retraining, and that in those circumstances, he was entitled to a social allowance to cover the costs of his transport, subsistence and medication. On 7 February 2007 the municipal social assistance department granted the applicant a monthly allowance of BGN 16.50 (approximately EUR 8). On 3 February 2009 the allowance was increased to BGN 19.50 (approximately EUR 10).

35. In addition, at his lawyer's request, the applicant was examined on 31 August 2006 by Dr V.S., a different psychiatrist from the one who regularly visited the social care home, and by a psychologist, Ms I.A. The report drawn up on that occasion concluded that the diagnosis of schizophrenia given on 15 June 2005 (see paragraph 37 below) was inaccurate in that the patient did not display all the symptoms of that condition. It stated that, although the applicant had suffered from the condition in the past, he had not shown any signs of aggression at the time of the examination, but rather a suspicious attitude and a slight tendency towards "verbal aggression", that he had not undergone any treatment for the condition between 2002 and 2006 and that his health had visibly



stabilised. The report noted that no risk of deterioration of his mental health had been observed and stated that, in the opinion of the home's director, the applicant was capable of reintegrating into society.

36. According to the report, the applicant's stay in the Pastra social care home was very damaging to his health and it was desirable that he should leave the home; otherwise, he was at risk of developing "institutionalisation syndrome" the longer he stayed there. The report added that it would be more beneficial to his mental health and social development to allow him to integrate into community life with as few restrictions as possible, and that the only aspect to monitor was his tendency towards alcohol abuse, which had been apparent prior to 2002. In the view of the experts who had examined the applicant, the behaviour of an alcohol-dependent person could have similar characteristics to that of a person with schizophrenia; accordingly, vigilance was required in the applicant's case and care should be taken not to confuse the two conditions.

#### **D. The applicant's attempts to obtain release from partial guardianship**

37. On 25 November 2004 the applicant, through his lawyer, asked the public prosecutor's office to apply to the Regional Court to have his legal capacity restored. On 2 March 2005 the public prosecutor requested the Pastra social care home to send him a doctor's opinion and other medical certificates concerning the applicant's disorders in preparation for a possible application to the courts for restoration of his legal capacity. Further to that request, the applicant was admitted to a psychiatric hospital from 31 May to 15 June 2005 for a medical assessment. In a certificate issued on the latter date, the doctors attested that the applicant showed symptoms of schizophrenia. As his health had not deteriorated since he had been placed in the home in 2002, the regime to which he was subject there had remained unchanged. He had been on maintenance medication since 2002 under the monthly supervision of a psychiatrist. A psychological examination had revealed that he was agitated, tense and suspicious. His communication skills were poor and he was unaware of his illness. He had said that he wanted to leave the home at all costs. The doctors did not express an opinion either on his capacity for resettlement or on the need to keep him in the Pastra social care home.

38. On 10 August 2005 the regional prosecutor refused to bring an action for restoration of the applicant's legal capacity on the grounds that, in the opinion of the doctors, the director of the Pastra social care home and the home's social worker, the applicant was unable to cope on his own, and that the home, where he could undergo medical treatment, was the most suitable place for him to live. The applicant's lawyer challenged the refusal to bring the action, arguing that her client should have the opportunity to

assess by himself whether or not, having regard to the living conditions at the home, it was in his interests to remain there. She pointed out that the enforced continuation of his stay in the home, on the pretext of providing him with treatment in his own interests, amounted in practice to a deprivation of liberty, a situation that was unacceptable. A person could not be placed in an institution without his or her consent. In accordance with the legislation in force, anyone under partial guardianship was free to choose his or her place of residence, with the guardian's agreement. The choice of residence was therefore not a matter within the competence of the prosecution service. Despite those objections, the regional prosecutor's refusal was upheld on 11 October 2005 by the appellate prosecutor, and subsequently on 29 November 2005 by the chief public prosecutor's office at the Supreme Court of Cassation.

39. On 9 September 2005 the applicant, through his lawyer, asked the mayor of Rila to bring a court action for his release from partial guardianship. In a letter of 16 September 2005 the mayor of Rila refused his request, stating that there was no basis for such an action in view of the medical certificate of 15 June 2005, the opinions of the director and the social worker and the conclusions reached by the public prosecutor's office. On 28 September 2005 the applicant's lawyer applied to the Dupnitsa District Court for judicial review of the mayor's decision, under Article 115 of the Family Code (see paragraph 49 below). In a letter of 7 October 2005 the District Court stated that since the applicant was partially lacking legal capacity, he was required to submit a valid form of authority certifying that his lawyer was representing him, and that it should be specified whether his guardian had intervened in the procedure. On an unspecified date the applicant's lawyer submitted a copy of the form of authority signed by the applicant. She also requested that the guardian join the proceedings as an interested party or that an *ad hoc* representative be appointed. On 18 January 2006 the court held a hearing at which the representative of the mayor of Rila objected that the form of authority was invalid as it had not been countersigned by the guardian. The guardian, who was present at the hearing, stated that he was not opposed to the applicant's application, but that the latter's old-age pension was insufficient to meet his needs and that, accordingly, the Pastra social care home was the best place for him to live.

40. The Dupnitsa District Court gave judgment on 10 March 2006. As to the admissibility of the application for judicial review, it held that although the applicant had instructed his lawyer to represent him, she was not entitled to act on his behalf since the guardian had not signed the form of authority. However, it held that the guardian's endorsement of the application at the public hearing had validated all the procedural steps taken by the lawyer, and that the application was therefore admissible. As to the merits, the court dismissed the application, finding that the guardian had no legitimate interest in contesting the mayor's refusal, given that he could apply

independently and directly for the applicant to be released from partial guardianship. Since the judgment was not subject to appeal, it became final.

41. Lastly, the applicant asserted that he had made several oral requests to his guardian to apply for his release from partial guardianship and to allow him to leave the home. However, his requests had always been refused.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Legal status of persons placed under partial guardianship and their representation before the courts

42. Section 5 of the Persons and Family Act of 9 August 1949 provides that persons who are unable to look after their own interests on account of mental illness or mental deficiency must be entirely deprived of legal capacity and declared legally incapable. Adults with milder forms of such disorders are to be partially incapacitated. Persons who are entirely deprived of legal capacity are placed under full guardianship (*настояничество*), whereas those who are partially incapacitated are placed under partial guardianship (*попечителство* – literally “trusteeship”). In accordance with sections 4 and 5 of the Act, persons under partial guardianship may not perform legal transactions without their guardian’s consent. They may, however, carry out ordinary acts forming part of everyday life and have access to the resources obtained in consideration for their work. Accordingly, the guardian of a partially incapacitated person cannot independently perform legal transactions that are binding on that person. This means that contracts signed only by the guardian, without the consent of the person partially lacking legal capacity, are invalid.

43. Under Article 16, paragraph 2, of the Code of Civil Procedure (“the CCP”), persons under full guardianship are represented before the courts by their guardian. Persons under partial guardianship, however, are entitled to take part in court proceedings, but require their guardian’s consent. Accordingly, the guardian of a partially incapacitated person does not perform the role of a legal representative. The guardian cannot act on behalf of the person under partial guardianship, but may express agreement or disagreement with the person’s individual transactions (Сталев, Ж., *Българско гражданско процесуално право*, София, 2006 г., стр. 171). In particular, a person under partial guardianship may instruct a lawyer provided that the form of authority is signed by the guardian (*ibid.*, стр. 173).

## **B. Procedure for placement under partial guardianship**

44. There are two stages to the procedure for placing a person under partial guardianship: the declaration of partial incapacity and the appointment of a guardian.

### *1. Declaration of partial incapacity by the courts*

45. The first stage involves a judicial procedure which at the material time was governed by Articles 275-277 of the 1952 CCP, which have been reproduced unchanged in Articles 336-340 of the new 2007 CCP. A declaration of partial incapacity may be sought by the person's spouse or close relatives, by the public prosecutor or by any other interested party. The court reaches its decision after examining the person concerned at a public hearing – or, failing that, after forming a first-hand impression of the person's condition – and interviewing the person's close relatives. If the statements thus obtained are insufficient, the court may have recourse to other evidence, such as an expert medical assessment. According to domestic case-law, an assessment must be ordered where the court is unable to conclude from any other information in the file that the request for deprivation of legal capacity is unfounded (Решение на ВС № 1538 от 21.VIII.1961 г. по гр. д. № 5408/61 г.; Решение на ВС № 593 от 4.III.1967 г. по гр. д. № 3218/1966 г.).

### *2. Appointment of a guardian by the administrative authorities*

46. The second stage involves an administrative procedure for the appointment of a guardian, which at the material time was governed by Chapter X (Articles 109-128) of the 1985 Family Code ("the FC"); these provisions have been reproduced, with only minor amendments, in Articles 153-174 of the new 2009 FC. The administrative stage is conducted by an authority referred to as "the guardianship authority", namely the mayor or any other municipal council officer designated by him or her.

47. The guardian should preferably be appointed from among the relatives of the person concerned who are best able to defend his or her interests.

## **C. Review of measures taken by the guardian and possibility of replacement**

48. Measures taken by the guardian are subject to review by the guardianship authority. At the authority's request, the guardian must report on his or her activities. If any irregularities are observed, the authority may request that they be rectified or may order the suspension of the measures in question (see Article 126, paragraph 2, and Article 125 of the 1985 FC, and

Article 170 and Article 171, paragraphs 2 and 3, of the 2009 FC). It is unclear from domestic law whether persons under partial guardianship may apply to the mayor individually or through another party to suspend measures taken by the guardian.

49. Decisions by the mayor, as the guardianship authority, and any refusal by the mayor to appoint a guardian or to take other steps provided for in the FC are, for their part, amenable to judicial review. They may be challenged by interested parties or the public prosecutor before the district court, which gives a final decision on the merits (Article 115 of the 1985 FC). This procedure allows close relatives to request a change of guardian in the event of a conflict of interests (Решение на ВС № 1249 от 23.XII.1993 г. по гр. д. № 897/93 г.). According to domestic case-law, fully incapacitated persons are not among the “interested parties” entitled to initiate such proceedings (Определение № 5771 от 11.06.2003 г. на ВАС по адм. д. № 9248/2002). There is no domestic case-law showing that a partially incapacitated person is authorised to do so.

50. Furthermore, the guardianship authority may at any time replace a guardian who fails to discharge his or her duties (Article 113 of the 1985 FC). By Article 116 of the 1985 FC, a person cannot be appointed as a guardian where there is a conflict of interests between that person and the person under partial guardianship. Article 123 of the 1985 FC provides that a deputy guardian is to be appointed where the guardian is unable to discharge his or her duties or where there is a conflict of interests. In both cases, the guardianship authority may also appoint an *ad hoc* representative.

#### **D. Procedure for restoration of legal capacity**

51. By virtue of Article 277 of the 1952 CCP, this procedure is similar to the partial guardianship procedure. It is open to anyone entitled to apply for a person to be placed under partial guardianship, and also to the guardianship authority and the guardian. The above-mentioned provision has been reproduced in Article 340 of the 2007 CCP. On 13 February 1980 the Plenary Supreme Court delivered a decision (no. 5/79) aimed at clarifying certain questions concerning the procedure for deprivation of legal capacity. Paragraph 10 of the decision refers to the procedure for restoration of legal capacity and reads as follows:

“The rules applicable in the procedure for restoration of legal capacity are the same as those governing the procedure for deprivation of capacity (Article 277 and Article 275, paragraphs 1 and 2, of the CCP). The persons who requested the measure or the close relatives are treated as respondent parties in the procedure. There is nothing to prevent the party that applied for a person to be deprived of legal capacity from requesting the termination of the measure if circumstances have changed.

Persons under partial guardianship may request, either individually or with the consent of their guardian, that the measure be lifted. They may also ask the

guardianship authority or the guardianship council to bring an action under Article 277 of the CCP in the regional court which deprived them of legal capacity. In such cases, they must show that the application is in their interests by producing a medical certificate. In the context of such an action, they will be treated as the claimant. Where the guardian of a partially incapacitated person, the guardianship authority or the guardianship council (in the case of a fully incapacitated person) refuses to bring an action for restoration of legal capacity, the incapacitated person may ask the public prosecutor to do so (Постановление № 5/79 от 13.II.1980 г., Пленум на ВС).”

52. In addition, the Government cited a case in which proceedings for the review of the legal status of a person entirely deprived of legal capacity had been instituted at the guardian’s request and the person had been released from guardianship (Решение № 1301 от 12.11.2008 г. на ВКС по гр. Д. № 5560/2007 г., V г.о.).

#### **E. Validity of contracts signed by representatives of incapacitated persons**

53. Section 26(2) of the Obligations and Contracts Act 1950 provides that contracts that are in breach of the law or have been entered into in the absence of consent are deemed null and void.

54. In accordance with section 27 of the same Act, contracts entered into by representatives of persons deprived of legal capacity in breach of the applicable rules are deemed voidable. A ground of incurable nullity may be raised on any occasion, whereas a ground of voidability may be raised only by means of a court action. The right to raise a ground of voidability becomes time-barred after a period of three years from the date of release from partial guardianship if a guardian is not appointed. In other cases, the period in question begins to run from the date on which a guardian is appointed (section 32(2), in conjunction with section 115(1)(e), of the above-mentioned Act; see also Решение на ВС № 668 от 14.III.1963 г. по гр. д. № 250/63 г., I г. о., Решение на Окръжен съд – Стара Загора от 2.2.2010 г. по т. д. № 381/2009 г. на I състав, Решение на Районен съд Стара Загора № 459 от 19.5.2009 г. по гр. д. № 1087/2008).

#### **F. Place of residence of legally incapacitated persons**

55. By virtue of Article 120 and Article 122, paragraph 3, of the 1985 FC, persons deprived of legal capacity are deemed to reside at the home address of their guardian, unless “exceptional reasons” require them to live elsewhere. Where the place of residence is changed without the guardian’s consent, the guardian may request the district court to order the person’s return to the official address. By Article 163, paragraphs 2 and 3, of the 2009 FC, before reaching a decision in such cases, the court is required to interview the person under guardianship. If it finds that there are

“exceptional reasons”, it must refuse to order the person’s return and must immediately inform the municipal social assistance department so that protective measures can be taken.

56. The district court’s order may be appealed against to the president of the regional court, although its execution cannot be stayed.

### **G. Placement of legally incapacitated persons in social care homes for adults with mental disorders**

57. Under the Social Assistance Act 1998, social assistance is available to people who, for medical and social reasons, are incapable of meeting their basic needs on their own through work, through their own assets or with the help of persons required by law to care for them (section 2 of the Act). Social assistance consists of the provision of various financial benefits, benefits in kind and social services, including placement in specialised institutions. Such benefits are granted on the basis of an individual assessment of the needs of the persons concerned and in accordance with their wishes and personal choices (section 16(2)).

58. By virtue of the implementing regulations for the Social Assistance Act 1998 (*Правилник за прилагане на Закона за социално подпомагане*), three categories of institutions are defined as “specialised institutions” for the provision of social services: (1) children’s homes (homes for children deprived of parental care, homes for children with physical disabilities, homes for children with a mental deficiency); (2) homes for adults with disabilities (homes for adults with a mental deficiency, homes for adults with mental disorders, homes for adults with physical disabilities, homes for adults with sensory disorders, homes for adults with dementia), and (3) old people’s homes (regulation 36(3)). Social services are provided in specialised institutions where it is no longer possible to receive them in the community (regulation 36(4)). Under domestic law, placement of a legally incapacitated person in a social care home is not regarded as a form of deprivation of liberty.

59. Similarly, in accordance with Decree no. 4 of 16 March 1999 on the conditions for obtaining social services, adopted on 16 March 1999 (*Наредба № 4 за условията и реда за извършване на социални услуги*), adults with mental deficiencies are placed in specialised social care homes if it is impossible to provide them with the necessary medical care in a family environment (section 12, point (4), and section 27 of the Decree). Section 33(1), point (3), of the Decree provides that when a person is placed in a social care home, a medical certificate concerning the person’s state of health must be produced. By section 37(1) of the Decree, a placement agreement for the provision of social services is signed between the specialised institution and the person concerned or his or her legal representative, on the basis of a model approved by the Ministry of Labour

and Social Policy. The person may be transferred to another home or may leave the institution in which he or she has been placed: (1) at his or her request or at the request of his or her legal representative, submitted in writing to the director of the institution; (2) if there is a change in the state of his or her mental and/or physical health such that it no longer corresponds to the profile of the home; (3) in the event of failure to pay the monthly social-welfare contribution for more than one month; (4) in the event of systematic breaches of the institution's internal rules; or (5) in the event of a confirmed addiction to narcotic substances.

60. Furthermore, the system governing admission to a psychiatric hospital for compulsory medical treatment is set out in the Health Act 2005, which replaced the Public Health Act 1973.

#### **H. Appointment of an *ad hoc* representative in the event of a conflict of interests**

61. Article 16, paragraph 6, of the CCP provides that, in the event of a conflict of interests between a person being represented and the representative, the court is to appoint an *ad hoc* representative. The Bulgarian courts have applied this provision in certain situations involving a conflict of interests between minors and their legal representative. Thus, the failure to appoint an *ad hoc* representative has been found to amount to a substantial breach of the rules governing paternity proceedings (Решение на ВС № 297 от 15.04.1987 г. по гр. д. № 168/87 г., II г. о.), disputes between adoptive and biological parents (Решение на ВС № 1381 от 10.05.1982 г. по гр. д. № 954/82 г., II г. о.) or property disputes (Решение № 643 от 27.07.2000 г. на ВКС по гр. д. № 27/2000 г., II г. о.; Определение на ОС – Велико Търново от 5.11.2008 г. по в. ч. гр. д. № 963/2008).

#### **I. State liability**

62. The State and Municipalities Responsibility for Damage Act 1988 (*Закон за отговорността на държавата и общините за вреди* – title amended in 2006) provides in section 2(1) that the State is liable for damage caused to private individuals as a result of a judicial decision ordering certain types of detention where the decision has been set aside as having no legal basis.

63. Section 1(1) of the same Act provides that the State and municipalities are liable for damage caused to private individuals and other legal entities as a result of unlawful decisions, acts or omissions by their own authorities or officials while discharging their administrative duties.

64. In a number of decisions, various domestic courts have found this provision to be applicable to the damage suffered by prisoners as a result of



poor conditions or inadequate medical treatment in prison and have, where appropriate, partly or fully upheld claims for compensation brought by the persons concerned (реш. от 26.01.2004 г. по гр. д. № 959/2003, ВКС, IV г. о. and реш. № 330 от 7.08.2007 г. по гр. д. № 92/2006, ВКС, IV г. о.).

65. There are no court decisions in which the above position has been found to apply to allegations of poor living conditions in social care homes.

66. Moreover, it appears from the domestic courts' case-law that under section 1(1) of the Act in question, anyone whose health has deteriorated because bodies under the authority of the Ministry of Health have failed in their duty to provide a regular supply of medication may hold the administrative authorities liable and receive compensation (реш. № 211 от 27.05.2008 г. по гр. д. № 6087/2007, ВКС, V г. о.).

67. Lastly, the State and its authorities are subject to the ordinary rules on tortious liability for other forms of damage resulting, for example, from the death of a person under guardianship while absconding from a social care home for adults with a mental deficiency, on the ground that the staff of the home had failed to discharge their duty of permanent supervision (реш. № 693 от 26.06.2009 г. по гр. д. № 8/2009, ВКС, III г. о.).

#### **J. Arrest by the police under the Ministry of the Interior Act 2006**

68. Under this Act, the police are, *inter alia*, authorised to arrest anyone who, on account of severe mental disturbance and through his or her conduct, poses a threat to public order or puts his or her own life in manifest danger (section 63(1)-(3)). The person concerned may challenge the lawfulness of the arrest before a court, which must give an immediate ruling (section 63(4)).

69. Furthermore, the police's responsibilities include searching for missing persons (section 139(3)).

#### **K. Information submitted by the applicant about searches for persons who have absconded from social care homes for adults with mental disorders**

70. The Bulgarian Helsinki Committee conducted a survey of police stations regarding searches for people who had absconded from social care homes of this type. It appears from the survey that there is no uniform practice. Some police officers said that when they were asked by employees of a home to search for a missing person, they carried out the search and took the person to the police station, before informing the home. Other officers explained that they searched for the person but, not being empowered to perform an arrest, simply notified the staff of the home, who took the person back themselves.

## **L. Statistics submitted by the applicant on judicial proceedings concerning deprivation of legal capacity**

71. The Bulgarian Helsinki Committee obtained statistics from eight regional courts on the outcome of proceedings for restoration of legal capacity between January 2002 and September 2009. During this period 677 persons were deprived of legal capacity. Proceedings to restore capacity were instituted in thirty-six cases: ten of them ended with the lifting of the measure; total incapacitation was changed to partial incapacitation in eight cases; the applications were rejected in four cases; the courts discontinued the proceedings in seven cases; and the other cases are still pending.

## **III. RELEVANT INTERNATIONAL INSTRUMENTS**

### **A. Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly on 13 December 2006 (Resolution A/RES/61/106)**

72. This Convention entered into force on 3 May 2008. It was signed by Bulgaria on 27 September 2007 but has yet to be ratified. The relevant parts of the Convention provide:

#### **Article 12**

##### **Equal recognition before the law**

“1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person’s circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person’s rights and interests.

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.”

**Article 14**  
**Liberty and security of person**

“1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

(a) Enjoy the right to liberty and security of person;

(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation.”

**B. Recommendation No. R (99) 4 of the Committee of Ministers of the Council of Europe on principles concerning the legal protection of incapable adults (adopted on 23 February 1999)**

73. The relevant parts of this Recommendation read as follows:

**Principle 2 – Flexibility in legal response**

“1. The measures of protection and other legal arrangements available for the protection of the personal and economic interests of incapable adults should be sufficient, in scope or flexibility, to enable suitable legal response to be made to different degrees of incapacity and various situations.

...

4. The range of measures of protection should include, in appropriate cases, those which do not restrict the legal capacity of the person concerned.”

**Principle 3 – Maximum reservation of capacity**

“1. The legislative framework should, so far as possible, recognise that different degrees of incapacity may exist and that incapacity may vary from time to time. Accordingly, a measure of protection should not result automatically in a complete removal of legal capacity. However, a restriction of legal capacity should be possible where it is shown to be necessary for the protection of the person concerned.

2. In particular, a measure of protection should not automatically deprive the person concerned of the right to vote, or to make a will, or to consent or refuse consent to any intervention in the health field, or to make other decisions of a personal character at any time when his or her capacity permits him or her to do so. ...”

**Principle 6 – Proportionality**

“1. Where a measure of protection is necessary it should be proportional to the degree of capacity of the person concerned and tailored to the individual circumstances and needs of the person concerned.

2. The measure of protection should interfere with the legal capacity, rights and freedoms of the person concerned to the minimum extent which is consistent with achieving the purpose of the intervention. ...”

**Principle 13 – Right to be heard in person**

“The person concerned should have the right to be heard in person in any proceedings which could affect his or her legal capacity.”

**Principle 14 – Duration, review and appeal**

“1. Measures of protection should, whenever possible and appropriate, be of limited duration. Consideration should be given to the institution of periodical reviews.

...

3. There should be adequate rights of appeal.”

**C. Reports on visits to Bulgaria by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)**

*1. The CPT’s report on its visit from 16 to 22 December 2003, published on 24 June 2004*

74. This report outlines the situation of persons placed by the public authorities in social care homes for people with mental disorders or mental deficiency, which are under the authority of the Ministry of Labour and Social Policy. Part II.4 of the report is devoted to the Pastra social care home.

75. The CPT noted that the home’s official capacity was 105; it had 92 registered male residents, of whom eighty-six were present at the time of the visit. Two residents had absconded and the others were on home leave. Some 90% of the residents were suffering from schizophrenia and the remainder had a mental deficiency. The majority had spent many years in the institution, discharges being quite uncommon.

76. According to the CPT’s findings, the premises of the Pastra social care home were in a deplorable state of repair and hygiene and the home was inadequately heated.

77. In particular, the buildings did not have running water. The residents washed in cold water in the yard and were often unshaven and dirty. The bathroom, to which they had access once a week, was rudimentary and dilapidated.

78. The toilets, likewise located in the yard, consisted of decrepit shelters with holes dug in the ground. They were in an execrable state and access to them was dangerous. Furthermore, basic toiletries were rarely available.

79. The report notes that the provision of food was inadequate. Residents received three meals a day, including 750 g of bread. Milk and

eggs were never on offer, and fresh fruit and vegetables were rarely available. No provision was made for special diets.

80. The only form of treatment at the home consisted of the provision of medicines. The residents, who were treated as chronic psychiatric patients in need of maintenance therapy, were registered as outpatients with a psychiatrist in Dupnitsa. The psychiatrist visited the home once every two to three months, and also on request. In addition, residents could be taken to the psychiatrist – who held weekly surgeries in the nearby town of Rila – if changes in their mental condition were observed. All residents underwent a psychiatric examination twice a year, which was an occasion for them to have their medication reviewed and, if necessary, adjusted. Nearly all residents received psychiatric medication, which was recorded on a special card and administered by the nurses.

81. Apart from the administration of medication, no therapeutic activities were organised for residents, who led passive, monotonous lives.

82. The CPT concluded that these conditions had created a situation which could be said to amount to inhuman and degrading treatment. It requested the Bulgarian authorities to replace the Pastra social care home as a matter of urgency. In their response of 13 February 2004 the Bulgarian authorities acknowledged that the home was not in conformity with European care standards. They stated that it would be closed as a priority and that the residents would be transferred to other institutions.

83. The CPT further observed, in part II.7 of its report, that in most cases, placement of people with mental disabilities in a specialised institution led to a *de facto* deprivation of liberty. The placement procedure should therefore be surrounded by appropriate safeguards, among them an objective medical, and in particular psychiatric, assessment. It was also essential that these persons should have the right to bring proceedings by which the lawfulness of their placement could be decided speedily by a court. The CPT recommended that such a right be guaranteed in Bulgaria (see paragraph 52 of the report).

*2. The CPT's report on its visit from 10 to 21 September 2006, published on 28 February 2008*

84. In this report the CPT again recommended that provision be made for the introduction of judicial review of the lawfulness of placement in a social care home (see paragraphs 176-177 of the report).

85. It also recommended that efforts be made to ensure that the placement of residents in homes for people with mental disorders and/or deficiency conformed fully to the letter and spirit of the law. Contracts for the provision of social services should specify the legal rights of residents, including the possibilities for lodging complaints with an outside authority. Furthermore, residents who were incapable of understanding the contracts should receive appropriate assistance (see paragraph 178 of the report).

86. Lastly, the CPT urged the Bulgarian authorities to take the necessary steps to avoid conflicts of interests arising from the appointment of an employee of a social care home as the guardian of a resident of the same institution (see paragraph 179 of the report).

87. The CPT made a further visit to the Pastra social care home during its periodic visit to Bulgaria in October 2010.

#### IV. COMPARATIVE LAW

##### **A. Access to a court for restoration of legal capacity**

88. A comparative study of the domestic law of twenty Council of Europe member States indicates that in the vast majority of cases (Croatia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Luxembourg, Monaco, Poland, Portugal, Romania, Slovakia, Sweden, Switzerland and Turkey) the law entitles anyone who has been deprived of legal capacity to apply directly to the courts for discontinuation of the measure.

89. In Ukraine, people who have been partially deprived of legal capacity may themselves apply for the measure to be lifted; this does not apply to those who have been declared fully incapable, who may nevertheless challenge before a court any measures taken by their guardian.

90. Judicial proceedings for the discontinuation of an order depriving a person of legal capacity cannot be instituted directly by the person concerned in Latvia (where an application may be made by the public prosecutor or the guardianship council) or Ireland.

##### **B. Placement of legally incapacitated persons in a specialised institution**

91. A comparative-law study of the legislation of twenty States Parties to the Convention shows that there is no uniform approach in Europe to the question of placement of legally incapacitated persons in specialised institutions, particularly as regards the authority competent to order the placement and the guarantees afforded to the person concerned. It may nevertheless be observed that in some countries (Austria, Estonia, Finland, France, Germany, Greece, Poland, Portugal and Turkey) the decision to place a person in a home on a long-term basis against his or her will is taken directly or approved by a judge.

92. Other legal systems (Belgium, Denmark, Hungary, Ireland, Latvia, Luxembourg, Monaco and the United Kingdom) authorise the guardian, close relatives or the administrative authorities to decide on placement in a specialised institution without a judge's approval being necessary. It also

appears that in all the above-mentioned countries, the placement is subject to a number of substantive requirements, relating in particular to the person's health, the existence of a danger or risk and/or the production of medical certificates. In addition, the obligation to interview or consult the person concerned on the subject of the placement, the setting of a time-limit by law or by the courts for the termination or review of the placement, and the possibility of legal assistance are among the safeguards provided in several national legal systems.

93. In certain countries (Denmark, Estonia, Germany, Greece, Hungary, Ireland, Latvia, Poland, Slovakia, Switzerland and Turkey) the possibility of challenging the initial placement order before a judicial body is available to the person concerned without requiring the guardian's consent.

94. Lastly, several States (Denmark, Estonia, Finland, Germany, Greece, Ireland, Latvia, Poland, Switzerland and Turkey) directly empower the person concerned to apply periodically for judicial review of the lawfulness of the continued placement.

95. It should also be noted that many countries' laws on legal capacity or placement in specialised institutions have recently been amended (Austria: 2007; Denmark: 2007; Estonia: 2005; Finland: 1999; France: 2007; Germany: 1992; Greece: 1992; Hungary: 2004; Latvia: 2006; Poland: 2007; Ukraine: 2000; United Kingdom: 2005) or are in the process of amendment (Ireland). These legislative reforms are designed to increase the legal protection of persons lacking legal capacity by affording them either the right of direct access to court for a review of their status or additional safeguards when they are placed in specialised institutions against their will.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

96. The applicant submitted that his placement in the Pastra social care home was in breach of Article 5 § 1 of the Convention.

Article 5 § 1 provides:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having

committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

### A. Preliminary remarks

97. The Grand Chamber observes that the Government maintained before it the objection they raised before the Chamber alleging failure to exhaust domestic remedies in respect of the complaint under Article 5 § 1.

98. The objection was based on the following arguments. Firstly, the applicant could at any time have applied personally to a court for restoration of his legal capacity, under Article 277 of the CCP, and release from guardianship would have allowed him to leave the home of his own accord. Secondly, his close relatives had not availed themselves of the possibility open to some of them, under Articles 113 and 115 of the FC, of asking the guardianship authority to replace his guardian. According to the Government, in the event of a refusal the applicants' relatives could have applied to a court, which would have considered the merits of the request and, if appropriate, appointed a new guardian, who would then have been able to terminate the placement agreement. The Government also submitted in substance that the applicant's close relatives could have challenged the contract signed between the guardian R.P. and the Pastra social care home. Lastly, they indicated that the applicant himself could have requested the guardianship authority to appoint an *ad hoc* representative on account of his alleged conflict of interests with his guardian, with a view to requesting to leave the institution and establish his home elsewhere (Article 123, paragraph 1, of the FC).

99. The Grand Chamber observes that in its admissibility decision of 29 June 2010 the Chamber found that this objection raised questions that were closely linked to those arising in relation to the applicant's complaint under Article 5 § 4 and therefore joined the objection to its examination of the merits under that provision.

100. In addition, finding that the question whether there had been a “deprivation of liberty” within the meaning of Article 5 § 1 in the present case was closely linked to the merits of the complaint under that provision, the Chamber likewise joined that issue to its examination of the merits. The



Grand Chamber sees no reason to call into question the Chamber's findings on these issues.

**B. Whether the applicant was deprived of his liberty within the meaning of Article 5 § 1**

*1. The parties' submissions*

**(a) The applicant**

101. The applicant contended that although under domestic law, placement of people with mental disorders in a social care institution was regarded as "voluntary", his transfer to the Pastra social care home constituted a deprivation of liberty. He maintained that, as in the case of *Storck v. Germany* (no. 61603/00, ECHR 2005-V), the objective and subjective elements of detention were present in his case.

102. With regard to the nature of the measure, the applicant submitted that living in a social care home in a remote mountain location amounted to physical isolation from society. He could not have chosen to leave on his own initiative since, having no identity papers or money, he would soon have faced the risk of being stopped by the police for a routine check, a widespread practice in Bulgaria.

103. Absences from the social care home were subject to permission. The distance of approximately 420 km between the institution and his home town and the fact that he had no access to his invalidity pension had made it impossible for him to travel to Ruse any more than three times. The applicant further submitted that he had been denied permission to travel on many other occasions by the home's management. He added that, in accordance with a practice with no legal basis, residents who left the premises for longer than the authorised period were treated as fugitives and were searched for by the police. He stated in that connection that on one occasion the police had arrested him in Ruse and that, although they had not taken him back to the home, the fact that the director had asked for him to be located and transferred back had amounted to a decisive restriction on his right to personal liberty. He stated that he had been arrested and detained by the police pending the arrival of staff from the home to collect him, without having been informed of the grounds for depriving him of his liberty. Since he had been transferred back under duress, it was immaterial that those involved had been employees of the home.

104. The applicant further noted that his placement in the home had already lasted more than eight years and that his hopes of leaving one day were futile, as the decision had to be approved by his guardian.

105. As to the consequences of his placement, the applicant highlighted the severity of the regime to which he was subject. His occupational activities, treatment and movements had been subject to thorough and

practical supervision by the home's employees. He had been required to follow a strict daily routine, getting up, going to bed and eating at set times. He had had no free choice as to his clothing, the preparation of his meals, participation in cultural events or the development of relations with other people, including intimate relationships as the home's residents were all men. He had been allowed to watch television in the morning only. Accordingly, his stay in the home had caused a perceptible deterioration in his well-being and the onset of institutionalisation syndrome, in other words the inability to reintegrate into the community and lead a normal life.

106. With regard to the subjective element, the applicant submitted that his situation differed from that examined in *H.M. v. Switzerland* (no. 39187/98, ECHR 2002-II), in which the applicant had consented to her placement in a nursing home. He himself had never given such consent. His guardian at the time, Ms R.P. (see paragraph 12 above), had not consulted him on the placement and, moreover, he did not even know her; nor had he been informed of the existence of the placement agreement of 10 December 2002 (see paragraph 14 above), which he had never signed. Those circumstances reflected a widespread practice in Bulgaria whereby once people were deprived of legal capacity, even partially, they were deemed incapable of expressing their wishes. In addition, it was clear from the medical documents that the applicant's desire to leave the home had been interpreted not as a freely expressed wish, but rather as a symptom of his mental illness.

107. Lastly, in the case of *H.M. v. Switzerland* (cited above) the authorities had based their decision to place the applicant in a nursing home on a thorough examination showing that the living conditions in her own home had severely deteriorated as a result of her lack of cooperation with a social welfare authority. By contrast, the applicant in the present case had never been offered and had never refused alternative social care at home.

#### **(b) The Government**

108. In their written observations before the Chamber, the Government accepted that the circumstances of the case amounted to a "deprivation of liberty" within the meaning of Article 5 § 1 of the Convention. However, at the hearing and in the proceedings before the Grand Chamber, they contended that Article 5 was not applicable. They observed in that connection that the applicant had not been compulsorily admitted to a psychiatric institution by the public authorities under the Public Health Act, but had been housed in a social care home at his guardian's request, on the basis of a civil-law agreement and in accordance with the rules on social assistance. Thus, persons in need of assistance, including those with mental disorders, could request various social and medical services, either directly or through their representatives, under the Social Assistance Act 1998 (see paragraphs 57-60 above). Homes for adults with mental disorders offered a

wide range of services of this kind and placement in such institutions could not be seen as a deprivation of liberty.

109. As to the particular circumstances of the case, the Government emphasised that the applicant had never expressly and consciously objected to his placement in the home, and it could not therefore be concluded that the measure had been involuntary. Furthermore, he had been free to leave the home at any time.

110. In addition, the applicant had been encouraged to work in the village restaurant to the best of his abilities and had been granted leave of absence on three occasions. The reason why he had twice returned from Ruse before the end of his authorised period of leave (see paragraph 27 above) was his lack of accommodation. The Government further submitted that the applicant had never been brought back to the home by the police. They acknowledged that in September 2006 the director had been obliged to ask the police to search for him because he had not come back (see paragraph 28 above). However, it was clear from the case of *Dodov v. Bulgaria* (no. 59548/00, 17 January 2008) that the State had a positive obligation to take care of people housed in social care homes. In the Government's submission, the steps taken by the director had formed part of this duty of protection.

111. The Government further observed that the applicant had lacked legal capacity and had not had the benefit of a supportive family environment, accommodation or sufficient resources to lead an independent life. Referring in that connection to the judgments in *H.M. v. Switzerland* (cited above) and *Nielsen v. Denmark* (28 November 1988, Series A no. 144), they submitted that the applicant's placement in the home was simply a protective measure taken in his interests alone and constituted an appropriate response to a social and medical emergency; such a response could not be viewed as involuntary.

**(c) The third party**

112. Interights made the following general observations. It stated that it had carried out a survey of practices regarding placement of people with mental disorders in specialised institutions in central and east European countries. According to the conclusions of the survey, in most cases placement in such institutions could be regarded as amounting to a *de facto* deprivation of liberty.

113. Social care homes were often located in rural or mountainous areas which were not easily accessible. Where they were situated near urban areas, they were surrounded by high walls or fences and the gates were kept locked. As a rule, residents were able to leave the premises only with the express permission of the director of the home, and for a limited period. In cases of unauthorised leave, the police had the power to search for and return the persons concerned. The same restrictive regime applied to all

residents, without any distinction according to legal status – whether they had full, partial or no legal capacity – and in the view of Interights, this was a decisive factor. No consideration at all was given to whether the placement was voluntary or involuntary.

114. Regarding the analysis of the subjective aspect of the placement, Interights submitted that the consent of the persons concerned was a matter requiring careful attention. Thorough efforts should be made to ascertain their true wishes, notwithstanding any declaration of legal incapacity that might have been made in their case. Interights contended that in reality, when faced with a choice between a precarious, homeless existence and the relative security offered by a social care home, incapable persons in central and east European countries might opt for the latter solution, simply because no alternative services were offered by the State's social welfare system. That did not mean, however, that the persons concerned could be said to have freely consented to the placement.

## 2. *The Court's assessment*

### (a) **General principles**

115. The Court reiterates that the difference between deprivation of liberty and restrictions on liberty of movement, the latter being governed by Article 2 of Protocol No. 4, is merely one of degree or intensity, and not one of nature or substance. Although the process of classification into one or other of these categories sometimes proves to be no easy task in that some borderline cases are a matter of pure opinion, the Court cannot avoid making the selection upon which the applicability or inapplicability of Article 5 depends (see *Guzzardi v. Italy*, 6 November 1980, §§ 92-93, Series A no. 39). In order to determine whether someone has been deprived of his liberty, the starting point must be his concrete situation and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question (see *Storck*, cited above, § 71, and *Guzzardi*, cited above, § 92).

116. In the context of deprivation of liberty on mental-health grounds, the Court has held that a person could be regarded as having been “detained” even during a period when he was in an open hospital ward with regular unescorted access to the unsecured hospital grounds and the possibility of unescorted leave outside the hospital (see *Ashingdane v. the United Kingdom*, 28 May 1985, § 42, Series A no. 93).

117. Furthermore, in relation to the placement of mentally disordered persons in an institution, the Court has held that the notion of deprivation of liberty does not only comprise the objective element of a person's confinement in a particular restricted space for a not negligible length of time. A person can only be considered to have been deprived of his liberty

if, as an additional subjective element, he has not validly consented to the confinement in question (see *Storck*, cited above, § 74).

118. The Court has found that there was a deprivation of liberty in circumstances such as the following: (a) where the applicant, who had been declared legally incapable and admitted to a psychiatric hospital at his legal representative's request, had unsuccessfully attempted to leave the hospital (see *Shtukurov v. Russia*, no. 44009/05, § 108, 27 March 2008); (b) where the applicant had initially consented to her admission to a clinic but had subsequently attempted to escape (see *Storck*, cited above, § 76); and (c) where the applicant was an adult incapable of giving his consent to admission to a psychiatric institution which, nonetheless, he had never attempted to leave (see *H.L. v. the United Kingdom*, no. 45508/99, §§ 89-94, ECHR 2004-IX).

119. The Court has also held that the right to liberty is too important in a democratic society for a person to lose the benefit of Convention protection for the single reason that he may have given himself up to be taken into detention (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, §§ 64-65, Series A no. 12), especially when it is not disputed that that person is legally incapable of consenting to, or disagreeing with, the proposed action (see *H.L. v. the United Kingdom*, cited above, § 90).

120. In addition, the Court has had occasion to observe that the first sentence of Article 5 § 1 must be construed as laying down a positive obligation on the State to protect the liberty of those within its jurisdiction. Otherwise, there would be a sizeable gap in the protection from arbitrary detention, which would be inconsistent with the importance of personal liberty in a democratic society. The State is therefore obliged to take measures providing effective protection of vulnerable persons, including reasonable steps to prevent a deprivation of liberty of which the authorities have or ought to have knowledge (see *Storck*, cited above, § 102). Thus, having regard to the particular circumstances of the cases before it, the Court has held that the national authorities' responsibility was engaged as a result of detention in a psychiatric hospital at the request of the applicant's guardian (see *Shtukurov*, cited above) and detention in a private clinic (see *Storck*, cited above).

#### **(b) Application of these principles in the present case**

121. The Court observes at the outset that it is unnecessary in the present case to determine whether, in general terms, any placement of a legally incapacitated person in a social care institution constitutes a "deprivation of liberty" within the meaning of Article 5 § 1. In some cases, the placement is initiated by families who are also involved in the guardianship arrangements and is based on civil-law agreements signed with an appropriate social care institution. Accordingly, any restrictions on liberty in such cases are the result of actions by private individuals and the authorities' role is limited to

supervision. The Court is not called upon in the present case to rule on the obligations that may arise under the Convention for the authorities in such situations.

122. It observes that there are special circumstances in the present case. No members of the applicant's family were involved in his guardianship arrangements, and the duties of guardian were assigned to a State official (Ms R.P.), who negotiated and signed the placement agreement with the Pastra social care home without any contact with the applicant, whom she had in fact never met. The placement agreement was implemented in a State-run institution by the social services, which likewise did not interview the applicant (see paragraphs 12-15 above). The applicant was never consulted about his guardian's choices, even though he could have expressed a valid opinion and his consent was necessary in accordance with the Persons and Family Act 1949 (see paragraph 42 above). That being so, he was not transferred to the Pastra social care home at his request or on the basis of a voluntary private-law agreement on admission to an institution to receive social assistance and protection. The Court considers that the restrictions complained of by the applicant are the result of various steps taken by public authorities and institutions through their officials, from the initial request for his placement in an institution and throughout the implementation of the relevant measure, and not of acts or initiatives by private individuals. Although there is no indication that the applicant's guardian acted in bad faith, the above considerations set the present case apart from *Nielsen* (cited above), in which the applicant's mother committed her son, a minor, to a psychiatric institution in good faith, which prompted the Court to find that the measure in question entailed the exercise of exclusive custodial rights over a child who was not capable of expressing a valid opinion.

123. The applicant's placement in the social care home can therefore be said to have been attributable to the national authorities. It remains to be determined whether the restrictions resulting from that measure amounted to a "deprivation of liberty" within the meaning of Article 5.

124. With regard to the objective aspect, the Court observes that the applicant was housed in a block which he was able to leave, but emphasises that the question whether the building was locked is not decisive (see *Ashingdane*, cited above, § 42). While it is true that the applicant was able to go to the nearest village, he needed express permission to do so (see paragraph 25 above). Moreover, the time he spent away from the home and the places where he could go were always subject to controls and restrictions.

125. The Court further notes that between 2002 and 2009 the applicant was granted leave of absence for three short visits (of about ten days) to Ruse (see paragraphs 26-28 above). It cannot speculate as to whether he could have made more frequent visits had he asked to do so. Nevertheless, it

observes that such leave of absence was entirely at the discretion of the home's management, who kept the applicant's identity papers and administered his finances, including transport costs (see paragraphs 25-26 above). Furthermore, it would appear to the Court that the home's location in a mountain region far away from Ruse (some 400 km) made any journey difficult and expensive for the applicant in view of his income and his ability to make his own travel arrangements.

126. The Court considers that this system of leave of absence and the fact that the management kept the applicant's identity papers placed significant restrictions on his personal liberty.

127. Moreover, it is not disputed that when the applicant did not return from leave of absence in 2006, the home's management asked the Ruse police to search for and return him (see paragraph 28 above). The Court can accept that such steps form part of the responsibilities assumed by the management of a home for people with mental disorders towards its residents. It further notes that the police did not escort the applicant back and that he has not proved that he was arrested pending the arrival of staff from the home. Nevertheless, since his authorised period of leave had expired, the staff returned him to the home without regard for his wishes.

128. Accordingly, although the applicant was able to undertake certain journeys, the factors outlined above lead the Court to consider that, contrary to what the Government maintained, he was under constant supervision and was not free to leave the home without permission whenever he wished. With reference to the *Dodov* case (cited above), the Government maintained that the restrictions in issue had been necessary in view of the authorities' positive obligations to protect the applicant's life and health. The Court notes that in the above-mentioned case, the applicant's mother suffered from Alzheimer's disease and that, as a result, her memory and other mental capacities had progressively deteriorated, to the extent that the nursing home staff had been instructed not to leave her unattended. In the present case, however, the Government have not shown that the applicant's state of health was such as to put him at immediate risk, or to require the imposition of any special restrictions to protect his life and limb.

129. As regards the duration of the measure, the Court observes that it was not specified and was thus indefinite since the applicant was listed in the municipal registers as having his permanent address at the home, where he still remains (having lived there for more than eight years). This period is sufficiently lengthy for him to have felt the full adverse effects of the restrictions imposed on him.

130. As to the subjective aspect of the measure, it should be noted that, contrary to the requirements of domestic law (see paragraph 42 above), the applicant was not asked to give his opinion on his placement in the home and never explicitly consented to it. Instead, he was taken to Pastra by ambulance and placed in the home without being informed of the reasons

for or duration of that measure, which had been taken by his officially assigned guardian. The Court observes in this connection that there are situations where the wishes of a person with impaired mental faculties may validly be replaced by those of another person acting in the context of a protective measure and that it is sometimes difficult to ascertain the true wishes or preferences of the person concerned. However, the Court has already held that the fact that a person lacks legal capacity does not necessarily mean that he is unable to comprehend his situation (see *Shtukurov*, cited above, § 108). In the present case, domestic law attached a certain weight to the applicant's wishes and it appears that he was well aware of his situation. The Court notes that, at least from 2004, the applicant explicitly expressed his desire to leave the Pastra social care home, both to psychiatrists and through his applications to the authorities to have his legal capacity restored and to be released from guardianship (see paragraphs 37-41 above).

131. These factors set the present case apart from *H.M. v. Switzerland* (cited above), in which the Court found that there had been no deprivation of liberty as the applicant had been placed in a nursing home purely in her own interests and, after her arrival there, had agreed to stay. In that connection the Government have not shown that in the present case, on arrival at the Pastra social care home or at any later date, the applicant agreed to stay there. That being so, the Court is not convinced that the applicant consented to the placement or accepted it tacitly at a later stage and throughout his stay.

132. Having regard to the particular circumstances of the present case, especially the involvement of the authorities in the decision to place the applicant in the home and its implementation, the rules on leave of absence, the duration of the placement and the applicant's lack of consent, the Court concludes that the situation under examination amounts to a deprivation of liberty within the meaning of Article 5 § 1 of the Convention. Accordingly, that provision is applicable.

### **C. Whether the applicant's placement in the Pastra social care home was compatible with Article 5 § 1**

#### *1. The parties' submissions*

##### **(a) The applicant**

133. The applicant submitted that, since he had not consented to his placement in the Pastra social care home and had not signed the agreement drawn up between his guardian and the home, the agreement was in breach of the Persons and Family Act. He added that he had not been informed of the agreement's existence at the time of his placement and that he had remained unaware of it for a long time afterwards. Nor had he had any



opportunity to challenge this step taken by his guardian. Although the guardian had been required by Article 126 of the Family Code to report on her activities to the guardianship authority (the mayor), the latter was not empowered to take any action against her. Furthermore, no report had ever been drawn up in respect of the applicant, and his guardians had never been called to account for that shortcoming.

134. The applicant further argued that his placement in a home for people with mental disorders did not fall within any of the grounds on which deprivation of liberty could be justified for the purposes of Article 5. The measure in question had not been justified by the need to ensure public safety or by the inability of the person concerned to cope outside the institution. In support of that contention, the applicant argued that the director of the home had deemed him capable of integrating into the community and that attempts had been made to bring him closer to his family, albeit to no avail. Accordingly, the authorities had based their decision to place him in the home on the simple fact that his family were not prepared to take care of him and he needed social assistance. They had not examined whether the necessary assistance could be provided through alternative measures that were less restrictive of his personal liberty. Such measures were, moreover, quite conceivable since Bulgarian legislation made provision for a wide range of social services, such as personal assistance, social rehabilitation centres and special allowances and pensions. The authorities had thus failed to strike a fair balance between the applicant's social needs and his right to liberty. It would be arbitrary, and contrary to the purpose of Article 5, for detention to be based on purely social considerations.

135. Should the Court take the view that the placement fell within the scope of Article 5 § 1 (e), by which persons of unsound mind could be deprived of their liberty, the applicant submitted that the national authorities had not satisfied the requirements of that provision. In the absence of a recent psychiatric assessment, it was clear that his placement in the home had not pursued the aim of providing him with medical treatment and had been based solely on medical documents produced in the context of the proceedings for his legal incapacitation. The documents had been issued approximately a year and a half beforehand and had not strictly concerned his placement in an institution for people with mental disorders. Relying on *Varbanov v. Bulgaria* (no. 31365/96, § 47, ECHR 2000-X), the applicant stated that he had been placed in the Pastra social care home without having undergone any assessment of his mental health at that time.

**(b) The Government**

136. The Government submitted that the applicant's placement in the home complied with domestic law as the guardian had signed an agreement whereby the applicant was to receive social services in his own interests.

She had therefore acted in accordance with her responsibilities and had discharged her duty to protect the person under partial guardianship.

137. Bearing in mind that the sole purpose of the placement had been to provide the applicant with social services under the Social Assistance Act and not to administer compulsory medical treatment, the Government submitted that this measure was not governed by Article 5 § 1 (e) of the Convention. In that connection, the authorities had taken into account his financial and family situation, that is to say, his lack of resources and the absence of close relatives able to assist him on a day-to-day basis.

138. The Government noted at the same time that the applicant could in any event be regarded as a “person of unsound mind” within the meaning of Article 5 § 1 (e). The medical assessment carried out during the proceedings for his legal incapacitation in 2000 showed clearly that he was suffering from mental disorders and that it was therefore legitimate for the authorities to place him in an institution for people with similar problems. Lastly, relying on the *Ashingdane* judgment (cited above, § 44), the Government submitted that there was an adequate link between the reason given for the placement, namely the applicant’s state of health, and the institution in which he had been placed. Accordingly, they contended that the measure in issue had not been in breach of Article 5 § 1 (e).

**(c) The third party**

139. On the basis of the study referred to in paragraphs 112-114 above, Interights submitted that in central and east European countries, the placement of mentally disordered persons in a social care home was viewed solely in terms of social protection and was governed by contractual law. Since such placements were not regarded as a form of deprivation of liberty under domestic law, the procedural safeguards available in relation to involuntary psychiatric confinement were not applicable.

140. Interights contended that situations of this nature were comparable to that examined in the case of *H.L. v. the United Kingdom* (cited above), in which criticism had been levelled at the system prior to 2007 in the United Kingdom, whereby the common-law doctrine of necessity had permitted the “informal” detention of compliant incapacitated persons with mental disorders. The Court had held that the lack of any fixed procedural rules on the admission and detention of such persons was striking. In its view, the contrast between this dearth of regulation and the extensive network of safeguards applicable to formal psychiatric committals covered by mental-health legislation was significant. In the absence of a formalised admission procedure, indicating who could propose admission, for what reasons and on what basis, and given the lack of indication as to the length of the detention or the nature of treatment or care, the hospital’s health-care professionals had assumed full control of the liberty and treatment of a vulnerable incapacitated person solely on the basis of their own clinical

assessments completed as and when they saw fit. While not doubting that those professionals had acted in good faith and in the applicant's best interests, the Court had observed that the very purpose of procedural safeguards was to protect individuals against any misjudgments and professional lapses (*H.L. v. the United Kingdom*, cited above, §§ 120-121).

141. Interights urged the Court to remain consistent with that approach and to find that in the present case the informal nature of admission to and continued detention in a social care home was at odds with the guarantees against arbitrariness under Article 5. The courts had not been involved at any stage of the proceedings and no other independent body had been assigned the task of monitoring the institutions in question. The lack of regulation coupled with the vulnerability of mentally disordered persons facilitated abuses of fundamental rights in a context of extremely limited supervision.

142. The third party further submitted that in most cases of this kind, placements were automatic as there were few possibilities of alternative social assistance. It contended that the authorities should be under a practical obligation to provide for appropriate measures that were less restrictive of personal liberty but were nonetheless capable of ensuring medical care and social services for mentally disordered persons. This would be a means of applying the principle that the rights guaranteed by the Convention should not be theoretical or illusory but practical and effective.

## 2. *The Court's assessment*

### (a) **General principles**

143. The Court reiterates that in order to comply with Article 5 § 1, the detention in issue must first of all be "lawful", including the observance of a procedure prescribed by law; in this respect the Convention refers back essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. It requires in addition, however, that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness (see *Herczegfalvy v. Austria*, 24 September 1992, § 63, Series A no. 244). Furthermore, the detention of an individual is such a serious measure that it is only justified where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained. That means that it does not suffice that the deprivation of liberty is in conformity with national law; it must also be necessary in the circumstances (see *Witold Litwa v. Poland*, no. 26629/95, § 78, ECHR 2000-III).

144. In addition, sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds of deprivation of liberty; such a measure will not be lawful unless it falls within one of those grounds (*ibid.*,

§ 49; see also, in particular, *Saadi v. the United Kingdom* [GC], no. 13229/03, § 43, 29 January 2008, and *Jendrowiak v. Germany*, no. 30060/04, § 31, 14 April 2011).

145. As regards the deprivation of liberty of mentally disordered persons, an individual cannot be deprived of his liberty as being of “unsound mind” unless the following three minimum conditions are satisfied: firstly, he must reliably be shown to be of unsound mind; secondly, the mental disorder must be of a kind or degree warranting compulsory confinement; thirdly, the validity of continued confinement depends upon the persistence of such a disorder (see *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33; *Shtukaturov*, cited above, § 114; and *Varbanov*, cited above, § 45).

146. As to the second of the above conditions, the detention of a mentally disordered person may be necessary not only where the person needs therapy, medication or other clinical treatment to cure or alleviate his condition, but also where the person needs control and supervision to prevent him, for example, causing harm to himself or other persons (see *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 52, ECHR 2003-IV).

147. The Court further reiterates that there must be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention. In principle, the “detention” of a person as a mental-health patient will be “lawful” for the purposes of Article 5 § 1 (e) only if effected in a hospital, clinic or other appropriate institution authorised for that purpose (see *Ashingdane*, cited above, § 44, and *Pankiewicz v. Poland*, no. 34151/04, §§ 42-45, 12 February 2008). However, subject to the foregoing, Article 5 § 1 (e) is not in principle concerned with suitable treatment or conditions (see *Ashingdane*, cited above, § 44, and *Hutchison Reid*, cited above, § 49).

**(b) Application of these principles in the present case**

148. In examining whether the applicant’s placement in the Pastra social care home was lawful for the purposes of Article 5 § 1, the Court must ascertain whether the measure in question complied with domestic law, whether it fell within the scope of one of the exceptions provided for in sub-paragraphs (a) to (f) of Article 5 § 1 to the rule of personal liberty, and, lastly, whether it was justified on the basis of one of those exceptions.

149. On the basis of the relevant domestic instruments (see paragraphs 57-59 above), the Court notes that Bulgarian law envisages placement in a social care institution as a protective measure taken at the request of the person concerned and not a coercive one ordered on one of the grounds listed in sub-paragraphs (a) to (f) of Article 5 § 1. However, in the particular circumstances of the instant case, the measure in question entailed significant restrictions on personal freedom giving rise to a deprivation of

liberty with no regard for the applicant's will or wishes (see paragraphs 121-132 above).

150. As to whether a procedure prescribed by law was followed, the Court notes firstly that under domestic law, the guardian of a person partially lacking legal capacity is not empowered to take legal steps on that person's behalf. Any contracts drawn up in such cases are valid only when signed together by the guardian and the person under partial guardianship (see paragraph 42 above). The Court therefore concludes that the decision by the applicant's guardian R.P. to place him in a social care home for people with mental disorders without having obtained his prior consent was invalid under Bulgarian law. This conclusion is in itself sufficient for the Court to establish that the applicant's deprivation of liberty was contrary to Article 5.

151. In any event, the Court considers that that measure was not lawful within the meaning of Article 5 § 1 of the Convention since it was not justified on the basis of any of sub-paragraphs (a) to (f).

152. The applicant accepted that the authorities had acted mainly on the basis of the arrangements governing social assistance (see paragraph 134 above). However, he argued that the restrictions imposed amounted to a deprivation of liberty which had not been warranted by any of the exceptions provided for in sub-paragraphs (a) to (f) of Article 5 § 1 to the rule of personal liberty. The Government contended that the applicant's placement in the home had been intended solely to protect his interest in receiving social care (see paragraphs 136-137 above). However, they stated that should the Court decide that Article 5 § 1 was applicable, the measure in question should be held to comply with sub-paragraph (e) in view of the applicant's mental disorder (see paragraph 138 above).

153. The Court notes that the applicant was eligible for social assistance as he had no accommodation and was unable to work as a result of his illness. It takes the view that, in certain circumstances, the welfare of a person with mental disorders might be a further factor to take into account, in addition to medical evidence, in assessing whether it is necessary to place the person in an institution. However, the objective need for accommodation and social assistance must not automatically lead to the imposition of measures involving deprivation of liberty. The Court considers that any protective measure should reflect as far as possible the wishes of persons capable of expressing their will. Failure to seek their opinion could give rise to situations of abuse and hamper the exercise of the rights of vulnerable persons. Therefore, any measure taken without prior consultation of the interested person will as a rule require careful scrutiny.

154. The Court is prepared to accept that the applicant's placement in the home was the direct consequence of the state of his mental health, the declaration of his partial incapacity and his placement under partial guardianship. Some six days after being appointed as the applicant's

guardian, Ms R.P., without knowing him or meeting him, decided on the strength of the file to ask the social services to place him in a home for people with mental disorders. The social services, for their part, likewise referred to the applicant's mental health in finding that the request should be granted. It seems clear to the Court that if the applicant had not been deprived of legal capacity on account of his mental disorder, he would not have been deprived of his liberty. Therefore, the present case should be examined under sub-paragraph (e) of Article 5 § 1.

155. It remains to be determined whether the applicant's placement in the home satisfied the requirements laid down in the Court's case-law concerning the detention of mentally disordered persons (see the principles outlined in paragraph 145 above). In this connection, the Court reiterates that in deciding whether an individual should be detained as a "person of unsound mind", the national authorities are to be recognised as having a certain discretion since it is in the first place for them to evaluate the evidence adduced before them in a particular case; the Court's task is to review under the Convention the decisions of those authorities (see *Winterwerp*, cited above, § 40, and *Luberti v. Italy*, 23 February 1984, § 27, Series A no. 75).

156. In the instant case it is true that the expert medical report produced in the course of the proceedings for the applicant's legal incapacitation referred to the disorders from which he was suffering. However, the relevant examination took place before November 2000, whereas the applicant was placed in the Pastra social care home on 10 December 2002 (see paragraphs 10 and 14 above). More than two years thus elapsed between the expert psychiatric assessment relied on by the authorities and the applicant's placement in the home, during which time his guardian did not check whether there had been any change in his condition and did not meet or consult him. Unlike the Government (see paragraph 138 above), the Court considers that this period is excessive and that a medical opinion issued in 2000 cannot be regarded as a reliable reflection of the state of the applicant's mental health at the time of his placement. It should also be noted that the national authorities were not under any legal obligation to order a psychiatric report at the time of the placement. The Government explained in that connection that the applicable provisions were those of the Social Assistance Act and not those of the Health Act (see paragraphs 57-60 and 137 above). Nevertheless, in the Court's view, the lack of a recent medical assessment would be sufficient to conclude that the applicant's placement in the home was not lawful for the purposes of Article 5 § 1 (e).

157. As a subsidiary consideration, the Court observes that the other requirements of Article 5 § 1 (e) were not satisfied in the present case either. As regards the need to justify the placement by the severity of the disorder, it notes that the purpose of the 2000 medical report was not to examine whether the applicant's state of health required his placement in a home for

people with mental disorders, but solely to determine the issue of his legal protection. While it is true that Article 5 § 1 (e) authorises the confinement of a person suffering from a mental disorder even where no medical treatment is necessarily envisaged (see *Hutchison Reid*, cited above, § 52), such a measure must be properly justified by the seriousness of the person's condition in the interests of ensuring his or her own protection or that of others. In the present case, however, it has not been established that the applicant posed a danger to himself or to others, for example because of his psychiatric condition; the simple assertion by certain witnesses that he became aggressive when he drank (see paragraph 10 above) cannot suffice for this purpose. Nor have the authorities reported any acts of violence on the applicant's part during his time in the Pastra social care home.

158. The Court also notes deficiencies in the assessment of whether the disorders warranting the applicant's confinement still persisted. Although he was under the supervision of a psychiatrist (see paragraph 31 above), the aim of such supervision was not to provide an assessment at regular intervals of whether he still needed to be kept in the Pastra social care home for the purposes of Article 5 § 1 (e). Indeed, no provision was made for such an assessment under the relevant legislation.

159. Having regard to the foregoing, the Court observes that the applicant's placement in the home was not ordered "in accordance with a procedure prescribed by law" and that his deprivation of liberty was not justified by sub-paragraph (e) of Article 5 § 1. Furthermore, the Government have not indicated any of the other grounds listed in sub-paragraphs (a) to (f) which might have justified the deprivation of liberty in issue in the present case.

160. There has therefore been a violation of Article 5 § 1.

## II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

161. The applicant complained that he had been unable to have the lawfulness of his placement in the Pastra social care home reviewed by a court.

He relied on Article 5 § 4 of the Convention, which provides:

"Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

### A. The parties' submissions

#### 1. *The applicant*

162. The applicant submitted that domestic law did not provide for any specific remedies in respect of his situation, such as a periodic judicial

review of the lawfulness of his placement in a home for people with mental disorders. He added that, since he was deemed incapable of taking legal action on his own, domestic law did not afford him the possibility of applying to a court for permission to leave the Pastra social care home. He stated that he had likewise been unable to seek to have the placement agreement terminated, in view of the conflict of interests with his guardian, who at the same time was the director of the home.

163. The applicant further noted that he had not been allowed to apply to the courts to initiate the procedure provided for in Article 277 of the CCP (see paragraph 51 above) and that, moreover, such action would not have led to a review of the lawfulness of his deprivation of liberty but solely to a review of the conditions justifying partial guardianship in his case.

164. He further submitted that the procedure provided for in Articles 113 and 115 of the FC (see paragraphs 49-50 above) in theory afforded his close relatives the right to ask the mayor to replace the guardian or to compel the mayor to terminate the placement agreement. However, this had been an indirect remedy not accessible to him, since his half-sister and his father's second wife had not been willing to initiate such a procedure.

## 2. *The Government*

165. The Government submitted that, since the purpose of the applicant's placement in the home had been to provide social services, he could at any time have asked for the placement agreement to be terminated without the courts needing to be involved. In their submission, in so far as the applicant alleged a conflict of interests with his guardian, he could have relied on Article 123, paragraph 1, of the FC (see paragraph 50 above) and requested the guardianship authority to appoint an *ad hoc* representative, who could then have consented to a change of permanent residence.

166. The Government further contended that the applicant's close relatives had not availed themselves of the possibility open to some of them under Articles 113 and 115 of the FC of requesting the guardianship authority to replace his guardian or of challenging steps taken by the latter. They added that in the event of a refusal, his relatives could have appealed to a court, which would have considered the merits of the case and, if appropriate, appointed a new guardian, who could then have terminated the placement agreement. This, in the Government's submission, would have enabled them to challenge in substance the agreement signed between Ms R.P. and the Pastra social care home.

167. Lastly, the Government submitted that an action for restoration of legal capacity (under Article 277 of the CCP – see paragraph 51 above) constituted a remedy for the purposes of Article 5 § 4 since, if a sufficient improvement in the applicant's health had been observed and he had been released from guardianship, he would have been free to leave the home.



## B. The Court's assessment

### 1. General principles

168. The Court reiterates that Article 5 § 4 entitles detained persons to institute proceedings for a review of compliance with the procedural and substantive conditions which are essential for the “lawfulness”, in Convention terms, of their deprivation of liberty. The notion of “lawfulness” under paragraph 4 of Article 5 has the same meaning as in paragraph 1, so that a detained person is entitled to a review of the “lawfulness” of his detention in the light not only of the requirements of domestic law but also of the Convention, the general principles embodied therein and the aim of the restrictions permitted by Article 5 § 1. Article 5 § 4 does not guarantee a right to judicial review of such a scope as to empower the court, on all aspects of the case including questions of pure expediency, to substitute its own discretion for that of the decision-making authority. The review should, however, be wide enough to bear on those conditions which are essential for the “lawful” detention of a person according to Article 5 § 1 (see *E. v. Norway*, 29 August 1990, § 50, Series A no. 181-A). The reviewing “court” must not have merely advisory functions but must have the competence to “decide” the “lawfulness” of the detention and to order release if the detention is unlawful (see *Ireland v. the United Kingdom*, 18 January 1978, § 200, Series A no. 25; *Weeks v. the United Kingdom*, 2 March 1987, § 61, Series A no. 114; *Chahal v. the United Kingdom*, 15 November 1996, § 130, *Reports of Judgments and Decisions* 1996-V; and *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 202, 19 February 2009).

169. The forms of judicial review satisfying the requirements of Article 5 § 4 may vary from one domain to another, and will depend on the type of deprivation of liberty in issue. It is not the Court's task to inquire into what would be the most appropriate system in the sphere under examination (see *Shtukaturov*, cited above, § 123).

170. Nevertheless, Article 5 § 4 guarantees a remedy that must be accessible to the person concerned and must afford the possibility of reviewing compliance with the conditions to be satisfied if the detention of a person of unsound mind is to be regarded as “lawful” for the purposes of Article 5 § 1 (e) (see *Ashingdane*, cited above, § 52). The Convention requirement for an act of deprivation of liberty to be amenable to independent judicial scrutiny is of fundamental importance in the context of the underlying purpose of Article 5 of the Convention to provide safeguards against arbitrariness. What is at stake is both the protection of the physical liberty of individuals and their personal security (see *Varbanov*, cited above, § 58). In the case of detention on the ground of mental illness, special procedural safeguards may be called for in order to protect the interests of persons who, on account of their mental disabilities, are not fully capable of

acting for themselves (see, among other authorities, *Winterwerp*, cited above, § 60).

171. Among the principles emerging from the Court's case-law under Article 5 § 4 concerning "persons of unsound mind" are the following:

(a) a person detained for an indefinite or lengthy period is in principle entitled, at any rate where there is no automatic periodic review of a judicial character, to take proceedings "at reasonable intervals" before a court to put in issue the "lawfulness" – within the meaning of the Convention – of his detention;

(b) Article 5 § 4 requires the procedure followed to have a judicial character and to afford the individual concerned guarantees appropriate to the kind of deprivation of liberty in question; in order to determine whether proceedings provide adequate guarantees, regard must be had to the particular nature of the circumstances in which they take place;

(c) the judicial proceedings referred to in Article 5 § 4 need not always be attended by the same guarantees as those required under Article 6 § 1 for civil or criminal litigation. Nonetheless, it is essential that the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation (see *Megyeri v. Germany*, 12 May 1992, § 22, Series A no. 237-A).

## 2. *Application of these principles in the present case*

172. The Court observes that the Government have not indicated any domestic remedy capable of affording the applicant the direct opportunity to challenge the lawfulness of his placement in the Pastra social care home and the continued implementation of that measure. It also notes that the Bulgarian courts were not involved at any time or in any way in the placement and that the domestic legislation does not provide for automatic periodic judicial review of placement in a home for people with mental disorders. Furthermore, since the applicant's placement in the home is not recognised as a deprivation of liberty in Bulgarian law (see paragraph 58 above), there is no provision for any domestic legal remedies by which to challenge its lawfulness in terms of a deprivation of liberty. In addition, the Court notes that, according to the domestic courts' practice, the validity of the placement agreement could have been challenged on the ground of lack of consent only on the guardian's initiative (see paragraph 54 above).

173. In so far as the Government referred to the procedure for restoration of legal capacity under Article 277 of the CCP (see paragraph 167 above), the Court notes that the purpose of this procedure would not have been to examine the lawfulness of the applicant's placement *per se*, but solely to review his legal status (see paragraphs 233-246 below). The Government also referred to the procedures for reviewing steps taken by the guardian (see paragraphs 165-166 above). The Court considers it necessary

to determine whether such remedies could have given rise to a judicial review of the lawfulness of the placement as required by Article 5 § 4.

174. In this connection, it notes that the 1985 FC entitled close relatives of a person under partial guardianship to challenge decisions by the guardianship authority, which in turn was required to review steps taken by the guardian – including the placement agreement – and to replace the latter in the event of failure to discharge his or her duties (see paragraphs 48-50 above). However, the Court notes that those remedies were not directly accessible to the applicant. Moreover, none of the persons theoretically entitled to make use of them displayed any intention of acting in Mr Stanev's interests, and he himself was unable to act on his own initiative without their approval.

175. It is uncertain whether the applicant could have requested the mayor to demand explanations from the guardian or to suspend the implementation of the placement agreement on the ground that it was invalid. In any event, it appears that since he had been partially deprived of legal capacity, the law did not entitle him to apply of his own motion to the courts to challenge steps taken by the mayor (see paragraph 49 above); this was not disputed by the Government.

176. The same conclusion applies as regards the possibility for the applicant to ask the mayor to replace his guardian temporarily with an *ad hoc* representative on the basis of an alleged conflict of interests and then to apply for the termination of the placement agreement. The Court observes in this connection that the mayor has discretion to determine whether there is a conflict of interests (see paragraph 50 above). Lastly, it does not appear that the applicant could have applied of his own motion to the courts for a review on the merits in the event of the mayor's refusal to take such action.

177. The Court therefore concludes that the remedies referred to by the Government were either inaccessible to the applicant or were not judicial in nature. Furthermore, none of them can give rise to a direct review of the lawfulness of the applicant's placement in the Pastra social care home in terms of domestic law and the Convention.

178. Having regard to those considerations, the Court dismisses the Government's objection of failure to exhaust domestic remedies (see paragraphs 97-99 above) and finds that there has been a violation of Article 5 § 4 of the Convention.

### III. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

179. The applicant submitted that he had not been entitled to compensation for the alleged violations of his rights under Article 5 §§ 1 and 4 of the Convention.

He relied on Article 5 § 5, which provides:

“Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

#### **A. The parties’ submissions**

180. The applicant submitted that the circumstances in which unlawful detention could give rise to compensation were exhaustively listed in the State Responsibility for Damage Act 1988 (see paragraphs 62-67 above) and that his own situation was not covered by any of them. He further complained that there were no legal remedies by which compensation could be claimed for a violation of Article 5 § 4.

181. The Government maintained that the compensation procedure under the 1988 Act could have been initiated if the applicant’s placement in the home had been found to have no legal basis. Since the placement had been found to be consistent with domestic law and with his own interests, he had not been able to initiate the procedure in question.

#### **B. The Court’s assessment**

182. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 (see *Wassink v. the Netherlands*, 27 September 1990, § 38, Series A no. 185-A, and *Houtman and Meeus v. Belgium*, no. 22945/07, § 43, 17 March 2009). The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the other paragraphs has been established, either by a domestic authority or by the Convention institutions. In this connection, the effective enjoyment of the right to compensation guaranteed by Article 5 § 5 must be ensured with a sufficient degree of certainty (see *Ciulla v. Italy*, 22 February 1989, § 44, Series A no. 148; *Sakık and Others v. Turkey*, 26 November 1997, § 60, *Reports* 1997-VII; and *N.C. v. Italy* [GC], no. 24952/94, § 49, ECHR 2002-X).

183. Turning to the present case, the Court observes that, regard being had to its finding of a violation of paragraphs 1 and 4 of Article 5, paragraph 5 is applicable. It must therefore ascertain whether, prior to the present judgment, the applicant had an enforceable right at domestic level to compensation for damage, or whether he will have such a right following the adoption of this judgment.

184. The Court reiterates in this connection that in order to find a violation of Article 5 § 5, it has to establish that the finding of a violation of one of the other paragraphs of Article 5 could not give rise, either before or after the Court’s judgment, to an enforceable claim for compensation before the domestic courts (see *Brogan and Others v. the United Kingdom*, 29 November 1988, §§ 66-67, Series A no. 145-B).

185. Having regard to the case-law cited above, the Court considers that it must first be determined whether the violation of Article 5 §§ 1 and 4 found in the present case could have given rise, before the delivery of this judgment, to an entitlement to compensation before the domestic courts.

186. As regards the violation of Article 5 § 1, the Court observes that section 2(1) of the State Responsibility for Damage Act 1988 provides for compensation for damage resulting from a judicial decision ordering certain types of detention where the decision has been set aside as having no legal basis (see paragraph 62 above). However, that was not the case in this instance. It appears from the case file that the Bulgarian judicial authorities have not at any stage found the measure to have been unlawful or otherwise in breach of Article 5 of the Convention. Moreover, the Government's line of argument has been that the applicant's placement in the home was in accordance with domestic law. The Court therefore concludes that the applicant was unable to claim any compensation under the above-mentioned provision in the absence of an acknowledgment by the national authorities that the placement was unlawful.

187. As to the possibility under section 1 of the same Act of claiming compensation for damage resulting from unlawful acts by the authorities (see paragraph 63 above), the Court observes that the Government have not produced any domestic decisions indicating that that provision is applicable to cases involving the placement of people with mental disorders in social care homes on the basis of civil-law agreements.

188. Furthermore, since no judicial remedy by which to review the lawfulness of the placement was available under Bulgarian law, the applicant could not have invoked State liability as a basis for receiving compensation for the violation of Article 5 § 4.

189. The question then arises whether the judgment in the present case, in which violations of paragraphs 1 and 4 of Article 5 have been found, will entitle the applicant to claim compensation under Bulgarian law. The Court observes that it does not appear from the relevant legislation that any such remedy exists; nor, indeed, have the Government submitted any arguments to prove the contrary.

190. It has therefore not been shown the applicant was able to avail himself prior to the Court's judgment in the present case, or will be able to do so after its delivery, of a right to compensation for the violation of Article 5 §§ 1 and 4.

191. There has therefore been a violation of Article 5 § 5.

#### IV. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION, TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 13

192. The applicant complained that the living conditions in the Pastra social care home were poor and that no effective remedy was available

under Bulgarian law in respect of that complaint. He relied on Article 3, taken alone and in conjunction with Article 13 of the Convention. These provisions are worded as follows:

**Article 3**

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

**Article 13**

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

**A. Preliminary objection of failure to exhaust domestic remedies**

193. In their memorial before the Grand Chamber the Government for the first time raised an objection of failure to exhaust domestic remedies in respect of the complaint under Article 3 of the Convention. They submitted that the applicant could have obtained compensation for the living conditions in the home by bringing an action under the State Responsibility for Damage Act 1988.

194. The Court reiterates that, in accordance with Rule 55 of the Rules of Court, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application (see *N.C. v. Italy*, cited above, § 44). Where an objection of failure to exhaust domestic remedies is raised out of time for the purposes of Rule 55, an estoppel arises and the objection must accordingly be dismissed (see *Velikova v. Bulgaria*, no. 41488/98, § 57, ECHR 2000-VI, and *Tanribilir v. Turkey*, no. 21422/93, § 59, 16 November 2000).

195. In the present case the Government have not cited any circumstances justifying their failure to raise the objection in question at the time of the Chamber’s examination of the admissibility of the case.

196. That being so, the Court observes that the Government are estopped from raising this objection, which must accordingly be dismissed.

**B. Merits of the complaint under Article 3 of the Convention**

*1. The parties’ submissions*

197. The applicant submitted that the poor living conditions in the Pastra social care home, in particular the inadequate food, the deplorable sanitary conditions, the lack of heating, the enforced medical treatment, the overcrowded bedrooms and the absence of therapeutic and cultural activities, amounted to treatment prohibited by Article 3.

198. He observed that the Government had already acknowledged in 2004 that such living conditions did not comply with the relevant European standards and had undertaken to make improvements (see paragraph 82 above). However, the conditions had remained unchanged, at least until late 2009.

199. In their observations before the Chamber, the Government acknowledged the deficiencies in the living conditions at the home. They explained that the inadequate financial resources set aside for institutions of this kind formed the main obstacle to ensuring the requisite minimum standard of living. They also stated that, following an inspection by the Social Assistance Agency, the authorities had resolved to close the Pastra social care home and to take steps to improve living conditions for its residents. In the Government's submission, since the living conditions were the same for all the home's residents and there had been no intention to inflict ill-treatment, the applicant had not been subjected to degrading treatment.

200. Before the Grand Chamber the Government stated that renovation work had been carried out in late 2009 in the part of the home where the applicant lived (see paragraph 24 above).

## 2. *The Court's assessment*

### (a) **General principles**

201. Article 3 enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 90, ECHR 2000-XI, and *Poltoratskiy v. Ukraine*, no. 38812/97, § 130, ECHR 2003-V).

202. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see *Kudła*, cited above, § 91, and *Poltoratskiy*, cited above, § 131).

203. Treatment has been held by the Court to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering (see *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV). Treatment has been considered "degrading" when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance or driving them to act against their will or conscience (see *Jalloh v. Germany* [GC],

no. 54810/00, § 68, ECHR 2006-IX). In this connection, the question whether such treatment was intended to humiliate or debase the victim is a factor to be taken into account, although the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (see *Peers v. Greece*, no. 28524/95, §§ 67, 68 and 74, ECHR 2001-III, and *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI).

204. The suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that deprivation of liberty in itself raises an issue under Article 3 of the Convention. Nevertheless, under that Article the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (see *Kudla*, cited above, §§ 92-94).

205. When assessing the conditions of a deprivation of liberty under Article 3 of the Convention, account has to be taken of their cumulative effects and the duration of the measure in question (see *Kalashnikov*, cited above, §§ 95 and 102; *Kehayov v. Bulgaria*, no. 41035/98, § 64, 18 January 2005; and *Iovchev v. Bulgaria*, no. 41211/98, § 127, 2 February 2006). In this connection, an important factor to take into account, besides the material conditions, is the detention regime. In assessing whether a restrictive regime may amount to treatment contrary to Article 3 in a given case, regard must be had to the particular conditions, the stringency of the regime, its duration, the objective pursued and its effects on the person concerned (see *Kehayov*, cited above, § 65).

**(b) Application of these principles in the present case**

206. In the present case the Court has found that the applicant's placement in the Pastra social care home – a situation for which the domestic authorities must be held responsible – amounts to a deprivation of liberty within the meaning of Article 5 of the Convention (see paragraph 132 above). It follows that Article 3 is applicable to the applicant's situation, seeing that it prohibits the inhuman and degrading treatment of anyone in the care of the authorities. The Court would emphasise that the prohibition of ill-treatment in Article 3 applies equally to all forms of deprivation of liberty, and in particular makes no distinction according to the purpose of the measure in issue; it is immaterial whether the measure entails detention ordered in the context of criminal proceedings or



admission to an institution with the aim of protecting the life or health of the person concerned.

207. The Court notes at the outset that, according to the Government, the building in which the applicant lives was renovated in late 2009, resulting in an improvement in his living conditions (see paragraph 200 above); the applicant did not dispute this. The Court therefore considers that the applicant's complaint should be taken to refer to the period between 2002 and 2009. The Government have not denied that during that period the applicant's living conditions corresponded to his description, and have also acknowledged that, for economic reasons, there were certain deficiencies in that regard (see paragraphs 198-199 above).

208. The Court observes that although the applicant shared a room measuring 16 square metres with four other residents, he enjoyed considerable freedom of movement both inside and outside the home, a fact likely to lessen the adverse effects of a limited sleeping area (see *Valašinas v. Lithuania*, no. 44558/98, § 103, ECHR 2001-VIII).

209. Nevertheless, other aspects of the applicant's physical living conditions are a considerable cause for concern. In particular, it appears that the food was insufficient and of poor quality. The building was inadequately heated and in winter the applicant had to sleep in his coat. He was able to have a shower once a week in an unhygienic and dilapidated bathroom. The toilets were in an execrable state and access to them was dangerous, according to the findings by the CPT (see paragraphs 21, 22, 23, 78 and 79 above). In addition, the home did not return clothes to the same people after they were washed (see paragraph 21 above), which was likely to arouse a feeling of inferiority in the residents.

210. The Court cannot overlook the fact that the applicant was exposed to all the above-mentioned conditions for a considerable period of approximately seven years. Nor can it ignore the findings of the CPT, which, after visiting the home, concluded that the living conditions there at the relevant time could be said to amount to inhuman and degrading treatment. Despite having been aware of those findings, during the period from 2002 to 2009 the Government did not act on their undertaking to close down the institution (see paragraph 82 above). The Court considers that the lack of financial resources cited by the Government is not a relevant argument to justify keeping the applicant in the living conditions described (see *Poltoratskiy*, cited above, § 148).

211. It would nevertheless emphasise that there is no suggestion that the national authorities deliberately intended to inflict degrading treatment. However, as noted above (see paragraph 203), the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3.

212. In conclusion, while noting the improvements apparently made to the Pastra social care home since late 2009, the Court considers that, taken

as a whole, the living conditions to which the applicant was exposed during a period of approximately seven years amounted to degrading treatment.

213. There has therefore been a violation of Article 3 of the Convention.

### **C. Merits of the complaint under Article 13 in conjunction with Article 3**

#### *1. The parties' submissions*

214. The applicant submitted that no domestic remedies, including the claim for compensation envisaged in the State Responsibility for Damage Act 1988, had been accessible to him without his guardian's consent. He pointed out in that connection that he had not had a guardian for a period of more than two years, between the end of Ms R.P.'s designated term on 31 December 2002 (see paragraph 12 above) and the appointment of a new guardian on 2 February 2005 (see paragraph 17 above). Moreover, his new guardian was also the director of the social care home. There would therefore have been a conflict of interests between the applicant and his guardian in the event of any dispute concerning the living conditions at the home and the applicant could not have expected the guardian to support his allegations.

215. In the Government's submission, an action for restoration of legal capacity (see paragraphs 51-52 above) constituted a remedy by which the applicant could have secured a review of his status, and in the event of being released from partial guardianship, he could have left the social care home and ceased to endure the living conditions of which he complained.

216. The Government added that the applicant could have complained directly about the living conditions at the Pastra social care home by bringing an action under section 1 of the State Responsibility for Damage Act 1988 (see paragraphs 62-67 above).

#### *2. The Court's assessment*

217. The Court refers to its settled case-law to the effect that Article 13 guarantees the existence of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law (see *McGlinchey and Others v. the United Kingdom*, no. 50390/99, § 62, ECHR 2003-V).

218. Where, as in the present case, the Court has found a breach of Article 3, compensation for the non-pecuniary damage flowing from the

breach should in principle be part of the range of available remedies (*ibid.*, § 63; and *Iovchev*, cited above, § 143).

219. In the instant case the Court observes that section 1(1) of the State Responsibility for Damage Act 1988 has indeed been interpreted by the domestic courts as being applicable to damage suffered by prisoners as a result of poor detention conditions (see paragraphs 63-64 above). However, according to the Government's submissions, the applicant's placement in the Pastra social care home is not regarded as detention under domestic law (see paragraphs 108-111 above). Therefore, he would not have been entitled to compensation for the poor living conditions in the home. Moreover, there are no judicial precedents in which this provision has been found to apply to allegations of poor conditions in social care homes (see paragraph 65 above), and the Government have not adduced any arguments to prove the contrary. Having regard to those considerations, the Court concludes that the remedies in question were not effective within the meaning of Article 13.

220. As to the Government's reference to the procedure for restoration of legal capacity (see paragraph 215 above), the Court considers that, even assuming that, as a result of that remedy, the applicant had been able to have his legal capacity restored and to leave the home, he would not have been awarded any compensation for his treatment during his placement there. Accordingly, the remedy in question did not afford appropriate redress.

221. There has therefore been a violation of Article 13 of the Convention, taken in conjunction with Article 3.

## V. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

222. The applicant alleged that Bulgarian law had not afforded him the possibility of applying to a court for restoration of his legal capacity. He relied on Article 6 § 1 of the Convention, the relevant parts of which read:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

### A. Preliminary remarks

223. The Grand Chamber observes that the Government have maintained before it the objection they raised before the Chamber alleging failure to exhaust domestic remedies. The objection was based on Article 277 of the CCP, which, according to the Government, entitled the applicant to apply personally to the courts for restoration of his legal capacity.

224. The Grand Chamber notes that in its admissibility decision of 29 June 2010 the Chamber observed that the applicant disputed the accessibility of the remedy which, according to the Government, would

have enabled him to obtain a review of his legal status and that that argument underpinned his complaint under Article 6 § 1. The Chamber thus joined the Government's objection to its examination of the merits of the complaint in question. The Grand Chamber sees no reason to depart from the Chamber's conclusion.

## **B. Merits**

### *1. The parties' submissions*

225. The applicant maintained that he had been unable personally to institute proceedings for restoration of his legal capacity under Article 277 of the CCP and that this was borne out by the Supreme Court's decision no. 5/79 (see paragraph 51 above). In support of that argument, he submitted that the Dupnitsa District Court had declined to examine his application for judicial review of the mayor's refusal to bring such proceedings, on the ground that the guardian had not countersigned the form of authority (see paragraphs 39-40 above).

226. In addition, although an action for restoration of legal capacity had not been accessible to him, the applicant had attempted to bring such an action through the public prosecutor's office, the mayor and his guardian (the director of the home). However, since no application to that end had been lodged with the courts, all his attempts had failed. Accordingly, the applicant had never had the opportunity to have his case heard by a court.

227. The Government submitted that Article 277 of the CCP had offered the applicant direct access to a court at any time to have his legal status reviewed. They pointed out that, contrary to what the applicant alleged, the Supreme Court's decision no. 5/79 had interpreted Article 277 of the CCP as meaning that persons partially deprived of legal capacity could apply directly to the courts to be released from guardianship. The only condition for making such an application was the production of evidence of an improvement in their condition. However, as was indicated by the medical assessment carried out at the public prosecutor's request (see paragraph 37 above), which had concluded that the applicant's condition still persisted and that he was incapable of looking after his own interests, it was clear that the applicant had not had any such evidence available. The Government thus concluded that the applicant had not attempted to apply to the court on his own because he had been unable to substantiate his application.

228. The Government further observed that the courts regularly considered applications for restoration of legal capacity submitted, for example, by a guardian (see paragraph 52 above).

## 2. *The Court's assessment*

### (a) **General principles**

229. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal (see *Golder v. the United Kingdom*, 21 February 1975, § 36, Series A no. 18). This “right to a court”, of which the right of access is an aspect, may be relied on by anyone who considers on arguable grounds that an interference with the exercise of his or her civil rights is unlawful and complains that no possibility was afforded to submit that claim to a court meeting the requirements of Article 6 § 1 (see, *inter alia*, *Roche v. the United Kingdom* [GC], no. 32555/96, § 117, ECHR 2005-X, and *Salontaji-Drobnjak v. Serbia*, no. 36500/05, § 132, 13 October 2009).

230. The right of access to the courts is not absolute but may be subject to limitations; these are permitted by implication since the right of access “by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the community and of individuals” (see *Ashingdane*, cited above, § 57). In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention’s requirements rests with the Court, it is no part of the Court’s function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field. Nonetheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (*ibid.*; see also, among many other authorities, *Cordova v. Italy* (no. 1), no. 40877/98, § 54, ECHR 2003-I, and the recapitulation of the relevant principles in *Fayed v. the United Kingdom*, 21 September 1994, § 65, Series A no. 294-B).

231. Furthermore, the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective. This is particularly true for the guarantees enshrined in Article 6, in view of the prominent place held in a democratic society by the right to a fair trial with all the guarantees under that Article (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 45, ECHR 2001-VIII).

232. Lastly, the Court observes that in most of the cases before it involving “persons of unsound mind”, the domestic proceedings have concerned their detention and were thus examined under Article 5 of the Convention. However, it has consistently held that the “procedural” guarantees under Article 5 §§ 1 and 4 of the Convention are broadly similar to those under Article 6 § 1 (see, for instance, *Winterwerp*, cited above,

§ 60; *Sanchez-Reisse v. Switzerland*, 21 October 1986, §§ 51 and 55, Series A no. 107; *Kampanis v. Greece*, 13 July 1995, § 47, Series A no. 318-B; and *Ilijkov v. Bulgaria*, no. 33977/96, § 103, 26 July 2001). In the *Shtukurov* case (cited above, § 66), in determining whether or not the incapacitation proceedings had been fair, the Court had regard, *mutatis mutandis*, to its case-law under Article 5 §§ 1 (e) and 4 of the Convention.

**(b) Application of these principles in the present case**

233. The Court observes at the outset that in the present case, none of the parties disputed the applicability of Article 6 to proceedings for restoration of legal capacity. The applicant, who has been partially deprived of legal capacity, complained that Bulgarian law did not afford him direct access to a court to apply to have his capacity restored. The Court has had occasion to clarify that proceedings for restoration of legal capacity are directly decisive for the determination of “civil rights and obligations” (see *Matter v. Slovakia*, no. 31534/96, § 51, 5 July 1999). Article 6 § 1 of the Convention is therefore applicable in the instant case.

234. It remains to be determined whether the applicant’s access to court was restricted and, if so, whether the restriction pursued a legitimate aim and was proportionate to it.

235. The Court notes firstly that the parties differed as to whether a legally incapacitated person had *locus standi* to apply directly to the Bulgarian courts for restoration of legal capacity; the Government argued that this was the case, whereas the applicant maintained the contrary.

236. The Court accepts the applicant’s argument that, in order to make an application to a Bulgarian court, a person under partial guardianship is required to seek the support of the persons referred to in Article 277 of the 1952 CCP (which has become Article 340 of the 2007 CCP). The list of persons entitled to apply to the courts under Bulgarian law does not explicitly include the person under partial guardianship (see paragraphs 45 and 51 above).

237. With regard to the Supreme Court’s 1980 decision (see paragraph 51 above), the Court observes that although the fourth sentence of paragraph 10 of the decision, read in isolation, might give the impression that a person under partial guardianship has direct access to a court, the Supreme Court explains further on that where the guardian of a partially incapacitated person and the guardianship authority refuse to institute proceedings for restoration of legal capacity, the person concerned may request the public prosecutor to do so. In the Court’s view, the need to seek the intervention of the public prosecutor is scarcely reconcilable with direct access to court for persons under partial guardianship in so far as the decision to intervene is left to the prosecutor’s discretion. It follows that the Supreme Court’s 1980 decision cannot be said to have clearly affirmed the existence of such access in Bulgarian law.

238. The Court further notes that the Government have not produced any court decisions showing that persons under partial guardianship have been able to apply of their own motion to a court to have the measure lifted; however, they have shown that at least one application for restoration of legal capacity has been successfully brought by the guardian of a fully incapacitated person (see paragraph 52 above).

239. The Court thus considers it established that the applicant was unable to apply for restoration of his legal capacity other than through his guardian or one of the persons listed in Article 277 of the CCP.

240. The Court would also emphasise that, as far as access to court is concerned, domestic law makes no distinction between those who are entirely deprived of legal capacity and those who, like the applicant, are only partially incapacitated. Moreover, domestic legislation does not provide for any possibility of automatic periodic review of whether the grounds for placing a person under guardianship remain valid. Lastly, in the applicant's case the measure in question was not limited in time.

241. Admittedly, the right of access to the courts is not absolute and requires by its very nature that the State should enjoy a certain margin of appreciation in regulating the sphere under examination (see *Ashingdane*, cited above, § 57). In addition, the Court acknowledges that restrictions on a person's procedural rights, even where the person has been only partially deprived of legal capacity, may be justified for the person's own protection, the protection of the interests of others and the proper administration of justice. However, the importance of exercising these rights will vary according to the purpose of the action which the person concerned intends to bring before the courts. In particular, the right to ask a court to review a declaration of incapacity is one of the most important rights for the person concerned since such a procedure, once initiated, will be decisive for the exercise of all the rights and freedoms affected by the declaration of incapacity, not least in relation to any restrictions that may be placed on the person's liberty (see also *Shtukurov*, cited above, § 71). The Court therefore considers that this right is one of the fundamental procedural rights for the protection of those who have been partially deprived of legal capacity. It follows that such persons should in principle enjoy direct access to the courts in this sphere.

242. However, the State remains free to determine the procedure by which such direct access is to be realised. At the same time, the Court considers that it would not be incompatible with Article 6 for national legislation to provide for certain restrictions on access to court in this sphere, with the sole aim of ensuring that the courts are not overburdened with excessive and manifestly ill-founded applications. Nevertheless, it seems clear that this problem may be solved by other, less restrictive means than automatic denial of direct access, for example by limiting the

frequency with which applications may be made or introducing a system for prior examination of their admissibility on the basis of the file.

243. The Court further observes that eighteen of the twenty national legal systems studied in this context provide for direct access to the courts for any partially incapacitated persons wishing to have their status reviewed. In seventeen States such access is open even to those declared fully incapable (see paragraphs 88-90 above). This indicates that there is now a trend at European level towards granting legally incapacitated persons direct access to the courts to seek restoration of their capacity.

244. The Court is also obliged to note the growing importance which international instruments for the protection of people with mental disorders are now attaching to granting them as much legal autonomy as possible. It refers in this connection to the United Nations Convention of 13 December 2006 on the Rights of Persons with Disabilities and to Recommendation No. R (99) 4 of the Committee of Ministers of the Council of Europe on principles concerning the legal protection of incapable adults, which recommend that adequate procedural safeguards be put in place to protect legally incapacitated persons to the greatest extent possible, to ensure periodic reviews of their status and to make appropriate remedies available (see paragraphs 72-73 above).

245. In the light of the foregoing, in particular the trends emerging in national legislation and the relevant international instruments, the Court considers that Article 6 § 1 of the Convention must be interpreted as guaranteeing in principle that anyone who has been declared partially incapable, as is the applicant's case, has direct access to a court to seek restoration of his or her legal capacity.

246. In the instant case the Court has observed that direct access of this kind is not guaranteed with a sufficient degree of certainty by the relevant Bulgarian legislation. That finding is sufficient for it to conclude that there has been a violation of Article 6 § 1 of the Convention in respect of the applicant.

247. The above conclusion dispenses the Court from examining whether the indirect legal remedies referred to by the Government provided the applicant with sufficient guarantees that his case would be brought before a court.

248. The Court therefore dismisses the Government's objection of failure to exhaust domestic remedies (see paragraph 223 above) and concludes that there has been a violation of Article 6 § 1 of the Convention.

## VI. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION, TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 13

249. The applicant alleged that the restrictive guardianship regime, including his placement in the Pastra social care home and the physical



living conditions there, had amounted to unjustified interference with his right to respect for his private life and home. He submitted that Bulgarian law had not afforded him a sufficient and accessible remedy in that respect. He relied on Article 8 of the Convention, taken alone and in conjunction with Article 13.

Article 8 provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

250. The applicant maintained in particular that the guardianship regime had not been geared to his individual case but had entailed restrictions automatically imposed on anyone who had been declared incapable by a judge. He added that the fact of having to live in the Pastra social care home had effectively barred him from taking part in community life and from developing relations with persons of his choosing. The authorities had not attempted to find alternative therapeutic solutions in the community or to take measures that were less restrictive of his personal liberty, with the result that he had developed “institutionalisation syndrome”, that is, the loss of social skills and individual personality traits.

251. The Government contested those allegations.

252. Having regard to its conclusions under Articles 3, 5, 6 and 13 of the Convention, the Court considers that no separate issue arises under Article 8 of the Convention, taken alone and/or in conjunction with Article 13. It is therefore unnecessary to examine this complaint.

## VII. ARTICLES 46 AND 41 OF THE CONVENTION

### A. Article 46 of the Convention

253. The relevant parts of Article 46 of the Convention read as follows:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution. ...”

254. The Court reiterates that by Article 46 of the Convention the Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach of the Convention or the Protocols thereto imposes

on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress as far as possible the effects (see *Menteş and Others v. Turkey* (Article 50), 24 July 1998, § 24, *Reports* 1998-IV; *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; and *Maestri v. Italy* [GC], no. 39748/98, § 47, ECHR 2004-I). The Court further notes that it is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order to discharge its obligation under Article 46 of the Convention (see *Scozzari and Giunta*, cited above; *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I; and *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-IV).

255. However, with a view to helping the respondent State to fulfil its obligations under Article 46, the Court may seek to indicate the type of individual and/or general measures that might be taken in order to put an end to the situation it has found to exist (see *Broniowski v. Poland* [GC], no. 31443/96, § 194, ECHR 2004-V, and *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 148, ECHR 2009-...).

256. In the instant case the Court considers that it is necessary, in view of its finding of a violation of Article 5, to indicate individual measures for the execution of this judgment. It observes that it has found a violation of that Article on account of the failure to comply with the requirement that any deprivation of liberty must be “in accordance with a procedure prescribed by law” and the lack of justification for the applicant’s deprivation of liberty under sub-paragraph (e) or any of the other sub-paragraphs of Article 5 § 1. It has also noted deficiencies in the assessment of the presence and persistence of any disorders warranting placement in a social care home (see paragraphs 148-160 above).

257. The Court considers that in order to redress the effects of the breach of the applicant’s rights, the authorities should ascertain whether he wishes to remain in the home in question. Nothing in this judgment should be seen as an obstacle to his continued placement in the Pastra social care home or any other home for people with mental disorders if it is established that he consents to the placement. However, should the applicant object to such placement, the authorities should re-examine his situation without delay in the light of the findings of this judgment.

258. The Court notes that it has also found a violation of Article 6 § 1 on account of the lack of direct access to a court for a person who has been partially deprived of legal capacity with a view to seeking its restoration (see paragraphs 233-248 above). Having regard to that finding, the Court

recommends that the respondent State envisage the necessary general measures to ensure the effective possibility of such access.

## **B. Article 41 of the Convention**

259. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

### *1. Damage*

260. The applicant did not submit any claims in respect of pecuniary damage but sought EUR 64,000 for non-pecuniary damage.

261. He asserted in particular that he had endured poor living conditions in the social care home and claimed a sum of EUR 14,000 on that account. In respect of his placement in the Pastra social care home, he stated that he had experienced feelings of anxiety, distress and frustration ever since that measure had begun to be implemented in December 2002. His enforced placement in the home had also had a significant impact on his life as he had been removed from his social environment and subjected to a very restrictive regime, making it harder for him to reintegrate into the community. He submitted that although there was no comparable case-law concerning unlawful detention in a social care home for people with mental disorders, regard should be had to the just satisfaction awarded by the Court in cases involving unlawful detention in psychiatric institutions. He referred, for example, to the judgments in *Gajcsi v. Hungary* (no. 34503/03, §§ 28-30, 3 October 2006) and *Kayadjieva v. Bulgaria* (no. 56272/00, § 57, 28 September 2006), while noting that he had been deprived of his liberty for a considerably longer period than the applicants in the above-mentioned cases. He submitted that a sum of EUR 30,000 would constitute an equitable award on that account. Lastly, he added that his lack of access to the courts to seek a review of his legal status had restricted the exercise of a number of freedoms in the sphere of his private life, causing additional non-pecuniary damage, for which an award of EUR 20,000 could provide redress.

262. The Government submitted that the applicant's claims were excessive and unfounded. They argued that if the Court were to make any award in respect of non-pecuniary damage, it should not exceed the amounts awarded in judgments against Bulgaria concerning compulsory psychiatric admission. The Government referred to the judgments in *Kayadjieva* (cited above, § 57), *Varbanov* (cited above, § 67), and *Kepenerov v. Bulgaria* (no. 39269/98, § 42, 31 July 2003).

263. The Court observes that it has found violations of several provisions of the Convention in the present case, namely Articles 3, 5 (paragraphs 1, 4 and 5), 6 and 13. It considers that the applicant must have endured suffering as a result of his placement in the home, which began in December 2002 and is still ongoing, his inability to secure a judicial review of that measure and his lack of access to a court to apply for release from partial guardianship. This suffering undoubtedly aroused in him a feeling of helplessness and anxiety. The Court further considers that the applicant sustained non-pecuniary damage on account of the degrading living conditions he had to endure for more than seven years.

264. Ruling on an equitable basis, as required by Article 41 of the Convention, the Court considers that the applicant should be awarded an aggregate sum of EUR 15,000 in respect of non-pecuniary damage.

*2. Costs and expenses*

265. The applicant did not submit any claims in respect of costs and expenses.

*3. Default interest*

266. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT

1. *Dismisses*, unanimously, the Government's preliminary objections of failure to exhaust domestic remedies;
2. *Holds*, unanimously, that there has been a violation of Article 5 § 1 of the Convention;
3. *Holds*, unanimously, that there has been a violation of Article 5 § 4 of the Convention;
4. *Holds*, unanimously, that there has been a violation of Article 5 § 5 of the Convention;
5. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention, taken alone and in conjunction with Article 13;
6. *Holds*, unanimously, that there has been a violation of Article 6 § 1 of the Convention;

7. *Holds*, by thirteen votes to four, that it is not necessary to examine whether there has been a violation of Article 8 of the Convention, taken alone and in conjunction with Article 13;
8. *Holds*, unanimously,
  - (a) that the respondent State is to pay the applicant, within three months, EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage, to be converted into Bulgarian leva at the rate applicable at the date of settlement, plus any tax that may be chargeable;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
9. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 17 January 2012.

Vincent Berger  
Jurisconsult

Nicolas Bratza  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) joint partly dissenting opinion of Judges Tulkens, Spielmann and Laffranque;
- (b) partly dissenting opinion of Judge Kalaydjieva.

N.B.  
V.B.

JOINT PARTLY DISSENTING OPINION OF JUDGES  
TULKENS, SPIELMANN AND LAFFRANQUE

*(Translation)*

We had no hesitation in voting in favour of finding a violation of Article 5 and of Article 3, taken alone and in conjunction with Article 13. We also voted in favour of finding a violation of Article 6 of the Convention, and we believe that the judgment is likely to strengthen considerably the protection of persons in a similarly vulnerable situation to the applicant. However, we do not agree with the majority's finding that no separate issue arises under Article 8 of the Convention, taken alone and/or in conjunction with Article 13, and that it is therefore unnecessary to examine this complaint (see paragraph 252 of the judgment and point 7 of the operative provisions).

We wish to point out that the applicant alleged that the restrictive guardianship regime, including his placement in the Pastra social care home and the physical living conditions there, amounted to unjustified interference with his right to respect for his private life and home (see paragraph 249 of the judgment). He submitted that Bulgarian law had not afforded him a sufficient and accessible remedy in that respect. He also maintained that the guardianship regime had not been geared to his individual case but had entailed restrictions automatically imposed on anyone who had been declared incapable by a judge. He added that the fact of having to live in the Pastra social care home had effectively barred him from taking part in community life and from developing relations with persons of his choosing. The authorities had not attempted to find alternative therapeutic solutions in the community or to take measures that were less restrictive of his personal liberty, with the result that he had developed "institutionalisation syndrome", that is, the loss of social skills and individual personality traits (see paragraph 250 of the judgment).

In our opinion, these are genuine issues that deserved to be examined separately. Admittedly, a large part of the allegations submitted under Article 8 are similar to those raised under Articles 3, 5 and 6. Nevertheless, they are not identical and the answers given in the judgment in relation to those provisions cannot entirely cover the complaints brought under Articles 8 and 13.

More specifically, an issue that would also have merited a separate examination concerns the scope of a periodic review of the applicant's situation. He submitted that domestic law did not provide for an automatic periodic assessment of the need to maintain a measure restricting legal capacity. It might have been helpful to consider whether States have a positive obligation to set up a review procedure of this kind, especially in situations where the persons concerned are unable to comprehend the

consequences of a regular review and cannot themselves initiate a procedure to that end.

## PARTLY DISSENTING OPINION OF JUDGE KALAYDJIEVA

I had no hesitation in reaching the conclusions concerning Mr Stanev's complaints under Articles 5, 3 and 6 of the Convention. However, like Judges Tulkens, Spielmann and Laffranque, I regret the majority's conclusion that in view of these findings it was not necessary to examine separately his complaints under Article 8 concerning "the [partial guardianship] system, including the lack of regular reviews of the continued justification of such a measure, the appointment of the director of the Pastra social care home as his [guardian] and the alleged lack of scrutiny of the director's decisions, and also about the restrictions on his private life resulting from his admission to the home against his will, extending to the lack of contact with the outside world and the conditions attached to correspondence" (see paragraph 90 of the decision as to admissibility of 29 June 2010). In my view the applicant's complaints under Article 8 of the Convention remain the primary issue in the present case.

In its earlier case-law the Court has expressed the view that an individual's legal capacity is decisive for the exercise of all the rights and freedoms, not least in relation to any restrictions that may be placed on the person's liberty (see *Shtukurov v. Russia*, no. 44009/05, § 71, 27 March 2008; *Salontaji-Drobniak v. Serbia*, no. 36500/05, §§ 140 et seq.; and the recent judgment in *X and Y v. Croatia*, no. 5193/09, §§ 102-104).

There is hardly any doubt that restrictions on legal capacity constitute interference with the right to private life, which will give rise to a breach of Article 8 of the Convention unless it can be shown that it was "in accordance with the law", pursued one or more legitimate aims and was "necessary" for their attainment.

Unlike the situation of the applicants in the cases mentioned above, Mr Stanev's capacity to perform ordinary acts relating to everyday life and his ability to validly enter into legal transactions with the consent of his guardian were recognised. The national law and the domestic courts' decisions entitled him to request and obtain social care in accordance with his needs and preferences if he so wished, or to refuse such care in view of the quality of the services offered and/or any restrictions involved which he was not prepared to accept. There was nothing in the domestic law or the applicant's personal circumstances to justify any further restrictions, or to warrant the substitution of his own will with his guardian's assessment of his best interests.

However, once declared partially incapacitated, he was divested of the possibility of acting in his own interests and there were insufficient guarantees to prevent his *de facto* treatment as a fully incapacitated individual. It has not been contested that he was not consulted as to whether he wished to avail himself of placement in a social care institution and that



he was not even entitled to decide independently how to spend his time or the remaining part of his pension, and whether and when to visit his friends or relatives or other places, to send and receive letters or to otherwise communicate with the outside world. No justification was offered for the fact that Mr Stanev was stripped of the ability to act in accordance with his preferences to the extent determined by the courts and the law and that, instead of due assistance from his officially appointed guardian, the pursuit of his best interests was made completely dependent on the good will or neglect shown by the guardian. In this regard the lack of respect for the applicant's recognised personal autonomy violated Mr Stanev's right to personal life and dignity as guaranteed by Article 8 and failed to meet contemporary standards for ensuring the necessary respect for the wishes and preferences he was capable of expressing.

The applicant's situation was further aggravated by his inability to trigger any remedy for the independent protection of his rights and interests. Any attempt to avail himself of such remedies depended on the initial approval of Mr Stanev's guardian, who also acted as the director and representative of the social care institution. In this regard the majority's preference not to consider separately the applicant's complaints under Article 8 resulted in a failure to subject to separate scrutiny the absence of safeguards for the exercise of these rights in the face of a potential or even evident conflict of interests, a factor which appears to be of central importance for the requisite protection of vulnerable individuals against possible abuse and is equally pertinent to the applicant's complaints under Article 8 and Article 6.

While both parties submitted information to the effect that proceedings for the restoration of capacity were not only possible in principle, but had also been successful in a reasonable percentage of cases, Mr Stanev rightly complained that the institution of such proceedings in his case depended on his guardian's approval. It appears that the guardian's discretion to block any attempt to take proceedings in court affected not only the applicant's right of access to court for the purposes of restoration of capacity, but also prevented the institution of any proceedings in pursuit of the applicant's interests and rights, including those protected under Article 5 of the Convention. As was also submitted by his representatives before the national authorities, Mr Stanev "should have had the opportunity to assess by himself whether or not, having regard to the living conditions at the home, it was in his interests to remain there" (see paragraph 38 of the judgment).

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 2.7.2008  
COM(2008) 426 final

2008/0140 (CNS)

Proposal for a

**COUNCIL DIRECTIVE**

**on implementing the principle of equal treatment between persons irrespective of  
religion or belief, disability, age or sexual orientation**

(presented by the Commission)

{SEC(2008) 2180}

{SEC(2008) 2181}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### **Grounds for and objectives of the proposal**

The aim of this proposal is to implement the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation outside the labour market. It sets out a framework for the prohibition of discrimination on these grounds and establishes a uniform minimum level of protection within the European Union for people who have suffered such discrimination.

This proposal supplements the existing EC legal framework under which the prohibition of discrimination on grounds of religion or belief, disability, age or sexual orientation applies only to employment, occupation and vocational training<sup>1</sup>.

#### **General context**

The Commission announced in its legislative and work programme adopted on 23 October 2007<sup>2</sup> that it would propose new initiatives to complete the EU anti-discrimination legal framework.

The current proposal is presented as part of the ‘Renewed Social Agenda: Opportunities, access and solidarity in 21<sup>st</sup> century Europe’<sup>3</sup>, and accompanies the Communication ‘Non-Discrimination and Equal Opportunities: A Renewed Commitment’<sup>4</sup>.

The UN Convention on the Rights of Persons with Disabilities has been signed by the Member States and the European Community. It is based on the principles of non-discrimination, participation and inclusion in society, equal opportunities and accessibility. A proposal for the conclusion of the Convention by the European Community has been presented to the Council<sup>5</sup>.

#### **Existing provisions in the area of the proposal**

This proposal builds upon Directives 2000/43/EC, 2000/78/EC and 2004/113/EC<sup>6</sup> which prohibit discrimination on grounds of sex, racial or ethnic origin, age, disability, sexual orientation, religion or belief<sup>7</sup>. Discrimination based on race or ethnic origin is prohibited in employment, occupation and vocational training, as well as in non-employment areas such as

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<sup>1</sup> Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180 of 19.7.2000, p.22 and Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303 of 2.12.2000, p. 16

<sup>2</sup> COM (2007) 640

<sup>3</sup> COM (2008) 412

<sup>4</sup> COM (2008) 420

<sup>5</sup> [ COM (2008) XXX ]

<sup>6</sup> Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373 of 21.12.2004, p.37

<sup>7</sup> Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180 of 19.7.2000), Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303 of 2.12.2000)

social protection, health care, education and access to goods and services, including housing, which are available to the public. Discrimination based on sex is prohibited in the same range of areas, with the exception of education and media and advertising. However, discrimination based on age, religion and belief, sexual orientation and disability is prohibited only in employment, occupation and vocational training.

Directives 2000/43/EC and 2000/78/EC had to be transposed into national law by 2003, with the exception of those provisions dealing with age and disability discrimination, for which an extra three years was available. A report on the implementation of Directive 2000/43/EC was adopted by the Commission in 2006<sup>8</sup> and a report on the implementation of Directive 2000/78/EC was adopted on 19 June 2008<sup>9</sup>. All except one Member State have transposed these directives. Directive 2004/113/EC had to be transposed by the end of 2007.

As far as possible, the concepts and rules provided for in this proposal build on those used in the existing Directives based on Article 13 EC.

### **Consistency with other policies and objectives of the Union**

This proposal builds upon the strategy developed since the Amsterdam Treaty to combat discrimination and is consistent with the horizontal objectives of the European Union, and in particular with the Lisbon Strategy for Growth and Jobs and the objectives of the EU Social Protection and Social Inclusion Process. It will help to further the fundamental rights of citizens, in line with the EU Charter of Fundamental Rights.

## **2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

### **Consultation**

In preparing this initiative, the Commission sought to associate all stakeholders with a potential interest and care was taken to ensure that those who might want to comment would have the opportunity and time to respond. The European Year of Equal Opportunities for All provided a unique opportunity to highlight the issues and encourage participation in the debate.

Particular mention should be made of the public on-line consultation<sup>10</sup>, a survey of the business sector<sup>11</sup>, and a written consultation of, and meetings with, the social partners and European level NGOs active in the non-discrimination field<sup>12</sup>. The results of the public consultation and that of the NGOs were a call for legislation at EU level to increase the level of protection against discrimination although some argued for ground-specific directives in the area of disability and of sex. The European Business Test Panel consultation indicated that businesses believe it would be helpful to have the same level of protection from discrimination across the EU. The social partners representing business were against new legislation in principle, which they saw as increasing red tape and costs, while the trade unions were in favour.

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<sup>8</sup> COM (2006) 643 final

<sup>9</sup> COM (2008) 225

<sup>10</sup> The full results of the consultation can be accessed at:

[http://ec.europa.eu/employment\\_social/fundamental\\_rights/news/news\\_en.htm#rpc](http://ec.europa.eu/employment_social/fundamental_rights/news/news_en.htm#rpc)

<sup>11</sup> [http://ec.europa.eu/yourvoice/ebtp/consultations/index\\_en.htm](http://ec.europa.eu/yourvoice/ebtp/consultations/index_en.htm)

<sup>12</sup> [http://ec.europa.eu/employment\\_social/fundamental\\_rights/org/imass\\_en.htm#ar](http://ec.europa.eu/employment_social/fundamental_rights/org/imass_en.htm#ar)

The responses to the consultation highlighted concerns about how a new Directive would deal with a number of sensitive areas and also revealed misunderstandings about the limits or extent of Community competence. The proposed Directive addresses these concerns and makes explicit the limits of Community competence. Within these limits the Community has the power to act (Article 13 EC Treaty) and believes that action at EU level is the best way forward.

The responses also emphasised the specific nature of disability-related discrimination and the measures needed to address it. These are addressed in a specific Article.

Concerns have been expressed that a new Directive would bring costs for business but it should be emphasised that this proposal builds largely on concepts used in the existing directives with which economic operators are familiar. As to measures to deal with disability discrimination, the concept of reasonable accommodation is familiar to businesses since it was established in Directive 2000/78/EC. The Commission proposal specifies the factors to be taken into account when assessing what is 'reasonable'.

It was pointed out that, unlike the other two Directives, Directive 2000/78/EC does not require Member States to establish equality bodies. Attention was also drawn to the need to tackle multiple discrimination, for example by defining it as discrimination and by providing effective remedies. These issues go beyond the scope of this Directive but nothing prevents Member States taking action in these areas.

Finally, it was pointed out that the scope of protection from sex discrimination under Directive 2004/113/EC is not as extensive as in Directive 2000/43/EC and that this should be addressed in new legislation. The Commission does not take up this suggestion now since the date for transposition of Directive 2004/113/EC has only just passed. However the Commission will report in 2010 on the Directive's implementation and can propose modifications then, if appropriate.

### **Collection and use of expertise**

A study<sup>13</sup> in 2006 showed that, on the one hand, most countries provide legal protection in some form that goes beyond the current EC requirements in most of the areas examined, and on the other hand, there was a good deal of variety between countries as to the degree and nature of the protection. It also showed that very few countries carried out ex-ante impact assessments on non-discrimination legislation. A further study<sup>14</sup> looked at the nature and extent of discrimination outside employment in the EU, and the potential (direct and indirect) costs this may have for individuals and society.

In addition, the Commission has used the reports from the European Network of Independent Experts in the non-discrimination field, notably their overview 'Developing Anti-Discrimination Law in Europe'<sup>15</sup> as well as a study on 'Tackling Multiple Discrimination: practices, policies and laws'<sup>16</sup>.

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<sup>13</sup> [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/pubst/stud/mapstrand1\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/mapstrand1_en.pdf)

<sup>14</sup> Will be available on: [http://ec.europa.eu/employment\\_social/fundamental\\_rights/org/imass\\_en.htm](http://ec.europa.eu/employment_social/fundamental_rights/org/imass_en.htm)

<sup>15</sup> [http://ec.europa.eu/employment\\_social/fundamental\\_rights/public/pubst\\_en.htm#leg](http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm#leg)

<sup>16</sup> [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/pubst/stud/multidis\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/multidis_en.pdf)

Also relevant are the results of a special Eurobarometer survey<sup>17</sup> and a Eurobarometer flash survey in February 2008<sup>18</sup>.

### **Impact assessment**

The impact assessment report<sup>19</sup> looked at evidence of discrimination outside the labour market. It found that, while non-discrimination is recognised to be one of the fundamental values of the EU, in practice the level of legal protection to secure these values differs between Member States and between discrimination grounds. As result, those at risk of discrimination often find themselves less able to participate fully in society and the economy, with negative effects both for the individual and for broader society.

The report defined three objectives which any initiative should meet:

- to increase protection from discrimination ;
- to ensure legal certainty for economic operators and potential victims across the Member States;
- to enhance social inclusion and promote the full participation of all groups in society and the economy.

Of the various measures identified that could help reach the objectives, six options were selected for further analysis, notably no new action at EU level; self-regulation; recommendations; and one or more directives prohibiting discrimination outside the employment sphere .

In any event, Member States will have to implement the UN Convention on the Rights of Persons with Disabilities which defines the denial of reasonable accommodation as discrimination. A legally binding measure which prohibits discrimination on grounds of disability entails financial costs because of the adaptations needed but there are also benefits from the fuller economic and social inclusion of groups currently facing discrimination.

The report concludes that a multi-ground directive would be the appropriate response, designed so as to respect the principles of subsidiarity and proportionality. A small number of Member States already have rather complete legislative protection while most others have some, but less comprehensive, protection. The legislative adaptation arising from new EC rules would therefore vary.

The Commission received many complaints about discrimination in the insurance and banking sector. The use of age or disability by insurers and banks to assess the risk profile of customers does not necessarily represent discrimination: it depends on the product. The Commission will initiate a dialogue with the insurance and banking industry together with other relevant stakeholders to achieve a better common understanding of the areas where age or disability are relevant factors for the design and pricing of the products offered in these sectors.

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<sup>17</sup> Special Eurobarometer Survey 296 on discrimination in the EU:  
[http://ec.europa.eu/employment\\_social/fundamental\\_rights/public/pubst\\_en.htm](http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm) and  
[http://ec.europa.eu/public\\_opinion/archives/eb\\_special\\_en.htm](http://ec.europa.eu/public_opinion/archives/eb_special_en.htm)

<sup>18</sup> Flash Eurobarometer 232; [http://ec.europa.eu/public\\_opinion/flash/fl\\_232\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_232_en.pdf)

<sup>19</sup> Will be available on:[http://ec.europa.eu/employment\\_social/fundamental\\_rights/org/imass\\_en.htm](http://ec.europa.eu/employment_social/fundamental_rights/org/imass_en.htm)

### **3. LEGAL ASPECTS**

#### **Legal base**

The proposal is based on Article 13(1) EC Treaty.

#### **Subsidiarity and proportionality**

The principle of subsidiarity applies insofar as the proposal does not fall under the exclusive competence of the Community. The objectives of the proposal cannot be sufficiently achieved by the Member States acting alone because only a Community-wide measure can ensure that there is a minimum standard level of protection against discrimination based on religion or belief, disability, age or sexual orientation in all the Member States. A Community legal act provides legal certainty as to the rights and obligations of economic operators and citizens, including for those moving between the Member States. Experience with the previous directives adopted under Article 13(1) EC is that they had a positive effect in achieving a better protection against discrimination. In accordance with the principle of proportionality, the proposed directive does not go beyond what is necessary to achieve the objectives set.

Moreover, national traditions and approaches in areas such as healthcare, social protection and education tend to be more diverse than in employment-related areas. These areas are characterised by legitimate societal choices in areas which fall within national competence.

The diversity of European societies is one of Europe's strengths, and is to be respected in line with the principle of subsidiarity. Issues such as the organisation and content of education, recognition of marital or family status, adoption, reproductive rights and other similar questions are best decided at national level. The Directive does not therefore require any Member State to amend its present laws and practices in relation to these issues. Nor does it affect national rules governing the activities of churches and other religious organisations or their relationship with the state. So, for example, it will remain for Member States alone to take decisions on questions such as whether to allow selective admission to schools, or prohibit or allow the wearing or display of religious symbols in schools, whether to recognise same-sex marriages, and the nature of any relationship between organised religion and the state.

#### **Choice of instrument**

A directive is the instrument that best ensures a coherent minimum level of protection against discrimination across the EU, whilst allowing individual Member States that want to go beyond the minimum standards to do so. It also allows them to choose the most appropriate means of enforcement and sanctions. Past experience in the non-discrimination field is that a directive was the most appropriate instrument.

#### **Correlation table**

Member States are required to communicate to the Commission the text of national provisions transposing the directive as well as a correlation table between those provisions and the directive.



## European Economic Area

This is a text of relevance to the European Economic Area and the Directive will be applicable to the non-EU Member States of the European Economic Area following a decision of the EEA Joint Committee

### 4. BUDGETARY IMPLICATIONS

The proposal has no implications for the Community budget.

### 5. DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS

#### *Article 1: Purpose*

The main objective of the directive is to combat discrimination based on religion or belief, disability, age or sexual orientation and to put into effect the principle of equal treatment, outside the field of employment. The directive does not prohibit differences of treatment based on sex which are covered by Articles 13 and 141 of the EC Treaty and related secondary legislation.

#### *Article 2: Concept of discrimination*

The definition of the principle of equal treatment is based on that contained in the previous directives adopted under Article 13(1) EC [as well as relevant case law of the European Court of Justice].

Direct discrimination consists of treating someone differently solely because of his or her age, disability, religion or belief and sexual orientation. Indirect discrimination is more complex in that a rule or practice which seems neutral in fact has a particularly disadvantageous impact upon a person or a group of persons having a specific characteristic. The author of the rule or practice may have no idea of the practical consequences, and intention to discriminate is therefore not relevant. As in Directives 2000/43/EC, 2000/78/EC and 2002/73/EC<sup>20</sup>, it is possible to justify indirect discrimination (if "that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary").

Harassment is a form of discrimination. The unwanted conduct can take different forms, from verbal or written comments, gestures or behaviour, but it has to be serious enough to create an intimidating, humiliating or offensive environment. This definition is identical to the definitions contained in the other Article 13 directives.

A denial of reasonable accommodation is considered a form of discrimination. This is in line with the UN Convention on the rights of people with disabilities and coherent with Directive 2000/78/EC. Certain differences of treatment based on age may be lawful, if they are justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (proportionality test).

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<sup>20</sup> OJ L269 of 5.10.2002

In the existing Article 13 EC directives exceptions to the prohibition of direct discrimination were allowed for "genuine and determining occupational requirements", for differences of treatment based on age, and in the context of sex discrimination, in access to goods and services. Although the current proposal does not cover employment, there will be differences of treatment in the areas mentioned in Article 3 that should be allowed. However, as exceptions to the general principle of equality should be narrowly drawn, the double test of a justified aim and proportionate way of reaching it (i.e. in the least discriminatory way possible) is required.

A special rule is added for insurance and banking services, in recognition of the fact that age and disability can be an essential element of the assessment of risk for certain products, and therefore of price. If insurers are not allowed to take age and disability into account at all, the additional costs will have to be entirely borne by the rest of the "pool" of those insured, which would result in higher overall costs and lower availability of cover for consumers. The use of age and disability in the assessment of risk must be based on accurate data and statistics.

The directive does not affect national measures based on public security, public order, the prevention of criminal offences, the protection of health and the rights and freedoms of others.

### *Article 3: Scope*

Discrimination based on religion or belief, disability, age or sexual orientation is prohibited by both the public and private sector in:

- social protection, including social security and health care;
- social advantages;
- education;
- access to and supply of goods and services which are available to the public, including housing.

In terms of access to goods and services, only professional or commercial activities are covered. In other words, transactions between private individuals acting in a private capacity will not be covered: letting a room in a private house does not need to be treated in the same way as letting rooms in a hotel. The areas are covered only to the extent that the subject matter falls within the competences of the Community. Thus, for example, the organisation of the school system, activities and the content of education courses, including how to organise education for persons with disabilities, is a matter for the Member States, and they may provide for differences in treatment in access to religious educational institutions. For example, a school could arrange a special presentation just for children of a certain age, while a faith based school would be allowed to arrange school trips with a religious theme.

The text makes it clear that matters related to marital and family status, which includes adoption, are outside the scope of the directive. This includes reproductive rights. Member States remain free to decide whether or not to institute and recognise *legally* registered partnerships. However once national law recognises such relationships as comparable to that of spouses then the principle of equal treatment applies<sup>21</sup>.

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<sup>21</sup> Judgment of the ECJ of 1.4.2008 in case C-267/06 Tadao Maruko

Article 3 specifies that the directive does not cover national laws relating to the secular nature of the State and its institutions, nor to the status of religious organisations. Member States may thus allow or prohibit the wearing of religious symbols in schools. Differences in treatment based on nationality are also not covered.

#### *Article 4: Equal treatment of persons with disabilities*

Effective access for disabled people to social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing, shall be provided by anticipation. This obligation is limited by the defence that if this would impose a disproportionate burden or would require major changes to the product or service, it does not need to be done.

In some cases individual measures of reasonable accommodation may be necessary to ensure effective access for a particular disabled person. As above, this is only the case if it would not impose a disproportionate burden. A non-exhaustive list is given of factors that could be taken into account in assessing whether the burden is disproportionate, thus allowing the specific situation of small and medium sized, and micro enterprises, to be taken into account.

The concept of reasonable accommodation already exists in the employment sphere under Directive 2000/78/EC, and Member States and businesses therefore have experience in applying it. What might be appropriate for a large corporation or public body may not be for a small or medium-sized company. The requirement to make reasonable accommodation does not only imply making physical changes but may entail an alternative means of providing a service.

#### *Article 5: Positive action*

This provision is common to all Article 13 directives. It is clear that in many cases, formal equality does not lead to equality in practice. It may be necessary to put in place specific measures to prevent and correct situations of inequality. The Member States have different traditions and practices regarding positive action, and this article lets Member States provide for positive action but does not make this an obligation.

#### *Article 6: Minimum requirements*

This provision is common to all Article 13 directives. It allows Member States to provide a higher level of protection than that guaranteed by the Directive, and confirms that there should be no lowering of the level of protection against discrimination already afforded by Member States when implementing the Directive.

#### *Article 7: Defence of rights*

This provision is common to all Article 13 directives. People should be able to enforce their right to non-discrimination. This article therefore provides that people who believe that they have been the victim of discrimination should be able to use administrative or judicial procedures, even after the relationship in which the discrimination is alleged to have taken place has ended, in accordance with the ruling of the European Court of Justice in the Coote<sup>22</sup> case.

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<sup>22</sup> Case C-185/97 [1998] ECR I-5199

The right to effective legal protection is strengthened by allowing organisations, which have a legitimate interest in the fight against discrimination, to help victims of discrimination in judicial or administrative procedures. National rules on time limits for initiating actions are unaffected by this provision.

#### *Article 8: Burden of proof*

This provision is common to all Article 13 directives. In judicial procedures, the general rule is that a person who alleges something must prove it. However, in discrimination cases, it is often extremely difficult to obtain the evidence necessary to prove the case, as it is often in the hands of the respondent. This problem was recognised by the European Court of Justice<sup>23</sup> and the Community legislator in Directive 97/80/EC<sup>24</sup>.

The shift of the burden of proof applies to all cases alleging breach of the principle of equal treatment, including those involving associations and organisations under Article 7(2). As in the earlier directives, this shift in the burden of proof does not apply to situations where the criminal law is used to prosecute allegations of discrimination.

#### *Article 9: Victimisation*

This provision is common to all Article 13 directives. Effective legal protection must include protection against retaliation. Victims may be deterred from exercising their rights due to the risk of retaliation, and it is therefore necessary to protect individuals against any adverse treatment due to the exercise of the rights conferred by the Directive. This article is the same as in Directives 2000/43/EC and 2000/78/EC.

#### *Article 10: Dissemination of information*

This provision is common to all Article 13 directives. Experience and polls show that individuals are badly or insufficiently informed of their rights. The more effective the system of public information and prevention is, the less need there will be for individual remedies. This replicates equivalent provisions in Directives 2000/43/EC, 2000/78/EC and 2002/113/EC.

#### *Article 11: Dialogue with relevant stakeholders*

This provision is common to all Article 13 directives. It aims to promote dialogue between relevant public authorities and bodies such as non-governmental organisations which have a legitimate interest in contributing to the fight against discrimination on grounds of religion or belief, disability, age or sexual orientation. A similar provision is contained in the previous anti-discrimination directives.

#### *Article 12: Bodies for the promotion of equal treatment*

This provision is common to two Article 13 directives. This article requires the Member States to have a body or bodies ("Equality Body") at national level to promote equal treatment of all persons without discrimination on the grounds of religion or belief, disability, age or sexual orientation.

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<sup>23</sup> Danfoss, Case 109/88, [1989] ECR 03199

<sup>24</sup> OJ L.14, 20.1.1998

It replicates the provisions of Directive 2000/43/EC in as far as they deal with access to and supply of goods and services, and builds on equivalent provisions in Directives 2002/73/EC<sup>25</sup> and 2004/113/EC. It sets out minimum competences applicable to bodies at national level which should act independently to promote the principle of equal treatment. Member States may decide that these bodies be the same as those already established under the previous directives.

It is both difficult and expensive for individuals to mount a legal challenge if they think they have been discriminated against. A key role of the Equality Bodies is to give independent help to victims of discrimination. They must also be able to conduct independent surveys on discrimination and to publish reports and recommendations on issues relating to discrimination.

#### *Article 13: Compliance*

This provision is common to all Article 13 directives. Equal treatment involves the elimination of discrimination arising from any laws, regulations or administrative provision and the directive therefore requires the Member States to abolish any such provisions. As with earlier legislation, the directive also requires that any provisions contrary to the principle of equal treatment must be rendered null and void or amended, or must be capable of being so rendered if they are challenged.

#### *Article 14: Sanctions*

This provision is common to all Article 13 directives. In accordance with the case law of the Court of Justice<sup>26</sup>, the text provides that there should be no upper limit on the compensation payable in cases of breach of the principle of equal treatment. This provision does not require criminal sanctions to be introduced.

#### *Article 15: Implementation*

This provision is common to all Article 13 directives. It gives the Member States a period of two years to transpose the directive into national law and to communicate to the Commission the texts of the national law. Member States may provide that the obligation to ensure effective access for disabled persons only applies four years after the adoption of the Directive.

#### *Article 16: Report*

This provision is common to all Article 13 directives. It requires the Commission to report to the European Parliament and the Council on the application of the Directive, on the basis of information from Member States. The report will take account of the views of the social partners, relevant NGOs and the EU Fundamental Rights Agency.

#### *Article 17: Entry into force*

This provision is common to all Article 13 directives. The Directive will enter into force on the day it is published in the Official Journal.

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<sup>25</sup> Directive 2002/73/EC amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, OJ L 269 of 5.10.2002, p.15

<sup>26</sup> Cases C-180/95 Draehmpaehl, ECR 1997 I p.2195 and C-271/91 Marshall ECR 1993 I P.4367

*Article 18: Addressees*

This provision is common to all Article 13 directives, making it clear that the Directive is addressed to the Member States.

Proposal for a

**COUNCIL DIRECTIVE**

**on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 13(1) thereof,

Having regard to the proposal from the Commission<sup>27</sup>,

Having regard to the opinion of the European Parliament<sup>28</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>29</sup>,

Having regard to the opinion of the Committee of the Regions<sup>30</sup>,

Whereas:

- (1) In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States and it respects fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community law.
- (2) The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of all forms of Racial Discrimination, the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the UN Convention on the Rights of Persons with Disabilities, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, to which [all] Member States are signatories. In particular, the UN Convention on the Rights of Persons with Disabilities includes the denial of reasonable accommodation in its definition of discrimination.

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<sup>27</sup> OJ C , , p. .

<sup>28</sup> OJ C , , p. .

<sup>29</sup> OJ C , , p. .

<sup>30</sup> OJ C , , p. .

- (3) This Directive respects the fundamental rights and observes the fundamental principles recognised in particular by the Charter of Fundamental Rights of the European Union. Article 10 of the Charter recognises the right to freedom of thought, conscience and religion; Article 21 prohibits discrimination, including on grounds of religion or belief, disability, age or sexual orientation; and Article 26 acknowledges the right of persons with disabilities to benefit from measures designed to ensure their independence.
- (4) The European Years of Persons with Disabilities in 2003, of Equal Opportunities for All in 2007, and of Intercultural Dialogue in 2008 have highlighted the persistence of discrimination but also the benefits of diversity.
- (5) The European Council, in Brussels on 14 December 2007, invited Member States to strengthen efforts to prevent and combat discrimination inside and outside the labour market<sup>31</sup>.
- (6) The European Parliament has called for the extension of the protection of discrimination in European Union law<sup>32</sup>.
- (7) The European Commission has affirmed in its Communication 'Renewed social agenda: Opportunities, access and solidarity in 21st century Europe'<sup>33</sup> that, in societies where each individual is regarded as being of equal worth, no artificial barriers or discrimination of any kind should hold people back in exploiting these opportunities.
- (8) The Community has adopted three legal instruments<sup>34</sup> on the basis of article 13(1) of the EC Treaty to prevent and combat discrimination on grounds of sex, racial and ethnic origin, religion or belief, disability, age and sexual orientation. These instruments have demonstrated the value of legislation in the fight against discrimination. In particular, Directive 2000/78/EC establishes a general framework for equal treatment in employment and occupation on the grounds of religion or belief, disability, age and sexual orientation. However, variations remain between Member States on the degree and the form of protection from discrimination on these grounds beyond the areas of employment.
- (9) Therefore, legislation should prohibit discrimination based on religion or belief, disability, age or sexual orientation in a range of areas outside the labour market, including social protection, education and access to and supply of goods and services, including housing. It should provide for measures to ensure the equal access of persons with disabilities to the areas covered.
- (10) Directive 2000/78/EC prohibits discrimination in access to vocational training; it is necessary to complete this protection by extending the prohibition of discrimination to education which is not considered vocational training.
- (11) This Directive should be without prejudice to the competences of the Member States in the areas of education, social security and health care. It should also be without

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<sup>31</sup> Presidency conclusions of the Brussels European Council of 14 December 2007, point 50.

<sup>32</sup> Resolution of 20 May 2008 P6\_TA-PROV(2008)0212

<sup>33</sup> COM (2008) 412

<sup>34</sup> Directive 2000/43/EC, Directive 2000/78/EC and Directive 2004/113/EC



prejudice to the essential role and wide discretion of the Member States in providing, commissioning and organising services of general economic interest.

- (12) Discrimination is understood to include direct and indirect discrimination, harassment, instructions to discriminate and denial of reasonable accommodation.
- (13) In implementing the principle of equal treatment irrespective of religion or belief, disability, age or sexual orientation, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.
- (14) The appreciation of the facts from which it may be presumed that there has been direct or indirect discrimination should remain a matter for the national judicial or other competent bodies in accordance with rules of national law or practice. Such rules may provide, in particular, for indirect discrimination to be established by any means including on the basis of statistical evidence.
- (15) Actuarial and risk factors related to disability and to age are used in the provision of insurance, banking and other financial services. These should not be regarded as constituting discrimination where the factors are shown to be key factors for the assessment of risk.
- (16) All individuals enjoy the freedom to contract, including the freedom to choose a contractual partner for a transaction. This Directive should not apply to economic transactions undertaken by individuals for whom these transactions do not constitute their professional or commercial activity.
- (17) While prohibiting discrimination, it is important to respect other fundamental rights and freedoms, including the protection of private and family life and transactions carried out in that context, the freedom of religion, and the freedom of association. This Directive is without prejudice to national laws on marital or family status, including on reproductive rights. It is also without prejudice to the secular nature of the State, state institutions or bodies, or education.
- (18) Member States are responsible for the organisation and content of education. The Commission Communication on Competences for the 21<sup>st</sup> Century: An Agenda for European Cooperation on Schools draws attention to the need for special attention to be paid to disadvantaged children and those with special educational needs. In particular national law may provide for differences in access to educational institutions based on religion or belief. . Member States may also allow or prohibit the wearing or display of religious symbols at school.
- (19) The European Union in its Declaration No 11 on the status of churches and non-confessional organisations, annexed to the Final Act of the Amsterdam Treaty, has explicitly recognised that it respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and that it equally respects the status of philosophical and non-confessional organisations. Measures to enable persons with disabilities to have effective non-discriminatory access to the areas covered by this Directive play an important part in ensuring full equality in practice. Furthermore, individual measures of reasonable accommodation may be required in some cases to ensure such access. In neither case are measures

required that would impose a disproportionate burden. In assessing whether the burden is disproportionate, account should be taken of a number of factors including the size, resources and nature of the organisation. The principle of reasonable accommodation and disproportionate burden are established in Directive 2000/78/EC and the UN Convention on Rights of Persons with Disabilities.

- (20) Legal requirements<sup>35</sup> and standards on accessibility have been established at European level in some areas while Article 16 of Council Regulation 1083/2006 of 11 July 2006 on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999<sup>36</sup> requires that accessibility for disabled persons is one of the criteria to be observed in defining operations co-financed by the Funds. The Council has also emphasised the need for measures to secure the accessibility of cultural infrastructure and cultural activities for people with disabilities<sup>37</sup>.
- (21) The prohibition of discrimination should be without prejudice to the maintenance or adoption by Member States of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular religion or belief, disability, age or sexual orientation. Such measures may permit organisations of persons of a particular religion or belief, disability, age or sexual orientation where their main object is the promotion of the special needs of those persons.
- (22) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.
- (23) Persons who have been subject to discrimination based on religion or belief, disability, age or sexual orientation should have adequate means of legal protection. To provide a more effective level of protection, associations, organisations and other legal entities should be empowered to engage in proceedings, including on behalf of or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.
- (24) The rules on the burden of proof must be adapted when there is a prima facie case of discrimination and, for the principle of equal treatment to be applied effectively, the burden of proof must shift back to the respondent when evidence of such discrimination is brought. However, it is not for the respondent to prove that the plaintiff adheres to a particular religion or belief, has a particular disability, is of a particular age or has a particular sexual orientation.
- (25) The effective implementation of the principle of equal treatment requires adequate judicial protection against victimisation.
- (26) In its resolution on the Follow-up of the European Year of Equal Opportunities for All (2007), the Council called for the full association of civil society, including

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<sup>35</sup> Regulation (EC) No. 1107/2006 and Regulation (EC) No 1371/2007

<sup>36</sup> OJ L 210, 31.7.2006, p.25. Regulation as last amended by Regulation (EC) No 1989/2006 (OJ L 411, 30.12.2006, p.6)

<sup>37</sup> OJ C 134, 7.6.2003, p.7

organisations representing people at risk of discrimination, the social partners and stakeholders in the design of policies and programmes aimed at preventing discrimination and promoting equality and equal opportunities, both at European and national levels.

- (27) Experience in applying Directives 2000/43/EC and 2004/113/EC show that protection from discrimination on the grounds covered by this Directive would be strengthened by the existence of a body or bodies in each Member State, with competence to analyse the problems involved, to study possible solutions and to provide concrete assistance for the victims.
- (28) In exercising their powers and fulfilling their responsibilities under this Directive, these bodies should operate in a manner consistent with the United Nations Paris Principles relating to the status and functioning of national institutions for the protection and promotion of human rights.
- (29) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.
- (30) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the EC Treaty, the objective of this Directive, namely ensuring a common level of protection against discrimination in all the Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the proposed action, be better achieved by the Community. This Directive does not go beyond what is necessary in order to achieve those objectives.
- (31) In accordance with paragraph 34 of the interinstitutional agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between the Directive and the transposition measures and to make them public.

HAS ADOPTED THIS DIRECTIVE:

## **Chapter 1**

### **GENERAL PROVISIONS**

#### *Article 1* *Purpose*

This Directive lays down a framework for combating discrimination on the grounds of religion or belief, disability, age, or sexual orientation, with a view to putting into effect in the Member States the principle of equal treatment other than in the field of employment and occupation.

#### *Article 2* *Concept of discrimination*

1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

4. An instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.

5. Denial of reasonable accommodation in a particular case as provided for by Article 4 (1)(b) of the present Directive as regards persons with disabilities shall be deemed to be discrimination within the meaning of paragraph 1.

6. Notwithstanding paragraph 2, Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary. In particular, this Directive shall not preclude the fixing of a specific age for access to social benefits, education and certain goods or services.

7. Notwithstanding paragraph 2, in the provision of financial services Member States may permit proportionate differences in treatment where, for the product in question, the use of age or disability is a key factor in the assessment of risk based on relevant and accurate actuarial or statistical data.

8. This Directive shall be without prejudice to general measures laid down in national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and the protection of the rights and freedoms of others.

### *Article 3* *Scope*

1. Within the limits of the powers conferred upon the Community, the prohibition of discrimination shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

(a) Social protection, including social security and healthcare;

(b) Social advantages;

(c) Education;

(d) Access to and supply of goods and other services which are available to the public, including housing.

Subparagraph (d) shall apply to individuals only insofar as they are performing a professional or commercial activity.

2. This Directive is without prejudice to national laws on marital or family status and reproductive rights.

3. This Directive is without prejudice to the responsibilities of Member States for the content of teaching, activities and the organisation of their educational systems, including the provision of special needs education. Member States may provide for differences in treatment in access to educational institutions based on religion or belief.

4. This Directive is without prejudice to national legislation ensuring the secular nature of the State, State institutions or bodies, or education, or concerning the status and activities of churches and other organisations based on religion or belief. It is equally without prejudice to national legislation promoting equality between men and women.

5. This Directive does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

#### *Article 4*

#### *Equal treatment of persons with disabilities*

1. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities:

a) The measures necessary to enable persons with disabilities to have effective non-discriminatory access to social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing and transport, shall be provided by anticipation, including through appropriate modifications or adjustments. Such measures should not impose a disproportionate burden, nor require fundamental alteration of the social protection, social advantages, health care, education, or goods and services in question or require the provision of alternatives thereto.

b) Notwithstanding the obligation to ensure effective non-discriminatory access and where needed in a particular case, reasonable accommodation shall be provided unless this would impose a disproportionate burden.

2. For the purposes of assessing whether measures necessary to comply with paragraph 1 would impose a disproportionate burden, account shall be taken, in particular, of the size and resources of the organisation, its nature, the estimated cost, the life cycle of the goods and services, and the possible benefits of increased access for persons with disabilities. The burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the equal treatment policy of the Member State concerned.

3. This Directive shall be without prejudice to the provisions of Community law or national rules covering the accessibility of particular goods or services.

*Article 5*  
*Positive action*

With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to religion or belief, disability, age, or sexual orientation.

*Article 6*  
*Minimum requirements*

1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.
2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.

## **CHAPTER II** **REMEDIES AND ENFORCEMENT**

*Article 7*  
*Defence of rights*

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.
2. Member States shall ensure that associations, organisations or other legal entities, which have a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.
3. Paragraphs 1 and 2 shall be without prejudice to national rules relating to time limits for bringing actions as regards the principle of equality of treatment.

*Article 8*  
*Burden of proof*

1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the prohibition of discrimination.
2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.

3. Paragraph 1 shall not apply to criminal procedures.

4. Member States need not apply paragraph 1 to proceedings in which the court or competent body investigates the facts of the case.

5. Paragraphs 1, 2, 3 and 4 shall also apply to any legal proceedings commenced in accordance with Article 7(2).

*Article 9*  
*Victimisation*

Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.

*Article 10*  
*Dissemination of information*

Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of the persons concerned by appropriate means throughout their territory.

*Article 11*  
*Dialogue with relevant stakeholders*

With a view to promoting the principle of equal treatment, Member States shall encourage dialogue with relevant stakeholders, in particular non-governmental organisations, which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on the grounds and in the areas covered by this Directive.

*Article 12*  
*Bodies for the Promotion of Equal treatment*

1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons irrespective of their religion or belief, disability, age, or sexual orientation. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights, including rights under other Community acts including Directives 2000/43/EC and 2004/113/EC.

2. Member States shall ensure that the competences of these bodies include:

- without prejudice to the right of victims and of associations, organizations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,
- conducting independent surveys concerning discrimination,
- publishing independent reports and making recommendations on any issue relating to such discrimination.

## **CHAPTER III**

### **FINAL PROVISIONS**

#### *Article 13* *Compliance*

Member States shall take the necessary measures to ensure that the principle of equal treatment is respected and in particular that:

- (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;
- (b) any contractual provisions, internal rules of undertakings, and rules governing profit-making or non-profit-making associations contrary to the principle of equal treatment are, or may be, declared null and void or are amended.

#### *Article 14* *Sanctions*

Member States shall lay down the rules on sanctions applicable to breaches of the national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. Sanctions may comprise the payment of compensation, which may not be restricted by the fixing of a prior upper limit, and must be effective, proportionate and dissuasive.

#### *Article 15* *Implementation*

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by .... at the latest [two years after adoption]. They shall forthwith inform the Commission thereof and shall communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. In order to take account of particular conditions, Member States may, if necessary, establish that the obligation to provide effective access as set out in Article 4 has to be complied with by ... [at the latest] four [years after adoption].

Member States wishing to use this additional period shall inform the Commission at the latest by the date set down in paragraph 1 giving reasons.

#### *Article 16* *Report*

1. Member States and national equality bodies shall communicate to the Commission, by .... at the latest and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.



2. The Commission's report shall take into account, as appropriate, the viewpoints of the social partners and relevant non-governmental organizations, as well as the EU Fundamental Rights Agency. In accordance with the principle of gender mainstreaming, this report shall, inter alia, provide an assessment of the impact of the measures taken on women and men. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.

*Article 17*  
*Entry into force*

This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.

*Article 18*  
*Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council*  
*The President*

## 7.1.9.

# CODE OF GOOD PRACTICE FOR THE EMPLOYMENT OF PEOPLE WITH DISABILITIES

## BUREAU DECISION

OF 22 JUNE 2005

THE BUREAU of the European Parliament

Having regard to the Treaty establishing the European Community, and in particular Article 13 thereof,

Having regard to Article 1d of the Staff Regulations,

Having regard to the Council Directive establishing a general framework for equal treatment in employment and occupation<sup>1</sup>,

Having regard to the existing Code of Good Practice for the Employment of People with Disabilities, adopted by the Bureau of the European Parliament in January 2000<sup>2</sup>

Having regard to the Commission Decision of 25 November 2003 on a Revised Code of Good Practice for the Employment of People with Disabilities,

Having regard to the opinion of the Legal Service,

Whereas:

(1) The Commission's *Consultative Document on Improving Working Arrangements and Career Perspectives for People with Disabilities*<sup>3</sup> provides that "a more pro-active approach should be adopted to the implementation, evaluation and monitoring of the Code of Good Practice, with greater involvement of disabled staff",

(2) The Employment Guidelines for 2000 agreed by the European Council at Helsinki on 10 and 11 December 1999 stress the need to foster a labour market favourable to social integration by formulating a coherent set of policies aimed at combating discrimination against groups such as persons with disability,

(3) The Council Directive establishing a general framework for equal treatment in employment and occupation and the Employment Guidelines for 2000 do not apply to the Community Institutions, the Commission has stated in the Reform that it should "offer its staff at least the same opportunities and levels of protection in these areas as apply in Member States"

(4) The European Parliament's resolution of 9 March 2005 on budget guidelines 2006 and on the European Parliament's preliminary draft estimates<sup>4</sup>, calls on the institutions to give an

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<sup>1</sup> 2000/78/EC

<sup>2</sup> PE 282.903/BUR

<sup>3</sup> SEC (2000) 2084/4

<sup>4</sup> A6-0043/2005, paragraph 9

overview by 1 September 2005 of measures taken to overcome obstacles to equal treatment as defined in Article 13 of the EC Treaty, taking account of the possibilities offered by the new Staff Regulations,

ADOPTS THE FOLLOWING CODE OF GOOD PRACTICE:

### **Article 1 - Introduction**

The European Institutions are committed to providing equality of access to employment in the European Public Service. A Public Service that reflects the diversity of the community it serves is better able to deliver quality services to the European citizens. Apart from the objective merits of equality, any organisation that claims to be progressive and forward-looking must seek to optimise the potential contribution of its entire recruitment base by ensuring equal access.

European statistics show that there are too few people with disabilities in employment by comparison with the number of people with disabilities of working age. It is the European Institutions' policy to promote a diverse and skilled workforce, to improve employment access and participation by people with disabilities, to eliminate discrimination in the workplace and to promote a workplace culture based on fair workplace practices and behaviour.

In pursuing this policy, due regard should be given to the Commission Communication "Towards a Barrier Free Europe for People with Disabilities"<sup>5</sup>. The "Design for All" principle must also be applied. "Design for All" is a relatively new approach that consists of designing, developing and marketing mainstream products, services, systems and environments that are accessible by as broad a range of users as possible. Failure to apply the design for all principle and to take peoples' needs into account in the planning, design and adaptation of environments can force people unnecessarily into a situation of dependency and social exclusion.

The purpose of this CODE OF GOOD PRACTICE is to provide a clear statement of the European Institutions' policy in relation to the employment of people with disabilities and ensure that all staff in the European Institutions comply with their legal and statutory obligations under anti-discrimination provisions and carry out their duties in a manner which is consistent with good equal opportunities practice. To this end, adequate resources will be re-allocated, wherever necessary, by all DGs and services in order to ensure the effective implementation of this Code of Good Practice.

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<sup>5</sup> COM(2000) 284 final of 12.05.2000

## **POLICY STATEMENT<sup>6</sup>**

*The European Institutions are committed to promoting equal treatment, irrespective of gender, race, colour, ethnic or social origin, genetic features, language, religion, convictions, political opinions or any other opinions, membership of a national minority, wealth, birth, age, disability or sexual orientation, by adopting workplace rules, policies, practices and behaviour, where all workers are valued and respected and have opportunities to develop their full potential and pursue a career of their choice. They are entitled to a working environment free from discrimination and harassment and where barriers to participation are identified and removed. These principles help the European Institutions to attract and retain the best people to deliver a high-quality service to European citizens.*

In pursuit of these standards, the following provisions relating to the employment of people with disabilities have been inserted into Article 1d (4) of the Staff Regulations<sup>7</sup>:

*“... a person has a disability if he has a physical or mental impairment that is, or likely to be, permanent. The impairment shall be determined according to the procedure set out in Article 33.*

*A person with a disability meets the conditions laid down in Article 28(e) if he can perform the essential functions of the job when reasonable accommodation is made.*

*“Reasonable accommodation”, in relation to the essential functions of the job, shall mean appropriate measures, where needed, to enable a person with a disability to have access to, to participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.”*

### **Article 2 - Scope of the Code**

People with disabilities are not only those whose disability is immediately apparent. While many disabilities are not obvious they may, nonetheless, require certain accommodation. It is also recognised that the same disability can vary in its severity and affect the individual to a different degree and at different times and that a disability may be temporary in nature.

This code covers those who have a disability during the recruitment process, those who have a disability at the time of initial appointment and those in whom the disability develops during employment. The European Institutions will seek to adjust to any new circumstances in a supportive and sensitive manner.

The scope of the code does not encompass topics such as the special medical allowance for people with disabilities or the special budget for officials' children who have disabilities and related school allowances.

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<sup>6</sup> The 'discriminatory grounds' set out in this Policy Statement are those included in the current Staff Regulations, which entered into force on 1st May 2004.

<sup>7</sup> Cf. article 1c of the Staff Regulations: “Any reference in these Staff Regulations to a person of the male sex shall be deemed also to constitute a reference to a person of the female sex, and vice-versa, unless the context clearly indicates otherwise.” In consequence, while the Code is drafted in gender-neutral terms, extracts from the Staff Regulations are not.

### **Article 3 - Work-related accommodation**

**It is the European Institutions' policy to provide reasonable accommodation in employment in order to meet the needs of people with disabilities and of the Institutions. For the purposes of the present code, it shall be for the Institution to demonstrate that providing the necessary accommodation imposes an unreasonable burden.**

It is recognised that the majority of people with disabilities do not require any form of special aid or adaptation to perform their work. However, people can do the same job in different ways to achieve the same result. Enabling a member of staff to perform well in a job by making a work-related accommodation is therefore entirely consistent with the merit principle. In order to ensure and facilitate the provision of accessible accommodation, the Institutions will have to anticipate some fundamental well-known needs following the "Design for All" principles, especially when new infrastructures are being developed.

Directive 2000/78/EC, establishing a general framework for Equal Treatment in Employment and Occupation, states that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This is also the basis of the European Institutions' policy on work-related accommodation.

Accommodation applies to all areas of employment, including:

- recruitment, selection and appointment,
- career development,
- training, and
- promotion, transfers or any other employment benefit
- social relationships within the Institutions.

Accommodation is a way of changing the workplace and may include:

- job redesign,
- purchasing or modifying equipment,
- flexible working arrangements.

The accommodation required is to be determined by the particular needs of the individual and will normally be provided. If providing accommodation would impose a disproportionate burden on them, the European Institutions may decline to offer employment to a person with a disability. Stringent standards, which have to be defined, are to be applied when assessing what is a disproportionate burden for the European Institutions. This is without prejudice to the right of administrative appeal.

### **Article 4 - Recruitment**

The European Institutions have a policy of equality of opportunity and selection on merit by means of fair and open competitions. Recruitment and selection procedures are adapted to ensure that they do not disadvantage candidates with disabilities. People with disabilities are also encouraged to apply by a positive reference to the equal opportunities policy in advertisements for posts and by the dissemination of notices about forthcoming competitions to specialist publications and organisations such as the European Disability Forum, which is representative of NGO disability groups in the Member States and the European Agency for

the Development of Special Needs Education. Positive action shall also be taken in the field of administrative 'stagiaire' recruitment as well as at the level of interim or temporary contracts.

Accordingly, recruitment procedures will include the following:

- **Press publicity** for competitions will include a statement affirming the Institutions' commitment to equality of opportunity for all candidates.
- **The Guide for Candidates** appearing in the Official Journal with the Notice of Competition will contain a paragraph specifically aimed at candidates with disabilities, mentioning the CODE OF GOOD PRACTICE.
- **Application forms** will request candidates with disabilities to detail the accommodation they require to enable them to participate in the tests on an equal basis with other candidates and every effort will be made to satisfy all reasonable requests.
- When a person with a disability is attending for **competition or interview**, the Secretary of the Selection Board, under the authority of the Chairperson, is responsible for ensuring that appropriate arrangements are made for the reception of that person and for the provision of any assistance that may be required, e.g. access to buildings, special equipment, extra time during competitions, etc.
- **Training** given to members of Selection Boards will include a module on disability awareness and the contents of this CODE OF GOOD PRACTICE. .
- A **website** will be set up in accordance with the most up-to-date accessibility standards, to enable access by the widest possible audience.

## **Article 5 - Careers**

Once candidates with disabilities are on a reserve list, they may avail themselves of specialist advice in securing a post. DG Personnel of the European Parliament and EPSO will conduct an ongoing audit of the number of candidates with disabilities in competitions, the number who pass and the number who are subsequently recruited.

Having been recruited, officials with disabilities have the right to fully develop their potential. Care is taken at all stages during the career of an official with disabilities to ensure the avoidance of job requirements that, whether intentionally or otherwise, are not job-related and therefore discriminate against people with disabilities.

- **Initial Appointment and Probation:** The Appointing Authority uses its best endeavours, in co-operation with the Medical Services and/or the Equal Opportunities Service of DG Personnel, to ensure that candidates with disabilities placed on a competition reserve list are offered appropriate posts. In accordance with Staff Regulations, all successful candidates in a competition have their capacity to carry out their duties confirmed by a medical assessment. When appointing a person with a disability or determining their capacity to continue duty, care is taken to avoid discrimination based on disability. The aim is to ensure that the person is qualified for employment and to verify that he/she can perform the essential functions of the job, without prejudice to the obligation of providing reasonable

accommodation and having regard to the kind of disability. If, during the probationary period, it is verified that the job assigned to a successful candidate is incompatible with his/her disability, mobility will be considered.

- **Career Guidance:** The Career Guidance and Counselling Service can play an important role in counselling staff with disabilities on their career development and they should receive the appropriate training. The best approach would be to recruit a counsellor specialised in vocational and rehabilitation counselling, who would link, as appropriate, with other relevant services.

- **Career development:** Every effort is made to ensure that staff with disabilities have the same opportunities as others to increase their experience and develop their career by means of mobility within the Institutions. Providing for career development may include adjusting other posts so that members of staff with a disability can act in different or higher positions to develop new skills.

- **Training:** Staff with disabilities have the same access to training as other staff. The acquisition of new skills and knowledge is an important prerequisite for the career development of all officials. Every effort is made to enable staff with disabilities to participate in training courses and programmes organised by the particular institution. Where in-house training is unavailable or inappropriate, reasonable measures may be taken to provide training externally.

- **Staff assessment and Promotion:** disability does not constitute a reason for assessors and promotion committees to depart from the normal objective criteria used to judge the merits of officials.

- **Retention of Staff:** If a staff member acquires a disability, or an existing disability becomes more severe, the European Institutions take steps to try to enable the staff member to remain in employment. In consultation with the person, accommodation to facilitate their retention is considered, including restructuring that person's job, providing retraining or redeployment to a suitable post. Where necessary, such arrangements can be reviewed. Medical retirement procedures are undertaken in full consultation with the staff member where it is decided that adjustments cannot be made to allow the employee to remain in his/her post and a suitable, alternative, post is not available.

## **Article 6 - Working environment**

The Institutions ensure that all reasonable measures are taken to eliminate physical or technical environmental barriers that may face some staff with disabilities:

- **Buildings:** All new buildings to be occupied by employees of the Institutions have to comply with the relevant national local legislation in respect of the access and utilisation of public buildings by people with disabilities in order to ensure seamless mobility. Buildings without suitable access, or buildings falling below a reasonable level in this respect, are progressively improved, subject to the availability of budgetary provision, or abandoned. Pending the adoption by the Institutions of revised criteria governing the adaptation of their buildings, the principles contained in the latest edition of the Commission document "Immeuble-type" will apply. The Institutions are taking all reasonable measures to ensure that officials with disabilities are allocated office accommodation compatible with their particular

needs, including the provision of designated parking, where necessary. Emergency facilities must be appropriate to all officials with disabilities. The Unit for Prevention and Well-Being at Work will continue to regularly audit buildings to determine improvements that should be made.

- **Office environment:** Care must be taken to ensure that the office environment is suited to a person with specific needs. The European Parliament will designate a specialist who will make an ergonomic appraisal of the office environment prior to newly-recruited staff members with disabilities commencing their employment and whenever a staff member with disabilities moves office.

The specialist will periodically inspect the office of all staff members with disabilities, will recommend appropriate changes, as needed, and will regularly inform the Directorate-General for Personnel, as well as the Interservice Working Party on the Accessibility of People with Disabilities, of the relevant findings.

To ensure the provision of reasonable accommodation, specific technical measures need to be taken as a precondition to an accessible environment. It is essential that information technology tools, including Intranet, applications and databases are developed following “Design for All” principles and accessibility guidelines. Electronic information and data should be available in accessible formats. The purchase of the appropriate tools and the training of personnel is an essential precondition.

Officials with disabilities are consulted about special equipment or furniture that might enhance their efficiency and effectiveness in the performance of their duties. The Institutions accept all reasonable requests for such items.

- **Meetings, etc.:** Care is taken to ensure that people with disabilities can fully participate in meetings or other fora by avoiding the inappropriate use of presentation aids or other media and by ensuring the availability of relevant material in accessible formats.

- **Flexible work:** Where reasonable, flexible working arrangements are made to meet both the Institution’s work requirements and the particular needs of an official with a disability. Examples are:

- *flexible starting and finishing times to accommodate the difficulties some people with a disability have getting to and from work using public transport,*

- *regular short breaks to assist people who require periodic medication or rest periods,*

- *part-time work; teleworking, with adequate technological supports provided by the employer.*



## **Article 7 - Information and Awareness Training**

This CODE OF GOOD PRACTICE will be brought to the attention of all staff by the Equal Opportunities Service and by the human resources units of DGs. It is available in all EU languages on the EUROPA web site, on the Intranets of the Institutions and their Offices and Agencies and is distributed to all Human Resources Management staff and to senior and middle management staff. Wherever possible, the Institutions will seek to make information services and documentation accessible to different groups of people with disabilities, taking into account language and cultural needs.

Training courses which deal with the question of disabilities in depth will be targeted at those most particularly involved, e.g. staff with HR responsibilities, local career guidance staff, relevant Heads of Units, and members of Selection Boards.

## **Article 8 - Monitoring**

An essential element in the implementation of this CODE OF GOOD PRACTICE is continuous monitoring of how it is performing, thus ensuring that improved procedures for its better application are introduced at all levels, including the recruitment process and throughout an official's career. In the event of complaints, it will be for DGs to show that they meet the requirements of people with disabilities. The Equal Opportunities Service and the Interservice Working Party on the Accessibility of People with Disabilities will discuss and fix targets to achieve barrier-free conditions.

A disability audit, under which directorates-general conduct a survey of their employees, who will declare if they believe that they have a disability, is conducted regularly and the results reported to DG Personnel. The purpose of collecting this information is to:

- ensure that appropriate consultation takes place with all relevant staff;
- eliminate discrimination and barriers to equal opportunities for staff with disabilities;
- identify what accommodation might need to be provided when interviewing or employing a person with a disability;
- develop the full potential of all staff and ensure equality of opportunity in career development.

The data are used to produce anonymous statistical reports to enable Institutions to assess if the non-discrimination policy and this Code are working effectively and to help frame new initiatives. Having due regard to the provisions of the Data Protection Regulation concerning the processing of personal data by the Community Institutions<sup>8</sup>, the information gathered in

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<sup>8</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L8, 12.01.2001, p. 1)

the audit will not be used for any other purpose. Statistics regarding the number of staff with disabilities will be published.

The **Interservice Working Party on the Accessibility of People with Disabilities** is also forwarding the direct input received from staff with disabilities in the DGs on questions of working conditions, accessibility, recruitment and career development to DG Personnel.

Additionally, the Equal Opportunities service of DG Personnel may be approached on a confidential basis if matters of dissatisfaction arise in relation to the implementation of this Code in the European Parliament. The Service pursues the issues discreetly, with due regard to the level of confidentiality sought.

## I

(Legislative acts)

## REGULATIONS

## REGULATION (EU) No 181/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 February 2011

## concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91(1) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure, in the light of the joint text approved by the Conciliation Committee on 24 January 2011 <sup>(2)</sup>,

Whereas:

(1) Action by the Union in the field of bus and coach transport should aim, among other things, at ensuring a high level of protection for passengers, that is comparable with other modes of transport, wherever they travel. Moreover, full account should be taken of the requirements of consumer protection in general.

(2) Since the bus or coach passenger is the weaker party to the transport contract, all passengers should be granted a minimum level of protection.

(3) Union measures to improve passengers' rights in the bus and coach transport sector should take account of the specific characteristics of this sector, which consists largely of small- and medium-sized undertakings.

(4) Passengers and, as a minimum, persons whom the passenger had, or would have had, a legal duty to maintain should enjoy adequate protection in the event of accidents arising out of the use of the bus or coach, taking into account Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles and the enforcement of the obligation to insure against such liability <sup>(3)</sup>.

(5) In choosing the national law applicable to compensation for death, including reasonable funeral expenses, or personal injury as well as for loss of or damage to luggage due to accidents arising out of the use of the bus or coach, Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) <sup>(4)</sup> and Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) <sup>(5)</sup> should be taken into account.

(6) Passengers should, in addition to compensation in accordance with applicable national law in the event of death or personal injury or loss of or damage to luggage due to accidents arising out of the use of the bus or coach, be entitled to assistance with regard to their immediate practical needs following an accident. Such assistance should include, where necessary, first aid, accommodation, food, clothes and transport.

<sup>(1)</sup> OJ C 317, 23.12.2009, p. 99.

<sup>(2)</sup> Position of the European Parliament of 23 April 2009 (OJ C 184 E, 8.7.2010, p. 312), position of the Council at first reading of 11 March 2010 (OJ C 122 E, 11.5.2010, p. 1), position of the European Parliament of 6 July 2010 (not yet published in the Official Journal), decision of the Council of 31 January 2011 and legislative resolution of the European Parliament of 15 February 2011 (not yet published in the Official Journal).

<sup>(3)</sup> OJ L 263, 7.10.2009, p. 11.

<sup>(4)</sup> OJ L 199, 31.7.2007, p. 40.

<sup>(5)</sup> OJ L 177, 4.7.2008, p. 6.

- (7) Bus and coach passenger services should benefit citizens in general. Consequently, disabled persons and persons with reduced mobility, whether caused by disability, age or any other factor, should have opportunities for using bus and coach services that are comparable to those of other citizens. Disabled persons and persons with reduced mobility have the same rights as all other citizens with regard to free movement, freedom of choice and non-discrimination.
- (8) In the light of Article 9 of the United Nations Convention on the Rights of Persons with Disabilities and in order to give disabled persons and persons with reduced mobility opportunities for bus and coach travel comparable to those of other citizens, rules for non-discrimination and assistance during their journey should be established. Those persons should therefore be accepted for carriage and not refused transport on the grounds of their disability or reduced mobility, except for reasons which are justified on the grounds of safety or of the design of vehicles or infrastructure. Within the framework of relevant legislation for the protection of workers, disabled persons and persons with reduced mobility should enjoy the right to assistance at terminals and on board vehicles. In the interest of social inclusion, the persons concerned should receive the assistance free of charge. Carriers should establish access conditions, preferably using the European standardisation system.
- (9) In deciding on the design of new terminals, and as part of major refurbishments, terminal managing bodies should endeavour to take into account the needs of disabled persons and persons with reduced mobility, in accordance with 'design for all' requirements. In any case, terminal managing bodies should designate points where such persons can notify their arrival and need for assistance.
- (10) Similarly, without prejudice to current or future legislation on technical requirements for buses and coaches, carriers should, where possible, take those needs into account when deciding on the equipment of new and newly refurbished vehicles.
- (11) Member States should endeavour to improve existing infrastructure where this is necessary to enable carriers to ensure access for disabled persons and persons with reduced mobility as well as to provide appropriate assistance.
- (12) In order to respond to the needs of disabled persons and persons with reduced mobility, staff should be adequately trained. With a view to facilitating the mutual recognition of national qualifications of drivers, disability awareness training could be provided as a part of the initial qualification or periodic training as referred to in Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers <sup>(1)</sup>. In order to ensure coherence between the introduction of the training requirements and the time-limits set out in that Directive, a possibility for exemption during a limited period of time should be allowed.
- (13) Organisations representative of disabled persons or persons with reduced mobility should be consulted or involved in preparing the content of the disability-related training.
- (14) Rights of bus and coach passengers should include the receipt of information regarding the service before and during the journey. All essential information provided to bus and coach passengers should also be provided, upon request, in alternative formats accessible to disabled persons and persons with reduced mobility, such as large print, plain language, Braille, electronic communications that can be accessed with adaptive technology, or audio tapes.
- (15) This Regulation should not restrict the rights of carriers to seek compensation from any person, including third parties, in accordance with the applicable national law.
- (16) Inconvenience experienced by passengers due to cancellation or significant delay of their journey should be reduced. To this end, passengers departing from terminals should be adequately looked after and informed in a way which is accessible to all passengers. Passengers should also be able to cancel their journey and have their tickets reimbursed or to continue their journey or to obtain re-routing under satisfactory conditions. If carriers fail to provide passengers with the necessary assistance, passengers should have the right to obtain financial compensation.
- (17) With the involvement of stakeholders, professional associations and associations of customers, passengers, disabled persons and persons with reduced mobility, carriers should cooperate in order to adopt arrangements at national or European level. Such arrangements should aim at improving the information, care and assistance offered to passengers whenever their travel is interrupted, in particular in the event of long delays or cancellation of travel, with a particular focus on passengers with special needs due to disability, reduced mobility, illness, elderly age and pregnancy, and including accompanying passengers and passengers travelling with young children. National enforcement bodies should be informed of those arrangements.

<sup>(1)</sup> OJ L 226, 10.9.2003, p. 4.

- (18) This Regulation should not affect the rights of passengers established by Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours <sup>(1)</sup>. This Regulation should not apply in cases where a package tour is cancelled for reasons other than cancellation of the bus or coach transport service.
- (19) Passengers should be fully informed of their rights under this Regulation, so that they can effectively exercise those rights.
- (20) Passengers should be able to exercise their rights by means of appropriate complaint procedures implemented by carriers or, as the case may be, by submission of complaints to the body or bodies designated to that end by the relevant Member State.
- (21) Member States should ensure compliance with this Regulation and designate a competent body or bodies to carry out supervision and enforcement tasks. This does not affect the rights of passengers to seek legal redress from courts under national law.
- (22) Taking into account the procedures established by Member States for the submission of complaints, a complaint concerning assistance should preferably be addressed to the body or bodies designated for the enforcement of this Regulation in the Member State where the boarding point or alighting point is situated.
- (23) Member States should promote the use of public transport and the use of integrated information and integrated tickets in order to optimise the use and interoperability of the various transport modes and operators.
- (24) Member States should lay down penalties applicable to infringements of this Regulation and ensure that those penalties are applied. Those penalties should be effective, proportionate and dissuasive.
- (25) Since the objective of this Regulation, namely to ensure an equivalent level of protection of and assistance to passengers in bus and coach transport throughout the Member States, cannot sufficiently be achieved by the Member States and can therefore by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (26) This Regulation should be without prejudice to Directive 95/46/EC of the European Parliament and of the Council

of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(2)</sup>.

- (27) The enforcement of this Regulation should be based on Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection law (the Regulation on consumer protection cooperation) <sup>(3)</sup>. That Regulation should therefore be amended accordingly.
- (28) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, as referred to in Article 6 of the Treaty on European Union, bearing in mind also Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin <sup>(4)</sup> and Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services <sup>(5)</sup>,

HAVE ADOPTED THIS REGULATION:

## CHAPTER I GENERAL PROVISIONS

### *Article 1*

#### **Subject matter**

This Regulation establishes rules for bus and coach transport as regards the following:

- (a) non-discrimination between passengers with regard to transport conditions offered by carriers;
- (b) rights of passengers in the event of accidents arising out of the use of the bus or coach resulting in death or personal injury or loss of or damage to luggage;
- (c) non-discrimination and mandatory assistance for disabled persons and persons with reduced mobility;
- (d) rights of passengers in cases of cancellation or delay;
- (e) minimum information to be provided to passengers;
- (f) handling of complaints;
- (g) general rules on enforcement.

<sup>(2)</sup> OJ L 281, 23.11.1995, p. 31.

<sup>(3)</sup> OJ L 364, 9.12.2004, p. 1.

<sup>(4)</sup> OJ L 180, 19.7.2000, p. 22.

<sup>(5)</sup> OJ L 373, 21.12.2004, p. 37.

<sup>(1)</sup> OJ L 158, 23.6.1990, p. 59.

*Article 2***Scope**

1. This Regulation shall apply to passengers travelling with regular services for non-specified categories of passengers where the boarding or the alighting point of the passengers is situated in the territory of a Member State and where the scheduled distance of the service is 250 km or more.

2. As regards the services referred to in paragraph 1 but where the scheduled distance of the service is shorter than 250 km, Article 4(2), Article 9, Article 10(1), point (b) of Article 16(1), Article 16(2), Article 17(1) and (2), and Articles 24 to 28 shall apply.

3. In addition, with the exception of Articles 9 to 16, Article 17(3), and Chapters IV, V and VI, this Regulation shall apply to passengers travelling with occasional services where the initial boarding point or the final alighting point of the passenger is situated in the territory of a Member State.

4. With the exception of Article 4(2), Article 9, Article 10(1), point (b) of Article 16(1), Article 16(2), Article 17(1) and (2), and Articles 24 to 28, Member States may, on a transparent and non-discriminatory basis, exempt domestic regular services from the application of this Regulation. Such exemptions may be granted as from the date of application of this Regulation for a period no longer than 4 years, which may be renewed once.

5. For a maximum period of 4 years from the date of application of this Regulation, Member States may, on a transparent and non-discriminatory basis, exempt from the application of this Regulation particular regular services because a significant part of such regular services, including at least one scheduled stop, is operated outside the Union. Such exemptions may be renewed once.

6. Member States shall inform the Commission of exemptions of different types of services granted pursuant to paragraphs 4 and 5. The Commission shall take appropriate action if such an exemption is deemed not to be in accordance with the provisions of this Article. By 2 March 2018, the Commission shall submit to the European Parliament and the Council a report on exemptions granted pursuant to paragraphs 4 and 5.

7. Nothing in this Regulation shall be understood as conflicting with or introducing additional requirements to those in current legislation on technical requirements for buses or coaches or infrastructure or equipment at bus stops and terminals.

8. This Regulation shall not affect the rights of passengers under Directive 90/314/EEC and shall not apply in case where a package tour referred to in that Directive is cancelled for reasons other than cancellation of a regular service.

*Article 3***Definitions**

For the purposes of this Regulation, the following definitions shall apply:

- (a) 'regular services' means services which provide for the carriage of passengers by bus or coach at specified intervals along specified routes, passengers being picked up and set down at predetermined stopping points;
- (b) 'occasional services' means services which do not fall within the definition of regular services and the main characteristic of which is the carriage by bus or coach of groups of passengers constituted on the initiative of the customer or the carrier himself;
- (c) 'transport contract' means a contract of carriage between a carrier and a passenger for the provision of one or more regular or occasional services;
- (d) 'ticket' means a valid document or other evidence of a transport contract;
- (e) 'carrier' means a natural or legal person, other than a tour operator, travel agent or ticket vendor, offering transport by regular or occasional services to the general public;
- (f) 'performing carrier' means a natural or legal person other than the carrier, who actually performs the carriage wholly or partially;
- (g) 'ticket vendor' means any intermediary concluding transport contracts on behalf of a carrier;
- (h) 'travel agent' means any intermediary acting on behalf of a passenger for the conclusion of transport contracts;
- (i) 'tour operator' means an organiser or retailer, other than the carrier, within the meaning of Article 2(2) and (3) of Directive 90/314/EEC;
- (j) 'disabled person' or 'person with reduced mobility' means any person whose mobility when using transport is reduced as a result of any physical disability (sensory or locomotory, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or as a result of age, and whose situation needs appropriate attention and adaptation to his particular needs of the services made available to all passengers;

- (k) 'access conditions' means relevant standards, guidelines and information on the accessibility of buses and/or of designated terminals including their facilities for disabled persons or persons with reduced mobility;
- (l) 'reservation' means a booking of a seat on board a bus or coach for a regular service at a specific departure time;
- (m) 'terminal' means a staffed terminal where according to the specified route a regular service is scheduled to stop for passengers to board or alight, equipped with facilities such as a check-in counter, waiting room or ticket office;
- (n) 'bus stop' means any point other than a terminal where according to the specified route a regular service is scheduled to stop for passengers to board or alight;
- (o) 'terminal managing body' means an organisational entity in a Member State responsible for the management of a designated terminal;
- (p) 'cancellation' means the non-operation of a regular service which was previously scheduled;
- (q) 'delay' means a difference between the time the regular service was scheduled to depart in accordance with the published timetable and the time of its actual departure.

#### Article 4

##### **Tickets and non-discriminatory contract conditions**

1. Carriers shall issue a ticket to the passenger, unless other documents give entitlement to transport. A ticket may be issued in an electronic format.
2. Without prejudice to social tariffs, the contract conditions and tariffs applied by carriers shall be offered to the general public without any direct or indirect discrimination based on the nationality of the final customer or on the place of establishment of the carriers, or ticket vendors within the Union.

#### Article 5

##### **Other performing parties**

1. If the performance of the obligations under this Regulation has been entrusted to a performing carrier, ticket vendor or any other person, the carrier, travel agent, tour operator or terminal managing body, who has entrusted such obligations, shall nevertheless be liable for the acts and omissions of that performing party.
2. In addition, the party to whom the performance of an obligation has been entrusted by the carrier, travel agent, tour operator or terminal managing body shall be subject to the provisions of this Regulation with regard to the obligation entrusted.

#### Article 6

##### **Exclusion of waiver**

1. Obligations to passengers pursuant to this Regulation shall not be limited or waived, in particular by a derogation or restrictive clause in the transport contract.
2. Carriers may offer contract conditions that are more favourable for the passenger than the conditions laid down in this Regulation.

#### CHAPTER II

##### **COMPENSATION AND ASSISTANCE IN THE EVENT OF ACCIDENTS**

#### Article 7

##### **Death or personal injury to passengers and loss of or damage to luggage**

1. Passengers shall, in accordance with applicable national law, be entitled to compensation for death, including reasonable funeral expenses, or personal injury as well as to loss of or damage to luggage due to accidents arising out of the use of the bus or coach. In case of death of a passenger, this right shall as a minimum apply to persons whom the passenger had, or would have had, a legal duty to maintain.
2. The amount of compensation shall be calculated in accordance with applicable national law. Any maximum limit provided by national law to the compensation for death and personal injury or loss of or damage to luggage shall on each distinct occasion not be less than:
  - (a) EUR 220 000 per passenger;
  - (b) EUR 1 200 per item of luggage. In the event of damage to wheelchairs, other mobility equipment or assistive devices the amount of compensation shall always be equal to the cost of replacement or repair of the equipment lost or damaged.

#### Article 8

##### **Immediate practical needs of passengers**

In the event of an accident arising out of the use of the bus or coach, the carrier shall provide reasonable and proportionate assistance with regard to the passengers' immediate practical needs following the accident. Such assistance shall include, where necessary, accommodation, food, clothes, transport and the facilitation of first aid. Any assistance provided shall not constitute recognition of liability.

For each passenger, the carrier may limit the total cost of accommodation to EUR 80 per night and for a maximum of 2 nights.

## CHAPTER III

**RIGHTS OF DISABLED PERSONS AND PERSONS WITH REDUCED MOBILITY***Article 9***Right to transport**

1. Carriers, travel agents and tour operators shall not refuse to accept a reservation from, to issue or otherwise provide a ticket to, or to take on board, a person on the grounds of disability or of reduced mobility.
2. Reservations and tickets shall be offered to disabled persons and persons with reduced mobility at no additional cost.

*Article 10***Exceptions and special conditions**

1. Notwithstanding Article 9(1), carriers, travel agents and tour operators may refuse to accept a reservation from, to issue or otherwise provide a ticket to, or to take on board, a person on the grounds of disability or of reduced mobility:
  - (a) in order to meet applicable safety requirements established by international, Union or national law, or in order to meet health and safety requirements established by the competent authorities;
  - (b) where the design of the vehicle or the infrastructure, including bus stops and terminals, makes it physically impossible to take on board, alight or carry the disabled person or person with reduced mobility in a safe and operationally feasible manner.
2. In the event of a refusal to accept a reservation or to issue or otherwise provide a ticket on the grounds referred to in paragraph 1, carriers, travel agents and tour operators shall inform the person concerned about any acceptable alternative service operated by the carrier.
3. If a disabled person or a person with reduced mobility, who holds a reservation or has a ticket and has complied with the requirements of point (a) of Article 14(1), is nonetheless refused permission to board on the grounds of his disability or reduced mobility, that person and any accompanying person pursuant to paragraph 4 of this Article shall be offered the choice between:
  - (a) the right to reimbursement, and where relevant a return service free of charge to the first point of departure, as set out in the transport contract, at the earliest opportunity; and
  - (b) except where not feasible, continuation of the journey or re-routing by reasonable alternative transport services to the place of destination set out in the transport contract.

The right to reimbursement of the money paid for the ticket shall not be affected by the failure to notify in accordance with point (a) of Article 14(1).

4. If a carrier, travel agent or tour operator refuses to accept a reservation from, to issue or otherwise provide a ticket to, or to take on board, a person on the grounds of disability or of reduced mobility for the reasons set out in paragraph 1, that person may request to be accompanied by another person of his own choosing who is capable of providing the assistance required by the disabled person or person with reduced mobility in order that the reasons set out in paragraph 1 no longer apply.

Such an accompanying person shall be transported free of charge and, where feasible, seated next to the disabled person or person with reduced mobility.

5. When carriers, travel agents or tour operators have recourse to paragraph 1, they shall immediately inform the disabled person or person with reduced mobility of the reasons therefor, and, upon request, inform the person in question in writing within 5 working days of the request.

*Article 11***Accessibility and information**

1. In cooperation with organisations representative of disabled persons or persons with reduced mobility, carriers and terminal managing bodies shall, where appropriate through their organisations, establish, or have in place, non-discriminatory access conditions for the transport of disabled persons and persons with reduced mobility.
2. The access conditions provided for in paragraph 1, including the text of international, Union or national laws establishing the safety requirements, on which these non-discriminatory access conditions are based, shall be made publicly available by carriers and terminal managing bodies physically or on the Internet, in accessible formats on request, in the same languages as those in which information is generally made available to all passengers. When providing this information particular attention shall be paid to the needs of disabled persons and persons with reduced mobility.
3. Tour operators shall make available the access conditions provided for in paragraph 1 which apply to journeys included in package travel, package holidays and package tours which they organise, sell or offer for sale.
4. The information on access conditions referred to in paragraphs 2 and 3 shall be physically distributed at the request of the passenger.



5. Carriers, travel agents and tour operators shall ensure that all relevant general information concerning the journey and the conditions of carriage is available in appropriate and accessible formats for disabled persons and persons with reduced mobility including, where applicable, online booking and information. The information shall be physically distributed at the request of the passenger.

#### Article 12

##### Designation of terminals

Member States shall designate bus and coach terminals where assistance for disabled persons and persons with reduced mobility shall be provided. Member States shall inform the Commission thereof. The Commission shall make available a list of the designated bus and coach terminals on the Internet.

#### Article 13

##### Right to assistance at designated terminals and on board buses and coaches

1. Subject to the access conditions provided for in Article 11(1), carriers and terminal managing bodies shall, within their respective areas of competence, at terminals designated by Member States, provide assistance free of charge to disabled persons and persons with reduced mobility, at least to the extent specified in part (a) of Annex I.

2. Subject to the access conditions provided for in Article 11(1), carriers shall, on board buses and coaches, provide assistance free of charge to disabled persons and persons with reduced mobility, at least to the extent specified in part (b) of Annex I.

#### Article 14

##### Conditions under which assistance is provided

1. Carriers and terminal managing bodies shall cooperate in order to provide assistance to disabled persons and persons with reduced mobility on condition that:

- (a) the person's need for such assistance is notified to carriers, terminal managing bodies, travel agents or tour operators at the latest 36 hours before the assistance is needed; and
- (b) the persons concerned present themselves at the designated point:
  - (i) at the time stipulated in advance by the carrier which shall be no more than 60 minutes before the published departure time, unless a shorter period is agreed between the carrier and the passenger; or
  - (ii) if no time is stipulated, no later than 30 minutes before the published departure time.

2. In addition to paragraph 1, disabled persons or persons with reduced mobility shall notify the carrier, travel agent or tour operator at the time of reservation or advance purchase of the ticket of their specific seating needs, provided that the need is known at that time.

3. Carriers, terminal managing bodies, travel agents and tour operators shall take all measures necessary to facilitate the receipt of notifications of the need for assistance made by disabled persons or persons with reduced mobility. This obligation shall apply at all designated terminals and their points of sale including sale by telephone and via the Internet.

4. If no notification is made in accordance with point (a) of paragraph 1 and paragraph 2, carriers, terminal managing bodies, travel agents and tour operators shall make every reasonable effort to ensure that the assistance is provided in such a way that the disabled person or person with reduced mobility is able to board the departing service, to change to the corresponding service or to alight from the arriving service for which he has purchased a ticket.

5. The terminal managing body shall designate a point inside or outside the terminal at which disabled persons or persons with reduced mobility can announce their arrival and request assistance. The point shall be clearly signposted and shall offer basic information about the terminal and assistance provided, in accessible formats.

#### Article 15

##### Transmission of information to a third party

If travel agents or tour operators receive a notification referred to in point (a) of Article 14(1) they shall, within their normal office hours, transfer the information to the carrier or terminal managing body as soon as possible.

#### Article 16

##### Training

1. Carriers and, where appropriate, terminal managing bodies shall establish disability-related training procedures, including instructions, and ensure that:

- (a) their personnel, other than drivers, including those employed by any other performing party, providing direct assistance to disabled persons and persons with reduced mobility are trained or instructed as described in parts (a) and (b) of Annex II; and
- (b) their personnel, including drivers, who deal directly with the travelling public or with issues related to the travelling public, are trained or instructed as described in part (a) of Annex II.

2. A Member State may for a maximum period of 5 years from 1 March 2013 grant an exemption from the application of point (b) of paragraph 1 with regard to training of drivers.

*Article 17***Compensation in respect of wheelchairs and other mobility equipment**

1. Carriers and terminal managing bodies shall be liable where they have caused loss of or damage to wheelchairs, other mobility equipment or assistive devices. The loss or damage shall be compensated by the carrier or terminal managing body liable for that loss or damage.
2. The compensation referred to in paragraph 1 shall be equal to the cost of replacement or repair of the equipment or devices lost or damaged.
3. Where necessary, every effort shall be undertaken to rapidly provide temporary replacement equipment or devices. The wheelchairs, other mobility equipment or assistive devices shall, where possible, have technical and functional features similar to those lost or damaged.

*Article 18***Exemptions**

1. Without prejudice to Article 2(2), Member States may exempt domestic regular services from the application of all or some of the provisions of this Chapter, provided that they ensure that the level of protection of disabled persons and persons with reduced mobility under their national rules is at least the same as under this Regulation.
2. Member States shall inform the Commission of exemptions granted pursuant to paragraph 1. The Commission shall take appropriate action if such an exemption is deemed not to be in accordance with the provisions of this Article. By 2 March 2018, the Commission shall submit to the European Parliament and the Council a report on exemptions granted pursuant to paragraph 1.

## CHAPTER IV

**PASSENGER RIGHTS IN THE EVENT OF CANCELLATION OR DELAY***Article 19***Continuation, re-routing and reimbursement**

1. Where a carrier reasonably expects a regular service to be cancelled or delayed in departure from a terminal for more than 120 minutes or in the case of overbooking, the passenger shall immediately be offered the choice between:
  - (a) continuation or re-routing to the final destination, at no additional cost and under comparable conditions, as set out in the transport contract, at the earliest opportunity;
  - (b) reimbursement of the ticket price, and, where relevant, a return service by bus or coach free of charge to the first

point of departure, as set out in the transport contract, at the earliest opportunity.

2. If the carrier fails to offer the passenger the choice referred to in paragraph 1, the passenger shall have the right to compensation amounting to 50 % of the ticket price, in addition to the reimbursement referred to in point (b) of paragraph 1. This sum shall be paid by the carrier within 1 month after the submission of the request for compensation.
3. Where the bus or coach becomes inoperable during the journey, the carrier shall provide either the continuation of the service with another vehicle from the location of the inoperable vehicle, or transport from the location of the inoperable vehicle to a suitable waiting point or terminal from where continuation of the journey becomes possible.
4. Where a regular service is cancelled or delayed in departure from a bus stop for more than 120 minutes, passengers shall have the right to the continuation or re-routing or reimbursement of the ticket price from the carrier, as referred to in paragraph 1.
5. The payment of reimbursement provided for in point (b) of paragraph 1 and paragraph 4 shall be made within 14 days after the offer has been made or request has been received. The payment shall cover the full cost of the ticket at the price at which it was purchased, for the part or parts of the journey not made, and for the part or parts already made if the journey no longer serves any purpose in relation to the passenger's original travel plan. In case of travel passes or season tickets the payment shall be equal to its proportional part of the full cost of the pass or ticket. The reimbursement shall be paid in money, unless the passenger accepts another form of reimbursement.

*Article 20***Information**

1. In the event of cancellation or delay in departure of a regular service, passengers departing from terminals shall be informed by the carrier or, where appropriate, the terminal managing body, of the situation as soon as possible and in any event no later than 30 minutes after the scheduled departure time, and of the estimated departure time as soon as this information is available.
2. If passengers miss, according to the timetable, a connecting service due to a cancellation or delay, the carrier or, where appropriate, the terminal managing body, shall make reasonable efforts to inform the passengers concerned of alternative connections.
3. The carrier or, where appropriate, the terminal managing body, shall ensure that disabled persons and persons with reduced mobility receive the information required under paragraphs 1 and 2 in accessible formats.

4. Where feasible, the information required under paragraphs 1 and 2 shall be provided by electronic means to all passengers, including those departing from bus stops, within the time-limit stipulated in paragraph 1, if the passenger has requested this and has provided the necessary contact details to the carrier.

#### Article 21

##### Assistance in case of cancelled or delayed departures

For a journey of a scheduled duration of more than 3 hours the carrier shall, in case of cancellation or delay in departure from a terminal of more than 90 minutes, offer the passenger free of charge:

- (a) snacks, meals or refreshments in reasonable relation to the waiting time or delay, provided they are available on the bus or in the terminal, or can reasonably be supplied;
- (b) a hotel room or other accommodation as well as assistance to arrange transport between the terminal and the place of accommodation in cases where a stay of 1 or more nights becomes necessary. For each passenger, the carrier may limit the total cost of accommodation, not including transport to and from the terminal and place of accommodation, to EUR 80 per night and for a maximum of 2 nights.

In applying this Article the carrier shall pay particular attention to the needs of disabled persons and persons with reduced mobility and any accompanying persons.

#### Article 22

##### Further claims

Nothing in this Chapter shall preclude passengers from seeking damages in accordance with national law before national courts in respect of loss resulting from cancellation or delay of regular services.

#### Article 23

##### Exemptions

1. Articles 19 and 21 shall not apply to passengers with open tickets as long as the time of departure is not specified, except for passengers holding a travel pass or a season ticket.
2. Point (b) of Article 21 shall not apply where the carrier proves that the cancellation or delay is caused by severe weather conditions or major natural disasters endangering the safe operation of bus or coach services.

#### CHAPTER V

##### GENERAL RULES ON INFORMATION AND COMPLAINTS

#### Article 24

##### Right to travel information

Carriers and terminal managing bodies shall, within their respective areas of competence, provide passengers with

adequate information throughout their travel. Where feasible, this information shall be provided in accessible formats upon request.

#### Article 25

##### Information on passenger rights

1. Carriers and terminal managing bodies shall, within their respective areas of competence, ensure that passengers are provided with appropriate and comprehensible information regarding their rights under this Regulation at the latest on departure. This information shall be provided at terminals and where applicable, on the Internet. At the request of a disabled person or person with reduced mobility the information shall be provided, where feasible, in an accessible format. This information shall include contact details of the enforcement body or bodies designated by the Member State pursuant to Article 28(1).

2. In order to comply with the information requirement referred to in paragraph 1, carriers and terminal managing bodies may use a summary of the provisions of this Regulation prepared by the Commission in all the official languages of the institutions of the European Union and made available to them.

#### Article 26

##### Complaints

Carriers shall set up or have in place a complaint handling mechanism for the rights and obligations set out in this Regulation.

#### Article 27

##### Submission of complaints

Without prejudice to claims for compensation in accordance with Article 7, if a passenger covered by this Regulation wants to make a complaint to the carrier, he shall submit it within 3 months from the date on which the regular service was performed or when a regular service should have been performed. Within 1 month of receiving the complaint, the carrier shall give notice to the passenger that his complaint has been substantiated, rejected or is still being considered. The time taken to provide the final reply shall not be longer than 3 months from the receipt of the complaint.

#### CHAPTER VI

##### ENFORCEMENT AND NATIONAL ENFORCEMENT BODIES

#### Article 28

##### National enforcement bodies

1. Each Member State shall designate a new or existing body or bodies responsible for the enforcement of this Regulation as regards regular services from points situated on its territory and regular services from a third country to such points. Each body shall take the measures necessary to ensure compliance with this Regulation.

Each body shall, in its organisation, funding decisions, legal structure and decision making, be independent of carriers, tour operators and terminal managing bodies.

2. Member States shall inform the Commission of the body or bodies designated in accordance with this Article.

3. Any passenger may submit a complaint, in accordance with national law, to the appropriate body designated under paragraph 1, or to any other appropriate body designated by a Member State, about an alleged infringement of this Regulation.

A Member State may decide that the passenger as a first step shall submit a complaint to the carrier in which case the national enforcement body or any other appropriate body designated by the Member State shall act as an appeal body for complaints not resolved under Article 27.

#### Article 29

##### Report on enforcement

By 1 June 2015 and every 2 years thereafter, the enforcement bodies designated pursuant to Article 28(1) shall publish a report on their activity in the previous 2 calendar years, containing in particular a description of actions taken in order to implement this Regulation and statistics on complaints and sanctions applied.

#### Article 30

##### Cooperation between enforcement bodies

National enforcement bodies as referred to in Article 28(1) shall, whenever appropriate, exchange information on their work and decision-making principles and practices. The Commission shall support them in this task.

#### Article 31

##### Penalties

Member States shall lay down rules on penalties applicable to infringements of the provisions of this Regulation and shall take

all the measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those rules and measures to the Commission by 1 March 2013 and shall notify it without delay of any subsequent amendment affecting them.

#### CHAPTER VII

##### FINAL PROVISIONS

#### Article 32

##### Report

The Commission shall report to the European Parliament and the Council by 2 March 2016 on the operation and effects of this Regulation. The report shall be accompanied, where necessary, by legislative proposals implementing in further detail the provisions of this Regulation, or amending it.

#### Article 33

##### Amendment to Regulation (EC) No 2006/2004

In the Annex to Regulation (EC) No 2006/2004 the following point is added:

- '19. Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 on the rights of passengers in bus and coach transport (\*).

(\*) OJ L 55, 28.2.2011, p. 1'.

#### Article 34

##### Entry into force

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 March 2013.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 16 February 2011.

For the European Parliament  
The President  
J. BUZEK

For the Council  
The President  
MARTONYI J.

## ANNEX I

**ASSISTANCE PROVIDED TO DISABLED PERSONS AND PERSONS WITH REDUCED MOBILITY****(a) Assistance at designated terminals**

Assistance and arrangements necessary to enable disabled persons and persons with reduced mobility to:

- communicate their arrival at the terminal and their request for assistance at designated points,
- move from the designated point to the check-in counter, waiting room and embarkation area,
- board the vehicle, with the provision of lifts, wheelchairs or other assistance needed, as appropriate,
- load their luggage,
- retrieve their luggage,
- alight from the vehicle,
- carry a recognised assistance dog on board a bus or coach,
- proceed to the seat;

**(b) Assistance on board**

Assistance and arrangements necessary to enable disabled persons and persons with reduced mobility to:

- be provided with essential information on a journey in accessible formats subject to request made by the passenger,
  - board/alight during pauses in a journey, if there are personnel other than the driver on board.
-

## ANNEX II

**DISABILITY-RELATED TRAINING****(a) Disability-awareness training**

Training of staff that deal directly with the travelling public includes:

- awareness of and appropriate responses to passengers with physical, sensory (hearing and visual), hidden or learning disabilities, including how to distinguish between the different abilities of persons whose mobility, orientation, or communication may be reduced,
- barriers faced by disabled persons and persons with reduced mobility, including attitudinal, environmental/physical and organisational barriers,
- recognised assistance dogs, including the role and the needs of an assistance dog,
- dealing with unexpected occurrences,
- interpersonal skills and methods of communication with deaf people and people with hearing impairments, people with visual impairments, people with speech impairments, and people with a learning disability,
- how to handle wheelchairs and other mobility aids carefully so as to avoid damage (if any, for all staff who are responsible for luggage handling);

**(b) Disability-assistance training**

Training of staff directly assisting disabled persons and persons with reduced mobility includes:

- how to help wheelchair users make transfers into and out of a wheelchair,
  - skills for providing assistance to disabled persons and persons with reduced mobility travelling with a recognised assistance dog, including the role and the needs of those dogs,
  - techniques for escorting visually impaired passengers and for the handling and carriage of recognised assistance dogs,
  - an understanding of the types of equipment which can assist disabled persons and persons with reduced mobility and a knowledge of how to handle such an equipment,
  - the use of boarding and alighting assistance equipment used and knowledge of the appropriate boarding and alighting assistance procedures that safeguard the safety and dignity of disabled persons and persons with reduced mobility,
  - understanding of the need for reliable and professional assistance. Also awareness of the potential of certain disabled passengers to experience feelings of vulnerability during travel because of their dependence on the assistance provided,
  - a knowledge of first aid.
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## I

(Legislative acts)

## REGULATIONS

**REGULATION (EU) No 1177/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 24 November 2010**  
**concerning the rights of passengers when travelling by sea and inland waterway and amending**  
**Regulation (EC) No 2006/2004**  
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 91(1) and 100(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) Action by the Union in the field of maritime and inland waterway transport should aim, among other things, at ensuring a high level of protection for passengers that is comparable with other modes of transport. Moreover, full account should be taken of the requirements of consumer protection in general.
- (2) Since the maritime and inland waterway passenger is the weaker party to the transport contract, all passengers

should be granted a minimum level of protection. Nothing should prevent carriers from offering contract conditions more favourable for the passenger than the conditions laid down in this Regulation. At the same time, the aim of this Regulation is not to interfere in commercial business-to-business relationships concerning the transport of goods. In particular, agreements between a road haulier and a carrier should not be construed as transport contracts for the purposes of this Regulation and should therefore not give the road haulier or its employees the right to compensation under this Regulation in the case of delays.

- (3) The protection of passengers should cover not only passenger services between ports situated in the territory of the Member States, but also passenger services between such ports and ports situated outside the territory of the Member States, taking into account the risk of distortion of competition on the passenger transport market. Therefore the term 'Union carrier' should, for the purposes of this Regulation, be interpreted as broadly as possible, but without affecting other legal acts of the Union, such as Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport <sup>(3)</sup> and Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) <sup>(4)</sup>.

<sup>(1)</sup> OJ C 317, 23.12.2009, p. 89.

<sup>(2)</sup> Position of the European Parliament of 23 April 2009 (OJ C 184 E, 8.7.2010, p. 293), position of the Council at first reading of 11 March 2010 (OJ C 122 E, 11.5.2010, p. 19), position of the European Parliament of 6 July 2010 (not yet published in the Official Journal) and decision of the Council of 11 October 2010.

<sup>(3)</sup> OJ L 378, 31.12.1986, p. 4.

<sup>(4)</sup> OJ L 364, 12.12.1992, p. 7.

- (4) The internal market for maritime and inland waterway passenger services should benefit citizens in general. Consequently, disabled persons and persons with reduced mobility, whether caused by disability, age or any other factor, should have opportunities for using passenger services and cruises that are comparable to those of other citizens. Disabled persons and persons with reduced mobility have the same rights as all other citizens with regard to free movement, freedom of choice and non-discrimination.
- (5) Member States should promote the use of public transport and the use of integrated tickets in order to optimise the use and interoperability of the various transport modes and operators.
- (6) In the light of Article 9 of the United Nations Convention on the Rights of Persons with Disabilities and in order to give disabled persons and persons with reduced mobility opportunities for maritime and inland waterway travel comparable to those of other citizens, rules for non-discrimination and assistance during their journey should be established. Those persons should therefore be accepted for carriage and not refused transport, except for reasons which are justified on the grounds of safety and established by the competent authorities. They should enjoy the right to assistance in ports and on board passenger ships. In the interests of social inclusion, the persons concerned should receive this assistance free of charge. Carriers should establish access conditions, preferably using the European standardisation system.
- (7) In deciding on the design of new ports and terminals, and as part of major refurbishments, the bodies responsible for those facilities should take into account the needs of disabled persons and persons with reduced mobility, in particular with regard to accessibility, paying particular consideration to 'design for all' requirements. Carriers should take such needs into account when deciding on the design of new and newly refurbished passenger ships in accordance with Directive 2006/87/EC of the European Parliament and of the Council of 12 December 2006 laying down technical requirements for inland waterway vessels <sup>(1)</sup> and Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships <sup>(2)</sup>.
- (8) Assistance given at ports situated in the territory of a Member State should, among other things, enable disabled persons and persons with reduced mobility to proceed from a designated point of arrival at a port to a passenger ship and from a passenger ship to a designated point of departure at a port, including embarking and disembarking.
- (9) In organising assistance to disabled persons and persons with reduced mobility, and the training of their personnel, carriers should cooperate with organisations representative of disabled persons or persons with reduced mobility. In that work they should also take into account the relevant provisions of the International Convention and Code on Standards of Training, Certification and Watchkeeping for Seafarers as well as the Recommendation of the International Maritime Organisation (IMO) on the design and operation of passenger ships to respond to elderly and disabled persons' needs.
- (10) The provisions governing the embarkation of disabled persons or persons with reduced mobility should be without prejudice to the general provisions applicable to the embarkation of passengers laid down by the international, Union or national rules in force.
- (11) Legal acts of the Union on passenger rights should take into account the needs of passengers, in particular those of disabled persons and persons with reduced mobility, to use different transport modes and to transfer smoothly between different modes, subject to the applicable safety regulations for the operation of ships.
- (12) Passengers should be adequately informed in the event of cancellation or delay of any passenger service or cruise. That information should help passengers to make the necessary arrangements and, if needed, to obtain information about alternative connections.
- (13) Inconvenience experienced by passengers due to the cancellation or long delay of their journey should be reduced. To this end, passengers should be adequately looked after and should be able to cancel their journey and have their tickets reimbursed or to obtain re-routing under satisfactory conditions. Adequate accommodation for passengers may not necessarily consist of hotel rooms but also of any other suitable accommodation that is available, depending in particular on the circumstances relating to each specific situation, the passengers' vehicles and the characteristics of the ship. In this respect and in duly justified cases of extraordinary and urgent circumstances, carriers should be able to take full advantage of the available relevant facilities, in cooperation with civil authorities.

<sup>(1)</sup> OJ L 389, 30.12.2006, p. 1.

<sup>(2)</sup> OJ L 163, 25.6.2009, p. 1.



- (14) Carriers should provide for the payment of compensation for passengers in the event of the cancellation or delay of a passenger service based on a percentage of the ticket price, except when the cancellation or delay occurs due to weather conditions endangering the safe operation of the ship or to extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.
- (15) Carriers should, in accordance with generally accepted principles, bear the burden of proving that the cancellation or delay was caused by such weather conditions or extraordinary circumstances.
- (16) Weather conditions endangering the safe operation of the ship should include, but not be limited to, strong winds, heavy seas, strong currents, difficult ice conditions and extremely high or low water levels, hurricanes, tornados and floods.
- (17) Extraordinary circumstances should include, but not be limited to, natural disasters such as fires and earthquakes, terrorist attacks, wars and military or civil armed conflicts, uprisings, military or illegal confiscations, labour conflicts, landing any sick, injured or dead person, search and rescue operations at sea or on inland waterways, measures necessary to protect the environment, decisions taken by traffic management bodies or port authorities, or decisions by the competent authorities with regard to public order and safety as well as to cover urgent transport needs.
- (18) With the involvement of stakeholders, professional associations and associations of customers, passengers, disabled persons and persons with reduced mobility, carriers should cooperate in order to adopt arrangements at national or European level for improving care and assistance offered to passengers whenever their travel is interrupted, notably in the event of long delays or cancellation of travel. National enforcement bodies should be informed of those arrangements.
- (19) The Court of Justice of the European Union has already ruled that problems leading to cancellations or delays can be covered by the concept of extraordinary circumstances only to the extent that they stem from events which are not inherent in the normal exercise of the activity of the carrier concerned and are beyond its actual control. It should be noted that weather conditions endangering the safe operation of the ship are indeed beyond the actual control of the carrier.
- (20) This Regulation should not affect the rights of passengers established by Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours <sup>(1)</sup>. This Regulation should not apply in cases where a package tour is cancelled for reasons other than cancellation of the passenger service or the cruise.
- (21) Passengers should be fully informed of their rights under this Regulation in formats which are accessible to everybody, so that they can effectively exercise those rights. Rights of passengers should include the receipt of information regarding the passenger service or cruise before and during the journey. All essential information provided to passengers should also be provided in formats accessible to disabled persons and persons with reduced mobility, with such accessible formats allowing passengers to access the same information using, for example, text, Braille, audio, video and/or electronic formats.
- (22) Passengers should be able to exercise their rights by means of appropriate and accessible complaint procedures implemented by carriers and terminal operators within their respective areas of competence or, as the case may be, by the submission of complaints to the body or bodies designated to that end by the Member State concerned. Carriers and terminal operators should respond to complaints by passengers within a set period of time, bearing in mind that the non-reaction to a complaint could be held against them.
- (23) Taking into account the procedures established by a Member State for the submission of complaints, a complaint concerning assistance in a port or on board a ship should preferably be addressed to the body or bodies designated for the enforcement of this Regulation in the Member State where the port of embarkation is situated and, for passenger services from a third country, where the port of disembarkation is situated.
- (24) Member States should ensure compliance with this Regulation and designate a competent body or bodies to carry out supervision and enforcement tasks. This does not affect the rights of passengers to seek legal redress from courts under national law.
- (25) The body or bodies designated for the enforcement of this Regulation should be independent of commercial interests. Each Member State should appoint at least one body which, when applicable, should have the power and capability to investigate individual complaints and

<sup>(1)</sup> OJ L 158, 23.6.1990, p. 59.

to facilitate dispute settlement. Passengers should be entitled to receive a substantiated reply from the designated body, within a reasonable period of time. Given the importance of reliable statistics for the enforcement of this Regulation, in particular to ensure coherent application throughout the Union, the reports prepared by those bodies should if possible include statistics on complaints and their outcome.

- (26) Member States should lay down penalties applicable to infringements of this Regulation and ensure that those penalties are applied. Those penalties should be effective, proportionate and dissuasive.
- (27) Since the objectives of this Regulation, namely to ensure a high level of protection of and assistance to passengers throughout the Member States and to ensure that economic agents operate under harmonised conditions in the internal market, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (28) The enforcement of this Regulation should be based on Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) <sup>(1)</sup>. That Regulation should therefore be amended accordingly.
- (29) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(2)</sup> should be strictly respected and enforced in order to guarantee respect for the privacy of natural and legal persons, and to ensure that the information and reports requested serve solely to fulfil the obligations laid down in this Regulation and are not used to the detriment of such persons.
- (30) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, as referred to in Article 6 of the Treaty on European Union,

HAVE ADOPTED THIS REGULATION:

<sup>(1)</sup> OJ L 364, 9.12.2004, p. 1.

<sup>(2)</sup> OJ L 281, 23.11.1995, p. 31.

## CHAPTER I

### GENERAL PROVISIONS

#### Article 1

##### Subject matter

This Regulation establishes rules for sea and inland waterway transport as regards the following:

- (a) non-discrimination between passengers with regard to transport conditions offered by carriers;
- (b) non-discrimination and assistance for disabled persons and persons with reduced mobility;
- (c) the rights of passengers in cases of cancellation or delay;
- (d) minimum information to be provided to passengers;
- (e) the handling of complaints;
- (f) general rules on enforcement.

#### Article 2

##### Scope

1. This Regulation shall apply in respect of passengers travelling:

- (a) on passenger services where the port of embarkation is situated in the territory of a Member State;
- (b) on passenger services where the port of embarkation is situated outside the territory of a Member State and the port of disembarkation is situated in the territory of a Member State, provided that the service is operated by a Union carrier as defined in Article 3(e);
- (c) on a cruise where the port of embarkation is situated in the territory of a Member State. However, Articles 16(2), 18, 19 and 20(1) and (4) shall not apply to those passengers.

2. This Regulation shall not apply in respect of passengers travelling:

- (a) on ships certified to carry up to 12 passengers;
- (b) on ships which have a crew responsible for the operation of the ship composed of not more than three persons or where the distance of the overall passenger service is less than 500 metres, one way;
- (c) on excursion and sightseeing tours other than cruises; or

(d) on ships not propelled by mechanical means as well as original, and individual replicas of, historical passenger ships designed before 1965, built predominantly with the original materials, certified to carry up to 36 passengers.

3. Member States may, for a period of 2 years from 18 December 2012, exempt from the application of this Regulation seagoing ships of less than 300 gross tons operated in domestic transport, provided that the rights of passengers under this Regulation are adequately ensured under national law.

4. Member States may exempt from the application of this Regulation passenger services covered by public service obligations, public service contracts or integrated services provided that the rights of passengers under this Regulation are comparably guaranteed under national law.

5. Without prejudice to Directive 2006/87/EC and to Directive 2009/45/EC, nothing in this Regulation shall be understood as constituting technical requirements imposing obligations on carriers, terminal operators or other entities to modify or replace ships, infrastructure, ports or port terminals.

### Article 3

#### Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (a) 'disabled person' or 'person with reduced mobility' means any person whose mobility when using transport is reduced as a result of any physical disability (sensory or locomotor, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or as a result of age, and whose situation needs appropriate attention and adaptation to his particular needs of the service made available to all passengers;
- (b) 'territory of a Member State' means a territory to which the Treaty on the Functioning of the European Union applies as referred to in Article 355 thereof, under the conditions set out therein;
- (c) 'access conditions' means relevant standards, guidelines and information on the accessibility of port terminals and ships including their facilities for disabled persons or persons with reduced mobility;
- (d) 'carrier' means a natural or legal person, other than a tour operator, travel agent or ticket vendor, offering transport by passenger services or cruises to the general public;

- (e) 'Union carrier' means a carrier established within the territory of a Member State or offering transport by passenger services operated to or from the territory of a Member State;
- (f) 'passenger service' means a commercial passenger transport service by sea or inland waterways operated according to a published timetable;
- (g) 'integrated services' means interconnected transport services within a determined geographical area with a single information service, ticketing scheme and timetable;
- (h) 'performing carrier' means a person, other than the carrier, who actually performs the carriage wholly or partially;
- (i) 'inland waterway' means a natural or artificial navigable inland body of water, or system of interconnected bodies of water, used for transport, such as lakes, rivers or canals or any combination of these;
- (j) 'port' means a place or a geographical area made up of such improvement works and facilities as to permit the reception of ships from which passengers regularly embark or disembark;
- (k) 'port terminal' means a terminal, staffed by a carrier or a terminal operator, in a port with facilities, such as check-in, ticket counters or lounges, and staff for the embarkation or disembarkation of passengers travelling on passenger services or on a cruise;
- (l) 'ship' means a vessel used for navigation at sea or on inland waterways;
- (m) 'transport contract' means a contract of carriage between a carrier and a passenger for the provision of one or more passenger services or cruises;
- (n) 'ticket' means a valid document or other evidence of a transport contract;
- (o) 'ticket vendor' means any retailer concluding transport contracts on behalf of a carrier;
- (p) 'travel agent' means any retailer acting on behalf of a passenger or a tour operator for the conclusion of transport contracts;
- (q) 'tour operator' means an organiser or retailer, other than a carrier, within the meaning of Article 2(2) and (3) of Directive 90/314/EEC;
- (r) 'reservation' means a booking of a specific departure of a passenger service or a cruise;

- (s) 'terminal operator' means a private or public body in the territory of a Member State responsible for the administration and management of a port terminal;
- (t) 'cruise' means a transport service by sea or inland waterway, operated exclusively for the purpose of pleasure or recreation, supplemented by accommodation and other facilities, exceeding two overnight stays on board;
- (u) 'shipping incident' means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship.

#### Article 4

##### **Tickets and non-discriminatory contract conditions**

1. Carriers shall issue a ticket to the passenger, unless under national law other documents give entitlement to transport. A ticket may be issued in an electronic format.
2. Without prejudice to social tariffs, the contract conditions and tariffs applied by carriers or ticket vendors shall be offered to the general public without any direct or indirect discrimination based on the nationality of the final customer or on the place of establishment of carriers or ticket vendors within the Union.

#### Article 5

##### **Other performing parties**

1. Where the performance of the obligations under this Regulation has been entrusted to a performing carrier, ticket vendor or any other person, the carrier, travel agent, tour operator or terminal operator who has entrusted such obligations shall nevertheless be liable for the acts and omissions of that performing party, acting within that party's scope of employment.
2. In addition to paragraph 1, the party to whom the performance of an obligation has been entrusted by the carrier, travel agent, tour operator or terminal operator shall be subject to the provisions of this Regulation, including provisions on liabilities and defences, with regard to the obligation entrusted.

#### Article 6

##### **Exclusion of waiver**

Rights and obligations pursuant to this Regulation shall not be waived or limited, in particular by a derogation or restrictive clause in the transport contract.

## CHAPTER II

### **RIGHTS OF DISABLED PERSONS AND PERSONS WITH REDUCED MOBILITY**

#### Article 7

##### **Right to transport**

1. Carriers, travel agents and tour operators shall not refuse to accept a reservation, to issue or otherwise provide a ticket or to embark persons on the grounds of disability or of reduced mobility as such.
2. Reservations and tickets shall be offered to disabled persons and persons with reduced mobility at no additional cost under the same conditions that apply to all other passengers.

#### Article 8

##### **Exceptions and special conditions**

1. By way of derogation from Article 7(1), carriers, travel agents and tour operators may refuse to accept a reservation from, to issue or otherwise provide a ticket to or to embark a disabled person or person with reduced mobility:
  - (a) in order to meet applicable safety requirements established by international, Union or national law or in order to meet safety requirements established by the competent authorities;
  - (b) where the design of the passenger ship or port infrastructure and equipment, including port terminals, makes it impossible to carry out the embarkation, disembarkation or carriage of the said person in a safe or operationally feasible manner.
2. In the event of a refusal to accept a reservation or to issue or otherwise provide a ticket on the grounds referred to in paragraph 1, carriers, travel agents and tour operators shall make all reasonable efforts to propose to the person concerned an acceptable alternative transport on a passenger service or a cruise operated by the carrier.

3. Where a disabled person or a person with reduced mobility, who holds a reservation or has a ticket and has complied with the requirements referred to in Article 11(2), is nonetheless denied embarkation on the basis of this Regulation, that person, and any accompanying person referred to in paragraph 4 of this Article, shall be offered the choice between the right to reimbursement and re-routing as provided for in Annex I. The right to the option of a return journey or re-routing shall be conditional upon all safety requirements being met.

4. Where strictly necessary and under the same conditions set out in paragraph 1, carriers, travel agents and tour operators may require that a disabled person or person with reduced mobility be accompanied by another person who is capable of providing the assistance required by the disabled person or person with reduced mobility. As regards passenger services, such an accompanying person shall be carried free of charge.

5. When carriers, travel agents and tour operators have recourse to paragraphs 1 or 4, they shall immediately inform the disabled person or person with reduced mobility of the specific reasons therefor. On request, those reasons shall be notified to the disabled person or person with reduced mobility in writing, no later than five working days after the request. In the event of refusal according to paragraph 1(a), reference shall be made to the applicable safety requirements.

#### Article 9

### Accessibility and information

1. In cooperation with organisations representative of disabled persons or persons with reduced mobility, carriers and terminal operators shall, where appropriate through their organisations, establish, or have in place, non-discriminatory access conditions for the transport of disabled persons and persons with reduced mobility and accompanying persons. The access conditions shall upon request be communicated to national enforcement bodies.

2. The access conditions provided for in paragraph 1 shall be made publicly available by carriers and terminal operators physically or on the Internet, in accessible formats on request, and in the same languages as those in which information is generally made available to all passengers. Particular attention shall be paid to the needs of disabled persons and persons with reduced mobility.

3. Tour operators shall make available the access conditions provided for in paragraph 1 which apply to journeys included in package travel, package holidays and package tours which they organise, sell or offer for sale.

4. Carriers, travel agents and tour operators shall ensure that all relevant information, including online reservation and information, concerning the conditions of carriage, journey information and access conditions is available in appropriate and accessible formats for disabled persons and persons with reduced mobility. Persons needing assistance shall receive confirmation of such assistance by any means available, including electronic means or Short Message Service (SMS).

#### Article 10

### Right to assistance in ports and on board ships

Subject to the access conditions provided for in Article 9(1), carriers and terminal operators shall, within their respective areas of competence, provide assistance free of charge to disabled persons

and persons with reduced mobility, as specified in Annexes II and III, in ports, including embarkation and disembarkation, and on board ships. The assistance shall, if possible, be adapted to the individual needs of the disabled person or person with reduced mobility.

#### Article 11

### Conditions under which assistance is provided

1. Carriers and terminal operators shall, within their respective areas of competence, provide assistance to disabled persons and persons with reduced mobility as set out in Article 10 provided that:

- (a) the carrier or the terminal operator is notified, by any means available, including electronic means or SMS, of the person's need for such assistance at the latest 48 hours before the assistance is needed, unless a shorter period is agreed between the passenger and the carrier or terminal operator; and
- (b) the disabled person or person with reduced mobility presents himself at the port or at the designated point as referred to in Article 12(3):
  - (i) at a time stipulated in writing by the carrier which shall not be more than 60 minutes before the published embarkation time; or
  - (ii) if no embarkation time is stipulated, no later than 60 minutes before the published departure time, unless a shorter period is agreed between the passenger and the carrier or terminal operator.

2. In addition to paragraph 1, disabled persons or persons with reduced mobility shall notify the carrier, at the time of reservation or advance purchase of the ticket, of their specific needs with regard to accommodation, seating or services required or their need to bring medical equipment, provided the need is known at that time.

3. A notification made in accordance with paragraphs 1(a) and 2 may always be submitted to the travel agent or the tour operator from which the ticket was purchased. Where the ticket permits multiple journeys, one notification shall be sufficient provided that adequate information on the timing of subsequent journeys is provided. The passenger shall receive a confirmation stating that the assistance needs have been notified as required in accordance with paragraphs 1(a) and 2.

4. Where no notification is made in accordance with paragraphs 1(a) and 2, carriers and terminal operators shall nonetheless make all reasonable efforts to ensure that the assistance is provided in such a way that the disabled person or person with reduced mobility is able to embark, disembark and travel on the ship.

5. Where a disabled person or person with reduced mobility is accompanied by a recognised assistance dog, that dog shall be accommodated together with that person, provided that the carrier, travel agent or tour operator is notified in accordance with applicable national rules on the carriage of recognised assistance dogs on board passenger ships, where such rules exist.

#### Article 12

##### Reception of notifications and designation of meeting points

1. Carriers, terminal operators, travel agents and tour operators shall take all measures necessary for the request for notifications, and for the reception of notifications made in accordance with Article 11(1)(a) and 11(2). That obligation shall apply at all their points of sale, including sale by telephone and over the Internet.

2. If travel agents or tour operators receive the notification referred to in paragraph 1 they shall, within their normal office hours, transfer the information to the carrier or terminal operator without delay.

3. Carriers and terminal operators shall designate a point inside or outside port terminals at which disabled persons or persons with reduced mobility can announce their arrival and request assistance. That point shall be clearly signposted and shall offer basic information about the port terminal and assistance provided, in accessible formats.

#### Article 13

##### Quality standards for assistance

1. Terminal operators and carriers operating port terminals or passenger services with a total of more than 100 000 commercial passenger movements during the previous calendar year shall, within their respective areas of competence, set quality standards for the assistance specified in Annexes II and III and shall, where appropriate through their organisations, determine resource requirements for meeting those standards, in cooperation with organisations representative of disabled persons or persons with reduced mobility.

2. In setting quality standards, full account shall be taken of internationally recognised policies and codes of conduct concerning facilitation of the transport of disabled persons or persons with reduced mobility, notably the IMO's Recommendation on the design and operation of passenger ships to respond to elderly and disabled persons' needs.

3. The quality standards provided for in paragraph 1 shall be made publicly available by terminal operators and carriers physically or on the Internet in accessible formats and in the same languages as those in which information is generally made available to all passengers.

#### Article 14

##### Training and instructions

Without prejudice to the International Convention and Code on Standards of Training, Certification and Watchkeeping for Seafarers and to the regulations adopted under the Revised Convention for Rhine Navigation and the Convention regarding the Regime of Navigation on the Danube, carriers and, where appropriate, terminal operators shall establish disability-related training procedures, including instructions, and ensure that:

- (a) their personnel, including those employed by any other performing party, providing direct assistance to disabled persons and persons with reduced mobility are trained or instructed as described in Annex IV, Parts A and B;
- (b) their personnel who are otherwise responsible for the reservation and selling of tickets or embarkation and disembarkation, including those employed by any other performing party, are trained or instructed as described in Annex IV, Part A; and
- (c) the categories of personnel referred to in points (a) and (b) maintain their competences, for example through instructions or refresher training courses when appropriate.

#### Article 15

##### Compensation in respect of mobility equipment or other specific equipment

1. Carriers and terminal operators shall be liable for loss suffered as a result of the loss of or damage to mobility equipment or other specific equipment, used by a disabled person or person with reduced mobility, if the incident which caused the loss was due to the fault or neglect of the carrier or the terminal operator. The fault or neglect of the carrier shall be presumed for loss caused by a shipping incident.

2. The compensation referred to in paragraph 1 shall correspond to the replacement value of the equipment concerned or, where applicable, to the costs relating to repairs.

3. Paragraphs 1 and 2 shall not apply if Article 4 of Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents <sup>(1)</sup> applies.

4. Moreover, every effort shall be undertaken to rapidly provide temporary replacement equipment which is a suitable alternative.

<sup>(1)</sup> OJ L 131, 28.5.2009, p. 24.

## CHAPTER III

**OBLIGATIONS OF CARRIERS AND TERMINAL OPERATORS IN THE EVENT OF INTERRUPTED TRAVEL***Article 16***Information in the event of cancelled or delayed departures**

1. In the case of a cancellation or a delay in departure of a passenger service or a cruise, passengers departing from port terminals or, if possible, passengers departing from ports shall be informed by the carrier or, where appropriate, by the terminal operator, of the situation as soon as possible and in any event no later than 30 minutes after the scheduled time of departure, and of the estimated departure time and estimated arrival time as soon as that information is available.

2. If passengers miss a connecting transport service due to a cancellation or delay, the carrier and, where appropriate, the terminal operator shall make reasonable efforts to inform the passengers concerned of alternative connections.

3. The carrier or, where appropriate, the terminal operator, shall ensure that disabled persons or persons with reduced mobility receive the information required under paragraphs 1 and 2 in accessible formats.

*Article 17***Assistance in the event of cancelled or delayed departures**

1. Where a carrier reasonably expects the departure of a passenger service or a cruise to be cancelled or delayed for more than 90 minutes beyond its scheduled time of departure, passengers departing from port terminals shall be offered free of charge snacks, meals or refreshments in reasonable relation to the waiting time, provided they are available or can reasonably be supplied.

2. In the case of a cancellation or a delay in departure where a stay of one or more nights or a stay additional to that intended by the passenger becomes necessary, where and when physically possible, the carrier shall offer passengers departing from port terminals, free of charge, adequate accommodation on board, or ashore, and transport to and from the port terminal and place of accommodation in addition to the snacks, meals or refreshments provided for in paragraph 1. For each passenger, the carrier may limit the total cost of accommodation ashore, not including transport to and from the port terminal and place of accommodation, to EUR 80 per night, for a maximum of three nights.

3. In applying paragraphs 1 and 2, the carrier shall pay particular attention to the needs of disabled persons and persons with reduced mobility and any accompanying persons.

*Article 18***Re-routing and reimbursement in the event of cancelled or delayed departures**

1. Where a carrier reasonably expects a passenger service to be cancelled or delayed in departure from a port terminal for more than 90 minutes, the passenger shall immediately be offered the choice between:

- (a) re-routing to the final destination, under comparable conditions, as set out in the transport contract, at the earliest opportunity and at no additional cost;
- (b) reimbursement of the ticket price and, where relevant, a return service free of charge to the first point of departure, as set out in the transport contract, at the earliest opportunity.

2. Where a passenger service is cancelled or delayed in departure from a port for more than 90 minutes, passengers shall have the right to such re-routing or reimbursement of the ticket price from the carrier.

3. The payment of the reimbursement provided for in paragraphs 1(b) and 2 shall be made within 7 days, in cash, by electronic bank transfer, bank order or bank cheque, of the full cost of the ticket at the price at which it was purchased, for the part or parts of the journey not made, and for the part or parts already made where the journey no longer serves any purpose in relation to the passenger's original travel plan. Where the passenger agrees, the full reimbursement may also be paid in the form of vouchers and/or other services in an amount equivalent to the price for which the ticket was purchased, provided that the conditions are flexible, particularly regarding the period of validity and the destination.

*Article 19***Compensation of the ticket price in the event of delay in arrival**

1. Without losing the right to transport, passengers may request compensation from the carrier if they are facing a delay in arrival at the final destination as set out in the transport contract. The minimum level of compensation shall be 25 % of the ticket price for a delay of at least:

- (a) 1 hour in the case of a scheduled journey of up to 4 hours;
- (b) 2 hours in the case of a scheduled journey of more than 4 hours, but not exceeding 8 hours;
- (c) 3 hours in the case of a scheduled journey of more than 8 hours, but not exceeding 24 hours; or
- (d) 6 hours in the case of a scheduled journey of more than 24 hours.

If the delay exceeds double the time set out in points (a) to (d), the compensation shall be 50 % of the ticket price.

2. Passengers who hold a travel pass or a season ticket and who encounter recurrent delays in arrival during its period of validity may request adequate compensation in accordance with the carrier's compensation arrangements. These arrangements shall state the criteria for determining delay in arrival and for calculation of compensation.

3. Compensation shall be calculated in relation to the price which the passenger actually paid for the delayed passenger service.

4. Where the transport is for a return journey, compensation for delay in arrival on either the outward or the return leg shall be calculated in relation to half of the price paid for the transport by that passenger service.

5. The compensation shall be paid within 1 month after the submission of the request for compensation. The compensation may be paid in vouchers and/or other services, provided that the conditions are flexible, particularly regarding the period of validity and the destination. The compensation shall be paid in money at the request of the passenger.

6. The compensation of the ticket price shall not be reduced by financial transaction costs such as fees, telephone costs or stamps. Carriers may introduce a minimum threshold under which payments for compensation will not be paid. This threshold shall not exceed EUR 6.

#### *Article 20*

#### **Exemptions**

1. Articles 17, 18 and 19 shall not apply to passengers with open tickets as long as the time of departure is not specified, except for passengers holding a travel pass or a season ticket.

2. Articles 17 and 19 shall not apply if the passenger is informed of the cancellation or delay before the purchase of the ticket or if the cancellation or delay is caused by the fault of the passenger.

3. Article 17(2) shall not apply where the carrier proves that the cancellation or delay is caused by weather conditions endangering the safe operation of the ship.

4. Article 19 shall not apply where the carrier proves that the cancellation or delay is caused by weather conditions endangering the safe operation of the ship or by extraordinary circumstances hindering the performance of the passenger service which could not have been avoided even if all reasonable measures had been taken.

#### *Article 21*

#### **Further claims**

Nothing in this Regulation shall preclude passengers from seeking damages in accordance with national law in respect of loss resulting from cancellation or delay of transport services before national courts, including under Directive 90/314/EEC.

#### CHAPTER IV

#### **GENERAL RULES ON INFORMATION AND COMPLAINTS**

#### *Article 22*

#### **Right to travel information**

Carriers and terminal operators shall, within their respective areas of competence, provide passengers with adequate information throughout their travel in formats which are accessible to everybody and in the same languages as those in which information is generally made available to all passengers. Particular attention shall be paid to the needs of disabled persons and persons with reduced mobility.

#### *Article 23*

#### **Information on passenger rights**

1. Carriers, terminal operators and, when applicable, port authorities, shall, within their respective areas of competence, ensure that information on the rights of passengers under this Regulation is publicly available on board ships, in ports, if possible, and in port terminals. The information shall be provided as far as possible in accessible formats and in the same languages as those in which information is generally made available to all passengers. When that information is provided particular attention shall be paid to the needs of disabled persons and persons with reduced mobility.

2. In order to comply with the information requirement referred to in paragraph 1, carriers, terminal operators and, when applicable, port authorities, may use a summary of the provisions of this Regulation prepared by the Commission in all the official languages of the institutions of the European Union and made available to them.

3. Carriers, terminal operators and, when applicable, port authorities shall inform passengers in an appropriate manner on board ships, in ports, if possible, and in port terminals, of the contact details of the enforcement body designated by the Member State concerned pursuant to Article 25(1).



*Article 24***Complaints**

1. Carriers and terminal operators shall set up or have in place an accessible complaint-handling mechanism for rights and obligations covered by this Regulation.

2. Where a passenger covered by this Regulation wants to make a complaint to the carrier or terminal operator, he shall submit it within 2 months from the date on which the service was performed or when a service should have been performed. Within 1 month of receiving the complaint, the carrier or terminal operator shall give notice to the passenger that his complaint has been substantiated, rejected or is still being considered. The time taken to provide the final reply shall not be longer than 2 months from the receipt of a complaint.

## CHAPTER V

**ENFORCEMENT AND NATIONAL ENFORCEMENT BODIES***Article 25***National enforcement bodies**

1. Each Member State shall designate a new or existing body or bodies responsible for the enforcement of this Regulation as regards passenger services and cruises from ports situated on its territory and passenger services from a third country to such ports. Each body shall take the measures necessary to ensure compliance with this Regulation.

Each body shall, in its organisation, funding decisions, legal structure and decision-making, be independent of commercial interests.

2. Member States shall inform the Commission of the body or bodies designated in accordance with this Article.

3. Any passenger may submit a complaint, in accordance with national law, to the competent body designated under paragraph 1, or to any other competent body designated by a Member State, about an alleged infringement of this Regulation. The competent body shall provide passengers with a substantiated reply to their complaint within a reasonable period of time.

A Member State may decide:

(a) that the passenger as a first step shall submit the complaint covered by this Regulation to the carrier or terminal operator; and/or

(b) that the national enforcement body or any other competent body designated by the Member State shall act as an appeal body for complaints not resolved under Article 24.

4. Member States that have chosen to exempt certain services pursuant to Article 2(4) shall ensure that a comparable mechanism of enforcement of passenger rights is in place.

*Article 26***Report on enforcement**

By 1 June 2015 and every 2 years thereafter, the enforcement bodies designated pursuant to Article 25 shall publish a report on their activity in the previous two calendar years, containing in particular a description of actions taken in order to implement the provisions of this Regulation, details of sanctions applied and statistics on complaints and sanctions applied.

*Article 27***Cooperation between enforcement bodies**

National enforcement bodies referred to in Article 25(1) shall exchange information on their work and decision-making principles and practice to the extent necessary for the coherent application of this Regulation. The Commission shall support them in that task.

*Article 28***Penalties**

The Member States shall lay down rules on penalties applicable to infringements of the provisions of this Regulation and shall take all the measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those rules and measures to the Commission by 18 December 2012 and shall notify it without delay of any subsequent amendment affecting them.

## CHAPTER VI

**FINAL PROVISIONS***Article 29***Report**

The Commission shall report to the European Parliament and to the Council by 19 December 2015 on the operation and the effects of this Regulation. The report shall be accompanied where necessary by legislative proposals implementing in further detail the provisions of this Regulation, or amending it.

*Article 30***Amendment to Regulation (EC) No 2006/2004**

In the Annex to Regulation (EC) No 2006/2004 the following point shall be added:

- '18. Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway (\*).

(\*) OJ L 334, 17.12.2010, p. 1.'

*Article 31***Entry into force**

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from 18 December 2012.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 24 November 2010.

*For the European Parliament*  
*The President*  
J. BUZEK

*For the Council*  
*The President*  
O. CHASTEL

## ANNEX I

**RIGHT TO REIMBURSEMENT OR RE-ROUTING FOR DISABLED PERSONS AND PERSONS WITH REDUCED MOBILITY AS REFERRED TO IN ARTICLE 8**

1. Where reference is made to this Annex, disabled persons and persons with reduced mobility shall be offered the choice between:
    - (a) — reimbursement within 7 days, paid in cash, by electronic bank transfer, bank order or bank cheque, of the full cost of the ticket at the price at which it was purchased, for the part or parts of the journey not made, and for the part or parts already made if the journey no longer serves any purpose in relation to the passenger's original travel plan, plus, where relevant,
      - a return service to the first point of departure, at the earliest opportunity; or
    - (b) re-routing to the final destination as set out in the transport contract, at no additional cost and under comparable conditions, at the earliest opportunity; or
    - (c) re-routing to the final destination as set out in the transport contract, under comparable conditions, at a later date at the passenger's convenience, subject to availability of tickets.
  2. Paragraph 1(a) shall also apply to passengers whose journeys form part of a package, except for the right to reimbursement where such a right arises under Directive 90/314/EEC.
  3. When, in the case where a town, city or region is served by several ports, a carrier offers a passenger a journey to an alternative port to that for which the reservation was made, the carrier shall bear the cost of transferring the passenger from that alternative port either to that for which the reservation was made, or to another nearby destination agreed with the passenger.
-

## ANNEX II

**ASSISTANCE IN PORTS, INCLUDING EMBARKATION AND DISEMBARKATION, AS REFERRED TO IN ARTICLES 10 AND 13**

1. Assistance and arrangements necessary to enable disabled persons and persons with reduced mobility to:
    - communicate their arrival at a port terminal or, if possible, a port and their request for assistance,
    - move from an entry point to the check-in counter, if any, or to the ship,
    - check in and register baggage, if necessary,
    - proceed from the check-in counter, if any, to the ship, through emigration and security points,
    - embark the ship, with the provision of lifts, wheelchairs or other assistance needed, as appropriate,
    - proceed from the ship door to their seats/area,
    - store and retrieve baggage on the ship,
    - proceed from their seats to the ship door,
    - disembark from the ship, with the provision of lifts, wheelchairs or other assistance needed, as appropriate,
    - retrieve baggage, if necessary, and proceed through immigration and customs points,
    - proceed from the baggage hall or the disembarkation point to a designated point of exit,
    - if required, make their way to the toilet facilities (if any).
  2. Where a disabled person or person with reduced mobility is assisted by an accompanying person, that person must, if requested, be allowed to provide the necessary assistance in the port and with embarking and disembarking.
  3. Handling of all necessary mobility equipment, including equipment such as electric wheelchairs.
  4. Temporary replacement of damaged or lost mobility equipment with equipment which is a suitable alternative.
  5. Ground handling of recognised assistance dogs, when relevant.
  6. Communication in accessible formats of information needed to embark and disembark.
-

## ANNEX III

**ASSISTANCE ON BOARD SHIPS AS REFERRED TO IN ARTICLES 10 AND 13**

1. Carriage of recognised assistance dogs on board the ship, subject to national regulations.
  2. Carriage of medical equipment and of the mobility equipment necessary for the disabled person or person with reduced mobility, including electric wheelchairs.
  3. Communication of essential information concerning a route in accessible formats.
  4. Making all reasonable efforts to arrange seating to meet the needs of disabled persons or persons with reduced mobility on request and subject to safety requirements and availability.
  5. If required, assistance in moving to toilet facilities (if any).
  6. Where a disabled person or person with reduced mobility is assisted by an accompanying person, the carrier shall make all reasonable efforts to give such person a seat or a cabin next to the disabled person or person with reduced mobility.
-

## ANNEX IV

**DISABILITY-RELATED TRAINING, INCLUDING INSTRUCTIONS, AS REFERRED TO IN ARTICLE 14**

## A. Disability-awareness training, including instructions

Disability-awareness training, including instructions, includes:

- awareness of and appropriate responses to passengers with physical, sensory (hearing and visual), hidden or learning disabilities, including how to distinguish between the different abilities of persons whose mobility, orientation or communication may be reduced,
- barriers faced by disabled persons and persons with reduced mobility, including attitudinal, environmental/physical and organisational barriers,
- recognised assistance dogs, including the role and the needs of an assistance dog,
- dealing with unexpected occurrences,
- interpersonal skills and methods of communication with people with hearing impairments, visual impairments or speech impairments and people with a learning disability,
- general awareness of IMO guidelines relating to the Recommendation on the design and operation of passenger ships to respond to elderly and disabled persons' needs.

## B. Disability-assistance training, including instructions

Disability-assistance training, including instructions, includes:

- how to help wheelchair users make transfers into and out of a wheelchair,
  - skills for providing assistance to disabled persons and persons with reduced mobility travelling with a recognised assistance dog, including the role and the needs of those dogs,
  - techniques for escorting passengers with visual impairments and for the handling and carriage of recognised assistance dogs,
  - an understanding of the types of equipment which can assist disabled persons and persons with reduced mobility and a knowledge of how to carefully handle such equipment,
  - the use of boarding and deboarding assistance equipment used and knowledge of the appropriate boarding and deboarding assistance procedures that safeguard the safety and dignity of disabled persons and persons with reduced mobility,
  - understanding of the need for reliable and professional assistance. Also awareness of the potential of certain disabled persons and persons with reduced mobility to experience feelings of vulnerability during travel because of their dependence on the assistance provided,
  - a knowledge of first aid.
-

**REGULATION (EC) No 1371/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 23 October 2007**  
**on rail passengers' rights and obligations**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty, in the light of the joint text approved by the Conciliation Committee on 31 July 2007 <sup>(3)</sup>,

Whereas:

- (1) In the framework of the common transport policy, it is important to safeguard users' rights for rail passengers and to improve the quality and effectiveness of rail passenger services in order to help increase the share of rail transport in relation to other modes of transport.
- (2) The Commission's communication 'Consumer Policy Strategy 2002-2006' <sup>(4)</sup> sets the aim of achieving a high level of consumer protection in the field of transport in accordance with Article 153(2) of the Treaty.
- (3) Since the rail passenger is the weaker party to the transport contract, passengers' rights in this respect should be safeguarded.
- (4) Users' rights to rail services include the receipt of information regarding the service both before and during the journey. Whenever possible, railway undertakings and ticket vendors should provide this information in advance and as soon as possible.
- (5) More detailed requirements regarding the provision of travel information will be set out in the technical specifications for interoperability (TSIs) referred to in Directive

2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the conventional rail system <sup>(5)</sup>.

- (6) Strengthening of the rights of rail passengers should build on the existing system of international law on this subject contained in Appendix A — Uniform rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV) to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as modified by the Protocol for the modification of the Convention concerning International Carriage by Rail of 3 June 1999 (1999 Protocol). However, it is desirable to extend the scope of this Regulation and protect not only international passengers but domestic passengers too.
- (7) Railway undertakings should cooperate to facilitate the transfer of rail passengers from one operator to another by the provision of through tickets, whenever possible.
- (8) The provision of information and tickets for rail passengers should be facilitated by the adaptation of computerised systems to a common specification.
- (9) The further implementation of travel information and reservation systems should be executed in accordance with the TSIs.
- (10) Rail passenger services should benefit citizens in general. Consequently, disabled persons and persons with reduced mobility, whether caused by disability, age or any other factor, should have opportunities for rail travel comparable to those of other citizens. Disabled persons and persons with reduced mobility have the same right as all other citizens to free movement, freedom of choice and to non-discrimination. *Inter alia*, special attention should be given to the provision of information to disabled persons and persons with reduced mobility concerning the accessibility of rail services, access conditions of rolling stock and the facilities on board. In order to provide passengers with sensory impairment with the best information on delays, visual and audible systems should be used, as appropriate. Disabled persons and persons with reduced mobility should be enabled to buy tickets on board a train without extra charges.

<sup>(1)</sup> OJ C 221, 8.9.2005, p. 8.

<sup>(2)</sup> OJ C 71, 22.3.2005, p. 26.

<sup>(3)</sup> Opinion of the European Parliament of 28 September 2005 (OJ C 227 E, 21.9.2006, p. 490), Council Common Position of 24 July 2006 (OJ C 289 E, 28.11.2006, p. 1), Position of the European Parliament of 18 January 2007 (not yet published in the Official Journal), Legislative Resolution of the European Parliament of 25 September 2007 and Council Decision of 26 September 2007.

<sup>(4)</sup> OJ C 137, 8.6.2002, p. 2.

<sup>(5)</sup> OJ L 110, 20.4.2001, p. 1. Directive as last amended by Commission Directive 2007/32/EC (OJ L 141, 2.6.2007, p. 63).

- (11) Railway undertakings and station managers should take into account the needs of disabled persons and persons with reduced mobility, through compliance with the TSI for persons with reduced mobility, so as to ensure that, in accordance with Community public procurement rules, all buildings and rolling stock are made accessible through the progressive elimination of physical obstacles and functional hindrances when acquiring new material or carrying out construction or major renovation work.
- (12) Railway undertakings should be obliged to be insured, or to make equivalent arrangements, for their liability to rail passengers in the event of accident. The minimum amount of insurance for railway undertakings should be the subject of future review.
- (13) Strengthened rights of compensation and assistance in the event of delay, missed connection or cancellation of a service should lead to greater incentives for the rail passenger market, to the benefit of passengers.
- (14) It is desirable that this Regulation create a system of compensation for passengers in the case of delay which is linked to the liability of the railway undertaking, on the same basis as the international system provided by the COTIF and in particular appendix CIV thereto relating to passengers' rights.
- (15) Where a Member State grants railway undertakings an exemption from the provisions of this Regulation, it should encourage railway undertakings, in consultation with organisations representing passengers, to put in place arrangements for compensation and assistance in the event of major disruption to a rail passenger service.
- (16) It is also desirable to relieve accident victims and their dependants of short-term financial concerns in the period immediately after an accident.
- (17) It is in the interests of rail passengers that adequate measures be taken, in agreement with public authorities, to ensure their personal security at stations as well as on board trains.
- (18) Rail passengers should be able to submit a complaint to any railway undertaking involved regarding the rights and obligations conferred by this Regulation, and be entitled to receive a response within a reasonable period of time.
- (19) Railway undertakings should define, manage and monitor service quality standards for rail passenger services.
- (20) The contents of this Regulation should be reviewed in respect of the adjustment of financial amounts for inflation and in respect of information and service quality requirements in the light of market developments as well as in the light of the effects on service quality of this Regulation.
- (21) This Regulation should be without prejudice to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(1)</sup>.
- (22) Member States should lay down penalties applicable to infringements of this Regulation and ensure that these penalties are applied. The penalties, which might include the payment of compensation to the person in question, should be effective, proportionate and dissuasive.
- (23) Since the objectives of this Regulation, namely the development of the Community's railways and the introduction of passenger rights, cannot be sufficiently achieved by the Member States, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (24) It is an aim of this Regulation to improve rail passenger services within the Community. Therefore, Member States should be able to grant exemptions for services in regions where a significant part of the service is operated outside the Community.
- (25) Railway undertakings in some Member States may experience difficulty in applying the entirety of the provisions of this Regulation on its entry into force. Therefore, Member States should be able to grant temporary exemptions from the application of the provisions of this Regulation to long-distance domestic rail passenger services. The temporary exemption should, however, not apply to the provisions of this Regulation that grant disabled persons or persons with reduced mobility access to travel by rail, nor to the right of those wishing to purchase tickets for travel by rail to do so without undue difficulty, nor to the provisions on railway undertakings' liability in respect of passengers and their luggage, the requirement that undertakings be adequately insured, and the requirement that those undertakings take adequate measures to ensure passengers' personal security in railway stations and on trains and to manage risk.

<sup>(1)</sup> OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).



- (26) Urban, suburban and regional rail passenger services are different in character from long-distance services. Therefore, with the exception of certain provisions which should apply to all rail passenger services throughout the Community, Member States should be able to grant exemptions from the application of the provisions of this Regulation to urban, suburban and regional rail passenger services.
- (27) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(1)</sup>.
- (28) In particular, the Commission should be empowered to adopt implementing measures. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, or to supplement it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC,

HAVE ADOPTED THIS REGULATION:

#### CHAPTER I

#### GENERAL PROVISIONS

##### Article 1

##### Subject matter

This Regulation establishes rules as regards the following:

- (a) the information to be provided by railway undertakings, the conclusion of transport contracts, the issuing of tickets and the implementation of a Computerised Information and Reservation System for Rail Transport,
- (b) the liability of railway undertakings and their insurance obligations for passengers and their luggage,
- (c) the obligations of railway undertakings to passengers in cases of delay,
- (d) the protection of, and assistance to, disabled persons and persons with reduced mobility travelling by rail,
- (e) the definition and monitoring of service quality standards, the management of risks to the personal security of passengers and the handling of complaints, and
- (f) general rules on enforcement.

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

#### Article 2

##### Scope

1. This Regulation shall apply to all rail journeys and services throughout the Community provided by one or more railway undertakings licensed in accordance with Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings <sup>(2)</sup>.

2. This Regulation does not apply to railway undertakings and transport services which are not licensed under Directive 95/18/EC.

3. On the entry into force of this Regulation, Articles 9, 11, 12, 19, 20(1) and 26 shall apply to all rail passenger services throughout the Community.

4. With the exception of the provisions set out in paragraph 3, a Member State may, on a transparent and non-discriminatory basis, grant an exemption for a period no longer than five years, which may be renewed twice for a maximum period of five years on each occasion, from the application of the provisions of this Regulation to domestic rail passenger services.

5. With the exception of the provisions set out in paragraph 3 of this Article, a Member State may exempt from the application of the provisions of this Regulation urban, suburban and regional rail passenger services. In order to distinguish between urban, suburban and regional rail passenger services, Member States shall apply the definitions contained in Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways <sup>(3)</sup>. In applying these definitions, Member States shall take into account the following criteria: distance, frequency of services, number of scheduled stops, rolling stock employed, ticketing schemes, fluctuations in passenger numbers between services in peak and off-peak periods, train codes and timetables.

6. For a maximum period of five years, a Member State may, on a transparent and non-discriminatory basis, grant an exemption, which may be renewed, from the application of the provisions of this Regulation to particular services or journeys because a significant part of the rail passenger service, including at least one scheduled station stop, is operated outside the Community.

7. Member States shall inform the Commission of exemptions granted pursuant to paragraphs 4, 5 and 6. The Commission shall take appropriate action if such an exemption is deemed not to be in accordance with the provisions of this Article. No later than 3 December 2014, the Commission shall submit to the European Parliament and the Council a report on exemptions granted pursuant to paragraphs 4, 5 and 6.

<sup>(2)</sup> OJ L 143, 27.6.1995, p. 70. Directive as last amended by Directive 2004/49/EC of the European Parliament and of the Council (OJ L 164, 30.4.2004, p. 44).

<sup>(3)</sup> OJ L 237, 24.8.1991, p. 25. Directive as last amended by Directive 2006/103/EC (OJ L 363, 20.12.2006, p. 344).

## Article 3

**Definitions**

For the purposes of this Regulation the following definitions shall apply:

1. 'railway undertaking' means a railway undertaking as defined in Article 2 of Directive 2001/14/EC <sup>(1)</sup>, and any other public or private undertaking the activity of which is to provide transport of goods and/or passengers by rail on the basis that the undertaking must ensure traction; this also includes undertakings which provide traction only;
2. 'carrier' means the contractual railway undertaking with whom the passenger has concluded the transport contract or a series of successive railway undertakings which are liable on the basis of this contract;
3. 'substitute carrier' means a railway undertaking, which has not concluded a transport contract with the passenger, but to whom the railway undertaking party to the contract has entrusted, in whole or in part, the performance of the transport by rail;
4. 'infrastructure manager' means any body or undertaking that is responsible in particular for establishing and maintaining railway infrastructure, or a part thereof, as defined in Article 3 of Directive 91/440/EEC, which may also include the management of infrastructure control and safety systems; the functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings;
5. 'station manager' means an organisational entity in a Member State, which has been made responsible for the management of a railway station and which may be the infrastructure manager;
6. 'tour operator' means an organiser or retailer, other than a railway undertaking, within the meaning of Article 2, points (2) and (3) of Directive 90/314/EEC <sup>(2)</sup>;
7. 'ticket vendor' means any retailer of rail transport services concluding transport contracts and selling tickets on behalf of a railway undertaking or for its own account;
8. 'transport contract' means a contract of carriage for reward or free of charge between a railway undertaking or a ticket vendor and the passenger for the provision of one or more transport services;
9. 'reservation' means an authorisation, on paper or in electronic form, giving entitlement to transportation subject to previously confirmed personalised transport arrangements;
10. 'through ticket' means a ticket or tickets representing a transport contract for successive railway services operated by one or several railway undertakings;
11. 'domestic rail passenger service' means a rail passenger service which does not cross a border of a Member State;
12. 'delay' means the time difference between the time the passenger was scheduled to arrive in accordance with the published timetable and the time of his or her actual or expected arrival;
13. 'travel pass' or 'season ticket' means a ticket for an unlimited number of journeys which provides the authorised holder with rail travel on a particular route or network during a specified period;
14. 'Computerised Information and Reservation System for Rail Transport (CIRSRT)' means a computerised system containing information about rail services offered by railway undertakings; the information stored in the CIRSRT on passenger services shall include information on:
  - (a) schedules and timetables of passenger services;
  - (b) availability of seats on passenger services;
  - (c) fares and special conditions;
  - (d) accessibility of trains for disabled persons and persons with reduced mobility;
  - (e) facilities through which reservations may be made or tickets or through tickets may be issued to the extent that some or all of these facilities are made available to users;
15. 'disabled person' or 'person with reduced mobility' means any person whose mobility when using transport is reduced due to any physical disability (sensory or locomotory, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or as a result of age, and whose situation needs appropriate attention and adaptation to his or her particular needs of the service made available to all passengers;
16. 'General Conditions of Carriage' means the conditions of the carrier in the form of general conditions or tariffs legally in force in each Member State and which have become, by the conclusion of the contract of carriage, an integral part of it;
17. 'vehicle' means a motor vehicle or a trailer carried on the occasion of the carriage of passengers.

<sup>(1)</sup> Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure (OJ L 75, 15.3.2001, p. 29). Directive as last amended by Directive 2004/49/EC.

<sup>(2)</sup> Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ L 158, 23.6.1990, p. 59).

## CHAPTER II

**TRANSPORT CONTRACT, INFORMATION AND TICKETS***Article 4***Transport contract**

Subject to the provisions of this Chapter, the conclusion and performance of a transport contract and the provision of information and tickets shall be governed by the provisions of Title II and Title III of Annex I.

*Article 5***Bicycles**

Railway undertakings shall enable passengers to bring bicycles on to the train, where appropriate for a fee, if they are easy to handle, if this does not adversely affect the specific rail service, and if the rolling-stock so permits.

*Article 6***Exclusion of waiver and stipulation of limits**

1. Obligations towards passengers pursuant to this Regulation may not be limited or waived, notably by a derogation or restrictive clause in the transport contract.
2. Railway undertakings may offer contract conditions more favourable for the passenger than the conditions laid down in this Regulation.

*Article 7***Obligation to provide information concerning discontinuation of services**

Railway undertakings or, where appropriate, competent authorities responsible for a public service railway contract shall make public by appropriate means, and before their implementation, decisions to discontinue services.

*Article 8***Travel information**

1. Without prejudice to Article 10, railway undertakings and ticket vendors offering transport contracts on behalf of one or more railway undertakings shall provide the passenger, upon request, with at least the information set out in Annex II, Part I in relation to the journeys for which a transport contract is offered by the railway undertaking concerned. Ticket vendors offering transport contracts on their own account, and tour operators, shall provide this information where available.
2. Railway undertakings shall provide the passenger during the journey with at least the information set out in Annex II, Part II.

3. The information referred to in paragraphs 1 and 2 shall be provided in the most appropriate format. Particular attention shall be paid in this regard to the needs of people with auditory and/or visual impairment.

*Article 9***Availability of tickets, through tickets and reservations**

1. Railway undertakings and ticket vendors shall offer, where available, tickets, through tickets and reservations.
2. Without prejudice to paragraph 4, railway undertakings shall distribute tickets to passengers via at least one of the following points of sale:
  - (a) ticket offices or selling machines;
  - (b) telephone, the Internet or any other widely available information technology;
  - (c) on board trains.
3. Without prejudice to paragraphs 4 and 5, railway undertakings shall distribute tickets for services provided under public service contracts via at least one of the following points of sale:
  - (a) ticket offices or selling machines;
  - (b) on board trains.
4. Railway undertakings shall offer the possibility to obtain tickets for the respective service on board the train, unless this is limited or denied on grounds relating to security or antifraud policy or compulsory train reservation or reasonable commercial grounds.
5. Where there is no ticket office or selling machine in the station of departure, passengers shall be informed at the station:
  - (a) of the possibility of purchasing tickets via telephone or the Internet or on board the train, and of the procedure for such purchase;
  - (b) of the nearest railway station or place at which ticket offices and/or selling machines are available.

*Article 10***Travel information and reservation systems**

1. In order to provide the information and to issue tickets referred to in this Regulation, railway undertakings and ticket vendors shall make use of CIRSRT, to be established by the procedures referred to in this Article.

2. The technical specifications for interoperability (TSIs) referred to in Directive 2001/16/EC shall be applied for the purposes of this Regulation.

3. The Commission shall, on a proposal to be submitted by the European Railway Agency (ERA), adopt the TSI of telematics applications for passengers by 3 December 2010. The TSI shall make possible the provision of the information, set out in Annex II, and the issuing of tickets as governed by this Regulation.

4. Railway undertakings shall adapt their CIRSRT according to the requirements set out in the TSI in accordance with a deployment plan set out in that TSI.

5. Subject to the provisions of Directive 95/46/EC, no railway undertaking or ticket vendor shall disclose personal information on individual bookings to other railway undertakings and/or ticket vendors.

#### CHAPTER III

##### LIABILITY OF RAILWAY UNDERTAKINGS FOR PASSENGERS AND THEIR LUGGAGE

###### Article 11

##### Liability for passengers and luggage

Subject to the provisions of this Chapter, and without prejudice to applicable national law granting passengers further compensation for damages, the liability of railway undertakings in respect of passengers and their luggage shall be governed by Chapters I, III and IV of Title IV, Title VI and Title VII of Annex I.

###### Article 12

##### Insurance

1. The obligation set out in Article 9 of Directive 95/18/EC as far as it relates to liability for passengers shall be understood as requiring a railway undertaking to be adequately insured or to make equivalent arrangements for cover of its liabilities under this Regulation.

2. The Commission shall submit to the European Parliament and the Council a report on the setting of a minimum amount of insurance for railway undertakings by 3 December 2010. If appropriate, that report shall be accompanied by suitable proposals or recommendations on this matter.

###### Article 13

##### Advance payments

1. If a passenger is killed or injured, the railway undertaking as referred to in Article 26(5) of Annex I shall without delay, and in any event not later than fifteen days after the establishment of the identity of the natural person entitled to compensation, make such advance payments as may be required to meet immediate economic needs on a basis proportional to the damage suffered.

2. Without prejudice to paragraph 1, an advance payment shall not be less than EUR 21 000 per passenger in the event of death.

3. An advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of this Regulation but is not returnable, except in the cases where damage was caused by the negligence or fault of the passenger or where the person who received the advance payment was not the person entitled to compensation.

###### Article 14

##### Contestation of liability

Even if the railway undertaking contests its responsibility for physical injury to a passenger whom it conveys, it shall make every reasonable effort to assist a passenger claiming compensation for damage from third parties.

#### CHAPTER IV

##### DELAYS, MISSED CONNECTIONS AND CANCELLATIONS

###### Article 15

##### Liability for delays, missed connections and cancellations

Subject to the provisions of this Chapter, the liability of railway undertakings in respect of delays, missed connections and cancellations shall be governed by Chapter II of Title IV of Annex I.

###### Article 16

##### Reimbursement and re-routing

Where it is reasonably to be expected that the delay in the arrival at the final destination under the transport contract will be more than 60 minutes, the passenger shall immediately have the choice between:

- (a) reimbursement of the full cost of the ticket, under the conditions by which it was paid, for the part or parts of his or her journey not made and for the part or parts already made if the journey is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant, a return service to the first point of departure at the earliest opportunity. The payment of the reimbursement shall be made under the same conditions as the payment for compensation referred to in Article 17; or
- (b) continuation or re-routing, under comparable transport conditions, to the final destination at the earliest opportunity; or
- (c) continuation or re-routing, under comparable transport conditions, to the final destination at a later date at the passenger's convenience.

*Article 17***Compensation of the ticket price**

1. Without losing the right of transport, a passenger may request compensation for delays from the railway undertaking if he or she is facing a delay between the places of departure and destination stated on the ticket for which the ticket has not been reimbursed in accordance with Article 16. The minimum compensations for delays shall be as follows:

- (a) 25 % of the ticket price for a delay of 60 to 119 minutes,
- (b) 50 % of the ticket price for a delay of 120 minutes or more.

Passengers who hold a travel pass or season ticket and who encounter recurrent delays or cancellations during its period of validity may request adequate compensation in accordance with the railway undertaking's compensation arrangements. These arrangements shall state the criteria for determining delay and for the calculation of the compensation.

Compensation for delay shall be calculated in relation to the price which the passenger actually paid for the delayed service.

Where the transport contract is for a return journey, compensation for delay on either the outward or the return leg shall be calculated in relation to half of the price paid for the ticket. In the same way the price for a delayed service under any other form of transport contract allowing travelling several subsequent legs shall be calculated in proportion to the full price.

The calculation of the period of delay shall not take into account any delay that the railway undertaking can demonstrate as having occurred outside the territories in which the Treaty establishing the European Community is applied.

2. The compensation of the ticket price shall be paid within one month after the submission of the request for compensation. The compensation may be paid in vouchers and/or other services if the terms are flexible (in particular regarding the validity period and destination). The compensation shall be paid in money at the request of the passenger.

3. The compensation of the ticket price shall not be reduced by financial transaction costs such as fees, telephone costs or stamps. Railway undertakings may introduce a minimum threshold under which payments for compensation will not be paid. This threshold shall not exceed EUR 4.

4. The passenger shall not have any right to compensation if he is informed of a delay before he buys a ticket, or if a delay due to continuation on a different service or re-routing remains below 60 minutes.

*Article 18***Assistance**

1. In the case of a delay in arrival or departure, passengers shall be kept informed of the situation and of the estimated departure time and estimated arrival time by the railway undertaking or by the station manager as soon as such information is available.

2. In the case of any delay as referred to in paragraph 1 of more than 60 minutes, passengers shall also be offered free of charge:

- (a) meals and refreshments in reasonable relation to the waiting time, if they are available on the train or in the station, or can reasonably be supplied;
- (b) hotel or other accommodation, and transport between the railway station and place of accommodation, in cases where a stay of one or more nights becomes necessary or an additional stay becomes necessary, where and when physically possible;
- (c) if the train is blocked on the track, transport from the train to the railway station, to the alternative departure point or to the final destination of the service, where and when physically possible.

3. If the railway service cannot be continued anymore, railway undertakings shall organise as soon as possible alternative transport services for passengers.

4. Railway undertakings shall, at the request of the passenger, certify on the ticket that the rail service has suffered a delay, led to a missed connection or that it has been cancelled, as the case might be.

5. In applying paragraphs 1, 2 and 3, the operating railway undertaking shall pay particular attention to the needs of disabled persons and persons with reduced mobility and any accompanying persons.

## CHAPTER V

**DISABLED PERSONS AND PERSONS WITH REDUCED MOBILITY***Article 19***Right to transport**

1. Railway undertakings and station managers shall, with the active involvement of representative organisations of disabled persons and persons with reduced mobility, establish, or shall have in place, non-discriminatory access rules for the transport of disabled persons and persons with reduced mobility.

2. Reservations and tickets shall be offered to disabled persons and persons with reduced mobility at no additional cost. A railway undertaking, ticket vendor or tour operator may not refuse to accept a reservation from, or issue a ticket to, a disabled person or a person with reduced mobility, or require that such person be accompanied by another person, unless this is strictly necessary in order to comply with the access rules referred to in paragraph 1.

#### Article 20

### Information to disabled persons and persons with reduced mobility

1. Upon request, a railway undertaking, a ticket vendor or a tour operator shall provide disabled persons and persons with reduced mobility with information on the accessibility of rail services and on the access conditions of rolling stock in accordance with the access rules referred to in Article 19(1) and shall inform disabled persons and persons with reduced mobility about facilities on board.

2. When a railway undertaking, ticket vendor and/or tour operator exercises the derogation provided for in Article 19(2), it shall upon request inform in writing the disabled person or person with reduced mobility concerned of its reasons for doing so within five working days of the refusal to make the reservation or to issue the ticket or the imposition of the condition of being accompanied.

#### Article 21

### Accessibility

1. Railway undertakings and station managers shall, through compliance with the TSI for persons with reduced mobility, ensure that the station, platforms, rolling stock and other facilities are accessible to disabled persons and persons with reduced mobility.

2. In the absence of accompanying staff on board a train or of staff at a station, railway undertakings and station managers shall make all reasonable efforts to enable disabled persons or persons with reduced mobility to have access to travel by rail.

#### Article 22

### Assistance at railway stations

1. On departure from, transit through or arrival at, a staffed railway station of a disabled person or a person with reduced mobility, the station manager shall provide assistance free of charge in such a way that that person is able to board the departing service, or to disembark from the arriving service for which he or she purchased a ticket, without prejudice to the access rules referred to in Article 19(1).

2. Member States may provide for a derogation from paragraph 1 in the case of persons travelling on services which are the subject of a public service contract awarded in conformity with Community law, on condition that the competent authority has put in place alternative facilities or arrangements guaranteeing an equivalent or higher level of accessibility of transport services.

3. In unstaffed stations, railway undertakings and station managers shall ensure that easily accessible information is displayed in accordance with the access rules referred to in Article 19(1) regarding the nearest staffed stations and directly available assistance for disabled persons and persons with reduced mobility.

#### Article 23

### Assistance on board

Without prejudice to the access rules as referred to in Article 19(1), railway undertakings shall provide disabled persons and persons with reduced mobility assistance free of charge on board a train and during boarding and disembarking from a train.

For the purposes of this Article, assistance on board shall consist of all reasonable efforts to offer assistance to a disabled person or a person with reduced mobility in order to allow that person to have access to the same services in the train as other passengers, should the extent of the person's disability or reduced mobility not allow him or her to have access to those services independently and in safety.

#### Article 24

### Conditions on which assistance is provided

Railway undertakings, station managers, ticket vendors and tour operators shall cooperate in order to provide assistance to disabled persons and persons with reduced mobility in line with Articles 22 and 23 in accordance with the following points:

- (a) assistance shall be provided on condition that the railway undertaking, the station manager, the ticket vendor or the tour operator with which the ticket was purchased is notified of the person's need for such assistance at least 48 hours before the assistance is needed. Where the ticket permits multiple journeys, one notification shall be sufficient provided that adequate information on the timing of subsequent journeys is provided;
- (b) railway undertakings, station managers, ticket vendors and tour operators shall take all measures necessary for the reception of notifications;
- (c) if no notification is made in accordance with point (a), the railway undertaking and the station manager shall make all reasonable efforts to provide assistance in such a way that the disabled person or person with reduced mobility may travel;

- (d) without prejudice to the powers of other entities regarding areas located outside the railway station premises, the station manager or any other authorised person shall designate points, within and outside the railway station, at which disabled persons and persons with reduced mobility can announce their arrival at the railway station and, if need be, request assistance;
- (e) assistance shall be provided on condition that the disabled person or person with reduced mobility present him or herself at the designated point at a time stipulated by the railway undertaking or station manager providing such assistance. Any time stipulated shall not be more than 60 minutes before the published departure time or the time at which all passengers are asked to check in. If no time is stipulated by which the disabled person or person with reduced mobility is required to present him or herself, the person shall present him or herself at the designated point at least 30 minutes before the published departure time or the time at which all passengers are asked to check in.

#### Article 25

### Compensation in respect of mobility equipment or other specific equipment

If the railway undertaking is liable for the total or partial loss of, or damage to, mobility equipment or other specific equipment used by disabled persons or persons with reduced mobility, no financial limit shall be applicable.

#### CHAPTER VI

### SECURITY, COMPLAINTS AND QUALITY OF SERVICE

#### Article 26

### Personal security of passengers

In agreement with public authorities, railway undertakings, infrastructure managers and station managers shall take adequate measures in their respective fields of responsibility and adapt them to the level of security defined by the public authorities to ensure passengers' personal security in railway stations and on trains and to manage risks. They shall cooperate and exchange information on best practices concerning the prevention of acts, which are likely to deteriorate the level of security.

#### Article 27

### Complaints

1. Railway undertakings shall set up a complaint handling mechanism for the rights and obligations covered in this Regulation. The railway undertaking shall make its contact details and working language(s) widely known to passengers.

2. Passengers may submit a complaint to any railway undertaking involved. Within one month, the addressee of the complaint shall either give a reasoned reply or, in justified cases, inform the passenger by what date within a period of less than three months from the date of the complaint a reply can be expected.

3. The railway undertaking shall publish in the annual report referred to in Article 28 the number and categories of received complaints, processed complaints, response time and possible improvement actions undertaken.

#### Article 28

### Service quality standards

1. Railway undertakings shall define service quality standards and implement a quality management system to maintain service quality. The service quality standards shall at least cover the items listed in Annex III.

2. Railway undertakings shall monitor their own performance as reflected in the service quality standards. Railway undertakings shall each year publish a report on their service quality performance together with their annual report. The reports on service quality performance shall be published on the Internet website of the railway undertakings. In addition, these reports shall be made available on the Internet website of the ERA.

#### CHAPTER VII

### INFORMATION AND ENFORCEMENT

#### Article 29

### Information to passengers about their rights

1. When selling tickets for journeys by rail, railway undertakings, station managers and tour operators shall inform passengers of their rights and obligations under this Regulation. In order to comply with this information requirement, railway undertakings, station managers and tour operators may use a summary of the provisions of this Regulation prepared by the Commission in all official languages of the European Union institutions and made available to them.

2. Railway undertakings and station managers shall inform passengers in an appropriate manner, at the station and on the train, of the contact details of the body or bodies designated by Member States pursuant to Article 30.

#### Article 30

### Enforcement

1. Each Member State shall designate a body or bodies responsible for the enforcement of this Regulation. Each body shall take the measures necessary to ensure that the rights of passengers are respected.

Each body shall be independent in its organisation, funding decisions, legal structure and decision-making of any infrastructure manager, charging body, allocation body or railway undertaking.

Member States shall inform the Commission of the body or bodies designated in accordance with this paragraph and of its or their respective responsibilities.

2. Each passenger may complain to the appropriate body designated under paragraph 1, or to any other appropriate body designated by a Member State, about an alleged infringement of this Regulation.

#### Article 31

### Cooperation between enforcement bodies

Enforcement bodies as referred to in Article 30 shall exchange information on their work and decision-making principles and practice for the purpose of coordinating their decision-making principles across the Community. The Commission shall support them in this task.

#### CHAPTER VIII

### FINAL PROVISIONS

#### Article 32

### Penalties

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those rules and measures to the Commission by 3 June 2010 and shall notify it without delay of any subsequent amendment affecting them.

#### Article 33

### Annexes

Measures designed to amend non-essential elements of this Regulation by adapting the Annexes thereto, except Annex I, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 35(2).

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 23 October 2007.

For the European Parliament  
The President  
H.-G. PÖTTERING

#### Article 34

### Amending provisions

1. Measures designed to amend non-essential elements of this Regulation by supplementing it and necessary for the implementation of Articles 2, 10 and 12 shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 35(2).

2. Measures designed to amend non-essential elements of this Regulation by adjusting the financial amounts referred to therein, other than in Annex I, in light of inflation shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 35(2).

#### Article 35

### Committee procedure

1. The Commission shall be assisted by the Committee instituted by Article 11a of Directive 91/440/EEC.

2. Where reference is made to this paragraph, Articles 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

#### Article 36

### Report

The Commission shall report to the European Parliament and the Council on the implementation and the results of this Regulation by 3 December 2012, and in particular on the service quality standards.

The report shall be based on information to be provided pursuant to this Regulation and to Article 10b of Directive 91/440/EEC. The report shall be accompanied where necessary by appropriate proposals.

#### Article 37

### Entry into force

This Regulation shall enter into force 24 months after the date of its publication in the *Official Journal of the European Union*.

For the Council  
The President  
M. LOBO ANTUNES



## ANNEX I

**Extract from Uniform Rules concerning the contract for international carriage of passengers and luggage by rail (CIV)***Appendix A*

**to the Convention Concerning International Carriage by Rail (COTIF) of 9 May 1980, as modified by the Protocol for the modification of the Convention Concerning International Carriage by Rail of 3 June 1999**

## TITLE II

**CONCLUSION AND PERFORMANCE OF THE CONTRACT OF CARRIAGE***Article 6***Contract of carriage**

1. By the contract of carriage the carrier shall undertake to carry the passenger as well as, where appropriate, luggage and vehicles to the place of destination and to deliver the luggage and vehicles at the place of destination.
2. The contract of carriage must be confirmed by one or more tickets issued to the passenger. However, subject to Article 9 the absence, irregularity or loss of the ticket shall not affect the existence or validity of the contract which shall remain subject to these Uniform Rules.
3. The ticket shall be prima facie evidence of the conclusion and the contents of the contract of carriage.

*Article 7***Ticket**

1. The General Conditions of Carriage shall determine the form and content of tickets as well as the language and characters in which they are to be printed and made out.
2. The following, at least, must be entered on the ticket:
  - (a) the carrier or carriers;
  - (b) a statement that the carriage is subject, notwithstanding any clause to the contrary, to these Uniform Rules; this may be indicated by the acronym CIV;
  - (c) any other statement necessary to prove the conclusion and contents of the contract of carriage and enabling the passenger to assert the rights resulting from this contract.
3. The passenger must ensure, on receipt of the ticket, that it has been made out in accordance with his instructions.
4. The ticket shall be transferable if it has not been made out in the passenger's name and if the journey has not begun.
5. The ticket may be established in the form of electronic data registration, which can be transformed into legible written symbols. The procedure used for the registration and treatment of data must be equivalent from the functional point of view, particularly so far as concerns the evidential value of the ticket represented by those data.

*Article 8***Payment and refund of the carriage charge**

1. Subject to a contrary agreement between the passenger and the carrier, the carriage charge shall be payable in advance.
2. The General Conditions of Carriage shall determine under what conditions a refund of the carriage charge shall be made.

*Article 9***Right to be carried. Exclusion from carriage**

1. The passenger must, from the start of his journey, be in possession of a valid ticket and produce it on the inspection of tickets. The General Conditions of Carriage may provide:

- (a) that a passenger who does not produce a valid ticket must pay, in addition to the carriage charge, a surcharge;
- (b) that a passenger who refuses to pay the carriage charge or the surcharge upon demand may be required to discontinue his journey;
- (c) if and under what conditions a refund of the surcharge shall be made.

2. The General Conditions of Carriage may provide that passengers who:

- (a) present a danger for safety and the good functioning of the operations or for the safety of other passengers,
- (b) inconvenience other passengers in an intolerable manner,

shall be excluded from carriage or may be required to discontinue their journey and that such persons shall not be entitled to a refund of their carriage charge or of any charge for the carriage of registered luggage they may have paid.

*Article 10***Completion of administrative formalities**

The passenger must comply with the formalities required by customs or other administrative authorities.

*Article 11***Cancellation and late running of trains. Missed connections**

The carrier must, where necessary, certify on the ticket that the train has been cancelled or the connection missed.

## TITLE III

**CARRIAGE OF HAND LUGGAGE, ANIMALS, REGISTERED LUGGAGE AND VEHICLES**

## Chapter I

**Common provisions***Article 12***Acceptable articles and animals**

1. The passenger may take with him articles which can be handled easily (hand luggage) and also live animals in accordance with the General Conditions of Carriage. Moreover, the passenger may take with him cumbersome articles in accordance with the special provisions, contained in the General Conditions of Carriage. Articles and animals likely to annoy or inconvenience passengers or cause damage shall not be allowed as hand luggage.

2. The passenger may consign articles and animals as registered luggage in accordance with the General Conditions of Carriage.

3. The carrier may allow the carriage of vehicles on the occasion of the carriage of passengers in accordance with special provisions, contained in the General Conditions of Carriage.

4. The carriage of dangerous goods as hand luggage, registered luggage as well as in or on vehicles which, in accordance with this Title are carried by rail, must comply with the Regulation concerning the Carriage of Dangerous Goods by Rail (RID).

*Article 13***Examination**

1. When there is good reason to suspect a failure to observe the conditions of carriage, the carrier shall have the right to examine whether the articles (hand luggage, registered luggage, vehicles including their loading) and animals carried comply with the conditions of carriage, unless the laws and prescriptions of the State in which the examination would take place prohibit such examination. The passenger must be invited to attend the examination. If he does not appear or cannot be reached, the carrier must require the presence of two independent witnesses.
2. If it is established that the conditions of carriage have not been respected, the carrier can require the passenger to pay the costs arising from the examination.

*Article 14***Completion of administrative formalities**

The passenger must comply with the formalities required by customs or other administrative authorities when, on being carried, he has articles (hand luggage, registered luggage, vehicles including their loading) or animals carried. He shall be present at the inspection of these articles save where otherwise provided by the laws and prescriptions of each State.

## Chapter II

***Hand luggage and animals****Article 15***Supervision**

It shall be the passenger's responsibility to supervise the hand luggage and animals that he takes with him.

## Chapter III

***Registered luggage****Article 16***Consignment of registered luggage**

1. The contractual obligations relating to the forwarding of registered luggage must be established by a luggage registration voucher issued to the passenger.
2. Subject to Article 22 the absence, irregularity or loss of the luggage registration voucher shall not affect the existence or the validity of the agreements concerning the forwarding of the registered luggage, which shall remain subject to these Uniform Rules.
3. The luggage registration voucher shall be prima facie evidence of the registration of the luggage and the conditions of its carriage.
4. Subject to evidence to the contrary, it shall be presumed that when the carrier took over the registered luggage it was apparently in a good condition, and that the number and the mass of the items of luggage corresponded to the entries on the luggage registration voucher.

*Article 17***Luggage registration voucher**

1. The General Conditions of Carriage shall determine the form and content of the luggage registration voucher as well as the language and characters in which it is to be printed and made out. Article 7(5) shall apply *mutatis mutandis*.
2. The following, at least, must be entered on the luggage registration voucher:
  - (a) the carrier or carriers;
  - (b) a statement that the carriage is subject, notwithstanding any clause to the contrary, to these Uniform Rules; this may be indicated by the acronym CIV;

- (c) any other statement necessary to prove the contractual obligations relating to the forwarding of the registered luggage and enabling the passenger to assert the rights resulting from the contract of carriage.
3. The passenger must ensure, on receipt of the luggage registration voucher, that it has been made out in accordance with his instructions.

#### Article 18

##### Registration and carriage

1. Save where the General Conditions of Carriage otherwise provide, luggage shall be registered only on production of a ticket valid at least as far as the destination of the luggage. In other respects the registration of luggage shall be carried out in accordance with the prescriptions in force at the place of consignment.
2. When the General Conditions of Carriage provide that luggage may be accepted for carriage without production of a ticket, the provisions of these Uniform Rules determining the rights and obligations of the passenger in respect of his registered luggage shall apply *mutatis mutandis* to the consignor of registered luggage.
3. The carrier can forward the registered luggage by another train or by another mode of transport and by a different route from that taken by the passenger.

#### Article 19

##### Payment of charges for the carriage of registered luggage

Subject to a contrary agreement between the passenger and the carrier, the charge for the carriage of registered luggage shall be payable on registration.

#### Article 20

##### Marking of registered luggage

The passenger must indicate on each item of registered luggage in a clearly visible place, in a sufficiently durable and legible manner:

- (a) his name and address;
- (b) the place of destination.

#### Article 21

##### Right to dispose of registered luggage

1. If circumstances permit and if customs requirements or the requirements of other administrative authorities are not thereby contravened, the passenger can request luggage to be handed back at the place of consignment on surrender of the luggage registration voucher and, if the General Conditions of Carriage so require, on production of the ticket.
2. The General Conditions of Carriage may contain other provisions concerning the right to dispose of registered luggage, in particular modifications of the place of destination and the possible financial consequences to be borne by the passenger.

#### Article 22

##### Delivery

1. Registered luggage shall be delivered on surrender of the luggage registration voucher and, where appropriate, on payment of the amounts chargeable against the consignment.

The carrier shall be entitled, but not obliged, to examine whether the holder of the voucher is entitled to take delivery.

2. It shall be equivalent to delivery to the holder of the luggage registration voucher if, in accordance with the prescriptions in force at the place of destination:
- (a) the luggage has been handed over to the customs or octroi authorities at their premises or warehouses, when these are not subject to the carrier's supervision;
- (b) live animals have been handed over to third parties.

3. The holder of the luggage registration voucher may require delivery of the luggage at the place of destination as soon as the agreed time and, where appropriate, the time necessary for the operations carried out by customs or other administrative authorities, has elapsed.
4. Failing surrender of the luggage registration voucher, the carrier shall only be obliged to deliver the luggage to the person proving his right thereto; if the proof offered appears insufficient, the carrier may require security to be given.
5. Luggage shall be delivered at the place of destination for which it has been registered.
6. The holder of a luggage registration voucher whose luggage has not been delivered may require the day and time to be endorsed on the voucher when he requested delivery in accordance with paragraph 3.
7. The person entitled may refuse to accept the luggage if the carrier does not comply with his request to carry out an examination of the registered luggage in order to establish alleged damage.
8. In all other respects delivery of luggage shall be carried out in accordance with the prescriptions in force at the place of destination.

## Chapter IV

### Vehicles

#### Article 23

#### Conditions of carriage

The special provisions governing the carriage of vehicles, contained in the General Conditions of Carriage, shall specify in particular the conditions governing acceptance for carriage, registration, loading and carriage, unloading and delivery as well as the obligations of the passenger.

#### Article 24

#### Carriage voucher

1. The contractual obligations relating to the carriage of vehicles must be established by a carriage voucher issued to the passenger. The carriage voucher may be integrated into the passenger's ticket.
2. The special provisions governing the carriage of vehicles, contained in the General Conditions of Carriage, shall determine the form and content of the carriage voucher as well as the language and the characters in which it is to be printed and made out. Article 7(5) shall apply *mutatis mutandis*.
3. The following, at least, must be entered on the carriage voucher:
  - (a) the carrier or carriers;
  - (b) a statement that the carriage is subject, notwithstanding any clause to the contrary, to these Uniform Rules; this may be indicated by the acronym CIV;
  - (c) any other statement necessary to prove the contractual obligations relating to the carriage of vehicles and enabling the passenger to assert the rights resulting from the contract of carriage.
4. The passenger must ensure, on receipt of the carriage voucher, that it has been made out in accordance with his instructions.

#### Article 25

#### Applicable law

Subject to the provisions of this Chapter, the provisions of Chapter III relating to the carriage of luggage shall apply to vehicles.

## TITLE IV

**LIABILITY OF THE CARRIER**

## Chapter I

***Liability in case of death of, or personal injury to, passengers***

## Article 26

**Basis of liability**

1. The carrier shall be liable for the loss or damage resulting from the death of, personal injuries to, or any other physical or mental harm to, a passenger, caused by an accident arising out of the operation of the railway and happening while the passenger is in, entering or alighting from railway vehicles whatever the railway infrastructure used.
2. The carrier shall be relieved of this liability
  - (a) if the accident has been caused by circumstances not connected with the operation of the railway and which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent;
  - (b) to the extent that the accident is due to the fault of the passenger;
  - (c) if the accident is due to the behaviour of a third party which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent; another undertaking using the same railway infrastructure shall not be considered as a third party; the right of recourse shall not be affected.
3. If the accident is due to the behaviour of a third party and if, in spite of that, the carrier is not entirely relieved of his liability in accordance with paragraph 2, letter c), he shall be liable in full up to the limits laid down in these Uniform Rules but without prejudice to any right of recourse which the carrier may have against the third party.
4. These Uniform Rules shall not affect any liability which may be incurred by the carrier in cases not provided for in paragraph 1.
5. If carriage governed by a single contract of carriage is performed by successive carriers, the carrier bound pursuant to the contract of carriage to provide the service of carriage in the course of which the accident happened shall be liable in case of death of, and personal injuries to, passengers. When this service has not been provided by the carrier, but by a substitute carrier, the two carriers shall be jointly and severally liable in accordance with these Uniform Rules.

## Article 27

**Damages in case of death**

1. In case of death of the passenger the damages shall comprise:
  - (a) any necessary costs following the death, in particular those of transport of the body and the funeral expenses;
  - (b) if death does not occur at once, the damages provided for in Article 28.
2. If, through the death of the passenger, persons whom he had, or would have had, a legal duty to maintain are deprived of their support, such persons shall also be compensated for that loss. Rights of action for damages of persons whom the passenger was maintaining without being legally bound to do so, shall be governed by national law.

## Article 28

**Damages in case of personal injury**

In case of personal injury or any other physical or mental harm to the passenger the damages shall comprise:

- (a) any necessary costs, in particular those of treatment and of transport;
- (b) compensation for financial loss, due to total or partial incapacity to work, or to increased needs.

*Article 29***Compensation for other bodily harm**

National law shall determine whether and to what extent the carrier must pay damages for bodily harm other than that for which there is provision in Articles 27 and 28.

*Article 30***Form and amount of damages in case of death and personal injury**

1. The damages under Article 27(2) and Article 28(b) must be awarded in the form of a lump sum. However, if national law permits payment of an annuity, the damages shall be awarded in that form if so requested by the injured passenger or by the persons entitled referred to in Article 27(2).

2. The amount of damages to be awarded pursuant to paragraph 1 shall be determined in accordance with national law. However, for the purposes of these Uniform Rules, the upper limit per passenger shall be set at 175 000 units of account as a lump sum or as an annual annuity corresponding to that sum, where national law provides for an upper limit of less than that amount.

*Article 31***Other modes of transport**

1. Subject to paragraph 2, the provisions relating to the liability of the carrier in case of death of, or personal injury to, passengers shall not apply to loss or damage arising in the course of carriage which, in accordance with the contract of carriage, was not carriage by rail.

2. However, where railway vehicles are carried by ferry, the provisions relating to liability in case of death of, or personal injury to, passengers shall apply to loss or damage referred to in Article 26(1) and Article 33(1), caused by an accident arising out of the operation of the railway and happening while the passenger is in, entering or alighting from the said vehicles.

3. When, because of exceptional circumstances, the operation of the railway is temporarily suspended and the passengers are carried by another mode of transport, the carrier shall be liable pursuant to these Uniform Rules.

## Chapter II

***Liability in case of failure to keep to the timetable****Article 32***Liability in case of cancellation, late running of trains or missed connections**

1. The carrier shall be liable to the passenger for loss or damage resulting from the fact that, by reason of cancellation, the late running of a train or a missed connection, his journey cannot be continued the same day, or that a continuation of the journey the same day could not reasonably be required because of given circumstances. The damages shall comprise the reasonable costs of accommodation as well as the reasonable costs occasioned by having to notify persons expecting the passenger.

2. The carrier shall be relieved of this liability, when the cancellation, late running or missed connection is attributable to one of the following causes:

- (a) circumstances not connected with the operation of the railway which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent;
- (b) fault on the part of the passenger; or
- (c) the behaviour of a third party which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent; another undertaking using the same railway infrastructure shall not be considered as a third party; the right of recourse shall not be affected.

3. National law shall determine whether and to what extent the carrier must pay damages for harm other than that provided for in paragraph 1. This provision shall be without prejudice to Article 44.

## Chapter III

**Liability in respect of hand luggage, animals, registered luggage and vehicles**

## SECTION 1

**Hand luggage and animals**

## Article 33

**Liability**

1. In case of death of, or personal injury to, passengers the carrier shall also be liable for the loss or damage resulting from the total or partial loss of, or damage to, articles which the passenger had on him or with him as hand luggage; this shall apply also to animals which the passenger had brought with him. Article 26 shall apply *mutatis mutandis*.

2. In other respects, the carrier shall not be liable for the total or partial loss of, or damage to, articles, hand luggage or animals the supervision of which is the responsibility of the passenger in accordance with Article 15, unless this loss or damage is caused by the fault of the carrier. The other Articles of Title IV, with exception of Article 51, and Title VI shall not apply in this case.

## Article 34

**Limit of damages in case of loss of or damage to articles**

When the carrier is liable under Article 33(1), he must pay compensation up to a limit of 1 400 units of account per passenger.

## Article 35

**Exclusion of liability**

The carrier shall not be liable to the passenger for loss or damage arising from the fact that the passenger does not conform to the formalities required by customs or other administrative authorities.

## SECTION 2

**Registered luggage**

## Article 36

**Basis of liability**

1. The carrier shall be liable for loss or damage resulting from the total or partial loss of, or damage to, registered luggage between the time of taking over by the carrier and the time of delivery as well as from delay in delivery.

2. The carrier shall be relieved of this liability to the extent that the loss, damage or delay in delivery was caused by a fault of the passenger, by an order given by the passenger other than as a result of the fault of the carrier, by an inherent defect in the registered luggage or by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.

3. The carrier shall be relieved of this liability to the extent that the loss or damage arises from the special risks inherent in one or more of the following circumstances:

- (a) the absence or inadequacy of packing;
- (b) the special nature of the luggage;
- (c) the consignment as luggage of articles not acceptable for carriage.

## Article 37

**Burden of proof**

1. The burden of proving that the loss, damage or delay in delivery was due to one of the causes specified in Article 36(2) shall lie on the carrier.



2. When the carrier establishes that, having regard to the circumstances of a particular case, the loss or damage could have arisen from one or more of the special risks referred to in Article 36(3), it shall be presumed that it did so arise. The person entitled shall, however, have the right to prove that the loss or damage was not attributable either wholly or in part to one of those risks.

#### Article 38

##### **Successive carriers**

If carriage governed by a single contract is performed by several successive carriers, each carrier, by the very act of taking over the luggage with the luggage registration voucher or the vehicle with the carriage voucher, shall become a party to the contract of carriage in respect of the forwarding of luggage or the carriage of vehicles, in accordance with the terms of the luggage registration voucher or of the carriage voucher and shall assume the obligations arising therefrom. In such a case each carrier shall be responsible for the carriage over the entire route up to delivery.

#### Article 39

##### **Substitute carrier**

1. Where the carrier has entrusted the performance of the carriage, in whole or in part, to a substitute carrier, whether or not in pursuance of a right under the contract of carriage to do so, the carrier shall nevertheless remain liable in respect of the entire carriage.

2. All the provisions of these Uniform Rules governing the liability of the carrier shall apply also to the liability of the substitute carrier for the carriage performed by him. Articles 48 and 52 shall apply if an action is brought against the servants or any other persons whose services the substitute carrier makes use of for the performance of the carriage.

3. Any special agreement under which the carrier assumes obligations not imposed by these Uniform Rules or waives rights conferred by these Uniform Rules shall be of no effect in respect of the substitute carrier who has not accepted it expressly and in writing. Whether or not the substitute carrier has accepted it, the carrier shall nevertheless remain bound by the obligations or waivers resulting from such special agreement.

4. Where and to the extent that both the carrier and the substitute carrier are liable, their liability shall be joint and several.

5. The aggregate amount of compensation payable by the carrier, the substitute carrier and their servants and other persons whose services they make use of for the performance of the carriage shall not exceed the limits provided for in these Uniform Rules.

6. This Article shall not prejudice rights of recourse which may exist between the carrier and the substitute carrier.

#### Article 40

##### **Presumption of loss**

1. The person entitled may, without being required to furnish further proof, consider an item of luggage as lost when it has not been delivered or placed at his disposal within 14 days after a request for delivery has been made in accordance with Article 22(3).

2. If an item of luggage deemed to have been lost is recovered within one year after the request for delivery, the carrier must notify the person entitled if his address is known or can be ascertained.

3. Within thirty days after receipt of a notification referred to in paragraph 2, the person entitled may require the item of luggage to be delivered to him. In that case he must pay the charges in respect of carriage of the item from the place of consignment to the place where delivery is effected and refund the compensation received less, where appropriate, any costs included therein. Nevertheless he shall retain his rights to claim compensation for delay in delivery provided for in Article 43.

4. If the item of luggage recovered has not been claimed within the period stated in paragraph 3 or if it is recovered more than one year after the request for delivery, the carrier shall dispose of it in accordance with the laws and prescriptions in force at the place where the item of luggage is situated.

*Article 41***Compensation for loss**

1. In case of total or partial loss of registered luggage, the carrier must pay, to the exclusion of all other damages:
  - (a) if the amount of the loss or damage suffered is proved, compensation equal to that amount but not exceeding 80 units of account per kilogram of gross mass short or 1 200 units of account per item of luggage;
  - (b) if the amount of the loss or damage suffered is not established, liquidated damages of 20 units of account per kilogram of gross mass short or 300 units of account per item of luggage.

The method of compensation, by kilogram missing or by item of luggage, shall be determined by the General Conditions of Carriage.

2. The carrier must in addition refund the charge for the carriage of luggage and the other sums paid in relation to the carriage of the lost item as well as the customs duties and excise duties already paid.

*Article 42***Compensation for damage**

1. In case of damage to registered luggage, the carrier must pay compensation equivalent to the loss in value of the luggage, to the exclusion of all other damages.
2. The compensation shall not exceed:
  - (a) if all the luggage has lost value through damage, the amount which would have been payable in case of total loss;
  - (b) if only part of the luggage has lost value through damage, the amount which would have been payable had that part been lost.

*Article 43***Compensation for delay in delivery**

1. In case of delay in delivery of registered luggage, the carrier must pay in respect of each whole period of 24 hours after delivery has been requested, but subject to a maximum of 14 days:
  - (a) if the person entitled proves that loss or damage has been suffered thereby, compensation equal to the amount of the loss or damage, up to a maximum of 0,80 units of account per kilogram of gross mass of the luggage or 14 units of account per item of luggage, delivered late;
  - (b) if the person entitled does not prove that loss or damage has been suffered thereby, liquidated damages of 0,14 units of account per kilogram of gross mass of the luggage or 2,80 units of account per item of luggage, delivered late.

The methods of compensation, by kilogram missing or by item of luggage, shall be determined by the General Conditions of Carriage.

2. In case of total loss of luggage, the compensation provided for in paragraph 1 shall not be payable in addition to that provided for in Article 41.
3. In case of partial loss of luggage, the compensation provided for in paragraph 1 shall be payable in respect of that part of the luggage which has not been lost.
4. In case of damage to luggage not resulting from delay in delivery the compensation provided for in paragraph 1 shall, where appropriate, be payable in addition to that provided for in Article 42.
5. In no case shall the total of compensation provided for in paragraph 1 together with that payable under Articles 41 and 42 exceed the compensation which would be payable in case of total loss of the luggage.

## SECTION 3

**Vehicles**

## Article 44

**Compensation for delay**

1. In case of delay in loading for a reason attributable to the carrier or delay in delivery of a vehicle, the carrier must, if the person entitled proves that loss or damage has been suffered thereby, pay compensation not exceeding the amount of the carriage charge.
2. If, in case of delay in loading for a reason attributable to the carrier, the person entitled elects not to proceed with the contract of carriage, the carriage charge shall be refunded to him. In addition the person entitled may, if he proves that loss or damage has been suffered as a result of the delay, claim compensation not exceeding the carriage charge.

## Article 45

**Compensation for loss**

In case of total or partial loss of a vehicle the compensation payable to the person entitled for the loss or damage proved shall be calculated on the basis of the usual value of the vehicle. It shall not exceed 8 000 units of account. A loaded or unloaded trailer shall be considered as a separate vehicle.

## Article 46

**Liability in respect of other articles**

1. In respect of articles left inside the vehicle or situated in boxes (e.g. luggage or ski boxes) fixed to the vehicle, the carrier shall be liable only for loss or damage caused by his fault. The total compensation payable shall not exceed 1 400 units of account.
2. So far as concerns articles stowed on the outside of the vehicle, including the boxes referred to in paragraph 1, the carrier shall be liable in respect of articles placed on the outside of the vehicle only if it is proved that the loss or damage results from an act or omission, which the carrier has committed either with intent to cause such a loss or damage or recklessly and with knowledge that such loss or damage would probably result.

## Article 47

**Applicable law**

Subject to the provisions of this Section, the provisions of Section 2 relating to liability for luggage shall apply to vehicles.

## Chapter IV

**Common provisions**

## Article 48

**Loss of right to invoke the limits of liability**

The limits of liability provided for in these Uniform Rules as well as the provisions of national law, which limit the compensation to a fixed amount, shall not apply if it is proved that the loss or damage results from an act or omission, which the carrier has committed either with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

## Article 49

**Conversion and interest**

1. Where the calculation of compensation requires the conversion of sums expressed in foreign currency, conversion shall be at the exchange rate applicable on the day and at the place of payment of the compensation.

2. The person entitled may claim interest on compensation, calculated at five per cent per annum, from the day of the claim provided for in Article 55 or, if no such claim has been made, from the day on which legal proceedings were instituted.
3. However, in the case of compensation payable pursuant to Articles 27 and 28, interest shall accrue only from the day on which the events relevant to the assessment of the amount of compensation occurred, if that day is later than that of the claim or the day when legal proceedings were instituted.
4. In the case of luggage, interest shall only be payable if the compensation exceeds 16 units of account per luggage registration voucher.
5. In the case of luggage, if the person entitled does not submit to the carrier, within a reasonable time allotted to him, the supporting documents required for the amount of the claim to be finally settled, no interest shall accrue between the expiry of the time allotted and the actual submission of such documents.

*Article 50*

**Liability in case of nuclear incidents**

The carrier shall be relieved of liability pursuant to these Uniform Rules for loss or damage caused by a nuclear incident when the operator of a nuclear installation or another person who is substituted for him is liable for the loss or damage pursuant to the laws and prescriptions of a State governing liability in the field of nuclear energy.

*Article 51*

**Persons for whom the carrier is liable**

The carrier shall be liable for his servants and other persons whose services he makes use of for the performance of the carriage, when these servants and other persons are acting within the scope of their functions. The managers of the railway infrastructure on which the carriage is performed shall be considered as persons whose services the carrier makes use of for the performance of the carriage.

*Article 52*

**Other actions**

1. In all cases where these Uniform Rules shall apply, any action in respect of liability, on whatever grounds, may be brought against the carrier only subject to the conditions and limitations laid down in these Uniform Rules.
2. The same shall apply to any action brought against the servants and other persons for whom the carrier is liable pursuant to Article 51.

TITLE V

**LIABILITY OF THE PASSENGER**

*Article 53*

**Special principles of liability**

The passenger shall be liable to the carrier for any loss or damage:

- (a) resulting from failure to fulfil his obligations pursuant to
  1. Articles 10, 14 and 20,
  2. the special provisions for the carriage of vehicles, contained in the General Conditions of Carriage, or
  3. the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID), or
- (b) caused by articles and animals that he brings with him,

unless he proves that the loss or damage was caused by circumstances that he could not avoid and the consequences of which he was unable to prevent, despite the fact that he exercised the diligence required of a conscientious passenger. This provision shall not affect the liability of the carrier pursuant to Articles 26 and 33(1).

## TITLE VI

**ASSERTION OF RIGHTS***Article 54***Ascertainment of partial loss or damage**

1. When partial loss of, or damage to, an article carried in the charge of the carrier (luggage, vehicles) is discovered or presumed by the carrier or alleged by the person entitled, the carrier must without delay, and if possible in the presence of the person entitled, draw up a report stating, according to the nature of the loss or damage, the condition of the article and, as far as possible, the extent of the loss or damage, its cause and the time of its occurrence.
2. A copy of the report must be supplied free of charge to the person entitled.
3. Should the person entitled not accept the findings in the report, he may request that the condition of the luggage or vehicle and the cause and amount of the loss or damage be ascertained by an expert appointed either by the parties to the contract of carriage or by a court or tribunal. The procedure to be followed shall be governed by the laws and prescriptions of the State in which such ascertainment takes place.

*Article 55***Claims**

1. Claims relating to the liability of the carrier in case of death of, or personal injury to, passengers must be addressed in writing to the carrier against whom an action may be brought. In the case of a carriage governed by a single contract and performed by successive carriers the claims may also be addressed to the first or the last carrier as well as to the carrier having his principal place of business or the branch or agency which concluded the contract of carriage in the State where the passenger is domiciled or habitually resident.
2. Other claims relating to the contract of carriage must be addressed in writing to the carrier specified in Article 56(2) and (3).
3. Documents which the person entitled thinks fit to submit with the claim shall be produced either in the original or as copies, where appropriate, the copies duly certified if the carrier so requires. On settlement of the claim, the carrier may require the surrender of the ticket, the luggage registration voucher and the carriage voucher.

*Article 56***Carriers against whom an action may be brought**

1. An action based on the liability of the carrier in case of death of, or personal injury to, passengers may only be brought against the carrier who is liable pursuant to Article 26(5).
2. Subject to paragraph 4 other actions brought by passengers based on the contract of carriage may be brought only against the first carrier, the last carrier or the carrier having performed the part of carriage on which the event giving rise to the proceedings occurred.
3. When, in the case of carriage performed by successive carriers, the carrier who must deliver the luggage or the vehicle is entered with his consent on the luggage registration voucher or the carriage voucher, an action may be brought against him in accordance with paragraph 2 even if he has not received the luggage or the vehicle.
4. An action for the recovery of a sum paid pursuant to the contract of carriage may be brought against the carrier who has collected that sum or against the carrier on whose behalf it was collected.
5. An action may be brought against a carrier other than those specified in paragraphs 2 and 4 when instituted by way of counter-claim or by way of exception in proceedings relating to a principal claim based on the same contract of carriage.
6. To the extent that these Uniform Rules apply to the substitute carrier, an action may also be brought against him.
7. If the plaintiff has a choice between several carriers, his right to choose shall be extinguished as soon as he brings an action against one of them; this shall also apply if the plaintiff has a choice between one or more carriers and a substitute carrier.

*Article 58***Extinction of right of action in case of death or personal injury**

1. Any right of action by the person entitled based on the liability of the carrier in case of death of, or personal injury to, passengers shall be extinguished if notice of the accident to the passenger is not given by the person entitled, within 12 months of his becoming aware of the loss or damage, to one of the carriers to whom a claim may be addressed in accordance with Article 55(1). Where the person entitled gives oral notice of the accident to the carrier, the carrier shall furnish him with an acknowledgement of such oral notice.
2. Nevertheless, the right of action shall not be extinguished if
  - (a) within the period provided for in paragraph 1 the person entitled has addressed a claim to one of the carriers designated in Article 55(1);
  - (b) within the period provided for in paragraph 1 the carrier who is liable has learned of the accident to the passenger in some other way;
  - (c) notice of the accident has not been given, or has been given late, as a result of circumstances not attributable to the person entitled;
  - (d) the person entitled proves that the accident was caused by fault on the part of the carrier.

*Article 59***Extinction of right of action arising from carriage of luggage**

1. Acceptance of the luggage by the person entitled shall extinguish all rights of action against the carrier arising from the contract of carriage in case of partial loss, damage or delay in delivery.
2. Nevertheless, the right of action shall not be extinguished:
  - (a) in case of partial loss or damage, if
    1. the loss or damage was ascertained in accordance with Article 54 before the acceptance of the luggage by the person entitled,
    2. the ascertainment which should have been carried out in accordance with Article 54 was omitted solely through the fault of the carrier;
  - (b) in case of loss or damage which is not apparent whose existence is ascertained after acceptance of the luggage by the person entitled, if he
    1. asks for ascertainment in accordance with Article 54 immediately after discovery of the loss or damage and not later than three days after the acceptance of the luggage, and
    2. in addition, proves that the loss or damage occurred between the time of taking over by the carrier and the time of delivery;
  - (c) in case of delay in delivery, if the person entitled has, within twenty-one days, asserted his rights against one of the carriers specified in Article 56(3);
  - (d) if the person entitled proves that the loss or damage was caused by fault on the part of the carrier.

*Article 60***Limitation of actions**

1. The period of limitation of actions for damages based on the liability of the carrier in case of death of, or personal injury to, passengers shall be:
  - (a) in the case of a passenger, three years from the day after the accident;
  - (b) in the case of other persons entitled, three years from the day after the death of the passenger, subject to a maximum of five years from the day after the accident.

2. The period of limitation for other actions arising from the contract of carriage shall be one year. Nevertheless, the period of limitation shall be two years in the case of an action for loss or damage resulting from an act or omission committed either with the intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

3. The period of limitation provided for in paragraph 2 shall run for actions:

- (a) for compensation for total loss, from the fourteenth day after the expiry of the period of time provided for in Article 22(3);
- (b) for compensation for partial loss, damage or delay in delivery, from the day when delivery took place;
- (c) in all other cases involving the carriage of passengers, from the day of expiry of validity of the ticket.

The day indicated for the commencement of the period of limitation shall not be included in the period.

4. [...]

5. [...]

6. Otherwise, the suspension and interruption of periods of limitation shall be governed by national law.

#### TITLE VII

### RELATIONS BETWEEN CARRIERS

#### Article 61

#### Apportionment of the carriage charge

1. Any carrier who has collected or ought to have collected a carriage charge must pay to the carriers concerned their respective shares of such a charge. The methods of payment shall be fixed by agreement between the carriers.
2. Article 6(3), Article 16(3) and Article 25 shall also apply to the relations between successive carriers.

#### Article 62

#### Right of recourse

1. A carrier who has paid compensation pursuant to these Uniform Rules shall have a right of recourse against the carriers who have taken part in the carriage in accordance with the following provisions:
  - (a) the carrier who has caused the loss or damage shall be solely liable for it;
  - (b) when the loss or damage has been caused by several carriers, each shall be liable for the loss or damage he has caused; if such distinction is impossible, the compensation shall be apportioned between them in accordance with letter c);
  - (c) if it cannot be proved which of the carriers has caused the loss or damage, the compensation shall be apportioned between all the carriers who have taken part in the carriage, except those who prove that the loss or damage was not caused by them; such apportionment shall be in proportion to their respective shares of the carriage charge.
2. In the case of insolvency of any one of these carriers, the unpaid share due from him shall be apportioned among all the other carriers who have taken part in the carriage, in proportion to their respective shares of the carriage charge.

#### Article 63

#### Procedure for recourse

1. The validity of the payment made by the carrier exercising a right of recourse pursuant to Article 62 may not be disputed by the carrier against whom the right to recourse is exercised, when compensation has been determined by a court or tribunal and when the latter carrier, duly served with notice of the proceedings, has been afforded an opportunity to intervene in the proceedings. The court or tribunal seized of the principal action shall determine what time shall be allowed for such notification of the proceedings and for intervention in the proceedings.

2. A carrier exercising his right of recourse must present his claim in one and the same proceedings against all the carriers with whom he has not reached a settlement, failing which he shall lose his right of recourse in the case of those against whom he has not taken proceedings.
3. The court or tribunal shall give its decision in one and the same judgment on all recourse claims brought before it.
4. The carrier wishing to enforce his right of recourse may bring his action in the courts or tribunals of the State on the territory of which one of the carriers participating in the carriage has his principal place of business, or the branch or agency which concluded the contract of carriage.
5. When the action must be brought against several carriers, the plaintiff carrier shall be entitled to choose the court or tribunal in which he will bring the proceedings from among those having competence pursuant to paragraph 4.
6. Recourse proceedings may not be joined with proceedings for compensation taken by the person entitled under the contract of carriage.

*Article 64*

**Agreements concerning recourse**

The carriers may conclude agreements which derogate from Articles 61 and 62.

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## ANNEX II

**MINIMUM INFORMATION TO BE PROVIDED BY RAILWAY UNDERTAKINGS  
AND/OR BY TICKET VENDORS****Part I: Pre-journey information**

General conditions applicable to the contract

Time schedules and conditions for the fastest trip

Time schedules and conditions for the lowest fares

Accessibility, access conditions and availability on board of facilities for disabled persons and persons with reduced mobility

Accessibility and access conditions for bicycles

Availability of seats in smoking and non-smoking, first and second class as well as couchettes and sleeping carriages

Any activities likely to disrupt or delay services

Availability of on-board services

Procedures for reclaiming lost luggage

Procedures for the submission of complaints.

**Part II: Information during the journey**

On-board services

Next station

Delays

Main connecting services

Security and safety issues.

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*ANNEX III***MINIMUM SERVICE QUALITY STANDARDS**

Information and tickets

Punctuality of services, and general principles to cope with disruptions to services

Cancellations of services

Cleanliness of rolling stock and station facilities (air quality in carriages, hygiene of sanitary facilities, etc.)

Customer satisfaction survey

Complaint handling, refunds and compensation for non-compliance with service quality standards

Assistance provided to disabled persons and persons with reduced mobility.

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## I

(Acts whose publication is obligatory)

**REGULATION (EC) No 1107/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 5 July 2006**  
**concerning the rights of disabled persons and persons with reduced mobility when travelling by air**  
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having consulted of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(2)</sup>,

Whereas:

- (1) The single market for air services should benefit citizens in general. Consequently, disabled persons and persons with reduced mobility, whether caused by disability, age or any other factor, should have opportunities for air travel comparable to those of other citizens. Disabled persons and persons with reduced mobility have the same right as all other citizens to free movement, freedom of choice and non-discrimination. This applies to air travel as to other areas of life.
- (2) Disabled persons and persons with reduced mobility should therefore be accepted for carriage and not refused transport on the grounds of their disability or lack of mobility, except for reasons which are justified on the grounds of safety and prescribed by law. Before accepting reservations from disabled persons or persons with reduced mobility, air carriers, their agents and tour operators should make all reasonable efforts to verify whether there is a reason which is justified on the grounds of safety and which would prevent such persons being accommodated on the flights concerned.

- (3) This Regulation should not affect other rights of passengers established by Community legislation and notably Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours <sup>(3)</sup> and Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights <sup>(4)</sup>. Where the same event would give rise to the same right of reimbursement or rebooking under either of those legislative acts as well as under this Regulation, the person so entitled should be allowed to exercise that right once only, at his or her discretion.

- (4) In order to give disabled persons and persons with reduced mobility opportunities for air travel comparable to those of other citizens, assistance to meet their particular needs should be provided at the airport as well as on board aircraft, by employing the necessary staff and equipment. In the interests of social inclusion, the persons concerned should receive this assistance without additional charge.

- (5) Assistance given at airports situated in the territory of a Member State to which the Treaty applies should, among other things, enable disabled persons and persons with reduced mobility to proceed from a designated point of arrival at an airport to an aircraft and from the aircraft to a designated point of departure from the airport, including embarking and disembarking. These points should be designated at least at the main entrances to terminal buildings, in areas with check-in counters, in train, light rail, metro and bus stations, at taxi ranks and other drop-off points, and in airport car parks. The assistance should be organised so as to avoid interruption and delay, while ensuring high and equivalent standards throughout the Community and making best use of resources, whatever airport or air carrier is involved.

<sup>(1)</sup> OJ C 24, 31.1.2006, p. 12.

<sup>(2)</sup> Opinion of the European Parliament of 15 December 2005 (not yet published in the Official Journal), and Council Decision of 9 June 2006.

<sup>(3)</sup> OJ L 158, 23.6.1990, p. 59.

<sup>(4)</sup> OJ L 46, 17.2.2004, p. 1.

- (6) To achieve these aims, ensuring high quality assistance at airports should be the responsibility of a central body. As managing bodies of airports play a central role in providing services throughout their airports, they should be given this overall responsibility.
- (7) Managing bodies of airports may provide the assistance to disabled persons and persons with reduced mobility themselves. Alternatively, in view of the positive role played in the past by certain operators and air carriers, managing bodies may contract with third parties for the supply of this assistance, without prejudice to the application of relevant rules of Community law, including those on public procurement.
- (8) Assistance should be financed in such a way as to spread the burden equitably among all passengers using an airport and to avoid disincentives to the carriage of disabled persons and persons with reduced mobility. A charge levied on each air carrier using an airport, proportionate to the number of passengers it carries to or from the airport, appears to be the most effective way of funding.
- (9) With a view to ensuring, in particular, that the charges levied on an air carrier are commensurate with the assistance provided to disabled persons and persons with reduced mobility, and that these charges do not serve to finance activities of the managing body other than those relating to the provision of such assistance, the charges should be adopted and applied in full transparency. Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports <sup>(1)</sup> and in particular the provisions on separation of accounts, should therefore apply where this does not conflict with this Regulation.
- (10) In organising the provision of assistance to disabled persons and persons with reduced mobility, and the training of their personnel, airports and air carriers should have regard to document 30 of the European Civil Aviation Conference (ECAC), Part I, Section 5 and its associated annexes, in particular the Code of Good Conduct in Ground Handling for Persons with Reduced Mobility as set out in Annex J thereto at the time of adoption of this Regulation.
- (11) In deciding on the design of new airports and terminals, and as part of major refurbishments, managing bodies of airports should, where possible, take into account the needs of disabled persons and persons with reduced mobility. Similarly, air carriers should, where possible, take such needs into account when deciding on the design of new and newly refurbished aircraft.
- (12) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(2)</sup> should be strictly enforced in order to guarantee respect for the privacy of disabled persons and persons with reduced mobility, and ensure that the information requested serves merely to fulfil the assistance obligations laid down in this Regulation and is not used against passengers seeking the service in question.
- (13) All essential information provided to air passengers should be provided in alternative formats accessible to disabled persons and persons with reduced mobility, and should be in at least the same languages as the information made available to other passengers.
- (14) Where wheelchairs or other mobility equipment or assistive devices are lost or damaged during handling at the airport or during transport on board aircraft, the passenger to whom the equipment belongs should be compensated, in accordance with rules of international, Community and national law.
- (15) Member States should supervise and ensure compliance with this Regulation and designate an appropriate body to carry out enforcement tasks. This supervision does not affect the rights of disabled persons and persons with reduced mobility to seek legal redress from courts under national law.
- (16) It is important that a disabled person or person with reduced mobility who considers that this Regulation has been infringed be able to bring the matter to the attention of the managing body of the airport or to the attention of the air carrier concerned, as the case may be. If the disabled person or person with reduced mobility cannot obtain satisfaction in such way, he or she should be free to make a complaint to the body or bodies designated to that end by the relevant Member State.
- (17) Complaints concerning assistance given at an airport should be addressed to the body or bodies designated for the enforcement of this Regulation by the Member State where the airport is situated. Complaints concerning assistance given by an air carrier should be addressed to the body or bodies designated for the enforcement of this Regulation by the Member State which has issued the operating licence to the air carrier.

<sup>(1)</sup> OJ L 272, 25.10.1996, p. 36. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

<sup>(2)</sup> OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003.

- (18) Member States should lay down penalties applicable to infringements of this Regulation and ensure that those penalties are applied. The penalties, which could include ordering the payment of compensation to the person concerned, should be effective, proportionate and dissuasive.
- (19) Since the objectives of this Regulation, namely to ensure high and equivalent levels of protection and assistance throughout the Member States and to ensure that economic agents operate under harmonised conditions in a single market, cannot sufficiently be achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (20) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (21) Arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland in a joint declaration by the Ministers of Foreign Affairs of the two countries. Such arrangements have yet to enter into operation,

HAVE ADOPTED THIS REGULATION:

#### Article 1

##### Purpose and scope

1. This Regulation establishes rules for the protection of and provision of assistance to disabled persons and persons with reduced mobility travelling by air, both to protect them against discrimination and to ensure that they receive assistance.
2. The provisions of this Regulation shall apply to disabled persons and persons with reduced mobility, using or intending to use commercial passenger air services on departure from, on transit through, or on arrival at an airport, when the airport is situated in the territory of a Member State to which the Treaty applies.
3. Articles 3, 4 and 10 shall also apply to passengers departing from an airport situated in a third country to an airport situated in the territory of a Member State to which the Treaty applies, if the operating carrier is a Community air carrier.
4. This Regulation shall not affect the rights of passengers established by Directive 90/314/EEC and under Regulation (EC) No 261/2004.

5. In so far as the provisions of this Regulation conflict with those of Directive 96/67/EC, this Regulation shall prevail.

6. Application of this Regulation to Gibraltar airport is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland with regard to the dispute over sovereignty over the territory in which the airport is situated.

7. Application of this Regulation to Gibraltar airport shall be suspended until the arrangements included in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland on 2 December 1987 enter into operation. The Governments of Spain and of the United Kingdom shall inform the Council of the date of entry into operation.

#### Article 2

##### Definitions

For the purposes of this Regulation the following definitions shall apply:

- (a) 'disabled person' or 'person with reduced mobility' means any person whose mobility when using transport is reduced due to any physical disability (sensory or locomotor, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or age, and whose situation needs appropriate attention and the adaptation to his or her particular needs of the service made available to all passengers;
- (b) 'air carrier' means an air transport undertaking with a valid operating licence;
- (c) 'operating air carrier' means an air carrier that performs or intends to perform a flight under a contract with a passenger or on behalf of another person, legal or natural, having a contract with that passenger;
- (d) 'Community air carrier' means an air carrier with a valid operating licence granted by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers<sup>(1)</sup>;
- (e) 'tour operator' means, with the exception of an air carrier, an organiser or retailer within the meaning of Article 2(2) and (3) of Directive 90/314/EEC;
- (f) 'managing body of the airport' or 'managing body' means a body which notably has as its objective under national legislation the administration and management of airport infrastructures, and the coordination and control of the activities of the various operators present in an airport or airport system;

<sup>(1)</sup> OJ L 240, 24.8.1992, p. 1.

- (g) 'airport user' means any natural or legal person responsible for the carriage of passengers by air from or to the airport in question;
- (h) 'Airport Users Committee' means a committee of representatives of airport users or organisations representing them;
- (i) 'reservation' means the fact that the passenger has a ticket, or other proof, which indicates that the reservation has been accepted and registered by the air carrier or tour operator;
- (j) 'airport' means any area of land specially adapted for the landing, taking-off and manoeuvres of aircraft, including ancillary installations which these operations may involve for the requirements of aircraft traffic and services including installations needed to assist commercial air services;
- (k) 'airport car park' means a car park, within the airport boundaries or under the direct control of the managing body of an airport, which directly serves the passengers using that airport;
- (l) 'commercial passenger air service' means a passenger air transport service operated by an air carrier through a scheduled or non-scheduled flight offered to the general public for valuable consideration, whether on its own or as part of a package.

### Article 3

#### Prevention of refusal of carriage

An air carrier or its agent or a tour operator shall not refuse, on the grounds of disability or of reduced mobility:

- (a) to accept a reservation for a flight departing from or arriving at an airport to which this Regulation applies;
- (b) to embark a disabled person or a person with reduced mobility at such an airport, provided that the person concerned has a valid ticket and reservation.

### Article 4

#### Derogations, special conditions and information

1. Notwithstanding the provisions of Article 3, an air carrier or its agent or a tour operator may refuse, on the grounds of disability or of reduced mobility, to accept a reservation from or to embark a disabled person or a person with reduced mobility:

- (a) in order to meet applicable safety requirements established by international, Community or national law or in order to meet safety requirements established by the authority that issued the air operator's certificate to the air carrier concerned;

- (b) if the size of the aircraft or its doors makes the embarkation or carriage of that disabled person or person with reduced mobility physically impossible.

In the event of refusal to accept a reservation on the grounds referred to under points (a) or (b) of the first subparagraph, the air carrier, its agent or the tour operator shall make reasonable efforts to propose an acceptable alternative to the person in question.

A disabled person or a person with reduced mobility who has been denied embarkation on the grounds of his or her disability or reduced mobility and any person accompanying this person pursuant to paragraph 2 of this Article shall be offered the right to reimbursement or re-routing as provided for in Article 8 of Regulation (EC) No 261/2004. The right to the option of a return flight or re-routing shall be conditional upon all safety requirements being met.

2. Under the same conditions referred to in paragraph 1, first subparagraph, point (a), an air carrier or its agent or a tour operator may require that a disabled person or person with reduced mobility be accompanied by another person who is capable of providing the assistance required by that person.

3. An air carrier or its agent shall make publicly available, in accessible formats and in at least the same languages as the information made available to other passengers, the safety rules that it applies to the carriage of disabled persons and persons with reduced mobility, as well as any restrictions on their carriage or on that of mobility equipment due to the size of aircraft. A tour operator shall make such safety rules and restrictions available for flights included in package travel, package holidays and package tours which it organises, sells or offers for sale.

4. When an air carrier or its agent or a tour operator exercises a derogation under paragraphs 1 or 2, it shall immediately inform the disabled person or person with reduced mobility of the reasons therefor. On request, an air carrier, its agent or a tour operator shall communicate these reasons in writing to the disabled person or person with reduced mobility, within five working days of the request.

### Article 5

#### Designation of points of arrival and departure

1. In cooperation with airport users, through the Airport Users Committee where one exists, and relevant organisations representing disabled persons and persons with reduced mobility, the managing body of an airport shall, taking account of local conditions, designate points of arrival and departure within the airport boundary or at a point under the direct control of the managing body, both inside and outside terminal

buildings, at which disabled persons or persons with reduced mobility can, with ease, announce their arrival at the airport and request assistance.

2. The points of arrival and departure referred to in paragraph 1, shall be clearly signed and shall offer basic information about the airport, in accessible formats.

#### Article 6

##### Transmission of information

1. Air carriers, their agents and tour operators shall take all measures necessary for the receipt, at all their points of sale in the territory of the Member States to which the Treaty applies, including sale by telephone and via the Internet, of notifications of the need for assistance made by disabled persons or persons with reduced mobility.

2. When an air carrier or its agent or a tour operator receives a notification of the need for assistance at least 48 hours before the published departure time for the flight, it shall transmit the information concerned at least 36 hours before the published departure time for the flight:

- (a) to the managing bodies of the airports of departure, arrival and transit, and
- (b) to the operating air carrier, if a reservation was not made with that carrier, unless the identity of the operating air carrier is not known at the time of notification, in which case the information shall be transmitted as soon as practicable.

3. In all cases other than those mentioned in paragraph 2, the air carrier or its agent or tour operator shall transmit the information as soon as possible.

4. As soon as possible after the departure of the flight, an operating air carrier shall inform the managing body of the airport of destination, if situated in the territory of a Member State to which the Treaty applies, of the number of disabled persons and persons with reduced mobility on that flight requiring assistance specified in Annex I and of the nature of that assistance.

#### Article 7

##### Right to assistance at airports

1. When a disabled person or person with reduced mobility arrives at an airport for travel by air, the managing body of the airport shall be responsible for ensuring the provision of the assistance specified in Annex I in such a way that the person is able to take the flight for which he or she holds a reservation, provided that the notification of the person's particular needs for

such assistance has been made to the air carrier or its agent or the tour operator concerned at least 48 hours before the published time of departure of the flight. This notification shall also cover a return flight, if the outward flight and the return flight have been contracted with the same air carrier.

2. Where use of a recognised assistance dog is required, this shall be accommodated provided that notification of the same is made to the air carrier or its agent or the tour operator in accordance with applicable national rules covering the carriage of assistance dogs on board aircraft, where such rules exist.

3. If no notification is made in accordance with paragraph 1, the managing body shall make all reasonable efforts to provide the assistance specified in Annex I in such a way that the person concerned is able to take the flight for which he or she holds a reservation.

4. The provisions of paragraph 1 shall apply on condition that:

- (a) the person presents himself or herself for check-in:
  - (i) at the time stipulated in advance and in writing (including by electronic means) by the air carrier or its agent or the tour operator, or
  - (ii) if no time is stipulated, not later than one hour before the published departure time, or
- (b) the person arrives at a point within the airport boundary designated in accordance with Article 5:
  - (i) at the time stipulated in advance and in writing (including by electronic means) by the air carrier or its agent or the tour operator, or
  - (ii) if no time is stipulated, not later than two hours before the published departure time.

5. When a disabled person or person with reduced mobility transits through an airport to which this Regulation applies, or is transferred by an air carrier or a tour operator from the flight for which he or she holds a reservation to another flight, the managing body shall be responsible for ensuring the provision of the assistance specified in Annex I in such a way that the person is able to take the flight for which he or she holds a reservation.

6. On the arrival by air of a disabled person or person with reduced mobility at an airport to which this Regulation applies, the managing body of the airport shall be responsible for ensuring the provision of the assistance specified in Annex I in such a way that the person is able to reach his or her point of departure from the airport as referred to in Article 5.

7. The assistance provided shall, as far as possible, be appropriate to the particular needs of the individual passenger.

*Article 8***Responsibility for assistance at airports**

1. The managing body of an airport shall be responsible for ensuring the provision of the assistance specified in Annex I without additional charge to disabled persons and persons with reduced mobility.

2. The managing body may provide such assistance itself. Alternatively, in keeping with its responsibility, and subject always to compliance with the quality standards referred to in Article 9(1), the managing body may contract with one or more other parties for the supply of the assistance. In cooperation with airport users, through the Airport Users Committee where one exists, the managing body may enter into such a contract or contracts on its own initiative or on request, including from an air carrier, and taking into account the existing services at the airport concerned. In the event that it refuses such a request, the managing body shall provide written justification.

3. The managing body of an airport may, on a non-discriminatory basis, levy a specific charge on airport users for the purpose of funding this assistance.

4. This specific charge shall be reasonable, cost-related, transparent and established by the managing body of the airport in cooperation with airport users, through the Airport Users Committee where one exists or any other appropriate entity. It shall be shared among airport users in proportion to the total number of all passengers that each carries to and from that airport.

5. The managing body of an airport shall separate the accounts of its activities relating to the assistance provided to disabled persons and persons with reduced mobility from the accounts of its other activities, in accordance with current commercial practice.

6. The managing body of an airport shall make available to airport users, through the Airport Users Committee where one exists or any other appropriate entity, as well as to the enforcement body or bodies referred to in Article 14, an audited annual overview of charges received and expenses made in respect of the assistance provided to disabled persons and persons with reduced mobility.

*Article 9***Quality standards for assistance**

1. With the exception of airports whose annual traffic is less than 150 000 commercial passenger movements, the managing body shall set quality standards for the assistance specified in Annex I and determine resource requirements for meeting them, in cooperation with airport users, through the Airport Users Committee where one exists, and organisations representing disabled passengers and passengers with reduced mobility.

2. In the setting of such standards, full account shall be taken of internationally recognised policies and codes of conduct concerning facilitation of the transport of disabled persons or persons with reduced mobility, notably the ECAC Code of Good Conduct in Ground Handling for Persons with Reduced Mobility.

3. The managing body of an airport shall publish its quality standards.

4. An air carrier and the managing body of an airport may agree that, for the passengers whom that air carrier transports to and from the airport, the managing body shall provide assistance of a higher standard than the standards referred to in paragraph 1 or provide services additional to those specified in Annex I.

5. For the purpose of funding either of these, the managing body may levy a charge on the air carrier additional to that referred to in Article 8(3), which shall be transparent, cost-related and established after consultation of the air carrier concerned.

*Article 10***Assistance by air carriers**

An air carrier shall provide the assistance specified in Annex II without additional charge to a disabled person or person with reduced mobility departing from, arriving at or transiting through an airport to which this Regulation applies provided that the person in question fulfils the conditions set out in Article 7(1), (2) and (4).

*Article 11***Training**

Air carriers and airport managing bodies shall:

- (a) ensure that all their personnel, including those employed by any sub-contractor, providing direct assistance to disabled persons and persons with reduced mobility have knowledge of how to meet the needs of persons having various disabilities or mobility impairments;
- (b) provide disability-equality and disability-awareness training to all their personnel working at the airport who deal directly with the travelling public;
- (c) ensure that, upon recruitment, all new employees attend disability-related training and that personnel receive refresher training courses when appropriate.

*Article 12***Compensation for lost or damaged wheelchairs, other mobility equipment and assistive devices**

Where wheelchairs or other mobility equipment or assistive devices are lost or damaged whilst being handled at the airport or



transported on board aircraft, the passenger to whom the equipment belongs shall be compensated, in accordance with rules of international, Community and national law.

*Article 13*

**Exclusion of waiver**

Obligations towards disabled persons and persons with reduced mobility pursuant to this Regulation shall not be limited or waived.

*Article 14*

**Enforcement body and its tasks**

1. Each Member State shall designate a body or bodies responsible for the enforcement of this Regulation as regards flights departing from or arriving at airports situated in its territory. Where appropriate, this body or bodies shall take the measures necessary to ensure that the rights of disabled persons and persons with reduced mobility are respected, including compliance with the quality standards referred to in Article 9(1). The Member States shall inform the Commission of the body or bodies designated.

2. Member States shall, where appropriate, provide that the enforcement body or bodies designated under paragraph 1 shall also ensure the satisfactory implementation of Article 8, including as regards the provisions on charges with a view to avoiding unfair competition. They may also designate a specific body to that effect.

*Article 15*

**Complaint procedure**

1. A disabled person or person with reduced mobility who considers that this Regulation has been infringed may bring the matter to the attention of the managing body of the airport or to the attention of the air carrier concerned, as the case may be.

2. If the disabled person or person with reduced mobility cannot obtain satisfaction in such way, complaints may be made to any body or bodies designated under Article 14(1), or to any

other competent body designated by a Member State, about an alleged infringement of this Regulation.

3. A body in one Member State which receives a complaint concerning a matter that comes under the responsibility of a designated body of another Member State shall forward the complaint to the body of that other Member State.

4. The Member States shall take measures to inform disabled persons and persons with reduced mobility of their rights under this Regulation and of the possibility of complaint to this designated body or bodies.

*Article 16*

**Penalties**

The Member States shall lay down rules on penalties applicable to infringements of this Regulation and shall take all the measures necessary to ensure that those rules are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission and shall notify it without delay of any subsequent amendment affecting them.

*Article 17*

**Report**

The Commission shall report to the European Parliament and the Council by 1 January 2010 at the latest on the operation and the effects of this Regulation. The report shall be accompanied where necessary by legislative proposals implementing in further detail the provisions of this Regulation, or revising it.

*Article 18*

**Entry into force**

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

It shall apply with effect from 26 July 2008, except Articles 3 and 4, which shall apply with effect from 26 July 2007.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 5 July 2006.

*For the European Parliament*

*The President*

J. BORRELL FONTELLES

*The President*

*For the Council*

P. LEHTOMÄKI

## ANNEX I

**Assistance under the responsibility of the managing bodies of airports**

Assistance and arrangements necessary to enable disabled persons and persons with reduced mobility to:

- communicate their arrival at an airport and their request for assistance at the designated points inside and outside terminal buildings mentioned in Article 5,
- move from a designated point to the check-in counter,
- check-in and register baggage,
- proceed from the check-in counter to the aircraft, with completion of emigration, customs and security procedures,
- board the aircraft, with the provision of lifts, wheelchairs or other assistance needed, as appropriate,
- proceed from the aircraft door to their seats,
- store and retrieve baggage on the aircraft,
- proceed from their seats to the aircraft door,
- disembark from the aircraft, with the provision of lifts, wheelchairs or other assistance needed, as appropriate,
- proceed from the aircraft to the baggage hall and retrieve baggage, with completion of immigration and customs procedures,
- proceed from the baggage hall to a designated point,
- reach connecting flights when in transit, with assistance on the air and land sides and within and between terminals as needed,
- move to the toilet facilities if required.

Where a disabled person or person with reduced mobility is assisted by an accompanying person, this person must, if requested, be allowed to provide the necessary assistance in the airport and with embarking and disembarking.

Ground handling of all necessary mobility equipment, including equipment such as electric wheelchairs subject to advance warning of 48 hours and to possible limitations of space on board the aircraft, and subject to the application of relevant legislation concerning dangerous goods.

Temporary replacement of damaged or lost mobility equipment, albeit not necessarily on a like-for-like basis.

Ground handling of recognised assistance dogs, when relevant.

Communication of information needed to take flights in accessible formats.

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## ANNEX II

**Assistance by air carriers**

Carriage of recognised assistance dogs in the cabin, subject to national regulations.

In addition to medical equipment, transport of up to two pieces of mobility equipment per disabled person or person with reduced mobility, including electric wheelchairs (subject to advance warning of 48 hours and to possible limitations of space on board the aircraft, and subject to the application of relevant legislation concerning dangerous goods).

Communication of essential information concerning a flight in accessible formats.

The making of all reasonable efforts to arrange seating to meet the needs of individuals with disability or reduced mobility on request and subject to safety requirements and availability.

Assistance in moving to toilet facilities if required.

Where a disabled person or person with reduced mobility is assisted by an accompanying person, the air carrier will make all reasonable efforts to give such person a seat next to the disabled person or person with reduced mobility.

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7.8.2008  
COM(2008) 510 final

**COMMUNICATION FROM THE COMMISSION**

**Communication on the scope of the liability of air carriers and airports in the event of destroyed, damaged or lost mobility equipment of passengers with reduced mobility when travelling by air.**

**Text with EEA-relevance**

## COMMUNICATION FROM THE COMMISSION

### Communication on the scope of the liability of air carriers and airports in the event of destroyed, damaged or lost mobility equipment of passengers with reduced mobility when travelling by air.

#### Text with EEA-relevance

#### 1. BACKGROUND

On 5 July 2006, the Council and the European Parliament adopted the Regulation 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air<sup>1</sup> (hereinafter referred to as "the Regulation"). The overall objective of the Regulation is to ensure that disabled passengers and persons with reduced mobility (hereinafter referred to as PRM) are not discriminated against when travelling by air. On 30 November 2005, in the course of the political negotiation process on the Commission proposal, and in relation to the future Article 12 concerning 'Compensation for lost or damaged wheelchairs, other mobility equipment and assistive devices', the Commission presented an statement for the minutes<sup>2</sup>, in which the Commission committed to launch an study and to report on it, regarding the possibility of enhancing the existing rights under Community, national or international law of air passengers whose wheelchairs or other mobility equipment are destroyed, damaged or lost during handling at an airport or during transport on-board aircraft.

The Commission published a contract notice<sup>3</sup> for a "*Study on the compensation thresholds for damaged or lost equipment and devices belonging to air passengers with reduced mobility*" (hereinafter referred as to "the Study"), which is available on the Commission website. The purpose of this Communication is to report on the outcome of the study and the possibility to enhance existing rights.

#### 2. THE SCOPE OF THE PROBLEM.

*"Damaged or lost luggage is annoying. Damaged or lost mobility equipment can destroy the whole journey and complicate life considerably for a long time. It is a loss of independence and dignity<sup>4</sup>."*

A significant proportion of the current EU population has mobility problems which include needing a wheelchair other mobility equipment or assistive devices (hereinafter referred to as "mobility equipment"). The proportion of PRM within the population is likely to increase as the EU population ages.

The Commission does not wish to reproduce in this Communication the data already provided in the study, which should be read as a complement to this Communication. Nevertheless, on

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<sup>1</sup> OJ L 204/1 of 26.07.2006

<sup>2</sup> Council working document n° 15206/05 ( COD 2005/007).

<sup>3</sup> Contract notice 2006/S 111-118193 of 14.06.2006

<sup>4</sup> From a PRM association's answer to the consultants.

the basis of those data, the Commission notes that there are clear indications that passengers with reduced mobility who require mobility equipment, are travelling by air less than the general population. It is quite likely that fear of loss, damage or destruction of their mobility equipment is a contributory factor in deterring them from travelling and, therefore, preventing their integration in society. This fear is based on several objective reasons:

- (1) The loss or damage of wheelchairs or other mobility equipment takes away the independence of the PRM and affects every aspect of their daily lives until the matter is properly resolved.
- (2) PRM face risks to their health and safety if their mobility equipment is lost, damaged or destroyed, as replacements are not always provided and, even when provided, replacements are not always suitable for the person's needs.
- (3) The time taken by airlines or airports to resolve practical problems presented by the damage or loss of mobility equipment is inappropriate given the urgency of the need.
- (4) The existing procedures and the average training level of the staff of most airlines and airports regarding how to act when confronted with a loss or damage of mobility equipment are deficient.
- (5) The financial implications of the loss, damage or destruction of mobility equipment present an additional risk for PRM when travelling by air in comparison with other passengers.
- (6) The provision of compensation for damaged, destroyed or lost mobility equipment varies from air carrier to air carrier, and for airports

### **3. OUTCOME OF THE STUDY: THE CHALLENGES**

The actual number of accidents per year and per company involving incidents with mobility equipment is very low. The total number of relevant complaints is somewhere in the range between 600 and 1000 cases per year, compared to 706 million air passengers carried per year in the European Union<sup>5</sup>. That means a ratio between less than one and one and a half complaints as a maximum in a million of passengers.

The study analyses both the experience in the USA and the situation in Europe. The two analysis provide a reasonable basis for believing that this estimate is close to the actual number. The study has also concluded that there are a number of outstanding issues regarding both the quantitative aspects and the qualitative aspects of the problem worth to be highlighted:

#### **3.1. Quantitative objective: to reduce the number of incidents**

The number of events of destroyed, damages or lost mobility equipment of PRM is linked to the correct handling and stowage of mobility equipment onboard aircraft and storage at airports is a fundamental part of the conditions of transport of PRM in order to meet their needs, and a skill for which staff must be properly trained. The objective should remain to allow the PRM to use her/his personal device as long as possible. Ideally, the mobility

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<sup>5</sup> 705.8 million air passengers carried in the EU in 2005.

equipment should be handed over by the PRM and back to him at the door of the aircraft in all those cases where the PRM cannot use their own mobility equipment onboard. Other procedures may be set up when required for safety, security or practical reasons.

The attachment to the 2001 Airline Passenger Service Commitment<sup>6</sup>, signed by the majority of European national carriers (hereinafter referred as to the Airline Commitment) states that signatory airlines must take all reasonable steps to avoid loss or damage to mobility equipment or other disability assistive devices; they will develop their own individual service plans incorporating the Airline Commitment; They will establish staff training programmes and introduce changes to their computer systems to implement the Airline Commitment; and that *"PRM must be enabled to remain independent to the greatest possible extent"*.

The Airport Voluntary Commitment on Air Passenger Service (hereinafter referred to as "the Airport Commitment"), developed by European airports under the auspices of Airports Council International Europe<sup>7</sup> states that *"Staff will be given appropriate training in understanding and meeting the needs of PRMs"*. The aim for the signatories was to develop their own individual service plans on the basis of the Commitment and to incorporate the appropriate provisions of the European Civil Aviation Conference (ECAC) Document 30 (Section 5)<sup>8</sup>, and the International Civil Aviation Organisation<sup>9</sup> (ICAO Annex 9).

Point 5.2.3.2 of ECAC document 30<sup>10</sup> states that *"Member States should promote the distribution of a booklet to airline and airport operator personnel on procedures and facilities to be provided to assist PRM, which would contain all the necessary information concerning the conditions of transport of such persons and the assistance to be provided to them, as well as the steps to be taken by them. They should ensure that airlines include in their manuals all procedures concerning PRM"*. Point 5.5 of the same document says *"Member States should ensure the provision at airports of a ground handling service for PRMs comprising: staff trained and qualified to meet their needs (...) the appropriate equipment to assist them."*

However, those voluntary agreements are not always properly honoured. Firstly, few companies and airports in the EU have actually developed their own plans or customer policies to implement those voluntary agreements. Secondly, those that have done so have adopted such different plans or policies that they result in widely differing levels of protection for PRM. Thirdly, those plans and customer policies are not always published, which makes it very difficult for PRM to know what to expect in advance.

In the context of the Airport Commitment, the majority of airports spontaneously provide assistance to passengers with reduced mobility. However, the procedures whereby the PRM is allowed to get to the door of the aircraft in their own wheelchair, or receive their own wheelchair on arrival, vary from airport to airport

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<sup>6</sup> The Airline Passenger Service Commitment: see article 8 and attachment

<sup>7</sup> ACI Europe (2001), Airport Voluntary Commitment on Air Passenger Service and its Special Protocol to Meet the Needs of People with Reduced Mobility.

<sup>8</sup> ECAC Policy Statement in the Field of Civil Aviation Facilitation (ECAC.CEAC DOC No. 30 (PART I) 10th Edition/December 2006

<sup>9</sup> Standards and Recommended Practices of the International Civil Aviation Organization (Annex 9 of the Chicago Convention).

<sup>10</sup> See footnote 8.



### **3.2. Qualitative objective: to minimise the consequences of an incident.**

#### *3.2.1. The current lack of a common procedure leading to immediate solutions on the spot.*

The extent of damage sustained to mobility equipment can have serious implications not just because of its cost. The issue is also about both the time during which the PRM will be unable to use their equipment, and the long period until compensation is finally paid to them. The difficulties of establishing where to send complaints about damage and appeals for assistance on arrival, in what is often an unfamiliar airport, adds to the time and stress involved in finding even a temporary solution to the practical problems of everyday life when without mobility equipment.

There are currently no international, Community or national legislation on offering immediate assistance to PRM whose mobility equipment has been lost, damaged or destroyed, or on how this immediate assistance should be provided, or what are the essential aspects of such assistance.

The Airline Commitment, does not give details of how related claims for compensation are to be dealt with or what action should be taken on the spot when a wheelchair or other mobility equipment is damaged or lost.

The majority of airports do not have a policy regarding claims for damaged or destroyed wheelchairs or mobility equipment. The provision of compensation and the procedures by which airports provide a replacement vary from airport to airport despite the existence of the Airport Commitment<sup>11</sup>. This may result in gaps and inconsistencies regarding replacement and compensation for PRM whose equipment was destroyed or damaged during the time when the airport is in charge. This certainly results in uncertainty and confusion for PRM, who never know how to act or to whom they should turn in the event of an accident involving their mobility equipment.

#### *3.2.2. The difference between the nature and the limits of the liability of airlines and the liability of airports.*

Traditionally there has been a difference between the nature and the limits of the liability of the airlines and the airports. This difference may cause confusion among stakeholders.

##### **3.2.2.1. Transport of equipment on board an aircraft (airline liability)**

Currently, assistance to PRM is provided by air carriers in the framework of the ground-handling. Air carriers can provide the assistance either directly, through a third company or through the airport when it acts as a service provider for the air carrier. Airline liability is currently limited by a miscellany of international conventions<sup>12</sup>, Community Regulations

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<sup>11</sup> See footnote 6.

<sup>12</sup> Those conventions are: 1 -The Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 10/1929, abbreviated: the Warsaw Convention (1929). 2 -The Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929; signed in the Hague on 28/09/1955, abbreviated: The Hague Protocol (1955). 3 -The Convention for the Unification of Certain Rules for International Carriage by Air, signed in Montreal on 28/05/1999, abbreviated: the Montreal Convention (1999).

implementing those international conventions within the EU<sup>13</sup>, and legal or administrative procedures that other countries impose on EU companies that wish to enter their national markets. Companies may waive their limited liability and agree to compensate the full value of the lost mobility equipment or of its repair.

All these legal texts operate according to the same mechanism: presumption of liability of the carrier in case of checked baggage<sup>14</sup>. This means that the victim will not have to prove that the carrier was at fault in order for the carrier's liability to be incurred. The only thing the PRM needs to prove is the fact that the damage or loss occurred while the equipment was in the care of the carrier (also commonly referred to as the "period of transportation").

With regard to equipment that was checked in at the check-in counter (always by or on behalf of the carrier) and consequently labelled as luggage, it is quite clear that the period of transportation starts at the moment the check-in procedure starts. The same holds true for luggage that is "a delivery at cabin". Although the equipment can be labelled prior to being actually handed over to the carrier (at the gate or at the door of the aircraft), the liability of the carrier should only be triggered at the moment the equipment is physically handed over to the carrier (be it at the boarding gate or at the door of the aircraft).

#### 3.2.2.2. Handling of the equipment at an airport (airport liability).

Airports have assumed the responsibility for providing assistance to PRM since the Regulation fully came into effect on 26 July 2008. Airport liability is, in principle, not limited<sup>15</sup> and it is established according to national liability/tort law. This fact that the applicable legal framework is different as between airports and airlines results in two big differences in the nature of their respective liability: First of all, as a rule, airport liability is based on a proven fault by the airport managing body. Secondly, whereas airport liability is not limited, airline liability definitely is. This means that, in the case of airports, the PRM will have to prove the fault of the wrongdoer before a court if the airport does not accept the claim (not so if the air carrier is responsible), but can recover the full damages (not so if the air carrier is liable, since its liability is normally limited).

#### 3.2.3. *Compensation: amount and procedure.*

For a long time, PRM organisations have been pressing for unlimited liability in cases of incidents regarding mobility equipment both during handling at an airport or during transfer on-board aircraft. This approach is driven by the high cost of modern mobility equipment<sup>16</sup> and the relatively low limit of current liability for baggage under international conventions, and in particular the Montreal Convention<sup>17</sup>, which indeed suggest that the amount of compensation under international conventions may not be adequate in all cases.

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<sup>13</sup> Regulation (EC) N° 889/2002 of the European Parliament and of the Council of 13 May 2002 (JO L 140/02 of 30.05.2002, amending Council Regulation (EC) N° 2027/97 on air carrier liability in the event of accidents.

<sup>14</sup> See Article 1.10 of the REGULATION (EC) N° 889/2002.

<sup>15</sup> Airport liability is not dealt with by any international convention or Community .

<sup>16</sup> for example, electric wheelchairs can cost up to €10000

<sup>17</sup> Up to 1000 SDRs (approximate amount in euros based on the SDR value on 10/03/2008 according to the IMF SDR valuation: €1060).

Most air carriers provide compensation in line with the Montreal Convention. Damages to the mobility equipment above 1000 SDR are at the passenger's own risk, unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires<sup>18</sup>. Special insurance for PRM mobility equipment is proposed by only a minority of companies and for a marginal number of airports. The majority of air carriers and of airports do not offer special insurance coverage for damaged or destroyed wheelchairs or mobility equipment.

According to the study, only a minority of EU companies allow PRM to declare that their mobility equipment has a higher value and that this can then be claimed accordingly. Among those companies, some limit the excess value declaration to a given amount above the level of compensation set by international and EU rules, but below the actual cost of the mobility equipment. Several carriers pointed out that declaring a special value involves “a supplement [that] has to be paid by the passenger”.

All stakeholders agree that the cost of providing for the needs of PRM must not be passed directly to PRM. However, only a few have drawn the logical conclusion and compensate the full cost of the damage or loss of the mobility equipment. The Regulation consolidates the principle that assistance shall be provided without additional charge to PRMs<sup>19</sup>, but its scope does not include the specific amount of compensation, which is left to be dealt with under the “rules of international, Community and national law<sup>20</sup>”.

It is worth noticing that for railway transport, Community legislation imposes on railway companies the obligation of full compensation, if the railway undertaking is liable for the total or partial loss or damage of the mobility equipment<sup>21</sup>.

#### 3.2.4. *The inclusion or exclusion of mobility equipment in the definition of "baggage".*

The point of view of PRM organisations and the majority of the Civil Aviation Authorities responding to the survey linked to the study is that mobility equipment should not be regarded as baggage. The purpose of this exclusion is that mobility equipment should not be subject to the airline limited liability rules laid down by the international conventions. As a consequence, airlines and airports should compensate the full cost of the lost mobility equipment or the price of repairing it.

The US Air Carrier Access Act (ACAA) does not give a definition of mobility equipment and does not expressly exclude it from the definition of baggage; however, it does impose full, objective liability without financial limits in the event of an accident involving mobility equipment on all carriers wishing to cover domestic routes in the United States<sup>22</sup>. The U.S. Department of Transportation intends to amend soon its regulation implementing the US Air Carrier Access Act to make foreign air carriers operating to and from the United States

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<sup>18</sup> in line with what it is stipulated by article 22.2 of the Montreal Convention and article 1.5 of Regulation 889/2002.

<sup>19</sup> See Article 8 of Regulation n° 1107/2006.

<sup>20</sup> See article 12 of Regulation n° 1107/2006.

<sup>21</sup> REGULATION (EC) No 1371/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2007 on rail passengers' rights and obligations, JO 315/14 of 31.12.2007, article 25.

<sup>22</sup> The Air Carrier Access Act (ACAA) prohibits discrimination in air travel against individuals with disabilities. The U.S. Department of Transportation issued a regulation (14 CFR Part 382) implementing the ACAA which explicitly refers to the treatment of mobility aids and devices.

subject to most of the disability-related requirements currently available to U.S. carriers under Part 382, including treatment of mobility aids and assistive devices.

The current Canadian legislation in place concerning PRMs is *Part VII of the Air transport Regulations: Terms and Conditions of Carriage Regulations*<sup>23</sup>. The Canadian Transportation Agency seems to define mobility aids as priority checked items of a personal nature, even though the mobility equipment is not excluded from the baggage definition strictu sensu. By doing so the Canadian Transportation Agency does not allow companies working on their territory to apply the limited liability provisions in respect of destroyed, damaged or lost baggage in international conventions to mobility equipment. There is an understanding that to land in Canada, the carrier must respect the Canadian regulations. This understanding seems not to have been challenged by any foreign carrier.

#### **4. AN ANSWER TO THE CHALLENGES: REGULATION N° 1107/2006.**

##### **4.1. Quantitative objective: to reduce the number of accidents.**

As has been demonstrated in point 3.1 of this Communication, the absence of specific procedures for handling wheelchairs or other mobility equipment and the fact that, training on handling wheelchairs and other mobility equipment is not being provided in all airports or by all airlines, indicate that improvements could easily be made. Regulation 1107/2006 has tackled this shortcoming in the current state of affairs by establishing legal obligations concerning both the necessary procedures and the necessary training for the staff to ensure adequate assistance to PRM<sup>24</sup>.

Such legal obligations include, inter alia, the handling of mobility equipment at the airport or its transportation on board aircraft. Therefore, the quality and the adequacy of the assistance provided by airlines and air carriers should improve significantly. Specific procedures on check-in and training for staff in the handling of mobility equipment will raise awareness among employers and employees alike and help to reduce even further the number and the gravity of accidents, as well as the personal and economic costs.

##### **4.2. Qualitative objective: to minimise the consequences of an incident.**

Point 3.2.1 of this Communication highlights the shortcomings of the current lack of a common procedure which would provide immediate solutions on the spot, in the case of damaged or lost mobility equipment. Regulation 1107/2006 partly covers that legal vacuum. First of all, Annex I of Regulation 1107/2006 specifically includes in the definition of airport assistance the *"temporary replacement of damaged or lost mobility equipment, albeit not necessarily on a like for like basis"*<sup>25</sup>. Secondly, Article 9 establishes a legal obligation for airports to set up *"quality standards for the assistance specified in Annex I and determine resource requirements for meeting them"*.

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<sup>23</sup> The Terms and Conditions of Carriage Regulations issued under the authority of the Canada Transportation Act. Part V of the Act deals with the transportation of persons with disabilities. Section 155 of this Part V explains the provisions for a damaged or lost aid.

<sup>24</sup> See articles 9 and 11 of the Regulation

<sup>25</sup> See Annex I to Regulation n° 1107/2006.

As regards the difference between the nature and the limits of the liability of airlines and airports mentioned in point 3.2.2 of this Communication, article 12 of Regulation 1107/2006 establishes the obligation of compensation *"in accordance with rules of international, Community and national law"*.

The Commission will closely monitor how airports and airlines implement this responsibility in the new context laid down by the Regulation, in order to assess in the future whether the inclusion of a more precise definition of the airport's liability, along the lines of what it is laid down for air carriers in Regulation 889/2002, would be advisable.

With regard to the amount of compensation and the relevant procedure, dealt with in point 3.2.3 of this Communication, the number of incidents regarding mobility equipment is already small and the new protection offered by Regulation 1107/2006 should help to further reduce the number of incidents and their consequences. It therefore seems clear that, if the current rules applying to compensation were to be changed, any economic consequences which those accidents could involve for companies or airports would not have a major economic impact on carriers or airports.

Finally, point 3.2.4 of this Communication deals with the issue of whether mobility equipment should be deemed included in the notion of "baggage". This question is relevant because it is linked to the amount of the compensation, since the limits on liability imposed by international conventions only apply to baggage. Some of the Community's biggest air transport partners have already developed detailed administrative procedures regarding the rights of PRM on this issue. Broadly speaking, those administrative procedures impose objective liability and full compensation on air carriers and sometimes on airports. European air carriers covering transoceanic routes to Canada or domestic flights in the US or Canada do already comply with those rules outside the Community's borders. Some companies have already waived their limited liability through their own customer policy or their internal quality standards.

As these examples show, different options can be envisaged when dealing with the amount of the compensation paid in case of destroyed, damaged or lost mobility equipment in order to approximate it to the real value of such equipment. That goal can be achieved by seeking to interpret or define the notion of baggage so as to exclude mobility equipment, while still ensuring legal coverage of such equipment under the applicable international conventions, or alternatively by removing or reviewing the limits on financial compensation under those international conventions. Finally, airlines and airports might voluntarily waive their current limited liability regarding mobility equipment.

The Commission considers that it is worth addressing this issue at ICAO level with the aim of abolishing or reviewing any financial limit on lost, damaged or destroyed mobility equipment, laid down in the Montreal Convention. The Commission recognises the difficulties linked to re-negotiating an international Convention. However, the fact that some ICAO members have decided to unilaterally amend their rules and impose full compensation for their domestic routes regarding the mobility equipment indicates that such an EU initiative may receive political support.

In the mid-term, the Commission considers that the full application of Regulation 1107/2006 will improve both the monitoring and the enforcement of existing rights of PRM related to compensation and/or replacement of destroyed, damaged or lost mobility equipment, as well as the kind of assistance to be provided on the spot when an incident occurs. Before deciding

whether to put forward a legislative proposal on these issues, the Commission considers it prudent to allow Regulation 1107/2006 to become applicable, before assessing its impact on the likely decreasing of incidents. Whilst taking into account current practices in other countries and having regard to Community legislation governing railway transport, the Commission in the short term encourages airlines to voluntarily waive their limited liability.

## 5. CONCLUSIONS

- (1) The Commission reminds airports and airlines of their obligation to put in place the quality standards and the necessary training and procedures regarding the handling of mobility equipment and the rights of PRM passengers in the case of an accident related to their mobility equipment, following in particular ECAC document n° 30 and its relevant annexes.
- (2) As regards the amount of compensation and in order to bring it closer to the actual value of the equipment, the Commission will propose to the Council that, with the cooperation of the Member States, the Community launch an initiative within ICAO with the aim of clarifying or defining the term 'baggage' so as to exclude mobility equipment or, alternatively, of abolishing or reviewing any liability limits on lost, damaged or destroyed mobility equipment, in the framework of the Montreal Convention.
- (3) The Commission encourages airlines in the UE to voluntarily waive their current liability limits in order to bring the amount of compensation closer to the actual value of the mobility equipment.
- (4) The Commission will monitor in 2008-2009 the compliance of Member States, air carriers and airports with Community law, including Regulation 1107/2006.
- (5) The Commission encourages the stakeholders to carry out a better and more systematic collection of data concerning claims related to mobility equipment.
- (6) The Commission will include in the Report foreseen in Article 17 of Regulation 1107/2006 a chapter on the rights of PRM whose mobility equipment has been lost, damaged or destroyed. The Commission will then assess the actual developments following the entry into force of Regulation 1107/2006 and the progress of the initiative within ICAO mentioned in point (2) of these conclusions. If the assessment shows that necessary improvement has not been achieved, the Commissions will put forward an appropriate legislative proposal to enhance the existing rights under Community law of air passengers whose wheelchairs or other mobility equipment are destroyed, damaged or lost during handling at an airport or during transport on-board aircraft, including the revision of the current threshold for compensation and the need to better define airport liability.

**EVALUATION OF REGULATION  
1107/2006**

**Final report**

**Main report and Appendices A-B**

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## **APPENDICES**

**A AIR CARRIERS POLICIES ON CARRIAGE OF PRMS**

**B SERVICES PROVIDED BY AIR CARRIERS**

**C CASE STUDIES (Provided as separate document)**



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## EXECUTIVE SUMMARY

### Background

1. Regulation 1107/2006, which took full effect in July 2008, introduced new protections for people with reduced mobility when travelling by air. Key provisions included:
  - The right, subject to certain derogations, not to be refused embarkation or reservation.
  - The right to be provided with assistance at airports, at no additional cost, in order to allow access to the flight.
  - Responsibility for provision of assistance to PRMs at airports is placed with the airport management company; previously, these services were usually contracted by airlines.
  - The costs of providing assistance at airports can be recovered from airlines through transparent and cost-reflective charges levied for all passengers.
2. The Regulation also required Member States to introduce sanctions into national law for non-compliance with the Regulation, and create National Enforcement Bodies (NEBs) responsible for enforcement of the Regulation. The Regulation applies to all flights from and within the European Union (EU), as well as to flights to the EU operated by EU-registered carriers.
3. The Regulation requires the Commission to report to the Council and the Parliament on its operation and results, and if appropriate to bring forward new legislative proposals. In order to inform this report, the Commission has asked Steer Davies Gleave to undertake an independent review of the Regulation.

### Factual conclusions

4. Our review has gathered evidence on the implementation of the Regulation through in-depth discussions and consultation with stakeholders, supplemented by desk research. Stakeholders included airports, airlines, NEBs and PRM organisations. The evidence gathered shows that most of the airports and airlines examined for the study have implemented the requirements of the Regulation. However, there is significant variation in the quality of service provided by airports, and in the policies of airlines on carriage of PRMs. We also identified relatively little activity by NEBs to monitor the Regulation's implementation, or to promote awareness of the rights it grants.
5. Conclusions regarding each of the groups of stakeholders are set out below.

#### *Airlines*

6. The key issue we identified in the study is the lack of consistency in policies on carriage, and the significant variation between carriers. For example, Ryanair permits a maximum of 4 PRMs who require assistance on any flight, and Brussels Airlines permits at most 2 on most aircraft; in contrast, British Airways does not impose any restrictions. There is similar variation in policies on whether PRMs have to be accompanied. Approval of policies is the responsibility of national safety regulators, however typically airlines propose policies which are then approved with little or no challenge by the licensing authority (often the same organisation as the NEB).

Although the rationale for these restrictions is safety, there is limited evidence to justify them. Limitations on carriage of PRMs are specifically prohibited by the equivalent US regulation on carriage of PRMs<sup>1</sup>.

7. All airlines in the study sample had published some information on carriage of PRMs, however 13 of the 21 did not publish on their websites all of the restrictions on carriage of PRMs that they imposed. Most stated in their Conditions of Carriage that PRMs would not be refused, but this was usually conditional on pre-notification; this may be an infringement of the Regulation.
8. The Regulation encourages PRMs to pre-notify their requirements for assistance to airlines, which are then required to pass on this information to the relevant airports. In theory this should both ensure that PRMs promptly receive the services they need, and allow airports to minimise resourcing costs through efficient rostering. However, our research found that levels of pre-notification too low to allow this: at 11 of 16 airports for which we were provided with information, pre-notification rates were lower than 60%.
9. PRM representative organisations informed us that loss or damage to mobility equipment could still be a significant issue. The Regulation requires airports to handle mobility equipment but does not introduce any new provisions which reduce the risk of loss or damage, or increase the amount of compensation payable, which is restricted by the limits defined in the Montreal Convention.

#### *Airports*

10. All airports in the study sample had implemented the Regulation, although we were informed that the Regulation had not been implemented at all at regional airports in Greece. Most had subcontracted the service through a competitive tender; several informed us that they were considering or were in the process of retendering the service, generally because service quality in the initial period had not been sufficient.
11. The frequency with which the PRM services are used varies considerably between airports: among the airports for which we have been able to obtain data use of services varies by a factor of 15, although in most cases between 0.2% and 0.7% of passengers requested assistance.
12. Most airports in the case study States had published quality standards, typically following the format of the minimum recommended standards in ECAC Document 30. Most undertook some form of internal monitoring of performance, however few used external checks of service such as 'mystery shoppers'. Most stakeholders informed us that airports were providing an adequate level of service quality.
13. Variability in airport service quality (including safety) was reported by PRM organisations and some airlines, but this is subjective and hard to quantify. Airports reported variation in equipment and facilities provided, and we observed significant

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<sup>1</sup> US Department of Transport 14 CFR part 382.



variation in the level of training given to personnel providing services to PRMs. In the sample examined, training varied between 3 and 14 days, ostensibly to provide the same services.

14. Charges levied by airports varied considerably (between €0.16 and €0.90 per departing passenger), and we were unable to identify any apparent link to frequency of service use, price differentials between States or service quality. Airports in Spain and mainland Portugal levied uniform charges across all airports managed by the national airport company; this may be an infringement of the Regulation. Many airlines believed consultation by airports regarding charges was poor; Cyprus, Spain and Portugal were identified as particular issues.

#### *NEBs*

15. All States except Slovenia have designated NEBs; in most cases the NEB is the CAA, and is the same organisation as the NEB for Regulation 261/2004. All States except Poland and Sweden have introduced penalties into national law for infringements of the Regulation, although several have not introduced sanctions for all possible infringements. The maximum sanction which can be imposed varies significantly, and in some States may not be at a high enough level to be dissuasive; for example, in Estonia, Lithuania and Romania the maximum sanction is lower than €1,000.
16. Most States have received very few complaints to date; in total 1,110 received to date, compared to a total of 3.2m passengers assisted in 2009 across 21 case study airports. 80% of all complaints regarding infringements of the Regulation had been submitted to the UK NEBs; this may be the result of national law in the UK which permits financial compensation to be claimed under the Regulation. No sanctions have yet been imposed, although the NEBs for France, Portugal and Spain have opened proceedings to impose fines. In a number of States we identified significant practical difficulties in imposing and collecting sanctions, typically in relation to imposing fines on carriers registered in other States. These issues are in most cases equivalent to those that apply in relation to Regulation 261/2004<sup>2</sup>.
17. Although most case study NEBs had taken some action to monitor the services provided under the Regulation beyond the monitoring of complaints (14 out of 16 had undertaken at least one inspection of airports), in most cases this was limited. Most inspections focussed on checks of systems and procedures, and did not assess the experience of passengers using the services. Monitoring of PRM charges was also poor: NEBs in 9 of the 16 States had undertaken no direct monitoring of airport charges.
18. Few NEBs had made significant efforts to promote awareness of the Regulation by passengers, as required by the Regulation; only two informed us of national public awareness campaigns they had undertaken. This lack of promotion undermines the claims of some NEBs that reviewing complaints is sufficient to monitor the

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<sup>2</sup> See Evaluation of Regulation 261/2004, February 2010:  
[http://ec.europa.eu/transport/passengers/studies/doc/2010\\_02\\_evaluation\\_of\\_regulation\\_2612004.pdf](http://ec.europa.eu/transport/passengers/studies/doc/2010_02_evaluation_of_regulation_2612004.pdf).

implementation of the Regulation. Awareness of the NEBs' performance appeared in general to be poor: most stakeholders contacted for the study held no opinion on the effectiveness of enforcement by NEBs, and many informed us that this was because they had had no interaction with them.

*Other issues*

19. A particular issue raised by stakeholders was the conflict between the Regulation and the equivalent US legislation (14 CFR Part 382), which applies to European carriers operating flights to/from the US, and other flights where these are operated as codeshares with US carriers. The most significant conflict is the allocation of responsibilities for assistance: the Regulation requires airports to arrange the provision of services to PRMs, while under the US legislation it is the airlines that have this responsibility. The US legislation also prohibits airlines from imposing numerical limits on PRMs, and from requiring pre-notification from PRMs. This has caused issues for carriers who are required to comply with pieces of legislation that conflict, although the US legislation does allow carriers to apply for a waiver where there is a conflict of laws.
20. A number of other issues regarding specific Articles are discussed in the section below on recommended changes to the Regulation.

**Recommendations**

21. We have made a number of recommendations, addressing:
  - improvements to the implementation of the Regulation which would not require any legislative changes; and
  - further recommendations which could only be implemented through amendment to the text of the Regulation.

*Measures to improve the operation of the Regulation*

22. Several airlines argued in their submissions to the study that they should be permitted to provide or contract their own PRM assistance services, as they could provide this more cost-efficiently than airports. We believe that this could create an incentive to minimise the service provided and hence would risk a reduction in service quality. Whilst there were initially significant issues with the quality of PRM service provision at certain airports, most stakeholders believed that these issues had now been addressed, and our most important recommendation is therefore that allocation of responsibility for PRM services to airports should not be amended.
23. Many of the concerns raised regarding airports relate to inconsistency of application of the Regulation. To address this, we suggest that the Commission should:
  - improve provision of information regarding accessibility of airports, through a centralised website listing factors such as maximum likely walking distance within an airport, means used for access to aircraft, and any facilities available for PRMs;
  - develop and share best practice on contracting of PRM service providers, both to improve the content and structure of the contracts used and therefore reduce

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- the likelihood of unnecessary retendering, and to recommend methods of cooperation; and
- develop and share best practice advice on training of staff providing PRM services, so that a more consistent standard of service is provided.
24. Similarly, many of the concerns raised regarding airlines also relate to inconsistency of application of the Regulation, in particular to inconsistent policies on carriage of PRMs. We therefore suggest that the Commission should:
- work with EASA to determine safe policies on carriage of PRMs, in particular to address the wide and unjustifiable variation in airline policies on carriage of PRMs (in particular on numerical limits and circumstances under which PRMs are required to be accompanied); and
  - ensure that the airlines we have identified as not publishing clear policies on carriage of PRMs do so, through actions by the relevant NEBs (which could also review airlines outside the study sample for the same reason).
25. Given the current low rates of rates pre-notification, we suggest that the Commission monitor this issue, through encouraging NEBs to collect rates of pre-notification. In future, the Commission should assess the situation and consider either eliminating the requirement for pre-notification or alternatively retaining it and providing passengers and carriers with more incentive to pre-notify.
26. An additional problem reported with pre-notification is where PRMs had pre-notified their requirements for assistance, but then found that this information had not been passed on to airport or airline staff. To address this, and to provide PRMs with evidence that they can use when making a complaint, we recommend that the Commission encourage airlines to provide PRMs with a receipt for pre-notification.
27. The greatest problem identified by the study regarding NEBs was the lack of proactive measures taken to monitor or enforce the Regulation. In most cases this has not had significant detrimental effect, as most airports and airlines have implemented the provisions of the Regulation, but could become an issue if the situation changes in the future. We suggest that the Commission should encourage all Member States to:
- designate NEBs and introduce penalties for all infringements of the Regulation;
  - take measures to inform PRMs of their rights under the Regulation and of the possibility of complaint to the relevant NEB, for example through national promotional campaigns; and
  - pro-actively monitor the application of the Regulation (rather than relying on complaints), for example through increased interaction with PRM organisations, and through direct monitoring of quality of service provided.
28. We also recommend that the Commission should, in consultation with stakeholders, develop a detailed good practice guide regarding implementation of the Regulation. This could include sections regarding recommendations on safety limits, the format and content of policies on carriage, and consultation. It could also specify recommended minimum quality standards covering qualitative aspects of the services provided. Publishing voluntary policies such as these would allow potential future amendments to the Regulation to be tested in practice before adoption.
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*Changes to the Regulation*

29. There are some areas where improvements can only be effected through changes to the text of the Regulation. These include minor amendments which we recommend should be implemented as soon as possible, and more significant amendments to be considered in the longer term.
30. The minor amendments we would suggest are:
- Extend Article 11 to require airlines to ensure that the personnel of their ground handling companies are trained to handle mobility equipment.
  - Amend Article 8 to make specific PRM charges obligatory for airports wishing to recover costs from users, and therefore ensure costs are transparent, reasonable and cost-related.
  - Amend Article 8 to make clear that that PRM charges are airport-specific and cannot be set at a network level.
  - Amend Article 14 to require that NEBs must be independent of any bodies responsible for providing services under the Regulation (at present this is not the case in Greece).
  - Amend Article 14 to clarify that NEBs are responsible for flights departing from (rather than both departing from and arriving at) airports in their territory, in addition to flights by Community carriers arriving at airports within the State's territory but departing from a third country.
  - Amend Recital 17 to be consistent with Article 14, so that both state that complaints regarding the Regulation should be addressed to the NEB of the State where the flight departed, rather than of the State which issued the operating license to the carrier.
31. These changes would improve the functioning of the Regulation in its current form, without making significant changes to its overall approach.
32. A key issue with the Regulation is its lack of detail when compared to equivalent legislation (in particular, the equivalent US regulations on carriage of PRMs); in our view, as a result of this, it leaves too much scope for interpretation and variation in service provision. We suggest that, to ensure greater consistency, and that PRMs' rights are adequately respected, the Commission should consider making the text more detailed and specific about the requirements for airlines and airports. Some key areas in which we suggest that changes could be made are as follows:
- Specify the circumstances under which carriage of PRMs may be restricted (including any numerical limits) or where PRMs may be required to be accompanied<sup>3</sup>.
  - Clarify the definitions of 'PRM', 'mobility equipment' and 'cooperation'.

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<sup>3</sup> This could be implemented either through amendment to this Regulation or through amendment to Commission Regulation (EC) 859/2008

- Clarify whether airlines may levy additional charges for supply of medical oxygen and for multiple seats where one seat is insufficient for the passenger (for example, in the case of obese or injured passengers).
  - Extend the Regulation to include a provision requiring airports to publish information on the rights of PRMs (including the right to complain) at accessible points within the airport.
33. It would be necessary to consult with stakeholders about these changes and to undertake an impact assessment, and therefore these changes could not be introduced immediately.
34. We also suggest that the Commission and the Member States should work with other contracting States to amend the Montreal Convention so as to exclude mobility equipment from the definition of baggage. This would address the problem faced by users of technologically advanced wheelchairs, the values of which often substantially exceed the maximum compensation allowable under the Montreal Convention (1,131 SDRs, or €1,370). Although most airlines we contacted for the study informed us that they waived the Montreal limits in this type of situation, several PRM organisations informed us of cases where they did not, and even in the case that an airline voluntarily waives the limit the PRM is in a position of uncertainty.

## 1. INTRODUCTION

### Background

- 1.1 Approximately 10% of the EU population has some type of disability<sup>4</sup>. Equal access to air transport services is necessary to enable full and equal participation in modern society. In order to ensure equal treatment as far as possible, Regulation 1107/2006 introduced new protections for people with reduced mobility when travelling by air, including the right, subject to certain derogations, not to be refused embarkation or reservation, and the right to be provided with assistance at airports, at no additional cost, in order to allow access to the flight. Before the introduction of the Regulation, there had been some well-publicised examples of carriers charging passengers for the provision of assistance that was essential in order to travel<sup>5</sup>.
- 1.2 The Regulation creates obligations towards disabled persons and persons of reduced mobility (PRMs) for air carriers and their agents, tour operators, airport management companies, and Member States:
- Airlines are prohibited from refusing carriage (except where necessary to comply with safety regulations or where it is physically impossible) and have to provide certain types of assistance on board the aircraft.
  - Airlines, their agents and tour operators have to ensure that they can accept notification of the need for assistance at all points of sale, and transmit this information to the airport and the operating air carrier.
  - Airport management companies have to provide assistance at the airport, and develop and publish quality standards for this assistance. The costs of providing this assistance can be recovered through transparent and cost-reflective charges levied for all passengers.
  - Member States are required to introduce sanctions into national law for non-compliance with the Regulation, create bodies responsible for enforcement of the Regulation, and promote awareness of the rights created by the Regulation and how to complain about infringements.

### The need for this study

- 1.3 Article 17 of the Regulation requires the Commission, by 2010, to report to the Parliament and the Council on the operation and results of the Regulation. In order to inform this report, the Commission requires an independent evaluation of the operation of the Regulation.

### This report

- 1.4 This report is the Final Report for the study. It sets out the work undertaken over the five month duration of the study, and draws conclusions on the current functioning of the Regulation. The recommendations set out in this report were discussed at the final

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<sup>4</sup> ECAC document 30, section 5, annex N

<sup>5</sup> For example, on January 2004 a UK court ruled that Ryanair had acted unlawfully by charging a passenger Bob Ross £18 in each direction for wheelchair hire at London Stansted airport

meeting with the Commission.

### **Structure of this document**

- 1.5 The rest of this report is structured as follows:
- Section 2 summarises the methodology used for this study;
  - Section 3 sets out how the Regulation is being applied by airports;
  - Section 4 sets out how the Regulation is being applied by airlines;
  - Section 5 describes enforcement and complaint handling by NEBs;
  - Section 6 summarises stakeholder views on other policy issues relating to the Regulation;
  - Section 7 summarises the factual conclusions; and
  - Section 8 summarises the recommendations.
- 1.6 Further detailed information on the policies of airlines regarding carriage of PRMs is provided in Appendices A and B.
- 1.7 Case studies have been undertaken of complaint handling and enforcement in 16 Member States. These are provided in Appendix C, which, due to its size, is provided as a separate document.

## 2. RESEARCH METHODOLOGY

### Introduction

2.1 This section provides a summary of the research methodology used. It describes:

- the overall approach used;
- the selection of case studies;
- the scope of the desk research that has been undertaken; and
- the stakeholders that have participated in the study, and how they have provided inputs.

### Overview of our approach

2.2 The Commission requested us to collect evidence to address a number of questions, most of which can be categorised as either relating to:

- enforcement and complaint handling undertaken by National Enforcement Bodies (NEBs); and
- application of the Regulation by air carriers, their agents, tour operators and airports.

2.3 In order to address these questions, we developed a research methodology divided into two parts:

- case study research; and
- cross-EU interviews and analysis.

2.4 The rationale for this division is that enforcement and complaint procedures are specific to Member States and are therefore best evaluated through a case study approach. It was agreed to undertake case studies of complaint handling and enforcement in 16 Member States as part of this study. The case studies also describe state-specific aspects of airline and airport implementation of the Regulation.

2.5 Key airlines cover the whole of the EU rather than restricting operations primarily to one State (for example, the Irish-registered carrier Ryanair operates domestic flights in the UK, France, Spain and Italy). In addition, the issues faced by airports in implementing the Regulation are, in most cases, not State-specific. Questions relating to the application of the Regulation by airlines and airports have therefore been addressed through a cross-EU approach. Information from both elements of the research has been used for the conclusions, and will be used in the development of recommendations.

2.6 Both the case study and the cross-EU research use a mixture of stakeholder interviews and desk research. The desk research has been useful to supplement the information provided by stakeholders, particularly regarding the charges levied by airports for services to PRMs.



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## Selection of case study States

2.7 The 16 case study states were selected in agreement with the Commission, with reference to the following criteria:

- The Member States with the largest aviation markets (measured by passenger numbers these are UK, Spain, Germany, Italy, France, Greece, Netherlands and Ireland);
- At least some of the Member States that, at the time the study commenced, had not introduced sanctions into national law;
- Member States in which the structure of the NEB is unusual (for example, in the UK, the Equality and Human Rights Commission is responsible for complaint handling);
- Member States in which airlines are based with which we identified significant issues of non-compliance with Regulation 1107/2006 in our 2008 review of Conditions of Carriage (carriers with some particularly non-compliant terms were based in Denmark and Italy); and
- States covering a wide geographical scope and variation in sizes.

2.8 The case study states are:

- Belgium;
- Denmark;
- France;
- Germany;
- Greece;
- Hungary;
- Ireland;
- Italy;
- Latvia;
- Netherlands;
- Poland;
- Portugal;
- Romania;
- Spain;
- Sweden; and
- United Kingdom.

2.9 In order to present a thorough analysis of the operation of the Regulation across the EU we conducted a more limited programme of data collection and stakeholder interviews in the remaining 11 Member States.

## Stakeholder selection and inputs

2.10 The stakeholders important for the study were:

- NEBs;
- Airlines;
- Airport managing bodies; and
- Organisations representing disabled people, and people with reduced mobility (PRM organisations).

2.11 In addition to these, we spoke to cross-EU bodies which represented these organisations at a European level.

### *National Enforcement Bodies*

2.12 We interviewed (face-to-face or by telephone) the NEB(s) notified to the Commission in every case study State, and obtained written responses from the NEBs of all other States.

2.13 We obtained the following information from each NEB:

- The legal basis for complaint handling and enforcement in the Member State;
- The degree of compliance by airlines;
- The degree of compliance by airports;
- Statistics on the number of complaints and the process for handling them;
- Issues relating to enforcement; and
- Any other issues.

2.14 Non-case study states were provided with a shorter question list which, while addressing the areas listed above, does so at a less detailed level.

2.15 Engagement of the NEBs was obtained through a combination of written responses, meetings and telephone interviews, depending on whether the State concerned is one of the 16 case study states. The approach adopted for case study NEB is listed in Table 2.1, together with the final status of contact as we drafted this Report.

**TABLE 2.1 STAKEHOLDER INTERVIEWS: CASE STUDY NEBS**

Member State	Organisation	Form of input
Belgium	SPF Mobilité et Transport	Written response and face-to-face interview
Denmark	CAA-Denmark (Støtens Luftfartsvesen)	Face-to-face interview
France	DGAC Sous-direction du tourisme	Face-to-face interview
Germany	Luftfahrt-Bundesamt (LBA) BM für Verkehr, Bau und Stadtentw	Face-to-face interview
Greece	CAA, Air Transport Economics Section CAA, Airports Division	Written response and telephone interview

Member State	Organisation	Form of input
Hungary	Nemzeti Közlekedési Hatóság (Directorate for Aviation) Egyenlő Bánásmód Hatóság (Equal Treatment Authority)	Face-to-face interview
Ireland	Commission for Aviation Regulation	Face-to-face interview
Italy	ENAC - Direzione Centrale Operazioni	Face-to-face interview
Latvia	Civil Aviation Agency	Written response and telephone interview
Netherlands	Inspectie Verkeer en Waterstaat	Written response and face-to-face interview
Poland	Civil Aviation Office	Face-to-face interview
Portugal	Instituto Nacional de Aviação Civil	Face-to-face interview
Romania	Autoritatea Nationala Pentru Persoanele cu Handicap Romanian Civil Aeronautical Authority	Face-to-face interview
Spain	Servicio de inspección y relaciones con usuarios	Written response and face-to-face interview
Sweden	Swedish Civil Aviation Authority	Written response and telephone interview
United Kingdom	Equality and Human Rights Commission (England) Civil Aviation Authority	Face-to-face interview

2.16 We obtained responses from all NEBs in the non-case study States, as shown in Table 2.2. We requested written responses from all non-case study NEBs and these were followed up with telephone interviews where necessary for clarification.

**TABLE 2.2 STAKEHOLDER INTERVIEWS: NON-CASE STUDY NEBS**

Member State	Organisation
Austria	Civil Aviation Authority
Bulgaria	Civil Aviation Administration Ministry of Transport, Information Technologies and Communications
Cyprus	Department of Civil Aviation
Czech Republic	Civil Aviation Authority
Estonia	Consumer Protection Body
Finland	Civil Aviation Authority
Lithuania	Civil Aviation Administration
Luxembourg	Direction de l'Aviation Civile
Malta	Department of Civil Aviation
Slovakia	Slovak Trade Inspection Ministry of Transport, Posts and Telecommunications, Directorate General of Civil Aviation and Water Transport, Air Transport Department
Slovenia	Ministry of Transport, Directorate of Civil Aviation

## Airlines

2.17 20 airlines have been selected to include a sample with variation across several criteria. These are:

- One key airline with major operations in each case study State;
- At a minimum to include the top 10 European airlines measured in terms of passenger numbers;
- Also to include a mix of different airline types (legacy, low cost and charter), States of registration, and sizes; and
- At least 2 non-EU airlines.

2.18 The airlines selected, and their relevance to each of the criteria, is shown in Table 2.3. We were originally planning to consider Air France-KLM as one airline, but various differences (for example, in its Conditions of Carriage) have meant that it is more logical to consider it as two airlines, meaning there are 11 airlines under the ‘Top 10 passenger numbers’ criterion. We have consequently excluded the 11<sup>th</sup> (Austrian) from the interview sample, although the airline still forms part of the desk research.

**TABLE 2.3 AIRLINE SELECTION CRITERIA**

Airline	Case study State coverage		Airline type				Top 10 passenger numbers
	Selected for case study state coverage	Case study states	Non-EU	Legacy	Low cost	Charter	
Aegean Airlines	✓	Greece			✓		
Air Berlin					✓		✓
Air France	✓	France / Netherlands		✓			✓
AirBaltic	✓	Latvia			✓		
Alitalia	✓	Italy		✓			✓
British Airways	✓	UK		✓			✓
Brussels Airlines	✓	Belgium		✓			
Delta			✓	✓			
EasyJet					✓		✓
Emirates			✓	✓			
Iberia	✓	Spain		✓			✓
KLM	✓	Netherlands		✓			✓
Lufthansa	✓	Germany		✓			✓
Ryanair	✓	Ireland			✓		✓
SAS	✓	Denmark / Sweden		✓			✓
TAP Portugal	✓	Portugal		✓			
TAROM	✓	Romania		✓			
Thomas Cook						✓	
TUI (Thomsonfly)						✓	

Wizzair	✓	Hungary / Poland	✓
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2.19 We approached all 21 case study airlines requesting either a face-to-face or telephone interview. The methods they chose to respond are shown in Table 2.4 below.

**TABLE 2.4 STAKEHOLDER INTERVIEWS: AIRLINES**

Airline	Form of input
Aegean Airlines	Written response and telephone interview
Air Berlin	Input through IACA only
Air France	Telephone interview
AirBaltic	Did not respond
Alitalia	Written response
British Airways	Declined to participate
Brussels Airlines	Did not respond
Delta	Written response
easyJet	Face-to-face interview
Emirates	Did not respond
Iberia	Telephone interview
KLM	Face-to-face interview
Lufthansa	Declined to participate
Ryanair	Face-to-face interview
SAS	Written response
TAP Portugal	Face-to-face interview
TAROM	Face-to-face interview
Thomas Cook	Face-to-face interview
TUI (Thomsonfly)	Input through IACA only
Wizzair	Did not respond

2.20 We also consulted the five main associations representing airlines operating airlines within the EU, listed in Table 2.5 below.

**TABLE 2.5 STAKEHOLDER INTERVIEWS: AIRLINE ASSOCIATIONS**

Organisation	Full Name	Type of airline represented	Form of input
IATA	International Air Transport Association	Legacy	Written response and telephone interview
ELFAA	European Low Fares Airline Association	European low cost	Face-to-face interview
AEA	Association of European Airlines	European legacy	Face-to-face interview
ERA	European Regions Airlines Association	European regional	Face-to-face interview
IACA	International Air Carrier Association	Leisure / charter	Face-to-face interview

### Airports

2.21 The 21 case study airports were selected according to the following criteria:

- All of the top 10 European airports in terms of passenger numbers;
- The main airport in each of the 16 case study Member States; and
- A sample of smaller airports.

2.22 The airports selected under each criterion, and the methods they chose to respond, are shown in Table 2.6. Note that three of the top 10 airports were excluded from the case study consultation as they were operated by the same organisations as others in the top 10. These comprise Paris Orly, London Gatwick, Zaragoza and Barcelona airports which, at the time the study was planned, were managed by the same companies as Paris CDG, Heathrow and Madrid Barajas respectively<sup>6</sup>. These airports do still form part of the desk research, however.

**TABLE 2.6 AIRPORT SELECTION CRITERIA**

Airport	State	Main airport in case study State	Top 10 passenger numbers	Smaller airport	Form of input
Amsterdam	Netherlands	✓	✓		Face-to-face interview
Athens	Greece	✓			Written response and telephone interview
Bologna	Italy			✓	Face-to-face interview
Brussels	Belgium	✓			Face-to-face interview
Bucharest Otopeni	Romania	✓			Face-to-face interview
Budapest	Hungary	✓			Face-to-face interview
Brussels Charleroi	Belgium			✓	Face-to-face interview
Copenhagen	Denmark	✓			Written response and telephone interview
Dublin	Ireland	✓			Face-to-face interview
Frankfurt Main	Germany	✓	✓		Face-to-face interview
Lisbon	Portugal	✓			Face-to-face interview
London Heathrow	United Kingdom	✓	✓		Face-to-face interview
London Luton	United Kingdom			✓	Face-to-face interview
Madrid Barajas	Spain	✓	✓		Face-to-face interview*
Munich	Germany		✓		Not able to obtain a response
Paris Charles De Gaulle	France	✓	✓		Face-to-face interview
Riga	Latvia	✓			Written response and telephone interview
Roma Fiumicino	Italy	✓	✓		Written response and telephone interview

<sup>6</sup> Gatwick ceased to be managed by BAA, the operator of Heathrow, on 2 December 2009

Stockholm	Sweden	✓		Written response and telephone interview
Warsaw	Poland	✓		Face-to-face interview
Zaragoza	Spain		✓	Face-to-face interview*

\* Interview with AENA covered all State airports in Spain

### *Selection of PRM organisations and other passenger groups*

2.23 In each case study State we selected a PRM organisation representing all disabilities and impairments at a national level. We initially approached the national council organisations that are members of the European Disability Forum (EDF); however in a small number of cases we were unable to obtain a response from this organisation and had to contact an alternative organisation in their place. The table also includes four cross-EU PRM organisations.

**TABLE 2.7 PRM AND PASSENGER ORGANISATIONS BY CASE STUDY STATE**

State	Organisation	Form of input
Belgium	Belgium Disability Forum	Telephone interview
Denmark	Danske Handicaporganisationer (DH; Disabled Peoples Organisations Denmark)	Face-to-face interview
France	Conseil Français des personnes Handicapées pour les questions Européennes (CFHE ; French Council of Disabled People for European Affairs)	Telephone interview
Germany	Deutscher Behinderten Rat (DBR; German Disability Council)	Unable to obtain a response
Greece	National Confederation of Disabled People (ESAEA)	Written response and telephone interview
Hungary	National Council of Federations of People with Disabilities (FESZT)	Written response and telephone interview
Ireland	People with Disabilities in Ireland (PWDI)	Face-to-face interview
Italy	Forum Italiano sulla Disabilità (FID; Italian Disability Forum)	Face-to-face interview
Latvia	Latvian Umbrella Body for Disability Organisations (SUSTENTO)	Written response and telephone interview
Netherlands	CG-Raad*	Face-to-face interview
Poland	Polskie Forum Osob Niepełnosprawnych (PFON; Polish Disability Forum)	Face-to-face interview
Portugal	Confederação Nacional dos Organismos de Deficientes (CNOD; National Confederation of Organisations of Disabled People)	Unable to obtain a response
Romania	National Disability Council (CNDR)	Face-to-face interview
Spain	Fundación ONCE*, on request of Comité Español de Representantes de Personas con Discapacidad (CERMI)	Face-to-face interview
Sweden	Swedish Disability Federation (HSO)	Written response and telephone interview
United Kingdom	UK Coalition for Disability Rights in Europe (UKCDRE)	Telephone interview

EU	European Disability Forum	Face-to-face interview
EU	European Blind Union	Face-to-face interview
EU	European Union of the Deaf	Written response and telephone interview
EU	Inclusion Europe	Declined to respond

\* Not a national council organisation member of EDF

*Selection of other organisations*

2.24 In addition to the stakeholders listed above, we contacted a number of cross-EU organisations. These comprised:

- **Passenger organisations:** the European Passenger Federation;
- **Travel agent associations:** ECTAA;
- **Airport association:** ACI Europe; and
- **Advisory bodies:** EASA, ECAC.

2.25 At the level of Member States, there were stakeholders which did not correspond to the categories described so far, but which we believed would provide useful information. These organisations were as follows:

- **Wings on Wheels (UK):** This organisation provides package holidays tailored to the needs of disabled people.
- **Thomas Cook, TUI:** Elements of the Regulation apply to travel agents as well as to airlines.
- **Air Transport Users Council (UK):** Prior to the introduction of the Regulation, this organisation had handled complaints from disabled passengers regarding travel by air, and as a result continued to receive some complaints after the Regulation came into force. In addition, the AUC is the only government-funded body in the EU specifically to represent the interests of air passengers

2.26 The form of input adopted by each stakeholder is shown in Table 2.8.

**TABLE 2.8 STAKEHOLDER INTERVIEWS: OTHER ORGANISATIONS**

State	Association name	Form of input
EU	ECTAA	Written response
EU	EPF	Did not respond
EU	ACI Europe	Face-to-face interview
EU	EASA	Written information provided
EU	ECAC	Face-to-face interview
United Kingdom	Wings on Wheels	Unable to obtain a response
Germany	Thomas Cook	Face-to-face interview
United Kingdom	TUI	Through IACA only
United Kingdom	Air Transport Users Council	Face-to-face interview



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## Desk research

- 2.27 The main objectives of the desk research were:
- To evaluate the extent to which air carriers demonstrate compliance with the Regulation through published information, such as Conditions of Carriage and policies on carriage of PRMs; and
  - The extent to which airports have complied with the requirement to develop and publish PRM quality standards, as specified in Article 9 of the Regulation, and the content of these standards.
- 2.28 Conclusions emerging from the desk research were supplemented by the information collected through stakeholder interviews.

### *Airlines*

- 2.29 The research methodology employed for this part of the study was based on a review of the websites of the 21 case study airlines listed above. Although the focus was on the English language version of the websites, versions in other languages were checked to check whether additional information was provided.
- 2.30 Three key sources of information were surveyed from each website:
- Conditions of Carriage, with particular regard to the conditions set out for the carriage of PRMs;
  - Other policies on the carriage of PRMs: a more detailed search across the airline's website for any policies and relevant information on PRM travel; and
  - Options to notify carriers of assistance requirements.

### *Airports*

- 2.31 Again, the research conducted for this part of the study was internet-based. The websites of each of the case study airports was surveyed against the following criteria:
- whether the airport publishes quality standards;
  - how easy these are to find;
  - the content of the standards; and
  - whether the airport publishes details of its performance against the standards.

### *Review of relevant legislation and other documentation*

- 2.32 We also reviewed airline and airport policies with reference to other applicable legislation and guidance. The only other EU-wide legislation which relates to the carriage of PRMs by air is EU-OPS 1 (Commission Regulation 859/2008). In addition, many EU carriers which operate flights to the US are also covered by the corresponding US regulation (14 CFR Part 382, Nondiscrimination on the Basis of Disability in Air Travel); this is significantly different from Regulation 1107/2006 and this has an impact on the operating procedures of some carriers.

2.33 Other current guidance includes:

- ECAC Document 30;
- JAR-OPS 1 Section 1;
- JAA Temporary Guidance Leaflet (TGL) No. 44; and
- UK Department for Transport (DfT), *Access to Air Travel for Disabled Persons and Persons with Reduced Mobility – Code of Practice*.

### 3. APPLICATION OF THE REGULATION BY AIRPORTS

#### Introduction

- 3.1 One of the most fundamental changes introduced by the Regulation was the change in responsibility for provision of assistance to PRMs: where previously these services were provided by airlines, the Regulation requires airports to provide them, and permits them to pass on the associated costs to users, provided this is done in a fair and transparent manner. The Regulation also requires airports handling over 150,000 passenger movements per year to develop and publish quality standards for assistance. The detailed requirements are set out in the following section.
- 3.2 In order to assess how airports are implementing these requirements, we met or sought responses from a sample of airports selected under the criteria set out above (see 2.21). The information gathered was supplemented by tours of the services provided at certain airports, by interviews with other stakeholders who gave their views on service provision, and by desk research. The desk research included analysis of the charges and quality standards set out by the airports in the sample.

#### Requirements of the Regulation

- 3.3 As noted above, the Regulation places responsibility for provision of assistance with the airport, whereas previously assistance had been provided by ground handling companies on the basis of contracts with individual airlines. The Regulation requires each airport to provide a uniform service quality for all airlines that it handles (except where an airline requests a higher level of service). The key requirements for the PRM assistance service are summarised below:
- **Designated points:** Airports are required to designate points inside and outside the terminal building at which PRMs can announce their arrival at the airport and request assistance. These must be developed in cooperation with airport users and relevant PRM organisations, must be clearly signed and must offer basic information about the airport in accessible formats.
  - **Assistance:** Airports must provide assistance to PRMs so that they are able to take the flight for which they hold a reservation, providing that they have pre-notified their requirements and arrive with sufficient time before the departure of their flight. If they have not pre-notified, the airport must make all reasonable efforts to enable them to take their flight. For PRMs on arriving flights, the airport must provide assistance to enable them to leave the airport or reach a connecting flight. The assistance provided should be appropriate to the individual passenger. An airport may contract for these services to be provided by another company, in compliance with quality standards (discussed below).
  - **Charges:** An airport cannot charge a PRM for this service, but may levy a specific charge on airport users for it. The charge must be reasonable, cost-related and transparent, and the accounts for these services must be separated from its other accounts. The charge must be shared between airport users in proportion to the total number of passengers carried to and from the airport by each. If an airport wishes to contract for services or levy a charge, both must be done in cooperation with airport users through the Airport Users Committee (AUC).

- **Quality standards:** Airports with over 150,000 annual passenger movements must set and publish quality standards for these services, and decide resource requirements to meet them, in cooperation with airport users and PRM organisations. The standards must take account of relevant policies and codes, such as the ECAC Code of Good Conduct in Ground Handling for Persons with Reduced Mobility (ECAC Document 30). An airline can agree with an airport to receive a higher standard of service, for an additional charge.
- **Training:** All employees (including those employed by sub-contractors) providing direct assistance to PRMs should be trained in how to meet their needs. Disability-equality and disability-awareness training should be provided to all airport personnel dealing directly with the travelling public, and all new employees should attend disability-related training.

### Categories of PRM defined by carriers and airports

3.4 The Regulation covers passengers with a wide range of impairments for which the needs for assistance are different. Although each individual is different, airlines and airports find it helpful to apply some categorisation when referring to the needs of different passengers. The most commonly used categorisation is the list of Special Service Request (SSR) codes defined by IATA. These categories are:

- **WCHR:** Wheelchair (R for Ramp). Passengers who are able to ascend and descend steps and move about inside the aircraft cabin, but who require a wheelchair or other assistance for longer distances (e.g. between the terminal and the aircraft).
- **WCHS:** Wheelchair (S for Steps): Passengers who cannot ascend or descend steps, but can move about inside the aircraft cabin. They require a wheelchair for the distances to and from aircraft and must be assisted up and down any steps.
- **WCHP:** Wheelchair (P for Paraplegic). Passengers with a disability of the lower limbs who have sufficient personal autonomy to take care of themselves, but who require assistance to embark and disembark and can move about inside the aircraft cabin only with the assistance of an onboard wheelchair.<sup>7</sup>
- **WCHC:** Wheelchair (C for Cabin Seat). Passengers who are completely immobile, and who can move about only with the assistance of a wheelchair or other means, and require this assistance at all points from arrival at the airport to seating (which may be fitted to their specific needs) on board the aircraft, and the reverse process on arrival.
- **BLND:** Blind or visually impaired passengers.
- **DEAF:** Deaf or hearing impaired passengers, and passengers who are deaf without speech.
- **BLND/DEAF:** Passengers who are both visually and hearing impaired, and who can only move about with the assistance of an accompanying person.
- **DPNA:** Disabled passengers with intellectual or developmental disabilities who need assistance.
- **MEDA:** Passengers whose mobility is impaired due to illness or other clinical reasons, and who are authorised to travel by medical authorities.

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<sup>7</sup> This code is not widely used or universally recognised at present

- **STCR:** Passengers who can only be transported on a stretcher.
  - **MAAS:** Meet and Assist. All other passengers requiring special assistance.
- 3.5 Some airlines use different categorisations. For example, Ryanair uses a more detailed classification system with 16 categories that also identify, for example, whether the passenger is travelling with their own wheelchair.
- 3.6 In addition to the codes above which describe the needs of the passenger, when referring to wheelchair users airlines may also add a description of the type of wheelchair which will be carried. The codes used are WCMP for manual power, WCBD for dry cell battery and WCBW for wet cell battery. These codes are useful for planning the type of assistance which will be necessary to transport them, for example if they require preparation or disassembly.

### Services actually provided by airports

- 3.7 All of the case study airports had implemented the Regulation, and were providing the required services in some form. We were given tours of the services provided at several of the airports we visited. From these, and descriptions of services given in interviews, we have drawn together a description of a typical process by which the services required by the Regulation are provided.

#### Departures

<i>Pre-notification</i>	Almost all airports and airlines have contracted SITA (a company providing aviation information technology) to provide a telex or email service for the purpose of passing notification of the needs of PRMs (see 4.64). For each series of flights for a given aircraft, any assistance required is communicated via a telex which includes a four letter code describing the category of disability of each PRM on each flight (see 3.4). This message is known as the passenger assistance list (PAL); if requirements change prior to the flight this is updated by a change assistance list, or CAL. Where a request for assistance is made by a PRM at least 48 hours before the published departure time for the flight, the airline is obliged to transmit this information to the relevant airports at least 36 hours before the published departure time.
<i>Recording of notification</i>	This information arrives at a telex server in the dispatch office of the airport PRM service provider. The telex describes: the time of the flight, the flight number, the names of passengers on board requiring assistance, and the category of disability of these passengers. The information from this telex is used to update the service provider's task management system, either via an automatic link, or via manual input. The task management system can be purposely developed task management software, or in some airports a piece of paper containing notes on expected assistance. Information regarding requests for assistance may also arrive via email. Airlines and airports may use email for several reasons: some airlines (such as non-EU charter carriers) may not have a SITA terminal; larger groups (such as operators of cruises) may send an off-line message in addition to PAL/CAL messages.
<i>PRM arrives and is assigned an assistant</i>	Each new request for assistance creates a new task; if a passenger arrives without notification, the task is created on their arrival. The task management software lists PRMs requiring assistance as tasks, and sets out expected arrival times and real-time information about their flights. When the passenger announces their arrival (either via a designated point or a check-in desk), the type of assistance they require is confirmed, and the task is assigned to one or more available assistants. At some airports, assistants carry personal digital assistants (PDAs) which record progress on a particular task; if this is the case, information regarding the passenger to be met will be forwarded to the PDA of the selected assistant. At other airports (for example in Spain) the management of tasks is a manual process. More than one assistant may be assigned if the passenger requires more involved assistance, such as carrying into their seat or is in a stretcher.

<p><i>PRM is met and needs are confirmed</i></p>	<p>The assistant meets the passenger at the point at which they announced their presence; when they meet the PRM, they update the dispatch office with their action. This update may be via PDA linking through to the software in the dispatch office, or via calling in. Assistants should be trained in how to approach passengers with different requirements. If the PRM has difficulty with long distances, the airport may use electric carts, or may push the passenger in a wheelchair provided by the airport. The electric carts may be capable of carrying a passenger in an airport wheelchair. The extent of the use of electric carts may be dependent on airport design.</p> <p>PRMs who are blind or visually impaired may require someone whose arm they can hold guide them through the airport. A PRM with an intellectual disability may require information about the airport to be presented to them in a simplified manner, or may require check-in and other procedures to be conducted in a particular manner. The assistant will help PRMs with a reasonable amount of baggage, but only as much as any other passenger would take.</p>
<p><i>PRM is assisted through check-in and security</i></p>	<p>The passenger is taken through check-in and security. At check-in, there may be lowered desks for passengers in wheelchairs. At security, there may be a track where the security staff are trained in searching PRMs, including searching wheelchairs, and a screen to provide privacy for the search. Usually it is not possible for wheelchairs to be taken through metal detector arches, and therefore wheelchair users are searched manually. The security track is not typically exclusively for PRMs, but they may receive priority. There may be a dedicated PRM lounge; if there is time before their flight leaves, they will have the option of resting there or if there is time may wish to use the facilities in the departure lounge until called for their flight. Some airports are willing to take PRMs to these facilities (such as restaurants and shops), while others require PRMs to remain in the waiting area allocated. Where the airport is willing to provide this, the assistant arranges a time at which to collect the passenger. Some airports allow PRMs to use the business lounge regardless of class of travel.</p>
<p><i>PRM is assisted through customs and to gate</i></p>	<p>Once the flight is ready for boarding, the assistant takes the passenger to the gate. Different methods of assisting a PRM into the aircraft will be used depending on the passenger's needs and on the manner in which the aircraft is embarked (e.g. via airbridge or from the apron). Some PRMs will be able to use either stairs or an airbridge and will not require specific assistance at this point.</p>
<p><i>PRM is assisted on board aircraft with airbridge</i></p>	<p>Where passengers board via an airbridge, category WCHC and WCHS PRMs are transferred to the onboard wheelchair at the door of the aircraft. If they have remained in their own chair up to this point, their wheelchair is transferred to the hold; otherwise the airport's wheelchair is returned with the assistant. The onboard wheelchair is narrower to allow it to pass down the aisle, and has straps to hold the passenger safely in the chair. Other categories of PRM board the aircraft on foot, without particular assistance. Depending on the policy of the carrier concerned, PRMs may have to board either first or last.</p>
<p><i>PRM is assisted on board aircraft without airbridge</i></p>	<p>Where passengers board via steps, category WCHC and WCHS PRMs are transferred to the onboard wheelchair on the apron before entering the aircraft. They are then lifted up to the aircraft either by an Ambulift<sup>8</sup>, by a motorised stair-climbing chair or at some airports by manual lifting. Other categories of PRM board the aircraft on foot, and may require assistance to ascend the stairs. If the aircraft is boarded away from the terminal building and passengers are brought to the aircraft by bus, a dedicated PRM vehicle may be used to bring the PRM to the aircraft.</p>
<p><i>PRM is assisted to seat on board aircraft</i></p>	<p>On board, the assistant provides the assistance necessary for the passenger to get to their seat. This may include lifting the passenger from the on-board wheelchair into the seat and if, as required by certain carriers, the PRM has to be seated in a window seat, transferring across other seats. The assistant may also help the passenger with storing any baggage in the overhead lockers. Once the passenger is installed in their seat, the airport ceases to have responsibility for providing assistance, and it transfers to the airline.</p>

<sup>8</sup> An Ambulift is a vehicle with a hydraulic platform which can be raised to the level of the flight deck to allow wheelchairs to be pushed on board.

*Arrivals*

<i>Notification arrives</i>	In addition to arriving via PAL or CAL, notification for arriving passengers may arrive by passenger service message (PSM). This is a list of passengers on board the aircraft requiring particular treatment on arrival, dispatched when an aircraft departs. The message states the points of embarkation and disembarkation, the flight number and date, and lists the names of the passengers requiring particular assistance with a description of the assistance. In addition to PRMs, the PSM lists children travelling alone (unaccompanied minors, or UMs), deportees and returned inadmissible passengers. In some circumstances, no PAL or CAL is received for arriving passengers, and the only notification is via PSM; this reduces the period of notification from 36 hours to the duration of the flight. In some cases no notification is received at all.
<i>PRM is met and assisted to disembark</i>	The information from the PSM is input into the task management system in the same manner as the PAL or CAL. When a flight lands, available assistants are assigned to each of the PRMs on board the flight, and dispatched to meet them at the gate. On landing, if a PRM requires assistance to disembark they will typically disembark once all other passengers have disembarked. The PRM is met at the door of the aircraft or within the aircraft by their assigned assistant. Depending on the code included in the PSM the assistant may have equipment such as wheelchairs, or may be accompanied by another member of staff. If the passenger has their own wheelchair, this is removed from the hold, and the passenger may then be assisted to transfer from the aircraft wheelchair into their own. At some airports the passenger's wheelchair is not returned to them until baggage reclaim, for security reasons.
<i>PRM is assisted from aircraft to point of arrival</i>	The passenger is then assisted through passport control (where there may be a dedicated PRM-accessible track) to the baggage hall, where they are assisted to retrieve their bags. They are then assisted through customs, and the assistant accompanies them as far as is required, up to the designated point of arrival outside the terminal. If it is situated close to the arrival point, they may also assist the PRM to their car if requested.

*Connections*

<i>Connecting flights</i>	Where a PRM requires assistance to make a connecting flight, the assistance offered varies depending on the length of time between arrival and departure. If there is limited time, assistance is offered as described above to disembark, transfer, and embark the passenger onto their next flight. If there is a significant wait between arrival and departure, the passenger may be taken to a PRM lounge or waiting area, until their departing flight is ready for boarding.
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**Policies on service provision***Provision for non pre-notified passengers*

- 3.8 The Regulation sets out the assistance which must be provided to PRMs where they have notified the air carrier or tour operator at least 48 hours before the published time of departure of their flight. It also requires that where no such notification is made, the airport should make all reasonable efforts to provide this assistance.
- 3.9 Of the airports we contacted, most stated that there was little or no difference in the service received by passengers who had not pre-notified, and differences in service quality only occurred when the services were busy. Even in the cases where a choice did have to be made between assisting a pre-notified and non-pre-notified passenger, some airports informed us that they would make decisions on the basis of ensuring all passengers could make their flights, rather than on the basis of notification. Some airports informed us that the level of notification was so low that it was not useful to make any distinction on this basis. Only a small minority of the case study airports stated that a slower service was provided to passengers who did not pre-notify (Table 3.1 below).

**TABLE 3.1 AIRPORT SERVICE PROVIDED TO NON-PRE-NOTIFIED PRMS**

Airport	Service provided to non-pre-notified PRMs
Amsterdam Schiphol	Equivalent service, priority based on ensuring passengers can make their flights
Athens	Slower service than pre-notified for departures, equal service for arrivals
Bologna	Equivalent service is provided
Brussels	Equivalent service as pre-notified, lower priority when busy
Bucharest Otopeni	Equivalent service is provided (some equipment may not be available)
Budapest	Equivalent service is provided (possible delay of a few minutes)
Brussels Charleroi	Equivalent service, priority based on ensuring passengers can make their flights
Copenhagen	Equivalent service as pre-notified, lower priority when busy
Dublin	Slower service
Frankfurt Main	Equivalent service as pre-notified, lower priority when busy
Lisbon	Standards not defined
London Heathrow	N/A
London Luton	Equivalent service is provided
Madrid Barajas	Equivalent service is provided (possible delay on arrival)
Munich	Equivalent service as pre-notified, lower priority when busy
Paris Charles De Gaulle	Equivalent service as pre-notified, lower priority when busy
Riga	Equivalent service is provided
Roma Fiumicino	Slower service
Stockholm	Slower service
Warsaw	Equivalent service as pre-notified, lower priority when busy
Zaragoza	Equivalent service is provided (possible delay on arrival)

3.10 Airports' estimates of the impact of pre-notification rates on staffing and equipment levels varied considerably. Several airports informed us that while an increase in the rate of pre-notification would improve the quality of the service provided, they would not expect it to significantly affect the number of staff they employed. In contrast, Aéroports de Paris believed that improving rates of pre-notification could allow them to reduce the costs of PRM service provision by 30%-40%. In January 2010, London Heathrow introduced a banded charge which varies the amount paid depending on the level of pre-notification of the airline (see 3.34).

#### *Restrictions on service*

3.11 Unlike for airlines, the Regulation does not explicitly state any grounds for airports to restrict the services provided. However, there may be national laws which have bearing on the functions which airport staff are permitted to undertake; for example, we were informed that in Denmark national laws on health and safety did not permit people of above a certain weight limit to be carried up stairs and into an aircraft.



*Other issues noted*

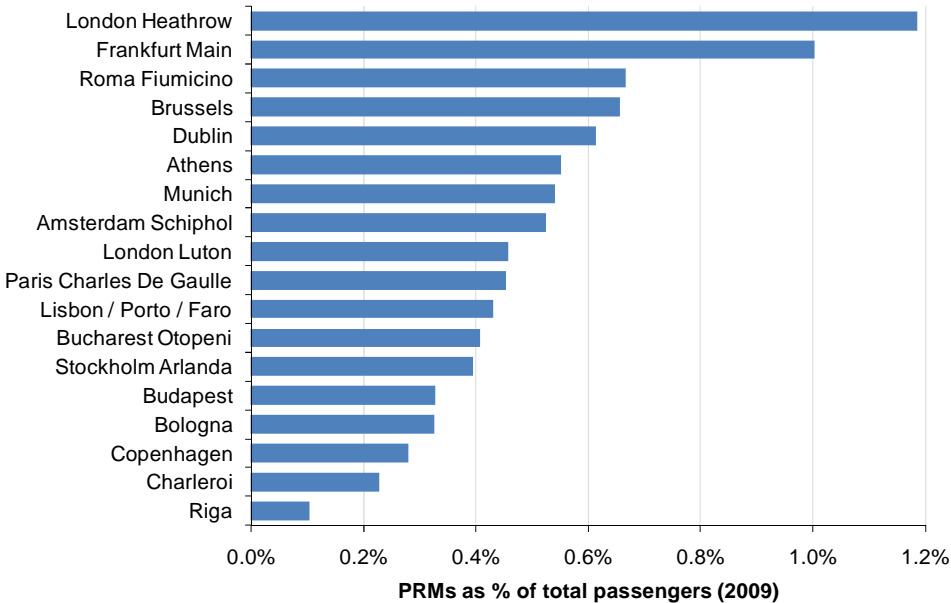
- 3.12 All of the case study airports provide the services required under the Regulation. The manner and quality of provision varies among the sample, and there have been a number of incidents of significant service failure, but we identified no fundamental problems with service provision at major airports. However, we were informed that the Regulation had not been implemented at Greek airports other than Athens: at these airports, services are provided to PRMs, but the change of responsibility from airline to airport has not yet been effected; provision of and payment for services is agreed between airlines and ground handling companies, as it was prior to the introduction of the Regulation.
- 3.13 The views of stakeholders on the provision of services are discussed at the end of this chapter (see 3.76).

**Statistical evidence for carriage of PRMs**

*The proportion of passengers requiring assistance*

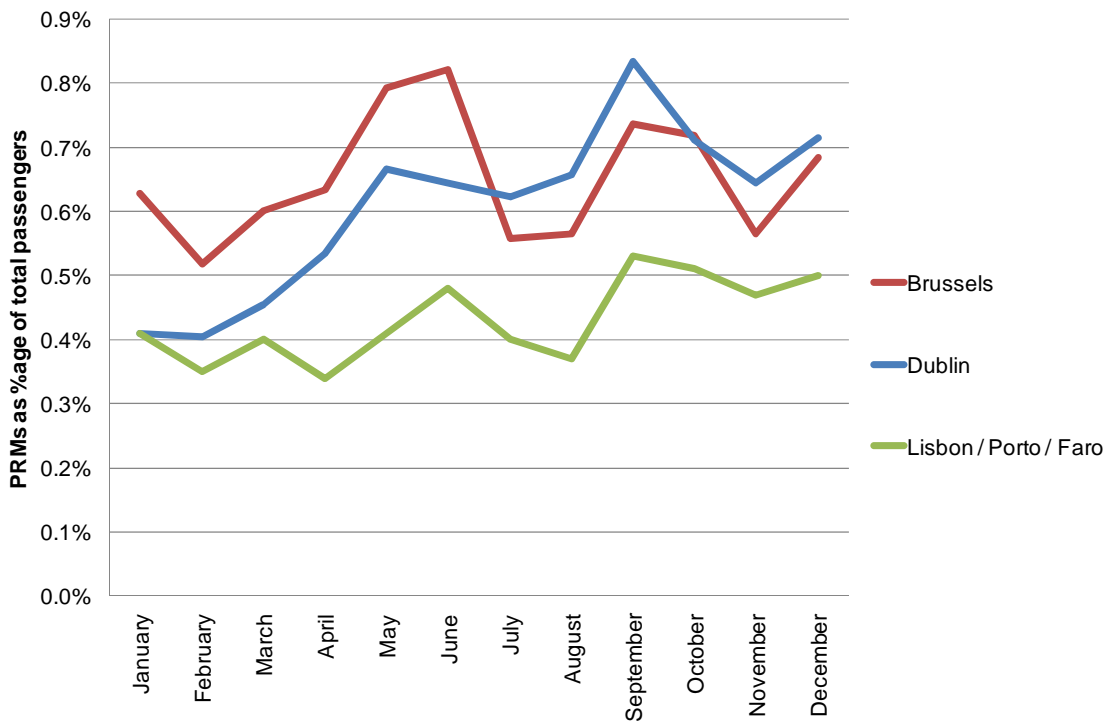
- 3.14 The frequency with which PRM assistance services are used varies considerably between airports. Figure 3.1 shows the rate of use at the airports in our sample for which we were provided with data. At London Heathrow 1.2% of passengers are PRMs requiring assistance, while at Riga only 0.1% of passengers require assistance. However, for most airports in the sample, the proportion requiring assistance is between 0.2% and 0.7%. ACI informed us that the higher rates at some airports were the result of the demographics of the passengers flying to these destinations.

**FIGURE 3.1 FREQUENCY OF PRMS REQUESTING ASSISTANCE AT AIRPORTS (2009)**



- 3.15 Some other airports have higher proportions of PRMs requiring assistance, resulting from the demographic profile of passengers using the airports. These include holiday destinations popular with elderly people, such as Alicante, Malaga and Tenerife Sur; and pilgrimage destinations such as Lourdes.
- 3.16 Based on the information we have received from airports, the profile of PRM travel differs markedly from that of other passengers (see Figure 3.2). Most data indicates that the number of PRMs travelling tends to be lower in relative terms, and at some airports also in absolute terms, during July and August when total air travel is at a peak. At some airports, there appears to be a peak in December and January, however this is not consistent across all the airports for which we have data. Airports informed us that provision of services between April and September can be particularly affected by passengers travelling to cruise ships: these often carry high numbers of PRMs, and since a cruise ship usually disembarks passengers at the same time as it embarks the next load, there is a twofold increase in the number of PRMs travelling through the airport. The winter peak in PRMs is partly due to high rates of injury amongst passengers returning from winter sports holidays.

**FIGURE 3.2 FREQUENCY OF PRMS OVER THE YEAR (2009)**

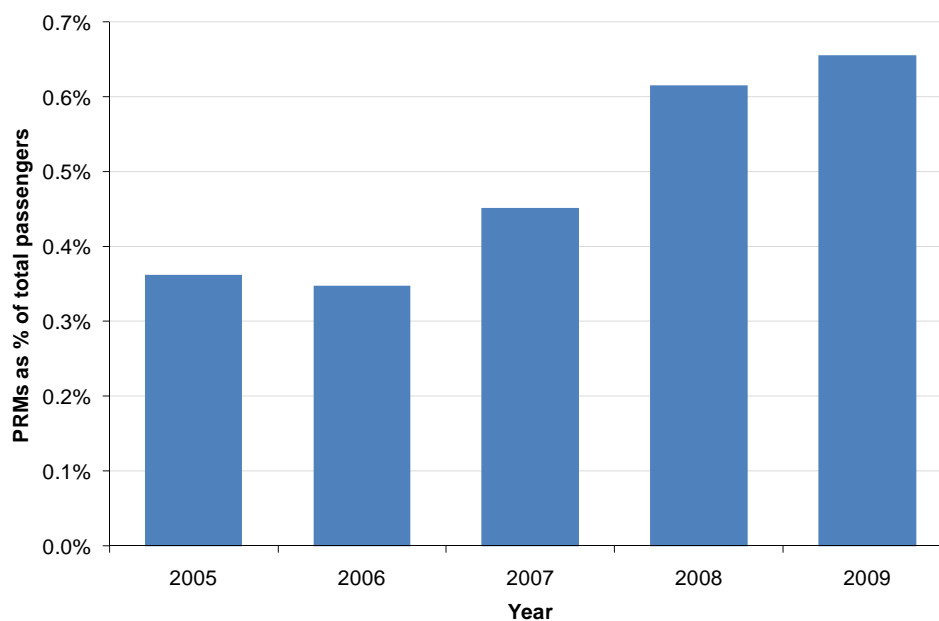


*Trend in PRM travel*

- 3.17 Several airports and airlines informed us that the number of PRMs requiring assistance has increased significantly since the introduction of the Regulation. It is difficult to verify this, as airports generally did not provide PRM services before July 2008, and therefore did not have a time series of data available. However, Brussels Zaventum airport introduced a PRM service similar to that required by the Regulation earlier, and as a result was able to provide figures for PRM's travelling between 2005 and 2010. This shows an increasing trend (Figure 3.3): the proportion of passengers

requiring assistance appears stable at approximately 0.35% over 2005 and 2006, and then climbs to 0.66% in 2009. It believed that this was a result of significant abuse of the services.

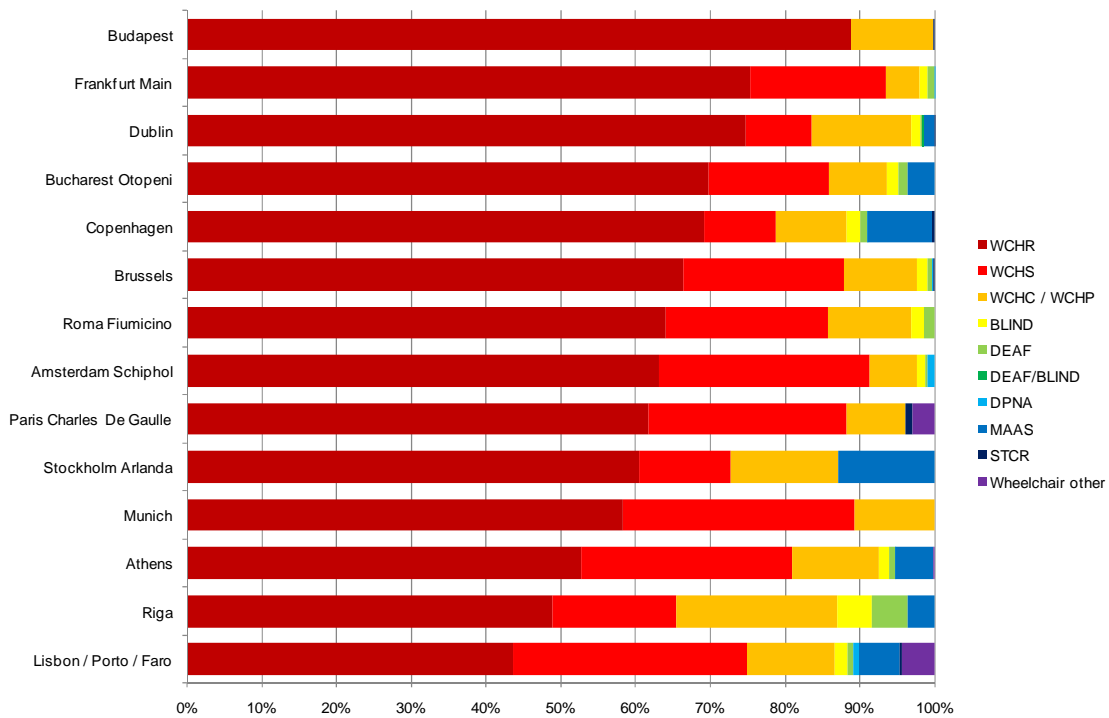
**FIGURE 3.3 RATE OF PRMS OBSERVED AT BRUSSELS ZAVENTUM AIRPORT**



#### *Types of assistance provided*

- 3.18 Assistance is often divided by airports into WCHC/WCHS (see 3.4), which requires significant time and resources, and others. We requested data on the types of passengers assisted from each of the case study airports and a summary of the data is shown in Figure 3.4. At all airports which provided data, the most frequent category of assistance was WCHR, although the proportion ranged from 44% to 89% (median 64%). The category “Wheelchair other” comprises wheelchair codes which do not fit into the other wheelchair categories: WCMP, manually powered wheelchair; WCBBD, dry cell operated wheelchair; and WCBW, wet cell operated wheelchair. We have excluded the codes for medical cases and unaccompanied minors (MEDA and UM respectively) from this analysis, as they are not within the scope of the Regulation.

**FIGURE 3.4 VARIATION IN TYPES OF PRMS ASSISTED (2009)**



*Abuse of services*

3.19 Many airports – particularly larger and busier airports – reported that the services they provided for PRMs were sometimes used by passengers who did not appear to have the right to do so under the Regulation. A typical observation was of a passenger who was assisted in a wheelchair from a designated point of arrival through security and customs, and who then walked to the gate unassisted. Several types of passenger who might be motivated to do this were suggested:

- Passengers who feel confused by a large and complex airport, and do not feel that they would be able to navigate it successfully;
- Passengers who do not speak the language used for the airport signs and announcements;
- Passengers who have no mobility impairment which prevented them from walking long distances within the airport, but who did not wish to; and
- Passengers (particularly those who arrive at the airport with limited time before the departure of their flight) who wish to avoid lengthy queues at emigration, customs and security.

3.20 In addition, some airports reported cases where airlines had requested PRM assistance for passengers such as unaccompanied minors, passengers with excessive cabin baggage, and VIPs. These passengers might previously have been classified ‘meet and assist’ (MAAS) and any assistance required would have been paid for by the airline.

- 3.21 By its nature, it is hard to establish the true level of this abuse. PRM organisations noted that a passenger's disability may not always be visible. They also noted the perceived stigma attached to travelling in a wheelchair, and believed that many passengers would prefer to avoid this in preference to receiving the services offered under the Regulation.
- 3.22 The level of abuse reported varied between airports. Copenhagen Airport reported a rate of approximately one passenger per day whom they suspected was not entitled to services under the Regulation, while Brussels reported 20-30 passengers per day. Brussels Airport perceived abuse as a bigger problem than other airports within the sample.
- 3.23 However, Charleroi Airport informed us that abuse of services had decreased since the introduction of the Regulation, as a result of changes made to procedures. The two changes it identified as having had an impact were:
- requiring passengers who had not pre-notified requirements for assistance to wait; and
  - boarding passengers requiring assistance after, rather than before, other passengers, and hence users of the PRM service no longer get first choice of seats on low cost carriers that do not allocate seats in advance.
- 3.24 These changes had the effect of reducing the number passengers without mobility needs who wished to use the services to avoid queues, and to obtain first choice of seating. However, these policies create some disadvantages for passengers who are entitled to the services.

#### **Organisation of service delivery**

- 3.25 Airport managing bodies may provide the services required under the Regulation themselves, or may contract with other parties to provide the assistance. Any arrangements for assistance to be provided through other parties must be compliant with published quality standards, and must be determined with the cooperation of airport users.

#### *Overview*

- 3.26 15 of the sample of 21 airports provided PRM services through a subcontractor (Table 3.2 below) and, of these, 12 were procured through open tenders. The advantage of procuring this service through an open tender include:
- a specialised provider might more easily be able to provide services of the cost or quality required;
  - providing services through subcontractors facilitates the separation of costs of PRM services in an airport's accounts; and
  - open tenders allow the airport to demonstrate that the costs are reasonable, as required by the Regulation.
- 3.27 Some of the largest airports split the tendering of provision into more than one contract, usually through grouping terminals together on a geographical basis.

- 3.28 In contrast, some of the airports provide the services required under the Regulation through specially trained airport staff. This may be through the creation of new department with this remit, or through extending the remit of a pre-existing department (for example the firefighting department). Airports may also subcontract some services (such as assisting passengers from the gate to the aircraft) to ground handling staff whilst providing other elements of the service themselves.
- 3.29 We also identified variation in the type of organisation providing services, where this was sub-contracted:
- **Subsidiary company of airport:** This approach is very similar to providing the services in-house, although an advantage is that it is easier for the airport to separate the accounts relating to the provision of PRM services.
  - **Ground handling companies:** Airports may be able to realise economies of scope through provision of PRM services by ground handling companies.
  - **Specialist PRM contractor:** Among the airports examined for this study, the most frequent type of organisation providing PRM services was a company that specialised in this kind of assistance service. Some such companies provided PRM services only, while a number provide it as part of a range of services. These other services might include cleaning services, facilities management, emergency assistance, and ambulance services.

**TABLE 3.2 METHODS OF PROCURING PRM SERVICES AT AIRPORTS**

Airport	Approach to procurement	Type of organisation providing PRM services
Amsterdam Schiphol	Open tender	Specialist PRM contractor
Athens	Open tender	3 ground handling companies
Bologna	In-house / non-competitive tender	Airport staff, 2 ground handling companies
Brussels	Open tender	Specialist PRM contractor
Bucharest Otopeni	In-house	Airport staff
Budapest	Open tender	Ground handling company
Brussels Charleroi	In-house	Airport staff
Copenhagen	Open tender	Specialist PRM contractor
Dublin	Open tender	Specialist PRM contractor
Frankfurt Main	Non-competitive tender	Subsidiary of airport
Lisbon	In-house	Airport staff, subcontracted ground handling staff
London Heathrow	Open tender	2 specialist PRM contractors
London Luton	Open tender	Specialist PRM contractor
Madrid Barajas	Open tender	Information not provided at interview
Munich	Open tender	Specialist PRM contractor
Paris Charles De Gaulle	Open tender	2 specialist PRM contractors
Riga	In-house	Airport staff
Roma Fiumicino	Non-competitive tender	Subsidiary of airport

Stockholm Arlanda	In-house	Airport staff
Warsaw	Non-competitive tender	Ground handling company
Zaragoza	Open tender	Information not provided at interview

3.30 Although the PRM service had only been provided by airports for around 18 months at the time of our research, we were informed by a number of airports that they were considering or were in the process of retendering the service. The primary reason given for retendering was that service quality had not been sufficiently high, although some airports cited a higher than expected increase in use of services after the introduction of the Regulation.

3.31 The Regulation also allows<sup>9</sup> for airlines to request a higher level of service than those set out in the quality standards for the airport, and to levy a supplementary charge for this service. However, none of the sample airports or airlines were requesting or providing such a service.

#### *Consultation*

3.32 The Regulation requires contracts for the supply of services under the Regulation to be entered into in cooperation with airport users and with organisations representing PRMs. Cooperation with airport users is usually through the airport users committee (AUC). Although this is intended to improve consultation, airlines informed us that in some circumstances it did not do so, citing examples where:

- the proceedings of the AUC were conducted only in the native language of the airport;
- only ground handlers were represented on the committee; and
- one stakeholder has a voting majority on the committee, allowing it to disregard the views of other carriers.

3.33 We were also informed of circumstances where the consultation provided by airports was extensive. London Luton retendered for PRM services in March 2010, and involved airport users (airlines and ground handling companies) at all stages of the tendering process, including the development of the specification, and the evaluation and scoring of bids.

#### **Airport charges**

3.34 The Regulation permits airports to fund the provision of assistance through a specific charge on airport users. This charge must be reasonable, cost-related, transparent and established in co-operation with airport users. It must be shared among airport users in proportion to the total number of passengers that each carries to and from the airport (this is typically calculated on the basis of departing passengers). The accounts of the airport relating to provision of PRM services must be separate from its accounts relating to other services, and it must make available to airport users and NEBs an audited annual overview of charges received and costs incurred relating to the provision.

<sup>9</sup> Articles 9 (4) and (5).

3.35 The majority of the case study airports recover costs for PRM assistance through a PRM charge levied on all departing passengers which is specific to the airport and set to fully recover the costs of the PRM service. However, we identified the following key variations in this approach:

- **Uniform charge:** The PRM charges in Spain and Portugal are uniform across the airports operated by AENA and ANA respectively. This approach appears to infringe the Regulation, which requires a specific charge “established by the managing body of the airport”, although there is some uncertainty about this due to differences between the English and Spanish language versions of the Regulation. Both AENA and ANA believed that, since the service was provided across a network of airports, it was appropriate that there should be a uniform network charge.
- **Economic regulation:** Many airports are subject to economic regulation of the charges they may levy on airlines. At most of the airports in our sample, the PRM charge is excluded from the regulated price cap, but at Dublin and Brussels Zaventem the PRM charge is included within this. As a result, their flexibility to amend charges (for example to reflect a higher than expected use of PRM services) is constrained: for example, they may require regulatory approval for any changes, or have the level of any increases limited by a charging cap. Charges may also be fixed over the course of a given regulatory period.
- **Pre-existing provision:** Stockholm Arlanda and all other State-owned airports in Sweden provided some elements of the services required under the Regulation prior to its introduction. In Sweden, charges for services for WCHC and WCHS passengers were introduced in 2001 at a rate of 1 SEK (€0.10<sup>10</sup>) per departing passenger; charges have not yet been increased since the Regulation came into force to reflect the wider range of passengers requiring assistance, but we were informed that this is likely to happen in the next year.
- **Non-implementation of the Regulation:** With the exception of Athens, none of the airports in Greece provide assistance for PRMs. Assistance is provided by ground handling companies, and charges are negotiated directly between airlines and ground handling companies, and consequently not made public.

3.36 We were informed by ACI that the proportion of airports which identify this fee separately was 52% across the airports it surveyed, as opposed to 48% which include it in the passenger fee.

3.37 The types of costs which may be recovered using the PRM charge are:

- **Direct assistance costs:** The direct costs of the day-to-day running of the service.
- **Other incidental operating costs:** These may include maintenance, purchase of operating materials, other services, etc.
- **Capital expenditure:** Expenditure to invest in facilities required to provide services, such as mobility equipment and the fitting out of a dispatch office.
- **Administrative expenses:** These may include time spent by airport personnel in running the contract, and project costs such as airport management time in developing the tender.

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<sup>10</sup> Calculated on the basis of €1 = 9.7 SEK.

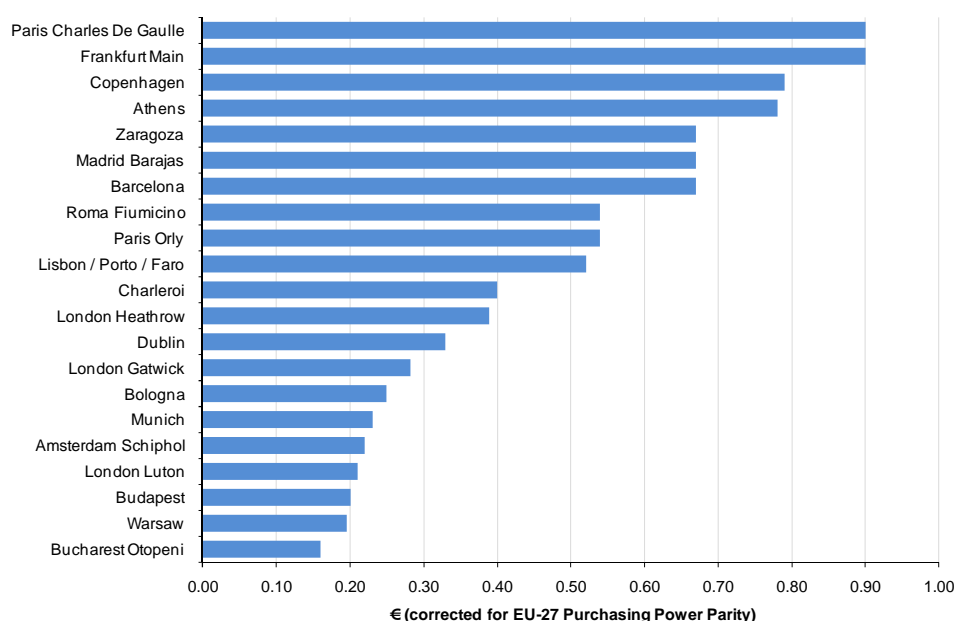


- **Other airport fees:** The PRM contractor may have to, for example, rent space from the airport and to pay a fee for doing so. This would also be recovered through the PRM charge.

#### Level of charges

3.38 Figure 3.5 shows the charges at the case study airports in euros, converted using current (January 2010) exchange rates where required. There is significant variation in the level of the PRM charge between airports, from a minimum of €0.16 in Bucharest to €0.90 at Frankfurt Main and Paris CDG.

**FIGURE 3.5 AIRPORT CHARGES PER DEPARTING PASSENGER  
(€ AT CURRENT EXCHANGE RATES)**



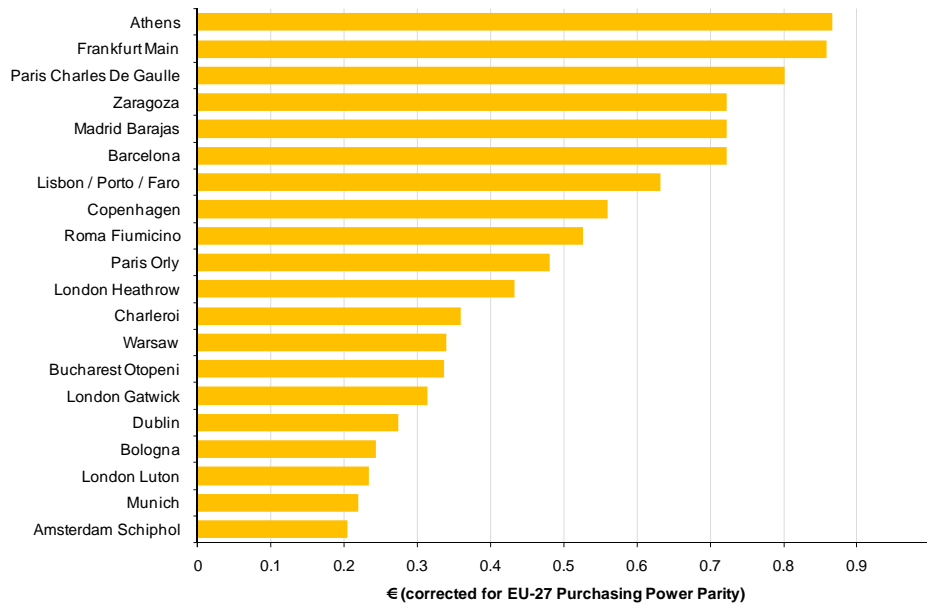
3.39 The variation in charges between airports may result from several factors, including:

- staff cost variation;
- quality standards in place;
- the frequency with which the PRM services are used;
- the proportion of connecting flights; and
- the design of the terminal or airport.

3.40 We discuss each of these possible reasons for variation in turn.

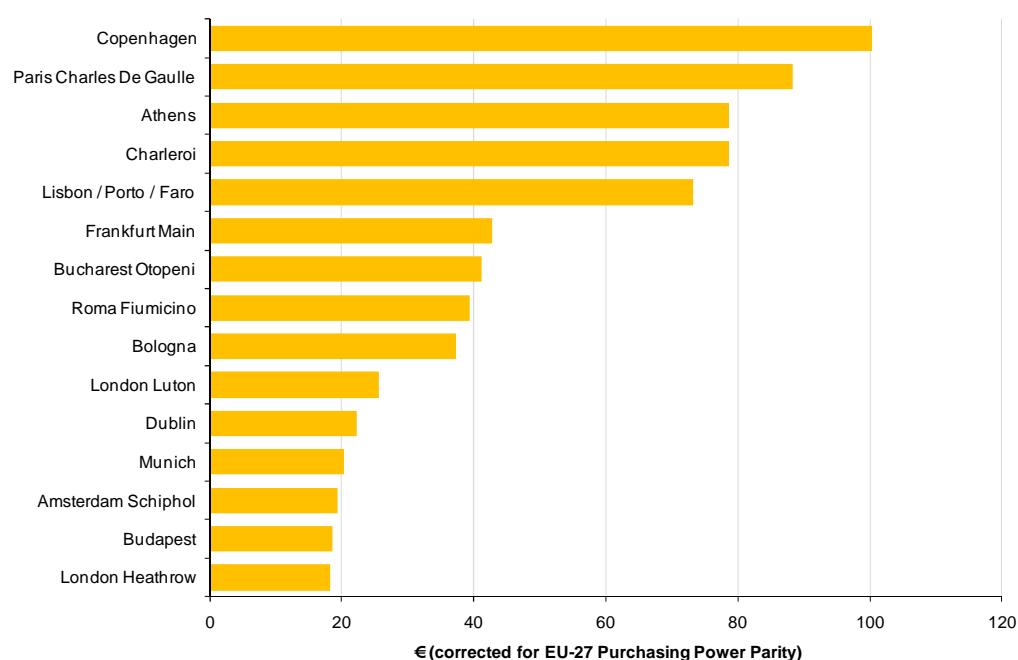
3.41 **Purchasing power parities (PPPs)** can be used to compensate for differences in price levels between States. Figure 3.6 uses Eurostat PPPs for 2008 to convert PRM charges in national currency to euros at average price levels for the EU-27. The harmonisation only very slightly reduces the variation in the charges (measured in terms of standard deviation).

**FIGURE 3.6 AIRPORT CHARGES PER DEPARTING PASSENGER, 2009  
(€ AT 2008 EU-27 PPP)**



- 3.42 Although it was not possible to find published data showing the actual **level of service** offered to PRMs at any of the case study airports, the level of service set out in the PRM quality standards might help explain the variation in charges. To test this, we have calculated a weighted average PRM wait time and compared this with the PRM charge at each airport. This analysis suggests little or no correlation: for example, although the London airports state the highest service standards in terms of waiting times, the charges levied are lower than those at many other airports. Similarly, low charges at Bucharest are not reflected in longer proposed waiting times for PRMs requesting assistance.
- 3.43 It might also be expected that airports with **higher proportions of PRMs** would have higher charges. To examine this we calculated a proxy for the cost of assisting each PRM, for the airports for which we had data. This was obtained by dividing the PRM charge by the proportion of PRMs at each airport, to obtain the revenue gained by the airport for each PRM assisted.
- 3.44 It should be noted that there are some limitations to this analysis. It calculates revenue per PRM, and for this to be a valid proxy for costs, it must be assumed that charges are accurately cost-reflective, which is not the case in some airports: in Spain and Portugal the charge is uniform across all mainland State-owned airports, and does not therefore reflect local variation in costs; at State-owned airports in Sweden, the charge reflects only the costs of providing services for WCHC and WCHS passengers. For the costs to be cost-reflective it is also necessary that the frequency of use of the service is as forecast when the charges were calculated.
- 3.45 Figure 3.7 shows the results of the analysis. There is still significant variation between airports; the maximum cost per PRM assisted (€100 at Copenhagen, PPP adjusted) is 5 times the minimum cost (€18 at Bucharest, PPP adjusted). This shows that the variation in the number of PRMs does not fully explain the variation in the charge.

**FIGURE 3.7 AIRPORT COSTS PER PRM ASSISTED, 2009  
(€ AT 2008 EU-27 PPP)**



- 3.46 The level of variation also does not appear to be accounted for by the **size of the airport**: the charge at London Heathrow is relatively low, while Paris CDG is relatively high.
- 3.47 Several airports cited **high proportions of connecting passengers** as a factor which increased costs. However, we do not believe that high proportions of connecting passengers would increase the costs of provision: transfer passengers are counted as two passengers in airport statistics and any PRM charge is levied twice, so if the service is less than twice the cost of that for an arriving or departing passenger, such passengers would in fact result in a cost saving relative to other PRMs. This view is supported by the data, where the charge at London Heathrow is relatively low.
- 3.48 **Terminal design** may impact on the amount of time required to provide assistance, or the efficiency with which it can be provided. For example, Amsterdam Schiphol airport, which has one integrated terminal building and the concourse is generally at the same level, can make extensive use of electric carts to transport multiple passengers together; this is not practical at airports such as CDG.

#### *Changes to charges in 2010*

- 3.49 The charges and costs in this section are based on those current in 2009, as this is the only complete year for which data was available. Where updated charges have been published for 2010<sup>11</sup>, we have compared these with those for 2009. Most airports had not made any changes, but Munich and Rome Fiumicino increased charges by 48% and 28% respectively.

<sup>11</sup> IATA Airport, ATC and Fuel Charges Monitor, February revision, published March 2010.

3.50 London Heathrow changed the structure of its PRM charges in 2010. Whereas previously it levied a charge of £0.35 (€0.38) per passenger for all airlines, from 1 January 2010 the charges vary depending on the level of pre-notification. Airlines which pre-notify 85% or more of PRMs are charged £0.42 (€0.46) per departing passenger, while those which pre-notify 45% or less of their passengers are charged £0.83 (€0.91).

#### *Consultation*

3.51 Airports are required to determine charges in cooperation with users through airport user committees. The Regulation does not define cooperation further, however, and as a result the form this consultation has taken varies considerably. London Luton informed us that their tender process involved airlines, ground handlers and PRM organisations at all points of the tender process, from developing the specification to evaluating the bids and awarding the contract. In contrast, several airlines informed us that the consultation in Portugal and Spain was limited to the publication of a letter stating the amount the charge per person. We were also informed that consultations on PRM charges were often included in wider general charge negotiations.

3.52 A number of issues were raised regarding this cooperation.

- We were informed by several airports that certain carriers have contested the procedural steps taken by airport managing bodies to establish the charge. This has in at least one case been supported by an NEB taking a strict interpretation of the meaning of ‘in cooperation with airport users’, as requiring agreement between the airport and the airline both on the tender and the level of the charge. This has led to delays, particularly due to challenges by low-cost airlines, including requests to see cost information, which the airports regarded as unnecessary, after the tender processes were completed.
- Some airlines have blocked the process of approving charges by refusing to participate in the consultation.
- Some airports believed that direct involvement of users in the tender process can be problematic: without signing personal non-disclosure agreements, it may not be possible to share the commercially sensitive information included in tenders; there may also be conflicts of interests between some of the handlers and the tendering parties. However, the example of London Luton discussed above demonstrates that these barriers are not impossible to overcome.

#### **Quality standards**

##### *Standards published*

3.53 The Regulation requires all airports serving over 150,000 passenger movements per year to set and publish quality standards. Figure 3.8 indicates the proportions of airports publishing quality standards. The following airports had not yet done so:

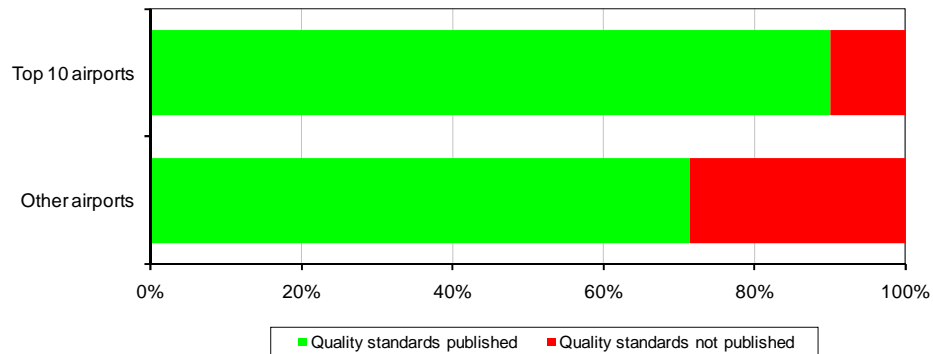
- Amsterdam Schiphol: quality standards are in the process of being re-developed with airlines, and have not been published yet;
- Bologna: standards not yet published;
- Budapest: standards published to airlines and handling companies by letter; and
- Stockholm Arlanda: standards published to airlines but not yet published on its

website; it informed us that the standards would be published soon.

3.54 Three of these airports provided the quality standards to us at interview, but Amsterdam Schiphol and Bologna did not provide any details of their quality standards.

3.55 We found that the largest ten European airports in terms of passenger numbers were more likely to publish quality standards than those outside the top 10.

**FIGURE 3.8 PROPORTION OF AIRPORTS PUBLISHING QUALITY STANDARDS**



#### *Ease of finding quality standards*

3.56 The ease with which the quality standards could be located on airport websites varied considerably. For the airports which published quality standards, some of the main issues encountered were:

- Having to click through an excessive number of links before finding the standards, e.g. the website of Charleroi Airport requires the user to click on five links before the standards can be viewed;
- Locating the standards on the site of the management company rather than within the section or website dedicated to the airport – this was the case for the Spanish airports for which the information is on the main AENA website;
- Using terminology which may not be obvious, avoiding the actual term ‘quality standards’, e.g. BAA use the term ‘Service Level Agreement’; and
- Restrictions on language – Bucharest Otopeni, Brussels Charleroi and the Paris airports only publish quality standards on the local language versions of their websites.

#### *Standards for waiting time*

3.57 The standards defined by the case study airports are shown in Table 3.3 and Table 3.4 below. At all of the case study airports for which we were able to obtain standards, these are defined in terms of the percentage of PRMs who should wait for up to a given number of minutes. For example, at Barcelona, 80% of departing passengers who have pre-notified requirements for assistance should wait for 10 minutes or less from the point at which notice is given that they have arrived at the airport. This

approach is consistent with the example standards in Annex 5-C of ECAC Document 30<sup>12</sup>, and eight of the airports in the sample (including Copenhagen, Munich and the AENA Spanish airports) follow these exactly.

- 3.58 There are however variations in both how the standards are structured and the level of the standards. Paris Charles de Gaulle is unusual in that, with the exception of the top 99% bracket, an additional ten minutes is added to the wait time for departing passengers located ‘further away’. The published standards do not define how far away this is. Aéroports de Paris also define an additional category, of pre-notification of between 8 and 36 hours, for whom the standards are part-way between those applying to PRMs for which notification was received 36 hours or more before travel (‘pre-booked’), and those for which notification was received less than 8 hours beforehand (‘non-pre booked’). This is not shown in the table as it is not comparable with the standards offered by the other airports.
- 3.59 There are also some differences in how the wait time for arriving passengers is measured. At most airports, it is measured from when the aircraft reaches the parking position, but there are the following exceptions:
- From descent of last passenger: Rome Fiumicino;
  - From boarding bridge lock: Brussels; and
  - Not defined: Athens, Budapest, Lisbon, Stockholm Arlanda.
- 3.60 The standards proposed for pre-booked departing passengers are generally consistent, at least in terms of the waiting times which percentages are applied to: 10, 20 and 30 minutes are the most commonly used intervals, at 80%, 90% and 100% respectively. For non pre-booked passengers 80%, 90% and 100% apply to 25, 35 and 45 minutes. Better standards are offered by the UK and French airports that we reviewed. This is also reflected in the standards for arriving passengers, with the London and Paris airports targeting zero waiting time for 90-100% of passengers. There is also a clear pattern for arriving passengers, with 80% of pre-notified PRMs waiting no more than 5 minutes, 90% no more than 10 and 100% no more than 20 minutes. Standards are not as high as this for non pre-booked passengers, however.
- 3.61 Several airports informed us that the standards suggested by ECAC Document 30 for arriving passengers were not short enough to meet airline requirements on turnaround times: if the airports adhered only to these standards, there would be significant operational issues. Some of these airports published standards in line with Document 30, but stated that they actually provided services in much shorter times.

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<sup>12</sup> ECAC Policy Statement in the field of Civil Aviation Facilitation, 11th Edition/December 2009.

*Other elements of published quality standards*

- 3.62 Some airports define additional standards other than the waiting time targets, generally reflective of the assistance set out in Annex 1 of the Regulation. For example, Charleroi provides detailed information regarding the level of assistance which will be provided for PRMs, for example support for embarking and disembarking the aircraft, or for dealing with customs formalities. Brussels Airport also defines how many assistants will accompany a PRM, depending on their type of disability.
- 3.63 Some airports also include more general, qualitative targets, less directly related to the assistance offered to an individual PRM. For example, Luton Airport's published standards include responding to 'disabled customer enquiries to offer guidance and advice', and auditing to ensure compliance with all disability legislation. Athens Airport also provides extensive details of the measures it has taken to accommodate PRMs, including disabled-access internet points and a special walkway for partially sighted PRMs.

**TABLE 3.3 SCOPE OF QUALITY STANDARDS: DEPARTING PASSENGERS**

	Pre-booked / airport informed										Non-pre-booked / airport not informed										
	<i>% of PRMs who should wait no longer than (minutes)</i>										<i>% of PRMs who should wait no longer than (minutes)</i>										
	5	10	15	20	25	30	35	40	45	60	5	10	15	20	25	30	35	40	45	60	
Athens		80%		90%		100%							80%		90%		100%				
Barcelona		80%		90%		100%									80%		90%		100%		
Brussels		80%		90%		100%									80%		90%		100%		
Bucharest Otopeni		80%		90%		100%									80%		90%		100%		
Budapest		100%										100%									
Charleroi		80%		90%		100%									80%		90%		100%		
Copenhagen		80%		90%		100%									80%		90%		100%		
Dublin		80%		90%		100%									80%		90%		100%		
Frankfurt Main		80%		90%		100%															Not defined
Lisbon		80%		90%		100%															Not defined
London Gatwick	80%	90%	100%									80%	90%	100%							
London Heathrow	80%	90%	100%									80%	90%	100%							
London Luton		90%	95%	100%									90%	95%	100%						
Madrid Barajas		80%		90%		100%									80%		90%		100%		
Munich		80%		90%		100%									80%		90%		100%		
Paris CDG		90%			99%										80%		90%		99%		
Paris Orly		90%			99%			100%				40%			80%				90%	100%	
Riga		80%		90%		100%									80%		90%		100%		
Roma Fiumicino		80%				100%									80%				100%		
Stockholm Arlanda		80%		90%		100%									80%		90%		100%		
Warsaw		100%													100%						
Zaragoza		80%		90%		100%									80%		90%		100%		



**TABLE 3.4 SCOPE OF QUALITY STANDARDS: ARRIVING PASSENGERS**

	Pre-booked / airport informed										Non-pre-booked / airport not informed									
	% of PRMs who should wait no longer than (minutes)										% of PRMs who should wait no longer than (minutes)									
	0	5	10	15	20	25	30	35	40	45	0	5	10	15	20	25	30	35	40	45
Athens		80%	90%	100%										80%	90%	100%				
Barcelona		80%	90%	100%												80%	90%	100%		
Brussels		80%	90%	100%										80%	90%	100%				
Bucharest Otopeni		80%	90%	100%											80%	90%	100%			
Budapest		100%										100%								
Charleroi		80%	90%	100%												80%	90%	100%		
Copenhagen		80%	90%	100%												80%	90%	100%		
Dublin		80%	90%	100%										80%	90%	100%				
Frankfurt Main			80%	100%																Not defined
Lisbon		80%	90%	100%																Not defined
London Gatwick	100%												80%	90%	100%					
London Heathrow	100%												80%	90%	100%					
London Luton	99%	100%											90%	100%						
Madrid Barajas		80%	90%	100%												80%	90%	100%		
Munich		80%	90%	100%												80%	90%	100%		
Paris CDG	90%		99%												80%	90%	100%			
Paris Orly	90%		99%						100%						80%	90%	100%			
Riga			80%	90%	100%											80%	90%	100%		
Roma Fiumicino					90%	100%														Not defined
Stockholm Arlanda		80%	90%	100%												80%	90%	100%		
Warsaw		100%														100%				
Zaragoza		80%	90%	100%												80%	90%	100%		



### Monitoring

3.64 While the Regulation requires larger airports to develop and publish quality standards, it does not require them publish whether they are actually met, and none of the case study airports do so. Nonetheless most airports do undertake some form of monitoring and several provided us with performance statistics. There were a number of approaches to monitoring:

- **Time spent waiting to receive assistance:** This is the most common measure used by airports, as set out above. These times are often measured by time stamps inputted into the personal digital assistants (PDAs) or equivalent devices carried by staff providing assistance to PRMs (discussed earlier). The data recorded can often give wider outputs than solely the time taken to receive assistance, such as time from gate to boarding, or time waiting once disembarked from an aircraft. This approach should give accurate information on the time spent waiting by passengers, but does not address other aspects of quality of service.
- **Spot checks:** Many airports reported that the PRM service manager will undertake frequent unannounced tours of the services and infrastructure provided within the airport. They may check, for example, that the designated points of arrival and departure are functioning correctly. This approach is useful to identify wide-ranging problems but may not be sufficiently systematic to identify all problems.
- **Surveys:** A number of airports reported using surveys to obtain feedback from passengers. Typically, a postcard with survey questions to be completed was given to PRMs at some point during their use of the airport's services, which could be submitted at information desks or at various comment boxes placed throughout the airport. These covered questions on the services received, and in some cases assessed the passenger's knowledge of the Regulation. A potential problem with this approach is the lack of accessibility for all passengers.
- **Mystery shoppers:** 'Mystery shoppers' are people (typically PRMs) paid to anonymously receive the service provided by the airport and afterwards give detailed reports or feedback about their experiences. This approach gives a thorough appraisal of the service provided at a particular time.

3.65 Table 3.5 sets out the actions airports have taken to monitor their quality standards. Most airports do not include any external auditing in their monitoring processes; Athens, Bucharest Otopeni, Luton, Madrid Barajas, Zaragoza include some external checks.

**TABLE 3.5 AIRPORT ACTIONS TO MONITOR QUALITY STANDARDS**

Airport	Measures monitored
Amsterdam Schiphol	Manual checks of numbers of PRMs and service quality
Athens	Audits, including 'mystery PRM' audit; PRM surveys
Bologna	PRM survey; time taken for assistance
Brussels	Time taken for assistance (in real time); passenger complaints
Bucharest Otopeni	Passenger surveys; complaints; external audits by NEB, PRM organisations, Commission, and airlines
Budapest	Monthly reports of time taken for assistance and passenger complaints; daily contact with service provider; 'walk-throughs' of service provided; airline audits

Brussels Charleroi	Passenger complaints received
Copenhagen	Time taken for assistance (in real time)
Dublin	Weekly audits of time taken; annual training audit
Frankfurt Main	Monthly reports of time taken for assistance
Lisbon	Time taken for assistance
London Heathrow	Time taken for assistance; missed flights; flight delays; internal audits; regular meetings with service providers; complaints from passengers and airlines; some of these measures monitored through a 'dashboard'; monthly 'scorecard' review
London Luton	Passenger feedback forms; 'walk-throughs' of service provided; internal and external audit teams of provider; airline and PRM organisation audits
Madrid Barajas	Monthly meetings with service providers and PRM organisation; surveys by service providers; independent surveys; PRM feedback forms
Munich	Monthly reports of time taken for assistance; spot checks; quality service manager as 'mystery shopper'; yearly passenger survey
Paris Charles De Gaulle	Flight delays for which PRM services are responsible; passenger complaints
Riga	Questionnaires to airlines, passengers and others; daily service monitoring by duty managers; internal audits
Rome Fiumicino	Time taken for assistance (in real time); other unspecified monitoring
Stockholm Arlanda	Time taken for assistance; passenger complaints; AOC meetings
Warsaw	Infrequent spot checks of time taken
Zaragoza	Monthly meetings with service providers and PRM organisation; surveys by service providers; independent surveys; PRM feedback forms

3.66 In addition, we found that most NEBs had not undertaken any direct, systematic monitoring of whether airports were meeting quality standards. Table 3.6 sets out the actions NEBs have taken to monitor airport quality standards.

**TABLE 3.6 NEB ACTIONS TO MONITOR QUALITY STANDARDS**

Member State	Monitoring
Belgium	Inspections of infrastructure and procedures
Denmark	No monitoring, biannual meetings
France	No monitoring
Germany	No monitoring
Greece	Inspections of infrastructure and procedures at Athens, not of regional airports
Hungary	Inspections of infrastructure and procedures, questionnaire on training
Ireland	No monitoring
Italy	Inspections of quality standards including infrastructure, procedures, information, training
Latvia	Inspection of infrastructure, procedures, waiting times, documentation
Netherlands	Inspection of infrastructure and procedures
Poland	No monitoring
Portugal	No monitoring

Member State	Monitoring
Romania	Request annual reports
Spain	Checks of staff training and procedures
Sweden	No monitoring
United Kingdom	Inspections of infrastructure and procedures, attend monthly PRM groups at major airports, less frequently at smaller airports

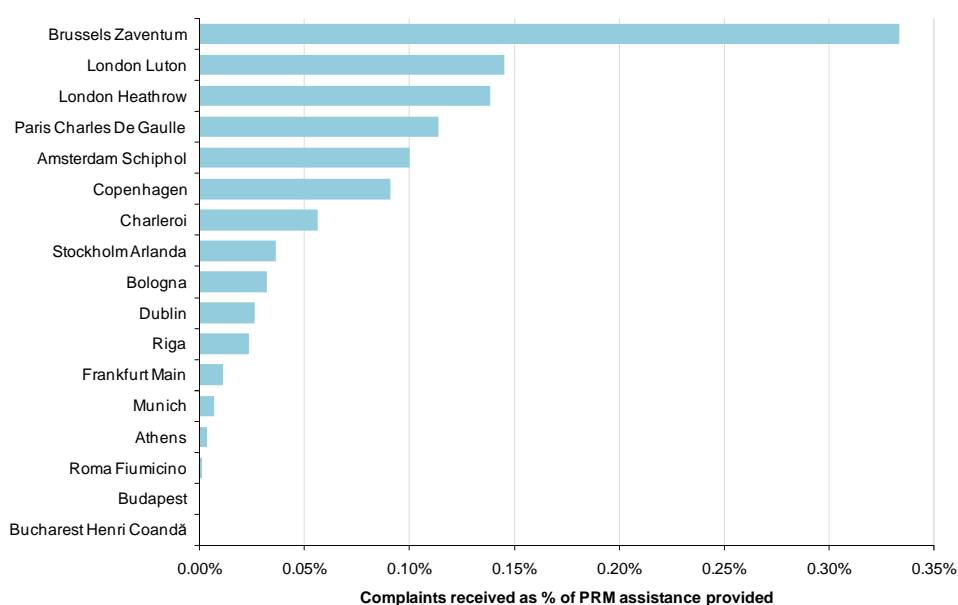
## Complaints to airports

### *Airport processes for handling complaints*

- 3.67 Most case study airports accepted complaints relating to PRM services in the same way as other complaints. Often airports will accept complaints via email, via information desks at the airport, or via forms which can be filled in and deposited in comment boxes located at various points within the terminals.
- 3.68 Typically, complaints are registered in a database which is reviewed by a member of staff on the service quality team. The staff member allocated to the complaint reviews documents relating to the service referred to in the complaint, and talks to the member of staff who provided the service (this member of staff may be employed by either the airport or a contractor). After investigating the complaint, the staff member writes a report including the findings and any response which is sent to the passenger. The service quality manager may review monthly reports on complaints, which will include complaints regarding the PRM service.
- 3.69 The level of detail to which the complaint handling process is specified varies depending on the volume of complaints received: an airport which handles many complaints may follow clearly defined procedures for handling complaints, while an airport which receives only few complaints may address them on a more ad hoc basis.

### *Number of complaints received*

- 3.70 For each airport in the case study sample we requested the number of complaints received relating to provision of services to PRMs. We compared the data received with the assistance provided to give a rate of complaints, shown in Figure 3.9. This shows a high level of variation in the number of complaints received. Most of the larger airports have a similar rate of complaints. The highest rate of complaints is at Brussels Zaventem (0.33%, over double the next highest).

**FIGURE 3.9 RATE OF COMPLAINTS RECEIVED BY AIRPORTS, 2009**

3.71 Some airports note that they have received no complaints regarding the Regulation since its introduction, while during the same period they have received several thousand complaints regarding aspects of their service not covered by the Regulation. This is evidence that their system for receiving complaints is functioning well, but it is not necessarily evidence that there are no problems regarding the implementation of the Regulation. We were informed by several PRM organisations that a mobility-impaired passenger who receives poor service may be reluctant to complain, as they may wish to forget the incident, and since these passengers may face many obstacles during a journey, they may take the view that reporting the more frequent minor incidents is not worthwhile. In addition, the lack of compensation in most Member States means there is little direct incentive to complain.

### Training

3.72 The Regulation requires that airports provide training relating to PRMs for their personnel:

- All personnel who provide direct assistance to PRMs, including those employed by subcontractors, must have knowledge of how to meet the needs of various different types of PRMs.
- All airport personnel who have direct contact with the travelling public must have disability-equality and disability-awareness training.
- All new employees must attend disability-related training and personnel must have appropriate refresher training.

3.73 We requested information on the training provided at each of the airports in the sample for the study. As many considered this material confidential, we were not able to obtain many copies of training documents. From the information we have received, the content of the three types of training may typically include the following:

- **Staff assisting PRMs directly:** Most courses described included: theoretical training on rights and obligations under the Regulation, training in awareness of disabilities, and physical training in lifting and other handling of PRMs. Some elements of training may be given to all staff; these could include Ambulift licenses and sign language. It may also include training not directly related to PRMs, such as training in first aid. Not all of the training courses we were given information for included provision for ‘soft’ elements of interacting with PRMs, such as ensuring that the person providing assistance is at the same height as a wheelchair user when talking to them, or being aware of the type of circumstances which could cause a person with autism to become distressed.
- **Passenger-facing staff:** This training is typically the disability-equality and disability-awareness sections of the training for staff providing direct assistance to PRMs. Several airports ensured that this training was undertaken by all staff working in the airport (including external staff) by making this training a requirement for obtaining the security clearance pass needed to work in the airport. It may include specific training for security staff who perform searches on PRMs, relating for example to how to search a passenger in their own wheelchair, and awareness of the importance to blind passengers of having belongs replaced in exactly the same place within their baggage.
- **Other employees:** The form of this training was often a short video on disability awareness. Some airports did not provide this training, or did not make it compulsory, which appears to be an infringement of the Regulation.

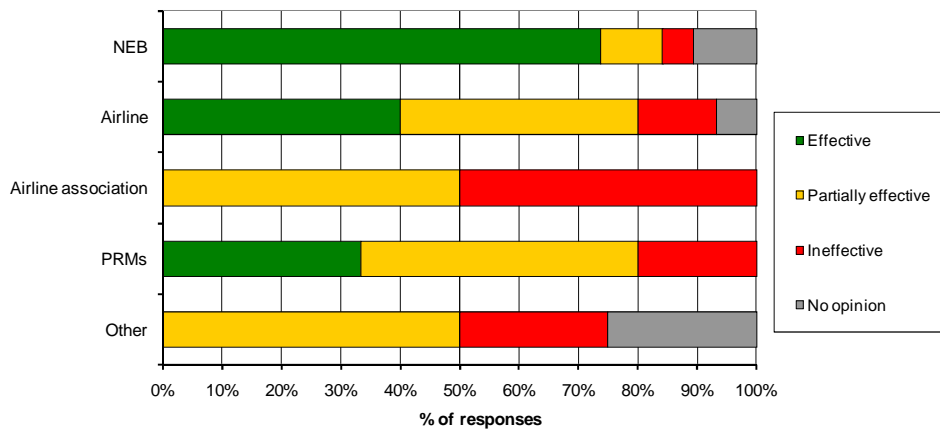
3.74 Training was delivered either internally, by external contractors specialising in training, or by PRM organisations. Several airports informed us that they used a “train the trainer” approach, where employees who have received the training then go on to train other employees. Several airports informed us that their training programmes were compliant with the guidance given in Annex 5-G of ECAC Document 30. A number of airports had involved PRM organisations in their training in some way, including in the development of the training, in its delivery, or through audit and approval. Several airports informed us that they had sought assistance from local PRM organisations but had found this problematic.

3.75 The lengths of the training programmes about which we were given information varied widely. We were given information relating to 6 training programmes for those providing direct assistance to PRMs: of these, 4 lasted 3-6 days, while two lasted 12 days or more. The length of training for passenger-facing staff also varied, with some airports requiring a full day of training whilst others only required the staff member to watch a 20 minute video. Refresher courses also varied considerably in length (between 1 and 4.5 days) and frequency: one airport informed us that it had monthly refresher training, while another required refresher training every 2 years.

#### **Stakeholder views on effectiveness of implementation**

3.76 We asked each of the stakeholders we contacted about how effectively they believed airports had implemented the Regulation; views vary considerably between different groups of stakeholders (Figure 3.10 below). Airlines and PRM organisations both believe that there are significant improvements to be made, but over 70% of NEBs believe that the actions of airports are largely sufficient. The rest of this section summarises the views expressed by stakeholders.

**FIGURE 3.10 VIEWS OF STAKEHOLDERS ON AIRPORT EFFECTIVENESS**



*Airports*

3.77 Most airports viewed their own actions as effective implementations of the Regulation. The most common problem reported by airports was misuse of the PRM service, however the level of impact of this reported misuse varied considerably between airports. The following other issues were identified by airports:

- Connecting flights: Minimum connection times, while sufficient for other passengers, can be insufficient for a PRM.
- Initial implementation of the Regulation: Several airports informed us that they had had problems with subcontracted service providers; a number had since retendered the service because of unsatisfactory service quality.
- Several airports informed us that they had had difficulty obtaining the cooperation of PRM organisations when developing quality standards.

*Airlines and airline associations*

3.78 Many airlines reported that quality of service and level of charges varied considerably between airports. This did not necessarily relate to size of airport: some airlines informed us that larger airports tended to provide better assistance, while other airlines informed us that their provision tended to be worse. Few airlines reported significant delays due to PRM services.

3.79 The most common problems with airport implementation of the Regulation reported by airlines related to airport charges. These issues were raised, in particular, by low cost and charter carriers:

- many airlines believed that the method of determining charges was not transparent and that the charges determined by airports were not reasonable or cost reflective;
- many airlines reported that the costs of the PRM service had increased (in some cases significantly) since the introduction of the Regulation, relative to the previous situation when the PRM service was contracted directly by the carrier, generally from its ground handler;



- this increase was believed by several airlines to be a result of overstaffing, or by some as a result of the inclusion of a margin, which they believed to be a contravention of the Regulation;
- at the same time as this perceived increase in cost, many airlines believed the quality of service had decreased, or at best not improved, since the introduction of the Regulation, and that the charges therefore represented poor value for money; and
- some States (in particular Spain and Portugal) have introduced uniform charges for services at State-operated airports, which airlines do not believe are cost-reflective or give value for money.

3.80 Some airlines informed us that they had serious concerns regarding the safety of uses of the PRM assistance services provided by airports, and noted that the airlines have no right to audit or directly influence the service provider.

3.81 Airline associations raised many of the same issues. ELFAA had particularly negative views regarding the assistance provided by airports: it believed that assistance was provided by unskilled staff and that the quality had decreased as a result, and that the cost of provision had tripled at some airports. It also believed that services were poorly synchronised with airline schedules. All of the airline associations from whom we obtained a response raised at least some concerns on all points regarding charges, including whether the costs were reasonable, cost-related and transparent, and whether the cooperation with airlines was sufficient.

#### *NEBs*

3.82 Most NEBs believed that airports had implemented the Regulation effectively. Several informed us that they believed there had initially been problems with implementation, but that these were now resolved. Those that believed there were areas which should be improved identified problems with designated points, infrastructure, delays on arrival and provision of information. It is not clear whether the level of supervision by most NEBs would be sufficient to allow an in-depth analysis of airport effectiveness (see 5.42).

#### *PRM organisations*

3.83 Most organisations representing disabled people believed there were some issues with the implementation of the Regulation by airports, and identified issues at all points of the process. Most organisations also noted that there was wide variation in the quality of service provided at different airports; several believed that this was a result of variation in the training given. Frequently identified problems included:

- **Mobility equipment is frequently damaged:** Many PRM organisations informed us that understanding of mobility equipment was poor and that training regarding it was insufficient. They believed that this poor understanding amongst airport and ground handling staff contributed to frequent damage. There was an expectation amongst most of the PRMs using wheelchairs that we spoke to that, if they travel by air, there is a high likelihood their chair will be damaged. For disabled people with extremely limited mobility who rely heavily on their wheelchair and may have adaptations particular to their needs, damage to their chair can be extremely distressing.

- **Lengthy waits for disembarkation:** Although the initial disembarking from the plane may be completed within the time set out in the quality standards, the passenger may then have to wait a long period of time in a holding area before the rest of the arrivals procedure is finished.
- **Information provision is poor:** This includes information on the layout of the airport, accessible real-time information on flights, and information on the rights of PRMs.
- **Websites are inaccessible:** We were informed by many organisations that airport websites are frequently inaccessible to visually impaired people.
- **Poor training of staff:** Several organisations reported that the interaction of airport assistance staff with PRMs could be poor. Examples of this included the assumption that all PRMs require a wheelchair, and where the assistance staff talk to a companion of a PRM rather than directly to the PRM.
- **Inability to use own wheelchair:** As discussed above, some wheelchair users with particularly limited mobility may wish to use their own wheelchair for as long as possible. We were informed that many airports do not permit the use of a passenger's own chair up to the gate, and that some have a policy of transferring the passenger to an airport chair at check-in.
- **Inadequate provision where connection times are long:** Where there is a wait of several hours between the arrival of one flight and the scheduled departure of the connecting flight, at some airports this may result in a PRM being left unattended for a long period in an area without facilities or assistance.
- **Insufficient time allowed for connections:** The minimum connection time given by airports may not be sufficient to unload, transfer and board a PRM. This is a particular problem at larger, more complex airports with multiple terminals.
- **Parking provision:** A number of issues were raised with the parking spaces made available to PRMs. These included comments on inconvenient location, insufficient capacity, or inappropriate requirements for payment.
- **“Holding areas”:** Some airports do not enable PRMs to access departure lounge facilities such as shops or restaurants, and require them to remain in a “holding area” for PRMs. Although such access to facilities is not required by the Regulation, it can significantly improve the experience of air travel of PRMs, and is provided by many airports.
- **Communication of arrival:** Communication of arrival at the airport can be difficult, for example through poor signage for points of communication, or points of communication failing to respond to calls for assistance.
- **Poor provision for the visually impaired:** Many airports do not provide adaptations to allow visually impaired passengers to access the airport independently. These can include tactile surfaces or Braille maps. We were also informed that training on how security staff should search the bags of these passengers was often lacking; it is important that all items are returned to their original location, as otherwise the passenger may have difficulty finding them.

#### *Other organisations*

3.84 The other organisations we interviewed raised issues which have been raised by the stakeholder groups already discussed. These included:

- “Teething problems” when the Regulation was first introduced;
- Poor provision of information;

- Variability of training; and
- Falling service levels, in particular falling standards of safety.

### Conclusions

- 3.85 All airports in the sample for this study had implemented the provisions of the Regulation. We were informed that the regional airports in Greece had yet to effect the change from provision by ground handlers to provision by airports, but we were not told of any other airports at which the Regulation has not been implemented. Most of the sample airports had contracted the provision of PRM assistance services to an external company, and several had changed their service provider within 18 months of the Regulation coming into force; this was interpreted by some as a sign that initial procurement and specification had not met actual needs.
- 3.86 The service provided at the sample airports varies in terms of a number of factors including the resources available to provide the services; the level of training of the assistance staff; the type of equipment used to provide services; the facilities provided to accommodate PRMs (such as PRM lounges). According to the information provided by PRM organisations, there is resulting variability in service quality, although this is difficult to quantify.
- 3.87 There is also significant variation between airports in the frequency with which PRM services are requested: the level of use of the service varies by a factor of 15 between the airports for which we have been able to obtain data. The type of PRM service requested also varies considerably between airports. Both the frequency of use and the type of service required are likely to be affected by the varying demographics of the passengers using different airports.
- 3.88 The Regulation requires airports to publish quality standards. Most sample airports had done so, although some had published them only to airlines and other service users. Almost all quality standards followed the example format set out in ECAC Document 30, which defines the percentage of PRMs who should wait for up to given numbers of minutes. Some airports published qualitative measures in addition to these time standards, such as descriptions of the treatment the passenger should expect at all points of the service. However, none of the sample airports had published the results of any monitoring of these quality standards, and whilst most did undertake monitoring in some form, only four had commissioned external checks of the service.
- 3.89 The Regulation allows airports to levy a specific charge to cover the costs of assistance. All but one of the sample airports had done so. The level of charges varied considerably. We analysed this charge to examine whether variation could be explained by higher frequency of use of the service, differences in price levels between States, or differences in service quality, but there was no evidence that this was the case. The design of the airport may be a further factor influencing the cost of service provision and hence the level of charges.
- 3.90 Some stakeholders believe that the requirements to select contractors and establish charges in cooperation with users and PRM organisations were not followed thoroughly. Many airlines did not believe that consultation on either element had been sufficient, and this view was shared by some PRM organisations. There were a

number of barriers to effective consultation, including linguistic restrictions and airport user committees which failed to include all interested stakeholders. Consultation with airlines was reported as particularly poor in Spain, Portugal and Cyprus. In contrast to this, we note that several airports stated that they had sought the participation of PRM organisations but had found this difficult to obtain.

- 3.91 The Regulation requires airports to provide specialised disability training for staff directly assisting PRMs, and whilst all sample airports had done so, there were significant variations in the length and format of this training. The shortest training course among those for which we have data was 3 days long, while the longest lasted 14 days. There was similar variation in the length of training provided for passenger-facing staff who did not provide direct assistance. A number of airports informed us that they did not provide disability-awareness training for staff not in public-facing roles, or only provided it on a voluntary basis.

## 4. APPLICATION OF THE REGULATION BY AIRLINES

### Introduction

4.1 Regulation 1107/2006 also sets out requirements for air carriers relating to their treatment of passengers with reduced mobility (PRMs). This section assesses how airlines are implementing these requirements. Information is drawn from two key sources:

- a detailed review of information published by the case study airline on their websites, against a range of criteria; and
- interviews with representatives of the carriers and other stakeholders.

4.2 This section begins by outlining the obligations imposed on airlines by the Regulation, and evaluates how airlines are implementing these requirements.

### Requirements of the Regulation for air carriers

4.3 The Regulation imposes a range of requirements on airlines, which can be summarised as follows:

- **Prevention of refusal of carriage:** The Regulation prohibits airlines from refusing carriage or accepting reservations from PRMs, unless this is necessary to comply with safety requirements, or necessitated by the physical constraints of the aircraft. Where boarding is refused, the provisions of Regulation 261/2004 should apply with regard to refunds or rerouting. Airlines are permitted to require that a PRM be accompanied by a person who is able to provide any assistance that is required (again subject to this being necessary to meet safety requirements), and are required to publish any safety rules which they attach to the carriage of PRMs.
- **Transmission of information:** Airlines are required to take all necessary measures to enable the receipt of PRM assistance requests at all points of sale. Where such requests are received up to 48 hours prior to departure, the airline should transmit the information to the relevant airport(s) at least 36 hours before departure, or as soon as possible if notification is received from the passenger less than 48 hours before departure. Following departure of a flight the airline is also required to provide the destination airport with details of the PRMs requiring assistance on the arriving flight.
- **Assistance:** Annex II specifies the level of assistance which air carriers should provide to PRMs. This comprises carriage of assistance dogs, transport of up to two items of mobility equipment, communication of flight information in accessible formats, making efforts to accommodate seating requests (and seating accompanying persons next to the PRM where possible) and assistance in moving to toilet facilities.
- **Training:** All employees (including those employed by sub-contractors) handling PRMs should have knowledge of how to meet their needs. Disability-equality and disability-awareness training should be provided to all airport personnel dealing directly with the travelling public, and all new employees should attend disability-related training.

- **Compensation for lost or damaged mobility equipment:** Airlines are required to compensate passengers for lost or damaged mobility equipment or assistive devices, in accordance with national and international law.

#### **Published safety rules**

- 4.4 Article 4(3) requires airlines to publish the safety rules relating to carriage of PRMs. The Regulation does not state in any more detail what these safety rules should cover, but we would expect from the context that this is intended to mean rules relating to where carriers would exercise a derogation under Article 4(1) to allow refusal or limitation of carriage, or for where passengers would have to be accompanied. This would include any rules necessitating limitations on the number of PRMs which can be carried, restrictions on the types of PRM posing specific safety risks, or limitations on their carriage or on that of mobility equipment due to the size of aircraft.
- 4.5 In some cases the information published by airlines is in the form of a document defined as ‘safety rules’ or ‘information pursuant to Regulation 1107/2006’, but more commonly information is provided on a web page (or pages) without these descriptions. The limited use of the ‘safety rules’ term by airlines may indicate that carriers do not understand what is meant by the term, or that the requirement is open to interpretation. It is also possible that airlines do not have specific PRM safety rules – both KLM and SAS informed us that the same safety rules apply to PRMs as to all other passengers.
- 4.6 The airlines’ Conditions of Carriage may also provide a useful source of information on policy on the carriage of PRMs, and in some cases may provide more detail than dedicated PRM web pages.
- 4.7 Seven carriers’ Conditions of Carriage also refer to other requirements (often described as ‘Our regulations’ or ‘Other regulations’) which apply to carriage of PRMs. In the sample we have reviewed, the reference to such regulations does not always specify exactly what the scope of these is or where they are to be found. This may infringe the requirement in Article 4(3) to publish any safety rules affecting PRMs, and may also raise issues of consistency with the Unfair Contract Terms Directive, as the conditions on which bookings are made should be transparent at the time. Whilst some airlines’ Conditions state that these regulations are published on their websites, the following case study carriers’ Conditions include such references without saying where the information can be found:
- Air Baltic;
  - Emirates;
  - SAS; and
  - TAP Portugal.
- 4.8 The carriers which provided the most detailed information set out the information listed below, and we would therefore expect a comprehensive PRM web page to provide at least some information on these topics:
- Any limitations on the carriage of PRMs, for example a limit on the number that can be conveyed on a given flight;

- Advance booking requirements for any PRM requiring assistance;
- Conditions under which an accompanying passenger will be required;
- Guidance on the carriage of assistance animals;
- Policies on the carriage of equipment, e.g. wheelchairs, stretchers and oxygen; and
- Any assistance which will be offered on board.

*Information actually published by carriers*

- 4.9 Three of the sample airlines (Air Berlin, easyJet and Ryanair) provide either ‘safety rules’, or a notice specifically stated to be pursuant to Regulation 1107/2006. In a further six cases Regulation 1107/2006 is mentioned in a first sentence of the web page / PRM document, or elsewhere in the text.
- 4.10 We found that eight of the sample airlines include on their website all the information likely to be required. This was normally in the form of a web page, sometimes with sub-sections, however AirBaltic and KLM provide downloadable documents containing all PRM guidance. Delta also provides a PRM brochure, but this does not contain all the information provided on the PRM web page. In the remainder of cases airlines provide fairly comprehensive web pages, but omit certain items which may appear on other sections of the website (for example in the Conditions of Carriage).
- 4.11 In some cases we found inconsistencies between the PRM web page and that the information provided in the Conditions of Carriage. For example, Delta’s Conditions of Carriage state that 48 hours’ advance notice is required for any PRMs who wish to receive special assistance, but the PRM information section states that 48 hours’ advance notice is only required if the passenger needs to use oxygen during the flight, requires the packaging of a wheelchair battery for shipment as checked luggage, or is travelling with a group of 10 or more people with disabilities. Austrian Airlines’ PRM information emphasises the importance of booking in advance, but does not reflect the stronger wording in the Conditions of Carriage, which state that carriage of PRMs ‘is subject to express prior arrangement’. Similarly, the Conditions of Carriage of Alitalia, Brussels Airlines, Delta, Ryanair and Wizzair state that carriage may be refused to PRMs if not arranged in advance; however although the PRM webpage states that assistance should be requested at the time of booking, it is not indicated that failure to do this may result in denial of boarding.
- 4.12 Some of the rules set out in airlines’ Conditions of Carriage do not appear in the PRM information section of the website. For example, Thomsonfly imposes a limit on the number of PRMs or wheelchairs which will be accepted per flight in their Conditions of Carriage, which does not appear on the airline’s PRM web page.

Table 4.1 outlines the coverage of the PRM web pages against the criteria set out in paragraph 4.9 above.



TABLE 4.1 INFORMATION AVAILABLE ON CARRIER WEBSITES

Airline	Information provided	Key issues and omissions
Aegean Airlines	'Travel Guide' section of website provides some information on carriage of assistance animals, wheelchairs and oxygen.	No information on advance booking, accompanying passengers or animals  Information on wheelchairs is incomplete – conditions of carriage state that spillable batteries cannot be carried. No information on stretchers.
Air Berlin	Information is provided within a section entitled 'Flying barrier-free', and in a safety rules section entitled 'airberlin's safety regulations for the carriage of passengers with restricted mobility (PRMs) in accordance with EC regulation no. 1107/2206' downloadable from the same page. The safety rules discuss the following: <ul style="list-style-type: none"> <li>• PRM limit</li> <li>• Accompanying persons</li> <li>• Seat allocation</li> <li>• Guide dogs</li> <li>• Information in the event of refusal of carriage</li> </ul>	The safety rules do not include advance booking or policies on carriage of equipment. However, with the exception of stretchers this information is provided on the PRM webpage which contains the safety rules.
Air France	Information is provided within a section entitled 'Passengers with reduced mobility'	None
AirBaltic	Detailed information is provided within a document entitled 'Air travel for physically challenged passengers'	None
Alitalia	Limited information across all categories is provided in a section entitled 'No barriers travelling'.	More detailed information on some topics can be accessed only by searching the site for specific terms, e.g. 'stretcher'.
Austrian	Information on most categories is provided in a section entitled 'Barrier-free travel'.	No reference is made to the carriage of stretchers.
British Airways	Information on all categories is provided within a section entitled 'Disability assistance'	None
Brussels Airlines	Reasonably detailed information across all categories is provided in a section entitled 'Special Assistance'.	Information on accompanying passengers, wheelchairs and stretchers is incomplete.
Delta	Detailed information on all categories is provided within a section entitled 'Services for Travelers with Disabilities'. A brochure providing a summary of this information can also be downloaded from the site.	None
easyJet	Detailed information on almost all categories is provided within a notice entitled 'For passengers who are disabled or have reduced mobility (PRM) due to a physical, cognitive (learning) disability or any physical impairment, as defined by current European law, Regulation EC1107/2006 Article 2(a).' In addition detailed information is provided in the 'Carrier's Regulations'.	The information notice on the website is detailed and generally appears complete. There is no reference to provision of oxygen or carriage of stretchers although both are addressed in the Carrier's Regulations.
Emirates	Some information across all categories is provided within the sections 'Health & Travel', 'Special Needs' and 'FAQs'.	The information provided appears to be complete but it is fragmented between these

Airline	Information provided	Key issues and omissions
		three sections, which could be confusing.
Iberia	The website has a general information section entitled 'Passengers with reduced mobility or special needs'. This provides a link to a more detailed information leaflet, downloadable by clicking on a 'No barriers to travel' icon.	The location of the information leaflet is not obvious as it is not listed under 'Information of interest'.  Information in the leaflet on accompanying passengers and carriage of mobility equipment appears to be incomplete.  There is a document entitled 'Attending to the needs of people with reduced mobility' but this appears to be a general summary of ECAC/ICAO guidance and it is not clear what applies to Iberia.
KLM	Information is provided within a section entitled 'Physically challenged passengers' and in a 'Carefree travel' brochure.	None
Lufthansa	Information on most categories is provided in a section entitled 'Travellers with special needs'.	No information on accompanying passengers or stretchers, although some info is provided in a section on flights to and from the USA.
Ryanair	Detailed information on almost all categories is provided within a notice entitled 'NOTICE PURSUANT TO EC REGULATION 1107/2006 CARRIAGE OF DISABLED PERSONS AND PERSONS WITH REDUCED MOBILITY'.	None
SAS	Information on almost all categories is provided within a section entitled 'Special needs'.	No information on accompanying passengers or stretchers
TAP Portugal	Detailed information on all categories is provided within a section entitled 'Special Assistance'.	None
TAROM	Limited information across all categories is provided in a section entitled 'Persons with disabilities'.	Because the information is not detailed it is not clear whether it is complete, e.g. whether all circumstances where passengers need to be accompanied are listed.
Thomas Cook	Information on all categories is provided within a section entitled 'Medical - passengers with Reduced Mobility'.	None
TUI (Thomsonfly)	Some information on most categories is provided within a section entitled 'Passengers with special needs'.	No information on stretchers or oxygen
Wizzair	Limited information is provided within a section entitled 'Passengers with Special Needs'.	No information on assistance animals or stretchers, although both are referred to in the Conditions of Carriage.

## Carrier requirements on carriage of PRMs

### *Safety requirements defined in law or by licensing authorities*

- 4.13 Article 4(1) allows derogations from Article 3 in order to meet safety requirements defined by national or international law, or to meet safety requirements established by the authority that issued the air operator's certificate to the air carrier concerned. The only EU-wide legislation which applies is EU-OPS1 (Commission Regulation 859/2008), which is aligned with JAR-OPS 1 Section 1 guidance previously produced by the Joint Aviation Authorities.
- 4.14 National health and safety legislation may also provide safety-related grounds for imposing restrictions on the carriage of PRMs – for example cabin crew may not be permitted to lift passengers between their seat and an on-board wheelchair, which would then necessitate an accompanying passenger if it is expected that they will need to leave their seat at any point during the flight.
- 4.15 All other restrictions are governed by safety requirements established by licensing authorities, which are often (although not always) the same organisation that has been designated as the NEB for the Regulation. The main guidance material relating to carriage of PRMs that licensing authorities should take into account is that originally defined in Section 2 of JAR-OPS 1. Section 2 was not included in EU-OPS1, but ECAC Document 30 states that, pending the adoption of implementing rules related to operations based on the EASA Regulation (216/2008), Member States are allowed to use the Section 2 guidance material, provided that there is not conflict with EU-OPS. To accompany EU-OPS 1, the JAA published an updated version of Section 2 in the form of Temporary Guidance Leaflet (TGL) 44. The section relating to the carriage of PRMs, ACJ OPS 1.260, remains unchanged from the original JAR-OPS 1 Section 2. It states that:

- 1 *A person with reduced mobility (PRM) is understood to mean a person whose mobility is reduced due to physical incapacity (sensory or locomotory), an intellectual deficiency, age, illness or any other cause of disability when using transport and when the situation needs special attention and the adaptation to a person's need of the service made available to all passengers.*
- 2 *In normal circumstances PRMs should not be seated adjacent to an emergency exit.*
- 3 *In circumstances in which the number of PRMs forms a significant proportion of the total number of passengers carried on board:*
  - a. *The number of PRMs should not exceed the number of able-bodied persons capable of assisting with an emergency evacuation; and*
  - b. *The guidance given in paragraph 2 above should be followed to the maximum extent possible.*

- 4.16 Licensing authorities may require their carriers to impose more stringent restrictions on carriage of PRMs than the 50% limit defined by TGL 44. However, this is rare: the only example identified amongst the case study States is the Belgian Civil Aviation Authority (BCAA), which has set restrictions on the numbers of certain types of PRM, and minimum numbers of accompanying passengers. The numerical limits, which are outlined in more detail in the case study for Belgium in appendix C, are reflected in the conditions imposed by Brussels Airlines. In contrast, some licensing authorities

(for example the UK CAA) have stated that they will not generally approve limits on carriage of PRMs below the 50% defined in TGL 44.

- 4.17 In the remainder of cases, licensing authorities do not have any defined policy and will consider any restrictions on carriage of PRMs on a case by case basis. Therefore, more stringent restrictions on carriage of PRMs may be proposed by the airlines themselves, included in their Operations Manuals and submitted for approval by the licensing authority. As a result, there are significant variations between airlines, even where operational models and types of aircraft are similar. For example, whilst Wizzair, easyJet and Ryanair have similar operational models and aircraft types, Ryanair has a limit of 4 PRMs who require assistance per aircraft whilst Wizzair has a limit of 28 PRMs and easyJet 50%. Although the limits imposed by the three airlines are all based on safety, it is difficult to imagine that all three could be ‘safe’ limits. There does not seem to be an evidence base for these limits and a stakeholder suggested to us that, in the event of an emergency, it is impossible to predict whether even ‘able bodied’ passengers will be in a physical or psychological state consistent with evacuating the aircraft in the expected time; therefore, it was discriminatory to have a PRM limit.
- 4.18 The policy adopted by many of the legacy carriers is influenced by the United States Department of Transport Regulation, 14 CFR Part 382 (hereafter described as rule 382). The United States Air Carrier Access Act of 1999 made rule 382 apply to non-US carriers on flights to/from the US, and to all flights which are codeshares with US carriers (even flights not to/from the US), except where there is a specific conflict with non-US law. Despite sharing the same aspiration of ensuring equal access to air travel for all, there are significant differences between the US and EU regulations. Rule 382 specifically prohibits airlines from imposing numerical limits on PRMs, on the basis that this practice is discriminatory. Lufthansa and TAP Portugal are the only case study airlines operating to and from the US to publish PRM limits.
- 4.19 PRM limits have also been challenged on the basis of national law. In 2009, the Madrid Provincial Court ruled that Iberia must change its Flight Operation Manual because it was indirectly discriminatory against disabled people. The case was brought by three deaf people who were refused boarding because they were unaccompanied.
- 4.20 The Regulation allows airlines to **request that a passenger be accompanied**, but only on the basis of safety. Three carriers cited the UK Department for Transport’s *Access to Air Travel for Disabled Persons and Persons with Reduced Mobility – Code of Practice* as the basis for the criteria they use to determine whether a PRM should be accompanied. The document also supports the Regulation in providing guidance to airlines and airports on best practice approaches to the handling and transit of PRMs. The guidance states that an accompanying passenger should only be required “when it is evident that the person is not self-reliant and this could pose a risk to safety”. The document defines this as being as passenger who cannot:
- Unfasten their seat belt;
  - Leave their seat and reach an emergency exit unaided;
  - Retrieve and fit a lifejacket;
  - Don an oxygen mask without assistance; or
  - Is unable to understand the safety briefing and any advice and instructions given

by the crew in an emergency situation (including information communicated in accessible formats).

- 4.21 The document also states that passengers who require a level of personal care which cabin crew cannot provide should be told that they should be accompanied. This includes assistance with the following:
- Breathing (reliance on supplementary oxygen);
  - Feeding;
  - Toileting; and
  - Medicating.
- 4.22 The guidance implies that a passenger should only be required to be accompanied if they are likely to require such assistance during the course of the flight. This is consistent with rule 382, which states that "concern that a passenger with a disability may need personal care services...is not a basis for requiring the passenger to travel with a safety assistant".
- 4.23 The most significant difference between US and EU law relates to the **48 hour advance notification** requirement in the Regulation for passengers requiring assistance. Rule 382 states that requiring pre-notification from PRMs is discriminatory, given that the same requirement is not imposed on other passengers. It does however allow airlines to require 48 hours pre-notification in circumstances where a passenger:
- Requires oxygen on a domestic flight (72 hours notice can be requested on international flights);
  - Is travelling in an incubator;
  - Requires a respirator or oxygen concentrator to be connected to the aircraft power supply;
  - Is travelling in a stretcher;
  - Is travelling in an electric wheelchair on an aircraft with 60 seats or less;
  - Requires hazardous material packaging, e.g. for an electric wheelchair;
  - Is travelling in a group of 10 or more PRMs;
  - Requires an on-board wheelchair on an aircraft with more than 60 seats that does not have an accessible toilet;
  - Intends to travel in the cabin with an emotional support animal;
  - Intends to travel in the cabin with a service animal on a flight of 8 hours or more; or
  - Has both severe vision and hearing impairments.
- 4.24 The Regulation does not define the circumstances under which **medical clearance** can be reflected from a passenger, but rule 382 prohibits airlines from requesting medical certification unless the passenger's condition poses a 'direct threat', which 'means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services'.

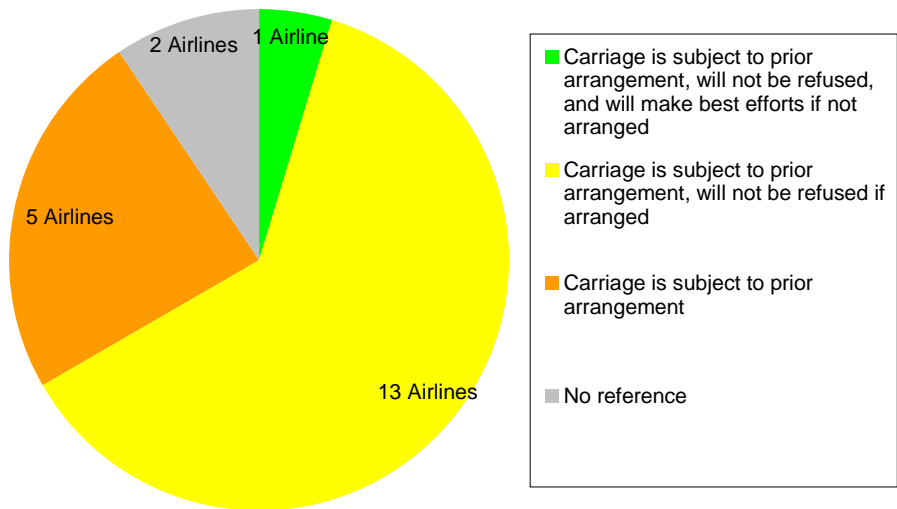
*Policy on carriage of PRMs defined in Conditions of Carriage*

4.25 The element of carriers’ Conditions of Carriage relating to PRMs can be classified into the following six categories:

- **Will not refuse carriage on disability grounds** – all PRMs carried without restriction or requirement for pre-booking;
- **Carriage subject to prior arrangement, but will not be refused if not arranged** – the airline would prefer that advance arrangements are made, but PRMs may nevertheless be carried without this;
- **Carriage subject to prior arrangement and will not be refused if arranged** – PRMs are required to make advance arrangements, and will not be refused carriage on the basis of their disability if advance arrangements have been made;
- **Carriage is subject to prior arrangement** – as above, but without the additional clause on non-refusal of carriage to PRMs who have made arrangements;
- **Non-compliant term** – e.g. airline refuses to carry certain PRMs;
- **No reference** – PRMs not discussed in Conditions of Carriage.

4.26 Figure 4.1 shows the general approach adopted in the Conditions of Carriage of the case study airlines. None of the case study Conditions of Carriage were at the extreme ends of the scale, i.e. explicitly non-compliant terms or carriage of all PRMs without any restriction.

**FIGURE 4.1 CONDITIONS ON CARRIAGE OF PRMS**



4.27 Most (13) of the Conditions of Carriage of the sample airlines surveyed state a policy of not refusing carriage to PRMs on the grounds of their special requirements subject to arrangements being made in advance, although boarding may still be denied for other reasons. Alitalia adds an additional disclaimer, which states that the PRMs who have made advance arrangements will be carried, unless this is “...impossible due to objective causes of force majeure”.

- 4.28 The advance booking requirement does not necessarily apply to all PRMs. Air Berlin states that the carriage of medical devices and mobility aids can only be guaranteed with up to 48 hours' notice, and visually impaired passengers with guide dogs are also required to make advance arrangements. No reference is made to PRMs not falling within these categories, however.
- 4.29 Table 4.2 shows the approaches adopted by each of the case study airlines in their Conditions of Carriage. Air Berlin is unusual in that the advance booking requirement appears only to apply to PRMs reliant on mobility aids, medical devices or assistance animals, and it appears that no such requirement exists for other PRMs.

**TABLE 4.2 CONDITIONS OF CARRIAGE OF PRMS**

Airline	State	General approach
Aegean Airlines	Greece	No reference
Air Berlin	Germany	Carriage of mobility aids, medical devices and assistance animals is subject to prior arrangement
Air France	France	Carriage is subject to prior arrangement, will not be refused if arranged
AirBaltic	Latvia	Carriage is subject to prior arrangement, will not be refused if arranged
Alitalia	Italy	Carriage is subject to prior arrangement, will not be refused if arranged
Austrian	Austria	Carriage is subject to prior arrangement
British Airways	UK	Carriage is subject to prior arrangement, will not be refused, and will make best efforts if not arranged
Brussels Airlines	Belgium	Carriage is subject to prior arrangement, will not be refused if arranged Also state that they will make reasonable efforts even if not arranged.
Delta	Non-EU	Carriage is subject to prior arrangement
EasyJet	UK	Carriage is subject to prior arrangement
Emirates	Non-EU	Carriage is subject to prior arrangement
Iberia	Spain	No reference
KLM	Netherlands	Carriage is subject to prior arrangement, will not be refused if arranged
Lufthansa	Germany	Carriage is subject to prior arrangement, will not be refused if arranged
Ryanair	Ireland	Carriage is subject to prior arrangement, will not be refused if arranged
SAS	Sweden	Carriage is subject to prior arrangement, will not be refused if arranged
TAP Portugal	Portugal	Carriage is subject to prior arrangement, will not be refused if arranged
TAROM	Romania	Carriage is subject to prior arrangement, will not be refused if arranged
Thomas Cook	Germany / UK	Carriage is subject to prior arrangement, will not be

Airline	State	General approach
		refused if arranged
TUI (Thomsonfly)	Germany / UK / Netherlands	Carriage is subject to prior arrangement, will not be refused if arranged
Wizzair	Hungary	Carriage is subject to prior arrangement

*Circumstances under which carriage may be refused*

4.30 Although all of the case study airlines impose a range of conditions on PRM bookings, only a proportion state explicitly that carriage may be refused if certain conditions are not met. In some cases, an individual PRM travelling cannot control whether the conditions are met, but some conditions can be satisfied if the PRM follows a defined course of action:

- Conditions which individual PRMs cannot control whether they meet include limits on the number of PRMs which can be carried on a given flight, and restrictions posed by the physical size and configuration of specific aircraft
- Conditions which PRMs can take actions to comply with include advance booking (discussed in the preceding section), travelling with an accompanying passenger or obtaining medical clearance.

4.31 The remaining categories are discussed in turn below.

4.32 Under Article 4 of the Regulation carriage can only be refused on safety grounds, or if boarding is physically impossible due to space constraints, a requirement with which most of the case study airlines are compliant. The only condition we have identified which is potentially non-compliant is the requirement for advance booking cited by Alitalia, Brussels Airlines, Delta, Ryanair and Wizz Air.

*PRM limits and physical constraints*

4.33 Ryanair is the only case study airline to set out numerical limits on carriage of PRMs in its Conditions of Carriage. In addition, Delta's Conditions of Carriage include the vague statement that carriage may be refused to any PRM on the basis of safety.

4.34 Airline PRM web pages provide more information on PRM limits, with several airlines setting out limits:

- Air Berlin;
- AirBaltic;
- Brussels Airlines;
- Lufthansa;
- TAROM (only for PRMs in wheelchairs); and
- Wizz Air.

4.35 Aegean Airlines and TAP Portugal also informed us that they have PRM limits in place, although these are not published. Full details of the PRM limits adopted by each airline are given in Table 4.3. Several of the other case study airlines informed us that they are required to adhere to the limit set out in TGL 44 that the number of PRMs



should not exceed the number of able bodied passengers; this restriction is not included in the table below, although it is possible that some of the unspecified restrictions actually relate to this. Note that other carriers may have unpublished limits which we have not been informed about.

**TABLE 4.3 AIRLINE PRM LIMITS**

Airline	Published limits	Unpublished limits	Applies to
Aegean Airlines	-	Unspecified restriction	All unaccompanied PRMs
AirBaltic	If number of PRMs exceeds number of cabin crew per flight (typically 3-4 on short haul aircraft)	-	All PRMs, only where PRMs form a large proportion of passengers on flight
Air Berlin	Unspecified limit for safety reasons	-	All PRMs
Brussels Airlines	2 when travelling individually, except on A330-300, where limit of 4. When travelling in group limit ranges from 9 (on BAe 146) to 27 (on A330-300), including escorts.	-	WCHS + WCHC + STCR + BLND + DEAF/BLND, in any combination
Lufthansa	Limit on unaccompanied passengers in wheelchairs: 3 on regional flights (>70 seats); 5 on other flights Limit on no. of wheelchairs per flight: 3 on most intercontinental flights, 2 on continental flights and 1 on regional flights. Also unspecified general limit on limited mobility passengers for care and safety reasons.	-	All unaccompanied PRMs
Ryanair	Limit of 4 per aircraft for safety reasons	-	Passengers with reduced mobility, blind/visually impaired or requiring special assistance.
TAP Portugal	-	Stretcher: 2, except Fokker 100 and Embraer 145; WCHC: 4-10 depending on aircraft; WCHS, blind and deaf: 9, except Fokker 100 and Embraer 145; Incubator: 1, except Fokker 100 and Embraer 145.	See left
TAROM	Limit on passengers requiring wheelchair in		

	cabin: 0 on AT42, 2 on B737 and 6 on A318. No limits on other PRMs	
Wizz Air	Limit of 28 disabled or incapacitated or passengers with reduced mobility, including a maximum of 10 who require a wheelchair from check-in to the cabin seat	See left

4.36 Fewer airlines refer to other physical constraints in their Conditions of Carriage, with only AirBaltic and Brussels Airlines indicating that carriage may be refused if the PRM is unable to physically board via the aircraft’s doors.

*Accompanying passengers*

4.37 Article 4(2) of the Regulation allows airlines to require PRMs to be accompanied in order to meet the applicable safety requirements referred to in Article 4(1). As with any numerical PRM limits, requirements for PRMs to be accompanied should be set out in the carriers’ Operations Manuals, which again would require the approval of the licensing authority in the relevant Member State.

4.38 Most airlines publish criteria under which a PRM would have to be accompanied. These are again generally safety related, or relate to the level of assistance cabin crew are able to give. Three common themes emerge:

- The PRM has certain specified conditions, e.g. difficulty walking;
- The PRM requires care which the cabin crew are unable to provide (typically this means that the passenger is not self-reliant); or
- The PRM is unable to evacuate the aircraft without assistance.

4.39 Although many airlines make reference to self-reliance criteria there is a difference between those requiring **all** passengers who are not self-reliant to be accompanied; and those which state that passengers who, for example, require help with eating, should be accompanied. In the latter case a passenger could argue that they will not be eating on the flight, and that this criterion is therefore irrelevant. Six of the sample airlines state that all passengers who are not self-reliant must be accompanied, and this is not limited to cases where there is a safety implication. In our view, these airlines may be infringing the Regulation as well as (if they fly to the US) rule 382.

*Medical clearance*

4.40 The majority of the case study airlines required medical clearance for certain types of PRM, either confirming fitness to travel, or stating a need to carry medical equipment such as syringes or oxygen, although again it is generally not explicitly stated that boarding will be refused if clearance is not obtained. In most cases, the PRM is required to ask their doctor to fill in a medical clearance form, which is then forwarded to the airline’s medical department for approval.

4.41 Given the importance of not confusing disability with illness, it might be expected that

the proportion of passengers required to seek clearance before travelling would be minimised. This is the case for most of the case study airlines. Although the types of PRM required to obtain clearance varies, this normally includes those requiring oxygen or stretchers and is not overly restrictive. However, six airlines adopt slightly different policies:

- Lufthansa states that ‘In the case of a physical or psychological limitation, you must obtain an assessment of your fitness for air travel from a Lufthansa doctor in advance’, although it is stated elsewhere that this does not apply to blind people. Nevertheless, this requirement could potentially encompass many types of PRM, and the requirement to see a Lufthansa doctor is likely to be particularly onerous.
- The policy adopted by Wizz Air, although vague, also has the potential to be quite onerous. The airline reserves the right to require medical clearance in all cases, and will refuse the reservation if this is not obtained.
- Austrian, Iberia (both on the PRM web pages) and Wizzair (in the airline’s Conditions of Carriage) all state explicitly that boarding may be refused to passengers on medical grounds if clearance has not been arranged in advance.
- Thomas Cook takes an unusually vague approach in stating that ‘Some medical conditions require a fitness to fly certificate’. Passengers who consider themselves to have a condition that will require the authorisation of their doctor are advised to obtain their approval before flying. A telephone number is however provided, where presumably clarification of the conditions requiring medical authorisation can be obtained.

4.42 Policies on denial of boarding, accompanying passengers and medical clearance are summarised in Appendix A. This information is mostly derived from the PRM web pages provided by the airlines, unless explicit reference is made to the conditions of carriage. Any unpublished information provided to us directly by the airline is shown in italics.

*Actions to be taken when carriage refused*

4.43 Article 4(1) requires that, where a PRM is refused boarding, the airline is required to offer reimbursement or rerouting in line with Regulation 261/2004. Although none of the case study airlines make any references to this in either their PRM web pages or Conditions of Carriage, almost all of the airlines we interviewed confirmed that passengers who have been refused boarding would be offered a refund, rerouting or cost-free cancellation, depending on the circumstances. However, some carriers indicated that this situation would be rare, as refusal would most commonly occur at the booking stage.

4.44 Where boarding is refused, airlines are required under Article 4(4) of the Regulation to immediately inform the PRM of the reasons for the refusal and, on request, should communicate the reasons to the PRM in writing within five working days. Alitalia and Ryanair are the only airlines to refer to this in their Conditions or policies, Alitalia stating in its Conditions of Carriage that in the event of refusal of carriage the passenger may request additional information, and Ryanair stating on its PRM webpage that ‘If we are unable to carry a disabled/reduced mobility passenger, we will inform the person concerned of the reasons for refusal of carriage’.

4.45 However, although only two of the case study airlines provide details of the actions

they will take when carriage is refused, again most indicated in their interviews with us that they will provide either written or verbal explanations to passengers who have been refused boarding.

### **Services provided to PRMs**

#### *Requirements defined in law or other guidance*

4.46 Annex II of the Regulation requires that airlines provide the following assistance to pre-notified PRMs without additional charge:

- Carriage of recognised assistance dogs in the cabin, subject to national regulations.
- In addition to medical equipment, transport of up to two pieces of mobility equipment per disabled person or person with reduced mobility, including electric wheelchairs (subject to advance warning of 48 hours and to possible limitations of space on board the aircraft, and subject to the application of relevant legislation concerning dangerous goods.
- Communication of essential information concerning a flight in accessible formats.
- The making of all reasonable efforts to arrange seating to meet the needs of individuals with disability or reduced mobility on request and subject to safety requirements and availability.
- Assistance in moving to toilet facilities if required.
- Where a disabled person or person with reduced mobility is assisted by an accompanying person, the air carrier will make all reasonable efforts to give such person a seat next to the disabled person or person with reduced mobility.

4.47 This guidance is reflected in ECAC Document 30 and the UK DfT Code of Practice. The Code of Practice also suggests the following:

- Cabin crew should provide reasonable assistance with the stowage and retrieval of any hand baggage and/or mobility aid whilst in flight.
- Cabin crew should familiarise disabled passengers with any facilities on board designed particularly for disabled passengers. In the case of visually impaired people they should additionally offer more general familiarisation information and such other explanations as may be requested, such as about on-board shopping.
- Other printed material, such as dinner menus, should, where reasonably practicable, be accessible to blind and partially sighted people. Alternatively, cabin crew should explain the material.
- Where video, or similar systems, are used to communicate safety or emergency information, sub-titles should be included to supplement any audio commentary.
- Where possible, films and other programmes should be subtitled for deaf and hard of hearing passengers.
- In selecting catering supplies, air carriers should consider how “user-friendly” the packaging is for disabled people.
- Cabin crew should describe the food, including its location on the tray, to blind and partially sighted passengers.
- During the flight, cabin crew should check periodically to see if PRMs need any

assistance. In the case of those requiring the use of the on-board wheelchair (where one is installed), the staff must be trained in how to assist the passenger to and from the toilet by pushing the on-board wheelchair.

- Passengers' own portable oxygen concentrators should normally be allowed if battery powered, though air carriers will need to check the type of device to ensure it does not pose any technical problems.

4.48 The assistance provided by the case study airlines generally reflects this guidance, although not all provide comprehensive information on the service they provide to PRMs, particularly in terms of general assistance on-board the aircraft.

4.49 Again, there are some conflicts between Regulation 1107/2006 and the US guidance defined in rule 382, which would apply to some flights operated by EU carriers including all flights to/from the US. In particular, the US regulations do not define an upper limit on the number of items of mobility equipment that should be carried. Some additional requirements established by rule 382 include:

- Assistance in moving to and from seats;
- Assistance in preparation for eating;
- All new videos, DVDs, and other audiovisual displays played on aircraft for safety purposes should be high-contrast captioned;
- Passengers should be able to use moveable armrests seats where their condition requires it;
- Seats with additional legroom should be provided for passengers with fused or immobilised legs;
- PRMs should be permitted to use ventilator, respirator, continuous positive airway pressure machine, or portable oxygen concentrator (POC) of a kind equivalent to an FAA-approved POC on all aircraft originally designed to have a maximum passenger capacity of more than 19 seats, unless the equipment does not meet safety requirements or cannot be used or stowed safely in the cabin.

#### *Assistance animals*

4.50 Of all the case study airlines which refer to guide dogs, almost all accept them in the cabin free of charge, as required by Annex II of the Regulation, although carriage is also limited by national regulations regarding the transport of animals. However, we identified the following issues with the carriers' published policies:

- Alitalia – assistance dogs are only allowed in the cabin if space is available;
- Emirates – assistance animals can only be carried in the hold;
- TAP Portugal / Thomas Cook / Wizz Air – insufficient information regarding charging and carriage in cabin;
- TUI – assistance dogs carried for a nominal charge. It is not stated whether animals can be carried in the cabin; and
- Air France / EasyJet – not stated whether carriage is free of charge.

4.51 There is some variation in terms of the conditions applied to the carriage of guide dogs; some airlines require a carrying case, muzzle or harness, for example; Austrian,

EasyJet and TAP Portugal require certification of service animal status; and carriage in exit rows is often prohibited. Several airlines state limits on the number of guide dogs that can be carried on a given flight – AirBaltic, British Airways and Ryanair. Other airlines may enforce similar unpublished limits. Full details of airline policies are provided in Appendix B.

- 4.52 In most cases, the information provided by carriers on which routes service dogs can be carried on is quite vague. Two exceptions are British Airways and Iberia, which include detailed information and links to external websites; in the case of British Airways this is the UK DEFRA (Department for Environment, Food and Rural Affairs) guidance on the Pet Travel Scheme which governs the carriage of assistance animals on flights within and to/from the UK. This includes detailed guidance on travel preparation and a full list of approved routes. The guidance provided by Brussels Airlines is also reasonably detailed, and both Austrian and Thomas Cook provide links to EU and UK regulations respectively, but without detailed supporting explanations.

#### *Mobility equipment*

- 4.53 All the airlines reviewed accept wheelchairs, and in most cases airlines state that there is no charge for this. Three airlines allow at least certain types of personal wheelchair in the cabin, with carriage restricted to the hold or not stated in the remainder of cases. Spillable wet-cell batteries are not accepted by some airlines and where they are accepted this is usually subject to preparation. Where specified, most airlines policies on the carriage of wheelchairs are consistent with the upper limit of two items of mobility equipment per passenger specified in Annex II of the Regulation. Air Berlin is the only one of the case study airlines to define a limit below this.
- 4.54 Dangerous goods legislation is cited by many airlines as posing a limitation on the range of battery operated wheelchairs which may be carried. However, few airlines provide specific details of the laws and regulations which apply. Austrian does provide references to both Regulation (EC) No 820/2008 and the IATA Dangerous Goods Regulations, the latter accessible via an external link; and Delta provides a link to the US Department of Transportation's Safe Travel information, which provides information to passengers on the carriage of batteries. The Thomas Cook and TUI websites include a reference to the IATA Dangerous Goods Regulations, but without external links. It is worth noting that, although only a fraction of the case study airlines provide this level of detail on their PRM web pages, many may provide such information in their luggage regulations or elsewhere in the Conditions of Carriage.
- 4.55 Under Article 12 airlines are required to compensate for losses or damage to mobility equipment, up to the limits specified by national and international law, which effectively means the limits defined in the Montreal Convention. This limits any compensation to 1131 SDR (approximately €1260), which would be inadequate for technologically advanced wheelchairs which can cost up to €20,000. However, several airlines have indicated that these limits would be waived in practice, partly to avoid bad publicity associated with provision of insufficient compensation, and also because it is generally agreed that such events are rare. Air France, Iberia, KLM, TAROM, Thomas Cook and TUI informed us that they compensate passengers for the full value of the equipment; with TUI also indicating that all UK airlines have agreed to waive

the Montreal limits. In contrast, one PRM organisation informed us that it was aware of cases where airlines had not waived the limits.

- 4.56 Almost all stakeholders stated that the Regulation had made no impact on loss or damage to mobility equipment, both in terms of the number of incidents and levels of compensation for loss or damage; although some felt that the training requirements imposed by the Regulation has resulted in improved handling procedures.

#### *Medical equipment*

- 4.57 Oxygen is available on most of the case study airlines, and can either be provided by the airline or the passenger. Where stated, charges range from €100 (Ryanair / Thomas Cook) to €335 (SAS intercontinental flights). Wizzair is the only exception: the airline accepts passengers who need oxygen with medical certification, but does not provide additional oxygen or allow passengers to bring their own onboard. Such restrictions appear to equate to a complete ban on PRMs requiring oxygen.
- 4.58 Policies on the carriage of stretchers (where stated) tend to be based on aeroplane size, with several operators not accepting stretchers on the smaller planes in their fleet. Most low cost carriers including easyJet, Ryanair, Thomas Cook and Wizzair prohibit carriage of stretchers entirely.

#### *Accessible information*

- 4.59 Only 6 airlines specify the types of accessible information provided for PRMs. This tends to be safety-related, although may also include Braille seat numbers and verbally describing food-related information.

#### *Seating*

- 4.60 Austrian, British Airways, Delta and KLM are the only case study airlines to state on their web pages that PRMs can be allocated any seat most appropriate to their needs, subject to safety regulations restricting access to exit row seats. Where most other airlines discuss their PRM seating policy this is usually in terms of restrictions, again the most frequent being not allowing PRMs to be seated in exit rows. Many airlines provide seats with retractable armrests, although normally only a proportion of the seats on an aircraft are provided with this feature (KLM is the only airline to state that all seats have moveable armrests). British Airways state that passengers will be allocated a bulkhead seat when requested, provided that this is not already allocated to another PRM. Similarly, Delta and Lufthansa also state that customers with service animals (or immobilised legs in the case of Delta) are entitled to bulkhead seats. Again, only a proportion of the airlines (14 out of 21) provide any of this kind of information, so it is unclear what the other case study airlines offer. The results of our analysis are shown in Appendix Table A.2.
- 4.61 Ryanair requires PRMs to sit in window seats, so that they do not impede the evacuation of other passengers, although this could result in a difficult or uncomfortable transfer to and from the seat for some passengers. Other airlines may adopt similar policies which we were not informed about. Iberia informed us that, although they recommend that PRMs are accommodated in window seats, through

their online booking systems PRMs are able to choose any seat, with the exception of emergency exit rows.

- 4.62 Several airlines prohibit PRMs from being seated in exit rows ‘for safety reasons’, but generally do not make a specific reference to the legal basis for this, which in most cases would be EU-OPS1. Air Berlin, Delta and Ryanair are the only airlines to provide details of the regulations on which this prohibition is based – in the case of Delta this is the Exit Seat Regulation, 14 CFR 121.585; and for Air Berlin and Ryanair EU/JAR-OPS 1.260. Thomas Cook and TUI make more vague references to UK CAA regulations as a justification for their seating restrictions.

*Restrictions on service*

- 4.63 12 of the case study airlines provide an indication of the level of assistance in-flight provided to PRMs, although mostly in terms of the assistance staff are unable to provide. This generally includes feeding, lifting passengers, administering medication and assisting in personal hygiene or toilet functions. The level of assistance which is provided is generally limited to preparation for eating, assistance in moving around the aircraft and stowing and retrieving luggage.

**Pre-notification of requirements**

*Requirements defined in law or other guidance*

- 4.64 Article 6(1) of the Regulation requires that airlines take all measures necessary to ensure that they are able to receive PRM assistance requests via all normal points of sale. Articles 6(2) and 6(3) state that, where this information is received more than 48 hours before departure it should be transmitted to the relevant airports no later than 36 hours before the flight departs. Requests received after 48 hours should be communicated at the earliest opportunity. Article 6(4) requires that, after departure of a flight, airlines inform the destination airport (if within the EU) of the number of disabled persons and persons with reduced mobility on that flight requiring assistance, and the nature of the assistance required.

*Methods by which passengers can pre-notify*

- 4.65 In addition to the requirements of Article 6(1), the Recitals of the Regulation state that all essential information provided to air passengers should be provided “in at least the same languages as the information made available to other passengers”. Several airlines do not meet this standard, although the Recitals are in themselves not binding.
- 4.66 Many of the major airlines provide offices and contact telephone numbers in a number of countries where the official language may not be one of the languages in which the airline website is offered. In most cases it is not possible to assess the languages offered by staff in these offices, and if the website is not offered in this language passengers may in any case have difficulty finding the contact for their country. For these reasons the language category is based on the website languages offered rather than the geographical spread of airline offices.
- 4.67 Some NEBs highlighted the use of premium rate special assistance telephone numbers as being an issue. Our research indicates that many carriers use phone numbers that do



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charge, although rates are usually moderate, with the following exceptions:

- Some carriers, for example AirBaltic, provide international numbers only.
- Ryanair provides national phone numbers in most Member States but the rates in some States are high – for example, €0.50 per minute in Belgium
- Brussels Airlines provides (for calls from the UK) either a Belgian telephone number, or the UK reservations centre which charges £0.40 (€0.44) per minute, although this number centre deals with all reservations, and not just PRM assistance requests.
- SAS provides (for calls from the UK) a UK reservations number, which charges £0.25 (€0.28) per minute, although again this is not PRM-specific.

4.68 Each of these airlines accept notifications online, so passengers could theoretically avoid payment of these charges. However, we are not able to comment on the accessibility of these systems or whether they enable collection of all of the information that would be required in each case – some passengers may still need to use the telephone numbers for these reasons.

4.69 The notification options available to PRMs for the 21 case study airlines are shown in Table 4.4. It should be noted that options presented during the booking process could only be examined up to the point of payment for tickets. Some airlines may provide a notification option after payment has been made, which we would not have identified.

TABLE 4.4 OPTIONS TO NOTIFY CARRIERS OF REQUIREMENTS

Airline	Options provided	Differences between languages of PRM info and main website	Languages for phone calls
Aegean Airlines	Telephone	None	Not stated
Air Berlin	Telephone	None	Not stated
Air France	During online booking process Email / website Telephone	Main site in 15 languages PRM info in 10 languages	Not stated
AirBaltic	Telephone	None	Not stated
Alitalia	Telephone	Main site in 8 languages PRM info in 6 languages	Not stated
Austrian	Email / website Fax	Main site in 22 languages PRM info in 2 languages	Not applicable
British Airways	During online booking process Email / website Telephone	None	Not stated
Brussels Airlines	Email / website Telephone	None	Not stated
Delta	Telephone	None	Not stated
EasyJet	During online booking process Email / website Telephone	None	Telephone numbers only accessible after logging into personal account
Emirates	Email / website Telephone	None	Not stated
Iberia	During online booking process	None	Not applicable
KLM	Email / website Telephone	Main site in 15 languages PRM info in 9 languages	Not stated
Lufthansa	Email / website Telephone	None	Not stated
Ryanair	During online booking process Telephone	None	English French Italian Spanish
SAS	During online booking process Email / website Telephone	Main site in 15 languages PRM info in 12 languages	Not stated
TAP Portugal	Telephone	Main site in 9 languages PRM info in 7 languages	Not stated

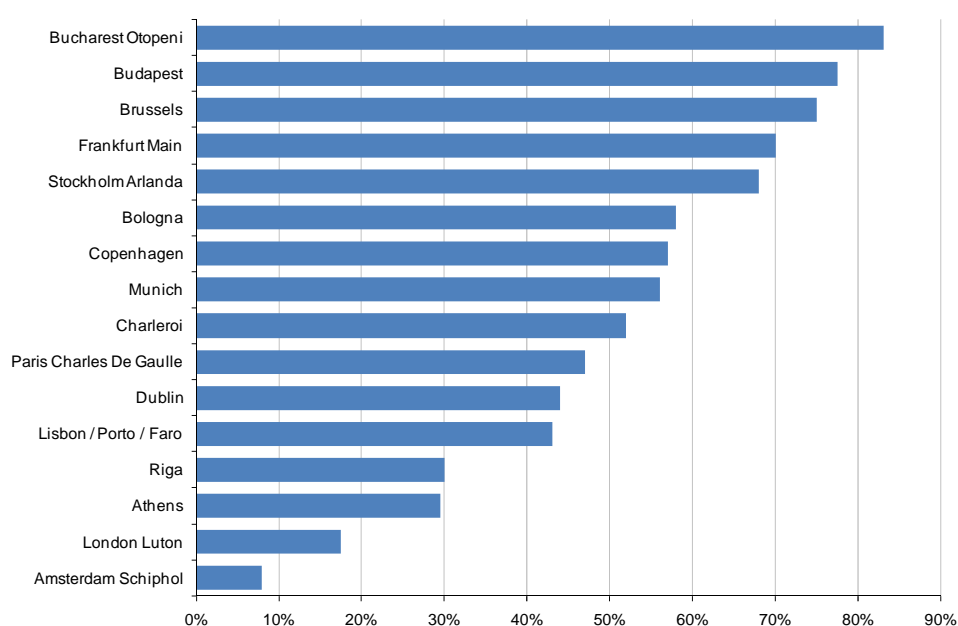
Airline	Options provided	Differences between languages of PRM info and main website	Languages for phone calls
TAROM	During online booking process	None	Not applicable
Thomas Cook	During online booking process Telephone	None	Not stated
TUI (Thomsonfly)	Telephone	None	Not stated
Wizzair	During online booking process Telephone	None	Bulgarian Czech English French German Hungarian Italian Polish Romanian Ukrainian

*Process for collection and transmission of requests*

- 4.70 Although many case study airlines enable PRMs to make special assistance requests online, this often has to be supplemented by a telephone call to the airline to establish the PRM's exact requirements. Air France informed us that, when notifying online, a 'pop up' window will appear which informs the passenger that they will be contacted by the airline to clarify the assistance required. Similarly, KLM stated that, although they do provide an online notification option, the passenger would still need to call the airline to establish their exact requirements.
- 4.71 The standard procedure for transmitting assistance requests to the relevant airports is the PAL (Passenger Assistance List), which under Article 6(2) should be sent 36 hours before departure. Additional requests received after this time can be included in the CAL (Change Assistance List) in line with the requirements of Article 6(3). Most requests are transmitted using the standard special assistance codes IATA codes, although some airlines their own codes.
- 4.72 This information is supported by Passenger Service Messages (PSM) which are automatically generated by all special assistance requests recorded on the Passenger Name List of a given flight (thus complying with Article 6(4) of the Regulation). PSM messages are generated automatically on departure from the origin airport, so can be particularly useful for airports in relation to long haul flights, where there is sufficient time to mobilise staff and equipment before the aircraft arrives. Conversely, PRM messages are of less use in relation to short haul flights, as staffing arrangements cannot be so easily amended at short notice.

*Effectiveness of process*

- 4.73 All of the case study airlines interviewed use the standard PAL / CAL / PSM system, although Ryanair informed us that they also have their own system of codes and notifications (discussed in section 3 above).
- 4.74 Rates of pre-notification vary substantially, as shown in Figure 4.2. It should be noted that the definition of pre-booked assistance may vary between airports – for example Brussels Charleroi airport informed us that its figures for pre-notification includes notification by PSM message, which would not be received prior to the 36 hours specified by the Regulation. A number of other airports did not clarify their definition of pre-notification, including Bucharest and Budapest, which may explain why the percentages here are particularly high.

**FIGURE 4.2 PRE-NOTIFICATION RATES BY AIRPORT**

- 4.75 There a number of possible explanations for both the wide divergence of pre-notification rates, and the particularly low values observed at some airports. These include:
- **Passenger factors**, e.g. not being aware of the pre-notification requirement, abuse of the system or not realising that they would need assistance until arriving at the airport;
  - **Airline factors**, e.g. not providing sufficient or appropriate means for passengers to pre-notify of their requirements, or failing to transmit assistance requests to airports within the time limits specified in the Regulation;
  - **Other factors** – primarily communication and other technological failures.
- 4.76 Stakeholder views on the possible explanations for pre-notification issues are explored in the relevant section below.

## Complaints to airlines

### *Airline processes for handling complaints*

- 4.77 Most of the case study airlines have dedicated complaint forms and departments for the handling of complaints. Complaints regarding the Regulation do not necessarily require specialised procedures – both easyJet and Ryanair stated that their process for handling complaints was the same as for Regulation 261/2004, and KLM reported that PRM complaints were handled in the same way as all others. The only differences cited by the airlines were that, in the case of easyJet, complaints regarding refusal of boarding were escalated to head office; and KLM informed us that the airline’s medical department may need to be involved in more complex cases. Ryanair also informed us that they will amend standard procedures for receipt of complaints where required, for example if a customer needs to complain by phone rather than in writing. KLM stated that to date they have only received complaints by phone, email or letter; and none in Braille / audio tape or other accessible formats.
- 4.78 Delta reported a more complex procedure, shaped primarily by the requirements of rule 382. The airline is required to designate Complaints Resolution Officials, responsible for providing a ‘dispositive response’ to customer complaints of an alleged violation, summarising the facts and explaining the airline’s determination of the issue. If the complaint relates to the airline’s policy and not a specific infringement the airline is still responsible for providing a full and final response and the reasons for its determination.
- 4.79 The stated time taken by airlines to respond to complaints is variable, and is not related to the airline type or business model.
- 4.80 Air France, SAS, TAP Portugal reported that they would (at least in theory) be able to accept complaints in any of the languages of the countries which they serve and/or have offices. Aegean Airlines, Ryanair and TAROM reported a more restricted range – despite its destinations including Albania, Egypt, Israel, Serbia, Spain and Turkey, Aegean Airlines stated that it can only accept complaints in Greek, English, German, French and Italian. Likewise, despite both Ryanair and TAROM operating services to 25 countries, the range of languages in which they will accept complaints is limited. Ryanair is only able to accept complaints in English, German, French, Spanish and Italian; and TAROM will only process complaints in Romanian, English, French, German, Spanish and Italian. Thomas Cook stated that, to date, they have only received complaints in English, although they do have a retainer with a language translation service which can be used if required.

### *Number of complaints received*

- 4.81 Only TAROM and Thomas Cook were able to provide us with PRM complaint statistics. TAROM reported so far receiving no complaints from PRMs; Thomas Cook received 51 complaints in each of 2008 and 2009.

## Cost of complying with the Regulation

- 4.82 The main compliance cost identified by airlines was the airport PRM charge. As discussed in section 3 above, several airlines (mostly low cost and charter carriers)

expressed dissatisfaction with the level of these charges; in contrast, Air France stated that it did not consider the PRM charge to be a real cost, as it was passed directly to passengers. Another legacy carrier stated that the Regulation did not generate any additional costs for it, as it was already compliant with the (generally more onerous) requirements of rule 382.

- 4.83 An issue raised by Air Berlin and TUI related to the additional costs likely to be associated with providing a cost-neutral special assistance telephone number. The German NEB considers that the special assistance helpline should be free, and the UK DfT Code of Practice also suggests that cost-neutral telephone numbers should be provided for PRMs, which TUI accommodates by requesting that the special assistance helpline calls the passenger back. However, the costs associated with telephone assistance calls are likely to be relatively small, particularly in relation to the staffing costs associated with providing a call centre.
- 4.84 TUI also highlighted the initial training costs incurred by the Regulation, which have now diminished as the focus shifts to more limited refresher training where required.

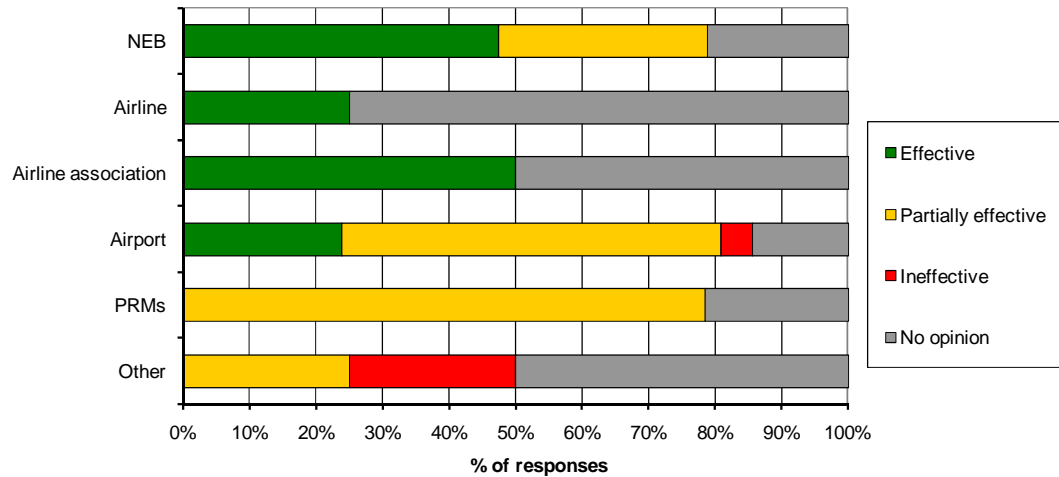
### **Training**

- 4.85 Under Article 11 airlines are required to:
- Ensure that all staff (including those employed by sub-contractors) providing direct assistance to PRMs, have knowledge of how to meet the needs of these persons;
  - Provide disability-equality and disability-awareness training to all staff working at airports dealing directly with the travelling public;
  - Ensure that, upon recruitment, all new employees attend disability-related training and that personnel receive refresher training courses when appropriate.
- 4.86 Most of the case study airlines were able to demonstrate compliance with the training criteria set out in Article 11, although the carriers informed us that training was restricted to passenger-facing staff only. Some examples of the training provided to airline staff are given below.
- Major European network carrier: 2.5 hours theory (e.g. responsibilities under the Regulation, how to approach PRMs) and practical (e.g. guiding blind PRMs, lifting to and from wheelchairs) training for crew; 1.5 hours theory for all other passenger-facing personnel.
  - US network carrier: annual recurrent training is provided to all Complaint Resolution Officers (CROs); required under 14 CFR Part 382 to ensure effective implementation and to resolve passengers' problems as quickly as possible).
  - European low cost carrier: initial and refresher cabin crew training includes PRM training, and the airline has requested that this training should be a requirement in contracts with ground handling staff.
  - European low cost carrier: basic training in sign language is included.
- 4.87 Airlines operating to the US and therefore already compliant with rule 382 stated that few if any changes to their existing training programmes were required to comply with the Regulation.

**Stakeholder views on effectiveness of implementation by airlines**

4.88 Figure 4.3 summarises stakeholder views on the effectiveness of the implementation of the Regulation by airlines. Although many stakeholders did not express an opinion on this, relatively few stakeholders were dissatisfied. A summary of views of each stakeholder group is given below.

**FIGURE 4.3 STAKEHOLDER VIEWS: AIRLINES**



*Airlines and airline associations*

4.89 Unsurprisingly, the majority of airlines did not express an opinion on their own effectiveness in implementing the Regulation, and none felt that implementation was ineffective. Similarly, airline associations either expressed no opinion, or stated that implementation by their members was effective. ELFAA felt that all its members were complying and not refusing carriage. AEA was also generally satisfied that its members were not discriminating against PRMs in any way, but did suggest that there may be issues around the interpretation of the safety rules governing embarkation by PRMs, leading to inconsistencies between its members.

*Airports*

4.90 Pre-notification was the most frequently cited issue raised by the airports, an issue discussed separately below. The second most common theme emerging across several airports was the alleged non-payment of PRM charges by airlines.

4.91 Alongside the non-payment issue ACI highlighted several other issues relating to agreement of the PRM charges at airports. These included trying to avoid or reduce the charge, for example by requiring excessive levels of detail on the costs of PRM assistance at airports after the tender process had been completed, and refusing to cooperate with consultation meetings. Two airports with high proportions of low cost carrier traffic informed us that some carriers sought to specify the lowest possible levels of service in order to minimise PRM charges.

*NEBs*

4.92 The majority of NEBs informed us that compliance by airlines was satisfactory.

Although some issues were raised no common themes emerged, suggesting that any issues may be somewhat isolated. The NEBs which stated that implementation by airlines was partially effective were:

- France (DGAC): lack of information, and limited consistency in policies between airlines.
- Germany (BMBVS): use of premium rate telephone numbers by airlines.
- Portugal (INAC): some issues with the explanations provided for refusal of carriage.
- Spain (AESA): notification can incur additional costs for the passenger, airline safety rules are sometimes insufficient, and some airlines claim that passengers with mobility equipment are taking two seats, and charge for this.
- Sweden (CAA): issues around pre-notification (see section below).
- UK (CAA / EHRC / CCNI): lack of consistency in criteria for refusal of carriage. Some airlines charge for reserving specific seats.

*PRM organisations*

- 4.93 Satisfaction with implementation by airlines was generally lower among the PRM organisations, although none of the stakeholders informed us that airlines were significantly non-compliant with the Regulation. Inconsistencies in airline policies, accessibility of websites and the level of information provided by airlines emerged as the most frequently cited issues – *Danske Handicaporganisationer* (DH) suggested that less than 5% of airlines’ websites were accessible. Two organisations also indicated that they had not seen any PRM safety rules published online.
- 4.94 Two organisations highlighted issues with medical clearance – this was felt to be requested too frequently, and that an unnecessary level of information was being requested by some airlines. Other issues raised included insufficient training, issues with handling of mobility equipment, seating, and inaccessibility of airport check-in systems. Guide Dogs reported instances where flight crew had not reported allergies which then prevented a passengers with guide dogs from flying, or had not checked that the dog was secure prior to take-off or landing. It was felt that policies of refusing boarding to unaccompanied blind passengers on the basis that they could not evacuate was misguided, given that they were accustomed to not being able to see and could therefore cope more easily in smoky conditions.



- 4.95 These views were echoed by the European Blind Union (EBU) and the European Disability Forum (EDF). In addition, EBU emphasised continuing difference in the handling of PRM travel between carriers, and felt that booking processes were discriminatory against those without access to a computer (we were informed that requesting assistance by phone can take several hours). The UK PRM organisation informed us that only 30% of the disabled population are online, which would increase this discrimination. EDF also noted that some airlines still only paid up to the Montreal Convention limits in cases of damage or loss of mobility equipment; that insurance for mobility equipment was extremely difficult to obtain; and that establishing liability for damage can be very complex. EDF also believe that the enforcement of numerical limits on PRMs is inappropriate and discriminatory, and that it is unacceptable for carriers to require passengers to be accompanied on self-reliance criteria.
- 4.96 EDF provided us with some examples of discrimination which had been reported to them. Some examples relating to treatment on-board the aircraft include:
- A blind passenger was not given any safety information in an accessible way, and the cabin crew were unaware of how to assist the passenger when serving a meal, or to communicate with the passenger more generally.
  - A passenger was not allowed to check-in online, due to him using a wheelchair. Once on the aircraft he was forced to sit in a window seat at the back of the plane, which he found both discriminatory and difficult, as being tetraplegic meant that it was not easy to access the seat, or to receive assistance in an emergency.
  - A passenger was informed that he had to pay extra to bring his prosthetic legs when going on holiday.
  - A wheelchair user tried to book a ticket with an airline but noticed on their website that it was clearly indicated that they do not accept passengers using wheelchairs.
  - A blind couple travelling with their baby were told that in order to be allowed to travel, they needed to bring an accompanying person, as it was not considered safe that the couple were responsible for their baby on board.
  - A blind passenger was asked by a member of cabin crew in a rude manner whether she really was entirely blind.

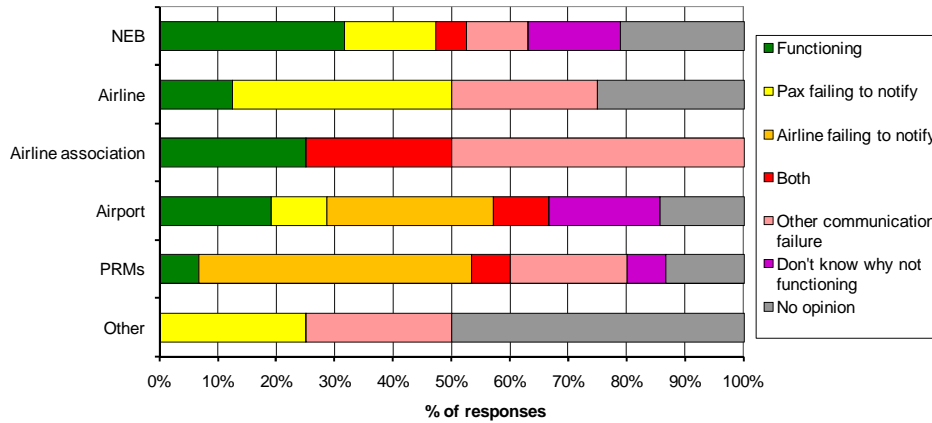
#### *Other organisations*

- 4.97 Key issues raised by other organisations were the application by some carriers of limits on the numbers of PRMs that could be carried, and that these limits could be further reduced based solely on arbitrary decisions by pilots. In addition, ECAC felt that information should be simplified for passengers with learning disabilities. However, ECTAA highlighted the improvements which airlines, tour operators and travel agents had made to their websites and booking procedures to enhance PRM travel.

**Stakeholder views on effectiveness of pre-notification systems**

4.98 Figure 4.4 shows stakeholder views on the effectiveness of the pre-notification system and reasons cited for low rates of notification. Most stakeholders believed that this system was not functioning well, although the explanations cited by each stakeholder group vary.

**FIGURE 4.4 STAKEHOLDER VIEWS: PRE-NOTIFICATION**



4.99 The NEBs were generally the most optimistic about how the pre-notification system was working, with fewer than half identifying problems. Where they did express a view on the cause of pre-notification issues it was most commonly that the passenger was the cause. The Irish NEB suggested that awareness of the Regulation and the need to pre-notify to receive assistance was low amongst PRMs who were not members of representative groups. Most of the PRM groups felt that the airlines were the primary cause of problems with the pre-notification system, for a variety of reasons:

- Poor design and accessibility of airline websites makes it difficult for passengers to pre-notify;
- Airlines have been unwilling to make the significant investments required to ensure an effective system; and
- Airlines have been ineffective at transmitting special requests (e.g. dietary needs) between staff and departments.

4.100 The majority of airlines believed that the main issue in terms of pre-notification was that passengers were themselves failing to notify of their assistance needs. Several airlines and airports suggested a possible explanation as being that, although they may not normally consider themselves as being in need of special assistance, some travellers (especially infrequent flyers and the elderly) may find they need this once in the airport and having to walk long distances to reach their flight. Low rates of pre-notification were also attributed partly to abuse of the system, as it was believed that ‘genuine’ PRMs would usually pre-notify.

4.101 However, the majority of airports stated that the most significant problem was failure by airlines to pass on notifications, or erroneous notifications. Several highlighted the large differences in pre-notification rates between airlines: some airlines are able to achieve high rates of pre-notification (60-80%) whereas others have very low rates

(10% or less). Non-EU airlines were often stated to be worse, with flights from North Africa and India often cited as being particularly problematic, both in terms of the low levels of pre-notification and the high numbers of PRMs on these flights. Aéroports de Paris stated that passengers travelling from some north African airports would be charged for assistance if pre-notifying, even though the European airport provided assistance free of charge. US flights also pose difficulties for airports as US carriers are generally not allowed, under rule 382, to request details of assistance requirements in advance; however, the relative length of these flights means that PSM messages are usually received 7-10 hours in advance of arrival.

- 4.102 Several airports also indicated that charter carriers had particularly low rates of pre-notification. This was attributed by some carriers to low rates of notification by travel agents – in many cases agents may have an incomplete knowledge of the full range of wheelchair codes, often simply observing that the passenger is using a wheelchair and then allocating the WCHR special assistance code.
- 4.103 Communication failures were also cited by a number of stakeholders, sometimes a result of the confusion generated by the IATA special assistance codes themselves, particularly unnecessary requests for wheelchairs. Although technological failures may have been a problem when the Regulation was first implemented, these did not emerge as a significant current issue.

### Conclusions

- 4.104 The main obligation that the Regulation places on carriers is that it prohibits refusal of carriage of PRMs, unless this is necessary to meet national or international safety rules or requirements imposed by the carrier's licensing authority, or is physically impossible due to the size of the aircraft or its doors. We found that most carriers comply with this, although some make carriage of PRMs conditional on advance notification, which does not appear to be consistent with the Regulation. In addition, a small number of carriers impose requirements for medical clearance which appear to be excessively onerous.
- 4.105 There are significant differences in policies relating to carriage of PRMs between carriers – even between carriers with similar aircraft types and operational models. The most significant difference is that some carriers impose a numerical limit on the number of PRMs that can be carried on a given aircraft. These can be quite low: some carriers have limits of 2-4 PRMs on a standard single-aisle aircraft such as an Airbus 319. In most cases, these requirements are defined in carriers' Flight Operations Manuals, which have to be approved by the relevant licensing authority; often, although not always, this is the same organisation that has been designated as the NEB. In some cases the PRM limits are required by the licensing authority, but in most cases, they are proposed by the carrier and approved by the authority. Whilst the rationale for these limits is safety, there does not seem to be an evidence base for them, and they are specifically prohibited by the equivalent US regulation on carriage of PRMs (14 CFR part 382).

- 4.106 The Regulation also allows carriers to require that PRMs be accompanied, subject to the same safety-based criteria. We found that a number of carriers require PRMs to be accompanied where they are not ‘self-reliant’, which can mean that the PRM cannot (for example) eat unaided. In our view this may be an infringement of the Regulation because there is no direct link to safety; for those carriers that fly to the US, it is also an explicit breach of the US PRM rules. Other carriers require PRMs to be accompanied where they are not self-reliant **and** this has a safety impact (for example, if the PRM could not exit the aircraft unaided in an emergency); this is consistent with the Regulation.
- 4.107 The Regulation also requires carriers to publish safety rules relating to the carriage of PRMs, although it does not specifically state what issues these safety rules should cover. We found that carriers all published some PRM-related information but in some cases there appeared to be significant omissions from this information.
- 4.108 Annex II of the Regulation sets out various requirements for services which have to be provided to PRMs by carriers. Evidence for the extent to which this is provided is limited, and restricts a fair assessment of compliance with these requirements. There is however sufficient evidence to conclude that the vast majority of case study airlines are complying with the requirement to carry up to two items of mobility equipment free of charge. Some PRM representative groups were critical of the effectiveness of airlines in implementing the Regulation, and we were informed of some particularly bad passenger experiences, but it is difficult to assess how common such occurrences are.

## 5. ENFORCEMENT AND COMPLAINT HANDLING BY NEBS

### Introduction

5.1 This section summarises the complaint handling and enforcement process undertaken by National Enforcement Bodies (NEBs). We set out the following information:

- an overview of the NEBs, describing the types of organisations they are and the resources they have available;
- the legal basis for complaint handling and enforcement in each State;
- statistics for the number of complaints received, the nature of the complaints, and the outcomes, and for sanctions that have been issued;
- the typical process for complaint handling and enforcement in each State, and outline a number of common issues and difficulties;
- a summary of the activities of NEBs to monitor the implementation of the Regulation; and
- an overview of other activities undertaken by NEBs in relation to the Regulation, such as interactions with other stakeholders and promotional activity.

5.2 Most of the information within this section is provided for the NEBs in all Member States. The detailed information relating to the complaint handling and enforcement process, and to monitoring and other activities undertaken by the NEB, has been collected for the case study States only. Further detail on complaint handling and enforcement in the 16 case study States is provided in the case studies, in Appendix C.

### Requirements of the Regulation relating to States and NEBs

5.3 The Regulation requires each Member State to designate a National Enforcement Body (NEB) responsible for the enforcement of the Regulation regarding flights departing from or arriving at airports within its territory, and to inform the Commission of this designation. This body is required to ensure that the rights of PRMs are respected, and in particular that the quality standards defined by Article 9(1) (see 3.53) are respected. It must also ensure that the provisions of Article 8 are respected. More than one body may be designated. To allow NEBs to enforce the Regulation, Member States must set out penalties for infringements of the Regulation, which must be effective, proportionate and dissuasive.

5.4 These bodies must also accept complaints from PRMs where they are dissatisfied with the service they have received under the Regulation and have been unable to obtain satisfaction by complaining directly to the service provider. If a body receives a complaint for which a body in another State is competent, it must forward the complaint to the other NEB. Other bodies may be designated specifically for the purpose of receiving complaints.

5.5 Member States should also inform PRMs about their rights under the Regulation, and the possibility of complaint to the bodies above.

## Overview of the NEBs

5.6 Most of the NEBs (68%) are Civil Aviation Authorities. The other NEBs are government departments, independent statutory bodies or consumer protection authorities. Some Member States have designated more than one NEB. In these States, the responsibilities of the NEBs are divided in two ways:

- according to which type of organisation the enforcement relates to: in France, there are separate bodies for complaints handling and enforcement relating to airlines and airports, and to tour operators; and
- according to task: in the UK, there are separate NEBs for complaints handling and for enforcement.

5.7 In Belgium, there are three NEBs and an additional body responsible for handling complaints; the case of Belgium is unique, as the Flemish- and French-speaking regions are administered separately. For some of the States, there is a body which acts as the NEB but which has not yet been explicitly designated (see 5.13).

5.8 No States have designated a separate body for the enforcement of Article 8.

5.9 Table 5.1 lists the NEBs, the nature of the organisation, and where there is more than one NEB in a State, the role of each organisation. The table is divided into case study and non-case study States.

**TABLE 5.1 ENFORCEMENT BODIES**

State	Enforcement Body	Nature of organisation	Role
Belgium	Belgian CAA	CAA	Enforcement and sanctions
	Departement Mobiliteit en Openbare Werken	Regional government department	Enforcement and sanctions
	Service public de Wallonie, direction générale opérationnelle de la mobilité et des voies hydrauliques	Regional government department	Enforcement and sanctions
	Passenger Rights Department of Federal Public Service of Mobility and Transport	Federal government department	Complaints handling
Denmark	Statens Luffartsvæsen (SLV)	CAA	-
France	Direction Générale de l'Aviation Civile (DGAC)	CAA	Airlines and airports
	Ministry of Economy, Industry and Labour, Division on Competition, Industry and Services	Government department	Tour operators
Germany	Luffahrts-Bundesamt (LBA)	CAA	-
Greece	Hellenic Civil Aviation Authority (HCAA): Airports Division	CAA	Airports
	Hellenic Civil Aviation Authority (HCAA): Air Transport Economics	CAA	Airlines and tour operators

Hungary	Equal Treatment Authority (ETA)	Independent statutory body	Complaint handling, enforcement relating to PRM complaints
	National Transport Authority Directorate for Aviation (NTA)	CAA	Other enforcement
Ireland	Commission for Aviation Regulation	Independent economic regulator	-
Italy	Ente Nazionale Aviazione Civile (ENAC)	CAA	-
Latvia	CAA, Aircraft Operations Division	CAA	-
Netherlands	Transport and Water Management Inspectorate (IVW)	CAA	-
Poland	Civil Aviation Office (CAO) Commission on Passengers' Rights	CAA	-
Portugal	National Institute for Civil Aviation (INAC)	CAA	-
Romania	Autoritatea Națională pentru Persoanele cu Handicap (ANPH)	Independent statutory body	All Articles except 8
	Autoritatea Aeronautică Civilă Română (AACR)	CAA	Article 8
Spain	Agencia Estatal de Seguridad Aérea (AESA)	CAA	-
Sweden	Swedish Transport Agency, Civil Aviation Department	CAA	-
UK	CAA	CAA	Enforcement
	EHRC	Independent statutory body	Complaints handling in UK except Northern Ireland
	CCNI	Consumer protection authority	Complaints handling in Northern Ireland
Austria	Federal Ministry of Transport, Innovation and Technology	CAA	-
Bulgaria	CAA	CAA	-
Cyprus	Department of Civil Aviation	CAA	-
Czech Republic	Civil Aviation Authority	CAA	-
Estonia	Consumer Protection Board	Consumer protection authority	-
Finland	Finnish Transport Safety Agency	CAA	-
Lithuania	Civil Aviation Administration	CAA	-
Luxembourg	Direction de l'Aviation Civile	CAA	-
Malta	Civil Aviation Directorate	CAA	-
Slovak Republic	Slovak Trade Inspectorate	Consumer protection authority	Consumer protection
	Civil Aviation Authority	CAA	Safety aspects
	Ministry of Transport, Post and	Government	Implementation, including airline

	Telecommunications	department	conditions of carriage and aspects of airport operations
Slovenia	Civil Aviation Directorate	CAA	-

5.10 Most of the bodies designated as NEBs under Regulation 1107/2006 are also designated as NEBs under Regulation 261/2004. The States which have different NEBs are shown in Table 5.2.

**TABLE 5.2 STATES WHERE NEBS ARE DIFFERENT UNDER REGULATIONS 1107/2006 AND 261/2004**

State	NEB(s) under Regulation 1107/2006	NEB(s) under Regulation 261/2004
Finland	Finnish Transport Safety Agency	Consumer Ombudsman & Agency
		Consumer Disputes Board
		Finnish Civil Aviation Authority
Hungary	Equal Treatment Authority (ETA)	Hungarian Authority for Consumer Protection
	National Transport Authority Directorate for Aviation (NTA)	National Transport Authority Directorate for Aviation
Latvia	CAA, Aircraft Operations Division	Consumer Rights Protection Centre
Romania	Autoritatea Națională pentru Persoanele cu Handicap (ANPH)	National Authority for Consumer Protection
	Autoritatea Aeronautică Civilă Română (AACR)	
Slovak Republic	Slovak Trade Inspectorate	Slovak Trade Inspectorate
	Civil Aviation Authority	
	Ministry of Transport, Post and Telecommunications	
Sweden	Swedish Transport Agency, Civil Aviation Department	Konsumentverket
		Allmänna reklamationsnämndens
UK	CAA	CAA
	EHRC	Air Transport Users Council
	CCNI	

5.11 Only BCAA is shown as a notified NEB for Belgium in the list published by the Commission. As a result, we were not made aware of the existence of the other Belgian NEBs until our interview with BCAA, and therefore did not seek responses from them; in addition, at the time of our research for this project, BCAA had not held meetings with the other regional departments. For these reasons, we therefore have only limited information on their operations, and the data relating to Belgian NEBs in this report refers only to BCAA.

#### *Separation of regulation from service provision*

5.12 There is no requirement in the Regulation that the NEB be independent from service providers. However, in our view, it is inappropriate for the NEB also to be a service provider, as it would be difficult for it to act independently in undertaking



enforcement in relation to an infringement that it was itself committing. The only case we have identified where an NEB is also a service provider is the Greek NEB, HCAA, which is also the operator of the regional airports in Greece. This is a significant issue because, as identified in section 4 above, the most significant failure to implement the Regulation that we have identified is that it has not been implemented at the HCAA airports.

### Legal basis for complaint handling and enforcement

5.13 Most Member States have complied with the obligations set out in Articles 14 and 16 to designate an NEB and introduce sanctions into national law, with the exception of:

- **Poland:** No sanctions have yet been introduced; a proposed amendment which includes fines is before the Polish parliament, but has not yet been passed.
- **Slovenia:** As yet no body has been designated, and no sanctions have been introduced.
- **Spain:** Enforcement relies on a law which predates the Regulation and hence does not refer explicitly to it. As a result, sanctions for infringements of Regulation 261/2004 (which have an equivalent legal basis) have been challenged by airlines. In most cases, the courts have upheld the right of the NEB to impose sanctions, but cases have not as yet reached the Supreme Court, and in one case a court has ruled that the NEB was not competent to impose sanctions. This is discussed in detail in the case study for Spain (appendix C).
- **Sweden:** No sanctions have yet been introduced; a proposed amendment which includes fines is before the Swedish parliament, but has not yet been passed. The proposed amendment does not define the levels of fines.

5.14 There are a number of States where sanctions have not been introduced for all potential infringements of the Regulation:

- Bulgaria, which does not define penalties for Article 8;
- Estonia, where sanctions have only been introduced for carriers;
- Luxembourg, which only defines explicit fines for Article 4; and
- Romania, where the law defining responsibilities makes the CAA responsible for enforcing compliance with Article 8, but does not endow it with the powers to do so.

5.15 In several Member States, enforcement is dependent on more than one law; for example, the law defining how the NEB must operate and the procedure for imposing sanctions may differ from the law introducing sanctions. There may also be other laws – typically defining rights to equal treatment – which may apply at the same time as the Regulation. Table 5.3 below summarises the relevant legislation in the case study States. More detailed information is provided in the case studies in Appendix C.

**TABLE 5.3 RELEVANT NATIONAL LEGISLATION**

State	Summary of relevant legislation
Belgium	• Articles 32 and 45-52 of Law of 27 June 1937
Denmark	• Air Navigation Act, Articles 149(11) and 149a define sanctions

France	<ul style="list-style-type: none"> <li>Article 330-20 of the Civil Aviation Code, as amended by Decree 2008-1445 of 22 December 2008: gives the Minister of Civil Aviation the power to impose sanctions</li> </ul>
Germany	<ul style="list-style-type: none"> <li>Air Traffic Licensing Regulation (Luftverkehrszulassungsordnung): defines LBA as the NEB and that breaches of the Regulation are considered an offence.</li> <li>Air Traffic Law (Luftverkehrsgesetz): defines that breach of EU Regulations relating to air traffic is an offence, and defines the fines applying.</li> <li>Law on Administrative Offences (Gesetz über Ordnungswidrigkeiten): defines the administrative process that must be followed in order to impose sanctions.</li> </ul>
Greece	<ul style="list-style-type: none"> <li>Letter of 1 December 2006 (reference 6310/A/10909) from Permanent Representation of Greece to Commission designates NEB; National Aviation Law 1815/1988 sets out fines</li> <li>Act CXXV of 2003 defines role and sanctions of ETA</li> <li>Act CXXX of 2003, and Article 4 (2) of Government Decree No 362/2004 define complaints handling procedure</li> </ul>
Hungary	<ul style="list-style-type: none"> <li>Act XCVII of 1995 on Air Traffic, implemented by Government Decree No. 141/1995 defines role and sanctions of NTA</li> <li>Ministerial Order 97/2005 makes NTA responsible for approving airport charges</li> <li>Act CXL of 2004 defines procedure for imposing fines and sets out administrative penalties</li> </ul>
Ireland	<ul style="list-style-type: none"> <li>Section 45(a) of the Aviation Regulation Act 2001 as inserted by the Aviation Act 2006: defines basis for enforcement and sanctions</li> <li>Statutory Instrument SI 299/2008: transposes the Regulation into law</li> </ul>
Italy	<ul style="list-style-type: none"> <li>Legislative Decree 24/2009 of 24 February 2009: defines process to be followed by ENAC and fines that can be imposed</li> </ul>
Latvia	<ul style="list-style-type: none"> <li>Air Navigation Order (2007): designates NEB</li> <li>Administrative Violations Code: defines fines</li> </ul>
Netherlands	<ul style="list-style-type: none"> <li>Resolution to set up the Transport and Water Management Inspectorate (Instellingsbesluit Inspectie Verkeer en Waterstaat), Article 2, paragraph 1, item d: sets up the NEB</li> <li>Civil Aviation Act (Wet luchtvaart), revised December 2009, Article 11.15, section b, item 1 and Article 11.16, paragraph 1.e.3: defines circumstance under which sanctions may be imposed</li> <li>General Administrative Law Act (Algemene wet bestuursrecht), chapter 4 (process to impose sanctions) and chapter 5 (level of fines).</li> </ul>
Poland	<ul style="list-style-type: none"> <li>Aviation Act ( Article 21.2(3) ): designates NEB</li> <li>Administrative Procedure Code: defines procedures to be followed</li> <li>No sanctions yet defined - draft amendment to Aviation Act (Articles 205a, 205b, 209a, 209b) will set out fines</li> </ul>
Portugal	<ul style="list-style-type: none"> <li>Decree Law 241/2008: designates NEB and defines level of fines which can be imposed for each infringement</li> <li>Decree Law 10/2004: defines standard scale of fines</li> </ul>
Romania	<ul style="list-style-type: none"> <li>Decree 27/2002: requires all government bodies to be able to receive complaints</li> <li>Decision 787/2007: defines penalties (except for Article 8)</li> <li>Decree 2/2001 (approved and modified by Law 180/2002): defines framework for imposing penalties</li> </ul>
Spain	<ul style="list-style-type: none"> <li>Royal Decree 184/2008: designates NEB</li> <li>Aviation Security Law (Law 21/2003): basis for enforcement and sanctions</li> <li>Royal Decree 28/2009: defines inspection regime</li> <li>Law on Public Administrations and Administrative Procedures (Law 30/1992): defines operational procedures for the NEB</li> </ul>

	<ul style="list-style-type: none"> <li>• Regulation on Procedures for the Imposition of Sanctions (Royal Decree 1398/1993): defines process for imposing sanctions</li> </ul>
Sweden	<ul style="list-style-type: none"> <li>• Förordning (1994:1808) om behöriga myndigheter på den civila luftfartens område (ordinance on competent authorities in civil aviation): designates the NEB</li> <li>• No sanctions yet defined, but some are set out in a proposed amendment Regeringens proposition 2009/10:95- Luftfartens lagar</li> <li>• Prohibition of Discrimination Act may also apply in some circumstances (e.g. infringements of Articles 3 and 4)</li> </ul>
UK	<ul style="list-style-type: none"> <li>• Statutory Instrument 2007/1895: designates NEBs, defines penalties and introduces a right to compensation for injury to feelings resulting from an infringement</li> <li>• Enterprise Act 2002: defines civil powers for NEB, including power to apply for an injunction ('stop now order') and power to seek binding undertakings</li> </ul>
Austria	<ul style="list-style-type: none"> <li>• Austrian Civil Aviation Law</li> </ul>
Bulgaria	<ul style="list-style-type: none"> <li>• Civil Aviation Act, Art. 81a</li> </ul>
Cyprus	<ul style="list-style-type: none"> <li>• Civil Aviation Act N 213(I)/2002</li> </ul>
Czech Republic	<ul style="list-style-type: none"> <li>• Civil Aviation Act (No 49/1997), § 93 Articles 7 (a) - (l) and 8</li> <li>• Administrative Code (No 500/2004)</li> </ul>
Estonia	<ul style="list-style-type: none"> <li>• Consumer Protection Act</li> <li>• Aviation Act §58 and §60</li> </ul>
Finland	<ul style="list-style-type: none"> <li>• Finnish Aviation Act (1194/2009) - Section 157 (Conditional fines and conditional orders of execution)</li> <li>• Conditional Fine Act (1113/1990)</li> </ul>
Lithuania	<ul style="list-style-type: none"> <li>• Paragraph 2 of Article 70 of the Act of Aviation No. VIII-2066 (O.J. 2000, No. 94-2918; 2007, No. 59-2279): designates CAA as NEB</li> <li>• Code of Administrative Violations, Article 115: defines penalties</li> </ul>
Luxembourg	<ul style="list-style-type: none"> <li>• Law of 31st January 1948, art 43, modified by the law of June 5, 2009, Article 1 (19)</li> </ul>
Malta	<ul style="list-style-type: none"> <li>• Civil Aviation (rights of Disabled Persons and Persons with Reduced Mobility) Regulations (LN234/07) as amended by (LN 411/07)</li> </ul>
Slovak Republic	<ul style="list-style-type: none"> <li>• Act No 128/2002 (State Inspections Act): defines powers of NEB to conduct inspections, impose preventative measures, and impose sanctions</li> <li>• Act No 250/2007 on Consumer Protection: provides legal framework for NEB's consumer protection activities</li> </ul>
Slovenia	<ul style="list-style-type: none"> <li>• Not yet implemented</li> </ul>

#### *Sanctions allowed in national law*

- 5.16 There are significant differences between the States in the maximum sanctions for infringements of the Regulation that can be imposed under national law (Table 5.4). The highest defined maximum sanctions are in Spain (€4.5 million) but in Denmark, Finland, Netherlands and the UK unlimited fines can be imposed, and in Cyprus the maximum fine is 10% of the turnover of the carrier. In Austria, Belgium and Denmark sanctions may also include a prison sentence.
- 5.17 However, in many States, sanctions are low, and in some States maximum sanctions are close to or below the costs that a service provider may in some circumstances avoid through non-compliance with the Regulation. In these States, it is possible that the sanctions regime may not comply with the requirement in Article 16 for dissuasive

sanctions to be introduced by Member States; however, without data on the costs of compliance we are unable to assess this. Maximum sanctions are particularly low (less than €1,000) in Estonia, Lithuania and Romania.

5.18 In most States, fines are determined by the NEB, taking into account various factors relating to the case, including the circumstances and conditions of the case, any reasons given for non-compliance, its impact on the passenger and the size of the company. In some States, fines may be imposed which relate directly to the financial impact of the alleged infringement:

- in Germany, additional fines may be imposed to recover any financial gains to the service provider which resulted from its non-compliance; and
- in the Netherlands, reparatory fines can be imposed, which require the service provider to make good any financial loss incurred by the passenger.

**TABLE 5.4 MAXIMUM FINES**

State	Maximum sanction (€)	Explanation/notes
Belgium	€4,000,000 (criminal and administrative)	In addition up to 1 year's imprisonment if a criminal prosecution
Denmark	Unlimited fine	In addition up to 4 months' imprisonment
France	€7,500	Maximum sanction 'per failing', which is not defined. Can be imposed on a per-passenger basis to give a higher total sanction. Can be doubled if repeated within a year.
Germany	€25,000	Additional fines can be imposed to recover the economic advantage that the carrier has obtained from infringement
Greece	€250,000	Minimum sanction is €500. Fines are generic, and do not refer specifically to the Regulation
Hungary	€22,600 (ETA) €11,300 (NTA)	Minimum sanction €189 for ETA. In addition penalty of up to €3,774 for failure to cooperate with an investigation.
Ireland	€150,000	Maximum €5,000 if the case is heard in a District Court. Fines only applicable on failure to comply with a Direction.
Italy	€120,000	Maximum depends on Article infringed and reduced by two thirds if paid within 60 days. Minimum fines of €2,500-€30,000.
Latvia	€2,800	Fine can be applied per passenger that complains. Law makes no direct reference to the Regulation, and it is possible that penalties could be open to legal challenge.
Netherlands	Reparatory fines: unlimited Punitive fines: €74,000	Reparatory fines should be in proportion to the amount of loss and to the severity of the violation. Punitive fines are per infringement and are not multiplied by number of passengers affected. IVW are conducting a study which will define policy on punitive fines.
Poland	Not yet defined, but proposed to be €1,875	Fines vary depending on Article infringed. Fines are variable for infringements of some Articles, but otherwise are fixed. Fines are cumulative per Article and per passenger that complains, so maximum could be a multiple of this. Minimum fines €47-€1,875.
Portugal	€250,000	The maximum and minimum fines depend on the infringement ('light', 'serious' or 'very serious'), the size of the

		company, and whether the infringement was intentional or negligent. Minimum fine €350-4,500.
Romania	€608	Maximum depends on Article infringed. Per Article breached and per passenger. No penalties available for Article 8. Minimum fines €195-€243.
Spain	€4,500,000	For most infringements maximum would be €4,500
Sweden	Not yet defined	Proposed amendment does not define levels of fines
UK	Unlimited fine	Maximum fines depend on Article breached; for many Articles the maximum fine is €5,600. Unlimited fines must be imposed by Crown Court, for serious cases.
Austria	€22,000	In addition up to 6 weeks' imprisonment
Bulgaria	€5,100	No penalties available for Article 8. Minimum fines €1,020.
Cyprus	€8,000 or 10% of operators turnover	-
Czech Republic	€192,000	-
Estonia	€640	Only applies to carriers
Finland	Unlimited fine	Fines are conditional on the period of time during which a condition is unfulfilled, and should be in proportion to company's size, amongst other factors
Lithuania	€870	Minimum sanction €290. Per case, not per passenger.
Luxembourg	€10,000	Fine of €10,000 for violation of Article 4, of €5,000 for failure to provide information, but no other sanctions given.
Malta	€2,300	Criminal procedure
Slovak Republic	€66,000	Depending on number of passengers affected and whether it is repeated
Slovenia	Not yet defined	-

### Statistics for complaint handling and enforcement

- 5.19 Most NEBs had received very few complaints in relation to the Regulation. Of the 27 NEBs, 8 had received no complaints, and 26 had received less than 50. 80% of all complaints to NEBs had been received by the UK NEBs. Although, the UK has the largest aviation market in Europe, and therefore would be expected to receive a higher number of complaints, in 2009 it received over ten times as many complaints as Germany or Spain, the next largest markets. This may be a result of the right in the UK to claim compensation for infringements of the Regulation, discussed below.

5.20 Of those NEBs that had received complaints, most were not able to give a breakdown. Table 5.5 therefore gives a brief description of the types of complaints received.

**TABLE 5.5 COMPLAINTS RECEIVED**

State	2009	Total	Description/notes
Belgium	1	1	Poor quality of assistance
Denmark	0	0	-
France	5	24	Transport of insulin and other liquids; denied boarding and requirements to be accompanied; damage to mobility equipment
Germany	22	34	Assistance by the carrier (55%), at the airport (18%), refusal of reservation (14%), denial of boarding (14%)
Greece	3	4	Denial of boarding; carriage of oxygen; handling of passengers
Hungary	0	1	Denial of boarding
Ireland	14	18	Conditions imposed on travel e.g. seating or carriage of oxygen.
Italy	36	40	48% refusal to embark PRMs; most of remainder lack of assistance at airports
Latvia	0	0	-
Netherlands	5	6	IVW was only competent for 1 complaint
Poland	2	2	Both related to airports outside Poland
Portugal	16	34	Not provided
Romania	0	0	-
Spain	35	46	Not provided
Sweden	3	5	Denied boarding, assistance dog policy
UK	356	883	Allocation of appropriate seating; timely provision of assistance on landing; and communicating requests for assistance on arrival at the airport.
Austria	1	2	Treatment of injured passengers
Bulgaria	0	0	Denied boarding
Cyprus	1	3	Not provided
Czech Republic	0	0	-
Estonia	0	0	-
Finland	3	4	Seating, oxygen, movement within cabin
Lithuania	0	0	-
Luxembourg	0	1	Boarding denied to deaf passengers
Malta	1	1	Carriage of guide dogs
Slovak Republic	0	0	-
Slovenia	0	1	Denied boarding
<b>Total</b>	<b>499</b>	<b>1110</b>	

- 5.21 In addition, NEBs in several States had received questions which were not complaints, regarding, for example, airline seating policy.

*Sanctions applied*

- 5.22 At the time the interviews for this study were conducted, no sanctions had yet been applied for infringements of the Regulation. At the time of drafting this report, three States were in the process of applying sanctions:

- France had opened proceedings to impose fines in one case;
- Portugal had opened proceedings to impose fines in two cases; and
- Spain had opened proceedings to impose fines in five cases.

- 5.23 Two other States had taken other actions to encourage compliance:

- Hungary wrote to an airline requiring it to correct its policy, and published this letter; and
- the UK has threatened several organisations with sanctions, and has taken other actions to encourage compliance, including writing to airlines, and setting out its requirements for compliance.

**The complaint handling and enforcement process**

*Overview of the process*

- 5.24 The complaint handling process is broadly similar in each NEB, however, since most NEBs receive very few complaints, the process for handling them is often not defined in detail. A typical process is as follows:

- complaints are recorded (since the number of complaints is frequently very low, this may be in a spreadsheet or a filing system rather than in a database);
- most undertake an initial filter of the complaints, to remove those that are not related to the Regulation, where the passenger has not first sought redress from the service provider, or where there is no *prima facie* case of an infringement;
- complaints relating to flights departing from other States are forwarded to the NEB of the State which is competent to handle the complaint;
- the complaint is investigated through contacting service providers to request information and/or justification for their actions; and
- a decision is made on the complaint.

- 5.25 The complaint handling process is different for complaints submitted to one of the UK NEBs (see box below). Otherwise, the main differences between the processes in different Member States are in the following areas, which are discussed in more detail below:

- the nature of the ruling or decision issued to the passenger, in particular whether the ruling is binding;
- under what circumstances the investigation of the complaint may lead to sanctions; and
- the process by which sanctions may be imposed and collected.

**Complaint handling in the UK (excluding Northern Ireland) by EHRC**

The legislation implementing penalties for infringements of the Regulation in the UK also grants a right to compensation for injury to feelings resulting from an infringement. This is in line with UK disability rights legislation in other sectors. As a result of this, the process for complaint handling is structured around conciliation, with a possible civil claim for compensation if conciliation fails. In other States there is no right to compensation and therefore no reason to offer conciliation proceedings.

The EHRC handles complaints relating to incidents which occurred in the UK excluding Northern Ireland. When a complaint is submitted to the EHRC and an initial evaluation shows it to be potentially valid, a letter is sent to the service provider which summarises the complaint and requests comments. This letter also explains the conciliation process, and asks if the service provider would be willing to participate. The responses are evaluated to see whether they appear to justify the actions of the service provider, but there is no technical or operational investigation, for example, to establish whether any claims made by a service provider are true.

If the complaint remains unresolved, the EHRC will consider referring the case for conciliation. If both parties agree, conciliation is provided independently, and may result in a voluntarily binding agreement on both parties. This agreement may include financial compensation, or may include non-financial reparations such as an apology.

If a service provider does not wish to participate in conciliation, the EHRC may suggest to the passenger that they initiate legal proceedings, which may result in payment of compensation. The EHRC may also consider offering litigation support for cases where it believes that the outcome could help clarify the application of the Regulation.

Complaints related to incidents occurring in Northern Ireland are handled by CCNI. This follows a procedure similar to most other NEBs, including an investigation of the facts of the case, but if this procedure fails to resolve the complaint to the passenger's satisfaction, the passenger can seek financial compensation under UK national law.

*Languages in which complaints can be handled*

5.26 Most NEBs are able to handle and reply to complaints written in the national language and English, but in many cases NEBs were not able to handle complaints in other Community languages. The languages in which NEBs can receive complaints, and respond to passengers, are shown below.

**TABLE 5.6 LANGUAGES IN WHICH COMPLAINTS ARE HANDLED**

State	Languages in which complaints may be written	Languages in which the NEB will reply to the passenger
Belgium	Flemish, French, English	Flemish, French, English
Denmark	Danish, English, German	Danish, English
France	French, English, Spanish	French only
Germany	German, English	German, English
Greece	Greek, English, French, German, Spanish, Italian	Greek, English
Hungary	Hungarian, English, German, Italian, other languages where possible	Hungarian, English, German, Italian
Ireland	English, French, German, Spanish, Italian	English, Spanish
Italy	Italian, English, French, Spanish, German	Italian, English, French, Spanish



Latvia	Information not provided at interview	Information not provided at interview
Netherlands	Dutch, English; sometimes also French and German	Dutch, English; sometimes also French and German
Poland	Polish, English, German, French	Polish, informal translation to English provided
Portugal	Portuguese, Spanish, English and French	Portuguese, Spanish, English and French
Romania	Romanian, English	Romanian, English
Spain	Spanish, English	Spanish, English
Sweden	Swedish, English	Swedish, English
UK	English, but would make arrangements to handle any other languages	English, but would make arrangements to handle any other languages

### *Time taken*

5.27 Many NEBs informed us that they had received too few complaints to be able to draw conclusions on the average time taken to handle them (see Table 5.7 below). Several other States had received very few complaints, but had a legal limit on time to respond set by national law. Of those that were able to estimate the actual time taken to resolve complaints, most reported wide variation: for example, Italy reported variation between 1 and 6 months. The longest time taken to resolve complaints was reported in the UK, where complaints may take up to 6 months, and there are instances where complaints have taken longer than this to resolve; as a result the passenger has no longer been able to claim for compensation under UK national law (see 5.25).

**TABLE 5.7 TIME TAKEN TO RESOLVE COMPLAINTS**

State	Average time taken	Explanation/Notes
Belgium	Too few complaints to estimate time	
Denmark	Too few complaints to estimate time	No complaints yet received, but in principle 2-3 months
France	Varies significantly	If the case goes to CAAC, it will take longer. Overall, durations are similar to under Regulation 261/2004
Germany	Too few complaints to estimate time	Complaints are handled faster than for Regulation 261/2004, which take 3-4 months
Greece	30 days	Response time is set by law and is generic across all complaints to HCAA
Hungary	75 days	Response time is set by law and is generic across all complaints to ETA
Ireland	3-4 months	Awaiting responses (from service providers or Commission) lengthens the average time taken, so many cases handled quicker than this
Italy	30 days to 6 months	Depends on investigation required and response of service provider
Latvia	Too few complaints to estimate time	
Netherlands	Too few complaints to estimate time	Same procedure as for Regulation 261/2004: in principle 3-6 months
Poland	Too few complaints to estimate time	Likely to be quicker than for Regulation 261/2004
Portugal	Too few complaints to estimate time	May be faster than for Regulation 261/2004

Romania	30 days	Time limit set by law
Spain	Too few complaints to estimate time	Always less than six months, and delay is due to service providers. Shorter than equivalent complaints under Regulation 261/2004.
Sweden	At most 6 weeks	This is a non-binding target for the CAA; little information at present on how well this has been met.
UK	EHRC: Up to 6 months, can take longer CCNI: Up to 6 weeks	EHRC: Wide variation in time taken. Process is driven by 6 month time limit for court cases for compensation under SI. CCNI: Wide variation in time taken.

#### *Responses issued to passengers*

- 5.28 All of the NEBs in the case study States provide PRMs who complain with an individual response. As there is no right to compensation, the extent to which an NEB can offer assistance to obtain redress is limited; most responses state a decision on whether the NEB considers the Regulation to have been infringed, but do not state whether any payment should be made to the PRM, for example for loss due to denied boarding. The UK is an exception, for the reasons given in above. Most responses from NEBs do not have specific legal status, however in Hungary the response is legally binding, and in the Netherlands non-compliance with a decision may lead to a fine.
- 5.29 Almost all States would undertake some form of investigation of a complaint. The exception to this is the UK (excluding Northern Ireland), where the body responsible for handling complaints does not take an investigative role, although the CAA does investigate the facts of a proportion of cases. As discussed above, the UK process is structured around claims for compensation and the NEB sees its role as to facilitate conciliation, where the service provider is incentivised to voluntarily provide some form of compensation, or risk having a court award compensation against it.
- 5.30 Table 5.8 summarises the responses issued to the passenger.

**TABLE 5.8 RESPONSES ISSUED TO PASSENGERS**

State	Nature of response issued
Belgium	Individual non-binding evaluation sent to both service provider and passenger
Denmark	Non-binding individual evaluation provided to PRM and service provider
France	Individual response provided by DGAC summarising the conclusions of the investigation and its opinion on the case
Germany	Individual response giving the result of the investigation and their conclusions
Greece	Individual response giving the result of the investigation and their conclusions
Hungary	ETA issues legally binding decision to both passenger and service provider
Ireland	CAR writes to each passenger to summarise conclusions and whether incident was an infringement of the Regulation
Italy	ENAC writes to each complainant to inform them of its conclusions
Latvia	No specific procedures established, but passengers would be issued with an official letter communicating the final decision

Netherlands	Formal decision issued to both passenger and carrier. Not legally binding, but non-compliance may lead to a fine.
Poland	Formal decision issued to both passenger and carrier
Portugal	Individual response summarising correspondence with service provider and reasons for decision.
Romania	Individual response is sent to the passenger, setting out any infringements of the Regulation and any corrective measures taken by ANPH
Spain	Individual response, including response from carrier and AESA's view on it, and information on how passenger can obtain redress
Sweden	Individual non-binding response summarising correspondence with service provider and reasons for decision.
UK	EHRC: Does not investigate complaints, and therefore does not have standard format for output. Conciliation process may result in form agreeing actions to be taken. CCNI: Individual opinion letter sent to passengers.

#### *Circumstances in which sanctions may be imposed*

- 5.31 There are also significant differences between the States as to whether and when sanctions are imposed.
- 5.32 Some NEBs, including one of the Hungarian NEBs, Italy, Portugal, and Romania, always impose sanctions in the case that an infringement is found, even if it is a minor or technical infringement which does not significantly inconvenience passengers. If the amendments to the Aviation Act are passed in their current form, the Polish NEB will in future apply fines for every infringement. The German NEB must also take some action whenever an infringement is identified, although it has discretion to choose between a warning letter and a fine. If it chooses a fine, this has to be proven to the same standard of evidence required for criminal cases, and the NEB is therefore unlikely to impose sanctions if the infringement is 'not significant'.
- 5.33 In other States, the policy is to impose sanctions far less frequently:
- In two States (Belgium and Greece), a sanction would only be imposed where a service provider fails to take corrective action when required to do so by the NEB. In Ireland, this is the case for infringements of some Articles. In Spain, this is the general policy of the NEB but it could in theory impose sanctions without first warning the service provider.
  - Several States have a policy of imposing sanctions where there is evidence of serious or systematic infringements, including Denmark, and the Netherlands.
  - The UK will consider prosecution of a service provider where it fails to comply with CAA requests for corrective action, or for wilful non-compliance. Any case to be taken to prosecution must be proven to a criminal standard of evidence, despite the due diligence defence available in UK law. The UK NEB believed that this would be less difficult than under Regulation 261/2004, as Regulation 1107/2006 is more prescriptive.
- 5.34 The policies of the case study States on imposition of sanctions are shown in Table 5.9 below.

**TABLE 5.9 POLICY ON IMPOSITION OF SANCTIONS**

State	Policy on imposition of sanctions	Explanation/Notes
Belgium	Applied for serious or systematic violations (allows opportunity for corrective action first). Public prosecutor decides whether to bring criminal case; if not, BCAA may then decide whether to impose administrative sanctions.	If prosecutor brings criminal case, BCAA may not impose administrative sanctions
Denmark	Applied for serious or systematic offenses; minor offences would receive a caution, which would not be made public	
France	In consultation with CAAC. Ultimate decision made by the Minister responsible for Civil Aviation on the advice of CAAC.	Cases would only be considered by CAAC if referred by DGAC
Germany	If a complaint is upheld, imposes warning letter or sanction; LBA has flexibility to decide which	Procedure is a mix between administrative and criminal procedures: level of proof required is equivalent to a criminal case but case is decided by LBA
Greece	First send a letter of caution; if service provider infringes again, then impose penalty.	
Hungary	Choice of actions (including fines and non-pecuniary measures) which may be applied by ETA, depending on nature of case. NTA has same choice of actions but must take some form of action. Fines also imposed for non-cooperation with cases.	Fines for non co-operation can be imposed even where there was no infringement found
Ireland	CAR would consider prosecuting if a service provider did not comply with a Direction, or if it identified a breach of Articles 3 or 6 (2)	CAR can consider issuing a Direction if issue identified during an inspection, or if a service provider does not rectify a case when required to do so
Italy	Applied in every case of an infringement, identified either by investigation of complaint or inspection	Amount of fine considers facts of the case. Appeals and collection process can be lengthy, up to 7 years
Latvia	At discretion of NEB	More specific policies to be developed when Administrative Violations Code amended.
Netherlands	In principle sanctions could be applied for every violation, but IVW policy is to apply them only for severe or repeated infringements	Appeals process includes several stages, and may take in principle up to 2 years
Poland	When in force, will be applied in every case of an infringement	No sanctions yet in place
Portugal	Applied for every confirmed infringement, identified either through complaint or inspection	
Romania	Applied for every confirmed infringement	Amount of fine considers facts of the case. Any sanctions must be imposed through the Social Inspectorate; specific methodology is in development. AACR cannot impose fines for violations of Article 8.
Spain	Whenever an infringement is identified, the service provider receives warning, with a period in which to rectify the issue; if it fails to	

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do so, AESA can impose a sanction.		
Sweden	Sanctions not yet defined	
UK	Applied when service provider fails to comply with CAA requests for corrective action, or for wilful non-compliance	In addition, standard of evidence required for criminal prosecution, and 'due diligence defence' means that it must be proved that senior management of carrier had intended not to comply

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#### *Process to impose sanctions*

5.35 In most Member States, the process to impose sanctions is an administrative procedure undertaken by the NEB, and the decision to impose sanctions is made by the NEB alone. Service providers, and in some cases also passengers, can appeal to the courts.

5.36 The exceptions to this are the following States:

- In Germany, the procedure is similar to the administrative procedures applying in other States, but the standard of evidence required is equivalent to that in criminal cases.
- In Slovakia, the procedure is also similar to the administrative procedures in other States, but with the key difference that (as for Regulation 261/2004) an on-site inspection is required before a sanction can be issued. A consequence of this is that sanctions cannot be imposed on carriers that are not based in Slovakia.
- In Denmark, Ireland, Malta and the UK<sup>13</sup>, sanctions are imposed under criminal law and therefore a criminal prosecution is required.
- In France, cases are referred by the NEB (DGAC) to an administrative commission (the CAAC) that meets twice per year. This makes a recommendation to the Minister of Civil Aviation, who takes the ultimate decision about whether a sanction should be imposed, and the level of any sanction.
- In Belgium, sanctions can be imposed under criminal law but administrative fines to an equivalent level are also available.
- In Austria, administrative fines can be imposed, but in aggravated cases a prison sentence of up to 6 weeks may also be imposed, under criminal law.

5.37 Some States have administrative fines to encourage compliance, which can be applied when a service provider fails to respond within a certain time; these include Hungary and Latvia.

#### *Application of sanctions to carriers based in other Member States*

5.38 A number of NEBs face difficulties in applying sanctions to carriers that are not based in their State. This arises because national law either:

- does not permit application of sanctions to carriers not based in the State; or
- requires administrative steps to be taken in order to impose a sanction, which are

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<sup>13</sup> Issues regarding the imposition and collection of fines in the UK are discussed in further detail in the Evaluation of Regulation 261/2004, SDG for European Commission, February 2010.

either difficult or impossible to take if the carrier is not based in, or does not have an office in, the State concerned.

5.39 The problem is particularly significant in relation to carriers based in other EU Member States, as opposed to non-EU carriers. In many Member States where sanctions are imposed through an administrative process, national law requires a notification of a sanction, or the process to start imposition of a sanction, to be served at a registered office of the carrier, or on a specific office-holder within the carrier. Non-EU (long haul) carriers will usually have an office in the each of the States to which they operate, and this can be a condition of the bilateral Air Services Agreements which permit their operation; however there are no such requirements on EU carriers, which are free to operate any services within the Union.

5.40 We discussed this issue in detail in our recent report on Regulation 261/2004, and in most cases the issues are equivalent, because the process to impose the sanction is the same. However, since the research for that report was conducted, there have been changes affecting the imposition of fines on non-national carriers in two States:

- **Greece:** Until 2008, the legal process for serving a fine required that a writ was accepted by a representative in Greece of the company being fined. As a result, HCAA faced difficulties in imposing fines on non-national carriers that had not established an office in Greece. To resolve this problem, in May 2008 HCAA adopted a regulation on airline representation, requiring all non-national airlines to have representation agreements with their local representatives. This was withdrawn shortly after it came into force, as the restrictions it imposed violated Regulation 1008/2008 on common rules for the operation of air services in the Community. The difficulties in imposing sanctions on non-national carriers therefore remain.
- **Germany:** German national law requires LBA to prove that the notification of any sanction had been issued to a named person within the carrier; as these carriers often do not have offices or legal representation in Germany, at the time of the research for the study on Regulation 261/2004 it was often not possible to meet this requirement. LBA now believes that this problem has been resolved and expects to test this application within six months.

5.41 The problems with application of sanctions to carriers not based in the Member State are summarised in Table 5.10. Since no fines have yet been imposed for infringements of the Regulation, many of the procedures and issues described below have not been tested in practice. However, often the procedures for imposing fines are equivalent to those for Regulation 261/2004 and therefore where possible we have drawn conclusions on this basis.

**TABLE 5.10 ISSUES WITH APPLICATION OF SANCTIONS TO CARRIERS NOT BASED IN THE STATE**

State	Whether it is possible to impose sanctions	Explanation/Notes
Belgium	Yes in principle	In principle there are no problems although this has not been tested as yet as no sanctions have been imposed. BCAA believed the best approach would be through cooperation with other NEBs, but the scope of the Regulation could limit this.
Denmark	Yes, although only if the incident occurred on Danish territory	No sanctions have been imposed and therefore this has not been tested. Restriction to Danish territory means that a small proportion of incidents would not be covered, i.e. incidents occurring mid-flight on board a non-Danish carrier which had departed from or was landing at a Danish airport.
France	Yes	Sanctions have been imposed on foreign carriers without any difficulties for other Regulations, so in principle should not be a problem. Notification can be sent by registered mail, and by fax if it is not possible to obtain a receipt from the registered mail.
Germany	Yes in principle	Sanctions must be served on a named person within the airline, which caused problems when issuing fines for Regulation 261/2004. LBA believe this is now resolved, and that it should be sufficient to obtain a signed receipt either by registered mail or by a courier, or issue the sanction through the German embassy in the State concerned
Greece	Uncertain	In summer 2009 national legislation came into force on airline representation, requiring a representation agreement for all non-national airlines. This allowed HCAA to impose financial penalties on all carriers but has now been repealed. The same difficulties in imposing fines on non-national carriers are now present: the legal process of serving a fine requires that a representative of the airline in Greece accept the writ, and there are therefore difficulties in imposing fines on non-national carriers that have not established an office in Greece.
Hungary	No	ETA is only able to handle discrimination cases regarding companies based in the territory of the Republic of Hungary.
Ireland	Yes in principle	Notification of a Direction can be served at the carrier's registered office, which does not have to be within the State. Any proceedings would require proof of incorporation of an airline which could be accepted by the Irish courts.
Italy	Yes but slower / more complex	ENAC would use the process set out in Regulation 1393/2007 to serve notifications on carriers which do not have offices in Italy, but this is likely to be slow/complex. For fines imposed under Regulation 261/2004, this has been short-cut in some cases by the Italian embassy/consulate in the State serving the notification directly.
Latvia	No	The Latvian Administrative Violations Code only allows for sanctions to be imposed on 'legal persons'. This is defined as including foreign individuals but not foreign companies.
Netherlands	Yes	IVW must prove that the company being fined has been notified, for example by proving receipt of the letter setting out the fine. The law states that if IVW can prove it has sent the fine, it is up to the other party to prove it has not received it.
Poland	Yes	Notifications are sent by registered mail or courier to the head office of the carrier – there is no limitation provided a receipt is obtained. A receipt from a courier company is considered sufficient.

Portugal	Yes	No specific constraints on imposing sanctions. Procedure equivalent to that for national carriers.
Romania	No	Notification of any penalty must be made by mail with a receipt, or by physically presenting it in the presence of a witness. If an airline does not have a legal representation in Romania, this cannot be done.
Spain	Yes	Notifications are sent by registered mail – there is no limitation provided a receipt is obtained. In theory collection of sanctions is problematic if carrier does not have an office in Spain, but this has not yet proved a problem.
Sweden	Sanctions not yet defined	Proposed amendment to Civil Aviation Act is unlikely to allow this, as no other Swedish legislation does so.
UK	Yes in principle	In principle there are no problems although this has not been tested as yet as no sanctions have been imposed. As sanctions could only be imposed through a criminal process, this would be undertaken by the criminal courts system not the NEB.

### Monitoring undertaken by NEBs

5.42 While the Regulation does not explicitly require NEBs to undertake monitoring of compliance with the Regulation, it does require them to take measures to ensure that the rights of PRMs are respected, including compliance with the quality standards required by Article 9 (1).

#### *Monitoring of airport quality of service*

5.43 Two NEBs, Denmark and Germany, had undertaken no actions to directly monitor airport service quality. Denmark holds biannual meetings with stakeholders including PRM organisations, airport managing bodies and airlines, but does not undertake any first-hand monitoring of service quality at airports.

5.44 NEBs in all but two of the case study States had undertaken some inspections of airports. Many undertook yearly inspections of the major airports, although some inspected airports more frequently: the Hungarian NEB inspects Budapest airport three times per year, and Spain had conducted 152 inspections since the introduction of the Regulation. Some had only undertaken one inspection, when the Regulation came into force; these included France, the Netherlands, Romania and Sweden.

5.45 Most inspections focus on checks of the systems and procedures in place to provide service. These checks included confirming the signage and functioning of the designated points of arrival, training records, and the written procedures followed by staff providing the service. Most did not assess the passenger experience; those that did were Latvia, Sweden and the UK. These checks included site visits accompanied by representatives of PRM organisations to check actual waiting times and infrastructure such as designated points.

5.46 In addition to inspections, there were a number of other approaches to monitoring quality of service, including:

- attending the PRM steering committees of larger airports on a monthly basis (UK);
- holding biannual meetings with stakeholders including PRM organisations (Denmark); and



- sending annual surveys on implementation of the Regulation to airports (Romania).

5.47 Table 5.11 summarises the actions NEBs have taken to monitor airport service quality.

**TABLE 5.11 NEB ACTIONS TO MONITOR AIRPORT QUALITY OF SERVICE (EXCLUDING INDIRECT MONITORING)**

State	Direct monitoring of airport quality of service
Belgium	Inspection and audit of subcontractors at Brussels Airport, covering part of Regulation
Denmark	Biannual meetings with stakeholders including PRM organisations, airport managing bodies and airlines
France	One inspection of Paris Charles De Gaulle
Germany	None
Greece	Inspections of all airports (including 3 at Athens) for compliance with quality standards (although no quality standards set at any airport other than Athens)
Hungary	Regular inspections (Budapest 3 per year, smaller airports once) covering systems and equipment; questionnaire requesting number of complaints received and training given; approves safety license of PRM service provider, including check of quality standards
Ireland	2 inspections at each airport under jurisdiction
Italy	Regular inspections by staff based at airports, reviewing equipment and procedures, application of quality standards, and provision of training
Latvia	Inspections for compliance with quality standards: checking 'time stamps', site visits to measure actual waiting times. Meetings two times a year to discuss standards.
Netherlands	Audit of systems at major Dutch airports in 2007/2008. Further investigations will be driven by complaints.
Poland	Surveys of all airports, covering: quality standards, training records and programmes, documentation of cooperation with PRM organisations and airport users. Documentation checked by inspections.
Portugal	Yearly inspections of major Portuguese airports, covering designated points and information, but excluding staff training and assistance provided.
Romania	Inspection of Bucharest Otopeni, in cooperation with Social Inspectorate. Annual surveys of airports on several topics, including training, accessible information and procurement.
Spain	152 inspections relating to the Regulation
Sweden	Inspection of Stockholm Arlanda with PRM organisation, including checks of designated points and signage. No such checks of smaller airports.
UK	CCNI: Annual PRM site visits at airports; quarterly meetings with airports. CAA: Physical inspections of airports combined with discussions with service providers. Attends airport-PRM consultative committees monthly for London Heathrow, Gatwick, Luton and Stansted, and for Manchester less frequently.

5.48 For most of the NEBs we spoke to, resource constraints were not an issue: most NEBs received few complaints, and did not undertake significant additional activity which would require additional resources. Where inspections of airports for compliance with the Regulation were undertaken, they were frequently combined with other inspections and did not therefore require significant additional resourcing. The case study States which informed us that they would undertake more inspections if they

had more resources were France and Ireland.

*Monitoring of airline quality of service and policy regarding carriage of PRMs*

5.49 Most NEBs did not inform us of any monitoring of airline service quality they had undertaken, and stated that they had not investigated or challenged any airline policies on carriage of PRMs.

5.50 The most pro-active approach to airline service quality was that of the Spanish NEB, which in 2009 undertook 409 inspections on passenger rights. The other NEBs which informed us of reviews of airline quality of service took a number of approaches:

- approval of ground handler training (Greece);
- reviewing operating manuals (Latvia, Poland);
- reviewing websites for accessibility (Latvia, Netherlands); and
- annual surveys on airline implementation of the Regulation (Romania).

5.51 Table 5.11 summarises the actions NEBs have taken to monitor airline service quality and policies on carriage of PRMs.

**TABLE 5.12 NEB ACTIONS TO MONITOR AIRLINE QUALITY OF SERVICE AND POLICY**

State	Monitoring of airline quality of service and policy on carriage of PRMs
Belgium	Developed advisory document which sets limits on PRM carriage by Belgian carriers
Denmark	No review of service quality. Discussion of hypothetical reasons for refusal of embarkation discussed at stakeholder meetings
France	None
Germany	No review of service quality.
Greece	Training of ground handlers is approved by HCAA
Hungary	Reviews requirements and Conditions of Carriage for compliance with Regulation
Ireland	Reviewed airline policies on carriage of PRMs
Italy	None
Latvia	Inspections of both main Latvian airlines: reviewed operating manuals, websites and records. Would use unannounced inspections if infringements identified.
Netherlands	Consultations with EDF to check accessibility of airline websites
Poland	NEB reviewed airline's operating manual as a result of one case
Portugal	None
Romania	Annual surveys of airlines on several topics, including refusal of carriage, training and accessible information
Spain	409 inspections in 2009 on passenger rights, including checks on information provided to passengers and compliance with conditions of carriage
Sweden	Reviewed policies on carriage in cooperation with Swedish Work Environment Authority; awaiting EASA report before defining policy on PRM limits
UK	Requested and reviewed information from airlines on the rationales for their policies

- 5.52 In addition, many NEBs are also the licensing authority for carriers registered in the State, and therefore have to approve carriers Operating Manuals. Where this is the case, these NEBs have to approve, and therefore could determine, carriers' policies on carriage of PRMs and requirements to be accompanied.
- 5.53 We have identified that in some cases the licensing authority does have specific policies on carriage of PRMs which must be reflected in carriers Operating Manuals. The stated rationale for these policies is safety, but these policies vary significantly between States, and have not been demonstrated to be evidence-based. In most cases, the licensing authorities do not have specific policies and will approve those proposed by the carriers, subject to these being reasonably based on safety. Most NEBs and licensing authorities have not done anything to challenge policies on carriage of PRMs proposed by carriers, and this has resulted in significant differences in policies between carriers. This issue is discussed in more detail in section 4 above.

#### *Monitoring of airport charges*

- 5.54 As noted previously (see 5.6), no Member State has designated a separate body for enforcement of Article 8 of the Regulation, and several have not yet passed legislation to allow penalties to be imposed for infringements of this Article.
- 5.55 7 out of 16 case study NEBs had undertaken no direct monitoring of the charges levied by airports for providing services under the Regulation, or of the consultation which airports are also obliged to undertake when setting such charges.
- 5.56 The NEBs for Hungary and Italy had undertaken audits of the charges levied, while a number of NEBs had undertaken high level reviews of expenses and charges (including Greece, Latvia, Poland and Romania). The Netherlands and Portugal had undertaken benchmarking exercises against other airports.
- 5.57 Table 5.11 summarises the actions NEBs have taken to monitor airport charges under the Regulation.

**TABLE 5.13 NEB ACTIONS TO MONITOR AIRPORT CHARGES (EXCLUDING INDIRECT MONITORING)**

State	Direct monitoring of airport service charges
Belgium	None
Denmark	None
France	None
Germany	None
Greece	Annual review of expenses and charges
Hungary	Approves airport charges; in-depth audit of costs and charge for Budapest
Ireland	Charges included within regulated price cap. CAR has investigated level of consultation on charges.
Italy	Charges set by ENAC in cooperation with airports and airlines
Latvia	High-level check of charge
Netherlands	Reviews against other airports with advice of Netherlands Competition Authority.

Poland	Review of charges (by other CAO department)
Portugal	Benchmarking exercise across European countries, but no auditing or analysis of whether charges are cost-reflective
Romania	Checks for: existence of charges; separation of accounts; annual report on expenses and revenues. No checks on whether reasonable or cost-reflective (but in the process of recruiting staff with economic skills).
Spain	None
Sweden	None, but review is planned.
UK	None

### Other activities undertaken by NEBs

#### *Interaction between NEBs and with other organisations*

5.58 Given the low number of complaints received by NEBs, interaction with other stakeholders is important to maintain an awareness of any issues arising. Table 5.14 summarises the interactions between NEBs and other organisations.

**TABLE 5.14 NEB INTERACTION WITH OTHER ORGANISATIONS**

State	Form of any interaction between NEB and other organisations
Belgium	None
Denmark	Biannual meetings with stakeholders, including airports, airlines and PRM organisations
France	No information provided at interview
Germany	No information provided at interview
Greece	Meetings with PRM organisations to help define quality standards, joint accessibility reviews of regional airports
Hungary	Biannual meetings with PRM organisations
Ireland	No information provided at interview
Italy	Round table discussions to develop advisory guidance, good relationship with PRM organisation
Latvia	CAA attends quarterly PRM steering committee at Riga Airport with PRM organisations
Netherlands	Consultations with EDF to check accessibility of airline websites
Poland	Worked with PRM organisation to improve CAO understanding of problems faced by PRMs
Portugal	One day seminar for aviation industry stakeholders on Regulations 261/2004 and 1107/2006. Did not include representatives of PRM organisations.
Romania	NEB and PRM organisation cooperated with Bucharest Otopeni to develop quality standards
Spain	No information provided at interview
Sweden	Approximately monthly contact with PRM organisations, including biannual aviation focus group
UK	CCNI: Worked with Equality Commission of Northern Ireland to support introduction. CAA: Attends monthly PRM steering committees at major UK airports with PRM organisations, receives guidance from government advisory committee on disabled travel.

*Promotional activity undertaken by NEBs*

- 5.59 The Regulation requires Member States to inform PRMs of their rights and the possibility of complaints to NEBs. Relatively few NEBs have made significant efforts towards this: of the case study NEBs, only Romania and UK had undertaken nationwide campaigns to promote awareness of passengers' rights under the Regulation, and even in the UK, the PRM organisation we spoke to was not aware of the campaign the UK NEB had conducted.
- 5.60 Other NEBs had undertaken less direct promotional activity, including the following:
- publishing of leaflets to be distributed at airports (Belgium, Germany);
  - holding a conference (Germany); and
  - actions to promote awareness of the Regulation to PRM organisations and other stakeholders, but which did not directly inform passengers (Denmark, Italy, Netherlands, Poland).
- 5.61 A number of NEBs had published information on their websites. While such information can be useful, if a passenger is unaware that they have rights, or is aware they have rights but unaware of the role the NEB plays in enforcing them, they are unlikely to find and read NEB websites. Table 5.15 lists the activities undertaken by NEBs.

**TABLE 5.15 NEB ACTIVITY TO PROMOTE AWARENESS OF THE REGULATION**

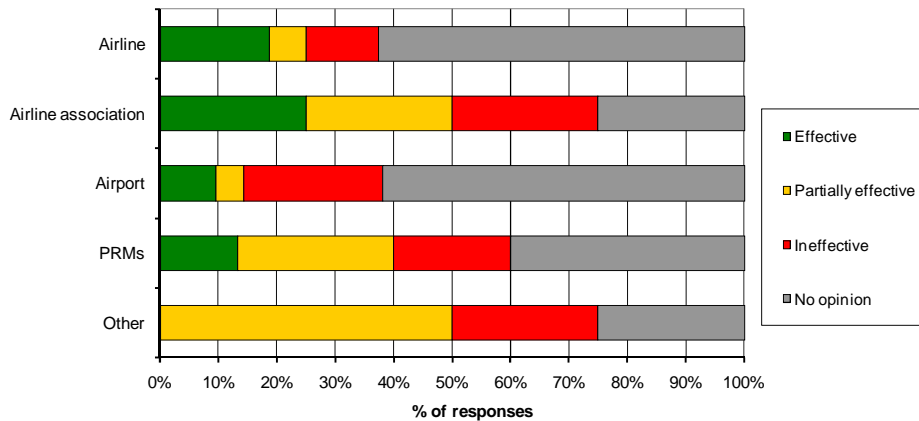
State	Actions taken by NEBs to promote awareness of the Regulation
Belgium	Leaflets sent to Brussels Airport; also available on the BCAA website.
Denmark	Letters to stakeholders on obligations under Regulation sent out when it was passed.
France	No information provided at interview. Section on website with information on Regulation.
Germany	BMBVS published a leaflet on Regulation in 2008 and held a conference with PRM organisations and the association of German air carriers; published information on website.
Greece	Information on the Regulation (including videos) placed on website.
Hungary	Information on the Regulation (including videos) placed on website.
Ireland	No information provided at interview. Section on website with in-depth information on Regulation.
Italy	Guidance on implementing the Regulation developed with and circulated to airports, airlines and PRM organisations. No direct promotional activity to passengers.
Latvia	Published PRM complaint form on website.
Netherlands	Contact with Dutch Association of Travel Agents to improve awareness and ensure correct allocation of IATA codes.
Poland	Provided information regarding the Regulation to PRM organisations.
Portugal	No information provided at interview. Section on website with information on Regulation.
Romania	Public awareness campaign with main PRM organisations, including dedicated website, posters and leaflets distributed throughout the country, through airports, carriers, travel agents and municipal bodies.
Spain	No information provided at interview. Section on website with information on Regulation.

Sweden	No information provided at interview. Section on website with information on Regulation. PRRM org states well-publicised initially but not since.
UK	EHRC: distribution of guides on rights under Regulation; advertised in national media CCNI: distribution of guides on rights under Regulation, covered in regional media; advertorial piece in newspapers; exhibitions at relevant events.

**Stakeholders views on complaint handling and enforcement**

5.62 We asked each of the stakeholders we contacted about how effectively they believed NEBs had enforced the Regulation; there is some variation between different groups of stakeholders (Figure 3.10 below). A high proportion of stakeholders (over 60% of airports and airlines) have no opinion on how well NEBs have been enforcing the Regulation; often, the reason given for this response was that the stakeholder had had no interaction with the NEB in question. The proportion which believes that NEBs have not been enforcing the Regulation effectively is broadly consistent across stakeholder groups, at 20%-25%.

**FIGURE 5.1 VIEWS OF STAKEHOLDERS ON NEB EFFECTIVENESS**



5.63 In this section, we discuss the particular issues raised by each group of stakeholders.

*Airlines and airline associations*

5.64 Most airlines did not express strong views on whether NEBs had enforced the Regulation effectively, and did not give specific examples of areas where NEBs were performing well or poorly. One airline expressed frustration with the lack of action taken against airports, in particular relating to excessive charges and to lack of focus on safety.

5.65 Of the airline associations we spoke to, AEA believed that effectiveness of enforcement varied by State. IACA believed that in general NEBs were unfairly targeting airlines and not airports. Regarding specific NEBs, it believed that the UK complaint-handling NEB was bringing cases which were factually inaccurate, and that there was insufficient distinction between NEBs and service providers in Spain and Portugal.

*Airports*

- 5.66 A higher proportion of airports than airlines believed that NEBs were ineffective. Two airports believed actions needed to be taken by NEBs to raise the proportion of pre-notifications for assistance. One airport believed that the NEB should take more action to inform passengers of their rights and obligations. Three airports informed us that they had had no interaction with their NEBs, and two stated that their interactions with NEBs had been unsatisfactory: one informed us that the NEB was slow and unresponsive, and the other stated that it was not clear which organisation was their NEB. Only one airport informed us that it had good and close cooperation with its NEB.

*NEBs*

- 5.67 As there have been very few complaints received under the Regulation, there have also been very few complaints which have required forwarding to other NEBs. Therefore, the NEBs have no information on the effectiveness of other NEBs via their responses to forwarded complaints.

*PRM organisations*

- 5.68 13% of PRM organisations believed that NEBs were enforcing the Regulation effectively. Those that believed that NEBs were functioning ineffectively or only partially effectively believed that too little action was being taken, either through active monitoring of the services provided or through taking actions to remedy poor service. Four of the PRM organisations we spoke to had had little or no interaction with their NEB.

*Other organisations*

- 5.69 The other organisations we spoke to noted the following issues with regard to enforcement:
- lack of consistency of approach between NEBs, particularly in terms of whether they believe it is their role to handle complaints;
  - unwieldy complaints systems; and
  - unreasonable requests made by NEBs.
- 5.70 One organisation also believed that some NEBs were taking a sensible line between the demands of PRMs and of service providers.

**Conclusions**

- 5.71 Member States are required to designate a body responsible for enforcing the Regulation regarding flights from or arriving at its territory. They may also designate separate bodies responsible for handling complaints, and for enforcing Article 8. All Member States except Slovenia have designated an NEB, which in most cases is the Civil Aviation Authority and is the same organisation that is responsible for enforcement of Regulation 261/2004. In a number of States, the Regulation is not explicitly referred to in the law designating the NEB, and in Spain, the imposition of sanctions has been challenged, in one case successfully, on the basis that the NEB was not competent to impose the sanction.

- 5.72 There is no requirement in the Regulation that the NEB be independent from service providers and we have identified one case where it is not: the Greek NEB, HCAA, is also the operator of the airports other than Athens.
- 5.73 Member States are also required to introduce penalties in national law for infringements of the Regulation, which must be effective, proportionate and dissuasive. All States except Poland and Sweden have introduced sanctions into national law, although there are a number of States where sanctions have not been introduced for infringements of all Articles. In the UK, national law grants rights additional to those given in the Regulation: passengers who suffer injury to feelings as a result of an infringement of the Regulation may seek financial compensation from the service provider.
- 5.74 There is significant variation in the level of the maximum sanctions which can be imposed for infringements, and in some States the fines may not be at a high enough level to be dissuasive. While some States allow unlimited fines to be imposed and may also impose a prison sentence, maximum sanctions in Estonia, Lithuania and Romania are lower than €1,000.
- 5.75 The Regulation allows any passenger who believes that the Regulation has been infringed, and is dissatisfied with the response they have received from the service provider, to make a complaint to the appropriate body (usually an NEB). However, very few complaints have been received under the Regulation: to date, since the introduction of the Regulation, 1,110 complaints have been received, compared to a total of 3.2 million passenger assisted in 2009 across a sample of 21 EU airports. 80% of all complaints were received by the UK NEBs; none of the NEBs in the other 26 Member States has received more than 50 complaints.
- 5.76 Where an NEB identifies an infringement (through a complaint or other means) it may choose to enforce the Regulation by imposing sanctions. No sanctions have yet been imposed, but France, Portugal and Spain have opened proceedings to impose fines. However, in a number of States, there are likely to be significant practical difficulties in imposing and collecting sanctions, in particular in relation to airlines registered in different States.
- 5.77 Many NEBs had taken at least some action, other than the monitoring of complaints, to assess whether service providers were complying with the Regulation. NEBs in 14 of the 16 case study States had undertaken at least one inspection of airports for compliance with the Regulation, however most inspections have focused on checks of systems and procedures, and did not assess the actual experience of PRMs using the service provided by the airport. NEBs for 9 of the 16 States had undertaken no direct monitoring of the charges levied by airports for providing PRM services, although Hungary and Italy informed us that they had undertaken in-depth audits of the charges levied at airports.
- 5.78 Member States are required to take measures to inform PRMs of their rights under the Regulation, and the possibility of complaining to appropriate bodies. Of those that provided information, relatively few NEBs had made significant efforts to promote awareness of the Regulation by passengers; only two informed us of national public awareness campaigns they had undertaken.



- 5.79 Awareness of the NEBs performance appeared in general to be poor: most stakeholders contacted for the study held no opinion on the effectiveness of enforcement by NEBs, and many informed us that this was because they had had no interaction with them.

## 6. STAKEHOLDER VIEWS ON POLICY ISSUES

### Introduction

6.1 This section summarises views expressed by stakeholders in the course of our consultation exercise on key policy issues, including whether any changes should be made to the scope or content of the Regulation, and what any changes should be.

6.2 Stakeholders also expressed views on the application of the Regulation by airports, carriers, and the complaint handling and enforcement process; these views are summarised in the relevant chapters above.

### Whether changes should be made to the Regulation

6.3 We asked all of the stakeholders that we interviewed whether they considered that any changes should be made to the Regulation.

6.4 Half of the airports we interviewed believed that the Regulation should be changed. Several suggested that the definition of PRM was too broad, and that this was contributing to abuse of services. It was also suggested that the Regulation be amended to require proof of disability, and that the Regulation should also be amended to improve the functioning of pre-notification (for example by making it mandatory). ACI supported these positions. The airports which did not believe the Regulation should be amended, or had a neutral opinion, thought that any lack of clarity in the Regulation could be addressed through information from the Commission.

6.5 In addition, around half of the airlines we interviewed also believed that the Regulation should be changed, however this was for different reasons to those given by airports. A number of airlines believed that it should be possible for them to choose to provide the service themselves or that responsibility should lie with airlines, arguing that as customer-focussed organisations they are better able to do this. Of the airline associations, only ELFAA argued for this amendment. One airport strongly agreed with this position, however most believed that the allocation of responsibility should not be revised, as if airlines were to provide their own service, the incentive to reduce costs would result in unacceptable reductions in service quality. Airlines also supported amendments to clarify the definitions of PRM and mobility equipment, and to improve pre-notification.

6.6 Most of the NEBs we interviewed did not have a clear opinion on whether the Regulation should be amended. Seven NEBs believed that the definitions of terms such as PRM and mobility equipment should be clarified, and two of the NEBs in the case study sample supported changes which would allow airlines to opt out of the Regulation and provide the services themselves.

6.7 Slightly over half of the PRM representative organisations we interviewed believed that the Regulation should be amended. Amendments were suggested to address the following issues:

- limits on number of PRMs which can safely be carried;

- allocation of seating;
- requirements on compensation payable for damaged mobility equipment, and improvements to its handling; and
- provision of information.

6.8 EDF suggested that compensation should be introduced, as this would incentivise more complaints and therefore improve service. Those that did not believe the Regulation should be amended either believed that the Regulation had not been in force for long enough to assess its efficacy, or that poor implementation was the cause of any problems identified.

### **The content and drafting of the Regulation**

6.9 We outline below some of the main detailed issues that have been raised by stakeholders. Few stakeholders believed that there were significant issues with the drafting of the Regulation that made it difficult to implement, however many stakeholders outlined issues relating to insufficient definition.

#### *Definition of terms*

6.10 The issue most commonly raised, particularly by airports and NEBs, is the definition of PRM set down in the Regulation. Many stakeholders believe this is too broad and opens the service to abuse, both by passengers and by airlines. A number of airports believed that airlines were using the wide definition to allow them to avoid costs: passengers who were previously classified as MAAS (including unaccompanied minors, VIPs and passengers with language issues), and therefore paid for by the airline, are now classified as WCHR and the cost is borne by all airlines. Some airports believed this could be resolved by setting out a clear definition of MAAS.

6.11 The definition in the Regulation could include a wide range of passengers who some stakeholders do not believe were the intended beneficiaries of the Regulation, including:

- obese passengers;
- stretchers;
- medical cases; and
- passengers who had sustained injuries (whose travel is often paid for by their travel insurance).

6.12 Some stakeholders believed that the definition of PRM was so broad that it could be considered to include passengers which the Regulation was clearly not intended to cover, such as passengers whose intellectual and sensory capacities were temporarily impaired by excessive consumption of alcohol.

6.13 Several stakeholders believed this issue could be resolved by requiring some proof of need for assistance in order to receive assistance, for example in the form of a disability ID card. This was opposed by some PRM organisations.

6.14 Stakeholders also considered that a number of other terms were not sufficiently defined. These included:

- **Mobility equipment:** The reference in Annex II to mobility equipment states that it should include electric wheelchairs but does not define the term any further. Stakeholders had differing views on what should be included in this: several airlines believe that it should refer only to equipment that is required to make it possible to travel by air, but a number of PRM organisations believed it should include items which make the *purpose* of the trip possible. This could include, for example, joists for lifting passengers in and out of seats.
- **Medical equipment:** Several stakeholders believed there was insufficient clarity on which items were classified as medical equipment and which as mobility equipment. It was also uncertain whether airlines could any limits (for example on weight) on its carriage.
- **Accessible formats:** It was reported that the requirement for designated points of arrival and departure to offer basic information about the airport in accessible formats did not define what was required, for example, whether all such points should include a map in Braille of the airport.
- **Safety rules:** Article 4(3) requires airlines to make publicly available the safety rules that it applies to the carriage of PRMs, and any restrictions on the carriage of PRMs or mobility equipment. Several stakeholders informed us that such documents were not defined, and it was not clear what this term referred to.

#### *Lack of clarity in the Regulation*

- 6.15 In one case, the requirements of the Regulation appear contradictory. Several NEBs noted that the responsibility for enforcement defined in Article 14 contradicts that specified in Recital 17. Article 14 states that NEBs are responsible for enforcement regarding flights departing from or arriving at airports within their State, while Recital 17 places responsibility on the NEB of the State which issued the carrier's operating license.
- 6.16 Stakeholders identified a number of other provisions where they considered the description of obligations was insufficiently clear, including:
- **Article 7:** Under this Article, airports are required to provide assistance to PRMs holding reservations so that they able to take their flight, however, it does not define what an airport is required to provide to a PRM who does not hold a valid reservation. In addition, it does not define the airport's liability when a PRM misses their flight, in particular where the passenger has not pre-notified their requirement for assistance.
  - **Article 11:** One airport had been the subject of a legal challenge by an airline regarding the inclusion within its PRM service charge of the costs of providing training under Article 11(b) to subcontractors at the airport. The airline contended that since the paragraph did not refer to subcontractors (unlike Article 11(a)) the airport was not obliged to provide such training. Several airports believed that the requirement under this Article to provide disability-related training to all new staff (not just those whose role required them to interact with PRMs) was unnecessary. In contrast, some PRM organisations believed that training should be explicitly extended to Commanders of aircraft, to enable them to make better-informed decisions on whether to embark PRMs. PRM organisations also noted

that it was not clear whether airports were required to provide training on specific procedures for handling mobility equipment; as damage to mobility equipment is perceived to be a significant issue, they believed this requirement should be explicitly included.

- **Article 12:** Several PRM stakeholders raised concerns that the compensation referred to in this Article would be consistent with the Montreal Convention, and that the limits under the Convention were insufficient for some mobility equipment, such as technologically advanced wheelchairs (see 4.55). Although this had not been an issue to date – in almost all cases that we were informed of, airlines waived the limits – it creates uncertainty for wheelchair users travelling by air. This is heightened by the reported difficulties in obtaining insurance for such equipment.
- **Annex I:** A number of airlines raised concerns regarding the allocation of liability when boarding a passenger. For example, they did not believe that liability was clear in the case that an accident occurs on board an aircraft when airport staff are present. Some airports raised concerns regarding liability for damage to wheelchairs while in their care. In addition, the services which should be provided to transfer passengers and the measures which should be taken to accommodate assistance dogs are not defined.

- 6.17 Regarding training, some stakeholders raised the issue of the legal weight of ECAC Document 30, particularly Annex 5-G which sets out recommended guidance for training regarding PRM services. While this is referred to in the Regulation as a policy which should be considered when developing quality standards, the same reference is not made in Article 11 where training requirements are defined.

*Conflicts with 14 CFR Part 382*

- 6.18 As discussed in section 4 above, the US regulations on carriage of PRMs (14 CFR Part 382) apply to European carriers operating flights to/from the US, and other flights where these are operated as codeshares with US carriers. There are a number of differences between these rules and the Regulation, the most significant of which is the allocation of responsibilities for assistance: the Regulation requires airports to arrange the provision of services to PRMs, while under the US legislation it is the airlines that have this responsibility. This has caused difficulties for carriers who are required to comply with legislation that conflicts, although the US legislation does allow carriers to apply for a waiver where there is a conflict of laws.

*Pre-notification*

- 6.19 The requirement to pre-notify requests for assistance and problems in doing so were raised by many stakeholders (see 4.98). Stakeholders held differing views on how this should be improved. Several airlines (in particular those with operations to the US, where requiring pre-notification is usually prohibited) believed that the requirement to pre-notify should be removed; they believed that the resulting increases in costs of provision would be marginal, as most resourcing requirements could be planned on the basis of observed variation in demand (over the course of a year, a week or a day as appropriate). This approach was supported by some PRM organisations. In contrast, a number of airports believed that pre-notification should be made compulsory, and

this proposal was opposed by some PRM organisations.

*Level of detail*

- 6.20 Almost all stakeholders informed us that there was significant variation in the services provided under the Regulation. This is partly a result of the approach taken by the Regulation, which does not seek to define in detail the services to be provided. In contrast, the equivalent US rules set out in detail all aspects of the services to be provided, in effect setting out procedures to be followed by all service providers.
- 6.21 Several stakeholders have raised the lack of detail in the Regulation as an issue, and believe that a more prescriptive approach would lead to greater harmonisation of the services provided. In particular, they believed that the services set out in Annexes I and II and the training required under Article 11 should be defined with greater precision.

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## Conclusions

- 6.22 We asked each stakeholder we contacted for the study whether they believed that changes should be made to the Regulation. Slightly more thought that there should be changes than did not, but there was not a clear majority in favour of changes. The reasons given for making changes and what those changes should be varied depending on the stakeholder.
- 6.23 No significant problems were identified with the drafting of the Regulation, although there is a conflict between Recital 17 and Article 14. In general, stakeholders had not found it difficult to follow the provisions of the Regulation. The most common issue raised with regard to the text of the Regulation is that the definitions used are not sufficiently precise; in particular, the definition of PRM is believed by airports and some airlines to be too broad, and this is believed to make it difficult for them to take action to counter abuse. The Regulation is much less precise about the policies and procedures that have to be followed, particularly by air carriers, than the equivalent US regulation on carriage of PRMs, 14 CFR Part 382.
- 6.24 In addition, many stakeholders pointed out the significant differences between the Regulation and 14 CFR Part 382, which applies to European carriers on flights to/from the US and other flights operated as codeshares with US carriers. One of the most significant is the requirement to pre-notify requirements for assistance was raised as an issue, particularly by airlines operating to the US, and by airports where the rates of pre-notification were low. Two different approaches were proposed to address the perceived problem. Some airlines (primarily those flying to US) proposed removing the requirement to pre-notify, which would resolve the conflict with US legislation; this was opposed by airports on the grounds that it would reduce service quality and increase cost. Some airports proposed making pre-notification compulsory; this was opposed by some PRM organisations on the grounds that it would reduce the freedom of PRMs to travel.

## 7. FACTUAL CONCLUSIONS

### Introduction

- 7.1 This section summarises our conclusions in relation to how effectively airports and airlines are providing the assistance required by the Regulation, and how effectively Member States and National Enforcement Bodies (NEBs) are undertaking their roles specified in the Regulation.

### Implementation of the Regulation by airports

- 7.2 We selected a sample of 21 airports for detailed analysis for the study, and reviewed how they had implemented the Regulation, through desk research and through interviews with representatives of airport management and other stakeholders.
- 7.3 Prior to the introduction of the Regulation, assistance at airports was provided by airlines and usually contracted from ground handlers. The Regulation places responsibility for provision of this assistance with the airport management company. We found that all airports in the sample for this study had implemented the provisions of the Regulation, although we were informed by airlines and other stakeholders that the regional airports in Greece had yet to effect the change from provision by ground handlers to provision by airports. We were not informed by stakeholders of any other EU airports at which the Regulation has not been implemented.
- 7.4 Most of the sample airports had contracted the provision of PRM assistance services to an external company, generally selected through a competitive tender process. However, several airports had changed their service provider within 18 months of the Regulation coming into force; this was interpreted by some as a sign that the service initially specified and procured had been inadequate. One major hub airport acknowledged that it had had significant problems with a PRM service provider.
- 7.5 The service provided at the sample airports varies in terms of: the resources available to provide the services; the level of training of the staff providing assistance; the type of equipment used to provide services; and the facilities provided to accommodate PRMs (such as PRM lounges). According to the information provided by PRM organisations, this results in variability in service quality. PRM representative organisations, airlines and some airports cited a number of examples of poor quality or even unsafe provision of services at airports, although it is not possible to infer how regular these occurrences are. Overall, most stakeholders believed that the Regulation had been implemented effectively by airports.
- 7.6 There is also significant variation between airports in the frequency with which PRM services are requested: the level of use of the service varies by a factor of 15 between the airports for which we have been able to obtain data, although in most cases between 0.2% and 0.7% of passengers requested assistance. The type of PRM service requested also varies considerably between airports although in all cases the largest category is WCHR (passengers who cannot walk long distances but can board the aircraft, including using stairs, unaided). Both the frequency of use and the type of service required are likely to be affected by the varying demographics of the passengers using different airports; PRMs account for the highest proportions of



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passengers at holiday airports, such as Alicante, and airports serving pilgrimage destinations, such as Lourdes.

- 7.7 The Regulation requires airports to publish quality standards. Most of the sample airports had done so, although some had published them only to airlines. Almost all quality standards followed the example format set out in ECAC Document 30, which defines the percentage of PRMs who should wait for up to given numbers of minutes. Some airports published qualitative measures in addition to these time standards, such as descriptions of the treatment the passenger should expect at all points of the service. However, none of the sample airports had published the results of any monitoring of these quality standards, and whilst most did undertake monitoring in some form, only four had commissioned external checks of the service.
- 7.8 The Regulation allows airports to levy a specific charge to cover the costs of assistance. All but one of the sample airports had done so. The level of charges varied considerably: the highest charges of the sample airports were at Paris CDG and Frankfurt. We analysed the charges to examine whether variation could be explained by higher frequency of use of the service, differences in levels of wages and other costs between States, or differences in service quality, but there was no evidence that this was the case. The design of the airport is a further factor influencing the cost of service provision and hence the level of charges: the assistance service can be provided at lower cost at an airport such as Amsterdam Schiphol, which is on a single level and has one integrated terminal building, than at an airport with a more complex configuration such as Paris CDG.
- 7.9 Some stakeholders believe that the requirements to select contractors and establish charges in cooperation with users and PRM organisations were not followed thoroughly. Many airlines did not believe that consultation on either element had been sufficient, and this view was shared by some PRM organisations. There were a number of barriers to effective consultation, including linguistic restrictions and airport user committees which did not adequately represent all air carriers. Consultation with air carriers was reported as particularly poor in Spain, Portugal and Cyprus. In contrast to this, we note that several airports stated that they had sought the participation of PRM organisations but had found this difficult to obtain.
- 7.10 The Regulation requires airports to provide specialised disability training for staff directly assisting PRMs, and whilst all sample airports had done so, there were significant variations in the length and format of this training. The shortest training course among those for which we have data was 3 days long, while the longest lasted 14 days. There was similar variation in the length of training provided for passenger-facing staff who did not provide direct assistance. A number of airports informed us that they did not provide disability-awareness training for staff not in public-facing roles, or only provided it on a voluntary basis.

### Implementation of the Regulation by air carriers

- 7.11 We selected a sample of 20 air carriers for the study. We reviewed how they had implemented the Regulation, both through review of their published policies, procedures and Conditions of Carriage, and through interviews with the carriers themselves and with other stakeholders.
- 7.12 The main obligation that the Regulation places on air carriers is that it prohibits refusal of carriage of PRMs, unless this is necessary to meet national or international safety rules or requirements imposed by the carrier's licensing authority, or is physically impossible due to the size of the aircraft or its doors. We found that air carriers largely comply with this, although some state in their Conditions of Carriage that carriage of PRMs is conditional on advance notification. In our view, this is not consistent with the Regulation, which does not allow for a derogation on the prohibition of refusal of carriage on the basis that the passenger has not provided advance notification. In addition, we found that a small number of carriers impose requirements for medical clearance which appear to be excessively onerous and to be worded to include PRMs as well as passengers with medical conditions.
- 7.13 We found significant differences in policies relating to carriage of PRMs between carriers – even between carriers with similar aircraft types and operational models. The most significant difference is that some carriers impose a numerical limit on the number of PRMs that can be carried on a given aircraft. These can be quite low: some carriers have limits of 2-4 PRMs on a standard single-aisle aircraft such as an Airbus 319. These limits are not required by any international or European safety rules, although in some cases they are required by the licensing authority for the carrier concerned; often, although not always, this is the same organisation that has been designated as the NEB. However, in most cases, these requirements are defined by carriers in their Flight Operations Manuals; although the licensing authority has to approve this, it appears that in most States, little has been done to challenge the limits proposed by carriers. Whilst the stated rationale for these limits is safety, there does not seem to be a clear evidence base for them, and they are specifically prohibited by the equivalent US regulation on carriage of PRMs (14 CFR part 382).
- 7.14 The Regulation also allows carriers to require that PRMs be accompanied, subject to the same safety-based criteria. We found that a number of carriers require PRMs to be accompanied where they are not 'self-reliant', which can mean that the PRM cannot (for example) eat unaided. In our view this may be an infringement of the Regulation because there is no direct link to safety; for those carriers that fly to the US, it is also an explicit breach of the US PRM rules. This type of condition is also, in our view, unreasonable for short haul flights for which passengers could decide to (for example) not eat or drink during the flight. Other carriers require PRMs to be accompanied only where they are not self-reliant **and** this has a safety impact (for example, if the PRM could not exit the aircraft unaided in an emergency or put on an oxygen mask without assistance); this is consistent with the Regulation.
- 7.15 The Regulation also requires carriers to publish safety rules relating to the carriage of PRMs, although it does not specifically state what issues these safety rules should cover. We found that carriers all published some PRM-related information, but few published a notice specifically described as being the safety rules related to carriage of

PRMs. In some cases there appeared to be significant omissions from the information published by carriers: for example, some of the carriers which imposed a numerical limit on the number of PRMs which could be carried did not publish this.

- 7.16 Annex II of the Regulation sets out various requirements for services which have to be provided to PRMs by carriers. Evidence for the extent to which this is provided is limited, and restricts a fair assessment of compliance with these requirements. There is however sufficient evidence to conclude that the vast majority of case study air carriers are complying with the requirement to carry up to two items of mobility equipment free of charge. Some PRM representative groups were critical of the effectiveness of airlines in implementing the Regulation, and we were informed of some particularly bad passenger experiences, but it is difficult to assess how common such occurrences are.

### **Enforcement and complaint handling by NEBs**

- 7.17 Member States are required to designate a body responsible for enforcing the Regulation regarding flights from or arriving at its territory. They may also designate separate bodies responsible for handling complaints, and for enforcing Article 8. All Member States except Slovenia have designated an NEB. In the majority of States, the NEB for this Regulation is the same organisation as the NEB for Regulation 261/2004, in most cases the Civil Aviation Authority. In a number of States, the Regulation is not explicitly referred to in the law designating the NEB, and in Spain, the imposition of sanctions has been challenged, in one case successfully, on the basis that the NEB was not competent to impose the sanction.
- 7.18 Member States are also required to introduce penalties in national law for infringements of the Regulation, which must be effective, proportionate and dissuasive. All States except Poland and Sweden have introduced sanctions into national law, although there are a number of States where sanctions have not been introduced for infringements of all Articles. There is significant variation in the level of the maximum sanctions which can be imposed for infringements, and in some States the fines may not be at a high enough level to be dissuasive. While some States allow unlimited fines to be imposed and may also impose a prison sentence, maximum sanctions in Estonia, Lithuania and Romania are lower than €1,000.
- 7.19 The Regulation allows any passenger who believes that the Regulation has been infringed, and is dissatisfied with the response they have received from the service provider, to make a complaint to the appropriate body (usually an NEB). However, very few complaints have been received relating to the Regulation: to date, since the introduction of the Regulation, 1,110 complaints have been received, compared to a total of 3.2 million passengers assisted in 2009 across the case study sample of 21 EU airports. There is also a significant disparity in which States had received complaints: 80% of all complaints about infringements of the Regulation were received by the UK NEBs; none of the NEBs in the other 26 Member States had received more than 50 complaints.
- 7.20 In the UK, national law grants rights additional to those in the Regulation: passengers who suffer injury to feelings as a result of an infringement of the Regulation may seek financial compensation from the air carrier or airport concerned. This is in line with

disability rights legislation applying to other sectors in the UK. A consequence of this is that the process for handling complaints is significantly different in the UK from other Member States, because passengers may have a right to claim compensation from the carrier or airport concerned. At least in part, this also explains the significantly higher number of complaints in the UK compared to the other Member States.

- 7.21 Where an NEB identifies an infringement (through a complaint or other means) it may choose to enforce the Regulation by imposing sanctions. No sanctions have yet been imposed, but the NEBs for France, Portugal and Spain have opened proceedings to impose fines. In most States, the process to impose sanctions is equivalent to that for Regulation 261/2004. In a number of States, there are likely to be significant practical difficulties in imposing and collecting sanctions, in particular in relation to airlines registered in different Member States. This is due to the same reasons identified in our recent study for the Commission of Regulation 261/2004<sup>14</sup>: either specific limitations in national law on imposition of sanctions on foreign companies, or administrative requirements which cannot be met if the carrier is based outside the State. This means that, in these States, the system of sanctions cannot be considered to be dissuasive as required by the Regulation.
- 7.22 There is no requirement in the Regulation that the NEB must be separate from the service providers that it has to regulate. The only case we have identified where the NEB is also a service provider is Greece, where HCAA is the operator of the airports other than Athens, as well as the NEB. Although not an infringement of the Regulation, this is a breach of the principle of separation of regulation and service provision. As noted above, the most significant failure to implement the Regulation that we have identified is at the HCAA airports, and HCAA has not imposed a sanction on itself for this failure to implement the Regulation.
- 7.23 Many NEBs have taken at least some action, other than the monitoring of complaints, to assess whether service providers were complying with the Regulation. NEBs in 14 of the 16 case study States have undertaken at least one inspection of airports for compliance with the Regulation. However, most inspections have focused on checks of systems and procedures, and did not assess the actual experience of PRMs using the service provided by the airport. NEBs for 9 of the 14 States have undertaken no direct monitoring of the charges levied by airports for providing PRM services, although Hungary and Italy informed us that they had undertaken in-depth audits of the charges levied at airports.
- 7.24 Member States are required to take measures to inform PRMs of their rights under the Regulation, and the possibility of complaining to appropriate bodies. Of those that provided information, relatively few NEBs had made significant efforts to promote awareness of the Regulation by passengers; only two informed us of national public awareness campaigns they had undertaken, and even in one of these States, a key national PRM organisation was not aware that the public campaign had taken place. Awareness of the NEBs performance appeared in general to be poor: most

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<sup>14</sup> Evaluation of Regulation 261/2004; Steer Davies Gleave on behalf of European Commission, February 2010

stakeholders contacted for the study held no opinion on the effectiveness of enforcement by NEBs, and many informed us that this was because they had had no interaction with them.

### **Other issues that have arisen with the Regulation**

7.25 Stakeholders also pointed out a number of other issues with the Regulation. Whilst few significant problems have been identified with the drafting of the Regulation, the following issues were identified:

- there is a conflict between Recital 17 and Article 14, regarding which NEB is responsible for enforcing the Regulation in relation to air carriers;
- the definition of PRM used in the Regulation is very broad, and could be interpreted to include some categories of passenger who it might not have been intended to cover (such as obese passengers, or even passengers temporarily incapacitated due to excess alcohol consumption); and
- the Regulation does not specify in detail the policies or procedures that have to be followed by air carriers, particularly if compared to the equivalent US regulations, and this has resulted in significant differences in policies between carriers.

7.26 In addition, stakeholders emphasised the significant differences between the Regulation and the equivalent US regulations on carriage of PRMs (14 CFR part 382). These can cause difficulties for air carriers, as part 382 applies to non-US carriers on flights to/from the US and all other flights that are operated as codeshares with US carriers (even if not to/from the US). The most significant differences are:

- in most circumstances, part 382 does not permit carriers to request pre-notification;
- part 382 does not allow limits on the number of PRMs on an aircraft and limits the circumstances in which an accompanying passenger may be required; and
- part 382 places the responsibility for provision of PRM assistance services on the air carrier, whereas the Regulation places this responsibility on the airport.

### **Conclusions**

7.27 Overall, despite difficulties with service provision at some airports, the services required by the Regulation have been implemented at most European airports and compliance with the Regulation appears to be relatively good. Most stakeholders considered that the quality of service provision had improved since the introduction of the Regulation, although some airlines strongly disagreed with this.

7.28 The key issue we have identified with the implementation of the Regulation is that there are significant differences between carriers in their policies on carriage of PRMs. This arises in part from the fact that the Regulation does not specify in detail the services to be provided and the procedures to be followed, in particular if compared to the equivalent US regulations on carriage of PRMs. The Regulation allows carriers to refuse carriage or require a passenger to be accompanied on the basis of safety requirements, but these requirements are not specified in law, and therefore there are significant differences in interpretation of these requirements.

## 8. RECOMMENDATIONS

### Overview

- 8.1 This section sets out our recommendations relating to how to improve the operation and enforcement of the Regulation. We present first a number of recommendations which would improve the operation of the Regulation without requiring any changes to be made to the text. However, we believe some changes are necessary which could only be implemented through amendments to the Regulation.

### Measures to improve the operation of the Regulation

- 8.2 This section sets out measures to improve the operation of the Regulation. It covers the following:
- improvement in the operation of PRM services at airports;
  - issues relating to the carriage of PRMs by airlines;
  - actions to be taken by or in relation to NEBs; and
  - guidance on PRM services and carriage which should be produced by the Commission, in consultation with other parties.

### *Airports*

- 8.3 All airports in the sample for the study had implemented the provisions of the Regulation in some form, although as the Regulation does not precisely specify the quality of service to be provided, PRM organisations have reported this as being variable. We do not recommend any significant changes, and recommend a number of measures which will help airports to move towards consistency of service.

### *Maintain allocation of responsibility*

- 8.4 Several airlines (primarily those operating low-cost business models) argued in their submissions to the study that they should be permitted to provide or contract their own PRM assistance services, as they could provide it more cost-efficiently than airports. We believe that this could create an incentive to minimise the service provided and hence would risk a reduction in service quality. Whilst there were initially significant issues with the quality of PRM service provision at certain airports, most stakeholders believed that these issues had now been addressed, and therefore we recommend that allocation of responsibility for PRM services to airports should **not** be amended.

### *Monitor misuse of services*

- 8.5 A number of airports (in particular larger and busier airports) reported that the services they provided for PRMs were sometimes used by passengers who did not appear to have the right to do so under the Regulation. There was no consensus amongst airports about how significant this issue was. This variation in perception of the problem, combined with the nature of the problem itself, makes it difficult to accurately assess its extent. We recommend that the Commission monitor reports of misuse of services, so that it is alerted if the problem becomes more consistently serious.

*Improve provision of information*

8.6 Several PRM organisations informed us that provision of information on accessibility by airports could be improved. In particular, we were informed that many PRMs would find it helpful to have access to information, in a consistent format, regarding the accessibility of airports to which they were travelling. This could be provided through a webpage on an airport's website included, for example:

- the maximum likely walking distance within the airport;
- locations of any flights of stairs;
- the means used for access to aircraft (airbridge or stairs);
- any facilities available for PRMs;
- appropriate contact details for PRM services both for airlines and the airport<sup>15</sup>.

8.7 Whilst some of this information is often available on airport websites, it can be difficult to find and is not always complete. To address this, we suggest that ACI could develop a single website which would either include all of this information or alternatively provide links to the specific pages on airport websites which include this information.

*Share best practice on contracting of PRM service providers*

8.8 We identified two issues with the process for selection of PRM service providers:

- several airports which had subcontracted PRM services had re-tendered within 18 months of the Regulation entering into force, as there were significant issues with the operation of the service; and
- many airlines informed us that they did not believe the extent of consultation from airports was sufficient.

8.9 To address these issues, we recommend that the Commission, in co-operation with ACI, develop and distribute best practice advice on contracting for services, including:

- **Content and structure of the contract:** This could include the level of detail at which contract terms relating to services should be specified, and any penalties for failure to meet required standards. It could be provided in the form of a sample contract. This would help to reduce the likelihood of issues with the contract leading to retendering.
- **Recommended methods of cooperation:** This could give details of the level and manner of consultation an airport should undertake. It could detail how to involve airport users in consultation at all points of a tendering process, including from drafting of invitation to tender documents, to evaluating and scoring bids, and might include input on the eventual decision. It could also include how to involve PRM organisations in this process. Where implemented, this would improve the perception by airport users and other parties of airport consultation.

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<sup>15</sup> London Luton airport provides a good example of this; see <http://www.london-luton.co.uk/en/content/3/1427/how-to-book-special-asistance.html>.

*Share best practice on training*

- 8.10 Our research found that approaches to training of staff to provide PRM services varied significantly. In particular, there was significant variation in length of training (between 3 and 14 days) and method of delivery (videos, classroom-based or practical), to provide what should in principle be the same services. In addition, some airports reported that they had sought assistance on developing training from local PRM organisations, but the PRM organisations were too resource-constrained to be able to provide the required assistance. We therefore recommend that the Commission work with ACI and EDF to develop and distribute best practice advice on training, which would include recommended minimum levels.

**Airlines**

- 8.11 A key problem identified in our research is the lack of consistency between airline policies on the carriage of PRMs. These policies are subject to approval by the carriers' licensing authorities (which are often the same organisation as the NEB), but in many cases they approve policies with little or no challenge.

*Work with EASA to determine safe policies on carriage of PRMs*

- 8.12 Article 4 of the Regulation permits air carriers to refuse to accept reservations from a PRM, or to require that a PRM be accompanied, in order to meet safety requirements set out in international, Community or national law, or established by the authority that issued the carrier's operating certificate. However, other than minimal requirements in EU-OPS, Community law does not impose specific requirements regarding the safe carriage of PRMs. There is little published research into safety issues regarding carriage of PRMs, so even where licensing authorities do seek to challenge proposed airline policies or impose their own, there is a limited evidence base on which to do this. This results in wide and unjustifiable variation in airline policies.

- 8.13 Therefore, we recommend that the Commission work with EASA to determine policies on carriage of PRMs which are consistent with safe operation. Such policies should include any limits on the number of PRMs permitted on board an aircraft, where PRMs may be seated, and whether and under what circumstances PRMs must be accompanied. The policies should take into account the type of aircraft and the different safety implications of carriage of different types of PRMs.

*Airlines to publish clear policies on carriage of PRMs*

- 8.14 We have identified a number of airlines which are failing to publish clear policies on carriage of PRMs. We recommend that the Commission encourage the relevant NEBs to ensure that the airlines identified in Table 4.1 as not publishing sufficient information do so. The Commission could also encourage NEBs to review the policies of airlines outside the study sample to ensure that these provide sufficient information.

*Monitor pre-notification*

- 8.15 Pre-notification of requirements for assistance should have two benefits:



- it should ensure that PRMs are able, on arrival at an airport, to promptly receive the assistance they require to take their chosen flight; and
- it should allow airports to plan their staffing requirements efficiently, minimising the cost of service provision .

8.16 However, at present, as discussed in section 4.74 above, pre-notification is not functioning well. Of the 16 airports which provided us with information on levels of pre-notification, 11 have rates of pre-notification under 60%. The result of this is that at most airports, the rate of pre-notification is too low for the airport to gain efficiency benefits, and the incentive for PRMs to pre-notify is reduced (since at many airports a similar quality of service is provided regardless of pre-notification). Therefore the system as it presently operates requires airlines and airports to incur the costs of enabling pre-notification, but not to realise the benefits of reduced costs or smoother provision of services. We recommend that the Commission monitor the operation of pre-notification (for example by encouraging NEBs to collect appropriate data), and in future assess the situation and consider either eliminating the requirement for pre-notification or alternatively retaining it and providing passengers and carriers with more incentive to pre-notify.

*Encourage airlines to provide receipts for pre-notification*

8.17 Several PRM organisations reported problems where PRMs had pre-notified their requirements for assistance, but then found that this information had not been passed on to airport or airline staff. To address this, and to provide PRMs with evidence that they can use when making a complaint, we recommend that the Commission encourage airlines to provide PRMs with a receipt for pre-notification. Once this voluntary scheme has been in place for an appropriate length of time, the Commission could consider amending the Regulation to make it compulsory.

*Monitor implementation of ECAC Document 30 recommendations on carriage*

8.18 Section 5 of ECAC Document 30 contains a number of recommendations regarding on-board provisions for PRMs which it recommends airlines commission in new or significantly refurbished aircraft. These include (depending on the type of aircraft) the provision of on-board wheelchairs, provision of at least one toilet catering for the special needs of PRMs, and ensuring that at least 50% of all aisle seats should have moveable armrests<sup>16</sup>. We recommend that the Commission monitor uptake of these recommendations.

**NEBs**

8.19 The greatest problem identified by the study regarding NEBs was the lack of proactive measures taken to monitor or enforce the Regulation. In most cases this has not had significant detrimental effect, as most airports and airlines have implemented the provisions of the Regulation, but could become an issue if the situation changes in the future. In most States few complaints had been received by the NEB, and as a result

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<sup>16</sup> See ECAC/CEAC DOC No. 30 (PART I), 11th Edition/December 2009, Section 5.10.5.

the handling of complaints has not been raised as a significant issue.

*Encourage all States to implement the Regulation*

- 8.20 We identified in section 5.13 above that some States have not as yet either introduced penalties into national law for all infringements of the Regulation, or designated an NEB. We recommend that the Commission encourage all States to comply with their obligations under the Regulation.

*Encourage better promotion of rights under Regulation*

- 8.21 Article 15(4) of the Regulation requires Member States to take measures to inform PRMs of their rights under the Regulation and of the possibility of complaint to the relevant NEB. Of the NEBs which provided information on this point, few had taken direct actions to promote the Regulation. Many had published sections with information on their websites, but unless PRMs are made aware that this website exists and is relevant to them, we do not believe that this is sufficient. Only two case study NEBs informed us that they had commissioned national promotional campaigns relating to the Regulation. We recommend that the Commission takes actions to encourage NEBs to inform PRMs of their rights under the Regulation.

*Encourage NEBs to pro-actively monitor application of Regulation*

- 8.22 Article 14 of the Regulation requires Member States to take the measures necessary to ensure that the rights of PRMs are respected. Our research found that most NEBs were taking only limited actions to monitor the application of the Regulation (see 5.42), and few NEBs were directly monitoring whether airports were meeting published quality standards. Many NEBs rely on complaints as a method of monitoring, but without promotion of awareness of rights and of the NEB as the body able to receive complaints (see above), a low number of complaints cannot be interpreted as evidence that there are no issues with the application of the Regulation.

- 8.23 We therefore recommend that the Commission encourage NEBs to pro-actively monitor the application of the Regulation. This could take a number of forms:

- increased interaction with PRM organisations;
- direct monitoring of quality of service provided, for example through ‘mystery shopping’ and other types of inspections of airports (which could be conducted in cooperation with PRM organisations);
- collection of airline pre-notification data; and
- reviews of airline websites for accessibility.

***Guidance to be produced***

- 8.24 We recommend that the Commission should, in collaboration with airlines, airports, PRM representatives and NEBs, develop a detailed good practice guide regarding implementation of the Regulation. This could take the code of practice issued by the

UK Department for Transport<sup>17</sup> as a model, and could form the basis for later detailed revisions of the Regulation. Publishing voluntary policies would allow potential future amendments to the Regulation to be tested in practice before adoption.

- 8.25 The good practice guide could address the following areas (some of which are discussed in previous sections on recommendations regarding airports and airlines):
- recommendations on safety limits;
  - the format and content of policies on carriage (including safety rules);
  - detailed training modules implementing the recommendations in Annex 5G of ECAC Document 30, in addition to recommended minimum duration;
  - consultation; and
  - airport accessibility information.
- 8.26 A key issue to be addressed in this guidance would be the quality standards to be published by airports. At present, most airports follow the format of the minimum standards recommended in ECAC Document 30<sup>18</sup> (see 3.57). However, these standards are a limited measure of the quality of service received by PRMs. We recommend that the Commission work with ECAC to develop recommended minimum standards which are wider in scope, and cover qualitative aspects of the service received. Airports such as London Luton, which publishes a wide range of quality standards which address all aspects of the service, could provide a model for this approach.
- 8.27 The guidance should also specify the information which should be included in carriers' published policies on carriage of PRMs, which should cover at least the areas identified in 4.8.

#### **Recommendations for changes to the Regulation**

- 8.28 The measures described above could significantly improve the operation of the Regulation. However, we believe that some issues could only be addressed through amendments to the text, and therefore we also set out:
- Recommendations for some minor amendments to address issues with the text (such as areas where the Regulation is unclear) which we believe should be implemented as soon as possible.
  - Suggestions for more significant revisions to be considered in the longer term. These would require consultation with stakeholders and an impact assessment to be undertaken.

#### ***Changes to be implemented as soon as possible***

##### *Training*

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<sup>17</sup> *Access to Air Travel for Disabled Persons and Persons with Reduced Mobility – Code of Practice*, UK Department for Transport, July 2008.

<sup>18</sup> See ECAC/CEAC DOC No. 30 (PART I), 11th Edition/December 2009, Annex 5C section 1.6.

- 8.29 We recommend that Article 11 be extended to require airlines to ensure that the personnel of their ground handling companies are trained to handle mobility equipment. Several PRM organisations informed us that damage to mobility equipment was one of the most serious problems for PRMs travelling by air, and that such damage could cause considerable distress to PRMs.
- 8.30 We recommend that Article 11 be amended to include the provisions in Recital 10, namely to specify that the provisions regarding training in ECAC Document 30 be taken into account when commissioning and developing training. This could be phrased in the manner of Article 9(2) on quality standards.
- 8.31 We recommend that Article 11b be amended to clarify that disability-equality and – awareness training is required for passenger-facing subcontractors as well as personnel directly employed by an airport. This would be consistent with Article 11a regarding personnel providing direct assistance. We were informed by one airport that an airline had disputed the level of PRM charges on the basis that the charges recovered the costs of training subcontractors, which the airline believed was not required by the Regulation.
- 8.32 We recommend that the Commission consider removing the requirement in Article 11c for disability-awareness training for non-passenger facing personnel, as it is not clear why this should be any more necessary in this sector than in others.

*Obligatory charges where costs recovered*

- 8.33 Article 8 permits airports to levy specific charges on airport users to fund the assistance provided under the Regulation, which must be reasonable, cost-related, transparent and established in cooperation with airport users. However, it does not *require* airports to levy such charges; several of the airports we researched for the study recovered costs through their general passenger charges, and did not identify the PRM component separately. Where specific charges are not applied, airports are not required to follow the requirements on reasonability, cost-relatedness, transparency and cooperation. We therefore recommend that, for airports above a minimum size, Article 8 be amended to make specific charges obligatory if costs are to be recovered from users.

*Airport charges*

- 8.34 We recommend that Article 8 be amended where necessary to make clear that PRM charges are airport-specific and cannot be set at a network level. At present, the translation into some languages (for example Spanish) could be interpreted to permit network charges, which we believe is contrary to the intention of the Regulation.

*Independence of NEBs*

- 8.35 We recommend that Article 14 be amended to require that NEBs must be independent of any bodies responsible for providing services under the Regulation.

*Scope of Regulation*

- 8.36 We recommend that Article 14 be amended to clarify that NEBs are responsible for

flights departing from (rather than, as is currently stated, both departing from and arriving at) airports in their territory, in addition to flights by Community carriers arriving at airports within State's territory but departing from a third country.

- 8.37 We also recommend that Recital 17 (which states that complaints regarding assistance given by an airline should be addressed to the NEB of the State which issued the operating license to the carrier) be amended to be consistent with Article 14.

*PRMs without a reservation*

- 8.38 Article 7 requires airports to provide assistance to PRMs arriving at an airport so that they are able to take the flight for which they hold a reservation. However, there may be rare occasions where a PRM (like any other passenger) arrives at an airport *without* a reservation, expecting to purchase a ticket at the airport. We therefore recommend that Article 7 be amended to set out the airport's responsibilities to such PRMs.

***Longer term changes to the Regulation***

- 8.39 The key issue that we have identified with the Regulation is that the text is much less detailed or specific than other comparable legislation (in particular, the equivalent US regulations on carriage of PRMs) and therefore leaves much more scope for interpretation and variation in service provision. We suggest that, to ensure greater consistency and that PRMs rights are adequately respected, the Commission should consider making the text more detailed and specific about the requirements for airlines and airports. The rest of this section describes key areas in which we suggest that changes could be made.
- 8.40 It would be necessary to consult with stakeholders about these changes and to undertake an impact assessment, and therefore these changes could not be introduced immediately.

*Provisions on safe carriage PRMs*

- 8.41 Once the Commission has established with EASA policies on the safe carriage of PRMs, particularly regarding any permissible limits on carriage and requirements for passengers to be accompanied (see 8.13), we recommend that either the Regulation or EU-OPS be extended to include these policies.

*Definitions*

- 8.42 We recommend that the following definitions should be clarified:
- **PRM:** The definition of PRM used in the Regulation is very broad and this has led to disputes as to whether obese passengers or those impacted by temporary injuries (e.g. winter sports) are included; and even that those temporarily incapacitated e.g. due to alcohol consumption might be included. We suggest that, at a minimum, the definition should be amended to clarify this, and ideally (but subject to consultation) a much more precise definition of passengers entitled to assistance should be used, along the lines of that used in the equivalent US Regulations (see below).
  - **Mobility equipment:** The Regulation should make clear whether this includes

equipment required by PRMs for the trip but not required for them to be able to take the flight (e.g. joists for assisted lifting of PRMs).

- **Cooperation:** The Regulation should to specify what measures airports must take when required by the Regulation to set out policies and charges in cooperation with airport users and PRM organisations - in particular in Article 8(4).

#### Definition of disability used in US CFR part 14 rule 382

*Individual with a disability* means any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(a) *Physical or mental impairment* means:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardio-vascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(b) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) Has a record of such impairment means has a history of, or has been classified, or misclassified, as having a mental or physical impairment that substantially limits one or more major life activities.

(d) *Is regarded as having an impairment* means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by an air carrier as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(3) Has none of the impairments set forth in this definition but is treated by an air carrier as having such an impairment.

#### Supplementary charges

- 8.43 Although we have not been made aware of any incidences of airlines or airports charging for assistance provided under the Regulation, several airlines charge for the supply of medical oxygen, and for multiple seats where one seat is insufficient for the passenger (for example, in the case of obese or injured passengers). Several PRM organisations informed us that they believed these charges were unjust. We recommend that in any amendment of the Regulation it should be clarified whether airlines may levy such additional charges.

#### Information on rights of PRMs

- 8.44 Regulation 261/2004 requires airlines to display at check-in a notice informing passengers that they may request information on their rights under the Regulation. To assist the promotion of awareness of rights under Regulation 1107/2006, we recommend that the Regulation be extended to include a provision requiring airports

to publish information on the rights of PRMs (including the right to complain) at accessible points within the airport, for example at check-in desks and help points.

*Liability for mobility equipment*

- 8.45 The Montreal Convention allows for compensation for damage to baggage up to 1,131 SDRs (€1,370), however this is insufficient for many technologically advanced electric wheelchairs, which can cost several thousand euros. Although most airlines we contacted for the study informed us that they waived the Montreal limits in this type of situation, several PRM organisations informed us of cases where they did not. Even in the case that an airline voluntarily waives the limit, the PRM is in a position of uncertainty. This is exacerbated by the difficulty of obtaining insurance for such wheelchairs; the high cost combined with the high probability of damage means that the PRM organisations we spoke to had been unable to find any insurers willing to provide coverage.
- 8.46 We therefore recommend that the Commission work with non-EU States to amend the Montreal Convention to exclude mobility equipment from the definition of baggage.





**APPENDIX A**  
**AIR CARRIERS POLICIES ON CARRIAGE OF PRMS**



**APPENDIX TABLE A.1 POLICY ON DENIAL OF BOARDING, ACCOMPANYING PASSENGERS AND MEDICAL CLEARANCE**

Airline	Circumstances for refusal of carriage	Circumstances requiring accompanying passenger	Circumstances requiring medical clearance
Aegean Airlines	Not stated <i>Unpublished limit on unaccompanied PRMs</i>	Not stated	<ul style="list-style-type: none"> <li>PRM requires oxygen</li> </ul>
Air Berlin	May limit number of PRMs on each flight for safety reasons	<p>'Advised' if the following apply (although the use of 'must' in terms of the criteria for the companion suggest that this may not be optional):</p> <ul style="list-style-type: none"> <li>PRM has severe walking disability</li> <li>PRM has severe visual impairment</li> </ul> <p><i>Also required if:</i></p> <ul style="list-style-type: none"> <li>PRM is on stretcher</li> <li>PRM is mentally ill / blind / deaf if unable to follow crew instructions</li> <li>ID states that continuous accompaniment required</li> </ul>	<ul style="list-style-type: none"> <li>PRM has infectious disease</li> <li>PRM is on stretcher</li> <li>PRM requires oxygen</li> </ul>
Air France	Not stated	<ul style="list-style-type: none"> <li>PRM cannot safely exit aircraft alone</li> <li>PRM cannot follow safety instructions</li> <li>PRM has visual or hearing impairment</li> </ul>	<ul style="list-style-type: none"> <li>PRM is on stretcher or in incubator</li> <li>PRM will need extraordinary medical equipment during flight</li> <li>PRM requires oxygen</li> </ul>
AirBaltic	<p>To meet safety requirements</p> <p>If aircraft doors make boarding physically impossible</p> <p>If number of PRMs exceeds number of cabin crew per flight, where PRMs form a large proportion of passengers on flight</p>	<p>PRM requires assistance beyond that provided by cabin crew. Cabin crew will provide additional information to PRMs, but will not:</p> <ul style="list-style-type: none"> <li>Assist with eating or personal hygiene;</li> <li>Administer medication; or</li> <li>Lift or carry passengers.</li> </ul> <p><i>Also required if unable to follow safety instructions, e.g. if in stretcher, incubator, of if both blind and deaf</i></p>	<ul style="list-style-type: none"> <li>PRM has infectious disease</li> <li>PRM has 'unusual condition' which could affect welfare of crew or other passengers, or could be considered a potential hazard to flight or its punctuality</li> <li>PRM will require medical attention or special equipment during flight</li> <li>PRM has medical condition which may worsen during, or because of, flight</li> <li>PRM cannot use normal seat in upright position</li> </ul>

Airline	Circumstances for refusal of carriage	Circumstances requiring accompanying passenger	Circumstances requiring medical clearance
Alitalia	Conditions of Carriage state that boarding may be denied if advance arrangements have not been made	<ul style="list-style-type: none"> <li>PRM uses wheelchair</li> <li>PRM is blind or deaf</li> <li>PRM is on stretcher</li> <li>PRM is not self sufficient</li> </ul>	<ul style="list-style-type: none"> <li>Pregnant passengers, except when uncomplicated and with more than 4 weeks until due date.</li> <li><i>PRM will require medical assistance on board</i></li> </ul>
Austrian	Not stated	<ul style="list-style-type: none"> <li>PRM cannot evacuate aircraft alone</li> <li>PRM cannot follow safety instructions</li> <li>PRM needs assistance in feeding or using toilet</li> <li>PRM is deaf and blind</li> <li>PRM requires assistance beyond that provided by cabin crew</li> </ul>	<ul style="list-style-type: none"> <li>PRM has chronic illness or disability</li> </ul>
British Airways	Not stated	<ul style="list-style-type: none"> <li>PRM cannot lift themselves</li> <li>PRM cannot evacuate aircraft alone</li> <li>PRM cannot communicate with crew on safety matters</li> <li>PRM cannot unfasten seat belt</li> <li>PRM cannot retrieve and fit life jacket</li> <li>PRM cannot fit oxygen mask.</li> </ul>	Not stated
Brussels Airlines	<p>To meet safety requirements</p> <p>If size of doors makes boarding or alighting physically impossible</p> <p>Limit of PRMs of up to 31 per flight depending on aeroplane type</p> <p>Conditions of Carriage state that boarding may be denied if advance arrangements have not been made</p>	<ul style="list-style-type: none"> <li>PRM is mentally disabled and does not have prior medical clearance of airline</li> </ul>	<ul style="list-style-type: none"> <li>PRM is on stretcher or bed</li> <li>PRM requires oxygen</li> <li>PRM is under care of a doctor</li> <li>PRM has unstable medical condition</li> <li>PRM suffers from illness</li> <li>PRM has recently been to hospital, or has operation</li> </ul>

Airline	Circumstances for refusal of carriage	Circumstances requiring accompanying passenger	Circumstances requiring medical clearance
			<ul style="list-style-type: none"> <li>PRM has medical disability and cannot be accompanied</li> <li>PRM is more than 34 weeks pregnant</li> </ul>
Delta	<p>On basis of safety, or if in violation of Federal Aviation Regulations</p> <p>If advance arrangements have not been made (this requirement is more stringent in the Conditions of Carriage)</p>	<ul style="list-style-type: none"> <li>PRM requires constant monitoring at departure gate</li> <li>PRM requires assistance beyond that provided by cabin crew</li> </ul>	<ul style="list-style-type: none"> <li>PRM has infectious disease</li> <li>PRM requires oxygen</li> <li>PRM will require extraordinary medical assistance during flight</li> </ul>
EasyJet	<p>If the safety and welfare of the PRM or other passengers may be compromised</p> <p><i>In only extreme circumstances, e.g. where special seats or torso restraints are required, or if a passenger's condition makes them potentially violent or disruptive.</i></p>	<ul style="list-style-type: none"> <li>PRM cannot evacuate aircraft alone</li> <li>PRM cannot communicate with staff</li> <li>PRM cannot unfasten seat belt</li> <li>PRM cannot retrieve and fit life jacket</li> <li>PRM cannot fit oxygen mask</li> <li>PRM cannot take care of own personal needs and welfare</li> </ul>	<ul style="list-style-type: none"> <li>PRM has infectious or chronic illness</li> <li>PRM has broken limb in plaster</li> <li>PRM is 28-35 weeks pregnant</li> <li>PRM is a child with a chronic lung disease</li> <li>PRM has severe asthma or has recently been prescribed oral steroids.</li> </ul>
Emirates	Not stated	<ul style="list-style-type: none"> <li>PRM needs to travel in stretcher or incubator</li> <li>PRM requires medical attention during flight</li> <li>PRM cannot follow safety instructions</li> <li>PRM cannot evacuate aircraft alone</li> <li>PRM has severe hearing and visual impairments and cannot communicate with staff</li> </ul>	<ul style="list-style-type: none"> <li>PRM is on stretcher</li> <li>PRM requires oxygen</li> <li>PRM requires medical escort or in-flight treatment</li> <li>PRM is carrying medical equipment or instruments</li> <li>PRM is 29 or more weeks pregnant</li> </ul>
Iberia	<p>If PRM poses a risk to themselves and other passengers for medical reasons</p> <p>Limit on number of PRMs per flight</p> <p><i>May also refuse carriage for security reasons, e.g. aggression.</i></p>	<ul style="list-style-type: none"> <li>In order to meet safety requirements</li> <li><i>PRM is considered as a 'medical case'</i></li> </ul>	Not stated
KLM	Not stated	<ul style="list-style-type: none"> <li>PRM requires assistance beyond that provided by</li> </ul>	<ul style="list-style-type: none"> <li>PRM has infectious disease</li> </ul>

Airline	Circumstances for refusal of carriage	Circumstances requiring accompanying passenger	Circumstances requiring medical clearance
	<p><i>Passenger cannot sit up straight</i></p> <p><i>Wheelchair will not fit through aircraft door.</i></p>	<p>cabin crew</p> <ul style="list-style-type: none"> <li>PRM cannot move unassisted between wheelchair and seat / toilet</li> <li>PRM not compliant with normal safety rules</li> </ul>	<ul style="list-style-type: none"> <li>PRM requires medical care or specific equipment in-flight</li> <li>PRM has medical condition that could result in a life-threatening situation or could require the provision of exceptional medical care for their safety during the flight.</li> <li>PRM requires in-flight personal care</li> <li>PRM cannot use normal seat in upright position</li> <li>PRMs up to 36 weeks pregnant who are expecting complications</li> </ul>
Lufthansa	<p>Limit on number of unaccompanied limited mobility PRMs per flight</p>	<ul style="list-style-type: none"> <li>Not stated for non-US flights</li> </ul>	<p>Stringent medical clearance requirements – see text</p>
Ryanair	<p>Limit on number of disabled or sensory or mobility impaired PRMs per flight. Conditions of Carriage state that failure to advise on special needs will result in denial of boarding.</p> <p><i>PRM limit can be overridden at the discretion of the crew on a case-by-case basis</i></p>	<ul style="list-style-type: none"> <li>PRM cannot use toilet unaided</li> <li>PRM cannot feed themselves unaided</li> <li>PRM cannot administer own medication.</li> </ul>	<ul style="list-style-type: none"> <li>PRM requires oxygen, portable dialysis machine or continuous portable airway pressure machine</li> </ul>
SAS	<p>Not stated</p> <p><i>When PRMs cannot be safely carried or physically accommodated</i></p>	<ul style="list-style-type: none"> <li>Not stated</li> <li><i>PRM is blind, deaf; or both</i></li> <li><i>PRM is Disabled Passenger with Intellectual or Developmental Disability Needing Assistance</i></li> <li><i>PRM is on stretcher</i></li> </ul>	<ul style="list-style-type: none"> <li>PRM requires stretcher or other flat transportation</li> </ul>
TAP Portugal	<p>Not stated</p> <p><i>Unpublished limit on unaccompanied PRMs</i></p>	<ul style="list-style-type: none"> <li>PRM is in an incubator</li> <li>PRM is on trolley / stretcher</li> <li>PRM requires oxygen</li> <li>PRM uses wheelchair or has 'great difficulty in mobility'</li> </ul>	<ul style="list-style-type: none"> <li>PRM uses emotional support dog</li> <li>PRM is more than 36 weeks pregnant</li> </ul>

Airline	Circumstances for refusal of carriage	Circumstances requiring accompanying passenger	Circumstances requiring medical clearance
		<ul style="list-style-type: none"> <li>PRM is reliant on others</li> </ul>	
TAROM	Not stated	<ul style="list-style-type: none"> <li>PRM suffers from a disease</li> <li>PRM cannot self-evacuate</li> </ul>	<ul style="list-style-type: none"> <li>PRM has disease</li> <li>PRM requires stretcher</li> <li>PRM requires oxygen</li> </ul>
Thomas Cook	Not stated	<ul style="list-style-type: none"> <li>PRM cannot lift themselves</li> <li>PRM cannot use toilet unaided</li> <li>PRM cannot feed themselves unaided</li> <li>PRM cannot administer own medication</li> <li>PRM cannot communicate or follow instructions</li> <li>PRM reliant on oxygen.</li> </ul>	Unspecified – see text
TUI (Thomsonfly)	Not stated	<ul style="list-style-type: none"> <li>PRM cannot lift themselves</li> <li>PRM cannot use toilet unaided</li> <li>PRM cannot feed themselves unaided</li> <li>PRM cannot administer own medication</li> <li>PRM cannot communicate or follow instructions</li> <li>PRM reliant on oxygen</li> <li>PRM requires wheelchair.</li> </ul>	<ul style="list-style-type: none"> <li>PRM is unaccompanied and does not meet self-sufficiency requirements</li> <li>PRM has declared medical condition</li> <li>PRM has requested a service for which there is a risk of abuse, e.g. extra legroom seats would normally be chargeable.</li> </ul>
Wizzair	<p>If medical certification is not provided on request</p> <p>If airline is unable to provide for specific medical requirements</p> <p>Limit of 28 PRMs per flight</p> <p>Conditions of Carriage state that boarding may be denied if advance arrangements have not been made</p>	<ul style="list-style-type: none"> <li>PRM unable to care for themselves</li> <li>PRM cannot use toilet unaided.</li> </ul>	Unspecified, but could be required in all cases – see text.





**APPENDIX B**  
**SERVICES PROVIDED BY AIR CARRIERS**



**APPENDIX TABLE A.2 SERVICE AND RESTRICTIONS**

<b>Airline</b>	<b>Assistance dogs</b>	<b>Wheelchairs and other equipment</b>	<b>Assistance offered</b>	<b>Accessible information</b>	<b>Seating and onboard assistance</b>
Aegean Airlines	Prenotification required Carried free in cabin Case / carrier required Subject to weight restriction Not carried on UK flights	Wheelchairs carried free Not subject to baggage allowance Passenger's oxygen allowed with medical certification Conditions of Carriage state that wet cell batteries are not allowed in cabin	Not stated	Not stated	Not stated
Air Berlin	Carried free in cabin Case / carrier not required Harness required	Wheelchairs carried in hold only Wet cell batteries subject to safety regulations Other medical aids carried free with medical certificate Limit of one wheelchair per passenger defined in Conditions of Carriage	Not stated	Not stated	Free seat reservation for passengers with severe disability pass (or equivalent) for 50% disability or more, and for companion PRMs cannot reserve XL / extra large seats (i.e. in exit rows) Conditions of carriage state that seating may be restricted for safety reasons
Air France	Carried free in cabin Leash required, attached to seat in front Muzzle not required	Up to two wheelchairs carried free of charge Onboard wheelchairs on most flights Stretchers accepted with medical clearance Oxygen allowed on board on payment of fee	Cannot lift passengers Cannot administer medication	Braille seat numbers in new aircraft Safety briefing in French or English Braille Some crew members able to communicate in French sign language	Additional seat may be reserved at discounted rate if needed Seats with retractable armrests Easy access toilets
AirBaltic	Carried free in cabin Excluded from weight	Carried free of charge Only collapsible wheelchairs	Will provide extra information Cannot assist with eating or	Not stated	Depending on aircraft, provide movable aisle armrest seats

Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
	restrictions Prohibited from exit rows	allowed in cabin Spillable batteries accepted if removed and packed and labelled Stretchers not carried Oxygen provided free with prenotification, doctor's verification and accompanying passenger	personal hygiene Cannot lift or carry passengers Cannot administer medication		PRMs cannot obstruct crew or emergency exits Companion must travel in seat next to PRM
Alitalia	Carried free in hold, or in cabin if space available Leash required Muzzle required	Wheelchairs carried free Stretcher service offered for a fee and with authorisation and accompanying passenger, only one per aircraft. Oxygen must be booked in advance, and not available on all flights	Not stated	Not stated	Not stated
Austrian	Carried free in cabin Leash required Subject to size and weight restriction Proof of status required	Up to two wheelchairs carried free, subject to space and prenotification for electric wheelchairs Onboard wheelchairs available	Preparation for eating Use of on-board wheelchair Accessing lavatory Stowing / retrieving carry-on items	Will communicate effectively as required.	Choice of seat may be limited Some seats with moveable armrests Accessible lavatories on long haul flights
British Airways	Prenotification required Limit on no. of guide dogs per flight Carried free in cabin Carried on all UK and certain international routes	Up to two wheelchairs carried free Preparation required for certain types of electric wheelchair Onboard wheelchairs on some flights Portable Oxygen Concentrators accepted with medical clearance, included in cabin	Cannot assist with breathing apparatus Cannot assist with eating Cannot administer medication Cannot assist with going to toilet Can assist in access to and from toilet when on-board wheelchair is available	Individual safety briefings and subtitles on English safety video Braille cards on some flights	Lifting armrests on some seats Cannot be seated on emergency exit aisle due to safety regulations. Will be allocated bulkhead seat when requested, unless already allocated to PRM. Adapted toilets on 747-operated flights

Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
		baggage allowance Conditions of carriage state that the airline reserves the right to refuse stretchers on any flight			
Brussels Airlines	Prenotification required Carried free in cabin Leash required Muzzle required Subject to national regulations	Electric wheelchairs carried in hold Spillable batteries accepted under certain conditions In-flight wheelchair on some flights Up to two stretchers on certain planes Can supply oxygen with prenotification and payment of fee in advance	Moving to toilet facilities Cannot lift passengers Cannot assist during visit to lavatory	Not stated	Not stated
Delta	Carried free in cabin Prohibited from exit rows Must occupy space where passenger sits No documentation required Subject to national entry requirements	One wheelchair can be carried in cabin per flight Wet cell batteries accepted with preparation One onboard wheelchair per flight Personal oxygen tanks can be transported but not used in flight Can provide oxygen on many flights, subject to medical certification Conditions of Carriage state that carriage of passengers requiring stretcher kit may be refused	Cannot assist with feeding or personal hygiene and lavatory functions. Cannot lift or carry passengers Cannot provide medical services such as giving injections.	Pre-booked passengers with hearing disabilities can be accompanied by agents who will provide updates on flight information	FAA regulations limit exit seats to certain customers Customers with service animals or immobilised leg are entitled to bulkhead seats On board aircraft with 100 seats or more, Delta provides a stowage location specifically for the first collapsible wheelchair

Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
EasyJet	<p>Carried free in cabin if space available</p> <p>Must occupy space where passenger sits</p> <p>Harness required</p> <p>Proof of training and status required</p> <p>Only allowed on routes within UK or mainland Europe</p>	<p>Up two to portable mobility items carried free, subject to weight restriction</p> <p>Wet cell batteries not accepted</p> <p>No onboard wheelchairs</p> <p>Allow up to two oxygen cylinders per passenger, with medical certification</p> <p>Conditions of Carriage state that stretchers are not carried</p>	<p>Stowing and retrieving of hand baggage</p> <p>Opening food packages and describing the contents</p> <p>Cannot lift passengers</p> <p>Cannot provide personal care</p> <p>Cannot administer medication</p> <p>Cannot assist with feeding or children</p>	<p>Can provide a verbal explanation of the safety card information and location of emergency exits</p>	<p>Body supports required for passengers who cannot sit upright</p>
Emirates	<p>All animals carried in hold, subject to IATA Live Animals and national regulations</p>	<p>Wheelchairs carried free of charge</p> <p>Do not count towards baggage allowance</p> <p>Battery-powered wheelchairs subject to safeguards</p> <p>Stretcher kit provided</p> <p>Oxygen provided</p> <p>Portable Oxygen Concentrators allowed</p>	<p>Cannot assist with transfer</p> <p>Cannot assist with feeding</p> <p>Cannot assist with toilet functions</p>	<p>Not stated</p>	<p>Not stated</p>
Iberia	<p>Carried free in cabin</p> <p>Must not use seat</p> <p>Muzzle required</p> <p>Does not count towards luggage allowance</p> <p>Deaf passengers will require medical certificate</p>	<p>All wheelchairs carried free in hold</p> <p>Wet cell batteries accepted with preparation</p> <p>Carriage of stretchers may be restricted on smaller aircraft</p> <p>Oxygen allowed in cabin subject to certain conditions</p>	<p>Cannot provide sanitary, hygienic or safety onboard assistance.</p>	<p>Not stated</p>	<p>‘The entire fleet has been adapted to carry Passengers with Reduced Mobility, despite the space limitations that air transport normally poses.’</p>
KLM	<p>Carried free in cabin</p> <p>Must be with PRM, but not using seat or blocking aisle of</p>	<p>Up to two pieces of mobility equipment carried free</p> <p>Collapsible wheelchairs allowed</p>	<p>Transporting passengers using on-board wheelchair</p>	<p>Braille safety cards</p> <p>Toilets with Braille attendant call</p>	<p>Seats with moveable armrests</p> <p>Leg rests available</p>

Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
	<p>exit</p> <p>Leash required</p> <p>Subject to national regulations</p>	<p>in cabin, electric wheelchairs carried in hold</p> <p>Wet cell batteries accepted with preparation</p> <p>Onboard wheelchairs on all flights</p> <p>Stretcher service offered, subject to medically trained companion</p> <p>Oxygen allowed on board on payment of fee</p> <p>Own oxygen not allowed</p> <p>Approved Portable Oxygen Concentrators allowed</p>	<p>Cannot assist with eating</p> <p>Cannot lift or carry passengers</p> <p>Cannot administer medication</p> <p>Cannot assist with personal hygiene</p>	<p>buttons</p>	
Lufthansa	<p>Carried free in cabin</p> <p>Limited number allowed per flight</p> <p>Subject to national regulations</p>	<p>Wheelchairs carried free in hold (small collapsible devices allowed in cabin to/from US)</p> <p>Non leak-proof wet cell batteries not accepted except to/from US</p> <p>Limit on number of wheelchairs per flight</p> <p>Limited oxygen available with advance payment of an unspecified fee</p>	<p>Assistance in boarding / disembarking</p> <p>Stowing hand luggage</p> <p>Opening of food items</p> <p>Getting to / from toilet</p> <p>Cannot provide assistance in toilet</p> <p>Cannot lift or carry passengers</p> <p>Cannot feed passengers</p> <p>Cannot administer medication</p>	<p>Will explain arrangement of meal tray to partially sighted</p> <p>Flights to/from US section of website also includes:</p> <p>Separate safety briefings</p> <p>Separate briefings about delays and other issues</p> <p>Captioning of in-flight video in English and German</p>	<p>Disabled toilets in long-haul aircraft</p> <p>Flights to/from US section of website also includes:</p> <p>Bulkhead seats provided if travelling with service animal</p> <p>Some seats with lifting armrests</p> <p>May not be able to sit near exit</p>
Ryanair	<p>Carried free in cabin</p> <p>Must travel on floor at passenger's feet</p> <p>Max of 4 per flight</p> <p>Not carried on some international routes</p>	<p>Wheelchairs carried free of charge in hold</p> <p>Not subject to weight limit</p> <p>Wet cell batteries not accepted</p> <p>One oxygen request per flight allowed at cost of £100.</p>	<p>Will provide water for taking medication</p> <p>Cannot administer medication</p> <p>Cannot lift passengers</p> <p>Cannot assist with personal hygiene</p>	<p>Not stated</p>	<p>Passengers with reduced mobility, or whose physical size prevents them from moving quickly cannot be seated near exit.</p> <p>Passengers with pre-booked special assistance will be</p>

Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
		<p>Personal oxygen not allowed on board</p> <p>Conditions of carriage state that stretchers are not carried</p>			<p>boarded after general boarding is completed as seats will be held on board.</p> <p>Conditions of carriage state that seating may be restricted for safety reasons</p>
SAS	<p>Carried free in cabin</p> <p>Case / carrier not required</p> <p>Excluded from weight restriction</p>	<p>One collapsible and one power-driven wheelchair carried free of charge</p> <p>Wet cell batteries accepted as cargo</p> <p>In-flight wheelchair on some flights</p> <p>Personal oxygen allowed if required for transport to/from aircraft</p> <p>Will provide oxygen with payment of fee</p>	<p>Cannot lift passengers</p> <p>Cannot assist during visit to lavatory</p>	Not stated	Not stated
TAP Portugal	<p>Dogs and cats allowed in cabin</p> <p>Leash required</p> <p>Must not occupy a seat</p> <p>Must comply with sanitary regulations</p> <p>Proof of status required</p>	<p>Prenotification of type of wheelchair battery required</p> <p>On-board wheelchair on larger planes</p> <p>Stretchers accepted in economy class subject to medically trained companion</p> <p>Oxygen provided with medical certification</p> <p>Personal oxygen not allowed</p>	<p>Not obliged to provide any on-board assistance contradicting passenger statement of self-reliance, e.g. assistance in toilet, lifting, carrying or feeding.</p>	Not stated	<p>May request an additional seat for greater comfort in coach class only. This seat must be requested when booking and is charged as an occupied place</p>
TAROM	<p>Prenotification required</p> <p>Carried free in cabin</p> <p>Case / carrier not required</p>	<p>Wheelchairs carried free and allowed in cabin on some planes</p> <p>Preparation of some electric</p>	Not stated	Not stated	Not stated



Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
	Muzzle required	wheelchairs may be required Stretchers not allowed on certain planes. PRM using a stretcher is considered as 'medical case' and is consequently required to obtain a medical certificate, and to be accompanied by a medical professional. Oxygen provided free, subject to limits on no of passengers per flight Personal oxygen not allowed			
Thomas Cook	Carried on many routes	Wheelchairs carried free in hold Electric wheelchairs accepted subject to IATA Dangerous Goods Regulations Limit on no of wheelchairs Stretchers not carried One oxygen request per flight allowed at cost of £100. Personal oxygen not allowed on board	Can assist in opening food containers	Will describe catering arrangements to blind people In-flight safety video includes subtitles Also offer separate briefing about safety procedures for passengers with hearing impairments	PRMs cannot be seated near exits
TUI (Thomsonfly)	Carried on many routes Conditions of Carriage state that this will incur 'a nominal charge'	Wheelchairs carried free in addition to normal baggage allowance Electric wheelchairs accepted subject to IATA Dangerous Goods Regulations Passengers may bring their own oxygen supply onboard if authorised to do so by Special	Not stated	Not stated	Not stated

Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
		Assistance Team.			
Wizzair	Not stated	Wheelchairs carried subject to weight limit Spillable batteries not accepted Do not provide additional oxygen, and passengers cannot carry their own supply Conditions of carriage state that stretchers are not carried	Free 'Meet and Assistance Service' provided to deaf and blind passengers on request	Not stated	PRMs cannot be seated on exit rows









<b>CONTROL SHEET</b>
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## I

(Acts whose publication is obligatory)

**DIRECTIVE 2004/17/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 31 March 2004**  
**coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) and Article 55 and Article 95 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the Opinion of the Economic and Social Committee <sup>(2)</sup>,

Having regard to the Opinion of the Committee of the Regions <sup>(3)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(4)</sup>, in the light of the joint text approved by the Conciliation Committee on 9 December 2003,

Whereas:

(1) On the occasion of new amendments being made to Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors <sup>(5)</sup>, which are necessary to meet requests for simplification and modernisation made by contracting entities and economic operators alike in their responses to the Green Paper adopted by the Commission on 27 November 1996, the Directive should, in the interests of clarity, be recast. This Directive is based on Court of Justice case-law, in particular case-law on award criteria, which clarifies the possibilities for the

contracting entities to meet the needs of the public concerned, including in the environmental and/or social area, provided that such criteria are linked to the subject-matter of the contract, do not confer an unrestricted freedom of choice on the contracting entity, are expressly mentioned and comply with the fundamental principles mentioned in recital 9.

(2) One major reason for the introduction of rules coordinating procedures for the award of contracts in these sectors is the variety of ways in which national authorities can influence the behaviour of these entities, including participation in their capital and representation in the entities' administrative, managerial or supervisory bodies.

(3) Another main reason why it is necessary to coordinate procurement procedures applied by the entities operating in these sectors is the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the Member States concerning the supply to, provision or operation of networks for providing the service concerned.

(4) Community legislation, and in particular Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector <sup>(6)</sup> and Regulation (EEC) No 3976/87 of 14 December 1987 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector <sup>(7)</sup>, is designed to introduce more competition between carriers providing air transport services to the public. It is therefore not appropriate to include such entities in the scope of this Directive. In view of the competitive position of Community shipping, it would also be inappropriate to make the contracts awarded in this sector subject to the rules of this Directive.

<sup>(1)</sup> OJ C 29 E, 30.1.2001, p. 112 and OJ C 203 E, 27.8.2002, p. 183.

<sup>(2)</sup> OJ C 193, 10.7.2001, p. 1.

<sup>(3)</sup> OJ C 144, 16.5.2001, p. 23.

<sup>(4)</sup> Opinion of the European Parliament of 17 January 2002 (OJ C 271 E, 7.11.2002, p. 293), Council Common Position of 20 Mars 2003 (OJ C 147 E, 24.6.2003, p. 137) and Position of the European Parliament of 2 July 2003 (not yet published in the Official Journal). Legislative Resolution of the European Parliament of 29 January 2004 and Decision of the Council of 2 February 2004.

<sup>(5)</sup> OJ L 199, 9.8.1993, p. 84. Directive as last amended by Commission Directive 2001/78/EC (OJ L 285, 29.10.2001, p. 1).

<sup>(6)</sup> OJ L 374, 31.12.1987, p. 1. Regulation as last amended by Regulation (EC) No 1/2003 (OJ L 1, 4.1.2003, p. 1).

<sup>(7)</sup> OJ L 374, 31.12.1987, p. 9. Regulation as last amended by the 1994 Act of Accession.



- (5) The scope of Directive 98/38/EEC covers, at present, certain contracts awarded by contracting entities operating in the telecommunications sector. A legislative framework, as mentioned in the Fourth report on the implementation of the telecommunications regulations of 25 November 1998, has been adopted to open this sector. One of its consequences has been the introduction of effective competition, both *de jure* and *de facto*, in this sector. For information purposes, and in the light of this situation, the Commission has published a list of telecommunications services<sup>(1)</sup> which may already be excluded from the scope of that Directive by virtue of Article 8 thereof. Further progress has been confirmed in the Seventh report on the implementation of telecommunications regulations of 26 November 2001. It is therefore no longer necessary to regulate purchases by entities operating in this sector.
- (6) It is therefore no longer appropriate to maintain the Advisory Committee on Telecommunications Procurement set up by Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy transport and telecommunications sectors<sup>(2)</sup>.
- (7) Nevertheless, it is appropriate to continue to monitor developments in the telecommunications sector and to reconsider the situation if it is established that there is no longer effective competition in that sector.
- (8) Directive 93/38/EEC excludes from its scope purchases of voice telephony, telex, mobile telephone, paging and satellite services. Those exclusions were introduced to take account of the fact that the services in question could frequently be provided only by one service provider in a given geographical area because of the absence of effective competition and the existence of special or exclusive rights. The introduction of effective competition in the telecommunications sector removes the justification for these exclusions. It is therefore necessary to include the procurement of such telecommunications services in the scope of this Directive.
- (9) In order to guarantee the opening up to competition of public procurement contracts awarded by entities operating in the water, energy, transport and postal services sectors, it is advisable to draw up provisions for Community coordination of contracts above a certain value. Such coordination is based on the requirements inferable from Articles 14, 28 and 49 of the EC Treaty and from Article 97 of the Euratom Treaty, namely the principle of equal treatment, of which the principle of non-discrimination is no more than a specific expression, the principle of mutual recognition, the principle of proportionality, as well as the principle of transparency. In view of the nature of the sectors affected by such coordination, the latter should, while safeguarding the application of those principles, establish a framework for sound commercial practice and should allow maximum flexibility.
- For public contracts the value of which is lower than that triggering the application of provisions of Community coordination, it is advisable to recall the case-law developed by the Court of Justice according to which the rules and principles of the Treaties referred to above apply.
- (10) To ensure a real opening up of the market and a fair balance in the application of procurement rules in the water, energy, transport and postal services sectors it is necessary for the entities covered to be identified on a basis other than their legal status. It should be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 295 of the Treaty, that the rules governing the system of property ownership in Member States are not prejudiced.
- (11) Member States should ensure that the participation of a body governed by public law as a tenderer in a procedure for the award of a contract does not cause any distortion of competition in relation to private tenderers.
- (12) Under Article 6 of the Treaty, environmental protection requirements are to be integrated into the definition and implementation of the Community policies and activities referred to in Article 3 of the Treaty, in particular with a view to promoting sustainable development. This Directive therefore clarifies how the contracting entities may contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring the possibility of obtaining the best value for money for their contracts.
- (13) Nothing in this Directive should prevent the imposition or enforcement of measures necessary to protect public morality, public policy, public security, health, human and animal life or the preservation of plant life, in particular with a view to sustainable development, provided that these measures are in conformity with the Treaty.

<sup>(1)</sup> OJ C 156, 3.6.1999, p. 3.

<sup>(2)</sup> OJ L 297, 29.10.1990, p. 1. Directive as last amended by Directive 94/22/EC of the European Parliament and of the Council (OJ L 164, 30.6.1994, p. 3).

(14) Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the Agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994) <sup>(1)</sup>, approved in particular the WTO Agreement on Government Procurement (hereinafter referred to as the 'Agreement'), the aim of which is to establish a multilateral framework of balanced rights and obligations relating to public contracts with the aim of achieving the liberalisation and expansion of world trade. In view of the international rights and commitments devolving on the Community as a result of the acceptance of the Agreement, the arrangements to be applied to tenderers and products from signatory third countries are those defined by the Agreement. The Agreement does not have direct effect. The contracting entities covered by the Agreement which comply with this Directive and which apply the latter to economic operators of third countries which are signatories to the Agreement should therefore be in conformity with the Agreement. It is also appropriate that this Directive should guarantee for Community economic operators conditions for participation in public procurement which are just as favourable as those reserved for economic operators of third countries which are signatories to the Agreement.

(15) Before launching a procurement procedure, contracting entities may, using a technical dialogue, seek or accept advice which may be used in the preparation of the specifications, provided, however, that such advice does not have the effect of precluding competition.

(16) In view of the diversity of works contracts, contracting entities should be able to make provision for contracts for the design and execution of work to be awarded either separately or jointly. It is not the intention of this Directive to prescribe either joint or separate contract awards. The decision to award contracts separately or jointly should be determined by qualitative and economic criteria, which may be defined by national law.

A contract may be considered to be a works contract only if its subject-matter specifically covers the execution of activities listed in Annex XII, even if the contract covers the provision of other services necessary for the execution of such activities. Service contracts, in particular in the sphere of property management services, may in certain circumstances include works. However, insofar as such works are incidental to the principal subject-matter of the contract, and are a possible consequence thereof or a complement thereto, the fact that such works are included in the contract does not justify the qualification of the contract as a works contract.

For the purpose of calculating the estimated value of a works contract it is appropriate to take as a basis the value of the works themselves as well as the estimated value of supplies and services, if any, that the contracting entities place at the disposal of contractors, insofar as these services or supplies are necessary for the execution of the works in question. It should be understood that, for the purposes of this paragraph, the services concerned are those rendered by the contracting entities through their own personnel. On the other hand, calculation of the value of services contracts, whether or not to be placed at the disposal of a contractor for the subsequent execution of works, follows the rules applicable to service contracts.

(17) The field of services is best delineated, for the purpose of applying the procedural rules of this Directive and for monitoring purposes, by subdividing it into categories corresponding to particular headings of a common classification and by bringing them together in two Annexes, XVII A and XVII B, according to the regime to which they are subject. As regards services in Annex XVII B, the relevant provisions of this Directive should be without prejudice to the application of Community rules specific to the services in question.

(18) As regards service contracts, full application of this Directive should be limited, for a transitional period, to contracts where its provisions will permit the full potential for increased cross-frontier trade to be realised. Contracts for other services need to be monitored during this transitional period before a decision is taken on the full application of this Directive. In this respect, the mechanism for such monitoring needs to be defined. This mechanism should, at the same time, enable interested parties to have access to the relevant information.

(19) Obstacles to the free provision of services should be avoided. Therefore, service providers may be either natural or legal persons. This Directive should not, however, prejudice the application, at national level, of rules concerning the conditions for the pursuit of an activity or a profession, provided that they are compatible with Community law.

(20) Certain new electronic purchasing techniques are continually being developed. Such techniques help to increase competition and streamline public purchasing, particularly in terms of the savings in time and money which their use will allow. Contracting entities may make use of electronic purchasing techniques, provided that such use complies with the rules of this Directive

<sup>(1)</sup> OJ L 336, 23.12.1994, p. 1.

and the principles of equal treatment, non-discrimination and transparency. To that extent, a tender submitted by a tenderer, in particular under a framework agreement or where a dynamic purchasing system is being used, may take the form of that tenderer's electronic catalogue if the latter uses the means of communication chosen by the contracting entity in accordance with Article 48.

(21) In view of the rapid expansion of electronic purchasing systems, appropriate rules should now be introduced to enable contracting entities to take full advantage of the possibilities afforded by these systems. Against this background, it is necessary to define a completely electronic dynamic purchasing system for commonly used purchases and to lay down specific rules for setting up and operating such a system in order to ensure the fair treatment of any economic operator who wishes to join. Any economic operator which submits an indicative tender in accordance with the specification and meets the selection criteria should be allowed to join such a system. This purchasing technique allows the contracting entity, through the establishment of a list of tenderers already selected and the opportunity given to new tenderers to join, to have a particularly broad range of tenders, as a result of the electronic facilities available, and hence to ensure optimum use of funds through broad competition.

(22) Since use of the technique of electronic auctions is likely to increase, such auctions should be given a Community definition and be governed by specific rules in order to ensure that they operate fully in accordance with the principles of equal treatment, non-discrimination and transparency. To that end, provision should be made for such electronic auctions to deal only with contracts for works, supplies or services for which the specifications can be determined with precision. Such may in particular be the case for recurring supplies, works and service contracts. With the same objective, it should also be possible to establish the respective ranking of the tenderers at any stage of the electronic auction. Recourse to electronic auctions enables contracting entities to ask tenderers to submit new prices, revised downwards, and, when the contract is awarded to the most economically advantageous tender, also to improve elements of the tenders other than prices. In order to guarantee compliance with the principle of transparency, only the elements suitable for automatic evaluation by electronic means, without any intervention and/or appreciation by the contracting entity, may be the object of electronic auctions, that is, only the elements which

are quantifiable so that they can be expressed in figures or percentages. On the other hand, those aspects of tenders which imply an appreciation of non-quantifiable elements should not be the object of electronic auctions. Consequently, certain works contracts and certain service contracts having as their subject-matter intellectual performances, such as the design of works, should not be the object of electronic auctions.

(23) Certain centralised purchasing techniques have been developed in Member States. Several contracting authorities are responsible for making acquisitions or awarding contracts/framework agreements for contracting entities. In view of the large volumes purchased, those techniques help increase competition and streamline public purchasing. Provision should therefore be made for a Community definition of central purchasing bodies used by contracting entities. A definition should also be given of the conditions under which, in accordance with the principles of non-discrimination and equal treatment, contracting entities purchasing works, supplies and/or services through a central purchasing body may be deemed to have complied with this Directive.

(24) In order to take account of the different circumstances obtaining in Member States, Member States should be allowed to choose whether contracting entities may use central purchasing bodies, dynamic purchasing systems or electronic auctions, as defined and regulated by this Directive.

(25) There has to be an appropriate definition of the concept of special or exclusive rights. The consequence of the definition is that the fact that, for the purpose of constructing networks or port or airport facilities, an entity may take advantage of a procedure for the expropriation or use of property or may place network equipment on, under or over the public highway will not in itself constitute exclusive or special rights within the meaning of this Directive. Nor does the fact that an entity supplies drinking water, electricity, gas or heat to a network which is itself operated by an entity enjoying special or exclusive rights granted by a competent authority of the Member State concerned in itself constitute an exclusive or special right within the meaning of this Directive. Nor may rights granted by a Member State in any form, including by way of acts of concession, to a limited number of undertakings on the basis of objective, proportionate and non-discriminatory criteria that allow any interested party fulfilling those criteria to enjoy those rights be considered special or exclusive rights.

- (26) It is appropriate for the contracting entities to apply common procurement procedures in respect of their activities relating to water and for such rules also to apply where contracting authorities within the meaning of this Directive award contracts in respect of their projects in the field of hydraulic engineering, irrigation, land drainage or the disposal and treatment of sewage. However, procurement rules of the type proposed for supplies of goods are inappropriate for purchases of water, given the need to procure water from sources near the area in which it will be used.
- (27) Certain entities providing bus transport services to the public were already excluded from the scope of Directive 93/38/EEC. Such entities should also be excluded from the scope of this Directive. In order to forestall the existence of a multitude of specific arrangements applying to certain sectors only, the general procedure that permits the effects of opening up to competition to be taken into account should also apply to all entities providing bus transport services that are not excluded from the scope of Directive 93/38/EEC pursuant to Article 2(4) thereof.
- (28) Taking into account the further opening up of Community postal services to competition and the fact that such services are provided through a network by contracting authorities, public undertakings and other undertakings, contracts awarded by contracting entities providing postal services should be subject to the rules of this Directive, including those in Article 30, which, safeguarding the application of the principles referred to in recital 9, create a framework for sound commercial practice and allow greater flexibility than is offered by Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts<sup>(1)</sup>. For a definition of the activities in question, it is necessary to take into account the definitions of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service<sup>(2)</sup>.
- Whatever their legal status, entities providing postal services are not currently subject to the rules set out in Directive 93/38/EEC. The adjustment of contract award procedures to this Directive could therefore take longer to implement for such entities than for entities already subject to those rules which will merely have to adapt their procedures to the amendments made by this Directive. It should therefore be permissible to defer application of this Directive to accommodate the additional time required for this adjustment. Given the varying situations of such entities, Member States should have the option of providing for a transitional period for the application of this Directive to contracting entities operating in the postal services sector.
- (29) Contracts may be awarded for the purpose of meeting the requirements of several activities, possibly subject to different legal regimes. It should be clarified that the legal regime applicable to a single contract intended to cover several activities should be subject to the rules applicable to the activity for which it is principally intended. Determination of the activity for which the contract is principally intended may be based on an analysis of the requirements which the specific contract must meet, carried out by the contracting entity for the purposes of estimating the contract value and drawing up the tender documents. In certain cases, such as the purchase of a single piece of equipment for the pursuit of activities for which information allowing an estimation of the respective rates of use would be unavailable, it might be objectively impossible to determine for which activity the contract is principally intended. The rules applicable to such cases should be indicated.
- (30) Without prejudice to the international commitments of the Community, it is necessary to simplify the implementation of this Directive, particularly by simplifying the thresholds and by rendering applicable to all contracting entities, regardless of the sector in which they operate, the provisions regarding the information to be given to participants concerning decisions taken in relation to contract award procedures and the results thereof. Furthermore, in the context of Monetary Union, such thresholds should be established in euro in such a way as to simplify the application of these provisions while at the same time ensuring compliance with the thresholds laid down in the Agreement, which are expressed in Special Drawing Rights (SDR). In this context, provision should also be made for periodic reviews of the thresholds expressed in euro so as to adjust them, where necessary, in line with possible variations in the value of the euro in relation to the SDR. In addition, the thresholds applicable to design contests should be identical to those applicable to service contracts.
- (31) Provision should be made for cases in which it is possible to refrain from applying the measures for coordinating procedures on grounds relating to State security or secrecy, or because specific rules on the awarding of contracts which derive from international agreements, relating to the stationing of troops, or which are specific to international organisations are applicable.

<sup>(1)</sup> See page 114 of this Official Journal.

<sup>(2)</sup> OJ L 15, 21.1.1998, p. 14. Directive as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

- (32) It is appropriate to exclude certain service, supply and works contracts awarded to an affiliated undertaking having as its principal activity the provision of such services, supply or works to the group of which it is part, rather than offering them on the market. It is also appropriate to exclude certain service, supply and works contracts awarded by a contracting entity to a joint venture which is formed by a number of contracting entities for the purpose of carrying out activities covered by this Directive and of which that entity is part. However, it is appropriate to ensure that this exclusion does not give rise to distortions of competition to the benefit of the undertakings or joint ventures that are affiliated with the contracting entities; it is appropriate to provide a suitable set of rules, in particular as regards the maximum limits within which the undertakings may obtain a part of their turnover from the market and above which they would lose the possibility of being awarded contracts without calls for competition, the composition of joint ventures and the stability of links between these joint ventures and the contracting entities of which they are composed.
- (33) In the context of services, contracts for the acquisition or rental of immovable property or rights to such property have particular characteristics which make the application of procurement rules inappropriate.
- (34) Arbitration and conciliation services are usually provided by bodies or individuals designated or selected in a manner which cannot be governed by procurement rules.
- (35) In accordance with the Agreement, the financial services covered by this Directive do not include contracts relating to the issue, purchase, sale or transfer of securities or other financial instruments; in particular, transactions by the contracting entities to raise money or capital are not covered.
- (36) This Directive should cover the provision of services only where based on contracts.
- (37) Pursuant to Article 163 of the Treaty, the encouragement of research and technological development is a means of strengthening the scientific and technological basis of Community industry, and the opening up of service contracts contributes to this end. This Directive should not cover the cofinancing of research and development programmes: research and development contracts other than those where the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting entity, are therefore not covered by this Directive.
- (38) To forestall the proliferation of specific arrangements applicable to certain sectors only, the current special arrangements created by Article 3 of Directive 93/38/EEC and Article 12 of Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons <sup>(1)</sup> governing entities exploiting a geographical area for the purpose of exploring for or extracting oil, gas, coal or other solid fuels should be replaced by the general procedure allowing for exemption of sectors directly exposed to competition. It has to be ensured, however, that this will be without prejudice to Commission Decision 93/676/EEC of 10 December 1993 establishing that the exploitation of geographical areas for the purpose of exploring for or extracting oil or gas does not constitute in the Netherlands an activity defined by Article 2(2)(b)(i) of Council Directive 90/531/EEC and that entities carrying on such an activity are not to be considered in the Netherlands as operating under special or exclusive rights within the meaning of Article 2(3)(b) of the Directive <sup>(2)</sup>, Commission Decision 97/367/EC of 30 May 1997 establishing that the exploitation of geographical areas for the purpose of exploring for or extracting oil or gas does not constitute in the United Kingdom an activity defined by Article 2(2)(b)(i) of Council Directive 93/38/EEC and that entities carrying on such an activity are not to be considered in the United Kingdom as operating under special or exclusive rights within the meaning of Article 2(3)(b) of the Directive <sup>(3)</sup>, Commission Decision 2002/205/EC of 4 March 2002 following a request by Austria applying for the special regime provided for in Article 3 of Directive 93/38/EEC <sup>(4)</sup> and Commission Decision 2004/73/EC on a request from Germany to apply the special procedure laid down in Article 3 of Directive 93/38/EEC <sup>(5)</sup>.
- (39) Employment and occupation are key elements in guaranteeing equal opportunities for all and contribute to integration in society. In this context, sheltered workshops and sheltered employment programmes contribute efficiently towards the integration or reintegration of people with disabilities in the labour market. However, such workshops might not be able to obtain contracts under normal conditions of competition. Consequently, it is appropriate to provide that Member States may reserve the right to participate in award procedures for contracts to such workshops or reserve performance of contracts to the context of sheltered employment programmes.

<sup>(1)</sup> OJ L 164, 30.6.1994, p. 3.

<sup>(2)</sup> OJ L 316, 17.12.1993, p. 41.

<sup>(3)</sup> OJ L 156, 13.6.1997, p. 55.

<sup>(4)</sup> OJ L 68, 12.3.2002, p. 31.

<sup>(5)</sup> OJ L 16, 23.1.2004, p.57.

- (40) This Directive should apply neither to contracts intended to permit the performance of an activity referred to in Articles 3 to 7 nor to design contests organised for the pursuit of such an activity if, in the Member State in which this activity is carried out, it is directly exposed to competition on markets to which access is not limited. It is therefore appropriate to introduce a procedure, applicable to all sectors covered by this Directive, that will enable the effects of current or future opening up to competition to be taken into account. Such a procedure should provide legal certainty for the entities concerned, as well as an appropriate decision-making process, ensuring, within short time limits, uniform application of Community law in this area.
- (41) Direct exposure to competition should be assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned. The implementation and application of appropriate Community legislation opening a given sector, or a part of it, will be considered to provide sufficient grounds for assuming there is free access to the market in question. Such appropriate legislation should be identified in an annex which can be updated by the Commission. When updating, the Commission takes in particular into account the possible adoption of measures entailing a genuine opening up to competition of sectors other than those for which a legislation is already mentioned in Annex XI, such as that of railway transports. Where free access to a given market does not result from the implementation of appropriate Community legislation, it should be demonstrated that, *de jure* and *de facto*, such access is free. For this purpose, application by a Member State of a Directive, such as Directive 94/22/EC opening up a given sector to competition, to another sector, such as the coal sector, is a circumstance to be taken into account for the purposes of Article 30.
- (42) The technical specifications drawn up by purchasers should allow public procurement to be opened up to competition. To this end, it should be possible to submit tenders which reflect the diversity of technical solutions. Accordingly, it should be possible to draw up the technical specifications in terms of functional performance and requirements and, where reference is made to the European standard or, in the absence thereof, to the national standard, tenders based on other equivalent arrangements which meet the requirements of the contracting entities and are equivalent in terms of safety should be considered by the contracting entities. To demonstrate equivalence, tenderers should be permitted to use any form of evidence. Contracting entities should be able to provide a reason for any decision that equivalence does not exist in a given case. Contracting entities that wish to define environmental requirements for the technical specifications of a given contract may lay down the environmental characteristics, such as a given production method, and/or specific environmental effects of product groups or services. They may use, but are not obliged to use appropriate specifications that are defined in eco-labels, such as the European Eco-label, (multi-) national eco-labels or any other eco-label provided that the requirements for the label are drawn up and adopted on the basis of scientific information using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and provided that the label is accessible and available to all interested parties. Contracting entities should, whenever possible, lay down technical specifications so as to take into account accessibility criteria for people with disabilities or design for all users. The technical specifications should be clearly indicated, so that all tenderers know what the requirements established by the contracting entity cover.
- (43) In order to encourage the involvement of small and medium-sized undertakings in the public contracts procurement market, it is advisable to include provisions on subcontracting.
- (44) Contract performance conditions are compatible with the Directive provided that they are not directly or indirectly discriminatory and are indicated in the notice used to make the call for competition, or in the specifications. They may in particular be intended to encourage on-site vocational training, the employment of people experiencing particular difficulty in integration, the fight against unemployment or the protection of the environment. For example, mention may be made of the requirements — applicable during the performance of the contract — to recruit long-term job-seekers or to implement training measures for the unemployed or for young persons, to comply in substance with the provisions of the basic International Labour Organisation (ILO) Conventions, assuming that such provisions have not been implemented in national law, and to recruit more handicapped persons than are required under national legislation.
- (45) The laws, regulations and collective agreements, at both national and Community level, which are in force in the areas of employment conditions and safety at work apply during the performance of a contract, provided that such rules, and their application, comply with Community law. In cross-border situations where workers from one Member State provide services in another Member State for the purpose of performing a contract, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the

posting of workers in the framework of the provision of services<sup>(1)</sup> lays down the minimum conditions which must be observed by the host country in respect of such posted workers. If national law contains provisions to this effect, non-compliance with those obligations may be considered to be grave misconduct or an offence concerning the professional conduct of the economic operator concerned, liable to lead to the exclusion of that economic operator from the procedure for the award of a contract.

- (46) In view of new developments in information and telecommunications technology, and the simplifications these can bring in terms of publicising contracts and the efficiency and transparency of procurement procedures, electronic means should be put on a par with traditional means of communication and information exchange. As far as possible, the means and technology chosen should be compatible with the technologies used in the other Member States.
- (47) The use of electronic means leads to savings in time. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Community level. However, it is necessary to ensure that the cumulative effect of reductions of time limits does not lead to excessively short time limits.
- (48) Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures<sup>(2)</sup> and Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market ('Directive on electronic commerce')<sup>(3)</sup> should, in the context of this Directive, apply to the transmission of information by electronic means. The public procurement procedures and the rules applicable to service contests require a level of security and confidentiality higher than that required by these Directives. Accordingly, the devices for the electronic receipt of offers, requests to participate and plans and projects should comply with specific additional requirements. To this end, use of electronic signatures, in particular advanced electronic signatures, should, as far as possible, be encouraged. Moreover, the existence of voluntary accreditation schemes could constitute a favourable framework for enhancing the level of certification service provision for these devices.
- (49) It is appropriate that the participants in an award procedure are informed of decisions to conclude a

framework agreement or to award a contract or to abandon the procedure within time limits that are sufficiently short so as not to render the lodging of requests for review impossible; this information should therefore be given as soon as possible and in general within 15 days following the decision.

- (50) It should be clarified that contracting entities which establish selection criteria in an open procedure should do so in accordance with objective rules and criteria, just as the selection criteria in restricted and negotiated procedures should be objective. These objective rules and criteria, just as the selection criteria, do not necessarily imply weightings.
- (51) It is important to take into account Court of Justice case-law in cases where an economic operator claims the economic, financial or technical capabilities of other entities, whatever the legal nature of the link between itself and those entities, in order to meet the selection criteria or, in the context of qualification systems, in support of its application for qualification. In the latter case, it is for the economic operator to prove that those resources will actually be available to it throughout the period of validity of the qualification. For the purposes of that qualification, a contracting entity may therefore determine the level of requirements to be met and in particular, for example where the operator lays claim to the financial standing of another entity, it may require that that entity be held liable, if necessary jointly and severally.

Qualification systems should be operated in accordance with objective rules and criteria, which, at the contracting entities' choice, may concern the capacities of the economic operators and/or the characteristics of the works, supplies or services covered by the system. For the purposes of qualification, contracting entities may conduct their own tests in order to evaluate the characteristics of the works, supplies or services concerned, in particular in terms of compatibility and safety.

- (52) The relevant Community rules on mutual recognition of diplomas, certificates or other evidence of formal qualifications apply when evidence of a particular qualification is required for participation in a procurement procedure or a design contest.
- (53) In appropriate cases, in which the nature of the works and/or services justifies applying environmental management measures or schemes during the performance of a contract, the application of such measures or schemes may be required. Environmental management schemes,

<sup>(1)</sup> OJ L 18, 21.1.1997, p. 1.

<sup>(2)</sup> OJ L 13, 19.1.2000, p. 12.

<sup>(3)</sup> OJ L 178, 17.7.2000, p. 1.

whether or not they are registered under Community instruments such as Regulation (EC) No 761/2001 (EMAS)<sup>(1)</sup>, can demonstrate that the economic operator has the technical capability to perform the contract. Moreover, a description of the measures implemented by the economic operator to ensure the same level of environmental protection should be accepted as an alternative to environmental management registration schemes as a form of evidence.

- (54) The award of public contracts to economic operators who have participated in a criminal organisation or who have been found guilty of corruption or of fraud to the detriment of the financial interests of the European Communities or of money laundering should be avoided. Given that contracting entities, which are not contracting authorities, might not have access to indisputable proof on the matter, it is appropriate to leave the choice of whether or not to apply the exclusion criteria listed in Article 45(1) of Directive 2004/18/EC to these contracting entities. The obligation to apply Article 45(1) should therefore be limited only to contracting entities that are contracting authorities. Where appropriate, the contracting entities should ask applicants for qualification, candidates or tenderers to supply relevant documents and, where they have doubts concerning the personal situation of these economic operators, they may seek the cooperation of the competent authorities of the Member State concerned. The exclusion of such economic operators should take place as soon as the contracting authority has knowledge of a judgment concerning such offences rendered in accordance with national law that has the force of *res judicata*.

If national law contains provisions to this effect, non-compliance with environmental legislation or legislation on unlawful agreements in contracts which has been the subject of a final judgment or a decision having equivalent effect may be considered an offence concerning the professional conduct of the economic operator concerned or grave misconduct.

Non-observance of national provisions implementing the Council Directives 2000/78/EC<sup>(2)</sup> and 76/207/EEC<sup>(3)</sup> concerning equal treatment of workers, which has been the subject of a final judgment or a decision having

equivalent effect may be considered an offence concerning the professional conduct of the economic operator concerned or grave misconduct.

- (55) Contracts must be awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non-discrimination and equal treatment and which guarantee that tenders are assessed in conditions of effective competition. As a result, it is appropriate to allow the application of two award criteria only: 'the lowest price' and 'the most economically advantageous tender'.

To ensure compliance with the principle of equal treatment in the award of contracts, it is appropriate to lay down an obligation — established by case-law — to ensure the necessary transparency to enable all tenderers to be reasonably informed of the criteria and arrangements which will be applied to identify the most economically advantageous tender. It is therefore the responsibility of contracting entities to indicate the criteria for the award of the contract and the relative weighting given to each of those criteria in sufficient time for tenderers to be aware of them when preparing their tenders. Contracting entities may derogate from indicating the weighting of the criteria for the award of the contract in duly justified cases for which they must be able to give reasons, where the weighting cannot be established in advance, in particular on account of the complexity of the contract. In such cases, they must indicate the descending order of importance of the criteria.

Where contracting entities choose to award a contract to the most economically advantageous tender, they should assess the tenders in order to determine which one offers the best value for money. In order to do this, they should determine the economic and quality criteria which, taken as a whole, must make it possible to determine the most economically advantageous tender for the contracting entity. The determination of these criteria depends on the object of the contract since they must allow the level of performance offered by each tender to be assessed in the light of the object of the contract, as defined in the technical specifications, and the value for money of each tender to be measured. In order to guarantee equal treatment, the criteria for the award of the contract must enable tenders to be compared and assessed objectively. If these conditions are fulfilled, economic and qualitative criteria for the award of the contract, such as meeting environmental requirements, may enable the contracting entity to meet the needs of the public concerned, as expressed in the specifications of the contract. Under the same conditions, a contracting entity may use criteria aiming to meet social requirements, in particular in response to the needs — defined in the specifications of the contract — of particularly disadvantaged groups of people to which those receiving/using the works, supplies or services which are the object of the contract belong.

(1) Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing a voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) (OJ L 114, 24.4.2001, p. 1).

(2) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16).

(3) Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, (OJ L 39 of 14.2.1976, p. 40). Directive as amended by Directive 2002/73/EC of the European Parliament and of the Council (OJ L 269, 5.10.2002, p. 15).



- (56) The award criteria must not affect the application of national provisions on the remuneration of certain services, such as the services provided by architects, engineers or lawyers.
- (57) Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits<sup>(1)</sup> should apply to the calculation of the time limits contained in this Directive.
- (58) This Directive should be without prejudice to the existing international obligations of the Community or of the Member States and should not prejudice the application of the provisions of the Treaty, in particular Articles 81 and 86 thereof.
- (59) This Directive should not prejudice the time-limits set out in Annex XXV, within which Member States are required to transpose and apply Directive 93/38/EEC.
- (60) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission,<sup>(2)</sup>.

HAVE ADOPTED THIS DIRECTIVE:

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## TITLE I

### GENERAL PROVISIONS APPLICABLE TO CONTRACTS AND DESIGN CONTESTS

#### CHAPTER I

#### **Basic terms**

##### *Article 1*

#### **Definitions**

1. For the purposes of this Directive, the definitions set out in this Article shall apply.
2. (a) 'Supply, works and service contracts' are contracts for pecuniary interest concluded in writing between one or more of the contracting entities referred to in Article 2(2), and one or more contractors, suppliers, or service providers.
- (b) 'Works contracts' are contracts having as their object either the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex XII or a work, or the realisation by whatever means of a work corresponding to the requirements specified by the contracting entity. A 'work' means the outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function.

(c) 'Supply contracts' are contracts other than those referred to in (b) having as their object the purchase, lease, rental or hire-purchase, with or without the option to buy, of products.

A contract having as its object the supply of products, which also covers, as an incidental matter, siting and installation operations shall be considered to be a 'supply contract';

(d) 'Service contracts' are contracts other than works or supply contracts having as their object the provision of services referred to in Annex XVII.

A contract having as its object both products and services within the meaning of Annex XVII shall be considered to be a 'service contract' if the value of the services in question exceeds that of the products covered by the contract.

A contract having as its object services within the meaning of Annex XVII and including activities within the meaning of Annex XII that are only incidental to the principal object of the contract shall be considered to be a service contract.

3. (a) A 'works concession' is a contract of the same type as a works contract except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the work or in that right together with payment;

(b) A 'service concession' is a contract of the same type as a service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in that right together with payment.

4. A 'framework agreement' is an agreement between one or more contracting entities referred to in Article 2(2) and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantities envisaged.

5. A 'dynamic purchasing system' is a completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting entity, which is limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification.

6. An 'electronic auction' is a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods. Consequently, certain service contracts and certain works contracts having as their subject-matter intellectual performances, such as the design of works, may not be the object of electronic auctions.

7. The terms 'contractor', 'supplier' or 'service provider' mean either a natural or a legal person, or a contracting entity within the meaning of Article 2(2)(a) or (b), or a group of such persons and/or entities which offers on the market, respectively, the execution of works and/or a work, products or services.

The terms 'economic operator' shall cover equally the concepts of contractor, supplier and service provider. It is used merely in the interests of simplification.

A 'tenderer' is an economic operator who submits a tender, and 'candidate' means one who has sought an invitation to take part in a restricted or negotiated procedure.

8. A 'central purchasing body' is a contracting authority within the meaning of Article 2(1)(a) or a contracting authority

within the meaning of Article 1(9) of Directive 2004/18/EC which:

— acquires supplies and/or services intended for contracting entities or

— awards public contracts or concludes framework agreements for works, supplies or services intended for contracting entities.

9. 'Open, restricted and negotiated procedures' are the procurement procedures applied by contracting entities, whereby:

(a) in the case of open procedures, any interested economic operator may submit a tender;

(b) in the case of restricted procedures, any economic operator may request to participate and only candidates invited by the contracting entity may submit a tender;

(c) in the case of negotiated procedures, the contracting entity consults the economic operators of its choice and negotiates the terms of the contract with one or more of these.

10. 'Design contests' are those procedures which enable the contracting entity to acquire, mainly in the fields of town and country planning, architecture, engineering or data processing, a plan or design selected by a jury after having been put out to competition with or without the award of prizes.

11. 'Written' or 'in writing' means any expression consisting of words or figures that can be read, reproduced and subsequently communicated. It may include information transmitted and stored by electronic means.

12. 'Electronic means' means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.

13. 'Common Procurement Vocabulary (CPV)' means the reference nomenclature applicable to public contracts as adopted by Regulation (EC) No 2195/2002 of 5 November 2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CVP) <sup>(1)</sup> while ensuring equivalence with the other existing nomenclatures.

In the event of varying interpretations of the scope of this Directive, owing to possible differences between the CPV and NACE nomenclatures listed in Annex XII or between the CPV and CPC (provisional version) nomenclatures listed in Annex XVII, the NACE or the CPC nomenclature respectively shall take precedence.

<sup>(1)</sup> OJ L 340, 16.12.2002, p. 1.

## CHAPTER II

**Definition of the activities and entities covered**

## Section 1

## Entities

## Article 2

**Contracting entities**

1. For the purposes of this Directive,
  - (a) 'Contracting authorities' are State, regional or local authorities, bodies governed by public law, associations formed by one or several such authorities or one or several of such bodies governed by public law.

'A body governed by public law' means any body:

- established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character,
  - having legal personality and
  - financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law;
- (b) a 'public undertaking' is any undertaking over which the contracting authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it.

A dominant influence on the part of the contracting authorities shall be presumed when these authorities, directly or indirectly, in relation to an undertaking:

- hold the majority of the undertaking's subscribed capital, or
  - control the majority of the votes attaching to shares issued by the undertaking, or
  - can appoint more than half of the undertaking's administrative, management or supervisory body.
2. This Directive shall apply to contracting entities:
    - (a) which are contracting authorities or public undertakings and which pursue one of the activities referred to in Articles 3 to 7;
    - (b) which, when they are not contracting authorities or public undertakings, have as one of their activities any of the activities referred to in Articles 3 to 7, or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of a Member State.
  3. For the purposes of this Directive, 'special or exclusive rights' mean rights granted by a competent authority of a

Member State by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of activities defined in Articles 3 to 7 to one or more entities, and which substantially affects the ability of other entities to carry out such activity.

## Section 2

## Activities

## Article 3

**Gas, heat and electricity**

1. As far as gas and heat are concerned, this Directive shall apply to the following activities:

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat; or
- (b) the supply of gas or heat to such networks.

2. The supply of gas or heat to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where:

- (a) the production of gas or heat by the entity concerned is the unavoidable consequence of carrying out an activity other than those referred to in paragraphs 1 or 3 of this Article or in Articles 4 to 7; and
- (b) supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the entity's turnover having regard to the average for the preceding three years, including the current year.

3. As far as electricity is concerned, this Directive shall apply to the following activities:

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity; or
- (b) the supply of electricity to such networks.

4. The supply of electricity to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 3 where:

- (a) the production of electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in paragraphs 1 or 3 of this Article or in Articles 4 to 7; and
- (b) supply to the public network depends only on the entity's own consumption and has not exceeded 30% of the entity's total production of energy, having regard to the average for the preceding three years, including the current year.

## Article 4

**Water**

1. This Directive shall apply to the following activities:
  - (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water; or
  - (b) the supply of drinking water to such networks.
2. This Directive shall also apply to contracts or design contests awarded or organised by entities which pursue an activity referred to in paragraph 1 and which:
  - (a) are connected with hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made available by such projects or irrigation or drainage installations, or
  - (b) are connected with the disposal or treatment of sewage.
3. The supply of drinking water to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where:
  - (a) the production of drinking water by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in Articles 3 to 7; and
  - (b) supply to the public network depends only on the entity's own consumption and has not exceeded 30 % of the entity's total production of drinking water, having regard to the average for the preceding three years, including the current year.

## Article 5

**Transport services**

1. This Directive shall apply to activities relating to the provision or operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of a Member State, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.

2. This Directive shall not apply to entities providing bus transport services to the public which were excluded from the scope of Directive 93/38/EEC pursuant to Article 2(4) thereof.

## Article 6

**Postal services**

1. This Directive shall apply to activities relating to the provision of postal services or, on the conditions set out in paragraph 2(c), other services than postal services.
2. For the purpose of this Directive and without prejudice to Directive 97/67/EC:
  - (a) 'postal item': means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight;
  - (b) 'postal services': means services consisting of the clearance, sorting, routing and delivery of postal items. These services comprise:
    - 'reserved postal services': postal services which are or may be reserved on the basis of Article 7 of Directive 97/67/EC,
    - 'other postal services': postal services which may not be reserved on the basis of Article 7 of Directive 97/67/EC; and
  - (c) 'other services than postal services': means services provided in the following areas:
    - mail service management services (services both preceding and subsequent to despatch, such as 'mailroom management services'),
    - added-value services linked to and provided entirely by electronic means (including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail),
    - services concerning postal items not included in point (a), such as direct mail bearing no address,
    - financial services, as defined in category 6 of Annex XVII A and in Article 24(c) and including in particular postal money orders and postal giro transfers,
    - philatelic services, and
    - logistics services (services combining physical delivery and/or warehousing with other non-postal functions),

on condition that such services are provided by an entity which also provides postal services within the meaning of point (b), first or second indent, and provided that the conditions set out in Article 30(1) are not satisfied in respect of the services falling within those indents.



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

This Directive shall apply to activities relating to the exploitation of a geographical area for the purpose of:

- (a) exploring for or extracting oil, gas, coal or other solid fuels, or
- (b) the provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.

*Article 8***Lists of contracting entities**

The non-exhaustive lists of contracting entities within the meaning of this Directive are contained in Annexes I to X. Member States shall notify the Commission periodically of any changes to their lists.

*Article 9***Contracts covering several activities**

1. A contract which is intended to cover several activities shall be subject to the rules applicable to the activity for which it is principally intended.

However, the choice between awarding a single contract and awarding a number of separate contracts may not be made with the objective of excluding it from the scope of this Directive or, where applicable, Directive 2004/18/EC.

2. If one of the activities for which the contract is intended is subject to this Directive and the other to the abovementioned Directive 2004/18/EC and if it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with the abovementioned Directive 2004/18/EC.

3. If one of the activities for which the contract is intended is subject to this Directive and the other is not subject to either this Directive or the abovementioned Directive 2004/18/EC, and if it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with this Directive.

## CHAPTER III

**General principles***Article 10***Principles of awarding contracts**

Contracting entities shall treat economic operators equally and non-discriminatorily and shall act in a transparent way.

## TITLE II

## RULES APPLICABLE TO CONTRACTS

## CHAPTER I

**General provisions***Article 11***Economic operators**

1. Candidates or tenderers who, under the law of the Member State in which they are established, are entitled to provide the relevant service, shall not be rejected solely on the ground that, under the law of the Member State in which the contract is awarded, they would be required to be either natural or legal persons.

However, in the case of service and works contracts as well as supply contracts covering in addition services and/or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the names and relevant professional qualifications of the staff to be responsible for the performance of the contract in question.

2. Groups of economic operators may submit tenders or put themselves forward as candidates. In order to submit a tender or a request to participate, these groups may not be required by the contracting entities to assume a specific legal form; however, the group selected may be required to do so when it has been awarded the contract, to the extent to which

this change is necessary for the satisfactory performance of the contract.

*Article 12***Conditions relating to agreements concluded within the World Trade Organisation**

For the purposes of the award of contracts by contracting entities, Member States shall apply in their relations conditions as favourable as those which they grant to economic operators of third countries in implementation of the Agreement. Member States shall, to this end, consult one another within the Advisory Committee for Public Contracts on the measures to be taken pursuant to the Agreement.

*Article 13***Confidentiality**

1. In the context of provision of technical specifications to interested economic operators, of qualification and selection of economic operators and of award of contracts, contracting entities may impose requirements with a view to protecting the confidential nature of information which they make available.

2. Without prejudice to the provisions of this Directive, in particular those concerning the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 43 and 49, and in accordance with the national law to which the contracting entity is subject, the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential; such information includes, in particular, technical or trade secrets and the confidential aspects of tenders.

#### Article 14

##### Framework agreements

1. Contracting entities may regard a framework agreement as a contract within the meaning of Article 1(2) and award it in accordance with this Directive.

2. Where contracting entities have awarded a framework agreement in accordance with this Directive, they may avail themselves of Article 40(3)(i) when awarding contracts based on that framework agreement.

3. Where a framework agreement has not been awarded in accordance with this Directive, contracting entities may not avail themselves of Article 40(3)(i).

4. Contracting entities may not misuse framework agreements in order to hinder, limit or distort competition.

#### Article 15

##### Dynamic purchasing systems

1. Member States may provide that contracting entities may use dynamic purchasing systems.

2. In order to set up a dynamic purchasing system, contracting entities shall follow the rules of the open procedure in all its phases up to the award of the contracts to be concluded under this system. All tenderers who satisfy the selection criteria and have submitted an indicative tender which complies with the specification and any possible additional documents shall be admitted to the system; indicative tenders may be improved at any time provided that they continue to comply with the specification. With a view to setting up the system and to the award of contracts under that system, contracting entities shall use solely electronic means in accordance with Article 48(2) to (5).

3. For the purposes of setting up the dynamic purchasing system, contracting entities shall:

(a) publish a contract notice making it clear that a dynamic purchasing system is involved;

(b) indicate in the specification, amongst other matters, the nature of the purchases envisaged under that system, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications;

(c) offer by electronic means, on publication of the notice and until the system expires, unrestricted, direct and full access to the specification and to any additional documents and shall indicate in the notice the internet address at which such documents may be consulted.

4. Contracting entities shall give any economic operator, throughout the entire period of the dynamic purchasing system, the possibility of submitting an indicative tender and of being admitted to the system under the conditions referred to in paragraph 2. They shall complete evaluation within a maximum of 15 days from the date of submission of the indicative tender. However, they may extend the evaluation period provided that no invitation to tender is issued in the meantime.

Contracting entities shall inform the tenderer referred to in the first subparagraph at the earliest possible opportunity of its admittance to the dynamic purchasing system or of the rejection of its indicative tender.

5. Each specific contract shall be the subject of an invitation to tender. Before issuing the invitation to tender, contracting entities shall publish a simplified contract notice inviting all interested economic operators to submit an indicative tender, in accordance with paragraph 4, within a time limit that may not be less than 15 days from the date on which the simplified notice was sent. Contracting entities may not proceed with tendering until they have completed evaluation of all the indicative tenders received within that time limit.

6. Contracting entities shall invite all tenderers admitted to the system to submit a tender for each specific contract to be awarded under the system. To that end, they shall set a time limit for the submission of tenders.

They shall award the contract to the tenderer which submitted the best tender on the basis of the award criteria set out in the contract notice for the establishment of the dynamic purchasing system. Those criteria may, if appropriate, be formulated more precisely in the invitation referred to in the first subparagraph.

7. A dynamic purchasing system may not last for more than four years, except in duly justified exceptional cases.

Contracting entities may not resort to this system to prevent, restrict or distort competition.

No charges may be billed to the interested economic operators or to parties to the system.

## CHAPTER II

**Thresholds and exclusion provisions**

## Section 1

## Thresholds

## Article 16

**Contract thresholds**

Save where they are ruled out by the exclusions in Articles 19 to 26 or pursuant to Article 30, concerning the pursuit of the activity in question, this Directive shall apply to contracts which have a value excluding value-added tax (VAT) estimated to be no less than the following thresholds:

- (a) EUR 499 000 in the case of supply and service contracts;
- (b) EUR 6 242 000 in the case of works contracts.

## Article 17

**Methods of calculating the estimated value of contracts, framework agreements and dynamic purchasing systems**

1. The calculation of the estimated value of a contract shall be based on the total amount payable, net of VAT, as estimated by the contracting entity. This calculation shall take account of the estimated total amount, including any form of option and any renewals of the contract.

Where the contracting entity provides for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of the contract.

2. Contracting entities may not circumvent this Directive by splitting works projects or proposed purchases of a certain quantity of supplies and/or services or by using special methods for calculating the estimated value of contracts.

3. With regard to framework agreements and dynamic purchasing systems, the estimated value to be taken into consideration shall be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the agreement or system.

4. For the purposes of Article 16, contracting entities shall include in the estimated value of a works contract both the cost of the works and the value of any supplies or services necessary for the execution of the works, which they make available to the contractor.

5. The value of supplies or services which are not necessary for the performance of a particular works contract may not be added to the value of the works contract when to do so would result in removing the procurement of those supplies or services from the scope of this Directive.

6. (a) Where a proposed work or purchase of services may result in contracts being awarded at the same time in

the form of separate lots, account shall be taken of the total estimated value of all such lots.

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 16, this Directive shall apply to the awarding of each lot.

However, the contracting entities may waive such application in respect of lots the estimated value of which, net of VAT, is less than EUR 80 000 for services or EUR 1 million for works, provided that the aggregate value of those lots does not exceed 20 % of the aggregate value of the lots as a whole.

(b) Where a proposal for the acquisition of similar supplies may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots when applying Article 16.

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 16, this Directive shall apply to the awarding of each lot.

However, the contracting entities may waive such application in respect of lots, the estimated value of which, net of VAT, is less than EUR 80 000, provided that the aggregate cost of those lots does not exceed 20 % of the aggregate value of the lots as a whole.

7. In the case of supply or service contracts which are regular in nature or which are intended to be renewed within a given period, the calculation of the estimated contract value shall be based on the following:

- (a) either the total actual value of the successive contracts of the same type awarded during the preceding twelve months or financial year adjusted, if possible, to take account of the changes in quantity or value which would occur in the course of the 12 months following the initial contract;
- (b) or the total estimated value of the successive contracts awarded during the 12 months following the first delivery, or during the financial year if that is longer than 12 months.

8. The basis for calculating the estimated value of a contract including both supplies and services shall be the total value of the supplies and services, regardless of their respective shares. The calculation shall include the value of the siting and installation operations.

9. With regard to supply contracts relating to the leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:

- (a) in the case of fixed-term contracts, if that term is less than or equal to 12 months, the total estimated value for the term of the contract or, if the term of the contract is greater than 12 months, the total value including the estimated residual value;

(b) in the case of contracts without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.

10. For the purposes of calculating the estimated contract value of service contracts, the following amounts shall, where appropriate, be taken into account:

- (a) the premium payable, and other forms of remuneration, in the case of insurance services;
- (b) fees, commissions, interest and other modes of remuneration, in the case of banking and other financial services;
- (c) fees, commissions payable and other forms of remuneration, in the case of contracts involving design tasks.

11. In the case of service contracts which do not indicate a total price, the value to be used as the basis for calculating the estimated contract value shall be:

- (a) in the case of fixed-term contracts, if that term is less than or equal to 48 months: the total value for their full term;
- (b) in the case of contracts without a fixed term or with a term greater than 48 months: the monthly value multiplied by 48.

## Section 2

Contracts and concessions and contracts subject to special arrangements

### SUBSECTION 1

#### Article 18

#### **Works and service concessions**

This Directive shall not apply to works and service concessions which are awarded by contracting entities carrying out one or more of the activities referred to in Articles 3 to 7, where those concessions are awarded for carrying out those activities.

### 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**

1. This Directive shall not apply to contracts awarded for purposes of resale or lease to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or lease the subject of such contracts, and other entities are free to sell or lease it under the same conditions as the contracting entity.

2. The contracting entities shall notify the Commission at its request of all the categories of products or activities which

they regard as excluded under paragraph 1. The Commission may periodically publish in the *Official Journal of the European Union*, for information purposes, lists of the categories of products and activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding information.

#### 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**

1. This Directive shall not apply to contracts which the contracting entities award for purposes other than the pursuit of their activities as described in Articles 3 to 7 or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Community.

2. The contracting entities shall notify the Commission at its request of any activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the *Official Journal of the European Union* for information purposes, lists of the categories of activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding this information.

#### Article 21

#### **Contracts which are secret or require special security measures**

This Directive shall not apply to contracts when they are declared to be secret by a Member State, when their performance must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned, or when the protection of the basic security interests of that Member State so requires.

#### Article 22

#### **Contracts awarded pursuant to international rules**

This Directive shall not apply to contracts governed by different procedural rules and awarded:

- (a) pursuant to an international agreement concluded in accordance with the Treaty between a Member State and one or more third countries and covering supplies, works, services or design contests intended for the joint implementation or exploitation of a project by the signatory States; all agreements shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts referred to in Article 68;

- (b) pursuant to a concluded international agreement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;
- (c) pursuant to the particular procedure of an international organisation.

provision of such supplies to undertakings with which it is affiliated;

- (c) to works contracts provided that at least 80 % of the average turnover of the affiliated undertaking with respect to works for the preceding three years derives from the provision of such works to undertakings with which it is affiliated.

#### Article 23

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

1. For the purposes of this Article, 'affiliated undertaking' means any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 44(2)(g) of the Treaty on consolidated accounts<sup>(1)</sup> (?), or, in the case of entities not subject to that Directive, any undertaking over which the contracting entity may exercise, directly or indirectly, a dominant influence within the meaning of Article 2(1)(b) hereof 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.

When, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it will be sufficient for that undertaking to show that the turnover referred to in points (a), (b) or (c) is credible, particularly by means of business projections.

Where more than one undertaking affiliated with the contracting entity provides the same or similar services, supplies or works, the above percentages shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.

2. Provided that the conditions in paragraph 3 are met, this Directive shall not apply to contracts awarded:

4. This Directive shall not apply to contracts awarded:

- (a) by a contracting entity to an affiliated undertaking, or
- (b) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 3 to 7, to an undertaking which is affiliated with one of these contracting entities.

- (a) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 3 to 7, to one of these contracting entities, or

3. Paragraph 2 shall apply:

- (b) by a contracting entity to such a joint venture of which it forms part, provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least three years and that the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part thereof for at least the same period.

- (a) to service contracts provided that at least 80 % of the average turnover of the affiliated undertaking with respect to services for the preceding three years derives from the provision of such services to undertakings with which it is affiliated;

5. Contracting entities shall notify to the Commission, at its request, the following information regarding the application of paragraphs 2, 3 and 4:

- (b) to supplies contracts provided that at least 80 % of the average turnover of the affiliated undertaking with respect to supplies for the preceding three years derives from the

- (a) the names of the undertakings or joint ventures concerned,
- (b) the nature and value of the contracts involved,

<sup>(1)</sup> OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28).

<sup>(?)</sup> Editorial Note: The title of the Directive has been adjusted to take account of the renumbering of the Articles of the Treaty in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Article 54(3)(g) of the Treaty.

- (c) such proof as may be deemed necessary by the Commission that the relationship between the undertaking or joint venture to which the contracts are awarded and the contracting entity complies with the requirements of this Article.

## 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**

This Directive shall not apply to service contracts for:

- (a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; nevertheless, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;
- (b) arbitration and conciliation services;
- (c) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions by the contracting entities to raise money or capital;
- (d) employment contracts;
- (e) research and development services other than those where the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting entity.

## Article 25

**Service contracts awarded on the basis of an exclusive right**

This Directive shall not apply to service contracts awarded to an entity which is itself a contracting authority within the meaning of Article 2(1)(a) or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a published law, regulation or administrative provision which is compatible with the Treaty.

## 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**

This Directive shall not apply:

(a) to contracts for the purchase of water if awarded by contracting entities engaged in one or both of the activities referred to in Article 4(1).

(b) to contracts for the supply of energy or of fuels for the production of energy, if awarded by contracting entities engaged in an activity referred to in Article 3(1), Article 3(3) or Article 7(a).

## 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**

Without prejudice to Article 30 the Kingdom of the Netherlands, the United Kingdom, the Republic of Austria and the Federal Republic of Germany shall ensure, by way of the conditions of authorisation or other appropriate measures, that any entity operating in the sectors mentioned in Decisions 93/676/EEC, 97/367/EEC, 2002/205/EC and 2004/73/EC:

- (a) observes the principles of non-discrimination and competitive procurement in respect of the award of supplies, works and service contracts, in particular as regards the information which the entity makes available to economic operators concerning its procurement intentions;
- (b) communicates to the Commission, under the conditions defined in Commission Decision 93/327/EEC defining the conditions under which contracting entities exploiting geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels must communicate to the Commission information relating to the contracts they award<sup>(1)</sup>.

## Article 28

**Reserved contracts**

Member States may reserve the right to participate in contract award procedures to sheltered workshops or provide for such contracts to be performed in the context of sheltered employment programmes where most of the employees concerned are handicapped persons who, by reason of the nature or the seriousness of their disabilities, cannot carry on occupations under normal conditions.

The notice used to make the call for competition shall make reference to this Article.

<sup>(1)</sup> OJ L 129, 27.5.1993, p. 25.

## Article 29

**Contracts and framework agreements awarded by central purchasing bodies**

1. Member States may prescribe that contracting entities may purchase works, supplies and/or services from or through a central purchasing body.

2. Contracting entities which purchase works, supplies and/or services from or through a central purchasing body in the cases set out in Article 1(8) shall be deemed to have complied with this Directive insofar as the central purchasing body has complied with it or, where appropriate, with Directive 2004/18/EC.

## Article 30

**Procedure for establishing whether a given activity is directly exposed to competition**

1. Contracts intended to enable an activity mentioned in Articles 3 to 7 to be carried out shall not be subject to this Directive if, in the Member State in which it is performed, the activity is directly exposed to competition on markets to which access is not restricted.

2. For the purposes of paragraph 1, the question of whether an activity is directly exposed to competition shall be decided on the basis of criteria that are in conformity with the Treaty provisions on competition, such as the characteristics of the goods or services concerned, the existence of alternative goods or services, the prices and the actual or potential presence of more than one supplier of the goods or services in question.

3. For the purposes of paragraph 1, access to a market shall be deemed not to be restricted if the Member State has implemented and applied the provisions of Community legislation mentioned in Annex XI.

If free access to a given market cannot be presumed on the basis of the first subparagraph, it must be demonstrated that access to the market in question is free de facto and de jure.

4. When a Member State considers that, in compliance with paragraphs 2 and 3, paragraph 1 is applicable to a given activity, it shall notify the Commission and inform it of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in paragraph 1, where appropriate together with the position adopted by an independent national authority that is competent in relation to the activity concerned.

Contracts intended to enable the activity concerned to be carried out shall no longer be subject to this Directive if the Commission:

— has adopted a Decision establishing the applicability of paragraph 1 in accordance with paragraph 6 and within the period it provides for, or

— has not adopted a Decision concerning such applicability within that period.

However, where free access to a given market is presumed on the basis of the first subparagraph of paragraph 3, and where an independent national authority that is competent in the activity concerned has established the applicability of paragraph 1, contracts intended to enable the activity concerned to be carried out shall no longer be subject to this Directive if the Commission has not established the inapplicability of paragraph 1 by a Decision adopted in conformity with paragraph 6 and within the period it provides for.

5. When the legislation of the Member State concerned provides for it, the contracting entities may ask the Commission to establish the applicability of paragraph 1 to a given activity by a Decision in conformity with paragraph 6. In such a case, the Commission shall immediately inform the Member State concerned.

That Member State shall, taking account of paragraphs 2 and 3, inform the Commission of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in paragraph 1, where appropriate together with the position adopted by an independent national authority that is competent in the activity concerned.

The Commission may also begin the procedure for adoption of a Decision establishing the applicability of paragraph 1 to a given activity on its own initiative. In such a case, the Commission shall immediately inform the Member State concerned.

If, at the end of the period laid down in paragraph 6, the Commission has not adopted a Decision concerning the applicability of paragraph 1 to a given activity, paragraph 1 shall be deemed to be applicable.

6. For the adoption of a Decision under this Article, in accordance with the procedure under Article 68(2), the Commission shall be allowed a period of three months commencing on the first working day following the date on which it receives the notification or the request. However, this period may be extended once by a maximum of three months in duly justified cases, in particular if the information contained in the notification or the request or in the documents annexed thereto is incomplete or inexact or if the facts as reported undergo any substantive changes. This extension shall be limited to one month where an independent national authority that is competent in the activity concerned has established the applicability of paragraph 1 in the cases provided for under the third subparagraph of paragraph 4.

When an activity in a given Member State is already the subject of a procedure under this Article, further requests concerning the same activity in the same Member State before the expiry of the period opened in respect of the first request shall not be considered as new procedures and shall be treated in the context of the first request.

The Commission shall adopt detailed rules for applying paragraphs 4, 5 and 6 in accordance with the procedure under Article 68(2).

These rules shall include at least:

- (a) the publication in the Official Journal, for information, of the date on which the three-month period referred to in the first subparagraph begins, and, in case this period is prolonged, the date of prolongation and the period by which it is prolonged;
- (b) publication of the possible applicability of paragraph 1 in accordance with the second or third subparagraph of paragraph 4 or in accordance with the fourth subparagraph of paragraph 5; and
- (c) the arrangements for forwarding positions adopted by an independent authority that is competent in the activity concerned, regarding questions relevant to paragraphs 1 and 2.

#### CHAPTER III

##### **Rules applicable to service contracts**

###### *Article 31*

##### **Service contracts listed in Annex XVII A**

Contracts which have as their object services listed in Annex XVII A shall be awarded in accordance with Articles 34 to 59.

###### *Article 32*

##### **Service contracts listed in Annex XVII B**

Contracts which have as their object services listed in Annex XVII B shall be governed solely by Articles 34 and 43.

###### *Article 33*

##### **Mixed service contracts including services listed in Annexes XVII A and services listed in Annex XVII B**

Contracts which have as their subject-matter services listed both in Annex XVII A and in Annex XVII B shall be awarded in accordance with Articles 34 to 59 where the value of the services listed in Annex XVII A is greater than the value of the services listed in Annex XVII B. In other cases, contracts shall be awarded in accordance with Articles 34 and 43.

#### CHAPTER IV

##### **Specific rules governing specifications and contract documents**

###### *Article 34*

##### **Technical specifications**

1. Technical specifications as defined in point 1 of Annex XXI shall be set out in the contract documentation,

such as contract notices, contract documents or additional documents. Whenever possible these technical specifications should be defined so as to take into account accessibility criteria for people with disabilities or design for all users.

2. Technical specifications shall afford equal access for tenderers and not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.

3. Without prejudice to legally binding national technical rules, to the extent that they are compatible with Community law, the technical specifications shall be formulated:

(a) either by reference to technical specifications defined in Annex XXI and, in order of preference, to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or — when these do not exist — national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the products. Each reference shall be accompanied by the words 'or equivalent';

(b) or in terms of performance or functional requirements; the latter may include environmental characteristics. However, such parameters must be sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting entities to award the contract;

(c) or in terms of performance or functional requirements as mentioned in subparagraph (b), with reference to the specifications mentioned in subparagraph (a) as a means of presuming conformity with such performance or functional requirements;

(d) or by referring to the specifications mentioned in subparagraph (a) for certain characteristics, and by referring to the performance or functional requirements mentioned in subparagraph (b) for other characteristics.

4. Where a contracting entity makes use of the option of referring to the specifications mentioned in paragraph 3(a), it cannot reject a tender on the ground that the products and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in his tender to the satisfaction of the contracting entity, by whatever appropriate means, that the solutions which he proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

An appropriate means might be constituted by a technical dossier from the manufacturer or a test report from a recognised body.



5. Where a contracting entity uses the option provided for in paragraph 3 of laying down performance or functional requirements, it may not reject a tender for products, services or works which comply with a national standard transposing a European standard, with a European technical approval, a common technical specification, an international standard, or a technical reference system established by a European standardisation body, if these specifications address the performance or functional requirements which it has laid down.

In his tender, the tenderer shall prove to the satisfaction of the contracting entity and by any appropriate means that the product, service or work in compliance with the standard meets the performance or functional requirements of the contracting entity.

An appropriate means might be constituted by a technical dossier from the manufacturer or a test report from a recognised body.

6. Where contracting entities lay down environmental characteristics in terms of performance or functional requirements as referred to in paragraph 3(b) they may use the detailed specifications, or, if necessary, parts thereof, as defined by European or (multi-) national eco-labels, or by any other eco-label, provided that:

- those specifications are appropriate to define the characteristics of the supplies or services that are the object of the contract,
- the requirements for the label are drawn up on the basis of scientific information,
- the eco-labels are adopted using a procedure in which all stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and
- they are accessible to all interested parties.

Contracting entities may indicate that the products and services bearing the eco-label are presumed to comply with the technical specifications laid down in the contract documents; they must accept any other appropriate means of proof, such as a technical dossier from the manufacturer or a test report from a recognised body.

7. 'Recognised bodies', within the meaning of this Article, are test and calibration laboratories, and certification and inspection bodies which comply with applicable European standards.

Contracting entities shall accept certificates from recognised bodies established in other Member States.

8. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or to a particular process, or to trade marks, patents,

types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted, on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraphs 3 and 4 is not possible; such reference shall be accompanied by the words 'or equivalent'.

#### Article 35

### Communication of technical specifications

1. Contracting entities shall make available on request to economic operators interested in obtaining a contract the technical specifications regularly referred to in their supply, works or service contracts, or the technical specifications which they intend to apply to contracts covered by periodic indicative notices within the meaning of Article 41(1).

2. Where the technical specifications are based on documents available to interested economic operators, the inclusion of a reference to those documents shall be sufficient.

#### Article 36

### Variants

1. Where the criterion for the award of the contract is that of the most economically advantageous tender, contracting entities may take account of variants which are submitted by a tenderer and meet the minimum requirements specified by the contracting entities.

Contracting entities shall indicate in the specifications whether or not they authorise variants and, if so, the minimum requirements to be met by the variants and any specific requirements for their presentation.

2. In procedures for awarding supply or service contracts, contracting entities which have authorised variants pursuant to paragraph 1 may not reject a variant on the sole ground that it would, if successful, lead either to a service contract rather than a supply contract or to a supply contract rather than a service contract.

#### Article 37

### Subcontracting

In the contract documents, the contracting entity may ask, or may be required by a Member State to ask, the tenderer to indicate in his tender any share of the contract he intends to subcontract to third parties and any proposed subcontractors. This indication shall be without prejudice to the question of the principal economic operator's liability.

## Article 38

**Conditions for performance of contracts**

Contracting entities may lay down special conditions relating to the performance of a contract, provided that these are compatible with Community law and are indicated in the notice used as a means of calling for competition or in the specifications. The conditions governing the performance of a contract may, in particular, concern social and environmental considerations.

## Article 39

**Obligations relating to taxes, environmental protection, employment protection provisions and working conditions**

1. A contracting entity may state in the contract documents, or be required by a Member State so to state, the body or bodies from which a candidate or tenderer may obtain the appropriate information on the obligations relating to taxes, to environmental protection, to protection provisions and to the working conditions which are in force in the Member State, region or locality in which the services are to be provided and which shall be applicable to the works carried out on site or to the services provided during the performance of the contract.

2. A contracting entity which supplies the information referred to in paragraph 1 shall request the tenderers or candidates in the contract award procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to employment protection provisions and the working conditions which are in force in the place where the service is to be provided.

The first subparagraph shall be without prejudice to the application of Article 57.

## CHAPTER V

**Procedures**

## Article 40

**Use of open, restricted and negotiated procedures**

1. When awarding supply, works or service contracts, contracting entities shall apply the procedures adjusted for the purposes of this Directive.

2. Contracting entities may choose any of the procedures described in Article 1(9)(a), (b) or (c), provided that, subject to paragraph 3, a call for competition has been made in accordance with Article 42.

3. Contracting entities may use a procedure without prior call for competition in the following cases:

- (a) when no tenders or no suitable tenders or no applications have been submitted in response to a procedure with a prior call for competition, provided that the initial conditions of contract are not substantially altered;
- (b) where a contract is purely for the purpose of research, experiment, study or development, and not for the purpose of securing a profit or of recovering research and development costs, and insofar as the award of such contract does not prejudice the competitive award of subsequent contracts which do seek, in particular, those ends;
- (c) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be executed only by a particular economic operator;
- (d) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting entities, the time limits laid down for open procedures, restricted procedures and negotiated procedures with a prior call for competition cannot be adhered to;
- (e) in the case of supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting entity to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;
- (f) for additional works or services which were not included in the project initially awarded or in the contract first concluded but have, through unforeseen circumstances, become necessary to the performance of the contract, on condition that the award is made to the contractor or service provider executing the original contract:
  - when such additional works or services cannot be technically or economically separated from the main contract without great inconvenience to the contracting entities, or
  - when such additional works or services, although separable from the performance of the original contract, are strictly necessary to its later stages;
- (g) in the case of works contracts, for new works consisting in the repetition of similar works assigned to the contractor to which the same contracting entities awarded an earlier contract, provided that such works conform to a basic project for which a first contract was awarded after a call for competition; as soon as the first project is put up for tender, notice shall be given that this procedure might be adopted and the total estimated cost of subsequent works shall be taken into consideration by the contracting entities when they apply the provisions of Articles 16 and 17;

- (h) for supplies quoted and purchased on a commodity market;
- (i) for contracts to be awarded on the basis of a framework agreement, provided that the condition referred to in Article 14(2) is fulfilled;
- (j) for bargain purchases, where it is possible to procure supplies by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices;
- (k) for purchases of supplies under particularly advantageous conditions from either a supplier definitively winding up his business activities or the receivers or liquidators of a bankruptcy, an arrangement with creditors or a similar procedure under national laws or regulations;
- (l) when the service contract concerned is part of the follow-up to a design contest organised in accordance with the provisions of this Directive and shall, in accordance with the relevant rules, be awarded to the winner or to one of the winners of that contest; in the latter case, all the winners shall be invited to participate in the negotiations.

## CHAPTER VI

### *Rules on publication and transparency*

#### Section 1

##### Publication of notices

##### *Article 41*

#### **Periodic indicative notices and notices on the existence of a system of qualification**

1. Contracting entities shall make known, at least once a year, by means of a periodic indicative notice as referred to in Annex XV A, published by the Commission or by themselves on their 'buyer profile', as described in point 2(b) of Annex XX:

- (a) where supplies are concerned, the estimated total value of the contracts or the framework agreements by product area which they intend to award over the following 12 months, where the total estimated value, taking into account the provisions of Articles 16 and 17, is equal to or greater than EUR 750 000.

The product area shall be established by the contracting entities by reference to the CPV nomenclature:

- (b) where services are concerned, the estimated total value of the contracts or the framework agreements in each of the categories of services listed in Annex XVII A which they intend to award over the following 12 months, where such estimated total value, taking into account the provisions of Articles 16 and 17, is equal to or greater than EUR 750 000;

- (c) where works are concerned, the essential characteristics of the works contracts or the framework agreements which they intend to award over the following 12 months, whose estimated value is equal to or greater than the threshold specified in Article 16, taking into account the provisions of Article 17.

The notices referred to in subparagraphs (a) and (b) shall be sent to the Commission or published on the buyer profile as soon as possible after the beginning of the budgetary year.

The notice referred to in subparagraph (c) shall be sent to the Commission or published on the buyer profile as soon as possible after the decision approving the planning of the works contracts or the framework agreements that the contracting entities intend to award.

Contracting entities which publish a periodic indicative notice on their buyer profiles shall transmit to the Commission, electronically, a notice of the publication of the periodic indicative notice on a buyer profile, in accordance with the format and procedures for the electronic transmission of notices indicated in point 3 of Annex XX.

The publication of the notices referred to in subparagraphs (a), (b) and (c) shall be compulsory only where the contracting entities take the option of reducing the time limits for the receipt of tenders as laid down in Article 45(4).

This paragraph shall not apply to procedures without prior call for competition.

2. Contracting entities may, in particular, publish or arrange for the Commission to publish periodic indicative notices relating to major projects without repeating information previously included in a periodic indicative notice, provided that it is clearly pointed out that these notices are additional ones.

3. Where contracting entities choose to set up a qualification system in accordance with Article 53, the system shall be the subject of a notice as referred to in Annex XIV, indicating the purpose of the qualification system and how to have access to the rules concerning its operation. Where the system is of a duration greater than three years, the notice shall be published annually. Where the system is of a shorter duration, an initial notice shall suffice.

##### *Article 42*

#### **Notices used as a means of calling for competition**

1. In the case of supply, works or service contracts, the call for competition may be made:

- (a) by means of a periodic indicative notice as referred to in Annex XV A; or
- (b) by means of a notice on the existence of a qualification system as referred to in Annex XIV; or
- (c) by means of a contract notice as referred to in Annex XIII A, B or C.

2. In the case of dynamic purchasing systems, the system's call for competition shall be by contract notice as referred to in paragraph 1(c), whereas calls for competition for contracts based on such systems shall be by simplified contract notice as referred to in Annex XIII D.

3. When a call for competition is made by means of a periodic indicative notice, the notice shall:

- (a) refer specifically to the supplies, works or services which will be the subject of the contract to be awarded;
- (b) indicate that the contract will be awarded by restricted or negotiated procedure without further publication of a notice of a call for competition and invite interested economic operators to express their interest in writing; and
- (c) have been published in accordance with Annex XX not more than 12 months prior to the date on which the invitation referred to in Article 47(5) is sent. Moreover, the contracting entity shall meet the time limits laid down in Article 45.

#### Article 43

##### Contract award notices

1. Contracting entities which have awarded a contract or a framework agreement shall, within two months of the award of the contract or framework agreement, send a contract award notice as referred to in Annex XVI under conditions to be laid down by the Commission in accordance with the procedure referred to in Article 68(2).

In the case of contracts awarded under a framework agreement within the meaning of Article 14(2), the contracting entities shall not be bound to send a notice of the results of the award procedure for each contract based on that agreement.

Contracting entities shall send a contract award notice based on a dynamic purchasing system within two months after the award of each contract. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within two months of the end of each quarter.

2. The information provided in accordance with Annex XVI and intended for publication shall be published in accordance with Annex XX. In this connection, the Commission shall respect any sensitive commercial aspects which the contracting entities may point out when forwarding this information, concerning the number of tenders received, the identity of economic operators, or prices.

3. Where contracting entities award a research-and-development service contract ('R&D contract') by way of a procedure without a call for competition in accordance with

Article 40(3)(b), they may limit to the reference 'research and development services' the information to be provided in accordance with Annex XVI concerning the nature and quantity of the services provided.

Where contracting entities award an R&D contract which cannot be awarded by way of a procedure without a call for competition in accordance with Article 40(3)(b), they may, on grounds of commercial confidentiality, limit the information to be provided in accordance with Annex XVI concerning the nature and quantity of the services supplied.

In such cases, contracting entities shall ensure that any information published under this paragraph is no less detailed than that contained in the notice of the call for competition published in accordance with Article 42(1).

If they use a qualification system, contracting entities shall ensure in such cases that such information is no less detailed than the category referred to in the list of qualified service providers drawn up in accordance with Article 53(7).

4. In the case of contracts awarded for services listed in Annex XVII B, the contracting entities shall indicate in the notice whether they agree to publication.

5. Information provided in accordance with Annex XVI and marked as not being intended for publication shall be published only in simplified form and in accordance with Annex XX for statistical purposes.

#### Article 44

##### Form and manner of publication of notices

1. Notices shall include the information mentioned in Annexes XIII, XIV, XV A, XV B and XVI and, where appropriate, any other information deemed useful by the contracting entity in the format of standard forms adopted by the Commission in accordance with the procedure referred to in Article 68(2).

2. Notices sent by contracting entities to the Commission shall be sent either by electronic means in accordance with the format and procedures for transmission indicated in point 3 of Annex XX, or by other means.

The notices referred to in Articles 41, 42 and 43 shall be published in accordance with the technical characteristics for publication set out in point 1(a) and (b) of Annex XX.

3. Notices drawn up and transmitted by electronic means in accordance with the format and procedures for transmission indicated in point 3 of Annex XX, shall be published no later than five days after they are sent.

Notices which are not transmitted by electronic means in accordance with the format and procedures for transmission indicated in point 3 of Annex XX shall be published not later than 12 days after they are transmitted. However, in exceptional cases, the contract notices referred to in Article 42(1)(c) shall be published within five days in response to a request by the contracting entity, provided that the notice has been sent by fax.

4. Contract notices shall be published in full in an official language of the Community as chosen by the contracting entity, this original language version constituting the sole authentic text. A summary of the important elements of each notice shall be published in the other official languages.

The costs of publication of notices by the Commission shall be borne by the Community.

5. Notices and their contents may not be published at national level before the date on which they are sent to the Commission.

Notices published at national level shall not contain information other than that contained in the notices dispatched to the Commission or published on a buyer profile in accordance with the first subparagraph of Article 41(1), but shall mention the date of dispatch of the notice to the Commission or its publication on the buyer profile.

Periodic indicative notices may not be published on a buyer profile before the dispatch to the Commission of the notice of their publication in that form; they shall mention the date of that dispatch.

6. Contracting entities shall ensure that they are able to supply proof of the dates on which notices are dispatched.

7. The Commission shall give the contracting entity confirmation of the publication of the information sent, mentioning the date of that publication. Such confirmation shall constitute proof of publication.

8. Contracting entities may publish in accordance with paragraphs 1 to 7 contract notices which are not subject to the publication requirements laid down in this Directive.

## Section 2

### Time limits

#### Article 45

#### **Time limits for the receipt of requests to participate and for the receipt of tenders**

1. When fixing the time limits for requests to participate and the receipt of tenders, contracting entities shall take particular account of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set by this Article.

2. In the case of open procedures, the minimum time limit for the receipt of tenders shall be 52 days from the date on which the contract notice was sent.

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

(a) the time limit for the receipt of requests to participate, in response to a notice published under Article 42(1)(c), or in response to an invitation by the contracting entities under Article 47(5), shall, as a general rule, be fixed at no less than 37 days from the date on which the notice or invitation was sent and may in no case be less than 22 days if the notice is sent for publication by means other than electronic means or fax, and at no less than 15 days if the notice is transmitted by such means;

(b) the time limit for the receipt of tenders may be set by mutual agreement between the contracting entity and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders;

(c) where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting entity shall fix a time limit which shall, as a general rule, be at least 24 days and shall in no case be less than 10 days from the date of the invitation to tender.

4. If the contracting entities have published a periodic indicative notice as referred to in Article 41(1) in accordance with Annex XX, the minimum time limit for the receipt of tenders in open procedures shall, as a general rule, not be less than 36 days, but shall in no case be less than 22 days from the date on which the notice was sent.

These reduced time limits are permitted, provided that the periodic indicative notice has included, in addition to the information required by Annex XV A, part I, all the information required by Annex XV A, part II, insofar as the latter information is available at the time the notice is published, and that the notice has been sent for publication between 52 days and 12 months before the date on which the contract notice referred to in Article 42(1)(c) is sent.

5. Where notices are drawn up and transmitted by electronic means in accordance with the format and procedures for transmission indicated in point 3 of Annex XX the time-limits for the receipt of requests to participate in restricted and negotiated procedures, and for receipt of tenders in open procedures, may be reduced by seven days.

6. Except in the case of a time limit set by mutual agreement in accordance with paragraph 3(b), time limits for the receipt of tenders in open, restricted and negotiated procedures may be further reduced by five days where the contracting entity offers unrestricted and full direct access to the contract documents and any supplementary documents by electronic means from the date on which the notice used as a means of calling for competition is published, in accordance with Annex XX. The notice should specify the internet address at which this documentation is accessible.

7. In open procedures, the cumulative effect of the reductions provided for in paragraphs 4, 5 and 6 may in no case result in a time limit for the receipt of tenders of less than 15 days from the date on which the contract notice is sent.

However, if the contract notice is not transmitted by fax or electronic means, the cumulative effect of the reductions provided for in paragraphs 4, 5 and 6 may in no case result in a time limit for receipt of tenders in an open procedure of less than 22 days from the date on which the contract notice is transmitted.

8. The cumulative effect of the reductions provided for in paragraphs 4, 5 and 6 may in no case result in a time limit for receipt of requests to participate, in response to a notice published under Article 42(1)(c), or in response to an invitation by the contracting entities under Article 47(5), of less than 15 days from the date on which the contract notice or invitation is sent.

In restricted and negotiated procedures, the cumulative effect of the reductions provided for in paragraphs 4, 5 and 6 may in no case, except that of a time limit set by mutual agreement in accordance with paragraph 3(b), result in a time limit for the receipt of tenders of less than 10 days from the date of the invitation to tender.

9. If, for whatever reason, the contract documents and the supporting documents or additional information, although requested in good time, have not been supplied within the time limits set in Articles 46 and 47, or where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time limits for the receipt of tenders shall be extended accordingly, except in the case of a time-limit set by mutual agreement in accordance with paragraph 3(b), so that all economic operators concerned may be aware of all the information needed for the preparation of a tender.

10. A summary table of the time limits laid down in this Article is given in Annex XXII.

#### Article 46

#### **Open procedures: specifications, additional documents and information**

1. In open procedures, where contracting entities do not offer unrestricted and full direct access by electronic means in accordance with Article 45(6) to the specifications and any supporting documents, the specifications and supporting documents shall be sent to economic operators within six days of

receipt of the request, provided that the request was made in good time before the time limit for the submission of tenders.

2. Provided that it has been requested in good time, additional information relating to the specifications shall be supplied by the contracting entities or competent departments not later than six days before the time limit fixed for the receipt of tenders.

#### Article 47

#### **Invitations to submit a tender or to negotiate**

1. In restricted procedures and negotiated procedures, contracting entities shall simultaneously and in writing invite the selected candidates to submit their tenders or to negotiate. The invitation to the candidates shall include either:

- a copy of the specifications and any supporting documents, or
- a reference to accessing the specifications and the supporting documents indicated in the first indent, when they are made directly available by electronic means in accordance with Article 45(6).

2. Where the specifications and/or any supporting documents are held by an entity other than the contracting entity responsible for the award procedure, the invitation shall state the address from which those specifications and documents may be requested and, if appropriate, the closing date for requesting such documents, the sum payable for obtaining them and any payment procedures. The competent department shall send that documentation to the economic operator immediately upon receipt of the request.

3. The additional information on the specifications or the supporting documents shall be sent by the contracting entity or the competent department not less than six days before the final date fixed for the receipt of tenders, provided that it is requested in good time.

4. In addition, the invitation shall include at least the following:

- (a) where appropriate, the time limit for requesting additional documents, as well as the amount and terms of payment of any sum to be paid for such documents;
- (b) the final date for receipt of tenders, the address to which they are to be sent, and the language or languages in which they are to be drawn up;
- (c) a reference to any published contract notice;
- (d) an indication of any documents to be attached;

(e) the criteria for the award of the contract, where they are not indicated in the notice on the existence of a qualification system used as a means of calling for competition;

(f) the relative weighting of the contract award criteria or, where appropriate, the order of importance of such criteria, if this information is not given in the contract notice, the notice on the existence of a qualification system or the specifications.

5. When a call for competition is made by means of a periodic indicative notice, contracting entities shall subsequently invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers or participants in negotiations.

This invitation shall include at least the following information:

(a) nature and quantity, including all options concerning complementary contracts and, if possible, the estimated time available for exercising these options for renewable contracts, the nature and quantity and, if possible, the estimated publication dates of future notices of competition for works, supplies or services to be put out to tender;

(b) type of procedure: restricted or negotiated;

(c) where appropriate, the date on which the delivery of supplies or the execution of works or services is to commence or terminate;

(d) the address and closing date for the submission of requests for tender documents and the language or languages in which they are to be drawn up;

(e) the address of the entity which is to award the contract and the information necessary for obtaining the specifications and other documents;

(f) economic and technical conditions, financial guarantees and information required from economic operators;

(g) the amount and payment procedures for any sum payable for obtaining tender documents;

(h) the form of the contract which is the subject of the invitation to tender: purchase, lease, hire or hire-purchase, or any combination of these; and

(i) the contract award criteria and their weighting or, where appropriate, the order of importance of such criteria, if this information is not given in the indicative notice or the specifications or in the invitation to tender or to negotiate.

### Section 3

#### Communication and information

#### Article 48

#### Rules applicable to communication

1. All communication and information exchange referred to in this Title may be carried out by post, by fax, by electronic means in accordance with paragraphs 4 and 5, by telephone in the cases and circumstances referred to in paragraph 6, or by a combination of those means, according to the choice of the contracting entity.

2. The means of communication chosen shall be generally available and thus not restrict economic operators' access to the tendering procedure.

3. Communication and the exchange and storage of information shall be carried out in such a way as to ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved, and that the contracting entities examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.

4. The tools to be used for communicating by electronic means, as well as their technical characteristics, shall be non-discriminatory, generally available and interoperable with the information and communication technology products in general use.

5. The following rules are applicable to devices for the electronic transmission and receipt of tenders and to devices for the electronic receipt of requests to participate:

(a) information regarding the specifications necessary for the electronic submission of tenders and requests to participate, including encryption, shall be available to interested parties. Moreover, the devices for the electronic receipt of tenders and requests to participate shall conform to the requirements of Annex XXIV;

(b) Member States may, in compliance with Article 5 of Directive 1999/93/EC, require that electronic tenders be accompanied by an advanced electronic signature in conformity with paragraph 1 thereof;

(c) Member States may introduce or maintain voluntary accreditation schemes aiming at enhanced levels of certification service provision for these devices;

(d) tenderers or candidates shall undertake to submit, before expiry of the time limit laid down for the submission of tenders or requests to participate, the documents, certificates and declarations mentioned in Articles 52(2), 52(3), 53 and 54 if they do not exist in electronic format.

6. The following rules shall apply to the transmission of requests to participate:

- (a) requests to participate in procedures for the award of contracts may be made in writing or by telephone;
- (b) where requests to participate are made by telephone, a written confirmation must be sent before expiry of the time limit set for their receipt;
- (c) contracting entities may require that requests for participation made by fax should be confirmed by post or by electronic means, where this is necessary for the purposes of legal proof. Any such requirement, together with the time limit for sending confirmation by post or electronic means, should be stated by the contracting entity in the notice used as a means of calling for competition or in the invitation referred to in Article 47(5).

#### Article 49

#### Information to applicants for qualification, candidates and tenderers

1. Contracting entities shall as soon as possible inform the economic operators involved of decisions reached concerning the conclusion of a framework agreement, the award of the contract, or admission to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement or award a contract for which there has been a call for competition or to recommence the procedure, or not to implement a dynamic purchasing system; this information shall be provided in writing if the contracting entities are requested to do so.

2. On request from the party concerned, contracting entities shall, as soon as possible, inform:

- any unsuccessful candidate of the reasons for the rejection of his application,
- any unsuccessful tenderer of the reasons for the rejection of his tender, including, for the cases referred to in Article 34(4) and (5), the reasons for their decision of non-equivalence or their decision that the works, supplies or services do not meet the performance or functional requirements,
- any tenderer who has made an admissible tender of the characteristics and relative advantages of the tender selected, as well as the name of the successful tenderer or the parties to the framework agreement.

The time taken to do so may under no circumstances exceed 15 days from receipt of the written enquiry.

However, contracting entities may decide that certain information on the contract award or the conclusion of the framework agreement or on admission to a dynamic purchasing system, referred to in the paragraph 1, is to be withheld where release of such information would impede law

enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, including the interests of the economic operator to whom the contract has been awarded, or might prejudice fair competition between economic operators.

3. Contracting entities which establish and operate a system of qualification shall inform applicants of their decision as to qualification within a period of six months.

If the decision will take longer than four months from the presentation of an application, the contracting entity shall inform the applicant, within two months of the application, of the reasons justifying the longer period and of the date by which his application will be accepted or refused.

4. Applicants whose qualification is refused shall be informed of this decision and the reasons for refusal as soon as possible and under no circumstances more than 15 days later than the date of the decision. The reasons shall be based on the criteria for qualification referred to in Article 53(2).

5. Contracting entities which establish and operate a system of qualification may bring the qualification of an economic operator to an end only for reasons based on the criteria for qualification referred to in Article 53(2). Any intention to bring qualification to an end shall be notified in writing to the economic operator beforehand, at least 15 days before the date on which qualification is due to end, together with the reason or reasons justifying the proposed action.

#### Article 50

#### Information to be stored concerning awards

1. Contracting entities shall keep appropriate information on each contract which shall be sufficient to permit them at a later date to justify decisions taken in connection with:

- (a) the qualification and selection of economic operators and the award of contracts;
- (b) the use of procedures without a prior call for competition by virtue of Article 40(3);
- (c) the non-application of Chapters III to VI of this Title by virtue of the derogations provided for in Chapter II of Title I and in Chapter II of this Title.

Contracting entities shall take appropriate steps to document the progress of award procedures conducted by electronic means.

2. The information shall be kept for at least four years from the date of award of the contract so that the contracting entity will be able, during that period, to provide the necessary information to the Commission if the latter so requests.



## CHAPTER VII

**Conduct of the procedure**

## Article 51

**General provisions**

1. For the purpose of selecting participants in their award procedures:

- (a) contracting entities having provided rules and criteria for the exclusion of tenderers or candidates in accordance with Article 54(1), (2) or (4) shall exclude economic operators which comply with such rules and meet such criteria;
- (b) they shall select tenderers and candidates in accordance with the objective rules and criteria laid down pursuant to Article 54;
- (c) in restricted procedures and in negotiated procedures with a call for competition, they shall where appropriate reduce in accordance with Article 54 the number of candidates selected pursuant to subparagraphs (a) and (b).

2. When a call for competition is made by means of a notice on the existence of a qualification system and for the purpose of selecting participants in award procedures for the specific contracts which are the subject of the call for competition, contracting entities shall:

- (a) qualify economic operators in accordance with the provisions of Article 53;
- (b) apply to such qualified economic operators those provisions of paragraph 1 that are relevant to restricted or negotiated procedures.

3. Contracting entities shall verify that the tenders submitted by the selected tenderers comply with the rules and requirements applicable to tenders and award the contract on the basis of the criteria laid down in Articles 55 and 57.

## Section 1

## Qualification and qualitative selection

## Article 52

**Mutual recognition concerning administrative, technical or financial conditions, and certificates, tests and evidence**

1. When selecting participants for a restricted or negotiated procedure, in reaching their decision as to qualification or when the criteria and rules are being updated, contracting entities shall not:

- (a) impose administrative, technical or financial conditions on certain economic operators which would not be imposed on others;
- (b) require tests or evidence which would duplicate objective evidence already available.

2. Where they request the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, contracting entities shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification.

Contracting entities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators.

3. For works and service contracts, and only in appropriate cases, the contracting entities may require, in order to verify the economic operator's technical abilities, an indication of the environmental management measures which the economic operator will be able to apply when carrying out the contract. In such cases, should the contracting entities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain environmental management standards, they shall refer to the EMAS or to environmental management standards based on the relevant European or international standards certified by bodies conforming to Community law or the relevant European or international standards concerning certification.

Contracting entities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators.

## Article 53

**Qualification systems**

1. Contracting entities which so wish may establish and operate a system of qualification of economic operators.

Contracting entities which establish or operate a system of qualification shall ensure that economic operators are at all times able to request qualification.

2. The system under paragraph 1 may involve different qualification stages.

It shall be operated on the basis of objective criteria and rules for qualification to be established by the contracting entity.

Where those criteria and rules include technical specifications, the provisions of Article 34 shall apply. The criteria and rules may be updated as required.

3. The criteria and rules for qualification referred to in paragraph 2 may include the exclusion criteria listed in Article 45 of Directive 2004/18/EC on the terms and conditions set out therein.

Where the contracting entity is a contracting authority within the meaning of Article 2(1)(a), those criteria and rules shall include the exclusion criteria listed in Article 45(1) of Directive 2004/18/EC.

4. Where the criteria and rules for qualification referred to in paragraph 2 include requirements relating to the economic and financial capacity of the economic operator, the latter may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator must prove to the contracting entity that these resources will be available to it throughout the period of the validity of the qualification system, for example by producing an undertaking by those entities to that effect.

Under the same conditions, a group of economic operators as referred to in Article 11 may rely on the capacity of participants in the group or of other entities.

5. Where the criteria and rules for qualification referred to in paragraph 2 include requirements relating to the technical and/or professional abilities of the economic operator, the latter may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator must prove to the contracting entity that those resources will be available to it throughout the period of the validity of the qualification system, for example by producing an undertaking by those entities to make the necessary resources available to the economic operator.

Under the same conditions, a group of economic operators referred to in Article 11 may rely on the abilities of participants in the group or of other entities.

6. The criteria and rules for qualification referred to in paragraph 2 shall be made available to economic operators on request. The updating of these criteria and rules shall be communicated to interested economic operators.

Where a contracting entity considers that the qualification system of certain other entities or bodies meets its requirements, it shall communicate to interested economic operators the names of such other entities or bodies.

7. A written record of qualified economic operators shall be kept; it may be divided into categories according to the type of contract for which the qualification is valid.

8. When establishing or operating a qualification system, contracting entities shall in particular observe the provisions of Article 41(3) concerning notices on the existence of a system of qualification, of Article 49(3), (4) and (5) concerning the information to be delivered to economic operators having applied for qualification, of Article 51(2) concerning the selection of participants when a call for competition is made by

means of a notice on the existence of a qualification system as well as the provisions of Article 52 on mutual recognition concerning administrative, technical or financial conditions, certificates, tests and evidence.

9. When a call for competition is made by means of a notice on the existence of a qualification system, tenderers in a restricted procedure or participants in a negotiated procedure shall be selected from the qualified candidates in accordance with such a system.

#### Article 54

#### Criteria for qualitative selection

1. Contracting entities which establish selection criteria in an open procedure shall do so in accordance with objective rules and criteria which are available to interested economic operators.

2. Contracting entities which select candidates for restricted or negotiated procedures shall do so according to objective rules and criteria which they have established and which are available to interested economic operators.

3. In restricted or negotiated procedures, the criteria may be based on the objective need of the contracting entity to reduce the number of candidates to a level which is justified by the need to balance the particular characteristics of the procurement procedure with the resources required to conduct it. The number of candidates selected shall, however, take account of the need to ensure adequate competition.

4. The criteria set out in paragraphs 1 and 2 may include the exclusion criteria listed in Article 45 of Directive 2004/18/EC on the terms and conditions set out therein.

Where the contracting entity is a contracting authority within the meaning of Article 2(1)(a), the criteria and rules referred to in paragraphs 1 and 2 of this Article shall include the exclusion criteria listed in Article 45(1) of Directive 2004/18/EC.

5. Where the criteria referred to in paragraphs 1 and 2 include requirements relating to the economic and financial capacity of the economic operator, the latter may where necessary and for a particular contract rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator shall prove to the contracting entity that the necessary resources will be available to it, for example by delivering an undertaking by those entities to that effect.

Under the same conditions, a group of economic operators as referred to in Article 11 may rely on the capacities of participants in the group or of other entities.

6. Where the criteria referred to in paragraphs 1 and 2 include requirements relating to the technical and/or professional abilities of the economic operator, the latter may where necessary and for a particular contract rely on the abilities of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator must prove to the contracting entity that for the performance of the contract those resources will be available to it, for example by delivering an undertaking by those entities to make the necessary resources available to the economic operator.

Under the same conditions, a group of economic operators as referred to in Article 11 may rely on the abilities of participants in the group or of other entities.

## Section 2

### Award of the contract

#### Article 55

#### **Contract award criteria**

1. Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, the criteria on which the contracting entities shall base the award of contracts shall:

- (a) where the contract is awarded on the basis of the most economically advantageous tender from the point of view of the contracting entity, be various criteria linked to the subject-matter of the contract in question, such as delivery or completion date, running costs, cost-effectiveness, quality, aesthetic and functional characteristics, environmental characteristics, technical merit, after-sales service and technical assistance, commitments with regard to parts, security of supply, and price or otherwise
- (b) the lowest price only.

2. Without prejudice to the provisions of the third subparagraph, in the case referred to in paragraph 1(a), the contracting entity shall specify the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.

Those weightings can be expressed by providing for a range with an appropriate maximum spread.

Where, in the opinion of the contracting entity, weighting is not possible for demonstrable reasons, the contracting entity shall indicate the criteria in descending order of importance.

The relative weighting or order of importance shall be specified, as appropriate, in the notice used as a means of calling for competition, in the invitation to confirm the interest referred to in Article 47(5), in the invitation to tender or to negotiate, or in the specifications.

## Article 56

### **Use of electronic auctions**

1. Member States may provide that contracting entities may use electronic auctions.
2. In open, restricted or negotiated procedures with a prior call for competition, the contracting entities may decide that the award of a contract shall be preceded by an electronic auction when the contract specifications can be established with precision.

In the same circumstances, an electronic auction may be held on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 15.

The electronic auction shall be based:

- (a) either solely on prices when the contract is awarded to the lowest price,
- (b) or on prices and/or on the new values of the features of the tenders indicated in the specification, when the contract is awarded to the most economically advantageous tender.

3. Contracting entities which decide to hold an electronic auction shall state that fact in the notice used as a means of calling for competition.

The specifications shall include, *inter alia*, the following details:

- (a) the features whose values will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;
- (b) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;
- (c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;
- (d) the relevant information concerning the electronic auction process;
- (e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
- (f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

4. Before proceeding with the electronic auction, contracting entities shall make a full initial evaluation of the tenders in accordance with the award criterion/criteria set and with the weighting fixed for them.

All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and/or new values; the invitation shall contain all relevant information concerning individual connection to the electronic equipment being used and shall state the date and time of the start of the electronic auction. The electronic auction may take place in a number of successive phases. The electronic auction may not start sooner than two working days after the date on which invitations are sent out.

5. When the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied by the outcome of a full evaluation of the relevant tender carried out in accordance with the weighting provided for in the first subparagraph of Article 55(2).

The invitation shall also state the mathematical formula to be used in the electronic auction to determine automatic rerankings on the basis of the new prices and/or new values submitted. That formula shall incorporate the weighting of all the criteria established to determine the most economically advantageous tender, as indicated in the notice used as a means of calling for competition or in the specifications; for that purpose, any ranges shall, however, be reduced beforehand to a specified value.

Where variants are authorised, a separate formula shall be provided for each variant.

6. Throughout each phase of an electronic auction the contracting entities shall instantaneously communicate to all tenderers sufficient information to enable them to ascertain their relative rankings at any moment. They may also communicate other information concerning other prices or values submitted, provided that that is stated in the specifications. They may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.

7. Contracting entities shall close an electronic auction in one or more of the following manners:

- (a) in the invitation to take part in the auction they shall indicate the date and time fixed in advance;
- (b) when they receive no more new prices or new values which meet the requirements concerning minimum differences. In that event, the contracting entities shall state in the invitation to take part in the auction the time which they will allow to elapse after receiving the last submission before they close the electronic auction;
- (c) when the number of phases in the auction, fixed in the invitation to take part in the auction, has been completed.

When the contracting entities have decided to close an electronic auction in accordance with subparagraph (c), possibly in combination with the arrangements laid down in subparagraph (b), the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

8. After closing an electronic auction the contracting entities shall award the contract in accordance with Article 55 on the basis of the results of the electronic auction.

9. Contracting entities may not have improper recourse to electronic auctions nor may they use them in such a way as to prevent, restrict or distort competition or to change the subject-matter of the contract, as defined in the notice used as a means of calling for competition and in the specification.

#### Article 57

#### Abnormally low tenders

1. If, for a given contract, tenders appear to be abnormally low in relation to the goods, works or services, the contracting entity shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant.

Those details may relate in particular to:

- (a) the economics of the manufacturing process, of the services provided and of the construction method;
- (b) the technical solutions chosen and/or any exceptionally favourable conditions available to the tenderer for the supply of the goods or services or for the execution of the work;
- (c) the originality of the supplies, services or work proposed by the tenderer;
- (d) compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed;
- (e) the possibility of the tenderer obtaining State aid.

2. The contracting entity shall verify those constituent elements by consulting the tenderer, taking account of the evidence supplied.

3. Where a contracting entity establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender can be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting entity, that the aid in question was granted legally. Where the contracting entity rejects a tender in these circumstances, it shall inform the Commission of that fact.

## Section 3

Tenders comprising products originating in third countries and relations with those countries

## Article 58

**Tenders comprising products originating in third countries**

1. This Article shall apply to tenders covering products originating in third countries with which the Community has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for Community undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Community or its Member States in respect of third countries.

2. Any tender submitted for the award of a supply contract may be rejected where the proportion of the products originating in third countries, as determined in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code<sup>(1)</sup>, exceeds 50 % of the total value of the products constituting the tender. For the purposes of this Article, software used in telecommunications network equipment shall be regarded as products.

3. Subject to the second subparagraph, where two or more tenders are equivalent in the light of the contract award criteria defined in Article 55, preference shall be given to those tenders which may not be rejected pursuant to paragraph 2. The prices of those tenders shall be considered equivalent for the purposes of this Article, if the price difference does not exceed 3 %.

However, a tender shall not be preferred to another pursuant to the first subparagraph where its acceptance would oblige the contracting entity to acquire equipment having technical characteristics different from those of existing equipment, resulting in incompatibility, technical difficulties in operation and maintenance, or disproportionate costs.

4. For the purposes of this Article, those third countries to which the benefit of the provisions of this Directive has been extended by a Council Decision in accordance with paragraph 1 shall not be taken into account for determining the proportion, referred to in paragraph 2, of products originating in third countries.

5. The Commission shall submit an annual report to the Council, commencing in the second half of the first year following the entry into force of this Directive, on progress made in multilateral or bilateral negotiations regarding access for Community undertakings to the markets of third countries in the fields covered by this Directive, on any result which

such negotiations may have achieved, and on the implementation in practice of all the agreements which have been concluded.

The Council, acting by a qualified majority on a proposal from the Commission, may amend the provisions of this Article in the light of such developments.

## Article 59

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

1. Member States shall inform the Commission of any general difficulties, in law or in fact, encountered and reported by their undertakings in securing the award of service contracts in third countries.

2. The Commission shall report to the Council before 31 December 2005, and periodically thereafter, on the opening up of service contracts in third countries and on progress in negotiations with these countries on this subject, particularly within the framework of the WTO.

3. The Commission shall endeavour, by approaching the third country concerned, to remedy any situation whereby it finds, on the basis either of the reports referred to in paragraph 2 or of other information, that, in the context of the award of service contracts, a third country:

- (a) does not grant Community undertakings effective access comparable to that granted by the Community to undertakings from that country; or
- (b) does not grant Community undertakings national treatment or the same competitive opportunities as are available to national undertakings; or
- (c) grants undertakings from other third countries more favourable treatment than Community undertakings.

4. Member States shall inform the Commission of any difficulties, in law or in fact, encountered and reported by their undertakings and which are due to the non-observance of the international labour law provisions listed in Annex XXIII when these undertakings have tried to secure the award of contracts in third countries.

5. In the circumstances referred to in paragraphs 3 and 4, the Commission may at any time propose that the Council decide to suspend or restrict, over a period to be laid down in the decision, the award of service contracts to:

- (a) undertakings governed by the law of the third country in question;

<sup>(1)</sup> OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council (OJ L 311, 12.12.2000, p. 17).

(b) undertakings affiliated to the undertakings specified in point (a) and having their registered office in the Community but having no direct and effective link with the economy of a Member State;

(c) undertakings submitting tenders which have as their subject-matter services originating in the third country in question.

The Council shall act, by qualified majority, as soon as possible.

The Commission may propose these measures on its own initiative or at the request of a Member State.

6. This Article shall be without prejudice to the commitments of the Community in relation to third countries ensuing from international agreements on public procurement, particularly within the framework of the WTO.

### TITLE III

#### RULES GOVERNING SERVICE DESIGN CONTESTS

##### Article 60

##### General provision

1. The rules for the organisation of a design contest shall be in conformity with paragraph 2 of this Article and with Articles 61 and 63 to 66 and shall be made available to those interested in participating in the contest.

2. The admission of participants to design contests shall not be limited:

- (a) by reference to the territory or part of the territory of a Member State;
- (b) on the ground that, under the law of the Member State in which the contest is organised, they would have been required to be either natural or legal persons.

##### Article 61

##### Thresholds

1. This Title shall apply to design contests organised as part of a procurement procedure for services whose estimated value, net of VAT, is equal to or greater than EUR 499 000. For the purposes of this paragraph, 'threshold' means the estimated value net of VAT of the service contract, including any possible prizes and/or payments to participants.

2. This Title shall apply to all design contests where the total amount of contest prizes and payments to participants is equal to or greater than EUR 499 000.

For the purposes of this paragraph, 'threshold' means the total amount of the prizes and payments, including the estimated value net of VAT of the service contract which might subsequently be concluded under Article 40(3) if the contracting entity does not exclude such an award in the contest notice.

##### Article 62

##### Design contests excluded

This Title shall not apply to:

(1) contests which are organised in the same cases as referred to in Articles 20, 21 and 22 for service contracts;

(2) design contests organised for the pursuit, in the Member State concerned, of an activity to which the applicability of paragraph 1 of Article 30 has been established by a Commission decision or has been deemed applicable pursuant to paragraph 4, second or third subparagraph, or to paragraph 5, fourth subparagraph, of that Article.

##### Article 63

##### Rules on advertising and transparency

1. Contracting entities which wish to organise a design contest shall call for competition by means of a contest notice. Contracting entities which have held a design contest shall make the results known by means of a notice. The call for competition shall contain the information referred to in Annex XVIII and the notice of the results of a design contest shall contain the information referred to in Annex XIX in accordance with the format of standard forms adopted by the Commission in accordance with the procedure in Article 68(2).

The notice of the results of a design contest shall be forwarded to the Commission within two months of the closure of the design contest and under conditions to be laid down by the Commission in accordance with the procedure referred to in Article 68(2). In this connection, the Commission shall respect any sensitive commercial aspects which the contracting entities may point out when forwarding this information, concerning the number of projects or plans received, the identity of the economic operators and the prices tendered.

2. Article 44(2) to (8) shall also apply to notices relating to design contests.

##### Article 64

##### Means of communication

1. Article 48(1), (2) and (4) shall apply to all communications relating to contests.

2. Communications, exchanges and the storage of information shall be such as to ensure that the integrity and the confidentiality of all information communicated by the participants in a contest are preserved and that the jury ascertains the contents of plans and projects only after the expiry of the time-limit for their submission.

3. The following rules shall apply to the devices for the electronic receipt of plans and projects:

- (a) the information relating to the specifications which is necessary for the presentation of plans and projects by electronic means, including encryption, shall be available to the parties concerned. In addition, the devices for the electronic receipt of plans and projects shall comply with the requirements of Annex XXIV;
- (b) Member States may introduce or maintain voluntary accreditation schemes aiming at enhanced levels of certification service provision for such devices.

#### Article 65

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

1. When organising design contests, contracting entities shall apply procedures which are adapted to the provisions of this Directive.

2. Where design contests are restricted to a limited number of participants, contracting entities shall establish clear and non-discriminatory selection criteria. In any event, the number

of candidates invited to participate shall be sufficient to ensure genuine competition.

3. The jury shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required of participants in a contest, at least a third of the jury members shall have the same qualification or an equivalent qualification.

#### Article 66

### Decisions of the jury

1. The jury shall be autonomous in its decisions or opinions.

2. It shall examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.

3. It shall record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points which may need clarification.

4. Anonymity must be observed until the jury has reached its opinion or decision.

5. Candidates may be invited, if need be, to answer questions which the jury has recorded in the minutes to clarify any aspects of the projects.

6. Complete minutes shall be drawn up of the dialogue between jury members and candidates.

## TITLE IV

### STATISTICAL OBLIGATIONS, EXECUTORY POWERS AND FINAL PROVISIONS

#### Article 67

### Statistical obligations

1. Member States shall ensure, in accordance with the arrangements to be laid down under the procedure provided for in Article 68(2), that the Commission receives every year a statistical report concerning the total value, broken down by Member State and by category of activity to which Annexes I to X refer, of the contracts awarded below the thresholds set out in Article 16 but which would be covered by this Directive were it not for those thresholds.

2. As regards the categories of activity to which Annexes II, III, V, IX and X refer, Member States shall ensure that the Commission receives a statistical report on contracts awarded no later than 31 October 2004 for the previous year, and before 31 October of each year thereafter, in accordance with arrangements to be laid down under the procedure provided for in Article 68(2). The statistical report shall contain the

information required to verify the proper application of the Agreement.

The information required under the first subparagraph shall not include information concerning contracts for the R & D services listed in category 8 of Annex XVII A, for telecommunications services listed in category 5 of Annex XVII A whose CPV positions are equivalent to the CPC reference numbers 7524, 7525 and 7526, or for the services listed in Annex XVII B.

3. The arrangements under paragraphs 1 and 2 shall be laid down in such a way as to ensure that:

- (a) in the interests of administrative simplification, contracts of lesser value may be excluded, provided that the usefulness of the statistics is not jeopardised;
- (b) the confidential nature of the information provided is respected.

## Article 68

**Committee procedure**

1. The Commission shall be assisted by the Advisory Committee for Public Contracts instituted by Article 1 of Council Decision 71/306/EEC<sup>(1)</sup> (hereinafter referred to as 'the Committee').

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. The Committee shall adopt its rules of procedure.

## Article 69

**Revision of the thresholds**

1. The Commission shall verify the thresholds established in Article 16 every two years from 30 April 2004, and shall, if necessary with regard to the second subparagraph, revise them in accordance with the procedure provided for in Article 68(2).

The calculation of the value of these thresholds shall be based on the average daily value of the euro, expressed in SDR, over the 24 months terminating on the last day of August preceding the revision with effect from 1 January. The value of the thresholds thus revised shall, where necessary, be rounded down to the nearest thousand euro so as to ensure that the thresholds in force provided for by the Agreement, expressed in SDR, are observed.

2. At the same time as performing the revision under paragraph 1, the Commission shall, in accordance with the procedure provided for in Article 68(2), align the thresholds laid down in Article 61 (design contests) with the revised threshold applicable to service contracts.

The values of the thresholds laid down in accordance with paragraph 1 in the national currencies of Member States not participating in Monetary Union shall, in principle, be revised every two years from 1 January 2004. The calculation of such values shall be based on the average daily values of those currencies, expressed in euro, over the 24 months terminating on the last day of August preceding the revision with effect from 1 January.

3. The revised thresholds referred to in paragraph 1, their values in national currencies and the aligned thresholds referred to in paragraph 2 shall be published by the Commission in the *Official Journal of the European Union* at the beginning of the month of November following their revision.

<sup>(1)</sup> OJ L 185, 16.8.1971, p. 15. Decision as amended by Decision 77/63/EEC (OJ L 13, 15.1.1977, p. 15).

## Article 70

**Amendments**

The Commission may amend, in accordance with the procedure provided for in Article 68(2):

- (a) the list of contracting entities in Annexes I to X so that they fulfil the criteria set out in Articles 2 to 7;
- (b) the procedures for the drawing-up, transmission, receipt, translation, collection and distribution of the notices referred to in Articles 41, 42, 43 and 63;
- (c) the procedures for specific references to particular positions in the CPV nomenclature in the notices;
- (d) the reference numbers in the nomenclature set out in Annex XVII, in so far as this does not change the material scope of the Directive, and the procedures for reference in the notices to particular positions in this nomenclature within the categories of services listed in the Annex;
- (e) the reference numbers in the nomenclature set out in Annex XII, insofar as this does not change the material scope of the Directive, and the procedures for reference to particular positions of this nomenclature in the notices;
- (f) Annex XI;
- (g) the procedure for sending and publishing data referred to in Annex XX, on grounds of technical progress or for administrative reasons;
- (h) the technical details and characteristics of the devices for electronic receipt referred to in points (a), (f) and (g) of Annex XXIV;
- (i) in the interests of administrative simplification as provided for in Article 67(3), the procedures for the use, drawing-up, transmission, receipt, translation, collection and distribution of the statistical reports referred to in Article 67(1) and (2);
- (j) the technical procedures for the calculation methods set out in Article 69(1) and (2), second subparagraph.

## Article 71

**Implementation of the Directive**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 January 2006 at the latest. They shall forthwith inform the Commission thereof.



Member States may avail themselves of an additional period of up to 35 months after expiry of the time limit provided for in the first subparagraph for the application of the provisions necessary to comply with Article 6 of this Directive.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such references shall be laid down by Member States.

The provisions of Article 30 are applicable from 30 April 2004.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### Article 72

##### Monitoring mechanisms

In conformity with 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<sup>(1)</sup>, Member States shall ensure implementation of this Directive by effective, available and transparent mechanisms.

For this purpose they may, among other things, appoint or establish an independent body.

#### Article 73

##### Repeal

Directive 93/38/EEC is hereby repealed, without prejudice to the obligations of the Member States concerning the time limits for transposition into national law set out in Annex XXV.

References to the repealed Directive shall be construed as being made to this Directive and shall be read in accordance with the correlation table in Annex XXVI.

#### Article 74

##### Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

#### Article 75

##### Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 31 March 2004.

*For the European Parliament*

*The President*

P. COX

*For the Council*

*The President*

D. ROCHE

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<sup>(1)</sup> OJ L 76, 23.03.1992, p. 14. Directive amended by the 1994 Act of Accession (OJ 241, 29.8.1994, p. 228).

## ANNEX I

## CONTRACTING ENTITIES IN THE SECTORS OF TRANSPORT OR DISTRIBUTION OF GAS OR HEAT

**Belgium**

- Distrigaz/NV Distrigaz.
- Local authorities, or associations of local authorities, for this part of their activities.

**Denmark**

- Entities distributing gas or heat on the basis of an authorisation pursuant to § 4 of the lov om varmforsyning, see Consolidation Act No 772 of 24 July 2000.
- Entities transporting gas on the basis of a licence pursuant to § 10 of lov nr. 449 om naturgasforsyning of 31 May 2000.
- Entities transporting gas on the basis of an authorisation pursuant to bekendtgørelse nr. 141 om rørledningsanlæg på dansk kontinentalsokkelområde til transport af kulbrinter of 13 March 1974.

**Germany**

- Local authorities, public law bodies or associations of public law bodies or State-controlled undertakings supplying gas or heat to others or operating a general supply network pursuant to Article 2(3) of the Gesetz über die Elektrizitäts- und Gasversorgung (Energiewirtschaftsgesetz) of 24 April 1998, as last amended on 10 November 2001.

**Greece**

- 'Δημόσια Επιχείρηση Αερίου (Δ.Ε.Π.Α.) Α.Ε.', which transports and distributes gas in accordance with Law No 2364/95, as amended by Laws Nos 2528/97, 2593/98 and 2773/99.

**Spain**

- Enagas, S.A.
- Bahía de Bizkaia Gas, S.L.
- Gasoducto Al Andalus, S.A.
- Gasoducto de Extremadura, S.A.
- Infraestructuras Gasistas de Navarra, S.A.
- Regasificadora del Noroeste, S.A.
- Sociedad de Gas de Euskadi, S.A.
- Transportista Regional de Gas, S.A.
- Unión Fenosa de Gas, S.A.
- Bilbogas, S.A.
- Compañía Española de Gas, S.A.
- Distribución y Comercialización de Gas de Extramadura, S.A.
- Distribuidora Regional de Gas, S.A.
- Donostigas, S.A.
- Gas Alicante, S.A.

- Gas Andalucía, S.A.
- Gas Aragón, S.A.
- Gas Asturias, S.A.
- Gas Castilla – La Mancha, S.A.
- Gas Directo, S.A.
- Gas Figueres, S.A.
- Gas Galicia SDG, S.A.
- Gas Hernani, S.A.
- Gas Natural de Cantabria, S.A.
- Gas Natural de Castilla y León, S.A.
- Gas Natural SDG, S.A.
- Gas Natural de Alava, S.A.
- Gas Natural de La Coruña, S.A.
- Gas Natural de Murcia SDG, S.A.
- Gas Navarra, S.A.
- Gas Pasaia, S.A.
- Gas Rioja, S.A.
- Gas y Servicios Mérida, S.L.
- Gesa Gas, S.A.
- Meridional de Gas, S.A.U.
- Sociedad del Gas Euskadi, S.A.
- Tolosa Gas, S.A.

#### **France**

- Société nationale des gaz du Sud-Ouest, transporting gas.
- Gaz de France, set up and operated pursuant to loi n° 46-628 sur la nationalisation de l'électricité et du gaz of 8 April 1946, as amended.
- Entities distributing electricity mentioned in Article 23 of loi n° 46-628 sur la nationalisation de l'électricité et du gaz of 8 April 1946, as amended.
- Compagnie française du méthane, transporting gas.
- Local authorities or associations of local authorities, distributing heat.

#### **Ireland**

- Bord Gáis Éireann
- Other entities that may be licensed to undertake the activity of natural gas distribution or transmission by the Commission for Energy Regulation pursuant to the provisions of the Gas Acts 1976 to 2002.

- Entities licensed under the Electricity Regulation Act 1999 which as operators of 'Combined Heat and Power Plants' are engaged in the distribution of heat.

### Italy

- SNAM Rete Gas s.p.a., SGM and EDISON T&S, transporting gas.
- Entities distributing gas governed by the consolidated text of the laws on the direct assumption of control of public services by local authorities and provinces, approved by Royal Decree No. 2578 of 15 October 1925 and by Presidential Decree No. 902 of 4 October 1986.
- Entities distributing heat to the public as referred to in Article 10 of Law No. 308 of 29 May 1982 — Norme sul contenimento dei consumi energetici, lo sviluppo delle fonti rinnovabili di energia, l'esercizio di centrali elettriche alimentate con combustibili dagli idrocarburi.
- Local authorities, or associations of local authorities, distributing heat to the public.

### Luxembourg

- Société de transport de gaz SOTEG S.A.
- Gaswierk Esch-Uelzecht S.A.
- Service industriel de la Ville de Dudelange.
- Service industriel de la Ville de Luxembourg.
- Local authorities or associations formed by those local authorities responsible for the distribution of heat.

### Netherlands

- Entities producing, transporting or distributing gas on the basis of a licence (vergunning) granted by the municipal authorities pursuant to the Gemeentewet.
- Municipal or provincial authorities transporting or distributing gas pursuant to the Gemeentewet or the Provinciewet.
- Local authorities or associations of local authorities distributing heat to the public.

### Austria

- Entities authorised to transport or distribute gas pursuant to the Energiewirtschaftsgesetz, dRGBL. I, pp. 1451-1935 or the Gaswirtschaftsgesetz, BGBL. I No 121/2000, as amended.
- Entities authorised to transport or distribute heat pursuant to the Gewerbeordnung, BGBL. No 194/1994, as amended.

### Portugal

- Entities transporting or distributing gas pursuant to Article 1 of Decree-Law No 8/2000 of 8 February 2000, with the exception of subparagraphs (ii) and (iii) of paragraph 3(b) of that Article.

### Finland

- Public or other entities operating a gas network transport system and transporting or distributing gas under a licence pursuant to Chapter 3(1) or Chapter 6(1) of the maakaasumarkkinalaki/naturgasmarknadslagen (508/2000); and municipal entities or public enterprises producing, transporting or distributing heat or providing heat to networks.

### Sweden

- Entities transporting or distributing gas or heat on the basis of a concession pursuant to lagen (1978:160) om vissa rörledninggar.

**United Kingdom**

- A public gas transporter as defined in section 7(1) of the Gas Act 1986.
  - A person declared to be an undertaker for the supply of gas under Article 8 of the Gas (Northern Ireland) Order 1996.
  - A local authority which provides or operates a fixed network which provides or will provide a service to the public in connection with the production, transport or distribution of heat.
  - A person licensed under section 6(1)(a) of the Electricity Act 1989 whose licence includes the provisions referred to in section 10(3) of that Act.
  - The Northern Ireland Housing Executive.
-

## ANNEX II

**CONTRACTING ENTITIES IN THE SECTORS OF PRODUCTION, TRANSPORT OR DISTRIBUTION OF ELECTRICITY****Belgium**

- SA Electrabel/NV Electrabel.
- Local authorities and associations of local authorities, for this part of their activities.
- SA Société de Production d'Electricité/NV Elektriciteitsproductie Maatschappij.

**Denmark**

- Entities producing electricity on the basis of a licence pursuant to § 10 of the lov om elforsyning, see Consolidation Act No 767 of 28 August 2001.
- Entities transporting electricity on the basis of a licence pursuant to § 19 of the lov om elforsyning, see Consolidation Act No 767 of 28 August 2001.
- Entities undertaking responsibility for the system on the basis of a licence pursuant to § 27 of the lov om elforsyning, see Consolidation Act No 767 of 28 August 2001.

**Germany**

- Local authorities, public law bodies or associations of public law bodies or State undertakings, supplying electricity to other undertakings or operating a general supply network pursuant to Article 2(3) of the Gesetz über die Elektrizitäts- und Gasversorgung (Energiewirtschaftsgesetz) of 24 April 1998, as last amended on 10 November 2001.

**Greece**

- 'Δημόσια Επιχείρηση Ηλεκτρισμού Α.Ε.', set up by Law No 1468/1950 περί ιδρύσεως της ΔΕΗ and operates in accordance with Law No 2773/1999 and Presidential Decree No 333/1999.
- The company 'ΔΙΑΧΕΙΡΙΣΤΗΣ ΕΛΛΗΝΙΚΟΥ ΣΥΣΤΗΜΑΤΟΣ ΜΕΤΑΦΟΡΑΣ ΗΛΕΚΤΡΙΚΗΣ ΕΝΕΡΓΕΙΑΣ Α.Ε.' known as 'ΔΙΑΧΕΙΡΙΣΤΗΣ ΤΟΥ ΣΥΣΤΗΜΑΤΟΣ ή ΔΕΣΜΗΕ', set up pursuant to Article 14 of Law No 2773/1999 and Presidential Decree No 328/2000 (Greek Official Gazette 268).

**Spain**

- Red Eléctrica de España, S.A.
- Endesa, S.A.
- Iberdrola, S.A.
- Unión Fenosa, S.A.
- Hidroeléctrica del Cantábrico, S.A.
- Electra del Viesgo, S.A.
- Otras entidades encargadas de la producción, transporte y distribución de electricidad en virtud de la Ley 54/1997, de 27 de noviembre, del Sector eléctrico y su normativa de desarrollo.

**France**

- Électricité de France, set up and operating pursuant to loi n° 46-628 sur la nationalisation de l'électricité et du gaz of 8 April 1946, as amended.
- Entities distributing electricity and referred to in Article 23 of loi n° 46-628 sur la nationalisation de l'électricité et du gaz of 8 April 1946, as amended.
- Compagnie nationale du Rhône.

**Ireland**

- The Electricity Supply Board.
- ESB Independent Energy [ESBIE — electricity supply].
- Synergen Ltd. [electricity generation].
- Viridian Energy Supply Ltd. [electricity supply].
- Huntstown Power Ltd. [electricity generation].
- Bord Gáis Éireann [electricity supply].
- Electricity Suppliers and Generators licensed under the Electricity Regulation Act 1999.

**Italy**

- Companies in the Gruppo Enel authorised to produce, transmit and distribute electricity within the meaning of Legislative Decree No 79 of 16 March 1999, as subsequently amended and supplemented.
- Other undertakings operating on the basis of concessions under Legislative Decree No 79 of 16 March 1999.

**Luxembourg**

- Compagnie grand-ducale d'électricité de Luxembourg (CEGEDEL), producing or distributing electricity pursuant to the convention concernant l'établissement et l'exploitation des réseaux de distribution d'énergie électrique dans le Grand-Duché du Luxembourg of 11 November 1927, approved by the Law of 4 January 1928.
- Local authorities responsible for the transport or distribution of electricity.
- Société électrique de l'Our (SEO).
- Syndicat de communes SIDOR.

**Netherlands**

- Entities distributing electricity on the basis of a licence (vergunning) granted by the provincial authorities pursuant to the Provinciewet.

**Austria**

- Entities operating a transmission or distribution network pursuant to the Elektrizitätswirtschafts- und Organisationsgesetz, BGBl. I No 143/1998, as amended, or pursuant to the Elektrizitätswirtschafts(wesen)gesetze of the nine Länder.

**Portugal**

- BASIC LEGISLATION
  - ELECTRICIDADE DE PORTUGAL (EDP), set up pursuant to Decree-Law No 182/95 of 27 July 1995, as amended by Decree-Law No 56/97 of 14 March 1997.
  - EMPRESA ELÉCTRICA DOS AÇORES (EDA), operating pursuant to Regional Legislative Decree No 15/96/A of 1 August 1996.
  - EMPRESA DE ELECTRICIDADE DA MADEIRA (EEM), operating pursuant to Decree-Law No 99/91 and Decree-Law No 100/91, both of 2 March 1991.

— PRODUCTION OF ELECTRICITY

- Entities producing electricity pursuant to Decree-Law No 183/95 of 27 July 1995, as amended by Decree-Law No 56/97 of 14 March 1997, as further amended by Decree-Law No 198/2000 of 24 August 2000.
- Independent producers of electricity pursuant to Decree-Law No 189/88 of 27 May 1988, as amended by Decree-Laws No 168/99 of 18 May 1999, No 313/95 of 24 November 1995, No 312/2001 of 10 December 2001 and No 339-C/2001 of 29 December 2001.

— TRANSPORT OF ELECTRICITY

- Entities transporting electricity pursuant to Decree-Law No 185/95 of 27 July 1995, as amended by Decree-Law No 56/97 of 14 March 1997.

— DISTRIBUTION OF ELECTRICITY

- Entities distributing electricity pursuant to Decree-Law No 184/95 of 27 July 1995, as amended by Decree-Law No 56/97 of 14 March 1997, and pursuant to Decree-Law No 344-B/82 of 1 September 1982, as amended by Decree-Law No.297/86 of 19 September 1986 and by Decree-Law No 341/90 of 30 October 1990 and Decree-Law No 17/92 of 5 February 1992.

**Finland**

- Municipal entities and public enterprises producing electricity and entities responsible for the maintenance of electricity transport or distribution networks and for transporting electricity or for the electricity system under a licence pursuant to Section 4 or 16 of the sähkömarkkinalakisähkömarkkinalaki/ elmarknadslagen (386/1995).

**Sweden**

- Entities transporting or distributing electricity on the basis of a concession pursuant to ellagen (1997:857).

**United Kingdom**

- A person licensed under section 6 of the Electricity Act 1989.
  - A person licensed under Article 10(1) of the Electricity (Northern Ireland) Order 1992.
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## ANNEX III

**CONTRACTING ENTITIES IN THE SECTORS OF PRODUCTION, TRANSPORT OR DISTRIBUTION OF DRINKING WATER****Belgium**

- Aqinter
- Local authorities and associations of local authorities, for this part of their activities.
- Société wallonne des Eaux
- Vlaams Maatschappij voor Watervoorziening

**Denmark**

- Entities supplying water as defined in § 3(3) of lov bekendtgørelse nr. 130 om vandforsyning m.v. of 26 February 1999.

**Germany**

- Entities producing or distributing water pursuant to the Eigenbetriebsverordnungen or Eigenbetriebsgesetze of the Länder (public utility companies).
- Entities producing or distributing water pursuant to the Gesetze über die kommunale Gemeinschaftsarbeit oder Zusammenarbeit of the Länder.
- Entities producing water pursuant to the Gesetz über Wasser- und Bodenverbände of 12 February 1991, as last amended on 15 May 2002.
- Publicly-owned companies producing or distributing water pursuant to the Kommunalgesetze, in particular the Gemeindeverordnungen of the Länder.
- Undertakings set up pursuant to the Aktiengesetz of 6 September 1965, as last amended on 19 July 2002, or the GmbH-Gesetz of 20 April 1892, as last amended on 19 July 2002, or having the legal status of a Kommanditgesellschaft (limited partnership), producing or distributing water on the basis of a special contract with regional or local authorities.

**Greece**

- 'Εταιρεία Υδρεύσεως και Αποχετεύσεως Πρωτευούσης Α.Ε.' ('Ε.Υ.Δ.Α.Π.' or 'Ε.Υ.Δ.Α.Π. Α.Ε.'). The legal status of the company is governed by the provisions of Consolidated Law No 2190/1920, Law No 2414/1996 and additionally by the provisions of Law No 1068/80 and Law No 2744/1999.
- 'Εταιρεία Υδρευσης και Αποχέτευσης Θεσσαλονίκης Α.Ε.' ('Ε.Υ.Α.Θ. Α.Ε.') governed by the provisions of Law No 2937/2001 (Greek Official Gazette 169 Α') and of Law No 2651/1998 (Greek Official Gazette 248 Α').
- 'Δημοτική Επιχείρηση Υδρευσης και Αποχέτευσης Μείζονος Περιοχής Βόλου' ('ΔΕΥΑΜΒ'), which operates pursuant to Law No 890/1979.
- 'Δημοτικές Επιχειρήσεις Υδρευσης — Αποχέτευσης', which produce and distribute water pursuant to Law No 1069/80 of 23 August 1980.
- 'Σύνδεσμοι Υδρευσης', which operate pursuant to Presidential Decree No 410/1995, in accordance with the Κώδικος Δήμων και Κοινοτήτων.
- 'Δήμοι και Κοινότητες', which operate pursuant to Presidential Decree No 410/1995, in accordance with the Κώδικος Δήμων και Κοινοτήτων.

**Spain**

- Mancomunidad de Canales de Taibilla.

- Otras entidades públicas integradas o dependientes de las Comunidades Autónomas y de las Corporaciones locales que actúan en el ámbito de la distribución de agua potable.
- Otras entidades privadas que tienen concedidos derechos especiales o exclusivos por las Corporaciones locales en el ámbito de la distribución de agua potable.

**France**

- Regional or local authorities and public local bodies producing or distributing drinking water.

**Ireland**

- Entities producing or distributing water pursuant to the Local Government [Sanitary Services] Act 1878 to 1964.

**Italy**

- Bodies responsible for managing the various stages of the water distribution service under the consolidated text of the laws on the direct assumption of control of public services by local authorities and provinces, approved by Royal Decree No. 2578 of 15 October 1925, Presidential Decree No. 902 of 4 October 1986 and Legislative Decree No. 267 setting out the consolidated text of the laws on the structure of local authorities, with particular reference to Articles 112 to 116.
- Ente Autonomo Acquedotto Pugliese set up by Royal Decree-Law No. 2060 of 19 October 1919.
- Ente Acquedotti Siciliani set up by Regional Law No. 2/2 of 4 September 1979 and Regional Law No. 81 of 9 August 1980.
- Ente Sardo Acquedotti e Fognature set up by Law No. 9 of 5 July 1963.

**Luxembourg**

- Departments of the local authorities responsible for water distribution.
- Associations of local authorities producing or distributing water, set up pursuant to the loi concernant la création des syndicats de communes of 23 February 2001, as amended and supplemented by the Law of 23 December 1958 and by the Law of 29 July 1981, and pursuant to the loi ayant pour objet le renforcement de l'alimentation en eau potable du Grand-Duché du Luxembourg à partir du réservoir d'Esch-sur-Sûre of 31 July 1962.

**Netherlands**

- Entities producing or distributing water according to the Waterleidingwet.

**Austria**

- Local authorities and associations of local authorities producing, transporting or distributing drinking water pursuant to the Wasserversorgungsgesetze of the nine Länder.

**Portugal**

- INTERMUNICIPAL SYSTEMS — Undertakings involving the State or other public entities, with a majority shareholding, and private undertakings, pursuant to Decree-Law No 379/93 of 5 November 1993. Direct administration by the State is permissible.
- MUNICIPAL SYSTEMS — Local authorities, associations of local authorities, local authority services, undertakings in which all or a majority of the capital is publicly owned or private undertakings pursuant to Decree-Law No 379/93 of 5 November 1993 and Law No 58/98 of 18 August 1998.

**Finland**

- Water supply authorities coming under Section 3 of the vesihuoltolaki/lagen om vattentjänster (119/2001).

**Sweden**

- Local authorities and municipal companies producing, transporting or distributing drinking water pursuant to lagen (1970:244) om allmänna vatten- och avloppsanläggningar.

**United Kingdom**

- A company holding an appointment as a water undertaker or a sewerage undertaker under the Water Industry Act 1991.
  - A water and sewerage authority established by section 62 of the Local Government etc (Scotland) Act 1994.
  - The Department for Regional Development (Northern Ireland).
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## ANNEX IV

## CONTRACTING ENTITIES IN THE FIELD OF RAIL SERVICES

**Belgium**

- Société nationale des Chemins de fer belges/Nationale Maatschappij der Belgische Spoorwegen.

**Denmark**

- Danske Statsbaner.
- Entities pursuant to lov nr. 1317 om amtskommunernes overtagelse af de statslige ejerandele i privatbanerne of 20 December 2000.
- Ørestadsselskabet I/S.

**Germany**

- Deutsche Bahn AG.
- Other undertakings providing railway services to the public pursuant to Article 2(1) of the Allgemeines Eisenbahngesetz of 27 December 1993, as last amended on 21 June 2002.

**Greece**

- 'Οργανισμός Σιδηροδρόμων Ελλάδος Α.Ε.' ('Ο.Σ.Ε. Α.Ε.'), pursuant to Law No 2671/98.
- 'ΕΡΓΟΣΕ Α.Ε.' pursuant to Law No 2366/95.

**Spain**

- Ente público Gestor de Infraestructuras Ferroviarias (GIF).
- Red Nacional de los Ferrocarriles Españoles (RENFE).
- Ferrocarriles de Vía Estrecha (FEVE).
- Ferrocarrils de la Generalitat de Catalunya (FGC).
- Eusko Trenbideak (Bilbao).
- Ferrocarriles de la Generalitat Valenciana. (FGV).
- Ferrocarriles de Mallorca.

**France**

- Société nationale des chemins de fer français and other rail networks open to the public, referred to in loi d'orientation des transports intérieurs No 82-1153 of 30 December 1982, Title II, Chapter 1.
- Réseau ferré de France, State-owned company set up by Law No 97-135 of 13 February 1997.

**Ireland**

- Iarnród Éireann [Irish Rail]
- Railway Procurement Agency

**Italy**

- Ferrovie dello Stato S. p. A.
- Trenitalia S. p. A.

- Entities, companies and undertakings providing railway services on the basis of a concession pursuant to Article 10 of Royal Decree No. 1447 of 9 May 1912, approving the consolidated text of the laws on le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili.
- Entities, companies and undertakings providing railway services on the basis of a concession pursuant to Article 4 of Law No. 410 of 4 June 1949 — Concorso dello Stato per la riattivazione dei pubblici servizi di trasporto in concessione.
- Entities, companies and undertakings or local authorities providing railway services on the basis of a concession pursuant to Article 14 of Law No. 1221 of 2 August 1952 — Provvedimenti per l'esercizio ed il potenziamento di ferrovie di altre linee di trasporto in regime di concessione.
- Entities, companies and undertakings providing public transport services pursuant to Articles 8 and 9 of Legislative Decree No. 422 of 19 November 1997 — Conferimento alle regioni ed agli enti locali di funzioni e compiti in materia di trasporto pubblico locale, under the terms of Article 4(4) of Law No. 9 of 15 March 1997, as amended by Legislative Decree No 400 of 20 September 1999 and by Article 45 of Law No. 166 of 1 August 2002.

### **Luxembourg**

- Chemins de fer luxembourgeois (CFL).

### **Netherlands**

- Procuring entities in the field of railway services.

### **Austria**

- Österreichische Bundesbahn.
- Schieneninfrastrukturfinanzierungs-Gesellschaft mbH sowie.
- Entities authorised to provide transport services pursuant to Eisenbahngesetz, BGBl. No 60/1957, as amended.

### **Portugal**

- CP – Caminhos de Ferro de Portugal, E.P., pursuant to Decree-Law No 109/77 of 23 March 1977.
- REFER, E.P., pursuant to Decree-Law No 104/97 of 29 April 1997.
- RAVE, S.A., pursuant to Decree-Law No 323-H/2000 of 19 December 2000.
- Fertagus, S.A., pursuant to Decree-Law No 189-B/99 of 2 June 1999.
- Metro do Porto, S.A., pursuant to Decree-Law No 394-A/98 of 15 December 1998, as amended by Decree-Law No 261/2001 of 26 September 2001.
- Normetro, S.A., pursuant to Decree-Law No 394-A/98 of 15 December 1998, as amended by Decree-Law No 261/2001 of 26 September 2001.
- Metropolitano Ligeiro de Mirandela, S.A., pursuant to Decree-Law No 15/95 of 8 February 1995.
- Metro do Mondego, S.A., pursuant to Decree-Law No 10/2002 of 24 January 2002.
- Metro Transportes do Sul, S.A., pursuant to Decree-Law No 337/99 of 24 August 1999.
- Local authorities and local authority undertakings providing transport services pursuant to Law No 159/99 of 14 September 1999.

- Public authorities and public undertakings providing railway services pursuant to Law No 10/90 of 17 March 1990.
- Private undertakings providing railway services pursuant to Law No 10/90 of 17 March 1990, where they hold special or exclusive rights.

**Finland**

- VR Osakeyhtiö/ VR Aktiebolag

**Sweden**

- Public entities operating railway services in accordance with förordningen (1996:734) om statens spåranläggningar and lagen (1990:1157) om järnvägssäkerhet.
- Regional and local public entities operating regional or local railway communications pursuant to lagen (1997:734) om ansvar för viss kollektiv persontrafik.
- Private entities operating railway services pursuant to an authorisation granted under förordningen (1996:734) om statens spåranläggningar, where such permission complies with Article 2(3) of the Directive.

**United Kingdom**

- Railtrack plc
  - Eurotunnel plc
  - Northern Ireland Transport Holding Company
  - Northern Ireland Railways Company Limited
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## ANNEX V

**CONTRACTING ENTITIES IN THE FIELD OF URBAN RAILWAY, TRAMWAY, TROLLEYBUS OR BUS SERVICES****Belgium**

- Société des Transports intercommunaux de Bruxelles/Maatschappij voor intercommunaal Vervoer van Brussel
- Société régionale wallonne du Transport et ses sociétés d'exploitation (TEC Liège–Verviers, TEC Namur–Luxembourg, TEC Brabant wallon, TEC Charleroi, TEC Hainaut)/ Société régionale wallonne du Transport en haar exploitatie-maatschappijen (TEC Liège–Verviers, TEC Namur–Luxembourg, TEC Brabant wallon, TEC Charleroi, TEC Hainaut)
- Vlaamse Vervoermaatschappij (De Lijn)
- Private companies benefiting from special or exclusive rights.

**Denmark**

- Danske Statsbaner
- Entities providing bus services to the public (ordinary regular services) on the basis of an authorisation pursuant to lov bekendtgørelse nr. 738 om buskørsel of 22 December 1999.
- Ørestadsselskabet I/S.

**Germany**

- Undertakings providing, on the basis of an authorisation, short-distance transport services to the public pursuant to the Personenbeförderungsgesetz of 21 March 1961, as last amended on 21 August 2002.

**Greece**

- 'Ηλεκτροκίνητα Λεωφορεία Περιοχής Αθηνών - Πειραιώς Α.Ε.' ('Η.Λ.Π.Α.Π. Α.Ε.'), established and operating pursuant to Legislative Decree No 768/1970 (A' 273), Law No 588/1977 (A' 148) and Law No 2669/1998 (A' 283).
- 'Ηλεκτρικοί Σιδηρόδρομοι Αθηνών - Πειραιώς' ('Η.Σ.Α.Π. Α.Ε.'), established and operating pursuant to Laws Nos 352/1976 (A' 147) and 2669/1998 (A' 283).
- 'Όργανισμός Αστικών Συγκοινωνιών Αθηνών Α.Ε.' ('Ο.Α.Σ.Α. Α.Ε.'), established and operating pursuant to Laws Nos 2175/1993 (A' 211) and 2669/1998 (A' 283).
- 'Εταιρεία Θερμικών Λεωφορείων Α.Ε.' ('Ε.Θ.Ε.Λ. Α.Ε.'), established and operating pursuant to Laws Nos 2175/1993 (A' 211) and 2669/1998 (A' 283).
- 'Αττικό Μετρό Α.Ε.', established and operating pursuant to Law No 1955/1991.
- 'Όργανισμός Αστικών Συγκοινωνιών Θεσσαλονίκης' ('Ο.Α.Σ.Θ.'), established and operating pursuant to Decree No 3721/1957, Legislative Decree No 716/1970 and Laws Nos 66/79 and 2898/2001 (A' 71).
- 'Κοινό Ταμείο Εισπραξης Λεωφορείων' ('Κ.Τ.Ε.Λ.'), operating pursuant to Law No 2963/2001 (A' 268).
- 'Δημοτικές Επιχειρήσεις Λεωφορείων Ρόδου και Κω', otherwise known as 'ΡΟΔΑ' and 'ΔΕΑΣ ΚΩ' respectively, operating pursuant to Law No 2963/2001 (A' 268).

**Spain**

- Entidades que prestan servicios públicos de transporte urbano con arreglo a la Ley 7/1985, de 2 de abril, Reguladora de las Bases de Régimen Local; Real Decreto legislativo 781/1986, de 18 de abril, por el que se aprueba el texto refundido de las disposiciones legales vigentes en materia de régimen local y correspondiente legislación autonómica en su caso.
- Entidades que prestan servicios públicos de autobuses con arreglo a la disposición transitoria tercera de la Ley 16/1987, de 30 de julio, de Ordenación de los Transportes Terrestres.

**France**

- Entities providing transport services to the public pursuant to Article 7-II of loi d'orientation des transports intérieurs n° 82-1153 of 30 December 1982.
- Régie autonome des transports parisiens, Société nationale des chemins de fer français and other entities providing transport services on the basis of an authorisation granted by the Syndicat des transports d'Ile-de-France, pursuant to Order No 59-151 of 7 January 1959 as amended and the Decrees implementing it with regard to the organisation of passenger transport in the Ile-de-France region.
- Réseau ferré de France, State-owned company set up by Law No 97-135 of 13 February 1997.

**Ireland**

- Iarnród Éireann [Irish Rail]
- Railway Procurement Agency
- Luas [Dublin Light Rail]
- Bus Éireann [Irish Bus]
- Bus Átha Cliath [Dublin Bus]
- Entities providing transport services to the public pursuant to the amended Road Transport Act 1932.

**Italy**

- Entities, companies and undertakings providing public transport services by rail, automated system, tramway, trolleybus or bus or managing the relevant infrastructures at national, regional or local level.

They include, for example:

- Entities, companies and undertakings providing transport services on the basis of a concession pursuant to Law No 1822 of 28 September 1939 — Disciplina degli autoservizi di linea (autolinee per viaggiatori, bagagli e pacchi agricoli in regime di concessione all'industria privata) — Article 1, as amended by Article 45 of the Presidential Decree No 771 of 28 June 1955.
- Entities, companies and undertakings providing transport services to the public pursuant to Article 1(4) or (15) of Royal Decree No 2578 of 15 October 1925 — Approvazione del testo unico della legge sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province.
- Entities, companies and undertakings providing transport services to the public pursuant to Legislative Decree No 422 of 19 November 1997 — Conferimento alle regioni ed agli enti locali di funzioni e compiti in materia di trasporto pubblico locale, under the terms of Article 4(4) of Law No 59 of 15 March 1997 — as amended by Legislative Decree No 400 of 20 September 1999, and by Article 45 of Law No 166 of 1 August 2002.
- Entities, companies and undertakings providing public transport services pursuant to Article 113 of the consolidated text of the laws on the structure of local authorities, approved by Law No 267 of 18 August 2000 as amended by Article 35 of Law No 448 of 28 December 2001.
- Entities, companies and undertakings operating on the basis of a concession pursuant to Article 242 or 256 of Royal Decree No 1447 of 9 May 1912 approving the consolidated text of the laws on le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili.
- Entities, companies and undertakings and local authorities operating on the basis of a concession pursuant to Article 4 of Law No 410 of 4 June 1949 — Concorso dello Stato per la riattivazione dei pubblici servizi di trasporto in concessione.
- Entities, companies and undertakings operating on the basis of a concession pursuant to Article 14 of Law No 1221 of 2 August 1952 — Provvedimenti per l'esercizio ed il potenziamento di ferrovie e di altre linee di trasporto in regime di concessione.



**Luxembourg**

- Chemins de fer du Luxembourg (CFL).
- Service communal des autobus municipaux de la Ville de Luxembourg.
- Transports intercommunaux du canton d'Esch-sur-Alzette (TICE).
- Bus service undertakings operating pursuant to the règlement grand-ducal concernant les conditions d'octroi des autorisations d'établissement et d'exploitation des services de transports routiers réguliers de personnes rémunérées of 3 February 1978.

**Netherlands**

- Entities providing transport services to the public pursuant to chapter II (Openbaar Vervoer) of the Wet Personenvervoer.

**Austria**

- Entities authorised to provide transport services pursuant to the Eisenbahngesetz, BGBl. No 60/1957, as amended, or the Kraftfahrliiniengesetz, BGBl. I No 203/1999, as amended.

**Portugal**

- Metropolitano de Lisboa, E.P., pursuant to Decree-Law No 439/78 of 30 December 1978.
- Local authorities, local authority services and local authority undertakings under Law No 58/98 of 18 August 1998, which provide transport services pursuant to Law No 159/99 of 14 September 1999.
- Public authorities and public undertakings providing railway services pursuant to Law No 10/90 of 17 March 1990.
- Private undertakings providing railway services pursuant to Law No 10/90 of 17 March 1990, where they hold special or exclusive rights.
- Entities providing public transport services pursuant to Article 98 of the Regulamento de Transportes em Automóveis (Decree No 37272 of 31 December 1948).
- Entities providing public transport services pursuant to Law No 688/73 of 21 December 1973.
- Entities providing public transport services pursuant to Decree-Law No 38144 of 31 December 1950.

**Finland**

- Entities providing regular coach transport services under a special or exclusive licence pursuant to the laki luvanvaraisesta henkilöliikenteestä tiellä/lagen om tillståndspliktig persontrafik på väg (343/1991) and municipal transport authorities and public enterprises providing public transport services by bus, rail or underground railway, or maintaining a network for the purpose of providing such transport services.

**Sweden**

- Entities operating urban railway or tramway services pursuant to lagen (1997:734) om ansvar för viss kollektiv persontrafik and lagen (1990:1157) om järnvägssäkerhet.
- Public or private entities operating a trolley bus or bus service pursuant with lagen (1997:734) om ansvar för viss kollektiv persontrafik and yrkestrafiklagen (1998:490).

**United Kingdom**

- London Regional Transport
- London Underground Limited

- 
- Transport for London
  - A subsidiary of Transport for London within the meaning of section 424(1) of the Greater London Authority Act 1999
  - Strathclyde Passenger Transport Executive
  - Greater Manchester Passenger Transport Executive
  - Tyne and Wear Passenger Transport Executive
  - Brighton Borough Council
  - South Yorkshire Passenger Transport Executive
  - South Yorkshire Supertram Limited
  - Blackpool Transport Services Limited
  - Conwy County Borough Council
  - A person who provides a London local service as defined in section 179(1) of the Greater London Authority Act 1999 (a bus service) in pursuance of an agreement entered into by Transport for London under section 156(2) of that Act or in pursuance of a transport subsidiary's agreement as defined in section 169 of that Act
  - Northern Ireland Transport Holding Company
  - A person who holds a road service licence under section 4(1) of the Transport Act (Northern Ireland) 1967 which authorises him to provide a regular service within the meaning of that licence
-

## ANNEX VI

## CONTRACTING ENTITIES IN THE POSTAL SERVICES SECTOR

## BELGIUM

De Post/La Poste

## DENMARK

Post Danmark, jf. Lov nr. 569 om Post Danmark A/S of 6 June 2002.

## GERMANY

—

## GREECE

Ελληνικά Ταχυδρομεία ΕΛ.ΤΑ established by Legislative Decree No 496/70 and operating pursuant to Law No 2668/98 (ELTA)

## SPAIN

Correos y Telégrafos, S.A.

## FRANCE

La Poste

## IRELAND

An Post plc

## ITALY

Poste Italiane S.p.A.

## LUXEMBOURG

Entreprise des Postes et Télécommunications Luxembourg

## NETHERLANDS

—

## AUSTRIA

Österreichische Post AG

## PORTUGAL

CTT – Correios de Portugal

## FINLAND

—

## SWEDEN

Posten Sverige AB

Posten Logistik AB

BLSI-I AB

DPD Nordic AB,

DPD Sverige AB

Falcon Air AB

Hultbergs Inrikes Transporter AB (HIT)

Posten Express AB

Posten Logistik AB

Poståkeriet Sverige AB

SwedeGiro AB

TAB

UNITED KINGDOM

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## ANNEX VII

## CONTRACTING ENTITIES IN THE SECTORS OF EXPLORATION FOR AND EXTRACTION OF OIL OR GAS

**Belgium**

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**Denmark**

Entities pursuant to

- Lov om Danmarks undergrund, see Consolidation Act No 526 of 11 June 2002.
- Lov om kontinentalsoklen, see Consolidation Act No 182 of 1 May 1979.

**Germany**

- Undertakings pursuant to the Bundesberggesetz of 13 August 1980.

**Greece**

- 'Ελληνικά Πετρέλαια Α.Ε.', pursuant to Law No 2593/98 για την αναδιοργάνωση της Δ.Ε.Π. Α.Ε. και των θυγατρικών της εταιρειών, το καταστατικό αυτής και άλλες διατάξεις.

**Spain**

- BG International Limited Quantum, Asesores & Consultores, S.A.
- Cambria Europe, Inc.
- CNWL oil (España), S.A.
- Compañía de investigación y explotaciones petrolíferas, S.A.
- Conoco limited.
- Eastern España, S.A.
- Enagas, S.A.
- España Canadá resources Inc.
- Fugro – Geoteam, S.A.
- Galioil, S.A.
- Hope petróleos, S.A.
- Locs oil compay of Spain, S.A.
- Medusa oil Ltd.
- Muphy Spain oil company
- Onempm España, S.A.
- Petroleum oil & gas España, S.A.
- Repsol Investigaciones petrolíferas, S.A.
- Sociedad de hidrocarburos de Euskadi, S.A.
- Taurus petroleum, AN.

- Teredo oil limited
- Unión Fenosa gas exploración y producción, S.A.
- Wintersahll, AG
- YCI España, L.C.
- Otras entidades que operan en virtud de la Ley 34/1998, de 7 de octubre, del Sector de hidrocarburos y su normativa de desarrollo.

**France**

- Entities responsible for exploration for and the extraction of oil or gas pursuant to the code minier and its implementing rules, particularly Decree No 95-427 of 19 April 1995.

**Ireland**

- Entities granted an authorisation, license, permit or concession to explore for or extract oil and gas pursuant to the following legal provisions:
  - Continental Shelf Act 1968
  - Petroleum and Other Minerals Development Act 1960
  - Licensing Terms for Offshore Oil and Gas Exploration and Development 1992
  - Petroleum (Production) Act (NI) 1964.

**Italy**

- Entities granted an authorisation, permit, licence or concession to explore for or extract oil and gas or to store natural gas underground pursuant to the following legislative provisions:
  - Law No 136 of 10 February 1953;
  - Law No 6 of 11 January 1957, as amended by Law No 613 of 21 July 1967;
  - Law No 9 of 9 January 1991;
  - Legislative Decree No 625 of 25 November 1996;
  - Law No 170 of 26 April 1974, as amended by the Legislative Decree No 164 of 23 May 2000.

**Luxembourg**

—

**Netherlands**

- Entities pursuant to Mijnbouwwet (1 January 2003).

**Austria**

- Entities authorised to explore for or extract oil or gas pursuant to the Mineralrohstoffgesetz, BGBl. I No 38/1999, as amended.

**Portugal**

Entities pursuant to

- Decree-Law No 109/94 of 26 April 1994 and Portaria (Ministerial Order) No 790/94 of 5 September 1994.
- Decree-Law No 82/94 of 24 August 1994 and Despacho (Decision) No A-87/94 of 17 January 1994.

**Finland**

—

**Sweden**

- Entities holding a concession for exploring for or exploiting oil or gas pursuant to minerallagen (1991:45) or which have been granted an authorisation pursuant to lagen (1966:314) om kontinentalsockeln.

**United Kingdom**

- A person operating by virtue of a licence granted or having effect as if granted under the Petroleum Act 1998
  - A person licensed under the Petroleum (Production) Act (Northern Ireland) 1964
-

## ANNEX VIII

**CONTRACTING ENTITIES IN THE SECTORS OF EXPLORATION FOR AND EXTRACTION OF COAL AND OTHER SOLID FUELS****Belgium**

—

**Denmark**

— Entities exploring for or extracting coal or other solid fuels pursuant to Consolidation Act No 569 of 30 June 1997.

**Germany**

— Undertakings exploring for or extracting coal or other solid fuels pursuant to the Bundesberggesetz of 13 August 1980.

**Greece**

— 'Δημόσια Επιχείρηση Ηλεκτρισμού', which prospects for and extracts coal and other solid fuels pursuant to the Mining Code of 1973, as amended by the law of 27 April 1976.

**Spain**

- Alto Bierzo, S.A.
- Antracitas de Arlanza, S.A.
- Antracitas de Gillon, S.A.
- Antracitas de La Granja, S.A.
- Antracitas de Tineo, S.A.
- Campomanes Hermanos, S.A.
- Carbones de Arlanza, S.A.
- Carbones de Linares, S.A.
- Carbones de Pedraforca, S.A.
- Carbones del Puerto, S.A.
- Carbones el Túnel, S.L.
- Carbones San Isidro y María, S.A.
- Carbonífera del Narcea, S.A.
- Compañía Minera Jove, S.A.
- Compañía General Minera de Teruel, S.A.
- Coto minero del Narcea, S.A.
- Coto minero del Sil, S.A.
- Empresa Nacional Carbonífera del Sur, S.A.
- Endesa, S.A.



- Gonzalez y Diez, S.A.
- Hijos de Baldomero García, S.A.
- Hullas del Coto Cortés, S.A.
- Hullera Vasco-leonesa, S.A.
- Hulleras del Norte, S.A.
- Industrial y Comercial Minera, S.A.
- La Carbonífera del Ebro, S.A.
- Lignitos de Meirama, S.A.
- Malaba, S.A.
- Mina Adelina, S.A.
- Mina Escobal, S.A.
- Mina La Camocha, S.A.
- Mina La Sierra, S.A.
- Mina Los Compadres, S.A.
- Minas de Navaleo, S.A.
- Minas del Principado, S.A.
- Minas de Valdeloso, S.A.
- Minas Escucha, S.A.
- Mina Mora primera bis, S.A.
- Minas y explotaciones industriales, S.A.
- Minas y ferrocarriles de Utrillas, S.A.
- Minera del Bajo Segre, S.A.
- Minera Martín Aznar, S.A.
- Minero Siderúrgica de Ponferrada, S.A.
- Muñoz Sole hermanos, S.A.
- Promotora de Minas de carbón, S.A.
- Sociedad Anónima Minera Catalano-aragonesa.
- Sociedad minera Santa Bárbara, S.A.
- Unión Minera del Norte, S.A.
- Union Minera Ebro Segre, S.A.
- Viloría Hermanos, S.A.
- Virgilio Riesco, S.A.
- Otras entidades que operan en virtud de la Ley 22/1973, de 21 de julio, de Minas y su normativa de desarrollo.

**France**

- Entities exploring for or extracting coal or other solid fuels pursuant to the code minier and its implementing rules, particularly Decree No 95-427 of 19 April 1995.

**Ireland**

- Bord na Mona plc. set up and operating pursuant to the Turf Development Act 1946 to 1998.

**Italy**

- Carbosulcis S.p.A.

**Luxembourg**

—

**Netherlands**

—

**Austria**

- Entities authorised to explore for or extract coal or other solid fuels pursuant to the Mineralrohstoffgesetz, BGBl. I No 38/1999, as amended.

**Portugal**

- Empresa Nacional de Urânio.

**Finland**

- Entities benefiting from a special concession for the exploration for or extraction of solid fuels pursuant to the laki oikeudesta luovuttaa valtion kiinteistövarallisuutta/ lagn om rätt att överlåta statlig fastighetsförmögenhet (...).

**Sweden**

- Entities benefiting from a concession for the exploration for or extraction of coal or other solid fuels on the basis of a concession pursuant to minerallagen (1991:45) or lagen (1985:620) om vissa torvfyndigheter, or which have been granted an authorisation pursuant to lagen (1966:314) om kontinentalsockeln.

**United Kingdom**

- Any licensed operator (within the meaning of the Coal Industry Act 1994)
  - The Department of Enterprise, Trade and Investment (Northern Ireland)
  - A person operating by virtue of a prospecting licence, a mining lease, a mining licence or a mining permission as defined by section 57(1) of the Mineral Development Act (Northern Ireland) 1969
-

## ANNEX IX

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

- Gemeentelijk Havenbedrijf van Antwerpen
- Havenbedrijf van Gent
- Maatschappij der Brugse Zeevaartinrichtigen
- Port autonome de Charleroi
- Port autonome de Namur
- Port autonome de Liège
- Port autonome du Centre et de l'Ouest
- Société régionale du Port de Bruxelles/Gewestelijk Vennootschap van de Haven van Brussel
- Zeekanaal en Watergebonden Grondbeheer Vlaanderen

**Denmark**

- Ports as defined in § 1 of lov nr. 326 om havne of 28 May 1999.

**Germany**

- Seaports owned totally or partially by territorial authorities (Länder, Kreise, Gemeinden).
- Inland ports subject to the Hafenordnung pursuant to the Wassergesetze of the Länder.

**Greece**

- 'Όργανισμός Λιμένος Πειραιώς Ανώνυμη Εταιρεία' ('Ο.Λ.Π. Α.Ε.'), pursuant to Law No 2688/99.
- 'Όργανισμός Λιμένος Θεσσαλονίκης Ανώνυμη Εταιρεία' ('Ο.Λ.Θ. Α.Ε.'), pursuant to Law No 2688/99.
- 'Όργανισμός Λιμένος Αλεξανδρούπολης Ανώνυμη Εταιρεία' ('Ο.Λ.Α. Α.Ε.'), pursuant to Law No 2932/01.
- 'Όργανισμός Λιμένος Βόλου Ανώνυμη Εταιρεία' ('Ο.Λ.Β. Α.Ε.'), pursuant to Law No 2932/01.
- 'Όργανισμός Λιμένος Ελευσίνας Ανώνυμη Εταιρεία' ('Ο.Λ.Ε. Α.Ε.'), pursuant to Law No 2932/01.
- 'Όργανισμός Λιμένος Ηγουμενίτσας Ανώνυμη Εταιρεία' ('Ο.Λ.ΗΓ. Α.Ε.'), pursuant to Law No 2932/01.
- 'Όργανισμός Λιμένος Ηρακλείου Ανώνυμη Εταιρεία' ('Ο.Λ.Η. Α.Ε.'), pursuant to Law No 2932/01.
- 'Όργανισμός Λιμένος Καβάλας Ανώνυμη Εταιρεία' ('Ο.Λ.Κ. Α.Ε.'), pursuant to Law No 2932/01.
- 'Όργανισμός Λιμένος Κέρκυρας Ανώνυμη Εταιρεία' ('Ο.Λ.ΚΕ. Α.Ε.'), pursuant to Law No 2932/01.
- 'Όργανισμός Λιμένος Πατρών Ανώνυμη Εταιρεία' ('Ο.Λ.ΠΑ. Α.Ε.'), pursuant to Law No 2932/01.
- 'Όργανισμός Λιμένος Λαυριού Ανώνυμη Εταιρεία' ('Ο.Λ.Λ. Α.Ε.'), pursuant to Law No 2932/01.
- 'Όργανισμός Λιμένος Ραφήνας Ανώνυμη Εταιρεία' ('Ο.Λ.Ρ. Α.Ε.'), pursuant to Law No 2932/01.
- Other ports, governed by Presidential Decree No 649/1977. (Εποπτεία, οργάνωση, λειτουργία και διοικητικός έλεγχος λιμένων).

**Spain**

- Ente público Puertos del Estado
- Autoridad Portuaria de Alicante
- Autoridad Portuaria de Almería – Motril
- Autoridad Portuaria de Avilés
- Autoridad Portuaria de la Bahía de Algeciras
- Autoridad Portuaria de la Bahía de Cádiz
- Autoridad Portuaria de Baleares
- Autoridad Portuaria de Barcelona
- Autoridad Portuaria de Bilbao
- Autoridad Portuaria de Cartagena
- Autoridad Portuaria de Castellón
- Autoridad Portuaria de Ceuta
- Autoridad Portuaria de Ferrol – San Cibrao
- Autoridad Portuaria de Gijón
- Autoridad Portuaria de Huelva
- Autoridad Portuaria de Las Palmas
- Autoridad Portuaria de Málaga
- Autoridad Portuaria de Marín y Ría de Pontevedra
- Autoridad Portuaria de Melilla
- Autoridad Portuaria de Pasajes
- Autoridad Portuaria de Santa Cruz de Tenerife
- Autoridad Portuaria de Santander
- Autoridad Portuaria de Sevilla
- Autoridad Portuaria de Tarragona
- Autoridad Portuaria de Valencia
- Autoridad Portuaria de Vigo
- Autoridad Portuaria de Villagarcía de Arousa
- Otras entidades Portuarias de las Comunidades Autónomas de Andalucía, Asturias, Baleares, Canarias, Cantabria, Cataluña, Galicia, Murcia, País Vasco y Valencia.

**France**

- Port autonome de Paris set up pursuant to loi n° 68-917 relative au port autonome de Paris of 24 October 1968.

- Port autonome de Strasbourg set up pursuant to the convention entre l'État et la ville de Strasbourg relative à la construction du port rhénan de Strasbourg et à l'exécution de travaux d'extension de ce port of 20 May 1923, approved by the Law of 26 April 1924.
- Ports autonomes operating pursuant to Articles L. 111-1 et seq. of the code des ports maritimes.
- Ports non autonomes operating pursuant to Articles R. 121-1 et seq. of the code des ports maritimes.
- Ports managed by the regional or département authorities or operating pursuant to a concession granted by the regional or département authorities pursuant to Article 6 of Law No 83-663 of 22 July 1983 supplementing loi n° 83-8 relative à la répartition des compétences entre les communes, les départements et l'État of 7 January 1983.
- Voies navigables de France, State-owned company subject to the provisions of Article 124 of Law No 90-1168 du 29 December 1990, as amended.

### **Ireland**

- Ports operating pursuant to Harbours Acts 1946 to 2000
- Port of Rosslare Harbour operating pursuant to the Fishguard and Rosslare Railways and Harbours Acts 1899.

### **Italy**

- National ports and other ports managed by the Capitaneria di Porto pursuant to the Codice della navigazione, Royal Decree No 327 of 30 March 1942.
- Autonomous ports (enti portuali) set up by special laws pursuant to Article 19 of the Codice della navigazione, Royal Decree No 327 of 30 March 1942.

### **Luxembourg**

- Port de Mertert, set up and operating pursuant to the loi relative à l'aménagement et à l'exploitation d'un port fluvial sur la Moselle of 22 July 1963, as amended.

### **Netherlands**

- Contracting entities in the field of sea port or inland port or other terminal equipment.

### **Austria**

- Inland ports owned totally or partially by the Länder and/or Gemeinden.

### **Portugal**

- APDL — Administração dos Portos do Douro e Leixões, S.A., pursuant to Decree-Law No 335/98 of 3 November 1998.
- APL — Administração do Porto de Lisboa, S.A., pursuant to Decree-Law No 336/98 of 3 November 1998.
- APS — Administração do Porto de Sines, S.A., pursuant to Decree-Law No 337/98 of 3 November 1998.
- APSS — Administração dos Portos de Setúbal e Sesimbra, S.A., pursuant to Decree-Law No 338/98 of 3 November 1998.
- APA — Administração do Porto de Aveiro, S.A., pursuant to Decree-Law No 339/98 of 3 November 1998.
- IPN — Instituto Portuário do Norte, pursuant to Decree-Law No 242/99 of 28 June 1999.
- ICP — Instituto Portuário do Centro, pursuant to Decree-Law No 243/99 of 28 June 1999.
- IPS — Instituto Portuário do Sul, pursuant to Decree-Law No 244/99 of 28 June 1999.
- IDN — Instituto da Navegabilidade do Douro, pursuant to Decree-Law No 138-A/97 of 3 June 1997.

**Finland**

- Ports operating pursuant to the laki kunnallisista satamajärjestyksistä ja liikennemaksuista/lagen om kommunala hamnanordningar och trafikavgifter (955/1976) and ports instituted under a licence pursuant to section 3 of the laki yksityisistä yleisistä satamista/lagen om privata allmänna hamnar (1156/1994).
- Saimaan kanavan hoitokunt/Förvaltningsnämnden för Saima kanal.

**Sweden**

- Ports and terminal facilities according to lagen (1983:293) om inrättande, utvidgning och avlysning av allmän farled och allmän hamn and förordningen (1983:744) om trafiken på Göta kanal.

**United Kingdom**

- A local authority which exploits a geographical area for the purpose of providing maritime or inland port or other terminal facilities to carriers by sea or inland waterway
  - A harbour authority within the meaning of section 57 of the Harbours Act 1964
  - British Waterways Board
  - A harbour authority as defined by section 38(1) of the Harbours Act (Northern Ireland) 1970
-

## ANNEX X

## CONTRACTING ENTITIES IN THE FIELD OF AIRPORT INSTALLATIONS

**Belgium**

- Belgocontrol
- Brussels International Airport Company
- Luchthaven van Deurne
- Luchthaven van Oostende
- SA Brussels South Charleroi Airport
- SA Société de Développement et de Promotion de l'Aéroport de Bierset

**Denmark**

- Airports operating on the basis of an authorisation pursuant to § 55(1) of the lov om luftfart, see Consolidation Act No 543 of 13 June 2001.

**Germany**

- Airports as defined in Article 38(2)(1) of the Luftverkehrs-Zulassungs-Ordnung of 19 June 1964, as last amended on 21 August 2002.

**Greece**

- 'Υπηρεσία Πολιτικής Αεροπορίας' (ΥΠΑ) operating pursuant to Legislative Decree No 714/70, as amended by Law No 1340/83; the organisation of the company is laid down by Presidential Decree No. 56/89, as amended subsequently.
- The company 'Διεθνής Αερολιμένας Αθηνών' at Spata operating pursuant to Legislative Decree No 2338/95 Κύρωση Σύμβασης Ανάπτυξης του Νέου Διεθνούς Αεροδρομίου της Αθήνας στα Σπάτα, 'ίδρυση της εταιρείας "Διεθνής Αερολιμένας Αθηνών Α.Ε." έγκριση περιβαλλοντικών όρων και άλλες διατάξεις).
- 'Φορείς Διαχείρισης' in accordance with Presidential Decree No 158/02 "Ίδρυση, κατασκευή, εξοπλισμός, οργάνωση, διοίκηση, λειτουργία και εκμετάλλευση πολιτικών αερολιμένων από φυσικά πρόσωπα, νομικά πρόσωπα ιδιωτικού δικαίου και Οργανισμούς Τοπικής Αυτοδιοίκησης' (Greek Official Gazette A 137).

**Spain**

- Ente público Aeropuertos Españoles y Navegación Aérea (AENA).

**France**

- Airports operated by State-owned companies pursuant to Articles L. 251-1, L.260-1 and L. 270-1 of the code de l'aviation civile.
- Airports operating on the basis of a concession granted by the State pursuant to Article R.223-2 of the code de l'aviation civile.
- Airports operating pursuant to an arrêté préfectoral portant autorisation d'occupation temporaire.
- Airports set up by a public authority and which are the subject of a convention as laid down in Article L. 221-1 of the code de l'aviation civile.

**Ireland**

- Airports of Dublin, Cork and Shannon managed by Aer Rianta – Irish Airports.
- Airports operating on the basis of a public use licence granted pursuant to the Irish Aviation Authority Act 1993 as amended by the Air Navigation and Transport (Amendment) Act, 1998, and at which any scheduled air services are performed by aircraft for the public transport of passengers, mail or cargo.

**Italy**

- AAAVTAG.
- Managing entities set up by special laws.
- Entities operating airport facilities on the basis of a concession granted pursuant to Article 694 of the Codice della navigazione, Royal Decree No 347 of 30 March 1942.
- R.A.I. Registro Aeronautico Italiano.

**Luxembourg**

- Aéroport du Findel.

**Netherlands**

- Airports operating pursuant to Articles 18 and following of the Luchtvaartwet.

**Austria**

- Entities authorised to provide airport facilities pursuant to the Luftfahrtgesetz, BGBl. No 253/1957, as amended.

**Portugal**

- ANA — Aeroportos de Portugal, S.A., set up pursuant to Decree-Law No 404/98 of 18 December 1998.
- NAV — Empresa Pública de Navegação Aérea de Portugal, E. P., set up pursuant to Decree-Law No 404/98 of 18 December 1998.
- ANAM — Aeroportos e Navegação Aérea da Madeira, S. A., set up pursuant to Decree-Law No 453/91 of 11 December 1991.

**Finland**

- Airports managed by the 'Ilmailulaitos/Luftfartsverket', or by a municipal or public enterprise pursuant to the ilmailulaki/luftfartslagen (281/1995).

**Sweden**

- Publicly-owned and operated airports in accordance with luftfartslagen (1957:297).
- Privately-owned and operated airports with an operating licence under the act, where this licence corresponds to the criteria of Article 2(3) of the Directive.

**United Kingdom**

- A local authority which exploits a geographical area for the purpose of providing airport or other terminal facilities to carriers by air.
  - An airport operator within the meaning of the Airports Act 1986 who has the management of an airport subject to economic regulation under Part IV of that Act.
  - An airport operator within the meaning of the Airports Act 1986 who has the management of an airport subject to economic regulation under Part IV of that Act.
  - Highland and Islands Airports Limited.
  - An airport operator within the meaning of the Airports (Northern Ireland) Order 1994.
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## ANNEX XI

## LIST OF COMMUNITY LEGISLATION REFERRED TO IN ARTICLE 30(3)

## A. TRANSPORT OR DISTRIBUTION OF GAS OR HEAT

Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas <sup>(1)</sup>

## B. PRODUCTION, TRANSMISSION OR DISTRIBUTION OF ELECTRICITY

Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity <sup>(2)</sup>

## C. PRODUCTION, TRANSPORT OR DISTRIBUTION OF DRINKING WATER

—

## D. CONTRACTING ENTITIES IN THE FIELD OF RAIL SERVICES

—

## E. CONTRACTING ENTITIES IN THE FIELD OF URBAN RAILWAY, TRAMWAY, TROLLEYBUS OR MOTOR BUS SERVICES

—

## F. CONTRACTING ENTITIES IN THE FIELD OF POSTAL SERVICES

Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service <sup>(3)</sup>

## G. EXPLORATION FOR AND EXTRACTION OF OIL OR GAS

Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons <sup>(4)</sup>

## H. EXPLORATION FOR AND EXTRACTION OF COAL OR OTHER SOLID FUELS

—

## I. CONTRACTING ENTITIES IN THE FIELD OF SEAPORT OR INLAND PORT OR OTHER TERMINAL EQUIPMENT

—

## J. CONTRACTING ENTITIES IN THE FIELD OF AIRPORT INSTALLATIONS

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<sup>(1)</sup> OJ L 204, 21.7.1998, p. 1.

<sup>(2)</sup> OJ L 27, 30.1.1997, p. 20.

<sup>(3)</sup> OJ L 15, 21.1.1998, p. 14. Directive last amended by Directive 2002/39/EC (OJ L 176, 5.7.2002, p. 21).

<sup>(4)</sup> OJ L 164, 30.6.1994, p. 3.

## ANNEX XII

LIST OF ACTIVITIES AS SET OUT IN ARTICLE 1(2), (b) <sup>(1)</sup>

NACE <sup>(1)</sup>					
SECTION F			CONSTRUCTION		CPV Code
Division	Group	Class	Subject	Notes	
45			Construction	This division includes: construction of new buildings and works, restoring and common repairs	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	This class includes: — demolition of buildings and other structures — clearing of building sites — earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc. — site preparation for mining: overburden removal and other development and preparation of mineral properties and sites  This class also includes: — building site drainage — drainage of agricultural or forestry land	45110000
		45.12	Test drilling and boring	This class includes: — test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes  This class excludes: — drilling of production oil or gas wells, see 11.20 — water well drilling, see 45.25 — shaft sinking, see 45.25 — oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20	45120000
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000

<sup>(1)</sup> In the event of any difference of interpretation between the CPV and the NACE, the NACE nomenclature will apply.

NACE (1)					
SECTION F			CONSTRUCTION		CPV Code
Division	Group	Class	Subject	Notes	
		45.21	General construction of buildings and civil engineering works	<p>This class includes:</p> <ul style="list-style-type: none"> <li>construction of all types of buildings</li> <li>construction of civil engineering constructions</li> <li>bridges, including those for elevated highways, viaducts, tunnels and subways</li> <li>long-distance pipelines, communication and power lines</li> <li>urban pipelines, urban communication and powerlines;</li> <li>ancillary urban works</li> <li>assembly and erection of prefabricated constructions on the site</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>service activities incidental to oil and gas extraction, see 11.20</li> <li>erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28</li> <li>construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23</li> <li>building installation, see 45.3</li> <li>building completion, see 45.4</li> <li>architectural and engineering activities, see 74.20</li> <li>project management for construction, see 74.20</li> </ul>	45210000
		45.22	Erection of roof covering and frames	<p>This class includes:</p> <ul style="list-style-type: none"> <li>erection of roofs</li> <li>roof covering</li> <li>waterproofing</li> </ul>	45220000
		45.23	Construction of highways, roads, airfields and sport facilities	<p>This class includes:</p> <ul style="list-style-type: none"> <li>construction of highways, streets, roads, other vehicular and pedestrian ways</li> <li>construction of railways</li> <li>construction of airfield runways</li> <li>construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations</li> <li>painting of markings on road surfaces and car parks</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>preliminary earth moving, see 45.11</li> </ul>	45230000

NACE (1)					
SECTION F			CONSTRUCTION		CPV Code
Division	Group	Class	Subject	Notes	
		45.24	Construction of water projects	This class includes construction of: waterways, harbour and river works, pleasure ports (marinas), locks, etc. dams and dykes dredging subsurface work	45240000
		45.25	Other construction work involving special trades	This class includes: construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment: construction of foundations, including pile driving water well drilling and construction, shaft sinking erection of non-self-manufactured steel elements steel bending bricklaying and stone setting scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms erection of chimneys and industrial ovens This class excludes: renting of scaffolds without erection and dismantling, see 71.32	45250000
	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	This class includes: installation in buildings or other construction projects of: electrical wiring and fittings telecommunications systems electrical heating systems residential antennas and aerials fire alarms burglar alarm systems lifts and escalators lightning conductors, etc.	45310000

NACE (1)					
SECTION F			CONSTRUCTION		CPV Code
Division	Group	Class	Subject	Notes	
		45.32	Insulation work activities	<p>This class includes:</p> <p>installation in buildings or other construction projects of thermal, sound or vibration insulation</p> <p>This class excludes:</p> <p>waterproofing, see 45.22</p>	45320000
		45.33	Plumbing	<p>This class includes:</p> <p>installation in buildings or other construction projects of:</p> <p>plumbing and sanitary equipment</p> <p>gas fittings</p> <p>heating, ventilation, refrigeration or air-conditioning equipment and ducts</p> <p>sprinkler systems</p> <p>This class excludes:</p> <p>installation of electrical heating systems, see 45.31</p>	45330000
		45.34	Other building installation	<p>This class includes:</p> <p>installation of illumination and signalling systems for roads, railways, airports and harbours</p> <p>installation in buildings or other construction projects of fittings and fixtures n.e.c.</p>	45340000
	45.4		Building completion		45400000
		45.41	Plastering	<p>This class includes:</p> <p>application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials</p>	45410000
		45.42	Joinery installation	<p>This class includes:</p> <p>installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials</p> <p>interior completion such as ceilings, wooden wall coverings, movable partitions, etc.</p> <p>This class excludes:</p> <p>laying of parquet and other wood floor coverings, see 45.43</p>	45420000

NACE <sup>(1)</sup>					
SECTION F			CONSTRUCTION		CPV Code
Division	Group	Class	Subject	Notes	
		45.43	Floor and wall covering	<p>This class includes:</p> <p>laying, tiling, hanging or fitting in buildings or other construction projects of:</p> <p>ceramic, concrete or cut stone wall or floor tiles</p> <p>parquet and other wood floor coverings</p> <p>carpets and linoleum floor coverings, including of rubber or plastic</p> <p>terrazzo, marble, granite or slate floor or wall coverings</p> <p>wallpaper</p>	45430000
		45.44	Painting and glazing	<p>This class includes:</p> <p>interior and exterior painting of buildings, painting of civil engineering structures</p> <p>installation of glass, mirrors, etc</p> <p>This class excludes:</p> <p>installation of windows, see 45.42</p>	45440000
		45.45	Other building completion	<p>This class includes:</p> <p>installation of private swimming pools</p> <p>steam cleaning, sand blasting and similar activities for building exteriors</p> <p>other building completion and finishing work n.e.c</p> <p>This class excludes:</p> <p>interior cleaning of buildings and other structures, see 74.70</p>	45450000
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50	Renting of construction or demolition equipment with operator	<p>This class excludes:</p> <p>renting of construction or demolition machinery and equipment without operators, see 71.32</p>	45500000

<sup>(1)</sup> Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1), Regulation as last amended by Commission Regulation (EEC) No 761/93 (OJ L 83, 3.4.1993, p. 1).

## ANNEX XIII

## INFORMATION TO BE INCLUDED IN CONTRACT NOTICES

## A. OPEN PROCEDURES

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax number of the contracting entity.
2. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
3. Nature of the contract (supply, works or service, where appropriate, state if it is a framework agreement or a dynamic purchasing system).

Category of service within the meaning of Annex XVII A or XVII B and description (nomenclature reference No(s)).

Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of these.

4. Place of delivery, site or place of performance of service.
5. For supplies and works:
  - (a) Nature and quantity of the goods to be supplied (nomenclature reference No(s)), including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work (nomenclature reference No(s));
  - (b) Indication of whether the suppliers may tender for some and/or all the goods required.

If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;
  - (c) For works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.

## 6. For services:

- (a) The nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;
- (b) Indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;
- (c) Reference of the law, regulation or administrative provision;
- (d) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the performance of the service;
- (e) Indication of whether service providers may tender for a part of the services concerned.

## 7. Where known, indication of whether authorisation to submit variants exists or not.

## 8. Time limits for delivery or completion or duration of service contract and, as far as possible, the starting date.

9. (a) Address from which the contract documents and additional documents may be requested;
- (b) Where appropriate, the amount and terms of payment of the sum to be paid to obtain such documents.
10. (a) Final date for receipt of tenders or indicative tenders where a dynamic purchasing system is introduced;
- (b) Address to which they should be sent;
- (c) Language or languages in which they should be drawn up.
11. (a) Where applicable, the persons authorised to be present at the opening of tenders;
- (b) Date, time and place of such opening.
12. Where applicable, any deposits and guarantees required.
13. Main terms concerning financing and payment and/or references to the provisions in which these are contained.
14. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.
15. Minimum economic and technical conditions required of the economic operator to whom the contract is awarded.
16. Period during which the tenderer is bound to keep open his tender.
17. Where appropriate, particular conditions to which performance of the contract is subject.
18. Criteria referred to in Article 55 to be used for award of the contract: 'lowest price' or 'most economically advantageous tender'. Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned where they do not appear in the specifications.
19. Where appropriate, the reference to publication in the Official Journal of the European Union of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.
20. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the department from which this information may be obtained.
21. Date of dispatch of the notice by the contracting entity.
22. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).
23. Any other relevant information.

#### B. RESTRICTED PROCEDURES

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax number of the contracting entity.
2. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
3. Nature of the contract (supplies, works or services; where appropriate, state if it is a framework agreement).

Category of service within the meaning of Annex XVII A or XVII B and description (nomenclature reference No(s)).



Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of these.

4. Place of delivery, site or place of performance of service.
5. For supplies and works:
  - (a) The nature and quantity of the goods to be supplied (nomenclature reference No(s)), including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work (nomenclature reference No(s));
  - (b) Indication of whether the suppliers may tender for some and/or all the goods required.

If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;
  - (c) Information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.
6. For services:
  - (a) The nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;
  - (b) Indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;
  - (c) Reference to the law, regulation or administrative provision;
  - (d) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the performance of the service;
  - (e) Indication of whether service providers may tender for a part of the services concerned.
7. Where known, indication of whether authorisation to submit variants exists or not.
8. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.
9. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.
10. (a) Final date for receipt of requests to participate;
  - (b) Address to which they should be sent;
  - (c) Language or languages in which they should be drawn up.
11. Final date for dispatch of invitations to tender.
12. Where applicable, any deposits and guarantees required.
13. Main terms concerning financing and payment and/or references to the provisions in which these are contained.

14. Information concerning the economic operator's position and the minimum economic and technical conditions required of him.
15. Criteria referred to in Article 55 to be used for award of the contract: 'lowest price' or 'most economically advantageous tender'. Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned where they do not appear in the specifications or will not be indicated in the invitation to tender.
16. Where appropriate, particular conditions to which performance of the contract is subject.
17. Where appropriate, the reference to publication in the *Official Journal of the European Union* of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.
18. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
19. Date of dispatch of the notice by the contracting entities.
20. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).
21. Any other relevant information.

#### C. NEGOTIATED PROCEDURES

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax number of the contracting entity.
2. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
3. Nature of the contract (supplies, works or services; where appropriate, state if it is a framework agreement).

Category of service within the meaning of Annex XVII A or XVII B and description (nomenclature reference No(s)).

Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of these.

4. Place of delivery, site or place of performance of service.
5. For supplies and works:
  - (a) The nature and quantity of the goods to be supplied (nomenclature reference No(s)), including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work (nomenclature reference No(s));
  - (b) Indication of whether the suppliers may tender for some and/or all the goods required.

If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;

- (c) For works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.

6. For services:
  - (a) The nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;
  - (b) Indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;
  - (c) Reference of the law, regulation or administrative provision;
  - (d) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the performance of the service;
  - (e) Indication of whether service providers may tender for a part of the services concerned.
7. Where known, indication of whether authorisation to submit variants exists or not.
8. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.
9. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.
10.
  - (a) Final date for receipt of requests to participate;
  - (b) Address to which they should be sent;
  - (c) Language or languages in which they should be drawn up.
11. Where appropriate, any deposits and guarantees required.
12. Main terms concerning financing and payment and/or references to the provisions in which these are contained.
13. Information concerning the economic operator's position and the minimum economic and technical conditions required of him.
14. Criteria referred to in Article 55 to be used for award of the contract: 'lowest price' or 'most economically advantageous tender'. Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned where they do not appear in the specifications or will not be indicated in the invitation to negotiate.
15. Where appropriate, the names and addresses of the economic operators already selected by the contracting entity.
16. Where applicable, date(s) of previous publications in the *Official Journal of the European Union*.
17. Where appropriate, particular conditions to which performance of the contract is subject.
18. Where appropriate, the reference to publication in the *Official Journal of the European Union* of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.
19. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
20. Date of dispatch of the notice by the contracting entity.
21. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).
22. Any other relevant information.

D. SIMPLIFIED CONTRACT NOTICE FOR USE IN A DYNAMIC PURCHASING SYSTEM <sup>(1)</sup>

1. Country of contracting entity.
  2. Name and e-mail address of contracting entity.
  3. Publication reference of the contract notice on the dynamic purchasing system.
  4. E-mail address at which the contract documents and additional documents relating to the dynamic purchasing system are available.
  5. Subject-matter of contract: description by reference number(s) of CPV nomenclature and quantity or extent of the contract to be awarded.
  6. Timeframe for submitting indicative tenders.
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<sup>(1)</sup> With a view to admission to the system in order to be able subsequently to participate in the invitation to tender for the specific contract.

## ANNEX XIV

**INFORMATION TO BE INCLUDED IN THE NOTICE ON THE EXISTENCE OF A QUALIFICATION SYSTEM**

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax number of the contracting entity.
  2. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
  3. Purpose of the qualification system (description of the goods, services or works or categories thereof to be procured through the system — nomenclature reference No(s)).
  4. Conditions to be fulfilled by the economic operators in view of their qualification pursuant to the system and the methods according to which each of those conditions will be verified. Where the description of such conditions and verification methods is voluminous and based on documents available to interested economic operators, a summary of the main conditions and methods and a reference to those documents shall be sufficient.
  5. Period of validity of the qualification system and the formalities for its renewal.
  6. Reference to the fact that the notice acts as the call for competition.
  7. Address where further information and documentation concerning the qualification system can be obtained (if different from the addresses mentioned under 1).
  8. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time-limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
  9. Where known, criteria referred to in Article 55 to be used for award of the contract: 'lowest price' or 'most economically advantageous tender'. Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria, shall be mentioned where they do not appear in the specifications or will not be indicated in the invitation to tender or to negotiate.
  10. Any other relevant information.
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## ANNEX XV A

**A INFORMATION TO BE INCLUDED IN THE PERIODIC INDICATIVE NOTICE**

## I. HEADINGS TO BE COMPLETED IN ALL CASES

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax number of the contracting entity or the service from which additional information may be obtained.
2. (a) For supply contracts: nature and quantity or value of the services or products to be supplied (nomenclature reference No(s)).  
  
(b) For works contracts: nature and extent of the services to be provided, the general characteristics of the work or of the lots by reference to the work (nomenclature reference No(s)).  
  
(c) For service contracts: intended total procurement in each of the service categories listed in Annex XVII A (nomenclature reference No(s)).
3. Date of dispatch of the notice or of dispatch of the notice of the publication of this notice on the buyer profile.
4. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).
5. Any other relevant information.

## II. INFORMATION WHICH SHOULD BE SUPPLIED WHERE THE NOTICE IS USED AS A MEANS OF CALLING FOR COMPETITION OR PERMITS THE REDUCTION OF THE TIME LIMITS FOR THE RECEIPT OF TENDERS

6. A reference to the fact that interested suppliers should advise the entity of their interest in the contract or contracts.
7. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
8. Time limit for the receipt of applications for an invitation to tender or to negotiate.
9. Nature and quantity of the goods to be supplied or general nature of the work or category of service within the meaning of Annex XVII A and description, stating if framework agreement(s) are envisaged, including any options for further procurement and the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, an estimate of the timing of the subsequent calls for competition.
10. State whether purchase, lease, rental or hire-purchase or any combination of these is involved.
11. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.
12. Address to which interested undertakings should send their expressions of interest in writing.  
  
Time limit for receipt of expressions of interest.  
  
Language or languages authorised for the presentation of candidatures or tenders.
13. Economic and technical conditions, and financial and technical guarantees required of suppliers.
14. (a) Estimated date for initiating the award procedures in respect of the contract or contracts (if known);  
  
(b) Type of award procedure (restricted or negotiated);  
  
(c) The amount of and payment details for any sum to be paid to obtain documents concerning the consultation.

15. Where appropriate, particular conditions to which performance of the contract is subject.
  16. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
  17. Where known, criteria referred to in Article 55 to be used for award of the contract: 'lowest price' or 'most economically advantageous tender'. Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned, where they do not appear in the specifications, or will not be indicated in the invitation to confirm interest referred to in Article 47(5) or in the invitation tender or to negotiate.
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## ANNEX XV 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**

1. Country of the contracting entity.
  2. Name of the contracting entity.
  3. Internet address of the 'buyer profile' (URL).
  4. CPV Nomenclature reference No(s).
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## ANNEX XVI

## INFORMATION TO BE INCLUDED IN THE CONTRACT AWARD NOTICE

**I. Information for publication in the *Official Journal of the European Union* <sup>(1)</sup>**

1. Name and address of the contracting entity.
2. Nature of the contract (supplies, works or services and Nomenclature reference No(s); where appropriate state if it is a framework agreement).
3. At least a summary indication of the nature and quantity of the products, works or services provided.
4. (a) Form of the call for competition (notice on the existence of a system of qualification; periodic notice; call for tenders);  
  
(b) Reference of publication of the notice in the *Official Journal of the European Union*;  
  
(c) In the case of contracts awarded without a prior call for competition, indication of the relevant provision of Article 40(3) or Article 32.
5. Award procedure (open, restricted or negotiated).
6. Number of tenders received.
7. Date of award of the contract.
8. Price paid for bargain purchases pursuant to Article 40(3)(j).
9. Name and address of the economic operator(s).
10. State, where appropriate, whether the contract has been, or may be, subcontracted.
11. Price paid or the prices of the highest and lowest tenders taken into account in the award of the contract.
12. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
13. Optional information:
  - value and share of the contract which has been or may be subcontracted to third parties,
  - award criteria.

**II. Information not intended for publication**

14. Number of contracts awarded (where an award has been split between several suppliers).
15. Value of each contract awarded.
16. Country of origin of the product or service (Community origin or non-Community origin; if the latter, broken down by third country).
17. Which award criteria were used (most economically advantageous; lowest price)?

<sup>(1)</sup> Information in headings 6, 9 and 11 is deemed information not intended for publication where the awarding entity considers that publication thereof might be detrimental to a sensitive commercial interest.

18. Was the contract awarded to a tenderer who submitted a variant, in accordance with Article 36(1)?
  19. Were any tenders excluded on the grounds that they were abnormally low, in accordance with Article 57?
  20. Date of transmission of the notice by the contracting entity.
  21. In the case of contracts for services listed in Annex XVII B, agreement by the contracting entity to publication of the notice (Article 43(4)).
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ANNEX XVII A <sup>(1)</sup>

## SERVICES WITHIN THE MEANING OF ARTICLE 31

Category No	Subject	CPC Reference No <sup>(1)</sup>	CPV Reference No
1	Maintenance and repair services	6112, 6122, 633, 886	From 50100000 to 50982000 (except for 50310000 to 50324200 and 50116510-9, 50190000-3, 50229000-6, 50243000-0)
2	Land transport services <sup>(2)</sup> , including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304	From 60112000-6 to 60129300-1 (except 60121000 to 60121600, 60122200-1, 60122230-0), and from 64120000-3 to 64121200-2
3	Air transport services of passengers and freight, except transport of mail	73 (except 7321)	From 62100000-3 to 62300000-5 (except 62121000-6, 62221000-7)
4	Transport of mail by land <sup>(2)</sup> and by air	71235, 7321	60122200-1, 60122230-0 62121000-6, 62221000-7
5	Telecommunications services	752	From 64200000-8 to 64228200-2, 72318000-7, and from 72530000-9 to 72532000-3
6	Financial services: (a) Insurances services (b) Banking and investment services <sup>(3)</sup>	ex 81, 812, 814	From 66100000-1 to 66430000-3 and From 67110000-1 to 67262000-1 <sup>(3)</sup>
7	Computer and related services	84	From 50300000-8 to 50324200-4, From 72100000-6 to 72591000-4 (except 72318000-7 and from 72530000-9 to 72532000-3)
8	Research and development services <sup>(4)</sup>	85	From 73000000-2 to 73300000-5 (except 73200000-4, 73210000-7, 7322000-0)
9	Accounting, auditing and bookkeeping services	862	From 74121000-3 to 74121250-0
10	Market research and public opinion polling services	864	From 74130000-9 to 74133000-0, and 74423100-1, 74423110-4
11	Management consulting services <sup>(5)</sup> and related services	865, 866	From 73200000-4 to 73220000-0, From 74140000-2 to 74150000-5 (except 74142200-8), and 74420000-9, 74421000-6, 74423000-0, 74423200-2, 74423210-5, 74871000-5, 93620000-0

<sup>(1)</sup> In the event of any difference of interpretation between the CPV and the CPC, the CPC nomenclature will apply.

Category No	Subject	CPC Reference No (1)	CPV Reference No
12	Architectural services; engineering services and integrated engineering services; urban planning and landscape engineering services; related scientific and technical consulting services; technical testing and analysis services	867	From 74200000-1 to 74276400-8, and From 74310000-5 to 74323100-0, and 74874000-6
13	Advertising services	871	From 74400000-3 to 74422000-3 (except 74420000-9 and 74421000-6)
14	Building-cleaning services and property management services	874, 82201 to 82206	From 70300000-4 to 70340000-6, and From 74710000-9 to 74760000-4
15	Publishing and printing services on a fee or contract basis	88442	From 78000000-7 to 78400000-1
16	Sewage and refuse disposal services; sanitation and similar services	94	From 90100000-8 to 90320000-6, and 50190000-3, 50229000-6, 50243000-0

(1) CPC Nomenclature (provisional version), used to define the scope of Directive 93/38/EEC.

(2) Except for rail transport services covered by category 18.

(3) Except financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services. Also excluded: services involving the acquisition or rental, by whatever financial procedures, of land, existing buildings, or other immovable property or concerning rights thereon; nevertheless, financial services supplied at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive.

(4) Except research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs on condition that the service provided is wholly remunerated by the contracting authority.

(5) Except arbitration and conciliation services.

## ANNEX XVII B

## SERVICES WITHIN THE MEANING OF ARTICLE 32

Category No	Subject	CPC Reference No	CPV Reference No
17	Hotel and restaurant services	64	From 55000000-0 to 55524000-9, and From 93400000-2 to 93411000-2
18	Rail transport services	711	60111000-9, and from 60121000-2 to 60121600-8
19	Water transport services	72	From 61000000-5 to 61530000-9, and From 63370000-3 to 63372000-7
20	Supporting and auxiliary transport services	74	62400000-6, 62440000-8, 62441000-5, 62450000-1, From 63000000-9 to 63600000-5 (except 63370000-3, 63371000-0, 63372000-7), and 74322000-2, 93610000-7
21	Legal services	861	From 74110000-3 to 74114000-1
22	Personnel placement and supply services <sup>(1)</sup>	872	From 74500000-4 to 74540000-6 (except 74511000-4), and from 95000000-2 to 95140000-5
23	Investigation and security services, except armoured car services	873 (except 87304)	From 74600000-5 to 74620000-1
24	Education and vocational education services	92	From 80100000-5 to 80430000-7
25	Health and social services	93	74511000-4, and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2)
26	Recreational, cultural and sporting services	96	From 74875000-3 to 74875200-5, and From 92000000-1 to 92622000-7 (except 92230000-2)
27	Other services		

<sup>(1)</sup> Except employment contracts.

## ANNEX XVIII

**INFORMATION TO BE INCLUDED IN THE DESIGN CONTEST NOTICE**

1. Name, address, electronic address telephone, telex and fax numbers of the contracting authority and of the service from which additional documents may be obtained.
  2. Project description (nomenclature reference No(s)).
  3. Nature of the contest: open or restricted.
  4. In the case of open contests: final date for receipt of projects.
  5. In the case of restricted contests:
    - (a) the number of participants envisaged, or range;
    - (b) where applicable, names of participants already selected;
    - (c) criteria for the selection of participants;
    - (d) final date for receipt of requests to participate.
  6. Where applicable, indication of whether participation is reserved to a particular profession.
  7. Criteria to be applied in the evaluation of projects.
  8. Where applicable, names of the selected members of the jury.
  9. Indication of whether the decision of the jury is binding on the authority.
  10. Where applicable, number and value of prizes.
  11. Where applicable, details of payments to all participants.
  12. Indication of whether the prize-winners are permitted any follow-up contracts.
  13. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
  14. Date of dispatch of the notice.
  15. Date of receipt of the notice by the Office for Official Publications of the European Communities.
  16. Any other relevant information
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## ANNEX XIX

**INFORMATION TO BE INCLUDED IN THE RESULTS OF DESIGN CONTEST NOTICES**

1. Name, address, telegraphic address and telephone, telex and fax numbers of the contracting authority.
  2. Project description (nomenclature reference No(s)).
  3. Total number of participants.
  4. Number of foreign participants.
  5. Winner(s) of the contest.
  6. Where applicable, the prize(s).
  7. Other information.
  8. Reference of the design contest notice.
  9. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
  10. Date of dispatch of the notice.
  11. Date of receipt of the notice by the Office for Official Publications of the European Communities.
-

## ANNEX XX

**FEATURES CONCERNING PUBLICATION****1. Publication of notices**

- (a) Notices referred to in Articles 41, 42, 43 and 63 must be sent by the contracting entities to the Office for Official Publications of the European Communities in the format required by Commission Directive 2001/78/EC of 13 September 2001 amending Annex IV to Council Directive 93/36/EEC, Annexes IV, V and VI to Council Directive 93/37/EEC, Annexes III and IV to Council Directive 92/50/EEC, as amended by Directive 97/52/EC, and Annexes XII to XV, XVII and XVIII to Council Directive 93/38/EEC, as amended by Directive 98/4/EC (Directive on the use of standard forms in the publication of public contract notices) <sup>(1)</sup>. The periodic indicative notices referred to in Article 41(1), published on a buyer profile as described in paragraph 2(b), must also use that format, as must the notice of such publication;
- (b) Notices referred to in Articles 41, 42, 43 and 63 must be published by the Office for Official Publications of the European Communities or by the contracting entities in the event of a periodic indicative notice published on a buyer profile in accordance with Article 41(1).
- In addition, contracting authorities may publish this information on the Internet on a 'buyer profile' as referred to in point 2(b);
- (c) The Office for Official Publications of the European Communities will give the contracting authority the confirmation referred to in Article 44(7).

**2. Publication of complementary or additional information**

- (a) Contracting entities are encouraged to publish the specifications and the additional documents in their entirety on the Internet;
- (b) The buyer profile may include periodic indicative notices as referred to in Article 41(1), information on ongoing invitations to tender, scheduled purchases, contracts concluded, procedures cancelled and any useful general information, such as a contact point, a telephone and a fax number, a postal address and an e-mail address.

**3. Format and procedures for the electronic transmission of notices**

The format and procedure for sending notices electronically are accessible at the Internet address '<http://simap.eu.int>'.

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<sup>(1)</sup> OJ L 285, 29.10.2001, p. 1 and OJ L 214, 9.8.2002, p. 1.



## ANNEX XXI

**DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS**

For the purposes of this Directive,

1. (a) 'Technical specification', in the case of service or supply contracts, means a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods and conformity assessment procedures;
  - (b) 'Technical specification', in the case of works contracts, means the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a material, product or supply, which permits a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting entity. These characteristics shall include levels of environmental performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, and production processes and methods. They shall also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting entity is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;
  2. 'Standard' means a technical specification approved by a recognised standardisation body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:
    - 'international standard': a standard adopted by an international standards organisation and made available to the general public;
    - 'European standard': a standard adopted by a European standards organisation and made available to the general public;
    - 'national standard': a standard adopted by a national standards organisation and made available to the general public;
  3. 'European technical approval' means a favourable technical assessment of the fitness for use of a product, based on the fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. European technical approvals are issued by an approval body designated for this purpose by the Member State;
  4. 'Common technical specifications' means a technical specification laid down in accordance with a procedure recognised by the Member States which has been published in the *Official Journal of the European Union*;
  5. 'Technical reference': any product produced by European standardisation bodies, other than official standards, according to procedures adapted to developments in market needs.
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## ANNEX XXII

## SUMMARY TABLE OF THE TIME-LIMITS LAID DOWN IN ARTICLE 45

## Open procedures

<i>Time limit for receipt of tenders — without a periodic indicative notice</i>					
Time limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 7	Effect on second subparagraph of paragraph 7
52	45	47	40	none	none

*With publication of a periodic indicative notice*

A: Time limit in general	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 7	Effect on second subparagraph of paragraph 7
36	29	31	24	none	none
B: Minimum time limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 7	Effect on second subparagraph of paragraph 7
22	15	17	10	The period of 10 days is extended to 15 days	The period of 17 days is extended to 22 days

## Restricted and negotiated procedures

<i>Time limit for the receipt of requests to participate:</i>					
General time limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
37	30	Not applicable (n.a.)	n.a.	none	n.a.

Minimum time limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
22	15	n.a.	n.a.	none	n.a.
Minimum time limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
15	8	n.a.	n.a.	The period of 8 days is extended to 15 days	n.a.

*Time limit for the receipt of tenders*

A: Time limit in general	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
24	n.a.	19	n.a.	n.a.	none
B: Minimum time limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
10	n.a.	5	n.a.	n.a.	The period of 5 days is extended to 10 days
C: Time limit set by agreement	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
	n.a.	n.a.	n.a.	n.a.	n.a.

## ANNEX XXIII

**INTERNATIONAL LABOUR LAW PROVISIONS WITHIN THE MEANING OF ARTICLE 59(4)**

- Convention 87 on Freedom of Association and the Protection of the Right to Organise;
  - Convention 98 on the Right to Organise and Collective Bargaining;
  - Convention 29 on Forced Labour;
  - Convention 105 on the Abolition of Forced Labour;
  - Convention 138 on Minimum Age;
  - Convention 111 on Discrimination (Employment and Occupation);
  - Convention 100 on Equal Remuneration;
  - Convention 182 on Worst Forms of Child Labour.
-

## ANNEX XXIV

**REQUIREMENTS RELATING TO DEVICES FOR THE ELECTRONIC RECEIPT OF TENDERS, REQUESTS TO PARTICIPATE, APPLICATIONS FOR QUALIFICATION AS WELL AS PLANS AND PROJECTS IN CONTESTS**

Devices for the electronic receipt of tenders, requests to participate, applications for qualification as well as plans and projects in contests must guarantee, through technical means and appropriate procedures, at least that:

- (a) electronic signatures relating to tenders, requests to participate and applications for qualification as well as to the forwarding of plans and projects comply with national provisions adopted pursuant to Directive 1999/93/EC<sup>(1)</sup>;
- (b) the exact time and date of the receipt of tenders, requests to participate, applications for qualification as well as the submission of plans and projects can be determined precisely;
- (c) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under these requirements;
- (d) if that access prohibition is infringed, it may be reasonably ensured that the infringement is clearly detectable;
- (e) only authorised persons may set or change the dates for opening data received;
- (f) during the various stages of the qualification procedure, the contract award procedure or contest, access to all data submitted, or to part thereof, must be possible only through simultaneous action by authorised persons;
- (g) simultaneous action by authorised persons must give access to data transmitted only after the prescribed date;
- (h) data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith.

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<sup>(1)</sup> Directive 1999/93/EC of the European Parliament and of the Council on a Community framework for electronic signatures (OJ L 13, 19.1.2000, p. 12).

## ANNEX XXV

## TIME LIMITS FOR TRANSPOSITION AND IMPLEMENTATION

Directive	Time limits for transposition	Time limits for implementation
93/38/EEC (OJ L 199, 9.8.1993, p. 84)	1.7.1994	Spain: 1.1.1997; Greece and Portugal: 1.1.1998
98/4/EC (OJ L 101, 1.4.1998, p. 1)	16.2.1999	Greece and Portugal: 16.2.2000

## ANNEX XXVI

CORRELATION TABLE <sup>(1)</sup>

This Directive	Directive 93/38/EEC	
Article 1(1)	Article 1(1), 1st sentence	
Article 1(2)(a)	Article 1(4), 1st sentence,	Adapted
Article 1(2)(b), 1st sentence	Article 1(4)(b), 1st sentence	Amended
Article 1(2)(b), 2nd sentence	Article 14(10), 2nd sentence	Adapted
Article 1(2)(c), 1st subparagraph	Article 1(4)(a)	Adapted
Article 1(2)(c), 2nd subparagraph		New
Article 1(2)(d), 1st subparagraph	Article 1(4)(c), 1st part	Adapted
Article 1(2)(d), 2nd subparagraph	Article 1(4), 2nd subparagraph	Adapted
Article 1(2)(d), 3rd subparagraph		New
Article 1(3)(a)		New
Article 1(3)(b)		New
Article 1(4)	Article 1(5)	Adapted
Article 1(5)		New
Article 1(6)		New
Article 1(7), 1st paragraph	Article 1(6), in fine	Amended
Article 1(7), 2nd paragraph		New
Article 1(7), 3rd subparagraph	Article 1(6), 1st sentence	Adapted
Article 1(8)		New
Article 1(9),(a) to (c)	Article 1(7)	Adapted
Article 1(9),(d)	Article 1(16),	Adapted
Article 1(10)		New
Article 1(11)		New
Article 1(12)		New
	Article 1(14) and (15)	Deleted
Article 2(1)(a)	Article 1(1)	
Article 2(1)(b)	Article 1(2)	

<sup>(1)</sup> 'Adapted' indicates that the wording has been reformulated without changing the scope of the text of the repealed Directive. Changes to the scope of the provisions of the repealed Directive are denoted by the word 'Amended'.

This Directive	Directive 93/38/EEC	
Article 2(2)	Article 2(1)	Adapted
Article 2(3)	Article 2(3)	Amended
Article 3(1)	Article 2(2)(a)(iii)	Adapted
Article 3(2)	Article 2(5)(b)	Adapted
Article 3(3)	Article 2(2)(a)(ii)	Adapted
Article 3(4)	Article 2(5)(a)	Adapted
Article 4(1)	Article 2(2)(a)(i)	Adapted
Article 4(2)	Article 6(2)	Adapted
Article 4(3)	Article 2(5)(a)	Adapted
Article 5(1)	Article 2(2)(c)	Amended
Article 5(2)	Article 2(4)	Amended
Article 6		New
Article 7	Article 2(2)(b)	
	Article 2(2)(d)	Deleted
Article 8	Article 2(6)	Amended
Article 9		New
Article 10	Article 4(2)	Amended
Article 11(1), 1st subparagraph	Article 33(2)	
Article 11(1), 2nd subparagraph	Article 33(3)	Amended
Article 11(2)	Article 33(1)	Amended
Article 12	Article 42a	
Article 13(1)	Article 4(3)	
Article 13(2)	Article 4(4)	Amended
Article 14	Article 5	
Article 15		New
Article 16	Article 14(1)	Amended
Article 17(1)	Article 14(2) and (6)	Amended
Article 17(2)	Article 14.(13)	Adapted
Article 17(3)	Article 14(9)	Amended
Article 17(4)	Article 14(11)	Adapted



This Directive	Directive 93/38/EEC	
Article 17(5)	Article 14(12)	Adapted
Article 17(6)(a), 1st subparagraph	Article 14(10), 3rd sentence	Amended
Article 17(6)(a), 2nd subparagraph	Article 14(10), 2nd subparagraph, 2nd sentence	Adapted
Article 17(6)(a), 3rd subparagraph	Article 14(10), 2nd subparagraph, 3rd sentence	Amended
Article 17(6)(b), 1st subparagraph	Article 14(10), 2nd subparagraph, 1st sentence	Amended
Article 17(6)(b), 2nd subparagraph	Article 14(10), 2nd subparagraph, 2nd sentence	Adapted
Article 17(6)(b), 3rd subparagraph		New
Article 17(7)	Article 14(7)	Amended
Article 17(8)	Article 14(8)	
Article 17(9)	Article 14(4)	Amended
Article 17(10)	Article 14(3)	Amended
Article 17(11)	Article 14(5)	
Article 18		New
Article 19	Article 7	
Article 20	Article 6(1) and (3)	Adapted
Article 21	Article 10	
Article 22(a)	Article 12, 1	Amended
Article 22(b)	Article 12, 2	
Article 22(c)	Article 12, 3	
Article 23(1)	Article 1(3)	
Article 23(2)	Article 13(1), 1st subparagraph, points (a) and (b)	Amended
Article 23(3), 1st subparagraph, point a	Article 13(1), 1st subparagraph in fine	Amended
Article 23, 1st subparagraph, points b and c		New
Article 23(3), 2nd subparagraph		New
Article 23(3), 3rd subparagraph	Article 13(1), 2nd subparagraph	Amended
Article 23(4)(a)	Article 13(1), 1st subparagraph, point b	Amended
Article 23(4)(b)		New
Article 23(4) in fine		New

This Directive	Directive 93/38/EEC	
Article 23(5)	Article 13(2)	Amended
Article 24(a)	Article 1(4),c,i	
Article 24(b)	Article 1,(4),c,iii	
Article 24(c)	Article 1(4),c,iv	Amended
Article 24(d)	Article 1(4),c,v	
Article 24(e)	Article 1(4),c,vi	
	Article 1(4),c,ii and Annex XVI A, footnote 2	Deleted
Article 25	Article 11	Amended
Article 26(a)	Article 9(1),a	Adapted
Article 26(b)	Article 9(1),b	Adapted
	Article 9(2)	Deleted
	Article 3(1)	Deleted
Article 27	Article 3(2)	Amended
	Article 3(3) to (5)	Deleted
Article 28		New
Article 29		New
Article 30		New
	Article 8	Deleted
Article 31	Article 15	Adapted
Article 32	Article 16	
Article 33	Article 17	
Article 34	Article 18 and Article 34(4)	Amended
Article 35	Article 19	Adapted
Article 36, paragraph 1	Article 34(3)	Amended
Article 36(2)		New
Article 37	Article 27	Amended
Article 38		New
Article 39(1)	Article 29(1)	Amended
Article 39(2)	Article 29(2)	
Article 40(1)	Article 4(1)	

This Directive	Directive 93/38/EEC	
Article 40(2) and (3)	Article 20(1) and (2)	
Article 41(1), 1st subparagraph	Article 22(1)	Amended
Article 41(1), 2nd to 6th subparagraph		New
Article 41(2)	Article 22(4)	
Article 41(3)	Article 30(9)	Adapted
Article 42(1)	Article 21(1)	
Article 42(2)		New
Article 42(2)(a) and (b)	Article 21(2),a and b	Adapted
Article 42(2)(c), 1st sentence	Article 22(3), 1st sentence	
Article 42(2)(c), 2nd sentence	Article 22(3), 2nd sentence	
Article 43(1)	Article 24(1)	Amended
Article 43(2)	Article 24(2)	Adapted
Article 43(3)	Article 24(3), 1st to 3rd sentences	Adapted
Article 43(4)	Article 24(3), 4th sentence	Adapted
Article 43(5)	Article 24(4)	Adapted
Article 44(1)		New
Article 44(2)		New
Article 44(3), 1st subparagraph		New
Article 44(3), 2nd subparagraph, 1st sentence	Article 25(3), 1st sentence	Amended
Article 44(3), 2nd subparagraph, 2nd sentence	Article 25(3), 2nd sentence	Adapted
Article 44(4), 1st subparagraph	Article 25(2)	Amended
Article 44(4), 2nd subparagraph	Article 25(4)	
Article 44(5)	Article 25(5)	Amended
Article 44(6)	Article 25(1)	
Article 44(7)		New
Article 44(8)		New
	Article 25(3), 3rd sentence	Deleted
Article 45(1)		New
Article 45(2)	Article 26(1), 1st subparagraph, 1st sentence	

This Directive	Directive 93/38/EEC	
Article 45(3)	Article 26(2)	Adapted
Article 45(4)	Article 26(1), 2nd and 3rd sentences	Adapted
Article 45(5) to (8)		New
Article 45(9)	Article 28(3)	Amended
Article 45(10)		New
Article 46(1)	Article 28(1)	Amended
Article 46(2)	Article 28(2)	Amended
Article 47(1), 1st sentence	Article 28(4), 1st sentence	
Article 47(1), 2nd sentence, 1st indent		New
Article 47(1), 2nd sentence, 2nd indent	Article 28(4), 2nd sentence	Amended
Article 47(2)		New
Article 47(3)	Article 28(2)	Amended
Article 47(4), a to d	Article 28(4), a to d and f	Adapted
	Article 28(4)(f)	Deleted
Article 47(4)(e)	Article 28(4),e	Amended
Article 47(4)(f)		New
Article 47(5), a to h	Article 21(2),c	Adapted
Article 47(3), i		New
Article 48(1)	Article 28(6), 1st and 2nd sentences and 1st indent	Amended
Article 48(2)		New
Article 48(3)	Article 28(6), 2nd and 4th indent	Amended
Article 48(4)		New
Article 48(5)		New
Article 48(6)	Article 28(5)	Amended
Article 49(1)	Article 41(3)	Amended
Article 49(2), 1st subparagraph	Article 41(4), 1st subparagraph	Amended
Article 49(2), 2nd subparagraph	Article 41(2), 2nd subparagraph	Adapted
Article 49(3)	Article 30(4)	

This Directive	Directive 93/38/EEC	
Article 49(4)	Article 30(6)	Amended
Article 49(5)	Article 30(8)	Amended
Article 50(1)	Article 41(1)	Amended
Article 50(2)	Article 41(2)	
Article 51		New
Article 52(1)	Article 30(5)	Amended
Article 52(2)	Article 32	Amended
Article 52(3)		New
Article 53(1)	Article 30(1)	
Article 53(2)	Article 30(2)	Amended
Article 53(3)		New
Article 53(4)		New
Article 53(5)		New
Article 53(6)	Article 30(3)	
Article 53(7)	Article 30(7)	
Article 53(8)		New
Article 53(9)	Article 21(3)	
	Article 21(5)	Deleted
Article 54(1)		New
Article 54(2)	Article 31(1)	
Article 54(3)	Article 31(3)	Adapted
Article 54(4), 1st subparagraph	Article 31(2)	Adapted
Article 54(4), 2nd subparagraph		New
Article 54(5)		New
Article 54(6)		
Article 55(1)	Article 34(1)	
Article 55(2)	Article 34(2)	Amended
	Article 35(1) and (2)	Deleted
Article 56		New
Article 57(1) and (2)	Article 34(5), 1st and 2nd subparagraphs	Amended

This Directive	Directive 93/38/EEC	
Article 57(3)	Article 34(5), 3rd subparagraph	Amended
Article 58(1) and (2)	Article 36(1) and (2)	
Article 58(3)	Article 36(3) and (4)	Adapted
Article 58(4) and (5)	Article 36(5) and (6)	
Article 59(1), (2), (3), (5) and (6)	Article 37	Adapted
Article 59(4)		new
Article 60(1)	Article 23(3)	
Article 60(2)	Article 23(4)	
Article 61(1) and (2)	Article 23(1) and (2)	Amended
Article 62(1)	Article 6(1), Article 12	Amended
Article 62(2)		New
Article 63(1), 1st subparagraph	Article 21(4)	Amended
Article 63(1), 2nd subparagraph	Article 24(1) and (2), 2nd sentence	Adapted
Article 63(2)	Article 25	Amended
Article 64		New
Article 65(1)	Article 4(1)	Adapted
Article 65(2)	Article 23(5)	
Article 65(3)	Article 23(6), 1st subparagraph	
Article 66	Article 23(6), 2nd subparagraph	Amended
Article 67	Article 42	Amended
	Article 39	Deleted
Article 68(1)	Article 40(5)	Amended
Article 68(2)		New
Article 68(3)		New
Article 69(1), 1st subparagraph	Article 14(15), 1st sentence	Amended
Article 69(1), 2nd subparagraph	Article 14(15), 2nd sentence	Amended
Article 69(2), 1st subparagraph		New
Article 69(2), 2nd subparagraph	Article 14(14), 1st and 2nd sentences	Amended
Article 69(3)	Article 14(14), 3rd sentence and (15), 3rd sentence	Adapted
Article 70(1), point a	Article 40(1)	Amended

This Directive	Directive 93/38/EEC	
Article 70(1), point b	Article 40(2)	Adapted
Article 70(1), point c	Article 40(3)	Amended
Article 70(1), point d	Article 40(3)	Amended
Article 70(1), point e		New
Article 70(1), points f, g and h		New
Article 70(1), point i	Article 40(2) and 42(2)	Adapted
Article 70(1), point j	Article 14(16)	Adapted
	Article 40(4)	Deleted
	Article 43 and Article 44	Deleted
Article 71		New
Article 72		new
Annex I	Annex III	Adapted
Annex II	Annex II	Adapted
Annex III	Annex I	Adapted
Annex IV	Annex VI	Adapted
Annex V	Annex VII	Adapted
Annex VI		New
Annex VII	Annex IV	Adapted
Annex VIII	Annex V	Adapted
Annex IX	Annex IX	Adapted
Annex X	Annex VIII	Adapted
Annex XI		New
Annex XII	Annex XI	Adapted
Annex XIII, A to C	Annex XII	Amended
Annex XIII, D		New
Annex XIV	Annex XIII	Amended
Annex XV, A	Annex XIV	Amended
Annex XV, B		New
Annex XVI	Annex XV	Amended
Annex XVII A	Annex XVI A	Amended
Annex XVII B	Annex XVI B	Adapted

This Directive	Directive 93/38/EEC	
Annexes XVIII and XIX	Annexes XVII and XVIII	Amended
Annex XX, point 1, a		New
Annex XX, point 1.b	Article 25(2)	Amended
Annex XX, point 1.c		New
Annex XX, points 2 and 3		New
Annex XXI, point 1	Article 1(8)	Amended
Annex XXI, point 2, 1st sentence	Article 1(9)	Adapted
Annex XXI, point 2, 1st indent		New
Annex XXI, point 2, 2nd indent	Article 1(10)	Amended
Annex XXI, point 2, 3rd indent		New
Annex XXI, point 3	Article 1(12)	Amended
Annex XXI, point 4	Article 1(11)	
	Article 1(13)	Deleted
Annex XXII		New
Annex XXIII		
Annex XXIV		New
Annex XXV		New
Annex XXVI		New





EUROPEAN COMMISSION

Brussels, 20.12.2011  
COM(2011) 895 final

2011/0439 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on procurement by entities operating in the water, energy, transport and postal services  
sectors**

(Text with EEA relevance)

{SEC(2011) 1585}

{SEC(2011) 1586}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

The Europe 2020 strategy for smart, sustainable and inclusive growth [COM(2010) 2020] is based on three interlocking and mutually reinforcing priorities: developing an economy based on knowledge and innovation; promoting a low-carbon, resource-efficient and competitive economy; and fostering a high-employment economy delivering social and territorial cohesion.

Public procurement plays a key role in the Europe 2020 strategy as one of the market-based instruments to be used to achieve those objectives by improving the business environment and conditions for business to innovate and by encouraging wider use of green procurement supporting the shift towards a resource efficient and low-carbon economy. At the same time, the Europe 2020 strategy stresses that public procurement policy must ensure the most efficient use of funds and that procurement markets must be kept open Union-wide.

In the face of those challenges, the existing public procurement legislation needs to be revised and modernised in order to make it better suited to deal with the evolving political, social and economic context. This concerns not only procurement by the State and public authorities, but also contract awards by utilities operators which have their own specific procurement regime.

In its communication of 13 April 2011 on “The Single Market Act: Twelve levers to boost growth and confidence”, the European Commission included among its twelve key priority actions to be adopted by the EU institutions before the end of 2012, a revised and modernised public procurement legislative framework to make the award of contracts more flexible and enable public contracts to be put to better use in support of other policies.

This proposal has two complementary objectives:

- Increase the efficiency of spending to ensure the best possible procurement outcomes in terms of value for money. This implies in particular a simplification and flexibilisation of the existing public procurement rules. Streamlined, more efficient procedures will benefit all economic operators and facilitate the participation of SMEs and cross-border bidders.
- Allow procurers to make better use of procurement in support of common societal goals such as protection of the environment, higher resource and energy efficiency, combating climate change, promoting innovation, employment and social inclusion and ensuring the best possible conditions for the provision of high quality social services.

- **General context**

Public procurement plays an important role in the overall economic performance of the European Union. In Europe, public purchasers spend around 18% of GDP on supplies, works and services. Given the volume of purchases, public procurement can be used as a powerful lever for achieving a Single Market fostering smart, sustainable and inclusive growth.

The current generation of public procurement Directives – Directives 2004/17/EC<sup>1</sup> and 2004/18/EC<sup>2</sup> – are the product of a long evolution that started in 1971 with the adoption of Directive 71/305/EEC. By guaranteeing transparent and non-discriminatory procedures, those Directives principally aim to ensure that economic operators from across the Single Market benefit fully from the basic freedoms in competing for public contracts.

A comprehensive economic evaluation has shown that the procurement Directives have achieved their objectives to a considerable extent. They have resulted in greater transparency and higher levels of competition while achieving measurable savings through lower prices.

Stakeholders have nevertheless voiced demand for a review of the public procurement directives to simplify the rules, increase their efficiency and effectiveness and make them better suited to deal with the evolving political, social and economic context. Streamlined, more efficient procedures will increase flexibility for contracting authorities, benefit all economic operators and facilitate the participation of SMEs and cross-border bidders. Improved procurement rules will also allow contracting entities to make better use of procurement in support of common societal goals, such as the protection of the environment, higher resource and energy efficiency and combating climate change, promoting innovation and social inclusion, and ensuring the best possible conditions for the provision of high quality social services. Those orientations were confirmed by the results of a consultation of stakeholders conducted by the European Commission in spring 2011, where a very large majority of stakeholders supported the proposal to review the procurement Directives in order to adapt them better to the new challenges faced by procurers and economic operators alike.

- **Existing provisions in the area of the proposal**

Together with the proposed new Directive on procurement by public authorities, the proposal will replace Directives 2004/17/EC and 2004/18/EC as the core elements of the European Union public procurement legislative framework.

The Directive will be complemented by the further elements of that legislative framework:

- Directive 2009/81/EC<sup>3</sup> sets specific rules for defence and sensitive security procurement,
- Directive 92/13/EEC<sup>4</sup> establishes common standards for national review procedures to ensure that rapid and effective means of redress is available in all EU countries in cases where bidders consider that contracts have been awarded unfairly.

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<sup>1</sup> Directive 2004/17/EC of 31 March 2004 coordinating the procurement procedures of entities in the water, energy, transport and postal services sectors, OJ L 134, 30.4.2004, p. 1.

<sup>2</sup> Directive 2004/18/EC of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, OJ L 134, 30.4.2004, p. 114.

<sup>3</sup> Directive 2009/81/EC of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC, OJ L 216, 20.8.2009, p. 76.

<sup>4</sup> 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 telecommunication sectors, OJ L 76, 23.3.1992, p. 14.

- **Consistency with the other policies and objectives of the Union**

This initiative implements the Europe 2020 strategy for smart, sustainable and inclusive growth [COM(2010) 2020] and the Europe 2020 Flagship Initiatives on a Digital Agenda for Europe [COM(2010) 245], the Innovation Union [COM(2010) 546], an Integrated Industrial Policy for the Globalisation Era [COM(2010) 614], Energy 2020 [COM(2010) 639] and a Resource Efficient Europe [COM(2011) 21]. It also implements the Single Market Act [COM(2011) 206], in particular its twelfth key action “Revised and Modernised Public Procurement Legislative Framework”. It is a CWP 2011 strategic initiative.

## 2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

### *Consultation methods, main sectors targeted and general profile of respondents*

The European Commission published on 27 January 2011 a *Green Paper on the modernisation of EU public procurement policy – Towards a more efficient European Procurement Market*<sup>5</sup> launching a broad public consultation on options for legislative changes to make the award of contracts easier and more flexible and enable public contracts to be put to better use in support of other policies. The purpose of the Green Paper was to identify a number of key areas for reform and ask for stakeholders’ views on concrete options for legislative change. Among the issues covered were the needs for simplifying and flexibilising procedures, strategic use of public procurement to promote other policy objectives, improving access for SMEs to public contracts and combating favouritism, corruption and conflicts of interest.

The public consultation closed on 18 April 2011 and met with a high response. In total, 623 replies were received, coming from a wide variety of stakeholder groups including central Member State authorities, local and regional public purchasers and their associations, undertakings, industry associations, academics, civil society organisations (including trade unions) and individual citizens. The majority of replies originated from the United Kingdom, Germany, France and, to a lesser degree, Belgium, Italy, the Netherlands, Austria, Sweden, Spain and Denmark.

The results of the consultation were summarised in a synthesis paper<sup>6</sup> and presented and discussed at a public conference on 30 June 2011<sup>7</sup>.

### *Summary of responses and how they have been taken into account*

A very large majority of stakeholders appreciated the initiative of the European Commission to review the current procurement policy. Amongst the different subjects discussed in the Green Paper, stakeholders put a particularly strong emphasis on the need to simplify procedures and make them more flexible. There was also consensus among all stakeholder

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<sup>5</sup> COM(2011) 15.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0015:FIN:EN:PDF>

<sup>6</sup>

[http://ec.europa.eu/internal\\_market/consultations/docs/2011/public\\_procurement/synthesis\\_document\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2011/public_procurement/synthesis_document_en.pdf)

<sup>7</sup>

[http://ec.europa.eu/internal\\_market/publicprocurement/modernising\\_rules/conferences/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/modernising_rules/conferences/index_en.htm)

groups that the rules on procurement by utilities were still relevant. A clear majority of respondents agreed that there was still a need for a specific set of rules to be applied to public utilities operators and that the different rules applying to utilities operators adequately reflect the specific character of utilities procurement.

In the same vein, a clear majority of respondents agree that the criteria used for defining the entities subject to the utilities rules (activities carried out by the entities concerned, their legal statute and, where they are private, the existence of special or exclusive rights) are still appropriate and should be maintained. Most respondents are also in agreement that the profit-seeking or commercial ethos of private companies cannot be regarded as sufficient to guarantee objective and fair procurement, if those companies are operating on the basis of special or exclusive rights.

On the strategic use of public procurement to achieve the societal goals of the Europe 2020 strategy, stakeholders' opinions were mixed. Many stakeholders, especially businesses, showed a general reluctance to the idea of using public procurement in support of other policy objectives. Other stakeholders, notably civil society organisations, were strongly in favour of such strategic use and advocated far-reaching changes to the very principles of the European Union public procurement policy.

- **Collection and use of expertise**

In addition to the Green Paper consultation, the European Commission conducted in 2010/2011 a comprehensive evaluation of the impact and effectiveness of EU procurement legislation drawing on an extensive body of evidence and new independent research. The studies assessed mainly the cost and effectiveness of procurement procedures, issues of cross border procurement, SMEs' access to procurement markets and the strategic use of procurement in Europe. With regard to utilities procurement, the evaluation examined whether the utilities sectors are now more exposed to competition than they were at the time of adoption of the procurement regime.

The findings of the evaluation showed that legislative activity to liberalise access to utility sectors has not yet translated into sustained or effective competitive pressure on incumbent operators. In many utility sectors, high levels of market concentration or anaemic competition continue to be observed. The evaluations concluded that conditions have not evolved to the extent that competition can be deemed to be sufficiently strong on a sector wide basis to permit the exclusion of sectors from the scope of the utilities procurement Directive. The rationale of the Directive continues to apply in general while specific exemptions from the application of the procurement rules may be justified on the basis of an in-depth, case by case analysis.

- **Impact assessment**

The impact assessment and its executive summary give an overview of the different options for each of the five groups of basic problems (administrative organisation, scope, procedures, strategic procurement and access to procurement markets). Based on an analysis of the advantages and disadvantages of the different options, a package of preferred options was identified that should optimise the synergies between the different solutions allowing savings due to one type of action to neutralise related costs caused by another (e.g. possible increased procedural requirements caused by strategic procurement actions could partially be

neutralised by savings related to the improved design of procurement procedures). Those preferred options form the basis of the present proposal.

The draft Impact Assessment report was scrutinised by the Impact Assessment Board, who asked for amendments concerning in particular the identification of the specific elements of the legislative framework to be addressed, the description of the options under discussion, a more in-depth cost-benefit analysis of the selected headline actions and the systematic integration of stakeholder views, both in the problem definition and to complement the analysis of impacts. Those recommendations for improvement were integrated in the final report. The opinion of the Impact Assessment Board on the report is published together with this proposal, as well as the final Impact Assessment report and its executive summary.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

- **Legal basis**

The proposal is based on Articles 53(1), 62 and 114 of the Treaty on the Functioning of the European Union (TFEU).

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the EU.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason:

The coordination of procurement procedures above certain thresholds has proven an important tool for the achievement of the Internal Market in the field of purchasing by utilities. It ensures effective and equal access to contracts for economic operators across the Internal Market. Experience with Directives 2004/17/EC and 2004/18/EC and the earlier generations of procurement Directives has shown that European-wide procurement procedures provide transparency and objectivity in procurement resulting in considerable savings and improved procurement outcomes that benefit utilities operators, their customers and, ultimately, the European taxpayer.

This objective could not be sufficiently achieved through action by Member States which would inevitably result in divergent requirements and possibly conflicting procedural regimes increasing regulatory complexity and causing unwarranted obstacles for cross-border activities.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle since it does not go beyond what is necessary in order to achieve the objective of ensuring the proper functioning of the Internal Market through a set of European-wide coordinated procurement procedures. Moreover, the proposal is based on a “tool box” approach, allowing Member State a maximum of flexibility in adapting the procedures and tools to their specific situation.

Compared to the current procurement Directives, the proposal will reduce administrative burden related to the conduct of the procedure both for contracting entities and economic operators; where new requirements are foreseen (for instance, in the context of strategic procurement), those will be compensated by the removal of constraints in other areas.

- **Choice of instruments**

Since the proposal is based on Articles 53(1), 62 and 114 TFEU the use of a Regulation for the provisions applying both to the procurement of goods and services would not be permitted by the Treaty. The instrument proposed is therefore a Directive.

During the impact assessment process, non-legislative options were discarded for reasons set out in detail in the impact assessment.

#### **4. BUDGETARY IMPLICATION**

The proposal has no budgetary implications.

#### **5. ADDITIONAL INFORMATION**

- **Repeal of existing legislation**

The adoption of the proposal will lead to the repeal of existing legislation (Directive 2004/17/EEC).

- **Review/revision/sunset clause**

The proposal contains a review clause concerning the economic effects of the threshold amounts.

- **Transposition measures and explanatory documents**

The proposal concerns an area where Union legislation has a coordination purpose, with a significant impact on a wide range of national legal sectors. Notwithstanding the coordination purpose, many provisions constitute full harmonisation and the proposal includes a large number of legal obligations. Member States supplement Union rules with national additional provisions so as the whole system becomes operational.

In this context, the Commission has identified a number of factors which render explanations by Member States necessary both for the correct understanding of transposing measures and for the functioning of the whole picture of procurement rules at national level:

- transposing and implementing measures are adopted at different institutional levels (national / federal, regional, local);
- in addition to the different regulatory layers, in many Member States rules are also established according to the sector involved or the type of procurement concerned;
- administrative measures of general or specific nature complement and in some cases overlap the main legal framework.

Only Member States can explain how the different measures transpose the Union directives in the public procurement sector and how the same measures interact each with the others.

For those reasons, the communication of documents explaining the relationship between the various parts of this directive and the corresponding parts of national transposition measures should be communicated together with the transposing measures, in particular concordance tables, which constitute an operational tool for the analysis of the national measures.

- **European Economic Area**

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

- **Detailed explanation of the proposal**

*1) Simplification and flexibilisation of procurement procedures*

The proposed Directive provides for a simplification and flexibilisation of the procedural regime set by the current public procurement Directives. For this purpose, it contains the following measures:

*Clarification of scope:* The basic concept of “procurement” which appears also in the title of the proposed Directive has been newly introduced in order to better determine the scope and purpose of procurement law and to facilitate the application of the thresholds. The definitions of certain key notions determining the scope of the Directive (such as body governed by public law, public works and service contracts, mixed contracts) have been revised in the light of the case-law of the Court of Justice. At the same time, the proposal endeavours to keep continuity in the use of notions and concepts that have been developed over the years through the Court’s case-law and are well known to practitioners. In this context, it should be noted that minor deviations from the wording or presentation known from the previous Directives do not necessarily imply a change of substance, but may be due to simplification of texts.

The notion of special or exclusive rights is central to the definition of the scope of this Directive, since entities which are neither contracting authorities nor public undertakings within the meaning of this Directive are subject to this Directive only to the extent that they exercise one of the activities covered on the basis of such rights. It is therefore appropriate to clarify that rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria, notably pursuant to Union legislation, do not constitute special or exclusive rights for the purposes of this Directive.

The traditional distinction between so-called priority and non-priority services (“A” and “B” services) will be abolished. The results of the evaluation have shown that it is no longer justified to restrict the full application of procurement law to a limited group of services. However, it became also clear that the regular procurement regime is not adapted to social services which need a specific set of rules (see below).

Following the results of the evaluation, the scope in terms of sectors covered remains largely unchanged. However, procurement made for the purpose of exploring oil and gas has been withdrawn from the scope as that sector has been found to be subject to such competitive pressure that the procurement discipline brought about by the Directive is no longer needed.



The competitive situation in this sector of activity has been examined in the context of four different requests for exemption under the current Article 30<sup>8</sup>. In all four cases, the relevant geographical market was consistently found to be worldwide, which is furthermore in accordance with well-established practice in merger cases<sup>9</sup>. The conclusions have consistently been that the exploration market is not highly concentrated. Apart from state owned companies, the market is characterised by the presence of three international vertically integrated private players named the super majors (BP, ExxonMobil and Shell) as well as a certain number of so-called ‘majors’ and the individual market share of even super majors is well below one percent. All of this has consistently been found to constitute indications of direct exposure to competition and access to the market is furthermore liberalised through the provisions of the Hydrocarbon Licensing Directive<sup>10</sup>. It therefore appropriate to simplify the legal situation and to lessen the administrative burden on all concerned (contracting entities, Member States, the European Commission, the European Parliament and Council) by avoiding the need to adopt individual Article 30 Decisions in respect of each of the remaining 23 Member States.

*Toolbox approach:* Member State systems will provide the three basic forms of procedure which already exist under current Directives: open and restricted procedures as well as negotiated procedures with prior call for competition. They may, in addition, foresee either as standard procedure or subject to certain conditions the innovation partnership, a new form of procedure for innovative procurement (see below).

Contracting entities will furthermore have at their disposal a set of six specific procurement techniques and tools intended for aggregated and electronic procurement: framework agreements, dynamic purchasing systems, electronic auctions, electronic catalogues, central purchasing bodies and joint procurement. Compared to the existing Directive, those tools have been improved and clarified with a view to facilitating e-procurement.

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<sup>8</sup> European Commission Implementing Decision 2011/481/EU of 28 July 2011 exempting exploration for oil and gas and exploitation of oil in Denmark, excluding Greenland and the Faroe Islands, from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, OJ L 197 of 29.7.2011, p. 20; European Commission Implementing Decision 2011/372/EU of 24 June 2011 exempting exploration for oil and gas and exploitation of oil in Italy from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, OJ L 166 of 25.6.2011, p. 28; European Commission Decision 2010/192/EU of 29 March 2010 exempting exploration for and exploitation of oil and gas in England, Scotland and Wales from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors; OJ L 84 of 31.03.2010, p. 52; European Commission Decision 2009/546/EC of 8 July 2009 exempting exploration for and exploitation of oil and gas in the Netherlands from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, OJ L 181 of 14.07.2009, p. 53.

<sup>9</sup> See in particular European Commission Decision 2004/284/EC of 29 September 1999 declaring a concentration compatible with the common market and the EEA Agreement (Case No IV/M.1383 — Exxon/Mobil) and subsequent decisions, inter alia, European Commission Decision of 03/05/2007 declaring a concentration to be compatible with the common market (Case No COMP/M.4545 — STATOIL/HYDRO) according to Council Regulation (EEC) No 139/2004.

<sup>10</sup> Directive 94/22/EEC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospecting, exploration and production of hydrocarbons, OJ L 79 of 29.3.1996, p. 30.

*Promotion of e-procurement:* The use of electronic communications and transaction processing by purchasers can deliver significant savings and improved procurement outcomes while reducing waste and error. The proposal aims at helping Member States to achieve the switchover to e-procurement enabling suppliers to take part in online procurement procedures across the Internal Market. For this purpose, the proposed Directive provides for the mandatory transmission of notices in electronic form, the mandatory electronic availability of the procurement documents and imposes the switch to fully electronic communication, in particular e-submission, in all procurement procedures within a transition period of two years. It streamlines and improves Dynamic Purchasing Systems and electronic catalogues, fully electronic procurement tools that are particularly adapted to highly aggregated procurement done by Central Purchasing Bodies. The e-procurement instrument would also enable contracting authorities to prevent, detect and correct errors generally due to wrong understanding or interpretation of public procurement rules.

*Modernisation of procedures:* The proposal provides a more flexible and user-friendly approach for certain important features of procurement procedures. Time-limits for participations and submission of offers have been shortened, allowing for quicker and more streamlined procurement. The distinction between selection of tenderers and award of the contract which is often a source of errors and misunderstandings has been made more flexible, allowing contracting entities to decide on the most practical sequencing by examining award criteria before selection criteria and to take into account the organisation and quality of the staff assigned to performing the contract as an award criterion.

The procedure for exemption of contracts awarded in sufficiently competitive markets (the current “Article 30 decisions”) has been simplified and streamlined. A number of exemptions, in particular the intra-group and joint venture exemptions which are important in practice have also been reviewed and clarified.

The modification of contracts during their term has become an increasingly relevant and problematic issue for practitioners. A specific provision on modification of contracts takes up the basic solutions developed by case-law and provides a pragmatic solution for dealing with unforeseen circumstances requiring an adaption of a public contract during its term.

## 2) *Strategic use of public procurement in response to new challenges*

The proposed Directive is based on *enabling approach* providing contracting entities with the instruments needed to contribute to the achievement of the Europe 2020 strategic goals by using their purchasing power to procure goods and services that foster innovation, respect the environment and combat climate change while improving employment, public health and social conditions.

*Life-cycle costing:* The proposal gives purchasers the possibility to base their award decisions on life-cycle costs of the products, services or works to be purchased. The life cycle covers all stages of the existence of a product or works or provision of a service, from raw material acquisition or generation of resources until disposal, clearance and finalisation. The costs to be taken into account do not only include direct monetary expenses, but also external environmental costs if they can be monetised and verified. Where a common European Union methodology for the calculation of life-cycle costs has been developed, contracting entities are obliged to make use of it.

*Production process:* Contracting entities may refer to all factors directly linked to the production process in the technical specifications and in the award criteria, as long as they refer to aspects of the production process which are closely related to the specific production or provision of the good or service purchased. This excludes requirements that are not related to the process of producing the products, works or services covered by the procurement, such as a general corporate social responsibility requirement covering the whole operation of the contractor.

*Labels:* Contracting entities may require that works, supplies or services bear specific labels certifying environmental, social or other characteristics, provided that they accept also equivalent labels. This applies for instance to European or (multi-)national eco-labels or labels certifying that a product is free of child-labour. The certification schemes in question must concern characteristics linked to the subject-matter of the contract and be drawn up on the basis of scientific information, established in an open and transparent procedure and accessible to all interested parties.

*Sanctioning violations of mandatory social, labour or environmental law:* Under the proposed Directive, a contracting entity can exclude economic operators from the procedure, if it identifies infringements of obligations established by Union legislation in the field of social, labour or environmental law or of international labour law provisions. Moreover, contracting entities will be obliged to reject tenders if they have established that they are abnormally low because of violations of Union legislation in the field of social, labour or environmental law.

*Social services:* The evaluation on the impact and effectiveness of EU public procurement legislation has shown that social, health and education services have specific characteristics which make them inappropriate for the application of the regular procedures for the award of public service contracts. Those services are typically provided within a specific context that varies widely between Member States due to different administrative, organisational and cultural circumstances. The services have, by their very nature, only a very limited cross-border dimension. Member States should therefore have large discretion to organise the choice of service providers. The proposal takes account of this by providing a specific regime for contracts for those services, with a higher threshold of EUR 1 000 000 and imposing only the respect of basic principles of transparency and equal treatment. A quantitative analysis of the values of contracts for the relevant services awarded to economic operators from abroad has shown that contracts below this value have typically no cross-border interest in the particular context of procurement in the utilities' sectors.

*Innovation:* Research and innovation play a central role in the Europe 2020 strategy for smart, sustainable and inclusive growth. Purchasers should be enabled to buy innovative products and services promoting future growth and improving efficiency and quality of public services. The proposal provides for this purpose the innovation partnership, a new special procedure for the development and subsequent purchase of new, innovative products, works and services, provided they can be delivered to agreed performance levels and costs. In addition, the proposal improves and simplifies the competitive dialogue procedure and facilitates cross-border joint procurement which is an important instrument for innovative purchasing.

### *3) Better access to the market for SMEs and Start-ups*

Small and medium-sized enterprises (SMEs) have a huge potential for job creation, growth and innovation. Easy access to procurement markets can help them unlock this potential while allowing contracting entities to broaden their supplier base, with positive effects of higher

competition for public contracts. In order to make public contracts as accessible as possible to SMEs, the European Commission published in 2008 the “European Code of Best Practices facilitating access by SMEs to public procurement contracts”<sup>11</sup>. The proposal builds on this work and provides concrete measures to remove barriers for market access by SMEs.

*Simplification of information obligations:* It is therefore foreseen that contracting entities may apply the selection criteria provided for in the proposed Directive on public procurement and that, where they do, they are then obliged to apply the provisions concerning notably the ceiling to requirements on minimum turnover as well as the provisions on in particular self-certification.

*Better access to framework agreements:* Under the current Directives, there is no limitation to the duration of framework agreements concluded in the utilities sectors. This can lead to market foreclosure. The proposal limits the duration to four years (except in duly justified circumstances), improving access to business opportunities and enhancing competition, also to the benefit of SMEs.

*Direct payment of subcontractors:* In addition, Member State can provide that subcontractors may request for direct payment by the contracting entity of supplies, works and services provided to the main contractor in the context of the contract performance. This offers subcontractors which are often SMEs an efficient way of protecting their interest in being paid.

#### 4) Sound procedures

The financial interests at stake and the interaction between the public and the private sector make procurement a risk area for unsound business practices such as conflict of interest, favouritism and corruption. The proposal improves the existing safeguards against such risks and provides for additional protection.

*Conflicts of interest:* The proposal contains a specific provision on conflicts of interest covering actual, potential or perceived conflict of interest situations affecting staff members of the contracting authority or of procurement service providers intervening in the procedure and members of the contracting authority's management who may influence the outcome of a procurement procedure even if they are not formally involved in it. Given the differences in the decision-making processes of respectively contracting authorities and undertakings, it is appropriate to limit such provisions to procurement carried out by the former.

*Illicit conduct:* The proposal contains a specific provision against illicit behaviour by candidates and tenderers, such as attempts to improperly influence the decision-making process or entering into agreements with other participants to manipulate the outcome of the procedure have to be excluded from the procedure. Such illicit activities violate basic principles of European Union law and can result in serious distortions of competition.

*Unfair advantages:* Market consultations are a useful instrument for contracting entities to obtain information on the structure, capability and capacity of a market while at the same time informing market actors on purchasers' procurement projects and requirements. However, preliminary contacts with market participants must not result in unfair advantages and distortions of competitions. The proposal contains therefore a specific provision on safeguards

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<sup>11</sup> European Commission Staff Working Document SEC(2008) 2193.

against undue preference in favour of participants who have advised the contracting entity or have been involved in the preparation of the procedure.

## 5) Governance

*National oversight bodies:* The evaluation has shown that not all Member States are consistently and systematically monitoring the implementation and functioning of the procurement rules. This compromises the efficient and uniform application of European Union law. The proposal provides therefore that Member States designate a single national authority in charge of monitoring, implementation and control of procurement law. Only a single body with overarching tasks will ensure an overview of main implementation difficulties and will be able to suggest appropriate remedies to more structural problems. It will be in the position to provide immediate feedback on the functioning of the policy and the potential weaknesses in national legislation and practice, thus contributing to the quick identification of solutions and the improvement of the procurement procedures.

*Knowledge centres:* In many cases, contracting entities do not have the internal expertise to deal with complex procurement projects. Appropriate and independent professional support by administrative structures could considerably improve procurement outcomes by expanding the knowledge base and the professionalism of public procurers and delivering assistance to businesses, notably SMEs. The proposal obliges therefore Member States to provide support structures offering legal and economic advice, guidance, training and assistance in preparing and conducting procurement procedures. Support structures or mechanisms exist already at national level, although organised in very different manners and covering different areas of interest for contracting authorities and contracting entities. Member states will therefore be able to use those mechanisms, build on their expertise and promote their services as an appropriate and modern tool capable to provide appropriate support to contracting authorities, contracting entities and economic operators. To reinforce the fight against corruption and favouritism, contracting authorities will be obliged to transmit the text of concluded contracts to the oversight body, which will thus be able to scrutinize these contracts for suspicious patterns, and give access to these documents to interested persons to the extent that legitimate public or private interests are not jeopardized. Because of the evident problems of protecting legitimate commercial interests and avoid distortion of competition, this obligation should not be extended to undertakings (public or private) operating in these sectors. Furthermore, the creation of disproportionate administrative burden must be avoided; the obligation to transmit the full text of concluded contracts should therefore remain limited to relatively high value contracts. The thresholds proposed would strike the right balance between increasing administrative burden and ensuring greater transparency: with a threshold of 1 000 000 EUR for supplies and services, and of 10 000 000 EUR, this obligation would apply to 10 - 20 % of all procurement published in the Official Journal.

It is not foreseen that requirements concerning oversight bodies and knowledge centres will generate overall an additional financial burden for Member States. If some costs are expected to re-organise or fine tune the activities of existing mechanisms and structures, they will be neutralised by a reduction of litigation costs (both for contracting entities and business), costs related to delays in the attribution of contracts, due to misapplication of public procurement rules or to the bad preparation of the procurement procedures, as well as costs related to the fact that advice to contracting entities is currently provided in a fragmented and inefficient manner.

*Administrative cooperation:* The proposal provides also for effective cooperation allowing national oversight bodies to share information and best practices and to cooperate through the Internal Market Information System (IMI).

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on procurement by entities operating in the water, energy, transport and postal services sectors**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) and Article 62 and Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments<sup>12</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>13</sup>,

Having regard to the opinion of the Committee of the Regions<sup>14</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In the light of the results of the Evaluation on the Impact and Effectiveness of EU Public Procurement Legislation<sup>15</sup> it appears appropriate to maintain rules on procurement by entities operating in the water, energy, transport and postal services sectors, since national authorities continue to be able to influence the behaviour of those entities, including participation in their capital and representation in the entities' administrative, managerial or supervisory bodies. Another reason to continue to regulate procurement in those sectors is the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the Member States concerning the supply to, provision or operation of networks for providing the service concerned.
- (2) In order to guarantee the opening up to competition of procurement by entities operating in the water, energy, transport and postal services sectors, provisions should be drawn up coordinating procurement procedures in respect of contracts above a

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<sup>12</sup> OJ C

<sup>13</sup> OJ C

<sup>14</sup> OJ C

<sup>15</sup> SEC(2011) 853 Final of 27.6.2011

certain value. Such coordination is needed to ensure the effect of the principles of the Treaty on the Functioning of the European Union and in particular the free movement of goods, the freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. In view of the nature of the sectors affected by such coordination, the latter should, while safeguarding the application of those principles, establish a framework for sound commercial practice and should allow maximum flexibility.

- (3) For procurement the value of which is lower than the thresholds triggering the application of the provisions of Union coordination, it is advisable to recall the case-law developed by the Court of Justice according to which the rules and principles of the Treaty apply.
- (4) Public procurement plays a key role in the Europe 2020 strategy<sup>16</sup> as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors<sup>17</sup> and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts<sup>18</sup> have to be revised and modernised in order to increase the efficiency of public spending, facilitating in particular the participation of small and medium-sized enterprises in public procurement and to enable procurers to make better use of public procurement in support of common societal goals. There is also a need to clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.
- (5) Under Article 11 of the Treaty on the Functioning of the European Union, environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development. This Directive clarifies how the contracting entities may contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring that they can obtain the best value for money for their contracts.
- (6) It is appropriate that the notion of procurement or the definition of what constitutes a single procurement are as close as possible to those applied pursuant to Directive [...] of the European Parliament and of the Council of [...] on public procurement<sup>19</sup>, having due regard for the specificities of the sectors covered by this Directive. The concept of single procurement encompasses all supplies, works and services needed to carry out a particular project, for instance a works project or an entirety of works, supplies and/or services. Indications for the existence of one single project can for instance consist in overall prior planning and conception by the contracting entity, the fact that the

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<sup>16</sup> COM(2010) 2020 final, 3.3-2010.

<sup>17</sup> OJ L 134, 30.4.2004, p. 1.

<sup>18</sup> OJ L 134, 30.4.2004, p. 114.

<sup>19</sup> See p. [ ] of this Official Journal.



different elements purchased fulfil a single economic and technical function or that they are otherwise logically interlinked and carried out in a narrow time frame.

- (7) To ensure a real opening up of the market and a fair balance in the application of procurement rules in the water, energy, transport and postal services sectors it is necessary for the entities covered to be identified on a basis other than their legal status. It should be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 345 of the Treaty on the Functioning of the European Union, that the rules governing the system of property ownership in Member States are not prejudiced.
- (8) The notion of special or exclusive rights is central to the definition of the scope of this Directive, since entities which are neither contracting authorities nor public undertakings within the meaning of this Directive are subject to its provisions only to the extent that they exercise one of the activities covered on the basis of such rights. It is therefore appropriate to clarify that rights which have been granted by means of a procedure based on objective criteria, notably pursuant to Union legislation, and for which adequate publicity has been ensured do not constitute special or exclusive rights for the purposes of this Directive. This legislation should include Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas<sup>20</sup>, Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity<sup>21</sup>, Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service<sup>22</sup>, Directive 94/22/EC of the European Parliament and of the Council of 20 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons<sup>23</sup> and Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70<sup>24</sup>.
- (9) Contracting entities that operate in the drinking water sector may also deal with other activities relating to water, such as projects in the field of hydraulic engineering, irrigation, land drainage or the disposal and treatment of sewage. In such case, contracting entities should be able to apply the procurement procedures provided for in this Directive in respect of all their activities relating to water, whichever part of the "water cycle" is concerned. However, procurement rules of the type proposed for supplies of goods are inappropriate for purchases of water, given the need to procure water from sources near the area in which it will be used.
- (10) It is appropriate to exclude procurement made for the purpose of exploring for oil and gas as that sector has consistently been found to be subject to such competitive

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<sup>20</sup> OJ L 204, 21.7.1998, p. 1

<sup>21</sup> OJ L 27, 30.1.1997, p. 20.

<sup>22</sup> OJ L 15, 21.1.1998, p. 14.

<sup>23</sup> OJ L 164, 30.6.1994, p. 3.

<sup>24</sup> OJ L 315, 3.12.2007, p. 1.

pressure that the procurement discipline brought about by the EU procurement rules is no longer needed.

- (11) Contracts may be awarded for the purpose of meeting the requirements of several activities, possibly subject to different legal regimes. It should be clarified that the legal regime applicable to a single contract intended to cover several activities should be subject to the rules applicable to the activity for which it is principally intended. Determination of the activity for which the contract is principally intended may be based on an analysis of the requirements which the specific contract must meet, carried out by the contracting entity for the purposes of estimating the contract value and drawing up the procurement documents. In certain cases, such as the purchase of a single piece of equipment for the pursuit of activities for which information allowing an estimation of the respective rates of use would be unavailable, it might be objectively impossible to determine for which activity the contract is principally intended. The rules applicable to such cases should be indicated.
- (12) Even if they do not necessarily lead to corrupt conduct, actual, potential or perceived conflicts of interest have a high potential to improperly influence public procurement decisions with the effect of distorting competition and jeopardising equal treatment of tenderers. Effective mechanisms should therefore be set up to prevent, identify and remedy conflicts of interest. Given the differences in the decision-making processes of respectively contracting authorities and undertakings, it is appropriate to limit such provisions to procurement carried out by the former.
- (13) Illicit conduct by participants in a procurement procedure, such as attempts to unduly influence the decision-making process or to enter into agreements with other candidates to manipulate the outcome of the procedure can result in violations of the basic principles of Union law and in serious distortions of competition. Economic operators should therefore be required to submit a declaration on honour that they do not engage in such illicit activities and be excluded if this declaration proves to be false.
- (14) Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the Agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994)<sup>25</sup>, approved in particular the World Trade Organisation Agreement on Government Procurement, hereinafter referred to as the "Agreement". The aim of the Agreement is to establish a multilateral framework of balanced rights and obligations relating to public contracts with a view to achieving the liberalisation and expansion of world trade. For contracts covered by the Agreement, as well as by other relevant international agreements by which the Union is bound, contracting entities fulfil the obligations under those agreements by applying this Directive to economic operators of third countries that are signatories to the agreements.
- (15) The Agreement applies to contracts above certain thresholds, set in the Agreement and expressed as special drawing rights. The thresholds laid down by this Directive should be aligned to ensure that they correspond to the euro equivalents of the thresholds of the Agreement. Provision should also be made for periodic reviews of the thresholds

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<sup>25</sup> OJ L 336, 23.12.1994, p. 1.

expressed in euros so as to adjust them, by way of a purely mathematical operation, to possible variations in the value of the euro in relation to the special drawing right. To avoid a multiplication of thresholds it is furthermore appropriate, without prejudice to the international commitments of the Union, to continue to apply the same thresholds to all contracting entities, regardless of the sector in which they operate.

- (16) The results of the Evaluation demonstrated that the exclusion of certain services from the full application of this directive should be reviewed. As a result, the full application of the Directive is extended to a number of services (such as hotel and legal services, which both showed a particularly high percentage of cross-border trade).
- (17) Other categories of services continue by their very nature to have a limited cross-border dimension, namely what are known as services to the person such as certain social, health and educational services. Those services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for contracts for those services, with a higher threshold of EUR 1 000 000. In the particular context of procurement in those sectors, services to the person with values below this threshold will typically not be of interest to providers from other Member States unless there are concrete indications to the contrary, such as Union financing for transborder projects. Contracts for services to the person above this threshold should be subject to Union-wide transparency. Given the importance of the cultural context and the sensitivity of those services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this directive take account of that imperative, imposing only observance of basic principles of transparency and equal treatment and making sure that contracting entities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee<sup>26</sup>. Member States and/or contracting entities remain free to provide those services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting entity, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.
- (18) Being addressed to Member States, this directive does not apply to procurement carried out by international organisations on their own behalf and for their own account. There is, however, a need to clarify to what extent this directive should be applied to procurement governed by specific international rules.
- (19) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by public procurement rules. The relevant case-law of the Court of Justice of the European Union is interpreted divergently between Member States and even between contracting authorities. As this jurisprudence would be equally applicable to public authorities when operating in the sectors covered by this

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<sup>26</sup> SPC/2010/10/8 Final of 6.10.2010.

directive, it is appropriate to ensure that the same rules apply in both this directive and Directive [.../.../EU][on public procurement].

- (20) It is appropriate to exclude certain service, supply and works contracts awarded to an affiliated undertaking having as its principal activity the provision of such services, supply or works to the group of which it is part, rather than offering them on the market. It is also appropriate to exclude certain service, supply and works contracts awarded by a contracting entity to a joint venture which is formed by a number of contracting entities for the purpose of carrying out activities covered by this Directive and of which that entity is part. However, it is appropriate to ensure that this exclusion does not give rise to distortions of competition to the benefit of the undertakings or joint ventures that are affiliated with the contracting entities; it is appropriate to provide a suitable set of rules, in particular as regards the maximum limits within which the undertakings may obtain a part of their turnover from the market and above which they would lose the possibility of being awarded contracts without calls for competition, the composition of joint ventures and the stability of links between those joint ventures and the contracting entities of which they are composed.
- (21) It is also appropriate to clarify the relations between the provisions on cooperation between public authorities and the provisions on the award of contracts to affiliated undertakings or in the context of joint ventures.
- (22) This Directive should apply neither to contracts intended to permit the performance of an activity referred to in Articles 5 to 11 nor to design contests organised for the pursuit of such an activity if, in the Member State in which this activity is carried out, it is directly exposed to competition on markets to which access is not limited. It is therefore appropriate to maintain the procedure, applicable to all sectors covered by this Directive that will enable the effects of current or future opening up to competition to be taken into account. Such a procedure should provide legal certainty for the entities concerned, as well as an appropriate decision-making process, ensuring, within short time limits, uniform application of Union law in this area.
- (23) Direct exposure to competition should be assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned. This assessment is, however, limited by the applicable short deadlines and by having to be based on the information available to the Commission – either from already available sources or from the information obtained in the context of the application pursuant to Article 28 - which can not be supplemented by more time consuming methods, including notably public inquiries of economic operators concerned. The assessment of direct exposure to competition that can be carried out in the context of this directive is consequently without prejudice to the full-fledged application of competition law.
- (24) The implementation and application of appropriate Union legislation opening a given sector, or a part of it, will be considered to provide sufficient grounds for assuming that there is free access to the market in question. Such appropriate legislation should be identified in an annex which can be updated by the Commission. It is appropriate that this annex should currently refer to Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the

internal market in natural gas and repealing Directive 2003/55/EC<sup>27</sup>, Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC<sup>28</sup> and Directive 94/22/EC.

- (25) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. Contracting entities should make the best strategic use of public procurement to spur innovation. Buying innovative goods and services plays a key role in improving the efficiency and quality of public services while addressing major societal challenges. It contributes to achieving best value for money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative products and services and thus promoting sustainable economic growth. This directive should contribute to facilitating procurement of innovation and help Member States in achieving the Innovation Union targets. A specific procurement procedure should therefore be provided for which allows contracting entities to establish a long-term innovation partnership for the development and subsequent purchase of a new, innovative product, service or works provided it can be delivered to agreed performance levels and costs. The partnership should be structured in such a way that it can provide the necessary “market-pull” incentivising the development of an innovative solution without foreclosing the market.
- (26) In view of the detrimental effects on competition, negotiated procedures without a call for competition should only be used in very exceptional circumstances. This exception should be limited to cases where publication is either not possible, for reasons of force majeure in line with the standing case-law of the Court of Justice of the European Union, or where it is clear from the outset that publication would not trigger more competition, not least because there is objectively only one economic operator that can perform the contract. Only situations of objective exclusivity can justify the use of the negotiated procedure without a call for competition, where the situation of exclusivity has not been created by the contracting entity itself with a view to the future procurement procedure, and where there are no adequate substitutes, the availability of which should be assessed thoroughly.
- (27) Electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency and transparency of procurement processes. They should become the standard means of communication and information exchange in procurement procedures. The use of electronic means also leads to time savings. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Union level. Moreover, electronic means of information and communication including adequate functionalities can enable contracting authorities to prevent, detect and correct errors that occur during procurement procedures.

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<sup>27</sup> OJ L 211, 14.8.2009, p. 94

<sup>28</sup> OJ L 211, 14.8.2009, p. 55

- (28) There is a strong trend emerging across Union public procurement markets towards the aggregation of demand by public purchasers, with a view to obtaining economies of scale, including lower prices and transaction costs, and to improving and professionalising procurement management. This can be achieved by concentrating purchases either by the number of contracting entities involved or by volume and value over time. However, the aggregation and centralisation of purchases should be carefully monitored in order to avoid excessive concentration of purchasing power and collusion, and to preserve transparency and competition, as well as market access opportunities for small and medium-sized enterprises.
- (29) The instrument of framework agreements can be an efficient procurement technique throughout Europe; however, there is a need to enhance competition by improving transparency of and access to procurement carried out by means of framework agreements. It is therefore appropriate to revise the provisions applicable to those agreements, notably by providing for mini-competitions for the award of specific contracts based on the agreement and by limiting the duration of framework agreements.
- (30) In view of the experience acquired, there is also a need to adjust the rules governing dynamic purchasing systems to enable contracting entities to take full advantage of the possibilities afforded by this instrument. The systems need to be simplified, in particular by operating them in the form of a restricted procedure, hence eliminating the need for indicative tenders, which have been identified as one of the major burdens associated with those systems. Thus any economic operator who submits a request to participate and meets the selection criteria should be allowed to take part in procurement procedures carried out through the dynamic purchasing system. This purchasing technique allows the contracting entity to have a particularly broad range of tenders and hence to ensure optimum use of funds through broad competition.
- (31) In addition, new electronic purchasing techniques are constantly being developed, such as electronic catalogues. They help to increase competition and streamline public purchasing, particularly in terms of savings in time and money. Certain rules should however be laid down to ensure that such use complies with the rules of this Directive and the principles of equal treatment, non-discrimination and transparency. In particular where competition has been reopened under a framework agreement or where a dynamic purchasing system is being used and where sufficient guarantees are offered in respect of ensuring traceability, equal treatment and predictability, contracting entities should be allowed to generate tenders in relation to specific purchases on the basis of previously transmitted electronic catalogues. In line with the requirements of the rules for electronic means of communication, contracting entities should avoid unjustified obstacles to economic operators' access to procurement procedures in which tenders are to be presented in the form of electronic catalogues and which guarantee compliance with the general principles of non-discrimination and equal treatment.
- (32) Centralised purchasing techniques are increasingly used in most Member States. Central purchasing bodies are responsible for making acquisitions or awarding contracts/framework agreements for other contracting authorities or for contracting entities. In view of the large volumes purchased, such techniques help increase competition and professionalise public purchasing. Provision should therefore be made for a Union definition of central purchasing bodies dedicated to contracting entities,

without preventing the continuation of less institutionalised and systematic common purchasing or the established practice of having recourse to service providers that prepare and manage procurement procedures on behalf and for the account of a contracting entity. Rules should also be laid down for allocating responsibility for the observance of the obligations pursuant to this Directive, also in the case of remedies, among the central purchasing body and the contracting entities procuring from or through the central purchasing body. Where the latter has sole responsibility for the conduct of the procurement procedures, it should also be solely and directly responsible for the legality of the procedures. Where a contracting entity conducts certain parts of the procedure, for instance the reopening of competition under a framework agreement or the award of individual contracts based on a dynamic purchasing system, it should continue to be responsible for the stages it conducts.

- (33) Electronic means of communication are particularly well suited to support centralised purchasing practices and tools because of the possibility they offer to re-use and automatically process data and to minimise information and transaction costs. The use of such electronic means of communication should therefore, as a first step, be rendered compulsory for central purchasing bodies, while also facilitating converging practices across the Union. This should be followed by a general obligation to use electronic means of communication in all procurement procedures after a transition period of two years.
- (34) Joint awarding of contracts by contracting entities from different Member States currently encounters specific legal difficulties, with special reference to conflicts of national laws. Despite the fact that Directive 2004/17/EC implicitly allowed for cross-border joint public procurement, in practice several national legal systems have explicitly or implicitly rendered cross-border joint procurement legally uncertain or impossible. Contracting entities from different Member States may be interested in cooperating and in jointly awarding contracts in order to derive maximum benefit from the potential of the internal market in terms of economies of scale and risk-benefit sharing, not least for innovative projects involving a greater amount of risk than reasonably bearable by a single contracting entity. Therefore new rules on cross-border joint procurement designating the applicable law should be established in order to facilitate cooperation between contracting entities across the Single Market. In addition, contracting entities from different Member States may set up joint legal bodies established under national or Union law. Specific rules should be established for such form of joint procurement.
- (35) The technical specifications drawn up by purchasers need to allow public procurement to be opened up to competition. To that end, it should be possible to submit tenders that reflect the diversity of technical solutions so as to obtain a sufficient level of competition. Consequently, technical specifications should be drafted in such a way to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications in terms of functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on other equivalent arrangements which meet the requirements of the contracting entities and are equivalent in terms of safety must be considered by the contracting entities. To demonstrate equivalence, tenderers can be required to

provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits.

- (36) Contracting entities that wish to purchase works, supplies or services with specific environmental, social or other characteristics should be able to refer to particular labels, such as the European Eco-label, (multi-) national eco-labels or any other label provided that the requirements for the label are linked to the subject-matter of the contract, such as the description of the product and its presentation, including packaging requirements. It is furthermore essential that those requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and that the label is accessible and available to all interested parties.
- (37) For all procurement intended for use by persons, whether general public or staff of the contracting entity, it is necessary that contracting entities lay down technical specifications so as to take into account accessibility criteria for people with disabilities or design for all users except in duly justified cases.
- (38) In order to encourage the involvement of small and medium-sized enterprises (SMEs) in the procurement market, it should be provided explicitly that contracts may be divided into lots, whether homogenous or heterogeneous. Where contracts are divided into lots, contracting entities may, for instance in order to preserve competition or to ensure security of supply, limit the number of lots for which an economic operator may tender; they may also limit the number of lots that may be awarded to any one tenderer.
- (39) Insofar as compatible with the need to ensure the objective of sound commercial practice while allowing for maximum flexibility, it is appropriate to provide for the application of Directive [2004/18/EC] on public procurement in respect of requirements concerning economic and financial capacity and documentary evidence. It is therefore foreseen that contracting entities may apply the selection criteria provided for in Directive [2004/18/EC] and that, where they do, they are then obliged to apply the provisions concerning notably the ceiling to requirements on minimum turnover as well as on self-certification.
- (40) Public contracts should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Given that contracting entities, which are not contracting authorities, might not have access to indisputable proof on the matter, it is appropriate to leave the choice of whether or not to apply the exclusion criteria listed in Directive [2004/18] to such contracting entities. The obligation to apply Article 55(1) and (2) of Directive [2004/18] should therefore be limited to contracting entities that are contracting authorities. Furthermore, contracting entities should be given the possibility to exclude candidates or tenderers for violations of environmental or social obligations, including rules on accessibility for disabled persons or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights.



- (41) Where contracting entities are obliged or choose to apply the just mentioned exclusion criteria, they should apply Directive [2004/18] concerning the possibility that economic operators adopt compliance measures aimed at remedying the consequences of any criminal offences or misconduct and at effectively preventing further occurrences of the misbehaviour.
- (42) Contracting entities may require that environmental management measures or schemes are to be applied during the performance of a contract. Environmental management schemes, whether or not they are registered under Union instruments such as Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)<sup>29</sup>, can demonstrate that the economic operator has the technical capability to perform the contract. A description of the measures implemented by the economic operator to ensure the same level of environmental protection should be accepted as an alternative to environmental management registration schemes as a form of evidence, where the economic operator concerned has no access to such environmental management registration schemes or no possibility of obtaining them within the relevant time limits.
- (43) Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of transparency, non-discrimination and equal treatment. Those criteria should guarantee that tenders are assessed in conditions of effective competition, also where contracting entities require high-quality works, supplies and services that are optimally suited to their needs. As a result, contracting entities should be allowed to adopt as award criteria either "the most economically advantageous tender" or "the lowest cost", taking into account that in the latter case they are free to set adequate quality standards by using technical specifications or contract performance conditions.
- (44) Where contracting entities choose to award a contract to the most economically advantageous tender, they must determine the award criteria on the basis of which they will assess tenders in order to identify which one offers the best value for money. The determination of those criteria depends on the subject-matter of the contract, since they must allow the level of performance offered by each tender to be assessed in the light of the subject-matter of the contract, as defined in the technical specifications, and the value for money of each tender to be measured. Furthermore, the chosen award criteria should not confer an unrestricted freedom of choice on the contracting entity and they should ensure the possibility of effective competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified.
- (45) It is of utmost importance to fully exploit the potential of public procurement to achieve the objectives of the Europe 2020 Strategy for sustainable growth. In view of the important differences between individual sectors and markets, it would however not be appropriate to set general mandatory requirements for environmental, social and innovation procurement. The Union legislature has already set mandatory procurement requirements for obtaining specific goals in the sectors of road transport vehicles (Directive 2009/33/EC of the European Parliament and the Council of 23 April 2009

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<sup>29</sup> OJ L 342, 22.12.2009, p. 1.

on the promotion of clean and energy-efficient road transport vehicles<sup>30</sup>) and office equipment (Regulation (EC) No 106/2008 of the European Parliament and the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment<sup>31</sup>). In addition, the definition of common methodologies for life cycle costing has significantly advanced. It therefore appears appropriate to continue on that path, leaving it to sector-specific legislation to set mandatory objectives and targets in function of the particular policies and conditions prevailing in the relevant sector and to promote the development and use of European approaches to life-cycle costing as a further underpinning for the use of public procurement in support of sustainable growth.

- (46) Those sector-specific measures must be complemented by an adaptation of the public procurement Directives empowering contracting entities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting entities can determine the most economically advantageous tender and the lowest cost using a life-cycle costing approach, provided that the methodology to be used is established in an objective and non-discriminatory manner and accessible to all interested parties. The notion of life-cycle costing includes all costs over the life-cycle of a works, supplies or services, both their internal costs (such as development, production, use, maintenance and end-of-life disposal costs) and their external costs, provided they can be monetised and monitored. Common methodologies should be developed at the level of the Union for the calculation of life-cycle costs for specific categories of supplies or services; whenever such a methodology is developed its use should be made compulsory.
- (47) Furthermore, in technical specifications and in award criteria, contracting entities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life-cycle of a product or service, provided that they are linked to the subject-matter of the contract. In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services<sup>32</sup> and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party.

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<sup>30</sup> OJ L 120, 15.5.2009, p. 5.

<sup>31</sup> OJ L 39, 13.2.2008, p. 1.

<sup>32</sup> OJ L 18, 21.1.1997, p.1.

- (48) For service contracts and for contracts involving the design of works, contracting entities should also be allowed to use as an award criterion the organisation qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of the contract performance and, as a result, the economic value of the tender.
- (49) Tenders that appear abnormally low in relation to the works, supplies or services might be based on technically, economically or legally unsound assumptions or practices. In order to prevent possible disadvantages during contract performance, contracting entities should be obliged to ask for an explanation of the price charged where a tender significantly undercuts the prices demanded by other tenderers. Where the tenderer cannot provide a sufficient explanation, the contracting entity should be entitled to reject the tender. Rejection should be mandatory in cases where the contracting entity has established that the abnormally low price results from non-compliance with mandatory Union legislation in the fields of social, labour or environmental law or international labour law provisions.
- (50) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked to the subject-matter of the contract and are indicated in the notice used to make the call for competition, or in the procurement documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment, protection of the environment or animal welfare. For example, mention may be made of the requirements applicable during the performance of the contract to recruit long-term job-seekers or to implement training measures for the unemployed or for young persons, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, even where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation.
- (51) The laws, regulations and collective agreements, at both national and Union level, that are in force in the areas of employment conditions and safety at work apply during the performance of a contract, provided that such rules, and their application, comply with Union law. In cross-border situations where workers from one Member State provide services in another Member State for the purpose of performing a contract, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services<sup>33</sup> lays down the minimum conditions that must be observed by the host country in respect of such posted workers. Where national law contains provisions to this effect, non-compliance with those obligations may be considered to be grave misconduct on the part of the economic operator concerned, liable to lead to the exclusion of that economic operator from the procedure for the award of a public contract.
- (52) Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits<sup>34</sup> should apply to the calculation of the time limits contained in this Directive.

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<sup>33</sup> OJ L 18, 21.1.1997, p. 1.

<sup>34</sup> OJ L 124, 8.6.1971, p. 1.

- (53) It is necessary to clarify the conditions under which modifications of a contract during its performance require a new procurement procedure, taking into account the relevant case-law of the Court of Justice of the European Union. A new procurement procedure is required in case of material changes to the initial contract, in particular to the scope and content of the mutual rights and obligations of the parties, including the distribution of intellectual property rights. Such changes demonstrate the parties' intention to renegotiate essential terms or conditions of that contract. This is the case in particular if the amended conditions would have had an influence on the outcome of the procedure, had they been part of the initial procedure.
- (54) Contracting entities can be faced with external circumstances that they could not foresee when they awarded the contract. In this case, a certain degree of flexibility is needed to adapt the contract to those circumstances without a new procurement procedure. The notion of unforeseeable circumstances refers to circumstances that could not have been predicted despite reasonably diligent preparation of the initial award by the contracting entity, taking into account its available means, the nature and characteristics of the specific project, good practice in the field in question and the need to ensure an appropriate relationship between the resources spent in preparing the award and its foreseeable value. However, this cannot apply in cases where a modification results in an alteration of the nature of the overall procurement, for instance by replacing the works, supplies or services to be procured by something different or by fundamentally changing the type of procurement since, in such a situation, a hypothetical influence on the outcome may be assumed.
- (55) In line with the principles of equal treatment and transparency, the successful tenderer should not be replaced by another economic operator without reopening the contract to competition. However, the successful tenderer performing the contract may undergo certain structural changes during the performance of the contract, such as purely internal reorganisations, mergers and acquisitions or insolvency. Such structural changes should not automatically require new procurement procedures for all contracts performed by that undertaking.
- (56) Contracting entities should, in the individual contracts themselves, have the possibility to provide for modifications by way of review clauses, but such clauses should not give them unlimited discretion. This directive should therefore set out to what extent modifications may be provided for in the initial contract.
- (57) The evaluation has shown that Member States do not consistently and systematically monitor the implementation and the functioning of public procurement rules. This has a negative impact on the correct implementation of provisions stemming from those directives, which is a major source of cost and uncertainty. Several Member States have appointed a national central body dealing with public procurement issues, but the functions that such bodies are empowered with vary considerably across Member States. Clearer, more consistent and authoritative monitoring and control mechanisms would increase knowledge of the functioning of procurement rules, legal certainty for businesses and contracting entities, and contribute to establish a level playing field. Such mechanisms could serve as tools for detection and early resolution of problems, especially with regard to projects cofunded by the Union, and for the identification of structural deficiencies. There is in particular a strong need to coordinate those mechanisms to ensure consistent application, controls and monitoring of public

procurement policy, as well as systematic assessment of the outcomes of procurement policy across the Union.

- (58) Member States should designate a single national authority in charge of monitoring, implementation and control of public procurement. Such a central body should have first hand and timely information particularly in relation to different problems affecting the implementation of public procurement law. It should be able to provide immediate feedback on the functioning of the policy, the potential weaknesses in national legislation and practice and contribute to the quick identification of solutions. In view of efficiently fighting corruption and fraud, this central body and the general public should also have the possibility to inspect the texts of concluded contracts. High-value contracts should hence be transmitted to the oversight body with a possibility of interested persons to have access to these documents, to the extent that legitimate public or private interests are not jeopardized.
- (59) Not all contracting entities may have the internal expertise to deal with economically or technically complex contracts. Against this background, appropriate professional support would be an effective complement to monitoring and control activities. On the one hand, this objective can be achieved by knowledge sharing tools (knowledge centres) offering technical assistance to contracting entities; on the other hand, business, not least SMEs, should benefit from administrative assistance, in particular when participating in procurement procedures on a cross-border basis.
- (60) Monitoring, oversight and support structures or mechanisms exist already at national level and can of course be used to ensure monitoring, implementation and control of public procurement and to provide the required support to contracting entities and economic operators.
- (61) Effective cooperation is necessary to ensure consistent advice and practice within each Member State and across the Union. Bodies designated for monitoring, implementation, control and technical assistance should be able to share information and cooperate; in the same context, the national authority designated by each Member State should act as the preferred contact point with the Commission services for the purpose of collecting data, exchanging information and monitoring the implementation of Union public procurement law.
- (62) In order to adapt to rapid technical, economic and regulatory developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of a number of non-essential elements of this Directive. In fact, due to the need to comply with international agreements, the Commission should be empowered to modify the technical procedures for the calculation methods concerning thresholds as well as to periodically revise the thresholds themselves; references to the CPV nomenclature may undergo regulatory changes at EU level and it is necessary to reflect those changes into the text of this Directive; the technical details and characteristics of the devices for electronic receipt should be kept up to date with technological developments and administrative needs; it is also necessary to empower the Commission to make mandatory certain technical standards for electronic communication to ensure the interoperability of technical formats, processes and messaging in procurement procedures conducted using electronic means of communication taking into account technological developments and administrative

needs; the Commission should also be empowered to adapt the mandatory content of the information to be included in notices to reflect administrative needs and regulatory changes at both national and EU level; the list of legislative acts of the Union establishing common methodologies for the calculation of life-cycle costs, referred to in article 77(3); the list of International Social and Environmental Conventions referred to in Articles 70 And 79 and the list of Union legislation referred to in article 27(3) whose implementation creates a presumption of free access to a given market as well as Annex II, referred to in Article 4(4), setting out a list of legislative acts to be taken into account when assessing the existence of special or exclusive rights should be quickly adapted to incorporate the measures adopted on a sectoral basis. In order to satisfy this need, the Commission should be empowered to keep the lists up-to date.

- (63) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. When preparing and drawing up delegated acts, the Commission should ensure simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.
- (64) In order to ensure uniform conditions for the implementation of this Directive, as for the procedure for sending and publishing data referred to in Annex IX and the procedures for drawing up and transmitting notices, the standard forms for the publication of notices as well as of process and messaging standards and the common template to be used by the oversight bodies for drawing up the implementation and statistical report, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No. 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers<sup>35</sup>. The advisory procedure should be used for the adoption of those implementing acts, which do not have any impact either from the financial point of views or on the nature and scope of obligations stemming from this Directive. On the contrary, those acts are characterised by a mere administrative purpose and serve to facilitate the application of the rules set by this Directive. Furthermore, decisions to establish whether a given activity is directly exposed to competition on markets to which access is free should be adopted under conditions ensuring uniform conditions for implementing that provision. Implementing powers should therefore be conferred on the Commission also in respect of the detailed provisions for the implementation of the procedure, provided for under Article 28, for establishing whether Article 27 is applicable as well as the Decisions themselves. Those powers should be exercised in accordance with Regulation (EU) 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers<sup>36</sup>. The advisory procedure should be used for the adoption of those implementing acts.
- (65) Since the objective of this Directive, namely the coordination of laws, regulations and administrative provisions of the Member States applying to certain public procurement procedures, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the

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<sup>35</sup> OJ L 55, 28.2.2011, p. 13.

<sup>36</sup> OJ L 55, 28.2.2011, p. 13.

principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(66) Directive 2004/17/EC should therefore be repealed.

(67) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of [date], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

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Article 40: Open procedure

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Article 42: Negotiated procedure with prior call for competition

Article 43: Innovation Partnership

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# TITLE I

## SCOPE, DEFINITIONS AND GENERAL PRINCIPLES

### CHAPTER I

#### *Subject-matter and definitions*

##### *Article 1*

###### *Subject-matter and scope*

1. This Directive establishes rules on the procedures for procurement by contracting entities as defined in Article 4 with respect to contracts as well as design contests, whose value is estimated to be not less than the thresholds defined in Article 12.
2. Procurement within the meaning of this Directive is the purchase or other forms of acquisition of works, supplies or services by one or more contracting entities from economic operators chosen by those contracting entities, provided that the works, supplies or services are intended for the pursuit of one of the activities referred to in Articles 5 to 11.

An entirety of works, supplies and/or services, even if purchased through different contracts, constitutes a single procurement within the meaning of this Directive, if the contracts are part of one single project.

##### *Article 2*

###### *Definitions*

For the purposes of this Directive, the following definitions shall apply:

- (1) "contracting authorities" means State, regional or local authorities, bodies governed by public law, associations formed by one or more such authorities or one or more such bodies governed by public law;
- (2) "regional authorities" include all authorities of the administrative units falling under NUTS 1 and 2, as referred to by Regulation (EC) No. 1059/2003 of the European Parliament and of the Council<sup>37</sup>;
- (3) "local authorities" include all authorities of the administrative units falling under NUTS 3 and smaller administrative units, as referred to by Regulation (EC) No. 1059/2003;
- (4) a "body governed by public law" means any body that has all of the following characteristics:

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<sup>37</sup> OJ L 154, 21.6.2003, p. 1

- (a) It is established for or has the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; for that purpose, a body which operates in normal market conditions, aims to make a profit, and bears the losses resulting from the exercise of its activity does not have the purpose of meeting needs in the general interest, not having an industrial or commercial character;
  - (b) it has legal personality;
  - (c) it is financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or has an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law;
- (5) a "public undertaking" means any undertaking over which the contracting authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it;
- (6) "special or exclusive rights" mean rights granted by a competent authority of a Member State by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of activities defined in Articles 5 to 11 to one or more entities, and which substantially affects the ability of other entities to carry out such activity;
- (7) "supply, works and service contracts" means contracts for pecuniary interest concluded in writing between one or more of the contracting entities referred to in Article 4(3), and one or more economic operators and having as their object the execution of works, the supply of products or the provision of services within the meaning of this Directive;
- (8) "works contracts" means contracts having as their object one of the following:
- (a) the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex I;
  - (b) the execution, or both the design and execution, of a work;
  - (c) the realisation by whatever means of a work corresponding to the requirements specified by the contracting entity exercising a decisive influence on the type or design of the work;
- (9) "a work" means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function;
- (10) "supply contracts" means contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products. A supply contract may include, as an incidental matter, siting and installation operations;
- (11) "service contracts" means contracts having as their object the provision of services other than those referred to in paragraph 8;

- (12) "economic operator" means any natural or legal person, or a contracting entity, or a group of such persons and/or entities which offers the execution of works and/or a work, the supply of products or the provision of services on the market;
- (13) "tenderer" means an economic operator that has submitted a tender;
- (14) "candidate" means an economic operator that has sought an invitation or has been invited to take part in a restricted or negotiated procedure or in an innovation partnership;
- (15) 'procurement documents' means all documents produced or referred to by the contracting entity to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice or the notices on the existence of a qualification system where they are used as a means of calling for competition, the technical specifications, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents;
- (16) "centralised purchasing activities" means activities conducted on a permanent basis, in one of the following forms:
- (a) the acquisition of supplies and/or services intended for contracting entities,
  - (b) the award of contracts or the conclusion of framework agreements for works, supplies or services intended for contracting entities;
- (17) "ancillary purchasing activities" means activities consisting in the provision of support to purchasing activities, in particular in the following forms:
- (a) technical infrastructure enabling contracting entities to award public contracts or to conclude framework agreements for works, supplies or services;
  - (b) advice on the conduct or design of procurement procedures;
  - (c) preparation and management of procurement procedures on behalf and for the account of the contracting entity concerned;
- (18) "central purchasing body" means a contracting authority within the meaning of point 1 of Article 2 or a contracting authority within the meaning of point 1 of Article 2 of Directive [2004/18/EC] providing centralised purchasing activities and, possibly, ancillary purchasing activities;
- (19) "procurement service provider" means a public or private body, which offers ancillary purchasing activities on the market;
- (20) "written" or "in writing" means any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means;
- (21) "electronic means" means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;



- (22) 'life cycle' means all consecutive and/or interlinked stages, including production, transport, use and maintenance, throughout the existence of a product or a works or the provision of a service, from raw material acquisition or generation of resources to disposal, clearance and finalisation;
- (23) "Design contests" means those procedures which enable the contracting entity to acquire, mainly in the fields of town and country planning, architecture, engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes.

### *Article 3*

#### *Mixed procurement and procurement covering several activities*

1. Contracts which have as their subject two or more types of procurement (works, services or supplies) shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject of the contract in question.

In the case of mixed contracts consisting of services within the meaning of Chapter I of Title III and other services or of services and supplies, the main object shall be determined by a comparison of the values of the respective services or supplies.

In the case of mixed contracts containing elements of supply, works and service contracts and of concessions, the part of the contract which constitutes a contract covered by this Directive shall be awarded in accordance with the provisions of this Directive.

Where the different parts of the contract in question are objectively not separable, the application of this Directive shall be determined on the basis of the main subject of that contract.

2. A contract which is intended to cover several activities shall be subject to the rules applicable to the activity for which it is principally intended.

However, the choice between awarding a single contract and awarding a number of separate contracts shall not be made with the objective of excluding it from the scope of this Directive or, where applicable, [2004/18/EC].

3. If one of the activities for which the contract is intended is subject to this Directive and the other to the abovementioned [2004/18] and if it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with the abovementioned Directive [2004/18].
4. If one of the activities for which the contract is intended is subject to this Directive and the other is not subject to either this Directive or to Directive [2004/18] or Directive 2009/81/EC of the European Parliament and of the Council<sup>38</sup>, and if it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with this Directive.

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<sup>38</sup> OJ L 217, 20.8.2009, p. 76.

## **CHAPTER II**

### **Personal scope: *definition of the activities and entities covered***

#### **SECTION 1**

#### **ENTITIES**

##### *Article 4*

##### *Contracting entities*

1. A dominant influence within the meaning of point 5 of Article 2 on the part of the contracting authorities shall be presumed in any of the following cases in which those authorities, directly or indirectly:
  - (a) hold the majority of the undertaking's subscribed capital;
  - (b) control the majority of the votes attaching to shares issued by the undertaking,
  - (c) can appoint more than half of the undertaking's administrative, management or supervisory body.
  
2. Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute "special or exclusive rights" within the meaning of point 6 of Article 2.

This includes:

  - (a) procurement procedures with a prior call for competition in conformity with Directive [2004/18/EC], [Directive ... (concessions)] or this Directive;
  - (b) procedures pursuant to other legislative acts of the Union listed in Annex II, ensuring adequate prior transparency for granting authorisations on the basis of objective criteria.
  
3. This Directive shall apply to contracting entities:
  - (a) which are contracting authorities or public undertakings and which pursue one of the activities referred to in Articles 5 to 11;
  - (b) which, when they are not contracting authorities or public undertakings, have as one of their activities any of the activities referred to in Articles 5 to 11, or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of a Member State.
  
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 concerning the amendment/modification of the list of Union legislation set out in Annex II, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary.

## SECTION 2 ACTIVITIES

### *Article 5 Gas and heat*

1. As far as gas and heat are concerned, this Directive shall apply to the following activities:
  - (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat;
  - (b) the supply of gas or heat to such networks.
2. The supply of gas or heat to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:
  - (a) the production of gas or heat by the entity concerned is the unavoidable consequence of carrying out an activity other than those referred to in paragraph 1 or in Articles 6 to 8;
  - (b) the supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the entity's turnover on the basis of the average for the preceding three years, including the current year.

### *Article 6 Electricity*

1. As far as electricity is concerned, this Directive shall apply to the following activities:
  - (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity;
  - (b) the supply of electricity to such networks.

For the purposes of this Directive, supply of electricity includes generation (production) and wholesale of electricity.

2. The supply of electricity to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:

- (a) the production of electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in paragraph 1 or in Articles 5 and 7 to 8;
- (b) supply to the public network depends only on the entity's own consumption and has not exceeded 30% of the entity's total production of energy, on the basis of the average for the preceding three years, including the current year.

*Article 7*  
*Water*

1. This Directive shall apply to the following activities:
  - (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water;
  - (b) the supply of drinking water to such networks.
2. This Directive shall also apply to contracts or design contests awarded or organised by entities which pursue an activity referred to in paragraph 1 and which are connected with one of the following:
  - (a) hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made available by such projects or irrigation or drainage installations,
  - (b) the disposal or treatment of sewage.
3. The supply of drinking water to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:
  - (a) the production of drinking water by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in Articles 5 to 8;
  - (b) the supply to the public network depends only on the entity's own consumption and has not exceeded 30 % of the entity's total production of drinking water, on the basis of the average for the preceding three years, including the current year.

*Article 8*  
*Transport services*

This Directive shall apply to activities relating to the provision or operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of a Member State, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.

*Article 9*  
*Ports and airports*

This Directive shall apply to activities relating to the exploitation of a geographical area for the purpose of the provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.

*Article 10*  
*Postal services*

1. This Directive shall apply to activities relating to the provision of:
  - (a) postal services;
  - (b) other services than postal services, on condition that such services are provided by an entity which also provides postal services within the meaning of point (b) of paragraph 2 and provided that the conditions set out in Article 27(1) are not satisfied in respect of the services falling within point (b) of paragraph 2.
2. For the purpose of this Directive and without prejudice to Directive 97/67/EC:
  - (a) "postal item": means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight;
  - (b) "postal services": means services consisting of the clearance, sorting, routing and delivery of postal items. This shall include both services falling within as well as services falling outside the scope of the universal service set up in conformity with Directive 97/67/EC;
  - (c) "other services than postal services": means services provided in the following areas:
    - (i) mail service management services (services both preceding and subsequent to despatch, including "mailroom management services");
    - (ii) added-value services linked to and provided entirely by electronic means (including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail);
    - (iii) services concerning postal items not included in point (a), such as direct mail bearing no address;

- (iv) financial services, as defined in the CPV under the reference numbers from 66100000-1 to 66720000-3 and in Article 19(c) and including in particular postal money orders and postal giro transfers;
- (v) philatelic services;
- (vi) logistics services (services combining physical delivery and/or warehousing with other non-postal functions).

#### *Article 11*

#### *Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels*

This Directive shall apply to activities relating to the exploitation of a geographical area for the purpose of:

- (a) extracting oil or gas;
- (b) exploring for or extracting coal or other solid fuels.

### **Chapter III: Material scope**

#### **SECTION 1 THRESHOLDS**

#### *Article 12 Thresholds*

Save where they are ruled out by the exclusions in Articles 15 to 20 or pursuant to Article 27, concerning the pursuit of the activity in question, this Directive shall apply to procurements with a value exclusive of value-added tax (VAT) estimated to be no less than the following thresholds:

- (a) EUR 400 000 for supply and service contracts as well as for design contests;
- (b) EUR 5 000 000 for works contracts;
- (c) EUR 1 000 000 for contracts for social and other specific services listed in Annex XVII.

#### *Article 13 Methods for calculating the estimated value of procurement*

1. The calculation of the estimated value of a procurement shall be based on the total amount payable, net of VAT, as estimated by the contracting entity, including any form of option and any renewals of the contract.

Where the contracting entity provides for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of the contract.

2. The choice of the method used to calculate the estimated value of a procurement shall not be made with the intention of excluding it from the scope of this Directive. A single procurement shall therefore not be subdivided with the effect of preventing it from falling within the scope of this Directive, unless justified by objective reasons.
3. This estimate shall be valid at the moment at which the call for competition is sent or, in cases where such notice is not foreseen, at the moment at which the contracting entity commences the contract procurement procedure, in particular by defining the essential characteristics of the intended procurement.
4. With regard to framework agreements and dynamic purchasing systems, the value to be taken into consideration shall be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the agreement or system.
5. In the case of innovation partnerships, the value to be taken into consideration shall be the maximum estimated value net of VAT of the research and development activities to take place during the all stages of the envisaged partnership as well as of the supplies, services or works to be developed and procured at the end of the envisaged partnership.
6. For the purposes of Article 12, contracting entities shall include in the estimated value of a works contract both the cost of the works and the total estimated value of any supplies or services that are made available to the contractor by the contracting entities provided that they are necessary for the execution of the works.
7. Where a proposed work or purchase of services may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots.

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 12, this Directive shall apply to the awarding of each lot.

8. Where a proposal for the acquisition of similar supplies may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots when applying Article 12.

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 12, this Directive shall apply to the awarding of each lot.

9. Contracting entities may award contracts for individual lots without applying the procedures provided for under this Directive, provided that the estimated value net of VAT of the lot concerned is less than EUR 80 000 for supplies or services or EUR 1 million for works. However, the aggregate value of the lots thus awarded without applying this Directive shall not exceed 20 % of the aggregate value of all the lots into which the proposed work, the proposed acquisition of similar supplies or the proposed purchase of services has been divided.

10. In the case of supply or service contracts which are regular in nature or which are intended to be renewed within a given period, the calculation of the estimated contract value shall be based on the following:
  - (a) either the total actual value of the successive contracts of the same type awarded during the preceding 12 months or financial year adjusted, if possible, to take account of the changes in quantity or value which would occur in the course of the 12 months following the initial contract;
  - (b) or the total estimated value of the successive contracts awarded during the 12 months following the first delivery, or during the financial year where that is longer than 12 months.
11. With regard to supply contracts relating to the leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:
  - (a) in the case of fixed-term contracts, if that term is less than or equal to 12 months, the total estimated value for the term of the contract or, where the term of the contract is greater than 12 months, the total value including the estimated residual value;
  - (b) in the case of contracts without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.
12. With regard to service contracts, the basis for calculating the estimated contract value shall, where appropriate, be the following:
  - (a) insurance services: the premium payable, and other forms of remuneration;
  - (b) banking and other financial services: the fees, commissions, interest and other forms of remuneration;
  - (c) design contracts: fees, commission payable and other forms of remuneration.
13. With regard to service contracts which do not indicate a total price, the basis for calculating the estimated contract value shall be the following:
  - (a) in the case of fixed-term contracts, where that term is less than or equal to 48 months: the total value for their full term;
  - (b) in the case of contracts without a fixed term or with a term greater than 48 months: the monthly value multiplied by 48.

*Article 14*  
*Revision of the thresholds*

1. Every two years from 30 June 2014, the Commission shall verify that the thresholds set out in points (a) and (b) of Article 12 correspond to the thresholds established in the Government Procurement Agreement, and shall, where necessary, revise them.



In accordance with the calculation method set out in the Government Procurement Agreement, the Commission shall calculate the value of those thresholds on the basis of the average daily value of the euro in terms of the special drawing rights (SDRs), over a period of 24 months terminating on the last day of August preceding the revision with effect from 1 January. The value of the thresholds thus revised shall, where necessary, be rounded down to the nearest thousand euros so as to ensure that the thresholds in force provided for by the Agreement, expressed in SDR, are observed.

2. Every two years from 1 January 2014, the Commission shall determine the values, in the national currencies of Member States not participating in Monetary Union, of the thresholds referred to in points (a) and (b) of Article 12, revised pursuant to paragraph 1 of this Article.

At the same time, the Commission shall determine the value, in the national currencies of the Member States which are not participating in monetary union, of the threshold referred to in point (c) of Article 12.

In accordance with the calculation method set out in the Government Procurement Agreement, the determination of such values shall be based on the average daily values of those currencies, corresponding to the applicable threshold expressed in euros over the 24 months terminating on the last day of August preceding the revision with effect from 1 January.

3. The revised thresholds referred to in paragraph 1 and their values in national currencies shall be published by the Commission in the *Official Journal of the European Union* at the beginning of the month of November following their revision.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 to adapt the methodology set out in the second subparagraph of paragraph 1 to any change in the methodology provided in the Government Procurement Agreement for the revision of the thresholds referred to in points (a) and (b) of Article 12 and for the determination of the thresholds in the national currencies of the Member States not participating in monetary union, as referred to in paragraph 2 of this Article.

It shall also be empowered to adopt delegated acts in accordance with Article 98 to revise the thresholds referred to in points (a) and (b) of Article 12 when necessary.

5. Where it is necessary to revise the thresholds referred to in points (a) and (b) of Article 12 and time constraints prevent the use of the procedure set in article 98 and therefore imperative grounds of urgency so require, the procedure provided for in Article 99 shall apply to delegated acts adopted pursuant to the second subparagraph of paragraph 4 of this Article.

## SECTION 2 EXCLUDED CONTRACTS AND DESIGN CONTESTS

### *Subsection 1*

#### *Exclusions applicable to all contracting entities and special exclusions for the water and energy sectors*

### *Article 15*

#### *Contracts awarded for purposes of resale or lease to third parties*

1. This Directive shall not apply to contracts awarded for purposes of resale or lease to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or lease the subject of such contracts, and other entities are free to sell or lease it under the same conditions as the contracting entity.
2. The contracting entities shall notify the Commission or the national oversight body at their request of all the categories of products or activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the *Official Journal of the European Union*, for information purposes, lists of the categories of products and activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding information.

### *Article 16*

#### *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*

1. This Directive shall not apply to contracts which the contracting entities award for purposes other than the pursuit of their activities as described in Articles 5 to 11 or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Union nor shall it apply to design contests organised for such purposes.
2. The contracting entities shall notify the Commission or the national oversight body at their request of any activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the *Official Journal of the European Union* for information purposes, lists of the categories of activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding this information.

### *Article 17*

#### *Defence and security*

1. In respect of contracts awarded and design contests organised in the fields of defence and security, this Directive shall not apply to:
  - (a) contracts to which Directive 2009/81/EC applies;

- (b) contracts to which Directive 2009/81/EC does not apply pursuant to Articles 8, 12 and 13 thereof.
2. This Directive shall not apply to contracts and design contests other than those mentioned in the first paragraph to the extent that the protection of the essential security interests of a Member State cannot be guaranteed in an procurement procedure as provided for in Article 39(1).

#### *Article 18*

##### *Contracts awarded and design contests organised pursuant to international rules*

This Directive shall not apply to contracts or design contests which the contracting entity is obliged to award or organise in accordance with procurement procedures different from those of this Directive established by any of the following:

- (a) an international agreement concluded in accordance with the Treaty between a Member State and one or more third countries and covering works, supplies or services intended for the joint implementation or exploitation of a project by the signatory States.;
- (b) an international agreement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;
- (c) a particular procedure of an international organisation;
- (d) procurement rules provided by an international organisation or international financing institution for contracts or design contests fully financed by this organisation or institution; in the case of contracts or design contests co-financed to a considerable extent by an international organisation or international financing institution the parties shall agree on applicable procurement procedures, which shall be in conformity with the Treaty.

All agreements referred to in point (a) of the first subparagraph shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts referred to in Article 100.

#### *Article 19*

##### *Specific exclusions for service contracts*

This Directive shall not apply to service contracts for:

- (a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; however, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;
- (b) arbitration and conciliation services;
- (c) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the

European Parliament and of the Council<sup>39</sup> and operations conducted with the European Financial Stability Facility;

- (d) employment contracts;
- (e) public passenger transport services by rail or metro;
- (f) contracts for broadcasting time that are awarded to broadcasters.

The broadcasting referred to in point (f) of the first paragraph shall include any transmission and distribution using any form of electronic network.

#### *Article 20*

*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*

This Directive shall not apply:

- (a) to contracts for the purchase of water if awarded by contracting entities engaged in one or both of the activities relating to drinking water referred to in Article 7(1).
- (b) to contracts awarded by contracting entities themselves being active in the energy sector by being engaged in an activity referred to in Article 5(1), Article 6(1) or Article 11 for the supply:
  - (i) of energy;
  - (ii) of fuels for the production of energy.

#### *Subsection 2*

*Special relations (Controlled entities, cooperation, affiliated undertakings and joint ventures)*

#### *Article 21*

*Relations between public authorities*

1. A contract awarded by a contracting authority to another legal person shall fall outside the scope of this Directive where the following cumulative conditions are fulfilled:
  - (a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments.
  - (b) at least 90 % of the activities of that legal person are carried out for the controlling contracting authority or for other legal persons controlled by that contracting authority;
  - (c) there is no private participation in the controlled legal person.

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<sup>39</sup> OJ L 145, 30.04.2004, p. 1.

A contracting authority shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments within the meaning of point (a) of the first subparagraph where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person.

2. Paragraph 1 also applies where a controlled entity which is a contracting authority awards a contract to its controlling entity, or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract.
3. A contracting authority, which does not exercise over a legal person control within the meaning of paragraph 1, may nevertheless award a contract without applying this Directive to a legal person which it controls jointly with other contracting authorities, where the following conditions are fulfilled:
  - (a) the contracting authorities exercise jointly over the legal person a control which is similar to that which they exercise over their own departments.
  - (b) at least 90 % of the activities of that legal person are carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;
  - (c) there is no private participation in the controlled legal person.

For the purposes of point (a) contracting authorities shall be deemed to jointly control a legal person where the following cumulative conditions are fulfilled:

- (a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities;
  - (b) those contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person;
  - (c) the controlled legal person does not pursue any interests which are distinct from that of the public authorities affiliated to it;
  - (d) the controlled legal person does not draw any gains other than the reimbursement of actual costs from the public contracts with the contracting authorities.
4. An agreement concluded between two or more contracting authorities shall not be deemed to be a “works, supply or service contract” within the meaning of point 7 of Article 2 of this Directive, where the following cumulative conditions are met:
  - (a) the agreement establishes a genuine co-operation between the participating contracting authorities aimed at carrying out jointly their public service tasks and involving mutual rights and obligations of the parties;
  - (b) the agreement is governed only by considerations relating to the public interest;

- (c) the participating contracting authorities do not perform on the open market more than 10 % in terms of turnover of the activities which are relevant in the context of the agreement;
  - (d) the agreement does not involve financial transfers between the participating contracting authorities, other than those corresponding to the reimbursement of actual costs of the works, services or supplies;
  - (e) there is no private participation in any of the contracting authorities involved.
5. The absence of private participation referred to in paragraphs 1 to 4 shall be verified at the time of the award of the contract or of the conclusion of the agreement.

The exclusions provided for in paragraphs 1 to 4 shall cease to apply from the moment any private participation takes place, with the effect that ongoing contracts need to be opened to competition through regular procurement procedures.

#### *Article 22*

##### *Contracts awarded to an affiliated undertaking*

1. For the purposes of this Article, "affiliated undertaking" means any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the Seventh Council Directive 83/349/EEC<sup>40</sup>.
2. In the case of entities not subject to that Directive, "affiliated undertaking" shall mean any undertaking that:
  - (a) may be, directly or indirectly, subject to a dominant influence by the contracting entity within the meaning of point (5) of Article 2 and Article 4(1) of this Directive;
  - (b) may exercise a dominant influence over the contracting entity;
  - (c) 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.
3. Article 21 notwithstanding and provided that the conditions in paragraph 4 are met, this Directive shall not apply to contracts awarded:
  - (a) by a contracting entity to an affiliated undertaking, or
  - (b) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 5 to 11, to an undertaking which is affiliated with one of those contracting entities.
4. Paragraph 3 shall apply:

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<sup>40</sup> OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28).

- (a) to service contracts provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to services in general for the preceding three years derives from the provision of services to undertakings with which it is affiliated;
  - (b) to supply contracts provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to supplies in general for the preceding three years derives from the provision of supplies to undertakings with which it is affiliated;
  - (c) to works contracts provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to works in general for the preceding three years derives from the provision of works to undertakings with which it is affiliated.
5. When, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it will be sufficient for that undertaking to show that the turnover referred to in points (a), (b) or (c) of paragraph 4 is credible, particularly by means of business projections.

Where more than one undertaking affiliated with the contracting entity provides the same or similar services, supplies or works, the above percentages shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.

#### *Article 23*

##### *Contracts awarded to a joint venture or to a contracting entity forming part of a joint venture*

Article 21 notwithstanding and provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least three years and that the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part thereof for at least the same period, this Directive shall not apply to contracts awarded by any of the following:

- (a) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 5 to 11, to one of those contracting entities, or
- (b) by a contracting entity to such a joint venture of which it forms part.

#### *Article 24*

##### *Notification of information*

Contracting entities shall notify to the Commission or the national oversight body, at their request, the following information regarding the application of Article 22, paragraphs 2, 3 and Article 23:

- (a) the names of the undertakings or joint ventures concerned,

- (b) the nature and value of the contracts involved,
- (c) proof deemed necessary by the Commission or the national oversight body that the relationship between the undertaking or joint venture to which the contracts are awarded and the contracting entity complies with the requirements of Articles 22 or 23.

*Subsection 3  
Specific situations*

*Article 25  
Research and development services*

1. This Directive shall apply to service contracts for research and development services with CPV reference numbers 73000000-2 to 73436000-7, except 73200000-4, 73210000-7 or 73220000-0, provided that the following conditions are both fulfilled:
  - (a) the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs,
  - (b) the service provided is wholly remunerated by the contracting entity.

This Directive shall not apply to service contracts for research and development services with CPV reference numbers 73000000-2 to 73436000-7, except 73200000-4, 73210000-7 or 73220000-0 where one of the conditions referred to in points (a) or (b) of the first subparagraph is not met.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 to amend the CPV reference numbers referred to in paragraph 1 to reflect changes in the CPV nomenclature provided that such amendments do not imply a modification of the scope of this Directive.

*Article 26  
Contracts subject to special arrangements*

1. Without prejudice to Article 27 the Republic of Austria and the Federal Republic of Germany shall ensure, by way of the conditions of authorisation or other appropriate measures, that any entity operating in the sectors mentioned in Decisions 2002/205/EC and 2004/73/EC:
  - (a) observes the principles of non-discrimination and competitive procurement in respect of the award of supplies, works and service contracts, in particular as regards the information which the entity makes available to economic operators concerning its procurement intentions;



- (b) communicates to the Commission, under the conditions defined in Commission Decision 93/327/EEC<sup>41</sup>, information relating to the contracts they award.
2. Without prejudice to Article 27, the United Kingdom shall ensure, by way of the conditions of authorisation or other appropriate measures, that any entity operating in the sectors mentioned in Decision 97/367/EEC applies points (a) and (b) of paragraph 1 in respect of contracts awarded for the pursuit of said activity in Northern Ireland.
  3. Paragraphs 1 and 2 shall not apply to contracts awarded for the purpose of exploring for oil or gas.

#### *Subsection 4*

#### *Activities directly exposed to competition and procedural provisions relating thereto*

#### *Article 27*

#### *Activities directly exposed to competition*

1. Contracts intended to enable an activity mentioned in Articles 5 to 11 to be carried out shall not be subject to this Directive if the Member State or the contracting entities having introduced the request pursuant to Article 28 can demonstrate that, in the Member State in which it is performed, the activity is directly exposed to competition on markets to which access is not restricted; nor shall design contests that are organised for the pursuit of such an activity in that geographic area be subject to this Directive. Such competition assessment, which will be made in the light of the information available to the Commission and for the purposes of this Directive, is without prejudice to the application of competition law.
2. For the purposes of paragraph 1, the question of whether an activity is directly exposed to competition shall be decided on the basis of criteria that are in conformity with the provisions on competition of the Treaty; those may include the characteristics of the goods or services concerned, the existence of alternative goods or services, the prices and the actual or potential presence of more than one supplier of the goods or provider of the services in question.

The geographical reference market, on the basis of which exposure to competition is assessed, shall consist of the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, conditions of competition are appreciably different in those areas. This assessment shall take account in particular of the nature and characteristics of the products or services concerned, of the existence of entry barriers or of consumer preferences, of appreciable differences of the undertakings'

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<sup>41</sup> European Commission Decision of 13 May 1993 defining the conditions under which contracting entities exploiting geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels must communicate to the European Commission information relating to the contracts they award, OJ L 129, 27.5.1993, p. 25.

market shares between the area concerned and neighbouring areas or of substantial price differences.

3. For the purposes of paragraph 1, access to a market shall be deemed not to be restricted if the Member State has implemented and applied the Union legislation listed in Annex III.

If free access to a given market cannot be presumed on the basis of the first subparagraph, it must be demonstrated that access to the market in question is free de facto and de jure.

#### *Article 28*

##### *Procedure for establishing whether Article 27 is applicable*

1. Where a Member State or, where the legislation of the Member State concerned provides for it, a contracting entity considers that, on the basis of the criteria set out in Article 27(2) and (3), a given activity is directly exposed to competition on markets to which access is not restricted, it may submit a request to establish that this Directive does not apply to the award of contracts or the organisation of desing contests for the pursuit of that activity.

Requests shall be accompanied by a reasoned and substantiated position adopted by an independent national authority that is competent in relation to the activity concerned. This position shall thoroughly analyse the conditions for the possible applicability of Article 27(1) to the activity concerned in accordance with its paragraphs 2 and 3.

The Member State or contracting entity concerned shall inform the Commission of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in Article 27(1).

2. Upon request submitted in accordance with paragraph 1 of this Article, the Commission may, by way of an implementing decision adopted within the periods set out in paragraph 4 of this Article, establish whether an activity referred to in Articles 5 to 11 is directly exposed to competition on the basis of the criteria set out in Article 27. Those implementing decisions shall be adopted in accordance with the advisory procedure referred to in Article 100(2) .

Contracts intended to enable the activity concerned to be carried out and design contests that are organised for the pursuit of such an activity shall cease to be subject to this Directive in any of the following cases:

- (a) The Commission has adopted the implementing decision referred to in the first subparagraph of this paragraph establishing the applicability of Article 27(1) within the period provided for in paragraph 3 of this Article;
  - (b) has not adopted the implementing decision referred to in the first subparagraph of this paragraph within the period provided for in paragraph 3 of this Article.
3. The implementing decisions referred to in paragraph 2 shall be adopted within the following periods:

- (a) 90 working days where free access to a given market is presumed on the basis of the first subparagraph of Article 27(3);
- (b) 130 working days in cases other than those referred to in point (a).

Those deadlines shall commence on the first working day following the date on which the Commission receives the request referred to in paragraph 1 or, where the information to be supplied with the request is incomplete, on the working day following the receipt of the complete information.

The periods set out in the first subparagraph may be extended by the Commission with the agreement of the Member State or contracting entity which has presented the request.

The Commission may require the Member State or the contracting entity concerned or the independent national authority referred to under paragraph 1 of this Article or any other competent national authority, including the oversight body referred to in Article 93, to provide all necessary information or to supplement or clarify information given within an appropriate time limit. In the event of late or incomplete answers, the periods set out in the first subparagraph shall be suspended for the period between the expiry of the time limit set in the request for information, and the receipt of the complete and correct information.

- 4. Where an activity in a given Member State is already the subject of a procedure under paragraphs 1, 2 and 3, further requests concerning the same activity in the same Member State before the expiry of the period opened in respect of the first request shall not be considered as new procedures and shall be treated in the context of the first request.
- 5. The Commission shall adopt an implementing act establishing detailed rules for the application of paragraphs 1 to 4. That implementing act shall include at least:
  - (a) The publication in the *Official Journal of the European Union*, for information, of the date on which the period set out in the first subparagraph of paragraph 3 begins and ends, including prolongations or suspensions of those periods, if any, as provided for in paragraph 3 of this Article;
  - (b) publication of the possible applicability of Article 27(1) in accordance with point b of the second subparagraph of paragraph 2 of this Article;
  - (c) implementing provisions concerning the form, content and other details of requests pursuant to paragraph 1 of this Article;
  - (d) rules concerning the periods set out in paragraph 3 of this Article.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100(2).

## **CHAPTER IV**

### ***General principles***

#### *Article 29*

##### *Principles of procurement*

Contracting entities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate way.

The design of the procurement shall not be made with the objective of excluding it from the scope of this Directive or of artificially narrowing competition.

#### *Article 30*

##### *Economic operators*

1. Economic operators that, under the law of the Member State in which they are established, are entitled to provide the relevant service, shall not be rejected solely on the ground that, under the law of the Member State in which the contract is awarded, they would be required to be either natural or legal persons.

However, in the case of service and works contracts as well as supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the names and relevant professional qualifications of the staff responsible for the performance of the contract in question.

2. Groups of economic operators may submit tenders or put themselves forward as candidates. Contracting entities shall not establish specific conditions for participation of such groups in procurement procedures which are not imposed on individual candidates. In order to submit a tender or a request to participate, those groups shall not be required by the contracting entities to assume a specific legal form.

Contracting entities may establish specific conditions for the performance of the contract by a group, provided that those conditions are justified by objective reasons and proportionate. Those conditions may require a group to assume a specific legal form once it has been awarded the contract, to the extent that this change is necessary for the satisfactory performance of the contract.

#### *Article 31*

##### *Reserved contracts*

Member States may reserve the right to participate in procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled and disadvantaged workers or provide for such contracts to be performed in the context of sheltered employment programmes, provided that more than 30% of the employees

of those workshops, economic operators or programmes are disabled or disadvantaged workers.

The call for competition shall make reference to this Article.

*Article 32*  
*Confidentiality*

1. Contracting entities may impose on economic operators requirements aimed at protecting the confidential nature of information which the contracting entities make available throughout the procurement procedure, including information made available in connection with the operation of a qualification system, whether or not this has been the subject of a notice on the existence of a qualification system used as a means of calling for competition.
2. Unless otherwise provided in this Directive or in the national law concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 64 and 69 of this directive the contracting entity shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

*Article 33*  
*Rules applicable to communication*

1. Except where use of electronic means is mandatory pursuant to Articles 46, 47, 48, 49(4), 65(2) or 67 of this Directive contracting entities may choose between the following means of communication for all communication and information exchange:
  - (a) electronic means in accordance with paragraphs 3, 4 and 5;
  - (b) post or fax;
  - (c) telephone in the cases and circumstances referred to in paragraph 6;
  - (d) a combination of those means.

Member States may make mandatory the use of electronic means of communication in other situations than those provided for in Articles 46, 47, 48, 49(4), 65(2) or 67 of this Directive.

2. The means of communication chosen shall be generally available and not restrict economic operators' access to the procurement procedure.

In all communication, exchange and storage of information, contracting entities shall ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved. They shall examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.

3. The tools to be used for communicating by electronic means, as well as their technical characteristics, shall be non-discriminatory, generally available and interoperable with the information and communication technology products in general use and shall not restrict economic operators' access to the procurement procedure. The technical details and characteristics of the devices for the electronic receipts to be deemed in compliance with the first subparagraph of this paragraph are set out in Annex IV.

The Commission shall be empowered to adopt delegated acts in accordance with Article 98 to amend the technical details and characteristics set out in Annex IV due to technical developments or administrative reasons.

To ensure the interoperability of technical formats as well as of process and messaging standards, especially in a cross-border context, the Commission shall be empowered to adopt delegated acts in accordance with Article 98 to establish the mandatory use of certain technical standards, at least with regard to the use of e-submission, electronic catalogues and means for electronic authentication.

4. Contracting entities may, where necessary, require the use of tools which are not generally available, provided that they offer alternative means of access.

Contracting entities shall be deemed to offer suitable alternative means of access in any of the following situations:

- (a) they offer unrestricted and full direct access by electronic means to those tools from the date of publication of the notice in accordance with Annex IX or from the date on which the invitation to confirm interest is sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which those tools are accessible;
  - (b) they ensure that tenderers established in other Member States than the contracting entity's may access the procurement procedure through the use of provisional tokens made available online at no extra cost;
  - (c) they support an alternative channel for electronic submission of tenders.
5. The following rules shall apply to devices for the electronic transmission and receipt of tenders and for the electronic receipt of requests to participate:
    - (a) information on specifications for the electronic submission of tenders and requests to participate, including encryption and time-stamping, shall be available to interested parties;
    - (b) the devices, methods for authentication and electronic signatures shall comply with the requirements of Annex IV;
    - (c) contracting entities shall specify the level of security required for the electronic means of communication to be used in the various stages of the specific procurement procedure; the level shall be proportionate to the risks attached;

- (d) where advanced Electronic Signatures as defined by Directive 1999/93/EC<sup>42</sup> are required, contracting entities shall, as long as the signature is valid, accept signatures supported by a qualified electronic certificate referred to in the Trusted List as provided for in the Commission Decision 2009/767/EC<sup>43</sup>, created with or without a secure signature creation device, subject to compliance with the following conditions:
  - (i) they must establish the required advanced signature format on the basis of formats established in Commission Decision 2011/130/EU<sup>44</sup> and shall put in place necessary measures to be able to process those formats technically;
  - (ii) where a tender is signed with the support of a qualified certificate that is included in the Trusted list, they must not apply additional requirements that may hinder the use of those signatures by tenderers.

6. The following rules shall apply to the transmission of requests to participate:

- (a) requests to participate in procedures for the award of contracts may be made in writing or by telephone; in the latter case, a written confirmation must be sent before expiry of the time limit set for their receipt;
- (b) contracting entities may require that requests for participation made by fax must be confirmed by post or by electronic means, where this is necessary for the purposes of legal proof.

For the purposes of point (b) the contracting entity shall indicate in the notice used as a means of calling for competition or in the invitation to confirm interest that it requires requests to participate made by fax to be confirmed by post or by electronic means and the time limit for sending such confirmation.

7. Contracting entities may use the data processed electronically for public procurement procedures in order to prevent, detect and correct errors occurring at each stage by developing appropriate tools.

#### *Article 34*

##### *General obligation to use electronic means of communication*

Member States shall ensure that, at the latest 2 years after the date provided for in Article 101(1), all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

This obligation shall not apply where the use of electronic means would require specialised tools or file formats that are not generally available in all the Member States within the

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<sup>42</sup> Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, OJ L 13, 19.1.2000, p. 12.

<sup>43</sup> OJ L 274, 20.10.2009, p. 36.

<sup>44</sup> OJ L 53, 26.2.2011, p. 66.

meaning of paragraph 3. It is the responsibility of the contracting entities using other means of communication for submission of tenders to demonstrate in the procurement documents that the use of electronic means, due to the particular nature of the information to be exchanged with the economic operators, would require specialised tools or file formats that are not generally available in all the Member States.

Contracting entities shall be deemed to have legitimate reasons not to request electronic means of communication in the submission process where the following apply:

- (a) the description of the technical specifications, due to the specialised nature of the procurement, cannot be rendered using file formats that are generally supported by commonly used applications;
- (b) the applications supporting file formats that are suitable for the description of the technical specifications are under a proprietary licensing schema and cannot be made available for downloading or remote use by the contracting entity;
- (c) the applications supporting file formats that are suitable for the description of the technical specifications use file formats that cannot be handled by any other open or downloadable applications.

#### *Article 35* *Nomenclatures*

1. Any references to nomenclatures in the context of public procurement shall be made using the "Common Procurement Vocabulary (CPV)" as adopted by Regulation (EC) No 2195/2002<sup>45</sup>.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 to adapt the reference numbers used in Annex II and XVI, whenever changes in the CPV nomenclature have to be reflected in this Directive and they do not imply a modification of the scope of this Directive.

#### *Article 36* *Conflicts of interests*

1. Member States shall, in respect of contracting authorities within the meaning of point 1 of Article 2, provide for rules to effectively prevent, identify and immediately remedy conflicts of interests arising in the conduct of procurement procedures that are subject to this Directive, including the design and preparation of the procedure, the drawing-up of the procurement documents, the selection of candidates and tenderers and the award of the contract, so as to avoid any distortion of competition and ensure equal treatment of all tenderers.

The notion of conflict of interests shall at least cover any situation where the categories of persons referred to in paragraph 2 have, directly or indirectly, a private

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<sup>45</sup> OJ L 340, 16.12.2002, p. 1.



interest in the outcome of the procurement procedure, which may be perceived to impair the impartial and objective performance of their duties.

For the purposes of this Article, "private interests" means any family, emotional life, economic, political or other shared interests with the candidates or the tenderers, including conflicting professional interests.

2. The rules referred to in paragraph 1 shall apply to conflicts of interests involving at least the following categories of persons:
  - (a) staff members of the contracting authority, procurement service providers or staff members of other service providers who are involved in the conduct of the procurement procedure;
  - (b) the chairperson of the contracting authority and members of decision-making bodies of the contracting authority who, without necessarily being involved in the conduct of the procurement procedure, may nevertheless influence the outcome of that procedure.
3. Member States shall ensure in particular:
  - (a) that staff members referred to in paragraph 2(a) are required to disclose any conflict of interests in relation to any of the candidates or tenderers, as soon as they become aware of such conflicts, in order to enable the contracting authority to take remedial action,
  - (b) that candidates and tenderers are required to submit at the beginning of the procurement procedure a declaration on the existence of any privileged links with the persons referred to in paragraph 2(b), which are likely to place those persons in a situation of conflict of interests; the contracting authority shall indicate in the individual report referred to in Article 94 whether any candidate or tenderer has submitted a declaration.

In the event of a conflict of interests, the contracting authority shall take appropriate measures. Those measures may include the recusal of the staff member in question from involvement in the affected procurement procedure or the re-assignment of the staff member's duties and responsibilities. Where a conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.

Where privileged links are identified, the contracting authority shall immediately inform the oversight body designated in accordance with Article 93 and take appropriate measures to avoid any undue influence on the award process and ensure equal treatment of candidates and tenderers. If the conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.

4. All measures taken pursuant to this Article shall be documented in the individual report referred to in Article 94.

*Article 37*  
*Illicit conduct*

Candidates shall be required at the beginning of the procedure to provide a declaration on honour that they have not undertaken and will not undertake to:

- (a) unduly influence the decision-making process of the contracting entity or obtain confidential information that may confer upon them undue advantages in the procurement procedure;
- (b) enter into agreements with other candidates and tenderers aimed at distorting competition, or
- (c) deliberately provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.

# TITLE II

## RULES APPLICABLE TO CONTRACTS

### CHAPTER I

#### *Procedures*

#### *Article 38*

#### *Conditions relating to the Government Procurement Agreement and other international agreements*

1. As far as covered by Annexes III, IV and V and the General Notes to the European Union's Appendix 1 to the Government Procurement Agreement and by the other international agreements by which the Union is bound, as listed in Annex V to this Directive, contracting entities within the meaning of Article 4(3)(a) shall accord to the works, supplies, services and economic operators of the signatories to those agreements treatment no less favourable than the treatment accorded to the works, supplies, services and economic operators of the Union. By applying this Directive to economic operators of the signatories to those agreements contracting entities shall comply with those agreements.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 to amend the list in Annex V, where necessary due to the conclusion of new international agreements or modification of existing international agreements.

#### *Article 39*

#### *Choice of procedures*

1. When awarding supply, works or service contracts, contracting entities shall apply the procedures adjusted to be in conformity with this Directive, provided that, without prejudice to Article 42, a call for competition has been published in accordance with this Directive.

Member States shall provide that contracting entities may apply open or restricted procedures or negotiated procedures with prior call for competition as regulated in this Directive.

2. The call for competition may be made by one of the following means:
  - (a) a periodic indicative notice pursuant to Article 61 where the contract is awarded by restricted or negotiated procedure;
  - (b) a notice on the existence of a qualification system pursuant to Article 62 where the contract is awarded by restricted or negotiated procedure or by an innovation partnership,
  - (c) by means of a contract notice pursuant to Article 63.

In the case referred to in point (a), economic operators having expressed their interest following the publication of the periodic indicative notice shall subsequently be invited to confirm their interest in writing by means of an 'invitation to confirm interest' in conformity with Article 68.

3. Member States may provide that contracting entities may apply a negotiated procedure without prior call for competition only in the specific cases and circumstances referred to expressly in Article 42.

*Article 40*  
*Open procedure*

1. In open procedures any interested economic operator may submit a tender in response to a call for competition.

The minimum time limit for the receipt of tenders shall be 40 days from the date on which the contract notice was sent.

The tender shall be accompanied by the requested information for qualitative selection.

2. Where contracting entities have published a periodic indicative notice which is not used as a means of calling for competition, the minimum time limit for the receipt of tenders, as laid down in the second subparagraph of paragraph 1 of this Article, may be shortened to 20 days, provided that both of the following conditions are fulfilled:

- (a) the periodic indicative notice has included, in addition to the information required by Section I of Part A of Annex VI, all the information required by Section II of Part A of Annex VI, insofar as the latter information is available at the time the periodic indicative notice is published;

- (b) it was sent for publication between 45 days and 12 months before the date on which the contract notice was sent.

3. Where a state of urgency duly substantiated by the contracting entities renders impracticable the time limit laid down in the second subparagraph of paragraph 1, they may fix a time limit which shall be not less than 20 days from the date on which the contract notice was sent.

4. The contracting entity may reduce by five days the time limit for receipt of tenders set out in the second subparagraph of paragraph 1 where it accepts that tenders may be submitted by electronic means in accordance with Article 33(3), (4) and (5).

*Article 41*  
*Restricted procedure*

1. In restricted procedures, any economic operator may submit a request to participate in response to a call for competition by providing the requested information for qualitative selection.

The minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice or the invitation to confirm interest is sent and may in no case be less than 15 days.

2. Only those economic operators invited by the contracting entity following their assessment of the requested information may submit a tender. Contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 72(2).

The time limit for the receipt of tenders may be set by mutual agreement between the contracting entity and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders;

Where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting entity shall fix a time limit which shall in no case be less than 10 days from the date on which the invitation to tender is sent.

#### *Article 42*

##### *Negotiated procedure with prior call for competition*

1. In negotiated procedures with prior call for competition, any economic operator may submit a request to participate in response to a call for competition by providing the requested information for qualitative selection.

The minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice or, where a periodic indicative notice is used as a means of calling for competition, the invitation to confirm interest is sent and may in no case be less than 15 days.

2. Only those economic operators invited by the contracting entity following their assessment of the requested information may participate in the negotiations. Contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 72(2).

The time limit for the receipt of tenders may be set by mutual agreement between the contracting entity and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders;

Where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting entity shall fix a time limit which shall in no case be less than 10 days from the date on which the invitation to tender is sent.

#### *Article 43*

##### *Innovation partnership*

1. Member States may provide that contracting entities may apply innovation partnerships as regulated in this Directive. Member States may decide not to transpose into their national law innovation partnerships or to restrict the use of it to certain types of procurement.

In innovation partnerships, any economic operator may submit a request to participate in response to a call for competition in accordance with points (b) and (c) of Article 39(2) with a view to establishing a structured partnership for the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the agreed performance levels and costs.

2. The partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, possibly up to the manufacturing of the supply or the provision of the services. It shall provide for intermediate targets to be attained by the partner and provide for payment of the remuneration in appropriate instalments. Based on those targets, the contracting entity can decide after each stage to terminate the partnership and launch a new procurement procedure for the remaining phases, provided that it has acquired the relevant intellectual property rights.
3. The contract shall be awarded in accordance with the rules for a negotiated procedure with prior call for competition set out in Article 42.

In selecting candidates, contracting entities shall pay particular attention to criteria concerning the tenderers' capacity and experience in the field of research and development or of developing innovative solutions. They may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 72(2).

Only those economic operators invited by the contracting entity following its assessment of the requested information may submit research and innovation projects, aimed at meeting the needs identified by the contracting entity that cannot be met by existing solutions. The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 76 (1)(a).

4. The structure of the partnership and, in particular the duration and value of the different phases shall reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The value and duration of a contract for the purchase of the resulting supply, service or works shall remain within appropriate limits, taking into account the need to recover the costs, including those incurred in developing an innovative solution, and to achieve an adequate profit.

Contracting entities shall not use innovation partnerships in such a way as to prevent, restrict or distort competition.

#### *Article 44*

##### *Use of the negotiated procedure without prior call for competition*

Contracting entities may use a negotiated procedure without prior call for competition in the following cases:

- (a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to a procedure with a prior call for competition, provided that the initial conditions of the contract are not substantially altered;
- (b) where a contract is purely for the purpose of research, experiment, study or development, and not for the purpose of securing a profit or of recovering research and development costs, and insofar as the award of such contract does not prejudice the competitive award of subsequent contracts which do seek, in particular, those ends;
- (c) where the aim of the procurement is the creation or obtention of a work of art;
- (d) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:
  - (i) the absence of competition for technical reasons;
  - (ii) the protection of patents, copyrights or other intellectual property rights;
  - (iii) the protection of other exclusive rights.

This exception only applies when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

- (e) insofar as is strictly necessary where, for reasons of extreme urgency brought about by force majeure, the time limits laid down for open procedures, restricted procedures and negotiated procedures with prior call for competition cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting entity;
- (f) in the case of supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting entity to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;
- (g) for new works or services consisting in the repetition of similar works or services assigned to the contractor to which the same contracting entities awarded an earlier contract, provided that such works or services conform to a basic project for which a first contract was awarded according to a procedure in accordance with Article 39(1).
- (h) for supplies quoted and purchased on a commodity market or other similar markets such as electricity exchanges;
- (i) for bargain purchases, where it is possible to procure supplies by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices;
- (j) for purchases of supplies under particularly advantageous conditions from either a supplier definitively winding up its business activities or the liquidators in an

insolvency procedure, an arrangement with creditors or a similar procedure under national laws or regulations;

- (k) where the service contract concerned follows a design contest organised in accordance with this Directive and is to be awarded, under the applicable rules, be awarded to the winner or to one of the winners of that contest; in the latter case, all the winners shall be invited to participate in the negotiations.

For the purposes of point (a), a tender shall be considered not to be suitable where:

- (a) it is irregular or unacceptable, and
- (b) it is completely irrelevant to the contract, being incapable of meeting the contracting entity's needs as specified in the procurement documents.

In particular, tenders shall be considered to be irregular, where they do not comply with the procurement documents or where the prices offered are sheltered from normal competitive forces;

In particular, tenders shall be considered to be unacceptable in any of the following cases:

- (a) they have been received late;
- (b) they have been submitted by tenderers that do not have the requisite qualifications;
- (c) their price either exceeds the contracting entity's budget as determined prior to the launching of the procurement procedure; the prior determination of the budget must be documented in writing;
- (d) they have been found to be abnormally low in accordance with Article 79.

For the purposes of point (g) of paragraph 1 of this Article, the basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded. As soon as the first project is put up for tender, notice shall be given that this procedure might be adopted and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting entities when they apply Articles 12 and 13.

## **CHAPTER II**

### **Techniques and instruments for electronic and aggregated procurement**

#### *Article 45* *Framework agreements*

1. Contracting entities may conclude framework agreements, provided that they apply the procedures provided for in this Directive.

A framework agreement means an agreement between one or more contracting entities and one or more economic operators, the purpose of which is to establish the



terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantities envisaged.

The term of a framework agreement shall not exceed four years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

2. Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in this paragraph and paragraphs 3 and 4.

Those procedures may be applied only between those contracting entities clearly identified for this purpose in the call for competition, in the invitation to confirm interest or, where a notice on the existence of a qualification system is used as a means of calling for competition, in the invitation to tender and those economic operators originally party to the framework agreement.

Contracts based on a framework agreement may under no circumstances make substantial modifications to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 3.

Contracting entities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.

3. Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement.

For the award of those contracts, contracting entities may consult the operator party to the framework agreement in writing, requesting it to supplement its tender as necessary.

4. Where a framework agreement is concluded with more than one economic operator, it may be performed in one of the two following ways:
  - (a) following the terms and conditions of the framework agreement, without reopening competition, where it sets out all the terms governing the provision of the works, services and supplies concerned and the objective conditions for determining which of the economic operators, party to the framework agreement, shall perform them; the latter conditions shall be indicated in the procurement documents;
  - (b) where not all the terms governing the provision of the works, services and supplies are laid down in the framework agreement, through reopening competition amongst the economic operators parties to the framework agreement.

5. The competition referred to in paragraph (4)(b) shall be based on the same terms as applied for the award of the framework agreement and, where necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the specifications of the framework agreement, in accordance with the following procedure:

- (a) for every contract to be awarded, contracting entities shall consult in writing the economic operators capable of performing the contract;
- (b) contracting entities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in tenders;
- (c) tenders shall be submitted in writing, and their content shall not be opened until the stipulated time limit for reply has expired;
- (d) contracting entities shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.

*Article 46*  
*Dynamic purchasing systems*

1. For commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting entities, they may use a dynamic purchasing system. The dynamic purchasing system shall be operated as a completely electronic process, open throughout its validity to any economic operator that satisfies the selection criteria.
2. In order to award contracts under a dynamic purchasing system, contracting entities shall follow the rules of the restricted procedure. All the candidates who satisfy the selection criteria shall be admitted to the system; the number of candidates to be admitted to the system shall not be limited in accordance with Article 72 (2). All communications in the context of a dynamic purchasing system shall only be made with electronic means in accordance with Article 33(2) to (6).
3. For the purposes of awarding contracts under a dynamic purchasing system, contracting entities shall:
  - (a) publish a call for competition making it clear that a dynamic purchasing system is involved;
  - (b) indicate in the specifications, at least the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications;
  - (c) offer unrestricted and full direct access, as long as the system is valid, to the specifications and to any additional documents in accordance with Article 67.
4. Contracting entities shall give any economic operator, throughout the entire duration of the dynamic purchasing system, the possibility of requesting to participate in the system under the conditions referred to in paragraph 2. Contracting entities shall finalise their assessment of such requests according to the selection criteria within 10 working days following their receipt.

Contracting entities shall inform the economic operator referred to in the first subparagraph at the earliest possible opportunity of whether or not it has been admitted to the dynamic purchasing system.

5. Contracting entities shall invite all qualified participants to submit a tender for each specific procurement under the dynamic purchasing system, in accordance with Article 68.

They shall award the contract to the tenderer that submitted the best tender on the basis of the award criteria set out in the contract notice for the dynamic purchasing system, in the invitation to confirm interest, or, where the means of calling for competition is a notice on the existence of a qualification system, in the invitation to tender. Those criteria may, where appropriate, be formulated more precisely in the invitation to tender.

6. Contracting entities shall indicate the duration of the dynamic purchasing system in the call for competition. They shall notify the Commission of any change in duration, using the following standard forms:
  - (a) where the duration is changed without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;
  - (b) where the system is terminated, a contract award notice referred to in Article 64.
7. No charges may be billed to the interested economic operators or to parties to the dynamic purchasing system.

#### *Article 47* *Electronic auctions*

1. Contracting entities may use electronic auctions in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

For this purpose, contracting entities shall use a repetitive electronic process (electronic auction), which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

2. In open, restricted or negotiated procedures with a prior call for competition, the contracting entities may decide that the award of a contract shall be preceded by an electronic auction when the tender specifications can be established with precision.

In the same circumstances, an electronic auction may be held on the reopening of competition among the parties to a framework agreement as provided for in point (b) of Article 45(4) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 46.

3. The electronic auction shall be based on one of the the following criteria:
  - (a) solely on prices where the contract is awarded to the lowest cost,

- (b) on prices and/or on the new values of the features of the tenders indicated in the specifications, where the contract is awarded to the most economically advantageous tender.
4. Contracting entities which decide to hold an electronic auction shall state that fact in the contract notice, in the invitation to confirm interest or, where a notice on the existence of a qualification system is used as a means of calling for competition, in the invitation to tender. The specifications shall include at least the information set out in Annex VII.
  5. Before proceeding with the electronic auction, contracting entities shall make a full initial evaluation of the tenders in accordance with the award criterion or criteria and with the weighting fixed for them.

A tender shall be considered admissible where it has been submitted by a qualified tenderer and is in conformity with the technical specifications.

All tenderers that have submitted admissible tenders shall be invited simultaneously by electronic means to participate in the electronic auction using, as of the specified date and time, the connections in accordance with the instructions set out in the invitation. The electronic auction may take place in a number of successive phases. The electronic auction shall not start sooner than two working days after the date on which invitations are sent out.

6. Where the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied by the outcome of a full evaluation of the relevant tender carried out in accordance with the weighting provided for in the first subparagraph of Article 76(5).

The invitation shall also state the mathematical formula to be used in the electronic auction to determine automatic re-rankings on the basis of the new prices and/or new values submitted. That formula shall incorporate the weighting of all the criteria established to determine the most economically advantageous tender, as indicated in the notice used as a means of calling for competition or in the specifications. For that purpose, any ranges shall, however, be reduced beforehand to a specified value.

Where variants are authorised, a separate formula shall be provided for each variant.

7. Throughout each phase of an electronic auction the contracting entities shall instantaneously communicate to all tenderers sufficient information to enable them to ascertain their relative rankings at any moment. They may also communicate other information concerning other prices or values submitted, provided that that is stated in the specifications. They may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.
8. Contracting entities shall close an electronic auction in one or more of the following manners:
  - (a) at the previously indicated date and time;

- (b) when they receive no more new prices or new values which meet the requirements concerning minimum differences, provided that they have previously stated the time which they will allow to elapse after receiving the last submission before they close the electronic auction;
- (c) when the previously indicated number of phases in the auction has been completed.

Where the contracting entities have decided to close an electronic auction in accordance with point (c), possibly in combination with the arrangements laid down in point (b), the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

9. After closing an electronic auction the contracting entities shall award the contract in accordance with Article 76 on the basis of the results of the electronic auction.

#### *Article 48* *Electronic catalogues*

1. Where contracting entities require the use of electronic means of communication pursuant to Article 33 , they may require tenders to be presented in the format of an electronic catalogue.

Member States may render the use of electronic catalogues mandatory in connection with certain types of procurement.

Tenders presented in the form of an electronic catalogue may be accompanied by other documents, completing the tender.

2. Electronic catalogues shall be established by the candidates or tenderers with a view to participating in a specific procurement procedure in accordance with the technical specifications and format established by the contracting entity.

Furthermore, electronic catalogues shall comply with the requirements for electronic communication tools as well as with any additional requirements set by the contracting entity in accordance with Article 33.

3. Where the presentation of tenders in the form of electronic catalogues is accepted or required, contracting entities shall:
  - (a) state so in the contract notice, in the invitation to confirm interest, or, where the means of calling for competition is a notice on the existence of a qualification system, in the invitation to tender or to negotiate;
  - (b) indicate in the specifications all the necessary information pursuant to Article 33(5) concerning the format, the electronic equipment used and the technical connection arrangements and specifications for the catalogue.
4. Where a framework agreement has been concluded with more than one economic operator following the submission of tenders in the form of electronic catalogues, contracting entities may provide that the reopening of competition for specific

contracts takes place on the basis of updated catalogues. In such case, contracting entities shall use one of the following alternative methods:

- (a) invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the specific contract in question;
- (b) notify tenderers that they intend to collect from the catalogues which have already been submitted the information needed to constitute tenders adapted to the requirements of the specific contract in question (hereinafter "punch out"), provided that the use of this method has been announced in the procurement documents for the framework agreement.

5. Where contracting entities reopen competition for specific contracts in accordance with point (b) of paragraph (4), they shall specify the date and time at which they intend to collect the information needed to constitute tenders adapted to the requirements of the specific contract in question and shall give tenderers the possibility to refuse such collection of information.

Contracting entities shall allow for an adequate period between the notification and the actual collection of information.

Before awarding the contract, contracting entities shall present the collected information to the tenderer concerned so as to give it the opportunity to contest or confirm the correctness of the tender thus constituted.

6. Contracting entities may award contracts based on a dynamic purchasing system through a punch out provided that the request for participation in the dynamic purchasing system is accompanied by an electronic catalogue in accordance with the technical specifications and format established by the contracting entity. This catalogue shall be completed subsequently by the candidates, when they are informed of the contracting entity's intention to constitute tenders by means of a punch out. The punch out shall be conducted in conformity with point (b) of paragraph 4 and paragraph 5.

#### *Article 49*

##### *Centralised purchasing activities and central purchasing bodies*

1. Contracting entities may purchase works, supplies and/or services from or through a central purchasing body.
2. Member States shall provide for the possibility for contracting entities to have recourse to centralised purchasing activities offered by central purchasing bodies established in another Member State.
3. A contracting entity fulfills its obligations pursuant to this Directive when it procures by having recourse to centralised purchasing activities, to the extent that the procurement procedures concerned and their performance are conducted by the central procurement body alone in all its stages from the publication of the call for competition to the end of the execution of the ensuing contract or contracts.

However, where certain stages of the procurement procedure or the performance of the ensuing contracts are carried out by the contracting entity concerned, the contracting entity continues to be responsible for fulfilling the obligations pursuant to this Directive in respect of the stages it conducts.

4. All procurement procedures conducted by a central purchasing body shall be performed using electronic means of communication, in accordance with the requirements of Article 33.
5. Contracting entities may, without applying the procedures provided for in this Directive, choose a central purchasing body to provide centralised purchasing activities, including where the central purchasing body is remunerated for so doing.
6. Central purchasing bodies shall also ensure the documentation of all transactions performed in the course of the execution of the contracts, framework agreements or dynamic purchasing systems they conclude in the course of their central purchasing activities.

*Article 50*  
*Ancillary purchasing activities*

The providers of ancillary purchasing activities shall be chosen in accordance with the procurement procedures set out in this Directive.

*Article 51*  
*Occasional joint procurement*

1. One or more contracting entities may agree to perform certain specific procurements jointly.
2. Where one contracting entity alone conducts the procurement procedures concerned in all its stages from the publication of the call for competition to the end of the performance of the ensuing contract or contracts, that contracting entity shall have sole responsibility for fulfilling the obligations pursuant to this Directive.

However, where the conduct of the procurement procedures and the performance of the ensuing contracts is carried out by more than one of the participating contracting entities, each shall continue to be responsible for fulfilling its obligations pursuant to this Directive in respect of the stages it conducts.

*Article 52*  
*Joint procurement between contracting entities from different Member States*

1. Without prejudice to Title I, Chapter III, Section 2, Subsection 2: Special relations, contracting entities from different Member States may jointly award contracts by using one of the means described in this Article.
2. Several contracting entities may purchase works, supplies and/or services from or through a central purchasing body located in another Member State. In that case, the

procurement procedure shall be conducted in accordance with the national provisions of the Member State where the central purchasing body is located.

3. Several contracting entities from different Member States may jointly award a contract. In that case, the participating contracting entities shall conclude an agreement that determines
  - (a) which national provisions shall apply to the procurement procedure;
  - (b) the internal organisation of the procurement procedure, including the management of the procedure, the sharing of responsibilities, the distribution of the works, supplies or services to be procured, and the conclusion of contracts.

When determining the applicable national law in accordance with point (a), contracting entities may choose the national provisions of any Member State in which at least one of the participating entities is located.

4. Where several contracting entities from different Member States have set up a joint legal entity, including European Groupings of territorial cooperation under Regulation (EC) No° 1082/2006 of the European Parliament and of the Council<sup>46</sup> or other entities established under Union law, the participating contracting entities shall, by a decision of the competent body of the joint legal entity, agree on the applicable national procurement rules of one of the following Member States:
  - (a) the national provisions of the Member State where the joint legal entity has its registered office;
  - (b) the national provisions of the Member State where the joint legal entity is carrying out its activities.

This agreement may either apply for an undetermined period, when fixed in the constitutive act of the joint legal entity, or may be limited to a certain period of time, certain types of contracts or to one or more individual contract awards.

5. In the absence of an agreement determining the applicable public procurement law, the national legislation governing the contract award shall be determined following the rules set out below:
  - (a) where the procedure is conducted or managed by one participating contracting entity on behalf of the others, the national provisions of the Member State of that contracting entity shall apply;
  - (b) where the procedure is not conducted or managed by one participating contracting entity on behalf of the others, and
    - (i) concerns a works contract, contracting entities shall apply the national provisions of the Member State where most of the works are located;

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<sup>46</sup> OJ L 210 of 31.7.2006, p. 19



- (ii) concerns a service or supply contract, contracting entities shall apply the national provisions of the Member State where the major part of the services or supplies is provided;
  - (c) where it is not possible to determine the applicable national law pursuant to points (a) or (b), contracting entities shall apply the national provisions of the Member State of the contracting entity which bears the biggest share of the costs.
- 6. In the absence of an agreement determining the applicable public procurement law under paragraph 4, the national legislation governing procurement procedures conducted by joint legal entities set up by several contracting entities from different Member States shall be determined following the following rules:
  - (a) where the procedure is conducted or managed by the competent organ of the joint legal entity, the national provisions of the Member State where the legal entity has its registered office shall apply;
  - (b) where the procedure is conducted or managed by a member of the legal entity on behalf of that legal entity, the rules set out in points (a) and (b) of paragraph 5 shall apply;
  - (c) where it is not possible to determine the applicable national law pursuant to points (a) or (b) of paragraph 5, the contracting entities shall apply the national provisions of the Member State where the legal entity has its registered office.
- 7. One or more contracting entities may award individual contracts under a framework agreement concluded by or jointly with a contracting entity located in another Member State, provided that the framework agreement contains specific provisions enabling the respective contracting entity or entities to award the individual contracts.
- 8. Decisions on the award of contracts in cross-border public procurement shall be subject to the ordinary review mechanisms available under the national law applicable.
- 9. In order to enable the effective operation of review mechanisms, Member States shall ensure that the decisions of review bodies within the meaning of Council Directive 92/13/EEC<sup>47</sup> located in other Member States are fully executed in their domestic legal order, where such decisions involve contracting entities established on their territory participating in the relevant cross-border public procurement procedure.

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<sup>47</sup> OJ L 76, 23.03.1992, p. 14.

## **CHAPTER III**

### ***Conduct of the procedure***

#### **SECTION 1 PREPARATION**

##### *Article 53*

##### *Preliminary market consultations*

1. Before launching a procurement procedure, contracting entities may conduct market consultations in order to assess the structure, capability and capacity of the market and to inform economic operators of their procurement plans and requirements.

For this purpose, contracting entities may seek or accept advice from administrative support structures or from third parties or market participants, provided that such advice does not have the effect of precluding competition and does not result in a violation of the principles of non-discrimination and transparency.

2. Where a candidate or tenderer or an undertaking related to a candidate or tenderer has advised the contracting entity or has otherwise been involved in the preparation of the procurement procedure, the contracting entity shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer.

Such measures shall include the communication to the other candidates and tenderers of any relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

Prior to any such exclusion, candidates or tenderers shall be given the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting competition. The measures taken shall be documented in the individual report required by to Article 94.

##### *Article 54*

##### *Technical specifications*

1. The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply.

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2.

The technical specifications shall also specify whether the transfer of intellectual property rights will be required.

For all procurement, the subject of which is intended for use by persons, whether general public or staff of the contracting entity, those technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for people with disabilities or design for all users.

Where mandatory accessibility standards are adopted by a legislative act of the Union, technical specifications shall, as far as accessibility criteria are concerned, be defined by reference thereto.

2. Technical specifications shall guarantee equal access of economic operators to the procurement procedure and not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.
3. Without prejudice to mandatory national technical rules, to the extent that they are compatible with Union law, the technical specifications shall be formulated in one of the following ways:
  - (a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting entities to award the contract;
  - (b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or - when those do not exist - national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words "or equivalent";
  - (c) in terms of performance or functional requirements referred to in point (a), with reference to the technical specifications referred to in point (b) as a means of presuming conformity with such performance or functional requirements;
  - (d) by reference to the technical specifications referred to in point (b) for certain characteristics, and by reference to the performance or functional requirements referred to in point (a) for other characteristics.
4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or to a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted, on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words "or equivalent".
5. Where a contracting entity uses the option of referring to the specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the ground that the works,

supplies and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in its tender, by whatever appropriate means, including the means of proof referred to in Article 56, that the solutions which it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

6. Where a contracting entity uses the option provided for in point (a) of paragraph 3 to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for supplies, services or works which comply with a national standard transposing a European standard, with a European technical approval, a common technical specification, an international standard, or a technical reference system established by a European standardisation body, where those specifications address the performance or functional requirements which it has laid down.

In its tender, the tenderer shall prove by any appropriate means including those referred to in Article 56, that the supplies, service or work in compliance with the standard meets the performance or functional requirements of the contracting entity.

#### *Article 55* *Labels*

1. Where contracting entities lay down environmental, social or other characteristics of a works, service or supply in terms of performance or functional requirements as referred to in point (a) of Article 54 paragraph 3, they may require that those works, supplies or services bear a specific label, provided that all of the following conditions are fulfilled:
  - (a) the requirements for the label only concern characteristics which are linked to the subject-matter of the contract and are appropriate to define the characteristics of the works, supplies or services that are the subject-matter of the contract;
  - (b) the requirements for the label are drawn up on the basis of scientific information or based on other objectively verifiable and non-discriminatory criteria;
  - (c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations may participate,
  - (d) the labels are accessible to all interested parties;
  - (e) the criteria of the label are set by a third party which is independent from the economic operator applying for the label.

Contracting entities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting entities. For products that do not bear the label, contracting entities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.

2. Where a label fulfils the conditions of provided in points (b), (c), (d) and (e) of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting entities may use those of the detailed specifications of that label, or, if necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

#### *Article 56*

##### *Test reports, certification and other means of proof.*

1. Contracting entities may require that economic operators provide a test report from a recognised body or a certificate issued by such a body as means of proof of conformity with the technical specifications.

Where contracting entities require the submission of certificates drawn up by recognised bodies attesting conformity with a particular technical specification, certificates from equivalent other recognised bodies shall also be accepted by the contracting entities.

2. Contracting entities shall accept other appropriate means of proof than those referred to in paragraph 1, such as a technical dossier of the manufacturer where the economic operator concerned has no access to such certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits.
3. "Recognised bodies" within the meaning of paragraph 1 of this Article shall be test and calibration laboratories, and any certification and inspection bodies accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council<sup>48</sup>.
4. Member States shall make available to other Member States, upon request, any information related to the evidence and documents submitted in accordance with Article 54(6), Article 55 and paragraphs 1, 2 and 3 of this Article to prove compliance with technical requirements. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 96.

#### *Article 57*

##### *Communication of technical specifications*

1. On request from economic operators interested in obtaining a contract, contracting entities shall make available the technical specifications regularly referred to in their supply, works or service contracts, or the technical specifications which they intend to apply to contracts for which the call for competition is a periodic indicative notice. Those specifications shall be made available by electronic means through unrestricted and full direct access free of charge.
2. Where the technical specifications are based on documents available by electronic means through unrestricted and full direct access free of charge to interested

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<sup>48</sup> OJ L 218, 13.8.2008, p. 30.

economic operators, the inclusion of a reference to those documents shall be sufficient.

*Article 58*  
*Variants*

1. Contracting entities may take account of variants which are submitted by a tenderer and meet the minimum requirements specified by the contracting entities.

Contracting entities shall indicate in the specifications whether or not they authorise variants and, if so, the minimum requirements to be met by the variants and any specific requirements for their presentation. Where variants are authorised, they shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

2. In procedures for awarding supply or service contracts, contracting entities that have authorised variants shall not reject a variant on the sole ground that it would, where successful, lead either to a service contract rather than a supply contract or to a supply contract rather than a service contract.

*Article 59*  
*Division of contracts into lots*

1. Contracts may be subdivided into homogenous or heterogeneous lots. Article 13(7) applies.

Contracting entities shall indicate, in the contract notice, in the invitation to confirm interest, or, where the means of calling for competition is a notice on the existence of a qualification system, in the invitation to tender or to negotiate, whether tenders are limited to one or more lots only.

2. Contracting entities may, even where the possibility to tender for all lots has been indicated, limit the number of lots that may be awarded to a tenderer provided that the maximum number is stated in the contract notice or in the invitation to confirm interest. Contracting entities shall determine and indicate in the procurement documents the objective and non-discriminatory criteria or rules for awarding the different lots where the application of the chosen award criteria would result in the award to one tenderer of more lots than the maximum number.
3. Where more than one lot may be awarded to the same tenderer, contracting entities may provide that they will either award a contract per lot or one or more contracts, covering several or all lots.

Contracting entities shall specify in the procurement documents whether they reserve the right to make such a choice and, if so, which lots may be grouped together under one contract.

Contracting entities shall first determine the tenders fulfilling best the award criteria set out pursuant to Article 76 for each individual lot. They may award a contract for

more than one lot to a tenderer that is not ranked first in respect of all individual lots covered by this contract, provided that the award criteria set out pursuant to Article 76 are better fulfilled with regard to all the lots covered by that contract. Contracting entities shall specify the methods they intend to use for such comparison in the procurement documents. Such methods shall be transparent, objective and non-discriminatory.

4. Contracting entities may require that all contractors coordinate under the direction of the economic operator to which a lot involving the coordination of the entire project or its relevant parts has been awarded.

*Article 60*  
*Setting time limits*

1. When fixing the time limits for requests to participate and the receipt of tenders, contracting entities shall take particular account of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set out in Articles 39 to 44.
2. Where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the procurement documents, the time limits for the receipt of tenders shall be extended, so that all economic operators concerned may be aware of all the information needed to produce tenders.

**Section 2**  
***Publication and transparency***

*Article 61*  
*Periodic indicative notices*

1. Contracting entities may make known their intentions of planned procurement through the publication of a periodic indicative notice as soon as possible after the beginning of the budgetary year. Those notices shall contain the information set out in part A, section I of Annex VI. They shall be published either by the Commission or by the contracting entities on their buyer profiles in accordance with point 2(b) of Annex IX. Where the notice is published by the contracting entities on their buyer profile, they shall send a notice of the publication of the periodic indicative notice on a buyer profile in accordance with point 3 of Annex IX.
2. When a call for competition is made by means of a periodic indicative notice in respect of restricted procedures and negotiated procedures with prior call for competition, the notice shall meet all the following requirements:
  - (a) it refers specifically to the supplies, works or services that will be the subject of the contract to be awarded;

- (b) it indicates that the contract will be awarded by restricted or negotiated procedure without further publication of a call for competition and invite interested economic operators to express their interest in writing;
- (c) it contains, in addition to the information set out in part A, section I of Annex VI, the information set out in part A, section II of Annex VI;
- (d) it has been published not more than 12 months prior to the date on which the invitation to confirm interest is sent.

#### *Article 62*

##### *Notices on the existence of a qualification system*

Where contracting entities choose to set up a qualification system in accordance with Article 71, the system shall be the subject of a notice as referred to in Annex X, indicating the purpose of the qualification system and how to have access to the rules concerning its operation. Where the system is of a duration greater than three years, the notice shall be published annually. Where the system is of a shorter duration, an initial notice shall suffice.

#### *Article 63*

##### *Contract notices*

Contract notices may be used as a means of calling for competition in respect of all procedures. They shall contain the information set out in the relevant part of Annex XI and shall be published in accordance with Article 65.

#### *Article 64*

##### *Contract award notices*

1. Within two months of the award of a contract or the conclusion of a framework agreement, contracting entities shall send a contract award notice on the results of the procurement procedure.

Such notice shall contain the information set out in Annex XII and shall be published in accordance with Article 65.

2. Where the call for competition for the contract concerned has been made in the form of a periodic indicative notice and the contracting entity does not intend to award further contracts during the 12 month period covered by the periodic indicative notice, the contract award notice shall contain a specific indication to that effect.

In the case of framework agreements concluded in accordance with Article 45, contracting entities shall not be bound to send a notice of the results of the procurement procedure for each contract based on that agreement.

Contracting entities shall send a contract award notice within two months after the award of each contract based on a dynamic purchasing system. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within two months of the end of each quarter.



3. The information provided in accordance with Annex XII and intended for publication shall be published in accordance with Annex IX. Certain information on the contract award or the conclusion of the framework agreement may be withheld from publication where its release would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, including the interests of the economic operator to whom the contract has been awarded, or might prejudice fair competition between economic operators.

In the case of contracts for research-and-development services ("R&D services"), the information concerning the nature and quantity of the services may be respectively limited to:

- (a) the indication "R&D services" where the contract has been awarded by a negotiated procedure without a call for competition in accordance with Article 44(b);
  - (b) at least as detailed information as was indicated in the notice that was used as a means of calling for competition.
4. Information provided in accordance with Annex XII and marked as not being intended for publication shall be published only in simplified form and in accordance with Annex IX for statistical purposes.

#### *Article 65*

##### *Form and manner of publication of notices*

1. Notices referred to in Articles 61 to 64 shall include the information set out in Annexes XI, X, VI A, VI B and XII and in the format of standard forms, including standard forms for corrigenda.

The Commission shall establish those standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100.

2. Notices referred to in Articles 61 to 64 shall be drawn up, transmitted by electronic means to the Commission and published in accordance with Annex IX. Notices shall be published not later than five days after they are sent. The costs of publication of the notices by the Commission shall be borne by the Union.
3. Calls for competition within the meaning of Article 39(2) shall be published in full in an official language of the Union as chosen by the contracting entity. That language version shall constitute the sole authentic text. A summary of the important elements of each notice shall be published in the other official languages.
4. The Commission shall ensure that the full text and the summary of periodic indicative notices referred to in Article 61(2), calls for competition setting up a dynamic purchasing system as referred to in Article 46(3)(a) and notices on the existence of a qualification system used as a means of calling for competition in accordance with Article 39(2)(b) continue to be published:

- (a) in the case of periodic indicative notices for 12 months or until receipt of a contract award notice as provided for in Article 64 (2) indicating that no further contracts will be awarded during the 12 month period covered by the call for competition;
  - (b) in the case of calls for competition setting up a dynamic purchasing system for the period of validity of the dynamic purchasing system;
  - (c) in the case of notices on the existence of a qualification system for its period of validity.
5. Contracting entities shall be able to supply proof of the dates on which notices are dispatched.

The Commission shall give the contracting entity confirmation of the receipt of the notice and of the publication of the information sent, indicating the date of that publication. Such confirmation shall constitute proof of publication.

6. Contracting entities may publish notices for works, supply or service contracts that are not subject to the publication requirements laid down in this Directive provided that those notices are sent to the Commission by electronic means in accordance with the format and procedures for transmission indicated in Annex IX.

#### *Article 66* *Publication at national level*

1. Notices referred to in Articles 61 to 64 and the information contained therein shall not be published at national level before the publication pursuant to Article 65.
2. Notices published at national level shall not contain information other than that contained in the notices dispatched to the Commission or published on a buyer profile, but shall indicate the date of dispatch of the notice to the Commission or its publication on the buyer profile.
3. Periodic indicative notices shall not be published on a buyer profile before the dispatch to the Commission of the notice of their publication in that form; they shall indicate the date of that dispatch.

#### *Article 67* *Electronic availability of procurement documents*

1. Contracting entities shall offer unrestricted and full direct access free of charge by electronic means to the procurement documents from the date of publication of the notice in accordance with Article 65 or the date on which the invitation to confirm interest is sent. Where the means of calling for competition is a notice on the existence of a qualification system, such access shall be offered as soon as possible and at the latest when the invitation to tender or to negotiate is sent. The text of the notice or of those invitations shall specify the internet address at which this documentation is accessible.

2. Provided that it has been requested in good time, the contracting entities or competent departments shall supply additional information relating to the specifications and any supporting documents not later than six days before the time limit fixed for the receipt of tenders. In the event of an accelerated open procedure as referred to in Article 40(3), that period shall be four days.

#### *Article 68*

##### *Invitations to submit a tender or to negotiate; invitations to confirm interest*

1. In restricted procedures, innovation partnerships and negotiated procedures with prior call for competition, contracting entities shall simultaneously and in writing invite the selected candidates to submit their tenders or to negotiate.

Where a periodic indicative notice is used as a call for competition pursuant to point (a) of Article 39(2), contracting entities shall simultaneously and in writing invite the economic operators having expressed their interest to confirm their continuing interest.

2. The invitations referred to in paragraph 1 shall include a reference to the electronic address on which the specifications and any other supporting document have been made directly available by electronic means. In addition, they shall include the information set out in Annex XIII.

#### *Article 69*

##### *Informing applicants for qualification, candidates and tenderers*

1. Contracting entities shall as soon as possible inform each candidate and tenderer of decisions reached concerning the conclusion of a framework agreement, the award of the contract, or admission to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement or award a contract for which there has been a call for competition or to recommence the procedure, or not to implement a dynamic purchasing system.
2. On request from the party concerned, contracting entities shall, as soon as possible, and in any case within 15 days from receipt of a written request, inform:
  - (a) any unsuccessful candidate of the reasons for the rejection of its request to participate;
  - (b) any unsuccessful tenderer of the reasons for the rejection of its tender, including, for the cases referred to in Article 54(5) and (6), the reasons for their decision of non-equivalence or their decision that the works, supplies or services do not meet the performance or functional requirements;
  - (c) any tenderer that has made an admissible tender of the characteristics and relative advantages of the tender selected, as well as the name of the successful tenderer or the parties to the framework agreement;
  - (d) any tenderer that has made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers.

3. Contracting entities may decide that certain information on the contract award or the conclusion of the framework agreement or the admission to a dynamic purchasing system, referred to in paragraph 1, is to be withheld where its release would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, including the interests of the economic operator to whom the contract has been awarded, or might prejudice fair competition between economic operators.
4. Contracting entities which establish and operate a system of qualification shall inform applicants of their decision as to qualification within a period of six months.  
  
If the decision will take longer than four months from the presentation of an application, the contracting entity shall inform the applicant, within two months of the application, of the reasons justifying the longer period and of the date by which his application will be accepted or refused.
5. Applicants whose qualification is refused shall be informed of this decision and the reasons for refusal as soon as possible and under no circumstances more than 15 days later than the date of the decision. The reasons shall be based on the criteria for qualification referred to in Article 71(2).
6. Contracting entities which establish and operate a system of qualification may bring the qualification of an economic operator to an end only for reasons based on the criteria for qualification referred to in Article 71(2). Any intention to bring qualification to an end shall be notified in writing to the economic operator beforehand, at least 15 days before the date on which qualification is due to end, together with the reason or reasons justifying the proposed action.

### **SECTION 3**

#### **CHOICE OF PARTICIPANTS AND AWARD OF CONTRACTS**

##### *Article 70*

##### *General principles*

1. For the purpose of selecting participants in their procurement procedures, the following cumulative rules apply:
  - (a) contracting entities having provided rules and criteria for the exclusion of tenderers or candidates in accordance with Article 72(1) or Article 74(2) shall exclude economic operators identified in accordance with such rules and fulfilling such criteria;
  - (b) they shall select tenderers and candidates in accordance with the objective rules and criteria laid down pursuant to Articles 72 and 74;
  - (c) in restricted procedures, in negotiated procedures with a call for competition and in innovation partnerships, they shall where appropriate reduce in accordance with Article 72(2) the number of candidates selected pursuant to points (a) and (b) of this paragraph.

2. When a call for competition is made by means of a notice on the existence of a qualification system and for the purpose of selecting participants in procurement procedures for the specific contracts which are the subject of the call for competition, contracting entities shall:
  - (a) qualify economic operators in accordance with Article 71;
  - (b) apply to such qualified economic operators those provisions of paragraph 1 that are relevant to restricted or negotiated procedures or to innovation partnerships.
3. When selecting participants for a restricted or negotiated procedure or an innovation partnership, in reaching their decision as to qualification or when the criteria and rules are being updated, contracting entities shall not:
  - (a) impose administrative, technical or financial conditions on certain economic operators which would not be imposed on others;
  - (b) require tests or evidence which would duplicate objective evidence already available.
4. Contracting entities shall verify that the tenders submitted by the selected tenderers comply with the rules and requirements applicable to tenders and award the contract on the basis of the criteria laid down in Articles 76 and 79, taking into account Article 58.
5. Contracting entities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XIV.
6. In open procedures, contracting entities may decide to examine tenders before verifying the suitability of tenderers, provided that the relevant provisions of Articles 70 to 79 are observed, including the rule that the contract shall not be awarded to a tenderer who should have been excluded pursuant to Article 74 or who does not meet the selection criteria set out by the contracting entity in accordance with Article 72(1) and Article 74.
7. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 to amend the list in Annex XIV, where necessary due to the conclusion of new international agreements or modification of existing international agreements.

## **SUBSECTION 1**

### **QUALIFICATION AND QUALITATIVE SELECTION**

#### *Article 71*

#### *Qualification systems*

1. Contracting entities which so wish may establish and operate a system of qualification of economic operators.

Contracting entities which establish or operate a system of qualification shall ensure that economic operators are at all times able to request qualification.

2. The system under paragraph 1 may involve different qualification stages.

Contracting entities shall establish objective rules and criteria for the exclusion and selection of economic operators requesting qualification and objective criteria and rules for the operation of the qualification system, covering matters such as inscription in the system, periodic updating of the qualifications, if any, and the duration of the system.

Where those criteria and rules include technical specifications, Articles 54 to 56 shall apply. The criteria and rules may be updated as required.

3. The criteria and rules referred to in paragraph 2 shall be made available to economic operators on request. Those those updated criteria and rules shall be communicated to interested economic operators.

Where a contracting entity considers that the qualification system of certain other entities or bodies meets its requirements, it shall communicate to interested economic operators the names of such other entities or bodies.

4. A written record of qualified economic operators shall be kept; it may be divided into categories according to the type of contract for which the qualification is valid.
5. When a call for competition is made by means of a notice on the existence of a qualification system, specific contracts for the works, supplies or services covered by the qualification system shall be awarded by restricted procedures or negotiated procedures, in which all tenderers and participants are selected among the candidates already qualified in accordance with such a system.
6. Any charges that are billed in connection with requests for qualification or with updating or conserving an already obtained qualification pursuant to the system shall be proportionate to the generated costs.

#### *Article 72*

##### *Criteria for qualitative selection*

1. Contracting entities may establish objective rules and criteria for the exclusion and selection of tenderers or candidates; those rules and criteria shall be available to interested economic operators.
2. Where contracting entities need to ensure an appropriate balance between the particular characteristics of the procurement procedure and the resources required to conduct it, they may, in restricted or negotiated procedures or in innovation partnerships, establish objective rules and criteria that reflect this need and enable the contracting entity to reduce the number of candidates that will be invited to tender or to negotiate. The number of candidates selected shall, however, take account of the need to ensure adequate competition.

*Article 73*  
*Reliance on the capacities of other entities*

1. Where the objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a qualification system include requirements relating to the economic and financial capacity of the economic operator, or to its technical and professional abilities, the economic operator may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator shall prove to the contracting entity that those resources will be available to it throughout the period of the validity of the qualification system, for example by producing an undertaking by those entities to that effect. In the case of economic and financial standing, contracting entities may require that the economic operator and those entities are jointly liable for the execution of the contract.

Under the same conditions, a group of economic operators as referred to in Article 30 may rely on the capacity of participants in the group or of other entities.

2. Where the objective rules and criteria for the exclusion and selection of candidates and tenderers in open, restricted or negotiated procedures or in innovation partnerships include requirements relating to the economic and financial capacity of the economic operator, or to its technical and professional abilities the economic operator may where necessary and for a particular contract rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator shall prove to the contracting entity that the necessary resources will be available to it, for example by delivering an undertaking by those entities to that effect. In the case of economic and financial standing, contracting entities may require that the economic operator and those entities are jointly liable for the execution of the contract.

Under the same conditions, a group of economic operators as referred to in Article 30 may rely on the capacities of participants in the group or of other entities.

3. In the case of works contracts, service contracts and siting and installation operations in the context of a supply contract, contracting entities may require that certain critical tasks be performed directly by the tenderer itself or, where a tender is submitted by a group of economic operators as referred to in Article 30, a participant in the group.

*Article 74*

*Use of exclusion grounds and selection criteria provided for under [Directive 2004/18]*

1. The objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a qualification system and the objective rules and criteria for the exclusion and selection of candidates and tenderers in open, restricted or negotiated procedures or in innovation partnerships may include the exclusion grounds listed in Article 55 of Directive 2004/18 on the terms and conditions set out therein.

Where the contracting entity is a contracting authority, those criteria and rules shall include the exclusion grounds listed in Article 55(1) and (2) of Directive 2004/18 on the terms and conditions set out in that Article.

2. The criteria and rules referred to in paragraph 1 may include the selection criteria set out in Article 56 of Directive 2004/18/EC on the terms and conditions set out therein, notably as regards the limits to requirements concerning yearly turnovers, as provided for under the second subparagraph of paragraph 3 of that Article.
3. For the purpose of applying paragraphs 1 and 2 of this Article, Articles 57 to 60 of Directive 2004/18/EC shall apply.

#### *Article 75*

##### *Quality assurance standards and environmental management standards*

1. Where they request the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, contracting entities shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification.

Contracting entities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

2. Where contracting entities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management schemes or standards, they shall refer to the European Union Eco-Management and Audit Scheme (EMAS) or to other environmental management schemes as recognized in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council<sup>49</sup> or other environmental management standards based on the relevant European or international standards by accredited bodies.

Contracting entities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

3. Upon request, Member States shall make available to other Member States, in accordance with Article 97, any information relating to the documents produced as evidence of compliance with quality and environmental standards referred to in paragraphs 1 and 2 of this Article.

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<sup>49</sup> OJ L 342, 22.12.2009, p. 1.



## SUBSECTION 2 AWARD OF THE CONTRACT

### *Article 76 Contract award criteria*

1. Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, the criteria on which contracting entities shall base the award of contracts shall be one of the following:

- (a) the most economically advantageous tender;
- (b) the lowest cost.

Costs may be assessed, at the choice of the contracting entity, on the basis of the price only or using a cost-effectiveness approach, such as a life-cycle costing approach, under the conditions set out in Article 77.

2. The most economically advantageous tender referred to in point (a) of paragraph 1) from the point of view of the contracting entity shall be identified on the basis of criteria linked to the subject-matter of the contract in question.

Those criteria shall include in addition to the price or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter of the contract in question, such as:

- (a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative character;
- (b) for service contracts and contracts involving the design of works, the organisation, qualification and experience of the staff assigned to performing the contract in question may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced with the consent of the contracting entity which must verify that replacements ensure equivalent organisation and quality;
- (c) after-sales service and technical assistance, delivery date and delivery period or period of completion, commitments with regard to parts and security of supply;
- (d) the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle, as referred to in point 22 of Article 2, to the extent that those criteria are specified in accordance with paragraph 4 and they concern factors directly involved in those processes and characterise the specific process of production or provision of the requested works, supplies or services.

3. Member States may provide that the award of certain types of contracts shall be based on the most economically advantageous tender referred to in point (a) of paragraph 1 and in paragraph 2.

4. Award criteria shall not confer an unrestricted freedom of choice on the contracting entity. They shall ensure the possibility of effective competition and shall be accompanied by requirements which allow the information provided by the tenderers to be effectively verified. Contracting entities shall verify effectively, on the basis of the information and proof provided by the tenderers, whether the tenders meet the award criteria.
5. In the case referred to in point (a) of paragraph 1, the contracting entity shall specify the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.

Those weightings may be expressed by providing for a range with an appropriate maximum spread.

Where weighting is not possible for objective reasons, the contracting entity shall indicate the criteria in descending order of importance.

The relative weighting or order of importance shall be specified, as appropriate, in the notice used as a means of calling for competition, in the invitation to confirm interest, in the invitation to tender or to negotiate, or in the specifications.

#### *Article 77* *Life-cycle costing*

1. Life-cycle costing shall to the extent relevant cover the following costs over the life cycle of a product, service or works as defined in point 22 of Article 2:
  - (a) internal costs, including costs relating to acquisition, such as production costs, use, such as energy consumption, maintenance costs and end of life, such as collection and recycling costs and
  - (b) external environmental costs directly linked to the life cycle, provided their monetary value can be determined and verified, which may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.
2. Where contracting entities assess the costs using a life-cycle costing approach, they shall indicate in the procurement documents the methodology used for the calculation of the life-cycle costs. The methodology used must fulfil all of the following conditions:
  - (a) it has been drawn up on the basis of scientific information or is based on other objectively verifiable and non-discriminatory criteria;
  - (b) it has been established for repeated or continuous application;
  - (c) it is accessible to all interested parties.

Contracting entities shall allow economic operators, including economic operators from third countries, to apply a different methodology for establishing the life-cycle costs of their offer, provided that they prove that this methodology complies with the

requirements set out in points a, b and c and is equivalent to the methodology indicated by the contracting entity.

3. Whenever a common methodology for the calculation of life-cycle costs is adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 76 (1).

A list of such legislative and delegated acts is set out in Annex XV. The Commission, shall be empowered to adopt delegated acts in accordance with Article 98 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary.

#### *Article 78 Impediments to award*

Contracting entities shall not conclude the contract with a successful tenderer where one of the following conditions is fulfilled:

- (a) the tenderer is not able to provide the certificates and documents required pursuant to Article 74(3);
- (b) the declaration provided by the tenderer pursuant to Article 37 is false;
- (c) the declaration provided by the tenderer pursuant to Article 36(3)(b) is false.

#### *Article 79 Abnormally low tenders*

1. The contracting entity shall request economic operators to explain the price or costs charged, where all of the following conditions are fulfilled:
  - (a) the price or cost charged is more than 50 % lower than the average price or costs of the remaining tenders;
  - (b) the price or cost charged is more than 20 % lower than the price or costs of the second lowest tender;
  - (c) at least five tenders have been submitted.
2. Where tenders appear to be abnormally low for other reasons, contracting entities may also request such explanations.
3. The explanations referred to in paragraphs 1 and 2 may in particular relate to:
  - (a) the economics of the manufacturing process, of the services provided and of the construction method;

- (b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the goods or services or for the execution of the work;
  - (c) the originality of the supplies, services or work proposed by the tenderer;
  - (d) compliance, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XIV or, where not applicable, with other provisions ensuring an equivalent level of protection;
  - (e) the possibility of the tenderer obtaining State aid.
4. The contracting entity shall verify the information provided by consulting the tenderer.
- It may only reject the tender where the evidence does not justify the low level of price or costs charged, taking into account the elements referred to in paragraph 3.
- Contracting entities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with obligations established by Union legislation in the field of social and labour law or environmental law or by the international social and environmental law provisions listed in Annex XIV.
5. Where a contracting entity establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting entity, that the aid in question was compatible with the internal market within the meaning of Article 107 of the Treaty. Where the contracting entity rejects a tender in those circumstances, it shall inform the Commission thereof.
6. Upon request, Member States shall make available to other Member States, in accordance with Article 97, any information relating to the evidence and documents produced in relation to details listed in paragraph 3.

## **Chapter IV**

### **Contract performance**

#### *Article 80*

#### *Conditions for performance of contracts*

Contracting entities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

*Article 81*  
*Subcontracting*

1. In the procurement documents, the contracting entity may ask, or may be required by a Member State to ask, the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.
2. Member States may provide that, at the request of the subcontractor and where the nature of the contract so allows, the contracting entity shall transfer due payments directly to the subcontractor for services, supplies or works provided to the main contractor. In such case, Member States shall put in place appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment shall be set out in the procurement documents.
3. Paragraphs 1 and 2 shall be without prejudice to the question of the principal economic operator's liability.

*Article 82*  
*Modification of contracts during their term*

1. A substantial modification of the provisions of a works, supply or service contract during its term shall be considered as a new award for the purposes of this Directive and shall require a new procurement procedure in accordance with this Directive.
2. A modification of a contract during its term shall be considered substantial within the meaning of paragraph 1, where it renders the contract substantially different from the one initially concluded. In any case, without prejudice to paragraph 3 and 4, a modification shall be considered substantial where one of the following conditions is met:
  - (a) the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the selection of other candidates than those initially selected or would have allowed for awarding the contract to another tenderer;
  - (b) the modification changes the economic balance of the contract in favour of the contractor;
  - (c) the modification extends the scope of the contract considerably to encompass supplies, services or works not initially covered.
3. The replacement of the contractual partner shall be considered a substantial modification within the meaning of paragraph 1.

However, the first subparagraph shall not apply in the event of universal or partial succession into the position of the initial contractor, following corporate restructuring operations or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive.

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 12 and where it is below 5% of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.
5. Contract modifications shall not be considered substantial within the meaning of paragraph 1 where they have been provided for in the procurement documents in clear, precise and unequivocal review clauses or options. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the contract.
6. By way of derogation from paragraph 1, a substantial modification shall not require a new procurement procedure where the following cumulative conditions are fulfilled:
  - (a) the need for modification has been brought about by circumstances which a diligent contracting entity could not foresee;
  - (b) the modification does not alter the overall nature of the contract.

Contracting entities shall publish in the *Official Journal of the European Union* a notice on such modifications. Such notices shall contain the information set out in Annex XVI and be published in accordance with Article 65.

7. Contracting entities shall not have recourse to modifications of the contract in the following cases:
  - (a) where the modification would aim at remedying deficiencies in the performance of the contractor or the consequences, which can be remedied through the enforcement of contractual obligations;
  - (b) where the modification would aim at compensating risks of price increases that have been hedged by the contractor.

### *Article 83* *Termination of contracts*

Member States shall ensure that contracting entities have the possibility, under the conditions determined by the applicable national contract law, to terminate a works, supply or service contract during its term, where one of the following conditions is fulfilled:

- (a) the exceptions provided for in Article 21 cease to apply following a private participation in the legal person awarded the contract pursuant to Article 21 (4);
- (b) a modification of the contract constitutes a new award within the meaning of Article 82;

- (c) the Court of Justice of the European Union finds, in a procedure under Article 258 of the Treaty, that a Member State has failed to fulfil its obligations under the Treaties due to the fact that a contracting entity belonging to that Member State has awarded the contract in question without complying with its obligations under the Treaties and this Directive.

# TITLE III

## PARTICULAR PROCUREMENT REGIMES

### CHAPTER I

#### *Social and other specific services*

##### *Article 84*

###### *Award of contracts for social and other specific services*

Contracts for social and other specific services listed in Annex XVII shall be awarded in accordance with this Chapter where the value of the contracts is equal to or greater than the threshold indicated in Article 12(c).

##### *Article 85*

###### *Publication of notices*

1. Contracting entities intending to award a contract for the services referred to in Article 84 shall make known their intention by means of a contract notice.
2. Contracting entities that have awarded a contract for the services referred to in Article 84 shall make known the results by means of contract award notice.
3. The notices referred to in paragraphs 1 and 2 shall contain the information referred to in Annex XVIII in accordance with the standard model notices. The Commission shall establish the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100.
4. The notices referred to in paragraphs 1 and 2 shall be published in accordance with Article 65.

##### *Article 86*

###### *Principles of awarding contracts*

1. Member States shall put in place appropriate procedures for the award of contracts subject to this Chapter, ensuring full compliance with the principles of transparency and equal treatment of economic operators and allowing contracting entities to take into account the specificities of the services in question.
2. Member States shall ensure that contracting entities may take into account the need to ensure quality, continuity, accessibility, availability and comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment of users and innovation. Member States may also provide that the choice of the service provider shall not be made solely on the basis of the price for the provision of the service.



## **CHAPTER II**

# **RULES GOVERNING DESIGN CONTESTS**

### *Article 87* *General provisions*

1. The rules for the organisation of design contests shall be in conformity with this Chapter and shall be made available to those interested in participating in the contest.
2. The admission of participants to design contests shall not be limited:
  - (a) by reference to the territory or part of the territory of a Member State;
  - (b) on the grounds that, under the law of the Member State in which the contest is organised, they would be required to be either natural or legal persons.

### *Article 88* *Scope*

1. This Chapter shall apply to design contests organised as part of a procurement procedure for a service contract, provided that the estimated value of the contract, net of VAT, and including any possible prizes or payments to participants, is equal to or greater than the amount set out in point (a) of Article 12.
2. This Chapter shall apply to all design contests where the total amount of contest prizes and payments to participants, including the estimated value net of VAT of the service contract which might subsequently be concluded under point (k) of Article 44 if the contracting entity does not exclude such an award in the contest notice, is equal to or greater than the amount set out in point (a) of Article 12.

### *Article 89* *Notices*

1. Contracting entities that intend to organise a design contest shall call for competition by means of a contest notice. Where they intend to award a subsequent service contract pursuant to point (k) of Article 44, this shall be indicated in the design contest notice. Contracting entities that have held a design contest shall make the results known by means of a notice.
2. The call for competition shall include the information set out in Annex XIX and the notice of the results of a design contest shall include the information set out in Annex XX in the format of standard forms. The Commission shall establish the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100.

The notice of the results of a design contest shall be forwarded to the Commission within two months of the closure of the design contest.

Where release of information on the outcome of the contest would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, including the interests of the economic operator to whom the contract has been awarded, or might prejudice fair competition between economic operators, such information may be withheld from publication.

3. Paragraphs (2) to (6) of Article 65 shall also apply to notices relating to design contests.

#### *Article 90*

##### *Rules on the organisation of design contests, the selection of participants and the jury*

1. When organising design contests, contracting entities shall apply procedures which are adapted to this Directive.
2. Where design contests are restricted to a limited number of participants, contracting entities shall establish clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.
3. The jury shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required of participants in a contest, at least a third of the jury members shall have the same qualification or an equivalent qualification.

#### *Article 91*

##### *Decisions of the jury*

1. The jury shall be autonomous in its decisions or opinions.
2. The jury shall examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.
3. The jury shall record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points that may need clarification.
4. Anonymity shall be observed until the jury has reached its opinion or decision.
5. Candidates may be invited, if need be, to answer questions that the jury has recorded in the minutes to clarify any aspects of the projects.
6. Complete minutes shall be drawn up of the dialogue between jury members and candidates.

# TITLE IV

## GOVERNANCE

### *Article 92* *Enforcement*

In conformity with Council Directive 92/13/EEC, Member States shall ensure correct application of this Directive by effective, available and transparent mechanisms which complement the system in place for the review of decisions taken by contracting entities.

### *Article 93* *Public oversight*

1. Member States shall appoint a single independent body responsible for the oversight and coordination of implementation activities (hereinafter "the oversight body"). Member States shall inform the Commission of their designation.

All contracting entities shall be subject to such oversight.

2. The competent authorities involved in the implementation activities shall be organised in such a manner that conflicts of interests are avoided. The system of public oversight shall be transparent. For this purpose, all guidance and opinion documents and an annual report illustrating the implementation and application of rules laid down in this Directive shall be published.

The annual report shall include the following:

- (a) an indication of the success rate of small and medium-sized enterprises (SMEs) in procurement; where the percentage is lower than 50 % in terms of values of contracts awarded to SMEs, the report shall provide an analysis of the reasons therefore;
  - (b) a global overview of the implementation of sustainable procurement policies, including on procedures taking into account considerations linked to the protection of the environment, social inclusion including accessibility for persons with disabilities or fostering innovation;
  - (c) centralized data about reported cases of fraud, corruption, conflict of interests and other serious irregularities in the field of public procurement, including those affecting projects cofinanced by the budget of the Union.
3. The oversight body shall be responsible for the following tasks:
  - (a) monitoring the application of public procurement rules and the related practice by contracting entities and in particular by central purchasing bodies;

- (b) providing legal advice to contracting entities on the interpretation of public procurement rules and principles and on the application of public procurement rules in specific cases;
- (c) issuing own initiative opinions and guidance on questions of general interest pertaining to the interpretation and application of public procurement rules, on recurring questions and on systemic difficulties related to the application of public procurement rules, in the light of the provisions of this Directive and of the relevant case-law of the Court of Justice of the European Union;
- (d) establishing and applying comprehensive, actionable 'red flag' indicator systems to prevent, detect and adequately report instances of procurement fraud, corruption, conflict of interest and other serious irregularities;
- (e) drawing the attention of the national competent institutions, including auditing authorities, to specific violations detected and to systemic problems;
- (f) examining complaints from citizens and businesses on the application of public procurement rules in specific cases and transmitting the analysis to the competent contracting entities, which shall have the obligation to take it into account in their decisions or, where the analysis is not followed, to explain the reasons for disregarding it;
- (g) monitoring the decisions taken by national courts and authorities following a ruling given by the Court of Justice of the European Union on the basis of Article 267 of the Treaty or findings of the European Court of Auditors establishing violations of Union public procurement rules related to projects cofinanced by the Union; the oversight body shall report to the European Anti-Fraud Office any infringement to Union procurement procedures where these were related to contracts directly or indirectly funded by the European Union.

The tasks referred to in point (e) shall be without prejudice to the exercise of rights of appeal under national law or under the system established on the basis of directive 92/13/EEC.

Member States shall empower the oversight body to seize the jurisdiction competent according to national law for the review of contracting entities' decisions where it has detected a violation in the course of its monitoring and legal advising activity.

4. Without prejudice to the general procedures and working methods established by the Commission for its communications and contacts with Member States, the oversight body shall act as a specific contact point for the Commission when it monitors the application of Union law and the implementation of the budget from the Union on the basis of Article 17 of the Treaty on the European Union and Article 317 of the Treaty on the Functioning of the European Union. It shall report to the Commission any violation of this Directive in procurement procedures for the award of contracts directly or indirectly funded by the Union.

The Commission may in particular refer to the oversight body the treatment of individual cases where the contract is not yet concluded or a review procedure can still be carried out. It may also entrust the oversight body with the monitoring

activities necessary to ensure the implementation of the measures to which Member States are committed in order to remedy a violation of Union public procurement rules and principles identified by the Commission.

The Commission may require the oversight body to analyse alleged breaches to Union public procurement rules affecting projects co-financed by the budget of the Union. The Commission may entrust the oversight body to follow-up certain cases and to ensure that the appropriate consequences of breaches to Union public procurement rules affecting projects co-financed are taken by the competent national authorities which will be obliged to follow its instructions.

5. The investigation and enforcement activities carried out by the oversight body to ensure that contracting entities' decisions comply with this Directive and the general principles of the Treaty on the Functioning of the European Union shall not replace or prejudice the institutional role of the Commission as guardian of the Treaty. When the Commission decides to refer the treatment of an individual case, it shall also retain the right to intervene in accordance with the powers conferred to it by the Treaty.
6. Contracting authorities shall transmit to the national oversight body the full text of all concluded contracts with a value equal to or greater than
  - (a) 1 000 000 EUR in the case of supply contracts or service contracts;
  - (b) 10 000 000 EUR in the case of works contracts.
7. Without prejudice to the national law concerning access to information, and in accordance with national and EU legislation on data protection, the oversight body shall, upon written request, give unrestricted and full direct access, free of charge, to the concluded contracts referred to in paragraph 6. Access to certain parts of the contracts may be refused where their disclosure would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

Access to the parts that may be released shall be given within a reasonable delay and no later than 45 days from the date of the request.

The applicants filing a request for access to a contract shall not need to show any direct or indirect interest related to that particular contract. The recipient of information should be allowed to make it public.

8. A summary of all the activities carried out by the oversight body in accordance with paragraphs 1 to 7 shall be included in the annual report mentioned in paragraph 2.

#### *Article 94*

##### *Individual reports on procedures for the award of contracts*

1. Contracting entities shall keep appropriate information on each contract, framework agreement and each time a dynamic purchasing system is established. This

information shall be sufficient to permit them at a later date to justify decisions taken in connection with:

- (a) the qualification and selection of economic operators and the award of contracts;
- (b) the use of negotiated procedures without a call for competition by virtue of Article 44;
- (c) the non-application of Chapters II to IV of Title II by virtue of the derogations provided for in Chapters II and III of Title I.

Contracting entities shall document the progress of all procurement procedures, whether or not the procedures are conducted by electronic means. To that end, they shall document all stages in the procurement procedure, including all communications with economic operators and internal deliberations, preparation of the tenders, dialogue or negotiation if any, selection and award of the contract.

2. The information shall be kept for at least four years from the date of award of the contract so that the contracting entity will be able, during that period, to provide the necessary information to the Commission or the national oversight body where they so request it.

#### *Article 95* *National reporting*

1. The bodies established or appointed in accordance with Article 93 shall forward to the Commission an implementation and statistical report on each year, based on a standard form, not later than 31 October of the following year.
2. The report referred to in paragraph 1 shall contain at least the total value, broken down by category of activity to which Articles 5 to 11 refer, of the contracts awarded below the thresholds set out in Article 12 but which would be covered by this Directive if their value exceeded the threshold.
3. Member States shall ensure that this report contains at least the number and value of contracts awarded, broken down by categories of activity to which Articles 5 to 11 refer and any other information required to verify the proper application of the Agreement. This shall include the number and value of contracts awarded pursuant to a negotiated procedure without a call for competition, broken down according to the circumstances referred to in Article 44 and by categories of activity to which Articles 5 to 11 refer. It shall also specify the Member State or third country of the successful contractor.
4. The yearly report shall furthermore, for each of the activities to which Articles 5 to 11 refers, contain a list of contracting entities exercising the activity concerned, indicating for each entity the unique identification number where such number is provided for in national legislation.

The Commission may periodically publish the list of those contracting entities for information in the *Official Journal of the European Union*.

5. The Commission shall establish the standard form for the drawing-up of the annual implementation and statistical report referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100.
6. The acts referred to under paragraph 5 shall ensure that:
  - (a) in the interests of administrative simplification, the statistical data may be collected on the basis of sampling, provided that its representativeness is not jeopardised;
  - (b) the confidential nature of the information provided is respected.

#### *Article 96*

##### *Assistance to contracting entities and businesses*

1. Member States shall make available technical support structures in order to provide legal and economic advice, guidance and assistance to contracting entities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting entity can obtain competent assistance and advice on individual questions.
2. With a view to improving access to public procurement for economic operators, in particular SMEs, and in order to facilitate correct understanding of the provisions of this Directive, Member States shall ensure that appropriate assistance can be obtained, including by electronic means or using existing networks dedicated to business assistance.
3. Specific administrative assistance shall be available to economic operators intending to participate in a procurement procedure in another Member State. Such assistance shall at least cover administrative requirements in the Member State concerned, as well as possible obligations related to electronic procurement.

Member States shall ensure that interested economic operators have easy access to appropriate information on the obligations relating to taxes, environmental protection and to social and labour law obligations, which are in force in the Member State, in the region or locality where the works are to be carried out or the services are to be provided and which will be applicable to the works carried out on site or to the services provided during the performance of the contract.

4. For the purposes of paragraphs 1, 2 and 3, Member States may appoint a single body or several bodies or administrative structures. Member States shall ensure case due coordination between those bodies and structures.

#### *Article 97*

##### *Administrative cooperation*

1. Member States shall provide mutual assistance to each other, and shall put in place measures for effective cooperation with one another, in order to ensure exchange of

information on issues referred to in Articles 56, 75 and 79. They shall ensure the confidentiality of the information which they exchange.

2. The competent authorities of all Member States concerned shall exchange information in compliance with personal data protection legislation provided for in Directives 95/46/EC of the European Parliament and of the Council<sup>50</sup> and 2002/58/EC of the European Parliament and of the Council<sup>51</sup>.
3. For the purposes of this Article, Member States shall designate one or more liaison points, the contact details of which shall be communicated to the other Member States, the oversight bodies and the Commission. Member States shall publish and regularly update the list of liaison points. The oversight body shall be in charge of the coordination of such liaison points.
4. The exchange of information shall take place via the Internal Market Information system established pursuant to Regulation (EU) N° XXX/XXXX of the European Parliament and Council<sup>52</sup> [*proposal for a Regulation of the European Parliament and Council on the administrative cooperation through the Internal Market Information System ('the IMI Regulation') COM(2011)522*]. Member States shall supply information requested by other Member States within the shortest possible period of time.

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<sup>50</sup> OJ L 281, 23.11.1995, p. 31.

<sup>51</sup> OJ L 201, 31.7.2002, p. 37.

<sup>52</sup> OJ L [...]



# TITLE V

## DELEGATED POWERS, IMPLEMENTING POWERS AND FINAL PROVISIONS

### *Article 98*

#### *Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Articles 4, 35, 33, 38, 25, 65, 70, 77, 85 and 95 shall be conferred on the Commission for an indeterminate period of time from the [date of entry into force of this Directive].
3. The delegation of power referred to in Articles 4, 35, 33, 38, 25, 65, 70, 77, 85 and 95 may be revoked at any time by the European Parliament or by the Council. A revocation decision shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 98 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of 2 months of notification of the act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

### *Article 99*

#### *Urgency procedure*

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.
2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 98(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or the Council.

*Article 100*  
*Committee procedure*

1. The Commission shall be assisted by the Advisory Committee for Public Contracts established by Council Decision 71/306/EEC<sup>53</sup>. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this Article, Article 4 of Regulation (EU) No 182/2011 shall apply.

*Article 101*  
*Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2014 at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 102*  
*Repeal*

Directive 2004/17/EC is hereby repealed with effect from 30 June 2014.

References to the repealed Directive shall be construed as being made to this Directive and shall be read in accordance with the correlation table in Annex XXI.

*Article 103*  
*Review*

The Commission shall review the economic effects on the internal market resulting from the application of the thresholds set in Article 12 and report thereon to the European Parliament and the Council by 30 June 2017.

In the event of any change to the threshold amounts applicable under the Agreement, the report shall, if appropriate, be followed by a legislative proposal amending the thresholds set out in this Directive.

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<sup>53</sup> OJ L 185, 16.8.1971, p. 15

*Article 104*  
*Entry into force*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 105*  
*Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

**ANNEX I**  
**LIST OF ACTIVITIES AS SET OUT IN POINT 8(a) OF ARTICLE 2**

In the event of any difference of interpretation between the CPV and the NACE, the CPV nomenclature will apply.

NACE <sup>(1)</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
45			Construction	This division includes:  construction of new buildings and works, restoring and common repairs.	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	This class includes:  — demolition of buildings and other structures,  — clearing of building sites,  — earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc.  — site preparation for mining:  — overburden removal and other development and preparation of mineral properties and sites.  This class also includes:  — building site drainage.  — drainage of agricultural or forestry land.	45110000
		45.12	Test drilling and boring	This class includes:  — test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes.  This class excludes:  — drilling of production oil or gas wells, see 11.20.  — water well drilling, see 45.25,  — shaft sinking, see 45.25,  — oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20.	45120000
	45.2		Building of complete constructions		45200000

			or parts thereof; civil engineering		
		45.21	General construction of buildings and civil engineering works	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— construction of all types of buildings construction of civil engineering constructions,</li> <li>— bridges, including those for elevated highways, viaducts, tunnels and subways,</li> <li>— long-distance pipelines, communication and power lines,</li> <li>— urban pipelines, urban communication and power lines,</li> <li>— ancillary urban works,</li> <li>— assembly and erection of prefabricated constructions on the site.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— service activities incidental to oil and gas extraction, see 11.20,</li> <li>— erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28,</li> <li>— construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23,</li> <li>— building installation, see 45.3,</li> <li>— building completion, see 45.4,</li> <li>— architectural and engineering activities, see 74.20,</li> <li>— project management for construction, see 74.20.</li> </ul>	<p>45210000</p> <p>Except:</p> <p>-</p> <p>45213316</p> <p>45220000</p> <p>45231000</p> <p>45232000</p>
		45.22	Erection of roof covering and frames	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— erection of roofs,</li> <li>— roof covering,</li> <li>— waterproofing.</li> </ul>	45261000
		45.23	Construction of highways, roads, airfields and sport facilities	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— construction of highways, streets, roads, other vehicular and pedestrian ways,</li> <li>— construction of railways,</li> <li>— construction of airfield runways,</li> <li>— construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and</li> </ul>	<p>45212212 and DA03</p> <p>45230000</p> <p>except:</p> <p>-</p> <p>45231000</p> <p>-</p>

			<p>other sports installations,</p> <p>— painting of markings on road surfaces and car parks.</p> <p>This class excludes:</p> <p>— preliminary earth moving, see 45.11.</p>	<p>45232000</p> <p>-</p> <p>45234115</p>
		45.24	<p>Construction of water projects</p> <p>This class includes</p> <p>— construction of:</p> <p>— waterways, harbour and river works, pleasure ports (marinas), locks, etc.,</p> <p>— dams and dykes,</p> <p>— dredging,</p> <p>— subsurface work.</p>	45240000
		45.25	<p>Other construction work involving special trades</p> <p>This class includes:</p> <p>— construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment,</p> <p>— construction of foundations, including pile driving,</p> <p>— water well drilling and construction, shaft sinking,</p> <p>— erection of non-self-manufactured steel elements,</p> <p>— steel bending,</p> <p>— bricklaying and stone setting,</p> <p>— scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms,</p> <p>— erection of chimneys and industrial ovens.</p> <p>This class excludes:</p> <p>— renting of scaffolds without erection and dismantling, see 71.32</p>	<p>45250000</p> <p>45262000</p>
	45.3		Building installation	45300000
		45.31	<p>Installation of electrical wiring and fittings</p> <p>This class includes:</p> <p>installation in buildings or other construction projects of:</p> <p>— electrical wiring and fittings,</p> <p>— telecommunications systems,</p> <p>— electrical heating systems,</p> <p>— residential antennas and aerials,</p>	<p>45213316</p> <p>45310000</p> <p>Except:</p> <p>-</p> <p>45316000</p>

				<ul style="list-style-type: none"> <li>— fire alarms,</li> <li>— burglar alarm systems,</li> <li>— lifts and escalators,</li> <li>— lightning conductors, etc.</li> </ul>	
		45.32	Insulation work activities	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation in buildings or other construction projects of thermal, sound or vibration insulation.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— waterproofing, see 45.22.</li> </ul>	45320000
		45.33	Plumbing	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation in buildings or other construction projects of:</li> <li>— plumbing and sanitary equipment,</li> <li>— gas fittings,</li> <li>— heating, ventilation, refrigeration or air-conditioning equipment and ducts,</li> <li>— sprinkler systems.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— installation of electrical heating systems, see 45.31.</li> </ul>	45330000
		45.34	Other building installation	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation of illumination and signalling systems for roads, railways, airports and harbours,</li> <li>— installation in buildings or other construction projects of fittings and fixtures n.e.c.</li> </ul>	45234115 45316000 45340000
	45.4		Building completion		45400000
		45.41	Plastering	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials.</li> </ul>	45410000
		45.42	Joinery installation	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials,</li> <li>— interior completion such as ceilings, wooden wall coverings, movable partitions, etc.</li> </ul>	45420000

				<p>This class excludes:</p> <ul style="list-style-type: none"> <li>— laying of parquet and other wood floor coverings, see 45.43.</li> </ul>	
		45.43	Floor and wall covering	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— laying, tiling, hanging or fitting in buildings or other construction projects of:</li> <li>—</li> <li>— ceramic, concrete or cut stone wall or floor tiles,</li> <li>— parquet and other wood floor coverings carpets and linoleum floor coverings,</li> <li>— including of rubber or plastic,</li> <li>— terrazzo, marble, granite or slate floor or wall coverings,</li> <li>— wallpaper.</li> </ul>	45430000
		45.44	Painting and glazing	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— interior and exterior painting of buildings,</li> <li>— painting of civil engineering structures,</li> <li>— installation of glass, mirrors, etc.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— installation of windows, see 45.42,</li> </ul>	45440000
		45.45	Other building completion	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation of private swimming pools,</li> <li>— steam cleaning, sand blasting and similar activities for building exteriors,</li> <li>— other building completion and finishing work n.e.c.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— interior cleaning of buildings and other structures, see 74.70.</li> </ul>	45212212 and DA04 45450000
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50	Renting of construction or	<p>This class excludes:</p> <ul style="list-style-type: none"> <li>— renting of construction or demolition machinery and</li> </ul>	45500000



		demolition equipment with operator	equipment without operators, see 71.32.	
<p>(i) Council Regulation (EEC) No 3037/90 of 9 October 1990 (OJ L 293, 24.10.1990, p. 1), Regulation as amended by Commission Regulation (EEC) No 761/93 (OJ L 83, 3.4.1993, p. 1).</p>				

**ANNEX II**  
**LIST OF UNION LEGISLATION REFERRED TO IN ARTICLE 4(2)**

Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute "special or exclusive rights" within the meaning of this Directive. The following lists procedures, ensuring adequate prior transparency, for granting authorisations on the basis of other legislative acts of the European Union which do not constitute "special or exclusive rights" within the meaning of this Directive:

- (a) granting authorisation to operate natural gas installations in accordance with the procedures laid down in Article 4 of Directive 98/30/EC;
- (b) authorisation or an invitation to tender for the construction of new electricity production installations in accordance with Directive 96/92/EC;
- (c) the granting in accordance with the procedures laid down in Article 9 of Directive 97/67/EC of authorisations in relation to a postal service which is not or shall not be reserved;
- (d) a procedure for granting an authorisation to carry on an activity involving the exploitation of hydrocarbons in accordance with Directive 94/22/EC;
- (e) public service contracts within the meaning of Regulation (EC) No 1370/2007 which have been awarded on the basis of a competitive tendering procedure in accordance with its Article 5(3).

**ANNEX III**  
**LIST OF UNION LEGISLATION REFERRED TO IN ARTICLE 27(3)**

A. TRANSPORT OR DISTRIBUTION OF GAS OR HEAT

Directive 2009/73/EC

B. PRODUCTION, TRANSMISSION OR DISTRIBUTION OF ELECTRICITY

Directive 2009/72/EC

C. PRODUCTION, TRANSPORT OR DISTRIBUTION OF DRINKING WATER

None

D. CONTRACTING ENTITIES IN THE FIELD OF RAIL SERVICES

Rail Freight transport

Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways<sup>54</sup>

Rail passenger transport

None

E. CONTRACTING ENTITIES IN THE FIELD OF URBAN RAILWAY, TRAMWAY, TROLLEYBUS OR MOTOR BUS SERVICES

None

F. CONTRACTING ENTITIES IN THE FIELD OF POSTAL SERVICES

Directive 97/67/EC

G. EXTRACTION OF OIL OR GAS

Directive 94/22/EC

H. EXPLORATION FOR AND EXTRACTION OF COAL OR OTHER SOLID FUELS

None

I. CONTRACTING ENTITIES IN THE FIELD OF SEAPORT OR INLAND PORT OR OTHER TERMINAL EQUIPMENT

None

J. CONTRACTING ENTITIES IN THE FIELD OF AIRPORT INSTALLATIONS

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<sup>54</sup> OJ L 237, 24.8.1991, p. 25

None

**ANNEX IV**  
**REQUIREMENTS RELATING TO DEVICES FOR THE ELECTRONIC RECEIPT**  
**OF TENDERS, REQUESTS TO PARTICIPATE, APPLICATIONS FOR**  
**QUALIFICATION AS WELL AS PLANS AND PROJECTS IN CONTESTS**

Devices for the electronic receipt of tenders, requests to participate, applications for qualification as well as plans and projects in contests must guarantee, through technical means and appropriate procedures, at least that:

- (a) the exact time and date of the receipt of tenders, requests to participate, applications for qualification as well as the submission of plans and projects can be determined precisely;
- (b) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under those requirements;
- (c) where that access prohibition is infringed, it may be reasonably ensured that the infringement is clearly detectable;
- (d) only authorised persons may set or change the dates for opening data received;
- (e) during the various stages of the qualification procedure, the procurement procedure or contest, access to all data submitted, or to part thereof, must be possible only through simultaneous action by authorised persons;
- (f) simultaneous action by authorised persons must give access to data transmitted only after the prescribed date;
- (g) data received and opened in accordance with those requirements must remain accessible only to persons authorised to acquaint themselves therewith and
- (h) authentication of tenders must conform to the requirements set out in this Annex.

**ANNEX V**  
**LIST OF INTERNATIONAL AGREEMENTS REFERRED TO IN ARTICLE 38**

Agreements with the following countries or groupings of countries:

- Albania (OJ L 107, 28.4.2009)
- Former Yugoslav Republic of Macedonia (OJ L 87, 20.03.2004)
- CARIFOUM (OJ L 289, 30.10.2008)
- Chile (OJ L352, 30.12.2002)
- Croatia (OJ L 26, 28.1.2005)
- Mexico (OJ L 276, 28.10.2000, L 157/30.6.2000)
- Montenegro (OJ L 345 of 28.12.2007)
- South Korea - (OJ L 127/14.5.2011)
- Switzerland (OJ L 300, 31/12/1972)

**ANNEX VI**  
**PART A**  
**INFORMATION TO BE INCLUDED IN THE PERIODIC INDICATIVE NOTICE**  
(as referred to in Article 61)

**I. INFORMATION TO BE INCLUDED IN ALL CASES**

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3.
  - (a) For supply contracts: nature and quantity or value of the services or products to be supplied (nomenclature reference No(s)).
  - (b) For works contracts: nature and extent of the services to be provided, the general characteristics of the work or of the lots by reference to the work (nomenclature reference No(s)).
  - (c) For service contracts: intended total procurement in each of the service categories envisaged (nomenclature reference No(s)).
4. Date of dispatch of the notice or of dispatch of the notice of the publication of this notice on the buyer profile.
5. Any other relevant information.

**II. ADDITIONAL INFORMATION TO BE SUPPLIED WHERE THE NOTICE IS USED AS A MEANS OF CALLING FOR COMPETITION OR PERMITS THE REDUCTION OF THE TIME LIMITS FOR THE RECEIPT OF TENDERS (Article 61(2))**

6. A reference to the fact that interested economic operators shall advise the entity of their interest in the contract or contracts.
7. Email or internet address at which the specifications and any supporting documents will be available for unrestricted and full direct access, free of charge.
8. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
9. Time limit for the receipt of applications for an invitation to tender or to negotiate.
10. Nature and quantity of the goods to be supplied or general nature of the work or category of service and description, stating if framework agreement(s) are envisaged, including any options for further procurement and the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, an estimate of the timing of the subsequent calls for competition. State whether purchase, lease, rental or hire-purchase or any combination of those is involved.

11. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service ; if the contract is divided into lots, this information shall be provided for each lot.
12. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.
13. Address to which interested undertakings shall send their expressions of interest in writing.
14. Time limit for receipt of expressions of interest.
15. Language or languages authorised for the presentation of candidatures or tenders.
16. Economic and technical conditions, and financial and technical guarantees required of suppliers.
17.
  - (a) Estimated date for initiating the procurement procedures in respect of the contract or contracts (if known);
  - (b) Type of procurement procedure (restricted or negotiated);
  - (c) The amount of and payment details for any sum to be paid to obtain documents concerning the consultation.
18. Where appropriate, particular conditions to which the performance of the contract is subject.
19. Where appropriate, indication whether:
  - (a) E-submission of tenders or requests to participate will be required/accepted,
  - (b) E-ordering will be used,
  - (c) E-invoicing will be used,
  - (d) E-payment will be accepted.
20. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
21. Where known, criteria referred to in Article 76 to be used for award of the contract: "lowest cost" or "most economically advantageous tender". Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria shall be mentioned, where they do not appear in the specifications, or will not be indicated in the invitation to confirm interest referred to in Article 61(2)(b) or in the invitation tender or to negotiate.



**PART 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 61(1))**

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. CPV Nomenclature reference No(s).
4. Internet address of the "buyer profile" (URL).
5. Date of dispatch of the notice of the publication of the prior information notice on the buyer profile

**ANNEX VII**  
**INFORMATION TO BE INCLUDED IN THE SPECIFICATIONS IN ELECTRONIC AUCTIONS (ARTICLE 47(4))**

The specifications to be used where contracting entities have decided to hold an electronic auction shall include at least the following details:

- (a) the features whose values will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;
- (b) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;
- (c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;
- (d) the relevant information concerning the electronic auction process;
- (e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
- (f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

**ANNEX VIII**  
**DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS**

For the purposes of this Directive,

- (1) "technical specification" means one of the following:
  - (e) in the case of service or supply contracts a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods at any stage of the life cycle of the supply or service and conformity assessment procedures;
  - (b) in the case of works contracts, the totality of the technical prescriptions contained in particular in the procurement documents, defining the characteristics required of a material, product or supply, which permits a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting entity; those characteristics include levels of environmental and climate performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, and production processes and methods at any stage of the life cycle of the works; those characteristics also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting entity is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;
- (2) "Standard" means a technical specification approved by a recognised standardisation body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:
  - (a) "international standard": a standard adopted by an international standards organisation and made available to the general public;
  - (b) "European standard": a standard adopted by a European standards organisation and made available to the general public;
  - (c) "national standard": a standard adopted by a national standards organisation and made available to the general public;
- (3) "European technical approval" means a favourable technical assessment of the fitness for use of a product, based on the fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the

defined conditions of application and use. European technical approvals are issued by an approval body designated for this purpose by the Member State;

- (4) "Common technical specifications" means a technical specification laid down in accordance with a procedure recognised by the Member States or in accordance with Articles 9 and 10 of Parliament and Council Regulation [XXX] on European standardisation [and amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/105/EC and 2009/23/EC of the European Parliament and the Council] which has been published in the *Official Journal of the European Union*;
- (5) "Technical reference" means any deliverable produced by European standardisation bodies, other than official standards, according to procedures adapted to developments in market needs.

**ANNEX IX**  
**FEATURES CONCERNING PUBLICATION**

1. Publication of notices

The notices referred to in Articles 61, 62, 63, 64, 85 and 89 must be sent by the contracting entities to the Publications Office of the European Union and published in accordance with the following rules:

- (a) Notices referred to in Articles 61, 62, 63, 64, 85 and 89 shall be published by the Publications Office of the European Union or by the contracting entities in the event of a periodic indicative notice published on a buyer profile in accordance with Article 61 (1).

In addition, contracting entities may publish this information on the Internet on a "buyer profile" as referred to in point 2(b) below;

- (b) The Publications Office of the European Union will give the contracting entity the confirmation referred to in the second subparagraph of Article 65 (5).

2. Publication of complementary or additional information

- (a) Contracting entities shall publish the specifications and the additional documents in their entirety on the Internet;

- (b) The buyer profile may include periodic indicative notices as referred to in Article 61 (1), information on ongoing invitations to tender, scheduled purchases, contracts concluded, procedures cancelled and any useful general information, such as a contact point, a telephone and a fax number, a postal address and an e-mail address.

3. Format and procedures for the electronic transmission of notices

The format and procedure for sending notices electronically as established by the Commission are made accessible at the Internet address "<http://simap.eu.int>".

**ANNEX X**  
**INFORMATION TO BE INCLUDED IN THE NOTICE ON THE EXISTENCE OF A**  
**QUALIFICATION SYSTEM**  
**(as referred to in point (b) of Article 39(2) and in Article 62)**

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
4. Purpose of the qualification system (description of the goods, services or works or categories thereof to be procured through the system - nomenclature reference No(s)). NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service.
5. Conditions to be fulfilled by the economic operators in view of their qualification pursuant to the system and the methods according to which each of those conditions will be verified. Where the description of such conditions and verification methods is voluminous and based on documents available to interested economic operators, a summary of the main conditions and methods and a reference to those documents shall be sufficient.
6. Period of validity of the qualification system and the formalities for its renewal.
7. Reference to the fact that the notice acts as the call for competition.
8. Address where further information and documentation concerning the qualification system can be obtained (where different from the addresses mentioned under 1).
9. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time-limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
10. Where known, criteria referred to in Article 76 to be used for award of the contract: "lowest cost" or "most economically advantageous tender". Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria, shall be mentioned where they do not appear in the specifications or will not be indicated in the invitation to tender or to negotiate.
11. Where appropriate, indication whether:
  - (a) E-submission of tenders or requests to participate will be required/accepted,

- (b) E-ordering will be used,
- (c) E-invoicing will be used,
- (d) E-payment will be accepted.

12. Any other relevant information.

**ANNEX XI**  
**INFORMATION TO BE INCLUDED IN CONTRACT NOTICES**  
**(as referred to in Article 63)**

A. OPEN PROCEDURES

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
4. Nature of the contract (supply, works or service, where appropriate, state if it is a framework agreement or a dynamic purchasing system), description (nomenclature reference No(s)). Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of those.
5. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service.
6. For supplies and works:
  - (a) Nature and quantity of the goods to be supplied (nomenclature reference No(s)), including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work (nomenclature reference No(s));
  - (b) Indication of whether the suppliers may tender for some and/or all the goods required.

If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;
  - (c) For works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.
7. For services:
  - (a) The nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring



contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;

- (b) Indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;
  - (c) Reference of the law, regulation or administrative provision;
  - (d) Indication of whether legal persons shall indicate the names and professional qualifications of the staff to be responsible for the performance of the service;
  - (e) Indication of whether service providers may tender for a part of the services concerned.
8. Where known, indication of whether authorisation to submit variants exists or not.
  9. Time limits for delivery or completion or duration of service contract and, as far as possible, the starting date.
  10. Email or internet address at which the specifications and any supporting documents will be available for unrestricted and full direct access, free of charge
  11.
    - (a) Final date for receipt of tenders or indicative tenders where a dynamic purchasing system is introduced;
    - (b) Address to which they shall be sent;
    - (c) Language or languages in which they shall be drawn up.
  12.
    - (a) Where applicable, the persons authorised to be present at the opening of tenders;
    - (b) Date, time and place of such opening.
  13. Where applicable, any deposits and guarantees required.
  14. Main terms concerning financing and payment and/or references to the provisions in which those are contained.
  15. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.
  16. Minimum economic and technical conditions required of the economic operator to whom the contract is awarded.
  17. Period during which the tenderer is bound to keep open his tender.
  18. Where appropriate, particular conditions to which the performance of the contract is subject.
  19. Criteria referred to in Article 76 to be used for award of the contract: "lowest cost" or "most economically advantageous tender". Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate,

the order of importance of those criteria shall be indicated where they do not appear in the specifications.

20. Where appropriate, date(s) and the reference(s) to publication in the *Official Journal of the European Union* of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.
21. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the department from which this information may be obtained.
22. Date of dispatch of the notice by the contracting entity.
23. Any other relevant information.

## B. RESTRICTED PROCEDURES

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
4. Nature of the contract (supplies, works or services; where appropriate, state if it is a framework agreement); description (nomenclature reference No(s)). Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of those.
5. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service.
6. For supplies and works:
  - (a) The nature and quantity of the goods to be supplied (nomenclature reference No(s)), including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work (nomenclature reference No(s));
  - (b) Indication of whether the suppliers may tender for some and/or all the goods required.

If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;

- (c) Information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.

7. For services:

- (a) The nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;
- (b) Indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;
- (c) Reference to the law, regulation or administrative provision;
- (d) Indication of whether legal persons shall indicate the names and professional qualifications of the staff to be responsible for the performance of the service;
- (e) Indication of whether service providers may tender for a part of the services concerned.

8. Where known, indication of whether authorisation to submit variants exists or not.

9. Time limits for delivery or completion or duration of the contract and, as far as possible, for starting.

10. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.

11. (a) Final date for receipt of requests to participate;

(b) Address to which they shall be sent;

(c) Language or languages in which they shall be drawn up.

12. Final date for dispatch of invitations to tender.

13. Where applicable, any deposits and guarantees required.

14. Main terms concerning financing and payment and/or references to the provisions in which those are contained.

15. Information concerning the economic operator's position and the minimum economic and technical conditions required of him.

16. Criteria referred to in Article 76 to be used for award of the contract: "lowest cost" or "most economically advantageous tender". Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate,

the order of importance of those criteria shall be indicated where they do not appear in the specifications or will not be indicated in the invitation to tender.

17. Where appropriate, particular conditions to which the performance of the contract is subject.
18. Where appropriate, the date(s) and reference(s) to publication in the *Official Journal of the European Union* of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.
19. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
20. Date of dispatch of the notice by the contracting entities.
21. Any other relevant information.

### C. NEGOTIATED PROCEDURES

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
4. Nature of the contract (supplies, works or services; where appropriate, state if it is a framework agreement); description (nomenclature reference No(s)). Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of those.
5. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service.
6. For supplies and works:
  - (a) The nature and quantity of the goods to be supplied (nomenclature reference No(s)), including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work (nomenclature reference No(s));
  - (b) Indication of whether the suppliers may tender for some and/or all the goods required.

If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;

- (c) For works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.

7. For services:

- (a) The nature and quantity of the services to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;
- (b) Indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;
- (c) Reference of the law, regulation or administrative provision;
- (d) Indication of whether legal persons shall indicate the names and professional qualifications of the staff to be responsible for the performance of the service;
- (e) Indication of whether service providers may tender for a part of the services concerned.

8. Where known, indication of whether authorisation to submit variants exists or not.

9. Time limits for delivery or completion or duration of the contract and, as far as possible, for starting.

10. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.

11. (a) Final date for receipt of requests to participate;

(b) Address to which they shall be sent;

(c) Language or languages in which they shall be drawn up.

12. Where appropriate, any deposits and guarantees required.

13. Main terms concerning financing and payment and/or references to the provisions in which those are contained.

14. Information concerning the economic operator's position and the minimum economic and technical conditions required of him.

15. Criteria referred to in Article 76 to be used for award of the contract: "lowest cost" or "most economically advantageous tender". Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate,

the order of importance of those criteria shall be indicated where they do not appear in the specifications or will not be indicated in the invitation to negotiate.

16. Where appropriate, the names and addresses of the economic operators already selected by the contracting entity.
17. Where appropriate, particular conditions to which the performance of the contract is subject.
18. Where appropriate, the dates and reference(s) of publication in the *Official Journal of the European Union* of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.
19. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
20. Date of dispatch of the notice by the contracting entity.
21. Any other relevant information.

**ANNEX XII**  
**INFORMATION TO BE INCLUDED IN THE CONTRACT AWARD NOTICE**  
**(as referred to in Article 64)**

I. Information for publication in the *Official Journal of the European Union*<sup>55</sup>

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Nature of the contract (supplies, works or services and Nomenclature reference No(s); where appropriate state if it is a framework agreement).
4. At least a summary indication of the nature and quantity of the products, works or services provided.
5.
  - (a) Form of the call for competition (notice on the existence of a system of qualification; periodic notice; call for tenders);
  - (b) Date(s) and reference(s) of publication of the notice in the *Official Journal of the European Union*;
  - (c) In the case of contracts awarded without a prior call for competition, indication of the relevant provision of Article 44.
6. Procurement procedure (open, restricted or negotiated).
7. Number of tenders received, specifying
  - (a) number of tenders received from economic operators which are small and medium-sized enterprises,
  - (b) number of tenders received from abroad,
  - (c) number of tenders received electronically.

In the case of multiple awards (lots, multiple framework agreements), this information shall be given for each award.
8. Date of award of the contract(s).
9. Price paid for bargain purchases pursuant to Article 44(i).
10. For each award, name, address including NUTS code, telephone, fax number, email address and internet address of the successful tenderer(s) including:

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<sup>55</sup> Information in headings 6, 9 and 11 is deemed information not intended for publication where the awarding entity considers that publication thereof might be detrimental to a sensitive commercial interest.

- (a) information whether the successful tenderer is small and medium-sized enterprise,
  - (b) information whether the contract was awarded to a consortium.
11. State, where appropriate, whether the contract has been, or may be, subcontracted.
  12. Price paid or the prices of the highest and lowest tenders taken into account in the award of the contract.
  13. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
  14. Optional information:
    - value and share of the contract which has been or may be subcontracted to third parties,
    - award criteria.

## II. Information not intended for publication

15. Number of contracts awarded (where an award has been split between several suppliers).
16. Value of each contract awarded.
17. Country of origin of the product or service (Community origin or non-Community origin; if the latter, broken down by third country).
18. Which award criteria were used (most economically advantageous; lowest cost)?
19. Was the contract awarded to a tenderer who submitted a variant, in accordance with Article 58(1)?
20. Were any tenders excluded on the grounds that they were abnormally low, in accordance with Article 79?
21. Date of transmission of the notice by the contracting entity.



**ANNEX XIII**  
**CONTENTS OF THE INVITATIONS TO SUBMIT A TENDER, TO NEGOTIATE OR**  
**TO CONFIRM INTEREST PROVIDED FOR UNDER ARTICLE 68**

1. The invitation to submit a tender or to negotiate provided for under Article 68 must contain at least:
  - (a) the final date for receipt of tenders, the address to which they are to be sent, and the language or languages in which they are to be drawn up;  

However, in the case of contracts awarded through an innovation partnership, this information shall not appear in the invitation to negotiate but it shall appear in the invitation to submit a tender.
  - (b) a reference to any published call for competition;
  - (c) an indication of any documents to be attached;
  - (d) the criteria for the award of the contract, where they are not indicated in the notice on the existence of a qualification system used as a means of calling for competition;
  - (e) the relative weighting of the contract award criteria or, where appropriate, the order of importance of such criteria, if this information is not given in the contract notice, the notice on the existence of a qualification system or the specifications.
  
2. When a call for competition is made by means of a periodic indicative notice, contracting entities shall subsequently invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers or participants in negotiations.

This invitation shall include at least the following information:

- (a) nature and quantity, including all options concerning complementary contracts and, if possible, the estimated time available for exercising those options for renewable contracts, the nature and quantity and, if possible, the estimated publication dates of future notices of competition for works, supplies or services to be put out to tender;
- (b) type of procedure: restricted or negotiated;
- (c) where appropriate, the date on which the delivery of supplies or the execution of works or services is to commence or terminate;
- (d) the address and closing date for the submission of requests for procurement documents and the language or languages in which they are to be drawn up;
- (e) the address of the entity which is to award the contract and the information necessary for obtaining the specifications and other documents;

- (f) economic and technical conditions, financial guarantees and information required from economic operators;
- (g) the form of the contract which is the subject of the invitation to tender: purchase, lease, hire or hire-purchase, or any combination of those; and
- (h) the contract award criteria and their weighting or, where appropriate, the order of importance of such criteria, if this information is not given in the indicative notice or the specifications or in the invitation to tender or to negotiate.

**ANNEX XIV**  
**LIST OF INTERNATIONAL SOCIAL AND ENVIRONMENTAL CONVENTIONS**  
**REFERRED TO IN ARTICLES 70 AND 79**

- Convention 87 on Freedom of Association and the Protection of the Right to Organise;
- Convention 98 on the Right to Organise and Collective Bargaining;
- Convention 29 on Forced Labour;
- Convention 105 on the Abolition of Forced Labour;
- Convention 138 on Minimum Age;
- Convention 111 on Discrimination (Employment and Occupation);
- Convention 100 on Equal Remuneration;
- Convention 182 on Worst Forms of Child Labour;
- Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);
- Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention);
- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10/09/1998 and its 3 regional Protocols.

**ANNEX XV**  
**LIST OF EU LEGISLATION REFERRED TO IN ARTICLE 77(3)**

- (a) Directive 2009/33/EC.

**ANNEX XVI**  
**INFORMATION TO BE INCLUDED IN NOTICES OF MODIFICATIONS OF A**  
**CONTRACT DURING ITS TERM**  
**(as referred to in Article 82(6))**

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. CPV Nomenclature reference No(s);
4. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service;
5. Description of the procurement before and after the modification: nature and extent of the works, nature and quantity or value of supplies, nature and extent of services.
6. Where applicable, increase in price caused by the modification.
7. Description of the circumstances which have rendered necessary the modification.
8. Date of contract award decision.
9. Where applicable, the name, address including NUTS code, telephone, fax number, email address and internet address of the new economic operator or operators.
10. Information whether the contract is related to a project and /or programme financed by European Union funds.
11. Name and address of the oversight body and the body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

**ANNEX XVII**  
**SERVICES REFERRED TO IN ARTICLE 84**

CPV Code	Description
79611000-0 and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2)	Health and social services
75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80100000- 5 to 80660000-8 (except 80533000-9, 80533100-0, 80533200-1); from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9, 92232000-6)	Administrative educational, healthcare and cultural services
75300000-9	Compulsory social security services
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	Benefit services
98000000-3	Other community, social and personal services
98120000-0	Services furnished by trade unions
98131000-0	Religious services

## **ANNEX XVIII**

### **Information to be included in notices concerning contracts for social and other specific services** **(as referred to in Article 85)**

#### **Part A Contract notice**

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Description of the services or categories thereof and where applicable, incidental works and supplies to be procured, including an indication of the quantities or values involved, nomenclature reference No(s).
4. NUTS code for the main place of performance of the services.
5. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
6. Main conditions to be fulfilled by the economic operators in view of their participation, or, where appropriate, the electronic address where detailed information may be obtained.
7. Time limit(s) for contacting the contracting entity in view of participation.
8. Any other relevant information.

#### **Part B Contract award notice**

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. At least a summary indication of the nature and quantity of the services and where applicable, incidental works and supplies provided.
4. Reference of publication of the notice in the *Official Journal of the European Union*
5. Number of tenders received.
6. Name and address of the chosen economic operator(s).
7. Any other relevant information.

**ANNEX XIX**  
**INFORMATION TO BE INCLUDED IN THE DESIGN CONTEST NOTICE**  
**(as referred to in Article 89(1))**

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Project description (nomenclature reference No(s)).
4. Nature of the contest: open or restricted.
5. In the case of open contests: final date for receipt of projects.
6. In the case of restricted contests:
  - (a) the number of participants envisaged, or range;
  - (b) where applicable, names of participants already selected;
  - (c) criteria for the selection of participants;
  - (d) final date for receipt of requests to participate.
7. Where applicable, indication of whether participation is reserved to a particular profession.
8. Criteria to be applied in the evaluation of projects.
9. Where applicable, names of the selected members of the jury.
10. Indication of whether the decision of the jury is binding on the authority.
11. Where applicable, number and value of prizes.
12. Where applicable, details of payments to all participants.
13. Indication of whether the prize-winners are permitted any follow-up contracts.
14. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
15. Date of dispatch of the notice.
16. Any other relevant information



**ANNEX XX**  
**INFORMATION TO BE INCLUDED IN THE RESULTS OF DESIGN CONTEST**  
**NOTICES**  
**(as referred to in Article 89(1))**

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Project description (nomenclature reference No(s)).
4. Total number of participants.
5. Number of foreign participants.
6. Winner(s) of the contest.
7. Where applicable, the prize(s).
8. Other information.
9. Reference of the design contest notice.
10. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
11. Date of dispatch of the notice.

**ANNEX XXI**  
**CORRELATION TABLE**<sup>56</sup>

This Directive	Directive 2004/17/EC	
Art. 1	-	New
Art. 2, 1 <sup>st</sup> sentence	Art. 1, par. 1	=
Art. 2, point 1	Art. 2, par. 1, point (a), 1 <sup>st</sup> subpar.	=
Art. 2, points 2 and 3	-	New
Art. 2, point 4, (a), 1 <sup>st</sup> part	Art. 2, par. 1, point (a), 2 <sup>nd</sup> subpar., 1 <sup>st</sup> indent	=
Art. 2, point 4, (a), 2 <sup>nd</sup> part		New
Art. 2, point 4, (b)	Art. 2, par. 1, point (a), 2 <sup>nd</sup> subpar., 2 <sup>nd</sup> indent	=
Art. 2, point 4, (c)	Art. 2, par. 1, point (a), 2 <sup>nd</sup> subpar., 3 <sup>rd</sup> indent	=
Art. 2, point 5	Art. 2, par. 1, point (b), 1 <sup>st</sup> subpar.	=
Art. 2, point 6	Art. 2, par. 3	Adapted
Art. 2, point 7	Art. 1, par. 2, point (a)	Adapted
Art. 2, point 8	Art. 1, par. 2, point (b), 1 <sup>st</sup> sentence	Adapted
Art. 2, point 9	Art. 1, par. 2, point (b), 2 <sup>nd</sup> sentence	=
Art. 2, point 10	Art. 1, par. 2, point (c)	Adapted
Art. 2, point 11	Art. 1, par. 2, point (d), 1 <sup>st</sup> subpar.	Amended
Art. 2, point 12	Art. 1, par. 7, 1 <sup>st</sup> & 2 <sup>nd</sup> subpar.	Adapted
Art. 2, point 13	Art. 1, par. 7, 3 <sup>rd</sup> subpar.	=

<sup>56</sup> "Adapted" means that the wording of the text was changed, while the meaning of the repealed directive was preserved. Changes to the meaning of the provisions of the repealed directive are indicated by the term "Amended".

Art. 2, point 14	Art. 1, par. 7, 3 <sup>rd</sup> subpar.	Amended
Art. 2, point 15	Art. 34, par. 1	Amended
Art. 2, point 16	Art. 1, par. 8	Amended
Art. 2, point 17		New
Art. 2, point 18	Art. 1, par. 8	Amended
Art. 2, point 19		New
Art. 2, point 20	Art. 1, par. 11	=
Art. 2, point 21	Art. 1, par. 12	=
Art. 2, point 22		New
Art. 2, point 23	Art. 1, par. 10	=
Art. 3, par. 1, 1 <sup>st</sup> subparagraph		New
Art. 3, par. 1, 2 <sup>nd</sup> subparagraph	Art. 1, par. 2, point (d), 2 <sup>nd</sup> & 3 <sup>rd</sup> subpar.	Amended
Art. 3, par. 1, 3 <sup>rd</sup> subparagraph		New
Art. 3, par. 2	Art. 9, par. 1	=
Art. 3, par. 3	Art. 9, par. 2	=
Art. 3, par. 4	Art. 9, par. 3	Amended
Art. 4, par. 1	Art. 2, par. 1, point (b) 2 <sup>nd</sup> subpar.	=
Art. 4, par. 2, 1 <sup>st</sup> subparagraph	Art. 2, par. 3; Recital 25	Adapted
Art. 4, par. 2, 2 <sup>nd</sup> subparagraph		New
Art. 4, par. 3	Art. 2, par. 2	=
Art. 4, par. 4		New
Art. 5	Art. 3, par. 1 & 2	=
Art. 6, par. 1	Art. 3, par. 3	Adapted

Art. 6, par. 2	Art. 3, par. 4	=
Art. 7	Art. 4	=
Art. 8	Art. 5, par. 1	=
	Art. 5, par. 2	Deleted
Art. 9	Art. 7, point (b)	=
Art. 10, par. 1	Art. 6, par. 1	adapted
Art. 10, par. 2, point (a)	Art. 6, par. 2, point (a)	=
Art. 10, par. 2, point (b)	Art. 6, par. 2, point (b)	Amended
Art. 10, par. 2, point (c)	Art. 6, par. 2, point (c)	Adapted
Art. 11, point (a)	Art. 7, point (a)	Amended
Art. 11, point (b)	Art. 7, point (a)	=
	Art. 8	Deleted
	Annex I - X	Deleted
Art. 12	Art. 16 & 61	Amended
Art. 13, par. 1	Art. 17, par. 1; Art. 17, par. 8	Amended
Art. 13, par. 2	Art. 17, par. 2; Art. 17, par. 8	Amended
Art. 13, par. 3		New
Art. 13, par. 4	Art. 17, par. 3	=
Art. 13, par. 5		New
Art. 13, par. 6	Art. 17, par. 4 & 5	Adapted
Art. 13, par. 7	Art. 17, par. 6(a), 1 <sup>st</sup> & 2 <sup>nd</sup> subpar.	=
Art. 13, par. 8	Art. 17, par. 6(b), 1 <sup>st</sup> & 2 <sup>nd</sup> subpar.	=
Art. 13, par. 9	Art. 17, par. 6(a), 3 <sup>rd</sup> subpar. & par. 6(b), 3 <sup>rd</sup> subpar.	Adapted
Art. 13, par. 10	Art. 17, par. 7	=
Art. 13, par. 11	Art. 17, par. 9	=

Art. 13, par. 12	Art. 17, par. 10	=
Art. 13, par. 13	Art. 17, par. 11	=
Art. 14	Art. 69	Adapted
Art. 15, par. 1	Art. 19, par. 1	=
Art. 15, par. 2	Art. 19, par. 1	Amended
Art. 16, par. 1	Art. 20, par. 1; Art. 62, point 1	Adapted
Art. 16, par. 2	Art. 20, par. 2	Amended
Art. 17, par. 1	Art. 22a	Adapted
Art. 17, par. 2	Art. 21; Art. 62, point 1	Amended
Art. 18	Art. 22; Art. 62, point 1	Amended
Art. 19, point (a) and (b)	Art. 24, point (a) and (b)	=
Art. 19, point (c)	Art. 24, point (c)	Amended
Art. 19, point (d)	Art. 24, point (d)	=
Art. 19, point (e)		New
Art. 19, point (f) and 2 <sup>nd</sup> subparagraph.		New
Art. 20	Art. 26	Adapted
Art. 21		New
Art. 22, par. 1	Art. 23, par. 1	Adapted
Art. 22, par. 2	Art. 23, par. 1	Adapted
Art. 22, par. 3	Art. 23, par. 2	Adapted
Art. 22, par. 4	Art. 23, par. 3, points (a) to (c)	Adapted
Art. 22, par. 5	Art. 23, par. 3, 2 <sup>nd</sup> & 3 <sup>rd</sup> subpar.	Adapted
Art. 23	Art. 23, par. 4	Adapted
Art. 24	Art. 23, par. 5	Amended
Art. 25, par. 1	Art. 24, point (e)	Amended
Art. 25, par. 2		New

Art. 26, par. 1 and 2	Art. 27	Amended
Art. 26, par. 3		New
Art. 27, par. 1, 1 <sup>st</sup> sentence	Art. 30, par. 1; Art. 62, point (2)	Adapted
Art. 27, par. 1, 2 <sup>nd</sup> sentence		New
Art. 27, par. 2, 1 <sup>st</sup> subparagraph	Art. 30, par. 2	=
Art. 27, par. 2, 2 <sup>nd</sup> subparagraph		New
Art. 27, par. 3	Art. 30, par. 3	=
Art. 28, par. 1	Art. 30, par. 4, 1 <sup>st</sup> subpar.; par. 5, 1 <sup>st</sup> & 2 <sup>nd</sup> subpar.	Amended
Art. 28, par. 2	Art. 30, par. 4, 2 <sup>nd</sup> subpar.; par. 5, 4 <sup>th</sup> subpar.; Art. 62, point (2)	Adapted
	Art. 30, par. 4, 3 <sup>rd</sup> subpar.	Deleted
Art. 28, par. 3, 1 <sup>st</sup> & 2 <sup>nd</sup> subparagraph	Art. 30, par. 6, 1 <sup>st</sup> subpar.	Amended
Art. 28, par. 3, 3 <sup>rd</sup> subparagraph		New
Art. 28, par. 3, 4 <sup>th</sup> subparagraph	Art. 30, par. 6, 1 <sup>st</sup> subpar., 2 <sup>nd</sup> sentence	Amended
Art. 28, par. 4	Art. 30, par. 6, 2 <sup>nd</sup> subpar.	=
Art. 28, par. 5	Art. 30, par. 6, 4 <sup>th</sup> subpar.	Amended
Art. 29	Art. 10	Amended
Art. 30, par. 1	Art. 11, par. 1	Adapted
Art. 30, par. 2	Art. 11, par. 2	Amended
Art. 31	Art. 28	Amended
Art. 32	Art. 13	Amended
Art. 33, par. 1	Art. 48, par. 1; Art. 64, par. 1	Amended
Art. 33, par. 2	Art. 48, par. 2 & 3; Art. 64, par.	Adapted

	1 & 2	
Art. 33, par 3, 1 <sup>st</sup> subparagraph	Art. 48, par. 4; Art. 64, par. 1	Amended
Art. 33, par 3, 2 <sup>nd</sup> subparagraph	Art. 70, par 2, point (f)	=
Art. 33, par. 3 3 <sup>rd</sup> subparagraph		New
Art, 33, par. 4		New
Art. 33, par. 5	Art. 48, par. 5; Art. 64, par. 3	Amended
Art. 33, par. 6	Art. 48, par. 6	Adapted
Art. 33, par. 7		New
Art. 34		New
Art. 35, par. 1	Art. 1, par. 13	Amended
Art. 35, par 2	Art. 70, par. 2, points (c) & (d)	Adapted
Art. 36		New
Art. 37		New
Art. 38, par. 1	Art. 12	Amended
Art. 38, par. 2		New
Art. 39, par. 1	Art. 40, par. 1 & 2	Amended
Art. 39, par. 2	Art. 42	=
Art. 39, par. 3		New
Art. 40, par. 1	Art. 1, par. 9, point (a); Art. 45, par. 2	Amended
Art. 40, par. 2	Art. 45, par. 4	Amended
Art. 40, par. 3		New
Art. 40, par. 4		New
Art. 41	Art. 1, par. 9, point (b); Art. 45, par. 3	Amended
Art. 42	Art. 1, par. 9, point (c); Art. 45,	Amended

	par. 3	
Art. 43		New
Art. 44, point (a)	Art. 40, par. 3, point (a)	=
Art. 44, point (b)	Art. 40, par. 3, point (b)	=
Art. 44, point (c)	Art. 40, par. 3, point (c)	Amended
Art. 44, point (d)	Art. 40, par. 3, point (c)	Amended
Art. 44, point (e)	Art. 40, par. 3, point (d)	Amended
Art. 44, point (f)	Art. 40, par. 3, point (e)	=
Art. 44, point (g)	Art. 40, par. 3, point (g)	Amended
Art. 44, point (h)	Art. 40, par. 3, point (h)	Amended
Art. 44, point (i)	Art. 40, par. 3, point (j)	=
Art. 44, point (j)	Art. 40, par. 3, point (k)	Adapted
Art. 44, point (k)	Art. 40, par. 3, point (l)	Adapted
Art. 44, 2 <sup>nd</sup> and 3 <sup>rd</sup> subparagraphs		New
Art. 44, 4 <sup>th</sup> subparagraph	Art. 40, par. 3, point (g) in fine	Adapted
Art. 45, par. 1, 1 <sup>st</sup> & 2 <sup>nd</sup> subparagraph	Art. 14, par. 1; Art. 1, par. 4	Adapted
Art. 45, par. 1, 3 <sup>rd</sup> subparagraph		New
Art. 45, par. 2 to 5	Art. 14, par. 2 - 4; Art. 40, par. 3, point (i)	Amended
Art. 46, par. 1	Art. 1, par. 5; Art. 15, par. 1	Amended
Art. 46, par. 2	Art. 15, par. 2	Amended
Art. 46, par. 3	Art. 15, par. 3	Adapted
Art. 46, par. 4	Art. 15, par. 4	Amended
Art. 46, par. 5	Art. 15, par. 6	Amended
Art. 46, par. 6		New



Art. 46, par. 7	Art. 15, par. 7, 3 <sup>rd</sup> subpar.	=
Art. 47, par. 1	Art. 1, par. 6; Art. 56, par. 1	Amended
Art. 47, par. 2, 1 <sup>st</sup> subparagraph	Art. 56, par. 2, 1 <sup>st</sup> subpar.	=
Art. 47, par. 2, 2 <sup>nd</sup> subparagraph	Art. 56, par. 2, 2 <sup>nd</sup> subpar.	Adapted
Art. 47, par. 3	Art. 56, par. 2, 3 <sup>rd</sup> subpar.	Adapted
Art. 47, par. 4	Art. 56, par. 3	Adapted
Art. 47, par. 5	Art. 56, par. 4	Adapted
Art. 47, par. 6	Art. 56, par. 5	Adapted
Art. 47, par. 7	Art. 56, par. 6	=
Art. 47, par. 8	Art. 56, par. 7	Adapted
Art. 47, par. 9	Art. 56, par. 8, 1 <sup>st</sup> subpar.	=
Art. 48		New
Art. 49, par. 1	Art. 29, par. 1	Amended
Art. 49, par. 2		New
Art. 49, par. 3	Art. 29, par. 2	Amended
Art. 49, par. 4		New
Art. 49, par. 5	Art. 29, par. 2	Amended
Art. 49, par. 6		New
Art. 50		New
Art. 51		New
Art. 52		New
Art. 53, par. 1	Recital 15	Amended
Art. 53, par. 2		New
Art. 54, par. 1	Art. 34, par. 1	Amended
Art. 54, par. 2	Art. 34, par. 2	Adapted

Art. 54, par. 3	Art. 34, par. 3	Adapted
Art. 54, par. 4	Art. 34, par. 8	=
Art. 54, par. 5	Art. 34, par. 4	Adapted
Art. 54, par. 6	Art. 34, par. 5	Amended
Art. 55, par. 1	Art. 34, par. 6	Amended
Art. 55, par. 2	Art. 34, par. 6	Adapted
Art. 56, par. 1	Art. 34, par. 4, 5, 6, & 7	Amended
Art. 56, par. 2	Art. 34, par. 4, 5 & 6	Amended
Art. 56, par. 3	Art. 34, par. 7	Adapted
Art. 56, par. 4		New
Art. 57	Art. 35	Amended
Art. 58, par. 1	Art. 36, par. 1	Amended
Art. 58, par. 2	Art. 36, par. 2	Adapted
Art. 59		New
Art. 60, par. 1	Art. 45, par. 1	Adapted
Art. 60, par. 2	Art. 45, par. 9	Amended
	Art. 45, par. 10	Deleted
Art. 61, par. 1	Art. 41, par. 1 & 2	Adapted
Art. 61, par. 2	Art. 42, par. 3; Art. 44, par. 1	Adapted
Art. 62	Art. 41, par. 3	Adapted
Art. 63	Art. 42, par. 1, point (c); Art. 44, par. 1	Adapted
Art. 64, par. 1	Art. 43, par. 1, 1 <sup>st</sup> subpar.; Art. 44, par. 1	Adapted
Art. 64, par. 2	Art. 43, par. 1, 2 <sup>nd</sup> & 3 <sup>rd</sup> subpar.	Amended
Art. 64, par. 3	Art. 43, par 2 & 3	Amended
Art. 64, par. 4	Art. 43, par. 5	Adapted

Art. 65, par. 1	Art. 44, par. 1; Art. 70, par. 1, point (b)	Amended
Art. 65, par. 2	Art. 44, par. 2, 3 & par. 4, 2 <sup>nd</sup> subpar.	Amended
Art. 65, par. 3	Art. 44, par. 4, 1 <sup>st</sup> subpar.	Adapted
Art. 65, par. 4		New
Art. 65, par. 5	Art. 44, par. 6 & 7	Amended
Art. 65, par. 6	Art. 44, par. 8	Amended
Art. 66, par. 1	Art. 44, par. 5, 1 <sup>st</sup> subpar.	Amended
Art. 66, par. 2 and 3	Art. 44, par. 5, 2 <sup>nd</sup> & 3 <sup>rd</sup> subpar.	Adapted
Art. 67, par. 1	Art. 45, par. 6	Amended
Art. 67, par. 2	Art. 46, par.2	Amended
Art. 68, par. 1	Art. 47, par. 1, 1 <sup>st</sup> sentence	Adapted
Art. 68, par. 2	Art. 47, par. 1, 2 <sup>nd</sup> sentence	Adapted
Art. 69, par. 1	Art. 49, par. 1	Adapted
Art. 69, par. 2	Art. 49, par. 2, 1 <sup>st</sup> & 2 <sup>nd</sup> subpar.	Adapted
Art. 69, par. 3	Art. 49, par. 2, 3 <sup>rd</sup> subpar.	=
Art. 69, par. 4, 5 and 6	Art. 49, par. 3, 4 & 5	=
Art. 70, par. 1	Art. 51, par. 1	Adapted
Art. 70, par. 2	Art. 51, par. 2	=
Art. 70, par. 3	Art. 52, par. 1	=
Art. 70, par. 4	Art. 51, par. 3	Adapted
Art. 70, par. 5		New
Art. 70, par. 6		New
Art. 70, par. 7		New
Art. 71, par. 1	Art. 53, par. 1	=
Art. 71, par. 2	Art. 53, par. 2	Adapted

Art. 71, par. 3	Art. 53, par. 6	=
Art. 71, par. 4	Art. 53, par. 7	=
Art. 71, par. 5	Art. 53, par. 9	Adapted
Art. 71, par. 6		New
Art. 72, par. 1	Art. 54, par. 1 & 2	Adapted
Art. 72, par. 2	Art. 54, par. 3	Adapted
Art. 73, par. 1	Art. 53, par. 4 & 5	Amended
Art. 73, par. 2	Art. 54, par. 5 & 6	Amended
Art. 73, par. 3		New
Art. 74, par. 1	Art. 53, par. 3; Art. 54, par. 4	Adapted
Art. 74, par. 2		New
Art. 74, par. 3	Art. 53, par. 3; Art. 54, par. 4	Amended
Art. 75, par. 1	Art. 52, par. 2	Amended
Art. 75, par. 2	Art. 52, par. 3	Amended
Art. 75, par. 3		New
Art. 76, par. 1	Art. 55, par. 1	Amended
Art. 76, par. 2	Art. 55, par. 1, point (a)	Amended
Art. 76, par. 3		New
Art. 76, par. 4	Recital 1; Recital 55, 3 <sup>rd</sup> par.	Amended
Art. 76, par. 5		Amended
Art. 77		New
Art. 78		New
Art. 79, par. 1	Art. 57, par. 1	Amended
Art. 79, par. 2	Art. 57, par. 1	Adapted
Art. 79, par. 3, point (a)	Art. 57, par. 1, 2 <sup>nd</sup> subpar., point (a)	=
Art. 79, par. 3, point (b)	Art. 57, par. 1, 2 <sup>nd</sup> subpar.,	=

	point (b)	
Art. 79, par. 3, point (c)	Art. 57, par. 1, 2 <sup>nd</sup> subpar., point (c)	=
Art. 79, par. 3, point (d)	Art. 57, par. 1, 2 <sup>nd</sup> subpar., point (d)	Amended
Art. 79, par. 3, point (e)	Art. 57, par. 1, 2 <sup>nd</sup> subpar., point (e)	=
Art. 79, par. 4, 1 <sup>st</sup> & 2 <sup>nd</sup> subparagraph	Art. 57, par. 2	Amended
Art. 79, par. 4, 3 <sup>rd</sup> subparagraph		New
Art. 79, par. 5	Art. 57, par. 3	Adapted
Art. 79, par. 6		New
	Art. 58; Art. 59	Deleted
Art. 80	Art. 38	Amended
Art. 81, par. 1	Art. 37, 1 <sup>st</sup> sentence	=
Art. 81, par. 2		New
Art. 81, par. 3	Art. 37, 2 <sup>nd</sup> sentence	Adapted
Art. 82, par. 1 – 5, par. 7		New
Art. 82, par. 6	Art. 40, par. 3, point (f)	Amended
Art. 83		New
Art. 84		New
Art. 85		New
Art. 86		New
Art. 87	Art. 60	=
Art. 88	Art. 61	Adapted
Art. 89, par. 1	Art. 63, par. 1, 1 <sup>st</sup> subpar.	Adapted
Art. 89, par. 2, 1 <sup>st</sup> and 2 <sup>nd</sup> subparagraphs	Art. 63, par. 1, 1 <sup>st</sup> subpar.; 2 <sup>nd</sup> subpar., 1 <sup>st</sup> sentence	Adapted

Art. 89, par. 2, 3 <sup>rd</sup> subparagraph	Art. 63, par. 1, 2 <sup>nd</sup> subpar., 2 <sup>nd</sup> sentence	Amended
Art. 89, par. 3	Art. 63, par. 2	Adapted
Art. 90	Art. 65	=
Art. 91	Art. 66	=
Art. 92	Art. 72, 1 <sup>st</sup> subpar.	Adapted
Art. 93, par. 1	Art. 72, 2 <sup>nd</sup> subpar.	Amended
Art. 93, par. 2 - 8		New
Art. 94	Art. 50	Amended
Art. 95, par. 1 - 3	Art. 67	Amended
Art. 95, par. 4		New
Art. 95, par. 5	Art. 70, par. 1, point (c)	Adapted
Art. 95, par. 6	Art. 67, par. 3	Amended
Art. 96		New
Art. 97		New
Art. 98	Art. 68, par. 3 & 4	Amended
Art. 99	Art. 68, par. 5	Amended
Art. 100, par. 1	Art. 68, par. 1	Adapted
Art. 100, par. 2	Art. 68, par. 3	Adapted
Art. 101, par. 1	Art. 71, par. 1	Adapted
Art. 101, par. 2	Art. 71, par. 2	=
Art. 102	Art. 73	Adapted
Art. 103		New
Art. 104 and 105	Art. 74; Art. 75	=
	Annex I to X	Deleted
Annex I (except 1 <sup>st</sup> sentence)	Annex XII (except footnote 1)	=
1 <sup>st</sup> sentence of Annex I	Footnote 1 to Annex XII	Amended

Annex II		New
Annex III, points A, B, C, E, F, G, H, I and J	Annex XI	Adapted
Annex III, point D		New
Annex IV, (a) – (g)	Annex XXIV, (b) – (h)	=
Annex IV, (h)		New
Annex V		New
Annex VI	Annex XV	Amended
Annex VII	Art. 56, par. 3, points (a) – (f)	=
Annex VIII, except for point 4	Annex XXI	Adapted
Annex VIII, point 4	Annex XXI	Amended
Annex IX	Annex XX	Amended
Annex X	Annex XIV	Amended
Annex XI	Annex XIII	Amended
Annex XII	Annex XVI	Amended
Annex XIII, 1.	Art. 47, par. 4	Adapted
Annex XIII, 2.	Art. 47, par. 5	Adapted
Annex XIV	Annex XXIII	Amended
Annex XV		New
Annex XVI	Annex XVI	Amended
Annex XVII	Annex XVII	Amended
Annex XVIII		New
Annex XIX	Annex XVIII	Amended
Annex XX	Annex XIX	Amended
Annex XI	Annex XXVI	Amended
	Annex XXII	Deleted

	Annex XXV	Deleted
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**DIRECTIVE 2004/18/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 31 March 2004**  
**on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) and Article 55 and Article 95 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(2)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(3)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(4)</sup>, in the light of the joint text approved by the Conciliation Committee on 9 December 2003,

Whereas:

(1) On the occasion of new amendments being made to Council Directives 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts <sup>(5)</sup>, 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts <sup>(6)</sup> and 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts <sup>(7)</sup>, which are necessary to meet requests for simplification and modernisation made by contracting authorities and economic operators alike in their responses to the Green Paper adopted by the

Commission on 27 November 1996, the Directives should, in the interests of clarity, be recast. This Directive is based on Court of Justice case-law, in particular case-law on award criteria, which clarifies the possibilities for the contracting authorities to meet the needs of the public concerned, including in the environmental and/or social area, provided that such criteria are linked to the subject-matter of the contract, do not confer an unrestricted freedom of choice on the contracting authority, are expressly mentioned and comply with the fundamental principles mentioned in recital 2.

(2) The award of contracts concluded in the Member States on behalf of the State, regional or local authorities and other bodies governed by public law entities, is subject to the respect of the principles of the Treaty and in particular to the principle of freedom of movement of goods, the principle of freedom of establishment and the principle of freedom to provide services and to the principles deriving therefrom, such as the principle of equal treatment, the principle of non-discrimination, the principle of mutual recognition, the principle of proportionality and the principle of transparency. However, for public contracts above a certain value, it is advisable to draw up provisions of Community coordination of national procedures for the award of such contracts which are based on these principles so as to ensure the effects of them and to guarantee the opening-up of public procurement to competition. These coordinating provisions should therefore be interpreted in accordance with both the aforementioned rules and principles and other rules of the Treaty.

(3) Such coordinating provisions should comply as far as possible with current procedures and practices in each of the Member States.

(4) Member States should ensure that the participation of a body governed by public law as a tenderer in a procedure for the award of a public contract does not cause any distortion of competition in relation to private tenderers.

(5) Under Article 6 of the Treaty, environmental protection requirements are to be integrated into the definition and implementation of the Community policies and activities referred to in Article 3 of that Treaty, in particular with a view to promoting sustainable development. This Directive therefore clarifies how the contracting authorities may contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring the possibility of obtaining the best value for money for their contracts.

<sup>(1)</sup> OJ C 29 E, 30.1.2001, p. 11 and OJ C 203 E, 27.8.2002, p. 210.

<sup>(2)</sup> OJ C 193, 10.7.2001, p. 7.

<sup>(3)</sup> OJ C 144, 16.5.2001, p. 23.

<sup>(4)</sup> Opinion of the European Parliament of 17 January 2002 (OJ C 271 E, 7.11.2002, p. 176), Council Common Position of 20 Mars 2003 (OJ C 147 E, 24.6.2003, p. 1) and Position of the European Parliament of 2 July 2003 (not yet published in the Official Journal). Legislative Resolution of the European Parliament of 29 January 2004 and Decision of the Council of 2 February 2004.

<sup>(5)</sup> OJ L 209, 24.7.1992, p. 1. Directive as last amended by Commission Directive 2001/78/EC (OJ L 285, 29.10.2001, p. 1).

<sup>(6)</sup> OJ L 199, 9.8.1993, p. 1. Directive as last amended by Commission Directive 2001/78/EC.

<sup>(7)</sup> OJ L 199, 9.8.1993, p. 54. Directive as last amended by Commission Directive 2001/78/EC.

(6) Nothing in this Directive should prevent the imposition or enforcement of measures necessary to protect public policy, public morality, public security, health, human and animal life or the preservation of plant life, in particular with a view to sustainable development, provided that these measures are in conformity with the Treaty.

(7) Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the Agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994) <sup>(1)</sup>, approved in particular the WTO Agreement on Government Procurement, hereinafter referred to as the 'Agreement', the aim of which is to establish a multilateral framework of balanced rights and obligations relating to public contracts with a view to achieving the liberalisation and expansion of world trade.

In view of the international rights and commitments devolving on the Community as a result of the acceptance of the Agreement, the arrangements to be applied to tenderers and products from signatory third countries are those defined by the Agreement. This Agreement does not have direct effect. The contracting authorities covered by the Agreement which comply with this Directive and which apply the latter to economic operators of third countries which are signatories to the Agreement should therefore be in conformity with the Agreement. It is also appropriate that those coordinating provisions should guarantee for Community economic operators conditions for participation in public procurement which are just as favourable as those reserved for economic operators of third countries which are signatories to the Agreement.

(8) Before launching a procedure for the award of a contract, contracting authorities may, using a technical dialogue, seek or accept advice which may be used in the preparation of the specifications provided, however, that such advice does not have the effect of precluding competition.

(9) In view of the diversity of public works contracts, contracting authorities should be able to make provision for contracts for the design and execution of work to be awarded either separately or jointly. It is not the intention of this Directive to prescribe either joint or separate

contract awards. The decision to award contracts separately or jointly must be determined by qualitative and economic criteria, which may be defined by national law.

(10) A contract shall be deemed to be a public works contract only if its subject matter specifically covers the execution of activities listed in Annex I, even if the contract covers the provision of other services necessary for the execution of such activities. Public service contracts, in particular in the sphere of property management services, may, in certain circumstances, include works. However, insofar as such works are incidental to the principal subject-matter of the contract, and are a possible consequence thereof or a complement thereto, the fact that such works are included in the contract does not justify the qualification of the contract as a public works contract.

(11) A Community definition of framework agreements, together with specific rules on framework agreements concluded for contracts falling within the scope of this Directive, should be provided. Under these rules, when a contracting authority enters into a framework agreement in accordance with the provisions of this Directive relating, in particular, to advertising, time limits and conditions for the submission of tenders, it may enter into contracts based on such a framework agreement during its term of validity either by applying the terms set forth in the framework agreement or, if all terms have not been fixed in advance in the framework agreement, by reopening competition between the parties to the framework agreement in relation to those terms. The reopening of competition should comply with certain rules the aim of which is to guarantee the required flexibility and to guarantee respect for the general principles, in particular the principle of equal treatment. For the same reasons, the term of the framework agreements should not exceed four years, except in cases duly justified by the contracting authorities.

(12) Certain new electronic purchasing techniques are continually being developed. Such techniques help to increase competition and streamline public purchasing, particularly in terms of the savings in time and money which their use will allow. Contracting authorities may make use of electronic purchasing techniques, providing such use complies with the rules drawn up under this Directive and the principles of equal treatment, non-discrimination and transparency. To that extent, a tender submitted by a tenderer, in particular where competition has been reopened under a framework agreement or where a dynamic purchasing system is being used, may take the form of that tenderer's electronic catalogue if the latter uses the means of communication chosen by the contracting authority in accordance with Article 42.

<sup>(1)</sup> OJ L 336, 23.12.1994, p. 1.

- (13) In view of the rapid expansion of electronic purchasing systems, appropriate rules should now be introduced to enable contracting authorities to take full advantage of the possibilities afforded by these systems. Against this background, it is necessary to define a completely electronic dynamic purchasing system for commonly used purchases, and lay down specific rules for setting up and operating such a system in order to ensure the fair treatment of any economic operator who wishes to take part therein. Any economic operator which submits an indicative tender in accordance with the specification and meets the selection criteria should be allowed to join such a system. This purchasing technique allows the contracting authority, through the establishment of a list of tenderers already selected and the opportunity given to new tenderers to take part, to have a particularly broad range of tenders as a result of the electronic facilities available, and hence to ensure optimum use of public funds through broad competition.
- (14) Since use of the technique of electronic auctions is likely to increase, such auctions should be given a Community definition and governed by specific rules in order to ensure that they operate in full accordance with the principles of equal treatment, non-discrimination and transparency. To that end, provision should be made for such electronic auctions to deal only with contracts for works, supplies or services for which the specifications can be determined with precision. Such may in particular be the case for recurring supplies, works and service contracts. With the same objective, it must also be possible to establish the respective ranking of the tenderers at any stage of the electronic auction. Recourse to electronic auctions enables contracting authorities to ask tenderers to submit new prices, revised downwards, and when the contract is awarded to the most economically advantageous tender, also to improve elements of the tenders other than prices. In order to guarantee compliance with the principle of transparency, only the elements suitable for automatic evaluation by electronic means, without any intervention and/or appreciation by the contracting authority, may be the object of electronic auctions, that is, only the elements which are quantifiable so that they can be expressed in figures or percentages. On the other hand, those aspects of the tenders which imply an appreciation of non-quantifiable elements should not be the object of electronic auctions. Consequently, certain works contracts and certain service contracts having as their subject-matter intellectual performances, such as the design of works, should not be the object of electronic auctions.
- (15) Certain centralised purchasing techniques have been developed in Member States. Several contracting authorities are responsible for making acquisitions or awarding public contracts/framework agreements for other contracting authorities. In view of the large volumes purchased, those techniques help increase competition and streamline public purchasing. Provision should therefore be made for a Community definition of central purchasing bodies dedicated to contracting authorities. A definition should also be given of the conditions under which, in accordance with the principles of non-discrimination and equal treatment, contracting authorities purchasing works, supplies and/or services through a central purchasing body may be deemed to have complied with this Directive.
- (16) In order to take account of the different circumstances obtaining in Member States, Member States should be allowed to choose whether contracting authorities may use framework agreements, central purchasing bodies, dynamic purchasing systems, electronic auctions or the competitive dialogue procedure, as defined and regulated by this Directive.
- (17) Multiplying the number of thresholds for applying the coordinating provisions complicates matters for contracting authorities. Furthermore, in the context of monetary union such thresholds should be established in euro. Accordingly, thresholds should be set, in euro, in such a way as to simplify the application of such provisions, while at the same time ensuring compliance with the thresholds provided for by the Agreement which are expressed in special drawing rights. In this context, provision should also be made for periodic reviews of the thresholds expressed in euro so as to adjust them, where necessary, in line with possible variations in the value of the euro in relation to the special drawing right.
- (18) The field of services is best delineated, for the purpose of applying the procedural rules of this Directive and for monitoring purposes, by subdividing it into categories corresponding to particular headings of a common classification and by bringing them together in two Annexes, II A and II B, according to the regime to which they are subject. As regards services in Annex II B, the relevant provisions of this Directive should be without prejudice to the application of Community rules specific to the services in question.
- (19) As regards public service contracts, full application of this Directive should be limited, for a transitional period, to contracts where its provisions will permit the full potential for increased cross-frontier trade to be realised. Contracts for other services need to be monitored during this transitional period before a decision is

taken on the full application of this Directive. In this respect, the mechanism for such monitoring needs to be defined. This mechanism should, at the same time, enable interested parties to have access to the relevant information.

- (20) Public contracts which are awarded by the contracting authorities operating in the water, energy, transport and postal services sectors and which fall within the scope of those activities are covered by Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors <sup>(1)</sup>. However, contracts awarded by the contracting authorities in the context of their service activities for maritime, coastal or river transport must fall within the scope of this Directive.
- (21) In view of the situation of effective market competition in the telecommunications sector following the implementation of the Community rules aimed at liberalising that sector, public contracts in that area should be excluded from the scope of this Directive insofar as they are intended primarily to allow the contracting authorities to exercise certain activities in the telecommunications sector. Those activities are defined in accordance with the definitions used in Articles 1, 2 and 8 of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sector <sup>(2)</sup>, such that this Directive does not apply to contracts which have been excluded from the scope of Directive 93/38/EEC pursuant to Article 8 thereof.
- (22) Provision should be made for cases in which it is possible to refrain from applying the measures for coordinating procedures on grounds relating to State security or secrecy, or because specific rules on the awarding of contracts which derive from international agreements, relating to the stationing of troops, or which are specific to international organisations are applicable.
- (23) Pursuant to Article 163 of the Treaty, the encouragement of research and technological development is a means of strengthening the scientific and technological basis of Community industry, and the opening-up of public service contracts contributes to this end. This Directive should not cover the cofinancing of research and development programmes: research and development contracts other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority, are not therefore covered by this Directive.
- (24) In the context of services, contracts for the acquisition or rental of immovable property or rights to such property have particular characteristics which make the application of public procurement rules inappropriate.
- (25) The awarding of public contracts for certain audiovisual services in the field of broadcasting should allow aspects of cultural or social significance to be taken into account which render application of procurement rules inappropriate. For these reasons, an exception must therefore be made for public service contracts for the purchase, development, production or co-production of off-the-shelf programmes and other preparatory services, such as those relating to scripts or artistic performances necessary for the production of the programme and contracts concerning broadcasting times. However, this exclusion should not apply to the supply of technical equipment necessary for the production, co-production and broadcasting of such programmes. A broadcast should be defined as transmission and distribution using any form of electronic network.
- (26) Arbitration and conciliation services are usually provided by bodies or individuals designated or selected in a manner which cannot be governed by procurement rules.
- (27) In accordance with the Agreement, the financial services covered by this Directive do not include instruments of monetary policy, exchange rates, public debt, reserve management or other policies involving transactions in securities or other financial instruments, in particular

<sup>(1)</sup> See p. 1 of this Official Journal.

<sup>(2)</sup> OJ L 199, 9.8.1993, p. 84. Directive as last amended by Commission Directive 2001/78/EC (OJ L 285, 29.10.2001, p. 1).

transactions by the contracting authorities to raise money or capital. Accordingly, contracts relating to the issue, purchase, sale or transfer of securities or other financial instruments are not covered. Central bank services are also excluded.

- (28) Employment and occupation are key elements in guaranteeing equal opportunities for all and contribute to integration in society. In this context, sheltered workshops and sheltered employment programmes contribute efficiently towards the integration or reintegration of people with disabilities in the labour market. However, such workshops might not be able to obtain contracts under normal conditions of competition. Consequently, it is appropriate to provide that Member States may reserve the right to participate in award procedures for public contracts to such workshops or reserve performance of contracts to the context of sheltered employment programmes.
- (29) The technical specifications drawn up by public purchasers need to allow public procurement to be opened up to competition. To this end, it must be possible to submit tenders which reflect the diversity of technical solutions. Accordingly, it must be possible to draw up the technical specifications in terms of functional performance and requirements, and, where reference is made to the European standard or, in the absence thereof, to the national standard, tenders based on equivalent arrangements must be considered by contracting authorities. To demonstrate equivalence, tenderers should be permitted to use any form of evidence. Contracting authorities must be able to provide a reason for any decision that equivalence does not exist in a given case. Contracting authorities that wish to define environmental requirements for the technical specifications of a given contract may lay down the environmental characteristics, such as a given production method, and/or specific environmental effects of product groups or services. They can use, but are not obliged to use appropriate specifications that are defined in eco-labels, such as the European Eco-label, (multi-)national eco-labels or any other eco-label providing the requirements for the label are drawn up and adopted on the basis of scientific information using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and providing the label is accessible and available to all interested parties. Contracting authorities should, whenever possible, lay down technical specifications so as to take into account accessibility criteria for people with disabilities or design for all users. The technical specifications should be clearly indicated, so that all tenderers know what the requirements established by the contracting authority cover.
- (30) Additional information concerning contracts must, as is customary in Member States, be given in the contract documents for each contract or else in an equivalent document.
- (31) Contracting authorities which carry out particularly complex projects may, without this being due to any fault on their part, find it objectively impossible to define the means of satisfying their needs or of assessing what the market can offer in the way of technical solutions and/or financial/legal solutions. This situation may arise in particular with the implementation of important integrated transport infrastructure projects, large computer networks or projects involving complex and structured financing the financial and legal make-up of which cannot be defined in advance. To the extent that use of open or restricted procedures does not allow the award of such contracts, a flexible procedure should be provided which preserves not only competition between economic operators but also the need for the contracting authorities to discuss all aspects of the contract with each candidate. However, this procedure must not be used in such a way as to restrict or distort competition, particularly by altering any fundamental aspects of the offers, or by imposing substantial new requirements on the successful tenderer, or by involving any tenderer other than the one selected as the most economically advantageous.
- (32) In order to encourage the involvement of small and medium-sized undertakings in the public contracts procurement market, it is advisable to include provisions on subcontracting.
- (33) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory and are indicated in the contract notice or in the contract documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment or the protection of the environment. For instance, mention may be made, amongst other things, of the requirements — applicable during performance of the contract — to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with the provisions of the basic International Labour Organisation (ILO) Conventions, assuming that such provisions have not been implemented in national law, and to recruit more handicapped persons than are required under national legislation.

- (34) The laws, regulations and collective agreements, at both national and Community level, which are in force in the areas of employment conditions and safety at work apply during performance of a public contract, providing that such rules, and their application, comply with Community law. In cross-border situations, where workers from one Member State provide services in another Member State for the purpose of performing a public contract, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services<sup>(1)</sup> lays down the minimum conditions which must be observed by the host country in respect of such posted workers. If national law contains provisions to this effect, non-compliance with those obligations may be considered to be grave misconduct or an offence concerning the professional conduct of the economic operator concerned, liable to lead to the exclusion of that economic operator from the procedure for the award of a public contract.
- (35) In view of new developments in information and communications technology, and the simplifications these can bring in terms of publicising contracts and the efficiency and transparency of procurement processes, electronic means should be put on a par with traditional means of communication and information exchange. As far as possible, the means and technology chosen should be compatible with the technologies used in other Member States.
- (36) To ensure development of effective competition in the field of public contracts, it is necessary that contract notices drawn up by the contracting authorities of Member States be advertised throughout the Community. The information contained in these notices must enable economic operators in the Community to determine whether the proposed contracts are of interest to them. For this purpose, it is appropriate to give them adequate information on the object of the contract and the conditions attached thereto. Improved visibility should therefore be ensured for public notices by means of appropriate instruments, such as standard contract notice forms and the Common Procurement Vocabulary (CPV) provided for in Regulation (EC) No 2195/2002 of the European Parliament and of the Council<sup>(2)</sup> as the reference nomenclature for public contracts. In restricted procedures, advertisement is, more particularly, intended to enable contractors of Member States to express their interest in contracts by seeking from the contracting authorities invitations to tender under the required conditions.
- (37) Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures<sup>(3)</sup> and Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market ('Directive on electronic commerce')<sup>(4)</sup> should, in the context of this Directive, apply to the transmission of information by electronic means. The public procurement procedures and the rules applicable to service contests require a level of security and confidentiality higher than that required by these Directives. Accordingly, the devices for the electronic receipt of offers, requests to participate and plans and projects should comply with specific additional requirements. To this end, use of electronic signatures, in particular advanced electronic signatures, should, as far as possible, be encouraged. Moreover, the existence of voluntary accreditation schemes could constitute a favourable framework for enhancing the level of certification service provision for these devices.
- (38) The use of electronic means leads to savings in time. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Community level.
- (39) Verification of the suitability of tenderers, in open procedures, and of candidates, in restricted and negotiated procedures with publication of a contract notice and in the competitive dialogue, and the selection thereof, should be carried out in transparent conditions. For this purpose, non-discriminatory criteria should be indicated which the contracting authorities may use when selecting competitors and the means which economic operators may use to prove they have satisfied those criteria. In the same spirit of transparency, the contracting authority should be required, as soon as a contract is put out to competition, to indicate the selection criteria it will use and the level of specific competence it may or may not demand of the economic operators before admitting them to the procurement procedure.
- (40) A contracting authority may limit the number of candidates in the restricted and negotiated procedures with publication of a contract notice, and in the competitive dialogue. Such a reduction of candidates should be performed on the basis of objective criteria indicated in

<sup>(1)</sup> OJ L 18, 21.1.1997, p. 1.

<sup>(2)</sup> OJ L 340, 16.12.2002, p.1.

<sup>(3)</sup> OJ L 13, 19.1.2000, p. 12.

<sup>(4)</sup> OJ L 178, 17.7.2000, p. 1.

the contract notice. These objective criteria do not necessarily imply weightings. For criteria relating to the personal situation of economic operators, a general reference in the contract notice to the situations set out in Article 45 may suffice.

Non-observance of national provisions implementing the Council Directives 2000/78/EC <sup>(1)</sup> and 76/207/EEC <sup>(2)</sup> concerning equal treatment of workers, which has been the subject of a final judgment or a decision having equivalent effect may be considered an offence concerning the professional conduct of the economic operator concerned or grave misconduct.

- (41) In the competitive dialogue and negotiated procedures with publication of a contract notice, in view of the flexibility which may be required and the high level of costs associated with such methods of procurement, contracting authorities should be entitled to make provision for the procedure to be conducted in successive stages in order gradually to reduce, on the basis of previously indicated contract award criteria, the number of tenders which they will go on to discuss or negotiate. This reduction should, insofar as the number of appropriate solutions or candidates allows, ensure that there is genuine competition.
- (42) The relevant Community rules on mutual recognition of diplomas, certificates or other evidence of formal qualifications apply when evidence of a particular qualification is required for participation in a procurement procedure or a design contest.
- (43) The award of public contracts to economic operators who have participated in a criminal organisation or who have been found guilty of corruption or of fraud to the detriment of the financial interests of the European Communities or of money laundering should be avoided. Where appropriate, the contracting authorities should ask candidates or tenderers to supply relevant documents and, where they have doubts concerning the personal situation of a candidate or tenderer, they may seek the cooperation of the competent authorities of the Member State concerned. The exclusion of such economic operators should take place as soon as the contracting authority has knowledge of a judgment concerning such offences rendered in accordance with national law that has the force of *res judicata*. If national law contains provisions to this effect, non-compliance with environmental legislation or legislation on unlawful agreements in public contracts which has been the subject of a final judgment or a decision having equivalent effect may be considered an offence concerning the professional conduct of the economic operator concerned or grave misconduct.
- (44) In appropriate cases, in which the nature of the works and/or services justifies applying environmental management measures or schemes during the performance of a public contract, the application of such measures or schemes may be required. Environmental management schemes, whether or not they are registered under Community instruments such as Regulation (EC) No 761/2001 <sup>(3)</sup> (EMAS), can demonstrate that the economic operator has the technical capability to perform the contract. Moreover, a description of the measures implemented by the economic operator to ensure the same level of environmental protection should be accepted as an alternative to environmental management registration schemes as a form of evidence.
- (45) This Directive allows Member States to establish official lists of contractors, suppliers or service providers or a system of certification by public or private bodies, and makes provision for the effects of such registration or such certification in a contract award procedure in another Member State. As regards official lists of approved economic operators, it is important to take into account Court of Justice case-law in cases where an economic operator belonging to a group claims the economic, financial or technical capabilities of other companies in the group in support of its application for registration. In this case, it is for the economic operator to prove that those resources will actually be available to it throughout the period of validity of

<sup>(1)</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16).

<sup>(2)</sup> Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ L 39, 14.2.1976, p. 40). Directive amended by Directive 2002/73/EC of the European Parliament and of the Council (OJ L 269, 5.10.2002, p. 15).

<sup>(3)</sup> Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing a voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) (OJ L 114, 24.4.2001, p. 1).

the registration. For the purposes of that registration, a Member State may therefore determine the level of requirements to be met and in particular, for example where the operator lays claim to the financial standing of another company in the group, it may require that that company be held liable, if necessary jointly and severally.

- (46) Contracts should be awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non-discrimination and equal treatment and which guarantee that tenders are assessed in conditions of effective competition. As a result, it is appropriate to allow the application of two award criteria only: 'the lowest price' and 'the most economically advantageous tender'.

To ensure compliance with the principle of equal treatment in the award of contracts, it is appropriate to lay down an obligation — established by case-law — to ensure the necessary transparency to enable all tenderers to be reasonably informed of the criteria and arrangements which will be applied to identify the most economically advantageous tender. It is therefore the responsibility of contracting authorities to indicate the criteria for the award of the contract and the relative weighting given to each of those criteria in sufficient time for tenderers to be aware of them when preparing their tenders. Contracting authorities may derogate from indicating the weighting of the criteria for the award in duly justified cases for which they must be able to give reasons, where the weighting cannot be established in advance, in particular on account of the complexity of the contract. In such cases, they must indicate the descending order of importance of the criteria.

Where the contracting authorities choose to award a contract to the most economically advantageous tender, they shall assess the tenders in order to determine which one offers the best value for money. In order to do this, they shall determine the economic and quality criteria which, taken as a whole, must make it possible to determine the most economically advantageous tender for the contracting authority. The determination of these criteria depends on the object of the contract since they must allow the level of performance offered by each tender to be assessed in the light of the object of the contract, as defined in the technical specifications, and the value for money of each tender to be measured.

In order to guarantee equal treatment, the criteria for the award of the contract should enable tenders to be

compared and assessed objectively. If these conditions are fulfilled, economic and qualitative criteria for the award of the contract, such as meeting environmental requirements, may enable the contracting authority to meet the needs of the public concerned, as expressed in the specifications of the contract. Under the same conditions, a contracting authority may use criteria aiming to meet social requirements, in response in particular to the needs — defined in the specifications of the contract — of particularly disadvantaged groups of people to which those receiving/using the works, supplies or services which are the object of the contract belong.

- (47) In the case of public service contracts, the award criteria must not affect the application of national provisions on the remuneration of certain services, such as, for example, the services performed by architects, engineers or lawyers and, where public supply contracts are concerned, the application of national provisions setting out fixed prices for school books.

- (48) Certain technical conditions, and in particular those concerning notices and statistical reports, as well as the nomenclature used and the conditions of reference to that nomenclature, will need to be adopted and amended in the light of changing technical requirements. The lists of contracting authorities in the Annexes will also need to be updated. It is therefore appropriate to put in place a flexible and rapid adoption procedure for this purpose.

- (49) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(1)</sup>.

- (50) It is appropriate that Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits <sup>(2)</sup> should apply to the calculation of the time limits contained in this Directive.

- (51) This Directive should not prejudice the time limits set out in Annex XI, within which Member States are required to transpose and apply Directives 92/50/EEC, 93/36/EEC and 93/37/EEC,

HAVE ADOPTED THIS DIRECTIVE:

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23.

<sup>(2)</sup> OJ L 124, 8.6.1971, p. 1.



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## TITLE I

### DEFINITIONS AND GENERAL PRINCIPLES

#### Article 1

engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function.

#### Definitions

1. For the purposes of this Directive, the definitions set out in paragraphs 2 to 15 shall apply.

2. (a) 'Public contracts' are contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services within the meaning of this Directive.

(c) 'Public supply contracts' are public contracts other than those referred to in (b) having as their object the purchase, lease, rental or hire purchase, with or without option to buy, of products.

A public contract having as its object the supply of products and which also covers, as an incidental matter, siting and installation operations shall be considered to be a 'public supply contract'.

(b) 'Public works contracts' are public contracts having as their object either the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex I or a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority. A 'work' means the outcome of building or civil

(d) 'Public service contracts' are public contracts other than public works or supply contracts having as their object the provision of services referred to in Annex II.

A public contract having as its object both products and services within the meaning of Annex II shall be considered to be a 'public service contract' if the value of the services in question exceeds that of the products covered by the contract.

A public contract having as its object services within the meaning of Annex II and including activities within the meaning of Annex I that are only incidental to the principal object of the contract shall be considered to be a public service contract.

3. 'Public works concession' is a contract of the same type as a public works contract except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the work or in this right together with payment.

4. 'Service concession' is a contract of the same type as a public service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment.

5. A 'framework agreement' is an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

6. A 'dynamic purchasing system' is a completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting authority, which is limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification.

7. An 'electronic auction' is a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

Consequently, certain service contracts and certain works contracts having as their subject-matter intellectual performances, such as the design of works, may not be the object of electronic auctions.

8. The terms 'contractor', 'supplier' and 'service provider' mean any natural or legal person or public entity or group of such persons and/or bodies which offers on the market, respectively, the execution of works and/or a work, products or services.

The term 'economic operator' shall cover equally the concepts of contractor, supplier and service provider. It is used merely in the interest of simplification.

An economic operator who has submitted a tender shall be designated a 'tenderer'. One which has sought an invitation to

take part in a restricted or negotiated procedure or a competitive dialogue shall be designated a 'candidate'.

9. 'Contracting authorities' means the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or one or several of such bodies governed by public law.

A 'body governed by public law' means any body:

(a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

(b) having legal personality; and

(c) financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.

Non-exhaustive lists of bodies and categories of bodies governed by public law which fulfil the criteria referred to in (a), (b) and (c) of the second subparagraph are set out in Annex III. Member States shall periodically notify the Commission of any changes to their lists of bodies and categories of bodies.

10. A 'central purchasing body' is a contracting authority which:

— acquires supplies and/or services intended for contracting authorities, or

— awards public contracts or concludes framework agreements for works, supplies or services intended for contracting authorities.

11. (a) 'Open procedures' means those procedures whereby any interested economic operator may submit a tender.

(b) 'Restricted procedures' means those procedures in which any economic operator may request to participate and whereby only those economic operators invited by the contracting authority may submit a tender.

(c) 'Competitive dialogue' is a procedure in which any economic operator may request to participate and whereby the contracting authority conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender.

For the purpose of recourse to the procedure mentioned in the first subparagraph, a public contract is considered to be 'particularly complex' where the contracting authorities:

— are not objectively able to define the technical means in accordance with Article 23(3)(b), (c) or (d), capable of satisfying their needs or objectives, and/or

— are not objectively able to specify the legal and/or financial make-up of a project.

(d) 'Negotiated procedures' means those procedures whereby the contracting authorities consult the economic operators of their choice and negotiate the terms of contract with one or more of these.

(e) 'Design contests' means those procedures which enable the contracting authority to acquire, mainly in the fields of town and country planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes.

12. 'Written' or 'in writing' means any expression consisting of words or figures which can be read, reproduced and subsequently communicated. It may include information which is transmitted and stored by electronic means.

13. 'Electronic means' means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.

14. The 'Common Procurement Vocabulary (CPV)' shall designate the reference nomenclature applicable to public contracts as adopted by Regulation (EC) No 2195/2002, while ensuring equivalence with the other existing nomenclatures.

In the event of varying interpretations of the scope of this Directive, owing to possible differences between the CPV and NACE nomenclatures listed in Annex I, or between the CPV and CPC (provisional version) nomenclatures listed in Annex II, the NACE or the CPC nomenclature respectively shall take precedence.

15. For the purposes of Article 13, Article 57(a) and Article 68(b), the following phrases shall have the following meanings:

(a) 'public telecommunications network' means the public telecommunications infrastructure which enables signals to be conveyed between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means;

(b) a 'network termination point' means all physical connections and their technical access specifications which form part of the public telecommunications network and are necessary for access to, and efficient communication through, that public network;

(c) 'public telecommunications services' means telecommunications services the provision of which the Member States have specifically assigned, in particular, to one or more telecommunications entities;

(d) 'telecommunications services' means services the provision of which consists wholly or partly in the transmission and routing of signals on the public telecommunications network by means of telecommunications processes, with the exception of broadcasting and television.

#### Article 2

### Principles of awarding contracts

Contracting authorities shall treat economic operators equally and non-discriminatorily and shall act in a transparent way.

#### Article 3

### Granting of special or exclusive rights: non-discrimination clause

Where a contracting authority grants special or exclusive rights to carry out a public service activity to an entity other than such a contracting authority, the act by which that right is granted shall provide that, in respect of the supply contracts which it awards to third parties as part of its activities, the entity concerned must comply with the principle of non-discrimination on the basis of nationality.

## TITLE II

## RULES ON PUBLIC CONTRACTS

## CHAPTER I

**General provisions**

## Article 4

**Economic operators**

1. Candidates or tenderers who, under the law of the Member State in which they are established, are entitled to provide the relevant service, shall not be rejected solely on the ground that, under the law of the Member State in which the contract is awarded, they would be required to be either natural or legal persons.

However, in the case of public service and public works contracts as well as public supply contracts covering in addition services and/or siting and installation operations, legal persons may be required to indicate in the tender or the request to participate, the names and relevant professional qualifications of the staff to be responsible for the performance of the contract in question.

2. Groups of economic operators may submit tenders or put themselves forward as candidates. In order to submit a tender or a request to participate, these groups may not be required by the contracting authorities to assume a specific legal form; however, the group selected may be required to do so when it has been awarded the contract, to the extent that this change is necessary for the satisfactory performance of the contract.

## Article 5

**Conditions relating to agreements concluded within the World Trade Organisation**

For the purposes of the award of contracts by contracting authorities, Member States shall apply in their relations conditions as favourable as those which they grant to economic operators of third countries in implementation of the Agreement on Government Procurement (hereinafter referred to as 'the Agreement'), concluded in the framework of the Uruguay Round multilateral negotiations. Member States shall, to this end, consult one another within the Advisory Committee for Public Contracts referred to in Article 77 on the measures to be taken pursuant to the Agreement.

## Article 6

**Confidentiality**

Without prejudice to the provisions of this Directive, in particular those concerning the obligations relating to the

advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 35(4) and 41, and in accordance with the national law to which the contracting authority is subject, the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential; such information includes, in particular, technical or trade secrets and the confidential aspects of tenders.

## CHAPTER II

**Scope**

## Section 1

## Thresholds

## Article 7

**Threshold amounts for public contracts**

This Directive shall apply to public contracts which are not excluded in accordance with the exceptions provided for in Articles 10 and 11 and Articles 12 to 18 and which have a value exclusive of value-added tax (VAT) estimated to be equal to or greater than the following thresholds:

- (a) EUR 162 000 for public supply and service contracts others than those covered by point (b), third indent, awarded by contracting authorities which are listed as central government authorities in Annex IV; in the case of public supply contracts awarded by contracting authorities operating in the field of defence, this shall apply only to contracts involving products covered by Annex V;
- (b) EUR 249 000
  - for public supply and service contracts awarded by contracting authorities other than those listed in Annex IV,
  - for public supply contracts awarded by contracting authorities which are listed in Annex IV and operate in the field of defence, where these contracts involve products not covered by Annex V,
  - for public service contracts awarded by any contracting authority in respect of the services listed in Category 8 of Annex IIA, Category 5 telecommunications services the positions of which in the CPV are equivalent to CPC reference Nos 7524, 7525 and 7526 and/or the services listed in Annex II B;
- (c) EUR 6 242 000 for public works contracts.



## Article 8

**Contracts subsidised by more than 50 % by contracting authorities**

This Directive shall apply to the awarding of:

- (a) contracts which are subsidised directly by contracting authorities by more than 50 % and the estimated value of which, net of VAT, is equal to or greater than EUR 6 242 000,
- where those contracts involve civil engineering activities within the meaning of Annex I,
  - where those contracts involve building work for hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes;
- (b) service contracts which are subsidised directly by contracting authorities by more than 50 % and the estimated value of which, net of VAT, is equal to or greater than EUR 249 000 and which are connected with a works contract within the meaning of point (a).

Member States shall take the necessary measures to ensure that the contracting authorities awarding such subsidies ensure compliance with this Directive where that contract is awarded by one or more entities other than themselves or comply with this Directive where they themselves award that contract for and on behalf of those other entities.

## Article 9

**Methods for calculating the estimated value of public contracts, framework agreements and dynamic purchasing systems**

1. The calculation of the estimated value of a public contract shall be based on the total amount payable, net of VAT, as estimated by the contracting authority. This calculation shall take account of the estimated total amount, including any form of option and any renewals of the contract.

Where the contracting authority provides for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of the contract.

2. This estimate must be valid at the moment at which the contract notice is sent, as provided for in Article 35(2), or, in cases where such notice is not required, at the moment at which the contracting authority commences the contract awarding procedure.

3. No works project or proposed purchase of a certain quantity of supplies and/or services may be subdivided to prevent its coming within the scope of this Directive.

4. With regard to public works contracts, calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies necessary for executing the works and placed at the contractor's disposal by the contracting authorities.

5. (a) Where a proposed work or purchase of services may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots.

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 7, this Directive shall apply to the awarding of each lot.

However, the contracting authorities may waive such application in respect of lots the estimated value of which net of VAT is less than EUR 80 000 for services or EUR 1 million for works, provided that the aggregate value of those lots does not exceed 20 % of the aggregate value of the lots as a whole.

(b) Where a proposal for the acquisition of similar supplies may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots when applying Article 7(a) and (b).

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 7, this Directive shall apply to the awarding of each lot.

However, the contracting authorities may waive such application in respect of lots, the estimated value of which, net of VAT, is less than EUR 80 000, provided that the aggregate cost of those lots does not exceed 20 % of the aggregate value of the lots as a whole.

6. With regard to public supply contracts relating to the leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:

(a) in the case of fixed-term public contracts, if that term is less than or equal to 12 months, the total estimated value for the term of the contract or, if the term of the contract is greater than 12 months, the total value including the estimated residual value;

(b) in the case of public contracts without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.

7. In the case of public supply or service contracts which are regular in nature or which are intended to be renewed within a given period, the calculation of the estimated contract value shall be based on the following:

- (a) either the total actual value of the successive contracts of the same type awarded during the preceding 12 months or financial year adjusted, if possible, to take account of the changes in quantity or value which would occur in the course of the 12 months following the initial contract;
- (b) or the total estimated value of the successive contracts awarded during the 12 months following the first delivery, or during the financial year if that is longer than 12 months.

The choice of method used to calculate the estimated value of a public contract may not be made with the intention of excluding it from the scope of this Directive.

8. With regard to public service contracts, the value to be taken as a basis for calculating the estimated contract value shall, where appropriate, be the following:

- (a) for the following types of services:
  - (i) insurance services: the premium payable and other forms of remuneration;
  - (ii) banking and other financial services: the fees, commissions, interest and other forms of remuneration;
  - (iii) design contracts: fees, commission payable and other forms of remuneration;
- (b) for service contracts which do not indicate a total price:
  - (i) in the case of fixed-term contracts, if that term is less than or equal to 48 months: the total value for their full term;
  - (ii) in the case of contracts without a fixed term or with a term greater than 48 months: the monthly value multiplied by 48.

9. With regard to framework agreements and dynamic purchasing systems, the value to be taken into consideration shall be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the framework agreement or the dynamic purchasing system.

## Section 2

### Specific situations

#### Article 10

#### **Defence procurement**

This Directive shall apply to public contracts awarded by contracting authorities in the field of defence, subject to Article 296 of the Treaty.

#### Article 11

#### **Public contracts and framework agreements awarded by central purchasing bodies**

1. Member States may stipulate that contracting authorities may purchase works, supplies and/or services from or through a central purchasing body.
2. Contracting authorities which purchase works, supplies and/or services from or through a central purchasing body in the cases set out in Article 1(10) shall be deemed to have complied with this Directive insofar as the central purchasing body has complied with it.

#### Section 3

#### Excluded contracts

#### Article 12

#### **Contracts in the water, energy, transport and postal services sectors**

This Directive shall not apply to public contracts which, under Directive 2004/17/EC, are awarded by contracting authorities exercising one or more of the activities referred to in Articles 3 to 7 of that Directive and are awarded for the pursuit of those activities, or to public contracts excluded from the scope of that Directive under Article 5(2) and Articles 19, 26 and 30 thereof.

However, this Directive shall continue to apply to public contracts awarded by contracting authorities carrying out one or more of the activities referred to in Article 6 of Directive 2004/17/EC and awarded for those activities, insofar as the Member State concerned takes advantage of the option referred to in the second subparagraph of Article 71 thereof to defer its application.

#### Article 13

#### **Specific exclusions in the field of telecommunications**

This Directive shall not apply to public contracts for the principal purpose of permitting the contracting authorities to provide or exploit public telecommunications networks or to provide to the public one or more telecommunications services.

#### Article 14

#### **Secret contracts and contracts requiring special security measures**

This Directive shall not apply to public contracts when they are declared to be secret, when their performance must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned, or when the protection of the essential interests of that Member State so requires.

*Article 15***Contracts awarded pursuant to international rules**

This Directive shall not apply to public contracts governed by different procedural rules and awarded:

- (a) pursuant to an international agreement concluded in conformity with the Treaty between a Member State and one or more third countries and covering supplies or works intended for the joint implementation or exploitation of a work by the signatory States or services intended for the joint implementation or exploitation of a project by the signatory States; all agreements shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts referred to in Article 77;
- (b) pursuant to a concluded international agreement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;
- (c) pursuant to the particular procedure of an international organisation.

*Article 16***Specific exclusions**

This Directive shall not apply to public service contracts for:

- (a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; nevertheless, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;
- (b) the acquisition, development, production or co-production of programme material intended for broadcasting by broadcasters and contracts for broadcasting time;
- (c) arbitration and conciliation services;
- (d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions by the contracting authorities to raise money or capital, and central bank services;
- (e) employment contracts;
- (f) research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority.

*Article 17***Service concessions**

Without prejudice to the application of Article 3, this Directive shall not apply to service concessions as defined in Article 1(4).

*Article 18***Service contracts awarded on the basis of an exclusive right**

This Directive shall not apply to public service contracts awarded by a contracting authority to another contracting authority or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a published law, regulation or administrative provision which is compatible with the Treaty.

## Section 4

## Special arrangement

*Article 19***Reserved contracts**

Member States may reserve the right to participate in public contract award procedures to sheltered workshops or provide for such contracts to be performed in the context of sheltered employment programmes where most of the employees concerned are handicapped persons who, by reason of the nature or the seriousness of their disabilities, cannot carry on occupations under normal conditions.

The contract notice shall make reference to this provision.

## CHAPTER III

**Arrangements for public service contracts***Article 20***Service contracts listed in Annex II A**

Contracts which have as their object services listed in Annex II A shall be awarded in accordance with Articles 23 to 55.

*Article 21***Service contracts listed in Annex II B**

Contracts which have as their object services listed in Annex II B shall be subject solely to Article 23 and Article 35(4).

## Article 22

**Mixed contracts including services listed in Annex II A and services listed in Annex II B**

Contracts which have as their object services listed both in Annex II A and in Annex II B shall be awarded in accordance with Articles 23 to 55 where the value of the services listed in Annex II A is greater than the value of the services listed in Annex II B. In other cases, contracts shall be awarded in accordance with Article 23 and Article 35(4).

## CHAPTER IV

**Specific rules governing specifications and contract documents**

## Article 23

**Technical specifications**

1. The technical specifications as defined in point 1 of Annex VI shall be set out in the contract documentation, such as contract notices, contract documents or additional documents. Whenever possible these technical specifications should be defined so as to take into account accessibility criteria for people with disabilities or design for all users.

2. Technical specifications shall afford equal access for tenderers and not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.

3. Without prejudice to mandatory national technical rules, to the extent that they are compatible with Community law, the technical specifications shall be formulated:

- (a) either by reference to technical specifications defined in Annex VI and, in order of preference, to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or — when these do not exist — to national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the products. Each reference shall be accompanied by the words 'or equivalent';
- (b) or in terms of performance or functional requirements; the latter may include environmental characteristics. However, such parameters must be sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;
- (c) or in terms of performance or functional requirements as mentioned in subparagraph (b), with reference to the specifications mentioned in subparagraph (a) as a means of presuming conformity with such performance or functional requirements;

(d) or by referring to the specifications mentioned in subparagraph (a) for certain characteristics, and by referring to the performance or functional requirements mentioned in subparagraph (b) for other characteristics.

4. Where a contracting authority makes use of the option of referring to the specifications mentioned in paragraph 3(a), it cannot reject a tender on the grounds that the products and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in his tender to the satisfaction of the contracting authority, by whatever appropriate means, that the solutions which he proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

An appropriate means might be constituted by a technical dossier of the manufacturer or a test report from a recognised body.

5. Where a contracting authority uses the option laid down in paragraph 3 to prescribe in terms of performance or functional requirements, it may not reject a tender for works, products or services which comply with a national standard transposing a European standard, with a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardisation body, if these specifications address the performance or functional requirements which it has laid down.

In his tender, the tenderer must prove to the satisfaction of the contracting authority and by any appropriate means that the work, product or service in compliance with the standard meets the performance or functional requirements of the contracting authority.

An appropriate means might be constituted by a technical dossier of the manufacturer or a test report from a recognised body.

6. Where contracting authorities lay down environmental characteristics in terms of performance or functional requirements as referred to in paragraph 3(b) they may use the detailed specifications, or, if necessary, parts thereof, as defined by European or (multi-) national eco-labels, or by any other eco-label, provided that:

- those specifications are appropriate to define the characteristics of the supplies or services that are the object of the contract,
- the requirements for the label are drawn up on the basis of scientific information,
- the eco-labels are adopted using a procedure in which all stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and
- they are accessible to all interested parties.

Contracting authorities may indicate that the products and services bearing the eco-label are presumed to comply with the technical specifications laid down in the contract documents; they must accept any other appropriate means of proof, such as a technical dossier of the manufacturer or a test report from a recognised body.

7. 'Recognised bodies', within the meaning of this Article, are test and calibration laboratories and certification and inspection bodies which comply with applicable European standards.

Contracting authorities shall accept certificates from recognised bodies established in other Member States.

8. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraphs 3 and 4 is not possible; such reference shall be accompanied by the words 'or equivalent'.

#### Article 24

##### Variants

1. Where the criterion for award is that of the most economically advantageous tender, contracting authorities may authorise tenderers to submit variants.

2. Contracting authorities shall indicate in the contract notice whether or not they authorise variants: variants shall not be authorised without this indication.

3. Contracting authorities authorising variants shall state in the contract documents the minimum requirements to be met by the variants and any specific requirements for their presentation.

4. Only variants meeting the minimum requirements laid down by these contracting authorities shall be taken into consideration.

In procedures for awarding public supply or service contracts, contracting authorities which have authorised variants may not reject a variant on the sole ground that it would, if successful, lead to either a service contract rather than a public supply contract or a supply contract rather than a public service contract.

#### Article 25

##### Subcontracting

In the contract documents, the contracting authority may ask or may be required by a Member State to ask the tenderer to indicate in his tender any share of the contract he may intend

to subcontract to third parties and any proposed subcontractors.

This indication shall be without prejudice to the question of the principal economic operator's liability.

#### Article 26

##### Conditions for performance of contracts

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that these are compatible with Community law and are indicated in the contract notice or in the specifications. The conditions governing the performance of a contract may, in particular, concern social and environmental considerations.

#### Article 27

##### Obligations relating to taxes, environmental protection, employment protection provisions and working conditions

1. A contracting authority may state in the contract documents, or be obliged by a Member State so to state, the body or bodies from which a candidate or tenderer may obtain the appropriate information on the obligations relating to taxes, to environmental protection, to the employment protection provisions and to the working conditions which are in force in the Member State, region or locality in which the works are to be carried out or services are to be provided and which shall be applicable to the works carried out on site or to the services provided during the performance of the contract.

2. A contracting authority which supplies the information referred to in paragraph 1 shall request the tenderers or candidates in the contract award procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to employment protection provisions and the working conditions which are in force in the place where the works are to be carried out or the service is to be provided.

The first subparagraph shall be without prejudice to the application of the provisions of Article 55 concerning the examination of abnormally low tenders.

#### CHAPTER V

##### Procedures

#### Article 28

##### Use of open, restricted and negotiated procedures and of competitive dialogue

In awarding their public contracts, contracting authorities shall apply the national procedures adjusted for the purposes of this Directive.

They shall award these public contracts by applying the open or restricted procedure. In the specific circumstances expressly provided for in Article 29, contracting authorities may award their public contracts by means of the competitive dialogue. In the specific cases and circumstances referred to expressly in Articles 30 and 31, they may apply a negotiated procedure, with or without publication of the contract notice.

#### Article 29

### Competitive dialogue

1. In the case of particularly complex contracts, Member States may provide that where contracting authorities consider that the use of the open or restricted procedure will not allow the award of the contract, the latter may make use of the competitive dialogue in accordance with this Article.

A public contract shall be awarded on the sole basis of the award criterion for the most economically advantageous tender.

2. Contracting authorities shall publish a contract notice setting out their needs and requirements, which they shall define in that notice and/or in a descriptive document.

3. Contracting authorities shall open, with the candidates selected in accordance with the relevant provisions of Articles 44 to 52, a dialogue the aim of which shall be to identify and define the means best suited to satisfying their needs. They may discuss all aspects of the contract with the chosen candidates during this dialogue.

During the dialogue, contracting authorities shall ensure equality of treatment among all tenderers. In particular, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.

Contracting authorities may not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without his/her agreement.

4. Contracting authorities may provide for the procedure to take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria in the contract notice or the descriptive document. The contract notice or the descriptive document shall indicate that recourse may be had to this option.

5. The contracting authority shall continue such dialogue until it can identify the solution or solutions, if necessary after comparing them, which are capable of meeting its needs.

6. Having declared that the dialogue is concluded and having so informed the participants, contracting authorities shall

ask them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. These tenders shall contain all the elements required and necessary for the performance of the project.

These tenders may be clarified, specified and fine-tuned at the request of the contracting authority. However, such clarification, specification, fine-tuning or additional information may not involve changes to the basic features of the tender or the call for tender, variations in which are likely to distort competition or have a discriminatory effect.

7. Contracting authorities shall assess the tenders received on the basis of the award criteria laid down in the contract notice or the descriptive document and shall choose the most economically advantageous tender in accordance with Article 53.

At the request of the contracting authority, the tenderer identified as having submitted the most economically advantageous tender may be asked to clarify aspects of the tender or confirm commitments contained in the tender provided this does not have the effect of modifying substantial aspects of the tender or of the call for tender and does not risk distorting competition or causing discrimination.

8. The contracting authorities may specify prices or payments to the participants in the dialogue.

#### Article 30

### Cases justifying use of the negotiated procedure with prior publication of a contract notice

1. Contracting authorities may award their public contracts by negotiated procedure, after publication of a contract notice, in the following cases:

(a) in the event of irregular tenders or the submission of tenders which are unacceptable under national provisions compatible with Articles 4, 24, 25, 27 and Chapter VII, in response to an open or restricted procedure or a competitive dialogue insofar as the original terms of the contract are not substantially altered.

Contracting authorities need not publish a contract notice where they include in the negotiated procedure all of, and only, the tenderers which satisfy the criteria of Articles 45 to 52 and which, during the prior open or restricted procedure or competitive dialogue, have submitted tenders in accordance with the formal requirements of the tendering procedure;

(b) in exceptional cases, when the nature of the works, supplies, or services or the risks attaching thereto do not permit prior overall pricing;

(c) in the case of services, *inter alia* services within category 6 of Annex II A, and intellectual services such as services involving the design of works, insofar as the nature of the services to be provided is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selection of the best tender according to the rules governing open or restricted procedures;

(d) in respect of public works contracts, for works which are performed solely for purposes of research, testing or development and not with the aim of ensuring profitability or recovering research and development costs.

2. In the cases referred to in paragraph 1, contracting authorities shall negotiate with tenderers the tenders submitted by them in order to adapt them to the requirements which they have set in the contract notice, the specifications and additional documents, if any, and to seek out the best tender in accordance with Article 53(1).

3. During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. In particular, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.

4. Contracting authorities may provide for the negotiated procedure to take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria in the contract notice or the specifications. The contract notice or the specifications shall indicate whether recourse has been had to this option.

#### Article 31

#### Cases justifying use of the negotiated procedure without publication of a contract notice

Contracting authorities may award public contracts by a negotiated procedure without prior publication of a contract notice in the following cases:

(1) for public works contracts, public supply contracts and public service contracts:

(a) when no tenders or no suitable tenders or no applications have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of contract are not substantially altered and on condition that a report is sent to the Commission if it so requests;

(b) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator;

(c) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable

by the contracting authorities in question, the time limit for the open, restricted or negotiated procedures with publication of a contract notice as referred to in Article 30 cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

(2) for public supply contracts:

(a) when the products involved are manufactured purely for the purpose of research, experimentation, study or development; this provision does not extend to quantity production to establish commercial viability or to recover research and development costs;

(b) for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the length of such contracts as well as that of recurrent contracts may not, as a general rule, exceed three years;

(c) for supplies quoted and purchased on a commodity market;

(d) for the purchase of supplies on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national laws or regulations;

(3) for public service contracts, when the contract concerned follows a design contest and must, under the applicable rules, be awarded to the successful candidate or to one of the successful candidates, in the latter case, all successful candidates must be invited to participate in the negotiations;

(4) for public works contracts and public service contracts:

(a) for additional works or services not included in the project initially considered or in the original contract but which have, through unforeseen circumstances, become necessary for the performance of the works or services described therein, on condition that the award is made to the economic operator performing such works or services:

— when such additional works or services cannot be technically or economically separated from the original contract without major inconvenience to the contracting authorities,

or

- when such works or services, although separable from the performance of the original contract, are strictly necessary for its completion.

However, the aggregate value of contracts awarded for additional works or services may not exceed 50 % of the amount of the original contract;

- (b) for new works or services consisting in the repetition of similar works or services entrusted to the economic operator to whom the same contracting authorities awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded according to the open or restricted procedure.

As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authorities when they apply the provisions of Article 7.

This procedure may be used only during the three years following the conclusion of the original contract.

#### Article 32

##### Framework agreements

1. Member States may provide that contracting authorities may conclude framework agreements.
2. For the purpose of concluding a framework agreement, contracting authorities shall follow the rules of procedure referred to in this Directive for all phases up to the award of contracts based on that framework agreement. The parties to the framework agreement shall be chosen by applying the award criteria set in accordance with Article 53.

Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in paragraphs 3 and 4. Those procedures may be applied only between the contracting authorities and the economic operators originally party to the framework agreement.

When awarding contracts based on a framework agreement, the parties may under no circumstances make substantial amendments to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 3.

The term of a framework agreement may not exceed four years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

Contracting authorities may not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.

3. Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement.

For the award of those contracts, contracting authorities may consult the operator party to the framework agreement in writing, requesting it to supplement its tender as necessary.

4. Where a framework agreement is concluded with several economic operators, the latter must be at least three in number, insofar as there is a sufficient number of economic operators to satisfy the selection criteria and/or of admissible tenders which meet the award criteria.

Contracts based on framework agreements concluded with several economic operators may be awarded either:

- by application of the terms laid down in the framework agreement without reopening competition, or
- where not all the terms are laid down in the framework agreement, when the parties are again in competition on the basis of the same and, if necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the specifications of the framework agreement, in accordance with the following procedure:
  - (a) for every contract to be awarded, contracting authorities shall consult in writing the economic operators capable of performing the contract;
  - (b) contracting authorities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in tenders;
  - (c) tenders shall be submitted in writing, and their content shall remain confidential until the stipulated time limit for reply has expired;
  - (d) contracting authorities shall award each contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.

#### Article 33

##### Dynamic purchasing systems

1. Member States may provide that contracting authorities may use dynamic purchasing systems.



2. In order to set up a dynamic purchasing system, contracting authorities shall follow the rules of the open procedure in all its phases up to the award of the contracts to be concluded under this system. All the tenderers satisfying the selection criteria and having submitted an indicative tender which complies with the specification and any possible additional documents shall be admitted to the system; indicative tenders may be improved at any time provided that they continue to comply with the specification. With a view to setting up the system and to the award of contracts under that system, contracting authorities shall use solely electronic means in accordance with Article 42(2) to (5).

3. For the purposes of setting up the dynamic purchasing system, contracting authorities shall:

- (a) publish a contract notice making it clear that a dynamic purchasing system is involved;
- (b) indicate in the specification, amongst other matters, the nature of the purchases envisaged under that system, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications;
- (c) offer by electronic means, on publication of the notice and up to the expiry of the system, unrestricted, direct and full access to the specification and to any additional documents and shall indicate in the notice the internet address at which such documents may be consulted.

4. Contracting authorities shall give any economic operator, throughout the entire period of the dynamic purchasing system, the possibility of submitting an indicative tender and of being admitted to the system under the conditions referred to in paragraph 2. They shall complete evaluation within a maximum of 15 days from the date of submission of the indicative tender. However, they may extend the evaluation period provided that no invitation to tender is issued in the meantime.

The contracting authority shall inform the tenderer referred to in the first subparagraph at the earliest possible opportunity of its admittance to the dynamic purchasing system or of the rejection of its indicative tender.

5. Each specific contract must be the subject of an invitation to tender. Before issuing the invitation to tender, contracting authorities shall publish a simplified contract notice inviting all interested economic operators to submit an indicative tender, in accordance with paragraph 4, within a time limit that may not be less than 15 days from the date on which the simplified notice was sent. Contracting authorities may not

proceed with tendering until they have completed evaluation of all the indicative tenders received by that deadline.

6. Contracting authorities shall invite all tenderers admitted to the system to submit a tender for each specific contract to be awarded under the system. To that end they shall set a time limit for the submission of tenders.

They shall award the contract to the tenderer which submitted the best tender on the basis of the award criteria set out in the contract notice for the establishment of the dynamic purchasing system. Those criteria may, if appropriate, be formulated more precisely in the invitation referred to in the first subparagraph.

7. A dynamic purchasing system may not last for more than four years, except in duly justified exceptional cases.

Contracting authorities may not resort to this system to prevent, restrict or distort competition.

No charges may be billed to the interested economic operators or to parties to the system.

#### Article 34

#### **Public works contracts: particular rules on subsidised housing schemes**

In the case of public contracts relating to the design and construction of a subsidised housing scheme the size and complexity of which, and the estimated duration of the work involved require that planning be based from the outset on close collaboration within a team comprising representatives of the contracting authorities, experts and the contractor to be responsible for carrying out the works, a special award procedure may be adopted for selecting the contractor most suitable for integration into the team.

In particular, contracting authorities shall include in the contract notice as accurate as possible a description of the works to be carried out so as to enable interested contractors to form a valid idea of the project. Furthermore, contracting authorities shall, in accordance with the qualitative selection criteria referred to in Articles 45 to 52, set out in such a contract notice the personal, technical, economic and financial conditions to be fulfilled by candidates.

Where such a procedure is adopted, contracting authorities shall apply Articles 2, 35, 36, 38, 39, 41, 42, 43 and 45 to 52.

## CHAPTER VI

**Rules on advertising and transparency**

## Section 1

## Publication of notices

*Article 35***Notices**

1. Contracting authorities shall make known, by means of a prior information notice published by the Commission or by themselves on their 'buyer profile', as described in point 2(b) of Annex VIII:

(a) where supplies are concerned, the estimated total value of the contracts or the framework agreements by product area which they intend to award over the following 12 months, where the total estimated value, taking into account Articles 7 and 9, is equal to or greater than EUR 750 000.

The product area shall be established by the contracting authorities by reference to the CPV nomenclature;

(b) where services are concerned, the estimated total value of the contracts or the framework agreements in each of the categories of services listed in Annex II A which they intend to award over the following 12 months, where such estimated total value, taking into account the provisions of Articles 7 and 9, is equal to or greater than EUR 750 000;

(c) where works are concerned, the essential characteristics of the contracts or the framework agreements which they intend to award, the estimated value of which is equal to or greater than the threshold specified in Article 7, taking into account Article 9.

The notices referred to in subparagraphs (a) and (b) shall be sent to the Commission or published on the buyer profile as soon as possible after the beginning of the budgetary year.

The notice referred to in subparagraph (c) shall be sent to the Commission or published on the buyer profile as soon as possible after the decision approving the planning of the works contracts or the framework agreements that the contracting authorities intend to award.

Contracting authorities who publish a prior information notice on their buyer profiles shall send the Commission, electronically, a notice of the publication of the prior information notice on a buyer profile, in accordance with the format and detailed procedures for sending notices indicated in point 3 of Annex VIII.

Publication of the notices referred to in subparagraphs (a), (b) and (c) shall be compulsory only where the contracting authorities take the option of shortening the time limits for the receipt of tenders as laid down in Article 38(4).

This paragraph shall not apply to negotiated procedures without the prior publication of a contract notice.

2. Contracting authorities which wish to award a public contract or a framework agreement by open, restricted or, under the conditions laid down in Article 30, negotiated procedure with the publication of a contract notice or, under the conditions laid down in Article 29, a competitive dialogue, shall make known their intention by means of a contract notice.

3. Contracting authorities which wish to set up a dynamic purchasing system shall make known their intention by means of a contract notice.

Contracting authorities which wish to award a contract based on a dynamic purchasing system shall make known their intention by means of a simplified contract notice.

4. Contracting authorities which have awarded a public contract or concluded a framework agreement shall send a notice of the results of the award procedure no later than 48 days after the award of the contract or the conclusion of the framework agreement.

In the case of framework agreements concluded in accordance with Article 32 the contracting authorities are not bound to send a notice of the results of the award procedure for each contract based on that agreement.

Contracting authorities shall send a notice of the result of the award of contracts based on a dynamic purchasing system within 48 days of the award of each contract. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within 48 days of the end of each quarter.

In the case of public contracts for services listed in Annex II B, the contracting authorities shall indicate in the notice whether they agree to its publication. For such services contracts the Commission shall draw up the rules for establishing statistical reports on the basis of such notices and for the publication of such reports in accordance with the procedure laid down in Article 77(2).

Certain information on the contract award or the conclusion of the framework agreement may be withheld from publication where release of such information would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

*Article 36***Form and manner of publication of notices**

1. Notices shall include the information mentioned in Annex VII A and, where appropriate, any other information deemed useful by the contracting authority in the format of standard forms adopted by the Commission in accordance with the procedure referred to in Article 77(2).

2. Notices sent by contracting authorities to the Commission shall be sent either by electronic means in accordance with the format and procedures for transmission indicated in Annex VIII, paragraph 3, or by other means. In the event of recourse to the accelerated procedure set out in Article 38(8), notices must be sent either by telefax or by electronic means, in accordance with the format and procedures for transmission indicated in point 3 of Annex VIII.

Notices shall be published in accordance with the technical characteristics for publication set out in point 1(a) and (b) of Annex VIII.

3. Notices drawn up and transmitted by electronic means in accordance with the format and procedures for transmission indicated in point 3 of Annex VIII, shall be published no later than five days after they are sent.

Notices which are not transmitted by electronic means in accordance with the format and procedures for transmission indicated in point 3 of Annex VIII, shall be published not later than 12 days after they are sent, or in the case of accelerated procedure referred to in Article 38(8), not later than five days after they are sent.

4. Contract notices shall be published in full in an official language of the Community as chosen by the contracting authority, this original language version constituting the sole authentic text. A summary of the important elements of each notice shall be published in the other official languages.

The costs of publication of such notices by the Commission shall be borne by the Community.

5. Notices and their contents may not be published at national level before the date on which they are sent to the Commission.

Notices published at national level shall not contain information other than that contained in the notices dispatched to the Commission or published on a buyer profile in accordance with the first subparagraph of Article 35(1), but shall mention the date of dispatch of the notice to the Commission or its publication on the buyer profile.

Prior information notices may not be published on a buyer profile before the dispatch to the Commission of the notice of their publication in that form; they shall mention the date of that dispatch.

6. The content of notices not sent by electronic means in accordance with the format and procedures for transmission indicated in point 3 of Annex VIII, shall be limited to approximately 650 words.

7. Contracting authorities must be able to supply proof of the dates on which notices are dispatched.

8. The Commission shall give the contracting authority confirmation of the publication of the information sent, mentioning the date of that publication. Such confirmation shall constitute proof of publication.

#### Article 37

### Non-mandatory publication

Contracting authorities may publish in accordance with Article 36 notices of public contracts which are not subject to the publication requirement laid down in this Directive.

#### Section 2

#### Time limits

#### Article 38

### Time limits for receipt of requests to participate and for receipt of tenders

1. When fixing the time limits for the receipt of tenders and requests to participate, contracting authorities shall take account in particular of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set by this Article.

2. In the case of open procedures, the minimum time limit for the receipt of tenders shall be 52 days from the date on which the contract notice was sent.

3. In the case of restricted procedures, negotiated procedures with publication of a contract notice referred to in Article 30 and the competitive dialogue:

(a) the minimum time limit for receipt of requests to participate shall be 37 days from the date on which the contract notice is sent;

(b) in the case of restricted procedures, the minimum time limit for the receipt of tenders shall be 40 days from the date on which the invitation is sent.

4. When contracting authorities have published a prior information notice, the minimum time limit for the receipt of tenders under paragraphs 2 and 3(b) may, as a general rule, be shortened to 36 days, but under no circumstances to less than 22 days.

The time limit shall run from the date on which the contract notice was sent in open procedures, and from the date on which the invitation to tender was sent in restricted procedures.

The shortened time limits referred to in the first subparagraph shall be permitted, provided that the prior information notice has included all the information required for the contract notice in Annex VII A, insofar as that information is available at the time the notice is published and that the prior information notice was sent for publication between 52 days and 12 months before the date on which the contract notice was sent.

5. Where notices are drawn up and transmitted by electronic means in accordance with the format and procedures for transmission indicated in point 3 of Annex VIII, the time limits for the receipt of tenders referred to in paragraphs 2 and 4 in open procedures, and the time limit for the receipt of the requests to participate referred to in paragraph 3(a), in restricted and negotiated procedures and the competitive dialogue, may be shortened by seven days.

6. The time limits for receipt of tenders referred to in paragraphs 2 and 3(b) may be reduced by five days where the contracting authority offers unrestricted and full direct access by electronic means to the contract documents and any supplementary documents from the date of publication of the notice in accordance with Annex VIII, specifying in the text of the notice the internet address at which this documentation is accessible.

This reduction may be added to that referred to in paragraph 5.

7. If, for whatever reason, the specifications and the supporting documents or additional information, although requested in good time, are not supplied within the time limits set in Articles 39 and 40, or where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time limits for the receipt of tenders shall be extended so that all economic operators concerned may be aware of all the information needed to produce tenders.

8. In the case of restricted procedures and negotiated procedures with publication of a contract notice referred to in Article 30, where urgency renders impracticable the time limits laid down in this Article, contracting authorities may fix:

- (a) a time limit for the receipt of requests to participate which may not be less than 15 days from the date on which the contract notice was sent, or less than 10 days if the notice was sent by electronic means, in accordance with the format and procedure for sending notices indicated in point 3 of Annex VIII;
- (b) and, in the case of restricted procedures, a time limit for the receipt of tenders which shall be not less than 10 days from the date of the invitation to tender.

#### Article 39

#### **Open procedures: Specifications, additional documents and information**

1. In open procedures, where contracting authorities do not offer unrestricted and full direct access by electronic means in accordance with Article 38(6) to the specifications and any supporting documents, the specifications and supplementary documents shall be sent to economic operators within six days of receipt of the request to participate, provided that the

request was made in good time before the deadline for the submission of tenders.

2. Provided that it has been requested in good time, additional information relating to the specifications and any supporting documents shall be supplied by the contracting authorities or competent departments not later than six days before the deadline fixed for the receipt of tenders.

### Section 3

#### Information content and means of transmission

#### Article 40

#### **Invitations to submit a tender, participate in the dialogue or negotiate**

1. In restricted procedures, competitive dialogue procedures and negotiated procedures with publication of a contract notice within the meaning of Article 30, contracting authorities shall simultaneously and in writing invite the selected candidates to submit their tenders or to negotiate or, in the case of a competitive dialogue, to take part in the dialogue.

2. The invitation to the candidates shall include either:

- a copy of the specifications or of the descriptive document and any supporting documents, or
- a reference to accessing the specifications and the other documents indicated in the first indent, when they are made directly available by electronic means in accordance with Article 38(6).

3. Where an entity other than the contracting authority responsible for the award procedure has the specifications, the descriptive document and/or any supporting documents, the invitation shall state the address from which those specifications, that descriptive document and those documents may be requested and, if appropriate, the deadline for requesting such documents, and the sum payable for obtaining them and any payment procedures. The competent department shall send that documentation to the economic operator without delay upon receipt of a request.

4. The additional information on the specifications, the descriptive document or the supporting documents shall be sent by the contracting authority or the competent department not less than six days before the deadline fixed for the receipt of tenders, provided that it is requested in good time. In the event of a restricted or an accelerated procedure, that period shall be four days.

5. In addition, the invitation to submit a tender, to participate in the dialogue or to negotiate must contain at least:

- (a) a reference to the contract notice published;

- (b) the deadline for the receipt of the tenders, the address to which the tenders must be sent and the language or languages in which the tenders must be drawn up;
- (c) in the case of competitive dialogue the date and the address set for the start of consultation and the language or languages used;
- (d) a reference to any possible adjoining documents to be submitted, either in support of verifiable declarations by the tenderer in accordance with Article 44, or to supplement the information referred to in that Article, and under the conditions laid down in Articles 47 and 48;
- (e) the relative weighting of criteria for the award of the contract or, where appropriate, the descending order of importance for such criteria, if they are not given in the contract notice, the specifications or the descriptive document.

However, in the case of contracts awarded in accordance with the rules laid down in Article 29, the information referred to in (b) above shall not appear in the invitation to participate in the dialogue but it shall appear in the invitation to submit a tender.

#### Article 41

##### Informing candidates and tenderers

1. Contracting authorities shall as soon as possible inform candidates and tenderers of decisions reached concerning the conclusion of a framework agreement, the award of the contract or admittance to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement or award a contract for which there has been a call for competition or to recommence the procedure or implement a dynamic purchasing system; that information shall be given in writing upon request to the contracting authorities.
2. On request from the party concerned, the contracting authority shall as quickly as possible inform:
  - any unsuccessful candidate of the reasons for the rejection of his application,
  - any unsuccessful tenderer of the reasons for the rejection of his tender, including, for the cases referred to in Article 23, paragraphs 4 and 5, the reasons for its decision of non-equivalence or its decision that the works, supplies or services do not meet the performance or functional requirements,
  - any tenderer who has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework agreement.

The time taken may in no circumstances exceed 15 days from receipt of the written request.

3. However, contracting authorities may decide to withhold certain information referred to in paragraph 1, regarding the contract award, the conclusion of framework agreements or admittance to a dynamic purchasing system where the release of such information would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between them.

#### Section 4

##### Communication

#### Article 42

##### Rules applicable to communication

1. All communication and information exchange referred to in this Title may be by post, by fax, by electronic means in accordance with paragraphs 4 and 5, by telephone in the cases and circumstances referred to in paragraph 6, or by a combination of those means, according to the choice of the contracting authority.
2. The means of communication chosen must be generally available and thus not restrict economic operators' access to the tendering procedure.
3. Communication and the exchange and storage of information shall be carried out in such a way as to ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved, and that the contracting authorities examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.
4. The tools to be used for communicating by electronic means, as well as their technical characteristics, must be non-discriminatory, generally available and interoperable with the information and communication technology products in general use.
5. The following rules are applicable to devices for the electronic transmission and receipt of tenders and to devices for the electronic receipt of requests to participate:
  - (a) information regarding the specifications necessary for the electronic submission of tenders and requests to participate, including encryption, shall be available to interested parties. Moreover, the devices for the electronic receipt of tenders and requests to participate shall conform to the requirements of Annex X;
  - (b) Member States may, in compliance with Article 5 of Directive 1999/93/EC, require that electronic tenders be accompanied by an advanced electronic signature in conformity with paragraph 1 thereof;

- (c) Member States may introduce or maintain voluntary accreditation schemes aiming at enhanced levels of certification service provision for these devices;
- (d) tenderers or candidates shall undertake to submit, before expiry of the time limit laid down for submission of tenders or requests to participate, the documents, certificates and declarations referred to in Articles 45 to 50 and Article 52 if they do not exist in electronic format.

6. The following rules shall apply to the transmission of requests to participate:

- (a) requests to participate in procedures for the award of public contracts may be made in writing or by telephone;
- (b) where requests to participate are made by telephone, a written confirmation must be sent before expiry of the time limit set for their receipt;
- (c) contracting authorities may require that requests for participation made by fax must be confirmed by post or by electronic means, where this is necessary for the purposes of legal proof. Any such requirement, together with the time limit for sending confirmation by post or electronic means, must be stated by the contracting authority in the contract notice.

#### Section 5

##### Reports

##### Article 43

#### Content of reports

For every contract, framework agreement, and every establishment of a dynamic purchasing system, the contracting authorities shall draw up a written report which shall include at least the following:

- (a) the name and address of the contracting authority, the subject-matter and value of the contract, framework agreement or dynamic purchasing system;
- (b) the names of the successful candidates or tenderers and the reasons for their selection;
- (c) the names of the candidates or tenderers rejected and the reasons for their rejection;
- (d) the reasons for the rejection of tenders found to be abnormally low;
- (e) the name of the successful tenderer and the reasons why his tender was selected and, if known, the share of the contract or framework agreement which the successful tenderer intends to subcontract to third parties;
- (f) for negotiated procedures, the circumstances referred to in Articles 30 and 31 which justify the use of these procedures;

(g) as far as the competitive dialogue is concerned, the circumstances as laid down in Article 29 justifying the use of this procedure;

(h) if necessary, the reasons why the contracting authority has decided not to award a contract or framework agreement or to establish a dynamic purchasing system.

The contracting authorities shall take appropriate steps to document the progress of award procedures conducted by electronic means.

The report, or the main features of it, shall be communicated to the Commission if it so requests.

#### 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. Contracts shall be awarded on the basis of the criteria laid down in Articles 53 and 55, taking into account Article 24, after the suitability of the economic operators not excluded under Articles 45 and 46 has been checked by contracting authorities in accordance with the criteria of economic and financial standing, of professional and technical knowledge or ability referred to in Articles 47 to 52, and, where appropriate, with the non-discriminatory rules and criteria referred to in paragraph 3.

2. The contracting authorities may require candidates and tenderers to meet minimum capacity levels in accordance with Articles 47 and 48.

The extent of the information referred to in Articles 47 and 48 and the minimum levels of ability required for a specific contract must be related and proportionate to the subject-matter of the contract.

These minimum levels shall be indicated in the contract notice.

3. In restricted procedures, negotiated procedures with publication of a contract notice and in the competitive dialogue procedure, contracting authorities may limit the number of suitable candidates they will invite to tender, to negotiate or to conduct a dialogue with, provided a sufficient number of suitable candidates is available. The contracting authorities shall indicate in the contract notice the objective and non-discriminatory criteria or rules they intend to apply, the minimum number of candidates they intend to invite and, where appropriate, the maximum number.

In the restricted procedure the minimum shall be five. In the negotiated procedure with publication of a contract notice and the competitive dialogue procedure the minimum shall be three. In any event the number of candidates invited shall be sufficient to ensure genuine competition.

The contracting authorities shall invite a number of candidates at least equal to the minimum number set in advance. Where the number of candidates meeting the selection criteria and the minimum levels of ability is below the minimum number, the contracting authority may continue the procedure by inviting the candidate(s) with the required capabilities. In the context of this same procedure, the contracting authority may not include other economic operators who did not request to participate, or candidates who do not have the required capabilities.

4. Where the contracting authorities exercise the option of reducing the number of solutions to be discussed or of tenders to be negotiated, as provided for in Articles 29(4) and 30(4), they shall do so by applying the award criteria stated in the contract notice, in the specifications or in the descriptive document. In the final stage, the number arrived at shall make for genuine competition insofar as there are enough solutions or suitable candidates.

## Section 2

### Criteria for qualitative selection

#### Article 45

##### **Personal situation of the candidate or tenderer**

1. Any candidate or tenderer who has been the subject of a conviction by final judgment of which the contracting authority is aware for one or more of the reasons listed below shall be excluded from participation in a public contract:

- (a) participation in a criminal organisation, as defined in Article 2(1) of Council Joint Action 98/733/JHA <sup>(1)</sup>;
- (b) corruption, as defined in Article 3 of the Council Act of 26 May 1997 <sup>(2)</sup> and Article 3(1) of Council Joint Action 98/742/JHA <sup>(3)</sup> respectively;
- (c) fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities <sup>(4)</sup>;
- (d) money laundering, as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering <sup>(5)</sup>.

Member States shall specify, in accordance with their national law and having regard for Community law, the implementing conditions for this paragraph.

<sup>(1)</sup> OJ L 351, 29.12.1998, p. 1.

<sup>(2)</sup> OJ C 195, 25.6.1997, p. 1.

<sup>(3)</sup> OJ L 358, 31.12.1998, p. 2.

<sup>(4)</sup> OJ C 316, 27.11.1995, p. 48.

<sup>(5)</sup> OJ L 166, 28.6.1991, p. 77. Directive as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 (OJ L 344, 28.12.2001, p. 76).

They may provide for a derogation from the requirement referred to in the first subparagraph for overriding requirements in the general interest.

For the purposes of this paragraph, the contracting authorities shall, where appropriate, ask candidates or tenderers to supply the documents referred to in paragraph 3 and may, where they have doubts concerning the personal situation of such candidates or tenderers, also apply to the competent authorities to obtain any information they consider necessary on the personal situation of the candidates or tenderers concerned. Where the information concerns a candidate or tenderer established in a State other than that of the contracting authority, the contracting authority may seek the cooperation of the competent authorities. Having regard for the national laws of the Member State where the candidates or tenderers are established, such requests shall relate to legal and/or natural persons, including, if appropriate, company directors and any person having powers of representation, decision or control in respect of the candidate or tenderer.

2. Any economic operator may be excluded from participation in a contract where that economic operator:

- (a) is bankrupt or is being wound up, where his affairs are being administered by the court, where he has entered into an arrangement with creditors, where he has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;
- (b) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or of an arrangement with creditors or of any other similar proceedings under national laws and regulations;
- (c) has been convicted by a judgment which has the force of res judicata in accordance with the legal provisions of the country of any offence concerning his professional conduct;
- (d) has been guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate;
- (e) has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;
- (f) has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;

(g) is guilty of serious misrepresentation in supplying the information required under this Section or has not supplied such information.

Member States shall specify, in accordance with their national law and having regard for Community law, the implementing conditions for this paragraph.

3. Contracting authorities shall accept the following as sufficient evidence that none of the cases specified in paragraphs 1 or 2(a), (b), (c), (e) or (f) applies to the economic operator:

- (a) as regards paragraphs 1 and 2(a), (b) and (c), the production of an extract from the 'judicial record' or, failing that, of an equivalent document issued by a competent judicial or administrative authority in the country of origin or the country whence that person comes showing that these requirements have been met;
- (b) as regards paragraph 2(e) and (f), a certificate issued by the competent authority in the Member State concerned.

Where the country in question does not issue such documents or certificates, or where these do not cover all the cases specified in paragraphs 1 and 2(a), (b) and (c), they may be replaced by a declaration on oath or, in Member States where there is no provision for declarations on oath, by a solemn declaration made by the person concerned before a competent judicial or administrative authority, a notary or a competent professional or trade body, in the country of origin or in the country whence that person comes.

4. Member States shall designate the authorities and bodies competent to issue the documents, certificates or declarations referred to in paragraph 3 and shall inform the Commission thereof. Such notification shall be without prejudice to data protection law.

#### Article 46

##### **Suitability to pursue the professional activity**

Any economic operator wishing to take part in a public contract may be requested to prove its enrolment, as prescribed in his Member State of establishment, on one of the professional or trade registers or to provide a declaration on oath or a certificate as described in Annex IX A for public works contracts, in Annex IX B for public supply contracts and in Annex IX C for public service contracts.

In procedures for the award of public service contracts, insofar as candidates or tenderers have to possess a particular authorisation or to be members of a particular organisation in order to be able to perform in their country of origin the service concerned, the contracting authority may require them to prove that they hold such authorisation or membership.

#### Article 47

##### **Economic and financial standing**

1. Proof of the economic operator's economic and financial standing may, as a general rule, be furnished by one or more of the following references:

- (a) appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;
- (b) the presentation of balance-sheets or extracts from the balance-sheets, where publication of the balance-sheet is required under the law of the country in which the economic operator is established;
- (c) a statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the contract for a maximum of the last three financial years available, depending on the date on which the undertaking was set up or the economic operator started trading, as far as the information on these turnovers is available.

2. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing an undertaking by those entities to that effect.

3. Under the same conditions, a group of economic operators as referred to in Article 4 may rely on the capacities of participants in the group or of other entities.

4. Contracting authorities shall specify, in the contract notice or in the invitation to tender, which reference or references mentioned in paragraph 1 they have chosen and which other references must be provided.

5. If, for any valid reason, the economic operator is unable to provide the references requested by the contracting authority, he may prove his economic and financial standing by any other document which the contracting authority considers appropriate.

#### Article 48

##### **Technical and/or professional ability**

1. The technical and/or professional abilities of the economic operators shall be assessed and examined in accordance with paragraphs 2 and 3.

2. Evidence of the economic operators' technical abilities may be furnished by one or more of the following means according to the nature, quantity or importance, and use of the works, supplies or services:



- (a) (i) a list of the works carried out over the past five years, accompanied by certificates of satisfactory execution for the most important works. These certificates shall indicate the value, date and site of the works and shall specify whether they were carried out according to the rules of the trade and properly completed. Where appropriate, the competent authority shall submit these certificates to the contracting authority direct;
- (ii) a list of the principal deliveries effected or the main services provided in the past three years, with the sums, dates and recipients, whether public or private, involved. Evidence of delivery and services provided shall be given:
- where the recipient was a contracting authority, in the form of certificates issued or countersigned by the competent authority,
  - where the recipient was a private purchaser, by the purchaser's certification or, failing this, simply by a declaration by the economic operator;
- (b) an indication of the technicians or technical bodies involved, whether or not belonging directly to the economic operator's undertaking, especially those responsible for quality control and, in the case of public works contracts, those upon whom the contractor can call in order to carry out the work;
- (c) a description of the technical facilities and measures used by the supplier or service provider for ensuring quality and the undertaking's study and research facilities;
- (d) where the products or services to be supplied are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authorities or on their behalf by a competent official body of the country in which the supplier or service provider is established, subject to that body's agreement, on the production capacities of the supplier or the technical capacity of the service provider and, if necessary, on the means of study and research which are available to it and the quality control measures it will operate;
- (e) the educational and professional qualifications of the service provider or contractor and/or those of the undertaking's managerial staff and, in particular, those of the person or persons responsible for providing the services or managing the work;
- (f) for public works contracts and public services contracts, and only in appropriate cases, an indication of the environmental management measures that the economic operator will be able to apply when performing the contract;
- (g) a statement of the average annual manpower of the service provider or contractor and the number of managerial staff for the last three years;
- (h) a statement of the tools, plant or technical equipment available to the service provider or contractor for carrying out the contract;
- (i) an indication of the proportion of the contract which the services provider intends possibly to subcontract;
- (j) with regard to the products to be supplied:
- (i) samples, descriptions and/or photographs, the authenticity of which must be certified if the contracting authority so requests;
  - (ii) certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of products clearly identified by references to specifications or standards.
3. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for the execution of the contract, for example, by producing an undertaking by those entities to place the necessary resources at the disposal of the economic operator.
4. Under the same conditions a group of economic operators as referred to Article 4 may rely on the abilities of participants in the group or in other entities.
5. In procedures for awarding public contracts having as their object supplies requiring siting or installation work, the provision of services and/or the execution of works, the ability of economic operators to provide the service or to execute the installation or the work may be evaluated in particular with regard to their skills, efficiency, experience and reliability.
6. The contracting authority shall specify, in the notice or in the invitation to tender, which references under paragraph 2 it wishes to receive.

*Article 49***Quality assurance standards**

Should they require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, contracting authorities shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators.

*Article 50***Environmental management standards**

Should contracting authorities, in the cases referred to in Article 48(2)(f), require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain environmental management standards, they shall refer to the Community Eco-Management and Audit Scheme (EMAS) or to environmental management standards based on the relevant European or international standards certified by bodies conforming to Community law or the relevant European or international standards concerning certification. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators.

*Article 51***Additional documentation and information**

The contracting authority may invite economic operators to supplement or clarify the certificates and documents submitted pursuant to Articles 45 to 50.

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

1. Member States may introduce either official lists of approved contractors, suppliers or service providers or certification by certification bodies established in public or private law.

Member States shall adapt the conditions for registration on these lists and for the issue of certificates by certification bodies to the provisions of Article 45(1), Article 45(2)(a) to (d) and (g), Articles 46, Article 47(1), (4) and (5), Article 48(1), (2), (5) and (6), Article 49 and, where appropriate, Article 50.

Member States shall also adapt them to Article 47(2) and Article 48(3) as regards applications for registration submitted by economic operators belonging to a group and claiming resources made available to them by the other companies in the group. In such case, these operators must prove to the authority establishing the official list that they will have these resources at their disposal throughout the period of validity of the certificate attesting to their being registered in the official list and that throughout the same period these companies continue to fulfil the qualitative selection requirements laid down in the Articles referred to in the second subparagraph on which operators rely for their registration.

2. Economic operators registered on the official lists or having a certificate may, for each contract, submit to the contracting authority a certificate of registration issued by the competent authority or the certificate issued by the competent certification body. The certificates shall state the references which enabled them to be registered in the list/to obtain certification and the classification given in that list.

3. Certified registration on official lists by the competent bodies or a certificate issued by the certification body shall not, for the purposes of the contracting authorities of other Member States, constitute a presumption of suitability except as regards Articles 45(1) and (2)(a) to (d) and (g), Article 46, Article 47(1)(b) and (c), and Article 48(2)(a)(i), (b), (e), (g) and (h) in the case of contractors, (2)(a)(ii), (b), (c), (d) and (j) in the case of suppliers and 2(a)(ii) and (c) to (i) in the case of service providers.

4. Information which can be deduced from registration on official lists or certification may not be questioned without justification. With regard to the payment of social security contributions and taxes, an additional certificate may be required of any registered economic operator whenever a contract is offered.

The contracting authorities of other Member States shall apply paragraph 3 and the first subparagraph of this paragraph only in favour of economic operators established in the Member State holding the official list.

5. For any registration of economic operators of other Member States in an official list or for their certification by the bodies referred to in paragraph 1, no further proof or statements can be required other than those requested of national economic operators and, in any event, only those provided for under Articles 45 to 49 and, where appropriate, Article 50.

However, economic operators from other Member States may not be obliged to undergo such registration or certification in order to participate in a public contract. The contracting authorities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other equivalent means of proof.

6. Economic operators may ask at any time to be registered in an official list or for a certificate to be issued. They must be informed within a reasonably short period of time of the decision of the authority drawing up the list or of the competent certification body.

7. The certification bodies referred to in paragraph 1 shall be bodies complying with European certification standards.

8. Member States which have official lists or certification bodies as referred to in paragraph 1 shall be obliged to inform the Commission and the other Member States of the address of the body to which applications should be sent.

### Section 3

#### Award of the contract

#### Article 53

##### Contract award criteria

1. Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, the criteria on which the contracting authorities shall base the award of public contracts shall be either:

- (a) when the award is made to the tender most economically advantageous from the point of view of the contracting authority, various criteria linked to the subject-matter of the public contract in question, for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion, or
- (b) the lowest price only.

2. Without prejudice to the provisions of the third subparagraph, in the case referred to in paragraph 1(a) the contracting authority shall specify in the contract notice or in the contract documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.

Those weightings can be expressed by providing for a range with an appropriate maximum spread.

Where, in the opinion of the contracting authority, weighting is not possible for demonstrable reasons, the contracting authority shall indicate in the contract notice or contract documents or, in the case of a competitive dialogue, in the descriptive document, the criteria in descending order of importance.

#### Article 54

##### Use of electronic auctions

1. Member States may provide that contracting authorities may use electronic auctions.

2. In open, restricted or negotiated procedures in the case referred to in Article 30(1)(a), the contracting authorities may decide that the award of a public contract shall be preceded by an electronic auction when the contract specifications can be established with precision.

In the same circumstances, an electronic auction may be held on the reopening of competition among the parties to a framework agreement as provided for in the second indent of the second subparagraph of Article 32(4) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 33.

The electronic auction shall be based:

- either solely on prices when the contract is awarded to the lowest price,
- or on prices and/or on the new values of the features of the tenders indicated in the specification when the contract is awarded to the most economically advantageous tender.

3. Contracting authorities which decide to hold an electronic auction shall state that fact in the contract notice.

The specifications shall include, *inter alia*, the following details:

- (a) the features, the values for which will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;
- (b) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;
- (c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;
- (d) the relevant information concerning the electronic auction process;
- (e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
- (f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

4. Before proceeding with an electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with the award criterion/criteria set and with the weighting fixed for them.

All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and/or new values; the invitation shall contain all relevant information concerning individual connection to the electronic equipment being used and shall state the date and time of the start of the electronic auction. The electronic auction may take place in a number of successive phases. The electronic auction may not start sooner than two working days after the date on which invitations are sent out.

5. When the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied by the outcome of a full evaluation of the relevant tenderer, carried out in accordance with the weighting provided for in the first subparagraph of Article 53(2).

The invitation shall also state the mathematical formula to be used in the electronic auction to determine automatic rerankings on the basis of the new prices and/or new values submitted. That formula shall incorporate the weighting of all the criteria fixed to determine the most economically advantageous tender, as indicated in the contract notice or in the specifications; for that purpose, any ranges shall, however, be reduced beforehand to a specified value.

Where variants are authorised, a separate formula shall be provided for each variant.

6. Throughout each phase of an electronic auction the contracting authorities shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. They may also communicate other information concerning other prices or values submitted, provided that that is stated in the specifications. They may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.

7. Contracting authorities shall close an electronic auction in one or more of the following manners:

- (a) in the invitation to take part in the auction they shall indicate the date and time fixed in advance;
- (b) when they receive no more new prices or new values which meet the requirements concerning minimum differences. In that event, the contracting authorities shall state in the invitation to take part in the auction the time which they will allow to elapse after receiving the last submission before they close the electronic auction;
- (c) when the number of phases in the auction, fixed in the invitation to take part in the auction, has been completed.

When the contracting authorities have decided to close an electronic auction in accordance with subparagraph (c), possibly in combination with the arrangements laid down in subparagraph (b), the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

8. After closing an electronic auction contracting authorities shall award the contract in accordance with Article 53 on the basis of the results of the electronic auction.

Contracting authorities may not have improper recourse to electronic auctions nor may they use them in such a way as to prevent, restrict or distort competition or to change the subject-matter of the contract, as put up for tender in the published contract notice and defined in the specification.

#### Article 55

#### Abnormally low tenders

1. If, for a given contract, tenders appear to be abnormally low in relation to the goods, works or services, the contracting authority shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant.

Those details may relate in particular to:

- (a) the economics of the construction method, the manufacturing process or the services provided;
- (b) the technical solutions chosen and/or any exceptionally favourable conditions available to the tenderer for the execution of the work, for the supply of the goods or services;
- (c) the originality of the work, supplies or services proposed by the tenderer;
- (d) compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed;
- (e) the possibility of the tenderer obtaining State aid.

2. The contracting authority shall verify those constituent elements by consulting the tenderer, taking account of the evidence supplied.

3. Where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender can be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was granted legally. Where the contracting authority rejects a tender in these circumstances, it shall inform the Commission of that fact.

## TITLE III

## RULES ON PUBLIC WORKS CONCESSIONS

## CHAPTER I

**Rules governing public works concessions**

## Article 56

**Scope**

This Chapter shall apply to all public works concession contracts concluded by the contracting authorities where the value of the contracts is equal to or greater than EUR 6 242 000.

The value shall be calculated in accordance with the rules applicable to public works contracts defined in Article 9.

## Article 57

**Exclusions from the scope**

This Title shall not apply to public works concessions which are awarded:

- (a) in the cases referred to in Articles 13, 14 and 15 of this Directive in respect of public works contracts;
- (b) by contracting authorities exercising one or more of the activities referred to in Articles 3 to 7 of Directive 2004/17/EC where those concessions are awarded for carrying out those activities.

However, this Directive shall continue to apply to public works concessions awarded by contracting authorities carrying out one or more of the activities referred to in Article 6 of Directive 2004/17/EC and awarded for those activities, insofar as the Member State concerned takes advantage of the option referred to in the second subparagraph of Article 71 thereof to defer its application.

## Article 58

**Publication of the notice concerning public works concessions**

1. Contracting authorities which wish to award a public works concession contract shall make known their intention by means of a notice.
2. Notices of public works concessions shall contain the information referred to in Annex VII C and, where appropriate, any other information deemed useful by the contracting authority, in accordance with the standard forms adopted by the Commission pursuant to the procedure in Article 77(2).
3. Notices shall be published in accordance with Article 36(2) to (8).

4. Article 37 on the publication of notices shall also apply to public works concessions.

## Article 59

**Time limit**

When contracting authorities resort to a public works concession, the time limit for the presentation of applications for the concession shall be not less than 52 days from the date of dispatch of the notice, except where Article 38(5) applies.

Article 38(7) shall apply.

## Article 60

**Subcontracting**

The contracting authority may either:

- (a) require the concessionaire to award contracts representing a minimum of 30 % of the total value of the work for which the concession contract is to be awarded, to third parties, at the same time providing the option for candidates to increase this percentage, this minimum percentage being specified in the concession contract, or
- (b) request the candidates for concession contracts to specify in their tenders the percentage, if any, of the total value of the work for which the concession contract is to be awarded which they intend to assign to third parties.

## Article 61

**Awarding of additional works to the concessionaire**

This Directive shall not apply to additional works not included in the concession project initially considered or in the initial contract but which have, through unforeseen circumstances, become necessary for the performance of the work described therein, which the contracting authority has awarded to the concessionaire, on condition that the award is made to the economic operator performing such work:

- when such additional works cannot be technically or economically separated from the initial contract without major inconvenience to the contracting authorities, or
- when such works, although separable from the performance of the initial contract, are strictly necessary for its completion.

However, the aggregate value of contracts awarded for additional works may not exceed 50 % of the amount of the original works concession contract.

## CHAPTER II

### **Rules on contracts awarded by concessionaires which are contracting authorities**

#### *Article 62*

#### **Applicable rules**

Where the concessionaire is a contracting authority as referred to in Article 1(9), it shall comply with the provisions laid down by this Directive for public works contracts in the case of works to be carried out by third parties.

## CHAPTER III

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

#### *Article 63*

#### **Advertising rules: threshold and exceptions**

1. The Member States shall take the necessary measures to ensure that public works concessionaires which are not contracting authorities apply the advertising rules defined in Article 64 when awarding works contracts to third parties where the value of such contracts is equal to or greater than EUR 6 242 000.

Advertising shall not, however, be required where a works contract satisfies the conditions listed in Article 31.

The values of contracts shall be calculated in accordance with the rules applicable to public works contracts laid down in Article 9.

2. Groups of undertakings which have been formed to obtain the concession or undertakings related to them shall not be considered third parties.

'Related undertaking' shall mean any undertaking over which the concessionaire can exert a dominant influence, whether directly or indirectly, or any undertaking which can exert a dominant influence on the concessionaire or which, as the concessionaire, is subject to the dominant influence of another undertaking as a result of ownership, financial participation or

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

- (a) holds a majority of the undertaking's subscribed capital;
- (b) controls a majority of the votes attached to the shares issued by the undertaking; or
- (c) can appoint more than half of the undertaking's administrative, management or supervisory body.

The exhaustive list of such undertakings shall be included in the application for the concession. That list shall be brought up to date following any subsequent changes in the relationship between the undertakings.

#### *Article 64*

#### **Publication of the notice**

1. Works concessionaires which are not contracting authorities and which wish to award works contracts to a third party shall make known their intention by way of a notice.
2. Notices shall contain the information referred to in Annex VII C and, where appropriate, any other information deemed useful by the works concessionaire, in accordance with the standard form adopted by the Commission in accordance with the procedure in Article 77(2).
3. The notice shall be published in accordance with Article 36(2) to (8).
4. Article 37 on the voluntary publication of notices shall also apply.

#### *Article 65*

#### **Time limit for the receipt of requests to participate and receipt of tenders**

In works contracts awarded by a works concessionaire which is not a contracting authority, the time limit for the receipt of requests to participate, fixed by the concessionaire, shall be not less than 37 days from the date on which the contract notice was dispatched and the time limit for the receipt of tenders not less than 40 days from the date on which the contract notice or the invitation to tender was dispatched.

Article 38(5), (6) and (7) shall apply.

## TITLE IV

## RULES GOVERNING DESIGN CONTESTS

## Article 66

**General provisions**

1. The rules for the organisation of design contests shall be in conformity with Articles 66 to 74 and shall be communicated to those interested in participating in the contest.

2. The admission of participants to design contests shall not be limited:

- (a) by reference to the territory or part of the territory of a Member State;
- (b) on the grounds that, under the law of the Member State in which the contest is organised, they would be required to be either natural or legal persons.

## Article 67

**Scope**

1. In accordance with this Title, design contests shall be organised by:

- (a) contracting authorities which are listed as central government authorities in Annex IV, starting from a threshold equal to or greater than EUR 162 000;
- (b) contracting authorities not listed in Annex IV, starting from a threshold equal to or greater than EUR 249 000;
- (c) by all the contracting authorities, starting from a threshold equal to or greater than EUR 249 000 where contests concern services in category 8 of Annex II A, category 5 telecommunications services, the positions of which in the CPV are equivalent to reference Nos CPC 7524, 7525 and 7526 and/or services listed in Annex II B.

2. This Title shall apply to:

- (a) design contests organised as part of a procedure leading to the award of a public service contract;
- (b) design contests with prizes and/or payments to participants.

In the cases referred to in (a) the threshold refers to the estimated value net of VAT of the public services contract, including any possible prizes and/or payments to participants.

In the cases referred to in (b), the threshold refers to the total amount of the prizes and payments, including the estimated value net of VAT of the public services contract which might

subsequently be concluded under Article 31(3) if the contracting authority does not exclude such an award in the contest notice.

## Article 68

**Exclusions from the scope**

This Title shall not apply to:

- (a) design contests within the meaning of Directive 2004/17/EC which are organised by contracting authorities exercising one or more of the activities referred to in Articles 3 to 7 of that Directive and are organised for the pursuit of such activities; nor shall it apply to contests excluded from the scope of this Directive.

However, this Directive shall continue to apply to design contests awarded by contracting authorities carrying out one or more of the activities referred to in Article 6 of Directive 2004/17/EC and awarded for those activities, insofar as the Member State concerned takes advantage of the option referred to in the second subparagraph of Article 71 thereof to defer its application;

- (b) contests which are organised in the same cases as those referred to in Articles 13, 14 and 15 of this Directive for public service contracts.

## Article 69

**Notices**

1. Contracting authorities which wish to carry out a design contest shall make known their intention by means of a contest notice.

2. Contracting authorities which have held a design contest shall send a notice of the results of the contest in accordance with Article 36 and must be able to prove the date of dispatch.

Where the release of information on the outcome of the contest would impede law enforcement, be contrary to the public interest, prejudice the legitimate commercial interests of a particular enterprise, whether public or private, or might prejudice fair competition between service providers, such information need not be published.

3. Article 37 concerning publication of notices shall also apply to contests.

*Article 70***Form and manner of publication of notices of contests**

1. The notices referred to in Article 69 shall contain the information referred to in Annex VII D in accordance with the standard model notices adopted by the Commission in accordance with the procedure in Article 77(2).

2. The notices shall be published in accordance with Article 36(2) to (8).

*Article 71***Means of communication**

1. Article 42(1), (2) and (4) shall apply to all communications relating to contests.

2. Communications, exchanges and the storage of information shall be such as to ensure that the integrity and the confidentiality of all information communicated by the participants in a contest are preserved and that the jury ascertains the contents of plans and projects only after the expiry of the time limit for their submission.

3. The following rules shall apply to devices for the electronic receipt of plans and projects:

- (a) the information relating to the specifications which is necessary for the presentation of plans and projects by electronic means, including encryption, shall be available to the parties concerned. In addition, the devices for the electronic receipt of plans and projects shall comply with the requirements of Annex X;
- (b) the Member States may introduce or maintain voluntary arrangements for accreditation intended to improve the level of the certification service provided for such devices.

*Article 72***Selection of competitors**

Where design contests are restricted to a limited number of participants, the contracting authorities shall lay down clear

and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.

*Article 73***Composition of the jury**

The jury shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required from participants in a contest, at least a third of the members of the jury shall have that qualification or an equivalent qualification.

*Article 74***Decisions of the jury**

1. The jury shall be autonomous in its decisions or opinions.

2. It shall examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.

3. It shall record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points which may need clarification.

4. Anonymity must be observed until the jury has reached its opinion or decision.

5. Candidates may be invited, if need be, to answer questions which the jury has recorded in the minutes to clarify any aspects of the projects.

6. Complete minutes shall be drawn up of the dialogue between jury members and candidates.

**TITLE V****STATISTICAL OBLIGATIONS, EXECUTORY POWERS AND FINAL PROVISIONS***Article 75***Statistical obligations**

In order to permit assessment of the results of applying this Directive, Member States shall forward to the Commission a statistical report, prepared in accordance with Article 76, separately addressing public supply, services and works contracts awarded by contracting authorities during the preceding year, by no later than 31 October of each year.

*Article 76***Content of statistical report**

1. For each contracting authority listed in Annex IV, the statistical report shall detail at least:

- (a) the number and value of awarded contracts covered by this Directive;



- (b) the number and total value of contracts awarded pursuant to derogations to the Agreement.

As far as possible, the data referred to in point (a) of the first subparagraph shall be broken down by:

- (a) the contract award procedures used; and
- (b) for each of these procedures, works as given in Annex I and products and services as given in Annex II identified by category of the CPV nomenclature;
- (c) the nationality of the economic operator to which the contract was awarded.

Where the contracts have been concluded according to the negotiated procedure, the data referred to in point (a) of the first subparagraph shall also be broken down according to the circumstances referred to in Articles 30 and 31 and shall specify the number and value of contracts awarded, by Member State and third country of the successful contractor.

2. For each category of contracting authority which is not given in Annex IV, the statistical report shall detail at least:

- (a) the number and value of the contracts awarded, broken down in accordance with the second subparagraph of paragraph 1;
- (b) the total value of contracts awarded pursuant to derogations to the Agreement.

3. The statistical report shall set out any other statistical information which is required under the Agreement.

The information referred to in the first subparagraph shall be determined pursuant to the procedure under Article 77(2).

#### Article 77

##### Advisory Committee

1. The Commission shall be assisted by the Advisory Committee for Public Contracts set up by Article 1 of Decision 71/306/EEC<sup>(1)</sup> (hereinafter referred to as 'the Committee').

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, in compliance with Article 8 thereof.

3. The Committee shall adopt its rules of procedure.

#### Article 78

##### Revision of the thresholds

1. The Commission shall verify the thresholds established in Article 7 every two years from the entry into force of this

Directive and shall, if necessary, revise them in accordance with the procedure laid down in Article 77(2).

The calculation of the value of these thresholds shall be based on the average daily value of the euro, expressed in SDRs, over the 24 months terminating on the last day of August preceding the revision with effect from 1 January. The value of the thresholds thus revised shall, where necessary, be rounded down to the nearest thousand euro so as to ensure that the thresholds in force provided for by the Agreement, expressed in SDRs, are observed.

2. At the same time as the revision under paragraph 1, the Commission, in accordance with the procedure under Article 77(2), shall align:

- (a) the thresholds established in (a) of the first subparagraph of Article 8, in Article 56 and in the first subparagraph of Article 63(1) on the revised threshold applying to public works contracts;
- (b) the thresholds established in (b) of the first subparagraph of Article 8, and in Article 67(1)(a) on the revised threshold applying to public service contracts concluded by the contracting authorities referred to in Annex IV;
- (c) the threshold established in Article 67(1)(b) and (c) on the revised threshold applying to public service contracts awarded by the contracting authorities not included in Annex IV.

3. The value of the thresholds set pursuant to paragraph 1 in the national currencies of the Member States which are not participating in monetary union is normally to be adjusted every two years from 1 January 2004 onwards. The calculation of such value shall be based on the average daily values of those currencies expressed in euro over the 24 months terminating on the last day of August preceding the revision with effect from 1 January.

4. The revised thresholds referred to in paragraph 1 and their corresponding values in the national currencies referred to in paragraph 3 shall be published by the Commission in the *Official Journal of the European Union* at the beginning of the month of November following their revision.

#### Article 79

##### Amendments

1. In accordance with the procedure referred to in Article 77(2), the Commission may amend:

- (a) the technical procedures for the calculation methods set out in the second subparagraph of Article 78(1) and in Article 78(3);

<sup>(1)</sup> OJ L 185, 16.8.1971, p. 15. Decision as amended by Decision 77/63/EEC (OJ L 13, 15.1.1977, p. 15).

- (b) the procedures for the drawing-up, transmission, receipt, translation, collection and distribution of the notices referred to in Articles 35, 58, 64 and 69 and the statistical reports provided for in the fourth subparagraph of Article 35(4), and in Articles 75 and 76;
- (c) the procedures for specific reference to specific positions in the CPV nomenclature in the notices;
- (d) the lists of bodies and categories of bodies governed by public law in Annex III, when, on the basis of the notifications from the Member States, these prove necessary;
- (e) the lists of central government authorities in Annex IV, following the adaptations necessary to give effect to the Agreement;
- (f) the reference numbers in the nomenclature set out in Annex I, insofar as this does not change the material scope of this Directive, and the procedures for reference to particular positions of this nomenclature in the notices;
- (g) the reference numbers in the nomenclature set out in Annex II, insofar as this does not change the material scope of this Directive, and the procedures for reference in the notices to particular positions in this nomenclature within the categories of services listed in the Annex;
- (h) the procedure for sending and publishing data referred to in Annex VIII, on grounds of technical progress or for administrative reasons;
- (i) the technical details and characteristics of the devices for electronic receipt referred to in points (a), (f) and (g) of Annex X.

#### Article 80

### Implementation

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 31 January 2006. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such

reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### Article 81

### Monitoring mechanisms

In conformity with Council 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<sup>(1)</sup>, Member States shall ensure implementation of this Directive by effective, available and transparent mechanisms.

For this purpose they may, among other things, appoint or establish an independent body.

#### Article 82

### Repeals

Directive 92/50/EEC, except for Article 41 thereof, and Directives 93/36/EEC and 93/37/EEC shall be repealed with effect from the date shown in Article 80, without prejudice to the obligations of the Member States concerning the deadlines for transposition and application set out in Annex XI.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex XII.

#### Article 83

### Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

<sup>(1)</sup> OJ L 395, 30.12. 1989, p. 33. Directive as amended by Directive 92/50/EEC.

*Article 84*

**Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 31 March 2004.

*For the European Parliament*

*The President*

P. COX

*For the Council*

*The President*

D. ROCHE

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## ANNEX I

LIST OF THE ACTIVITIES REFERRED TO IN ARTICLE 1(2), POINT (b) <sup>(1)</sup>

NACE <sup>(1)</sup>					
CPV code			SECTION F		CONSTRUCTION
Division	Group	Class	Subject	Notes	
45			Construction	This division includes: construction of new buildings and works, restoring and common repairs	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	This class includes: — demolition of buildings and other structures — clearing of building sites — earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc. — site preparation for mining: — overburden removal and other development and preparation of mineral properties and sites  This class also includes: — building site drainage — drainage of agricultural or forestry land	45110000
		45.12	Test drilling and boring	This class includes: — test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes  This class excludes: — drilling of production oil or gas wells, see 11.20 — water well drilling, see 45.25 — shaft sinking, see 45.25 — oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20	45120000
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000

<sup>(1)</sup> In the event of any difference of interpretation between the CPV and the NACE, the NACE nomenclature will apply.

NACE (1)					
CPV code			SECTION F		CONSTRUCTION
Division	Group	Class	Subject	Notes	
		45.21	General construction of buildings and civil engineering works	<p>This class includes:</p> <ul style="list-style-type: none"> <li>construction of all types of buildings</li> <li>construction of civil engineering constructions:</li> <ul style="list-style-type: none"> <li>bridges, including those for elevated highways, viaducts, tunnels and subways</li> <li>long-distance pipelines, communication and power lines</li> <li>urban pipelines, urban communication and power lines;</li> <li>ancillary urban works</li> </ul> <li>assembly and erection of prefabricated constructions on the site</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>service activities incidental to oil and gas extraction, see 11.20</li> <li>erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28</li> <li>construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23</li> <li>building installation, see 45.3</li> <li>building completion, see 45.4</li> <li>architectural and engineering activities, see 74.20</li> <li>project management for construction, see 74.20</li> </ul>	45210000
		45.22	Erection of roof covering and frames	<p>This class includes:</p> <ul style="list-style-type: none"> <li>erection of roofs</li> <li>roof covering</li> <li>waterproofing</li> </ul>	45220000
		45.23	Construction of highways, roads, airfields and sports facilities	<p>This class includes:</p> <ul style="list-style-type: none"> <li>construction of highways, streets, roads, other vehicular and pedestrian ways</li> <li>construction of railways</li> <li>construction of airfield runways</li> <li>construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations</li> <li>painting of markings on road surfaces and car parks</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>preliminary earth moving, see 45.11</li> </ul>	45230000

NACE (1)					
CPV code			SECTION F		CONSTRUCTION
Division	Group	Class	Subject	Notes	
		45.24	Construction of water projects	This class includes: construction of: waterways, harbour and river works, pleasure ports (marinas), locks, etc. dams and dykes dredging subsurface work	45240000
		45.25	Other construction work involving special trades	This class includes: construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment: construction of foundations, including pile driving water well drilling and construction, shaft sinking erection of non-self-manufactured steel elements steel bending bricklaying and stone setting scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms erection of chimneys and industrial ovens This class excludes: renting of scaffolds without erection and dismantling, see 71.32	45250000
	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	This class includes: installation in buildings or other construction projects of: electrical wiring and fittings telecommunications systems electrical heating systems residential antennas and aerials fire alarms burglar alarm systems lifts and escalators lightning conductors, etc.	45310000

NACE (1)					
CPV code			SECTION F		CONSTRUCTION
Division	Group	Class	Subject	Notes	
		45.32	Insulation work activities	<p>This class includes:</p> <p>installation in buildings or other construction projects of thermal, sound or vibration insulation</p> <p>This class excludes:</p> <p>waterproofing, see 45.22</p>	45320000
		45.33	Plumbing	<p>This class includes:</p> <p>installation in buildings or other construction projects of:</p> <p>plumbing and sanitary equipment</p> <p>gas fittings</p> <p>heating, ventilation, refrigeration or air-conditioning equipment and ducts</p> <p>sprinkler systems</p> <p>This class excludes:</p> <p>installation of electrical heating systems, see 45.31</p>	45330000
		45.34	Other building installation	<p>This class includes:</p> <p>installation of illumination and signalling systems for roads, railways, airports and harbours</p> <p>installation in buildings or other construction projects of fittings and fixtures n.e.c.</p>	45340000
	45.4		Building completion		45400000
		45.41	Plastering	<p>This class includes:</p> <p>application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials</p>	45410000
		45.42	Joinery installation	<p>This class includes:</p> <p>installation of non self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials</p> <p>interior completion such as ceilings, wooden wall coverings, movable partitions, etc.</p> <p>This class excludes:</p> <p>laying of parquet and other wood floor coverings, see 45.43</p>	45420000

NACE <sup>(1)</sup>					
CPV code			SECTION F		CONSTRUCTION
Division	Group	Class	Subject	Notes	
		45.43	Floor and wall covering	This class includes: laying, tiling, hanging or fitting in buildings or other construction projects of: ceramic, concrete or cut stone wall or floor tiles parquet and other wood floor coverings carpets and linoleum floor coverings, including of rubber or plastic terrazzo, marble, granite or slate floor or wall coverings wallpaper	45430000
		45.44	Painting and glazing	This class includes: interior and exterior painting of buildings painting of civil engineering structures installation of glass, mirrors, etc This class excludes: installation of windows, see 45.42	45440000
		45.45	Other building completion	This class includes: installation of private swimming pools steam cleaning, sand blasting and similar activities for building exteriors other building completion and finishing work n.e.c. This class excludes: interior cleaning of buildings and other structures, see 74.70	45450000
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50	Renting of construction or demolition equipment with operator	This class excludes: renting of construction or demolition machinery and equipment without operators, see 71.32	

<sup>(1)</sup> Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1). Regulation as amended by Commission Regulation (EEC) No 761/93 of 24 March 1993 (OJ L 83, 3.4.1993, p. 1).



## ANNEX II

## SERVICES REFERRED TO IN ARTICLE 1(2)(d)

ANNEX II A <sup>(1)</sup>

Category No	Subject	CPC Reference No <sup>(1)</sup>	CPV Reference No
1	Maintenance and repair services	6112, 6122, 633, 886	From 50100000 to 50982000 (except for 50310000 to 50324200 and 50116510-9, 50190000-3, 50229000-6, 50243000-0)
2	Land transport services <sup>(2)</sup> , including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304	From 60112000-6 to 60129300-1 (except 60121000 to 60121600, 60122200-1, 60122230-0), and from 64120000-3 to 64121200-2
3	Air transport services of passengers and freight, except transport of mail	73 (except 7321)	From 62100000-3 to 62300000-5 (except 62121000-6, 62221000-7)
4	Transport of mail by land <sup>(3)</sup> and by air	71235, 7321	60122200-1, 60122230-0 62121000-6, 62221000-7
5	Telecommunications services	752	From 64200000-8 to 64228200-2, 72318000-7, and from 72530000-9 to 72532000-3
6	Financial services: (a) Insurance services (b) Banking and investment services <sup>(4)</sup>	ex 81, 812, 814	From 66100000-1 to 66430000-3 and from 67110000-1 to 67262000-1 <sup>(4)</sup>
7	Computer and related services	84	From 50300000-8 to 50324200-4, From 72100000-6 to 72591000-4 (except 72318000-7 and from 72530000-9 to 72532000-3)
8	Research and development services <sup>(5)</sup>	85	From 73000000-2 to 73300000-5 (except 73200000-4, 73210000-7, 7322000-0)
9	Accounting, auditing and bookkeeping services	862	From 74121000-3 to 74121250-0
10	Market research and public opinion polling services	864	From 74130000-9 to 74133000-0, and 74423100-1, 74423110-4
11	Management consulting services <sup>(6)</sup> and related services	865, 866	From 73200000-4 to 73220000-0, From 74140000-2 to 74150000-5 (except 74142200-8), and 74420000-9, 74421000-6, 74423000-0, 74423200-2, 74423210-5, 74871000-5, 93620000-0

<sup>(1)</sup> In the event of any difference of interpretation between the CPV and the CPC, the CPC nomenclature will apply.

Category No	Subject	CPC Reference No <sup>(1)</sup>	CPV Reference No
12	Architectural services; engineering services and integrated engineering services; urban planning and landscape engineering services; related scientific and technical consulting services; technical testing and analysis services	867	From 74200000-1 to 74276400-8, and from 74310000-5 to 74323100-0, and 74874000-6
13	Advertising services	871	From 74400000-3 to 74422000-3 (except 74420000-9 and 74421000-6)
14	Building-cleaning services and property management services	874, 82201 to 82206	From 70300000-4 to 70340000-6, and from 74710000-9 to 74760000-4
15	Publishing and printing services on a fee or contract basis	88442	From 78000000-7 to 78400000-1
16	Sewage and refuse disposal services; sanitation and similar services	94	From 90100000-8 to 90320000-6, and 50190000-3, 50229000-6, 50243000-0

<sup>(1)</sup> CPC Nomenclature (provisional version), used to define the scope of Directive 92/50/EEC.

<sup>(2)</sup> Except for rail transport services covered by category 18.

<sup>(3)</sup> Except for rail transport services covered by category 18.

<sup>(4)</sup> Except financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services.

Also excluded: services involving the acquisition or rental, by whatever financial procedures, of land, existing buildings, or other immovable property or concerning rights thereon; nevertheless, financial services supplied at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive.

<sup>(5)</sup> Except research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs on condition that the service provided is wholly remunerated by the contracting authority.

<sup>(6)</sup> Except arbitration and conciliation services.

## ANNEX II B

Category No	Subject	CPC Reference No	CPV Reference No
17	Hotel and restaurant services	64	From 55000000-0 to 55524000-9, and from 93400000-2 to 93411000-2
18	Rail transport services	711	60111000-9, and from 60121000-2 to 60121600-8
19	Water transport services	72	From 61000000-5 to 61530000-9, and from 63370000-3 to 63372000-7
20	Supporting and auxiliary transport services	74	62400000-6, 62440000-8, 62441000-5, 62450000-1, From 63000000-9 to 63600000-5 (except 63370000-3, 63371000-0, 63372000-7), and 74322000-2, 93610000-7
21	Legal services	861	From 74110000-3 to 74114000-1
22	Personnel placement and supply services <sup>(1)</sup>	872	From 74500000-4 to 74540000-6 (except 74511000-4), and from 95000000-2 to 95140000-5
23	Investigation and security services, except armoured car services	873 (except 87304)	From 74600000-5 to 74620000-1
24	Education and vocational education services	92	From 80100000-5 to 80430000-7
25	Health and social services	93	74511000-4, and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2)
26	Recreational, cultural and sporting services	96	From 74875000-3 to 74875200-5, and from 92000000-1 to 92622000-7 (except 92230000-2)
27	Other services <sup>(2)</sup>		

<sup>(1)</sup> Except employment contracts.

<sup>(2)</sup> Except contracts for the acquisition, development, production or co-production of programmes by broadcasting organisations and contracts for broadcasting time.

## ANNEX III

## LIST OF BODIES AND CATEGORIES OF BODIES GOVERNED BY PUBLIC LAW AS REFERRED TO IN THE SECOND SUBPARAGRAPH OF ARTICLE 1(9)

## I — BELGIUM

**Bodies**

## A

- Agence fédérale pour l'Accueil des demandeurs d'Asile — Federaal Agentschap voor Opvang van Asielzoekers
- Agence fédérale pour la Sécurité de la Chaîne alimentaire — Federaal Agentschap voor de Veiligheid van de Voedselketen
- Agence fédérale de Contrôle nucléaire — Federaal Agentschap voor nucleaire Controle
- Agence wallonne à l'Exportation
- Agence wallonne des Télécommunications
- Agence wallonne pour l'Intégration des Personnes handicapées
- Aquafin
- Arbeitsamt der Deutschsprachigen Gemeinschaft
- Archives générales du Royaume et Archives de l'Etat dans les Provinces — Algemeen Rijksarchief en Rijksarchief in de Provinciën Astrid

## B

- Banque nationale de Belgique — Nationale Bank van België
- Belgisches Rundfunk- und Fernsehzentrum der Deutschsprachigen Gemeinschaft
- Berlaymont 2000
- Bibliothèque royale Albert I<sup>er</sup> — Koninklijke Bibliotheek Albert I
- Bruxelles-Propreté — Agence régionale pour la Propreté — Net-Brussel — Gewestelijke Agentschap voor Netheid
- Bureau d'Intervention et de Restitution belge — Belgisch Interventie — en Restitutiebureau
- Bureau fédéral du Plan — Federaal Planbureau

## C

- Caisse auxiliaire de Paiement des Allocations de Chômage — Hulpkas voor Werkloosheidsuitkeringen
- Caisse auxiliaire d'Assurance Maladie-Invalidité — Hulpkas voor Ziekte — en Invaliditeitsverzekeringen
- Caisse de Secours et de Prévoyance en Faveur des Marins — Hulp — en Voorzorgskas voor Zeevarenden
- Caisse de Soins de Santé de la Société Nationale des Chemins de Fer Belges — Kas der geneeskundige Verzorging van de Nationale Maatschappij der Belgische Spoorwegen
- Caisse nationale des Calamités — Nationale Kas voor Rampenschade
- Caisse spéciale de Compensation pour Allocations familiales en Faveur des Travailleurs occupés dans les Entreprises de Batellerie — Bijzondere Verrekenkas voor Gezinsvergoedingen ten Bate van de Arbeiders der Ondernemingen voor Binnenscheepvaart
- Caisse spéciale de Compensation pour Allocations familiales en Faveur des Travailleurs occupés dans les Entreprises de Chargement, Déchargement et Manutention de Marchandises dans les Ports, Débarcadères, Entrepôts et Stations (appelée habituellement «Caisse spéciale de Compensation pour Allocations familiales des Régions maritimes») — Bijzondere Verrekenkas voor Gezinsvergoedingen ten Bate van de Arbeiders gebezigd door Ladings — en Lossingsondernemingen en door de Stuwadoors in de Havens, Losplaatsen, Stapelplaatsen en Stations (gewoonlijk genoemd „Bijzondere Compensatiekas voor Kindertoeslagen van de Zeevaartgewesten”)
- Centre d'Etude de l'Energie nucléaire — Studiecentrum voor Kernenergie
- Centre de recherches agronomiques de Gembloux
- Centre hospitalier de Mons

- Centre hospitalier de Tournai
- Centre hospitalier universitaire de Liège
- Centre informatique pour la Région de Bruxelles-Capitale — Centrum voor Informatica voor het Brusselse Gewest
- Centre pour l'Égalité des Chances et la Lutte contre le Racisme — Centrum voor Gelijkheid van Kansen en voor Racismebestrijding
- Centre régional d'Aide aux Communes
- Centrum voor Bevolkings- en Gezinsstudiën
- Centrum voor landbouwkundig Onderzoek te Gent
- Comité de Contrôle de l'Électricité et du Gaz — Controlecomité voor Elektriciteit en Gas
- Comité national de l'Énergie — Nationaal Comité voor de Energie
- Commissariat général aux Relations internationales
- Commissariaat-Generaal voor de Bevordering van de lichamelijke Ontwikkeling, de Sport en de Openlucht recreatie
- Commissariat général pour les Relations internationales de la Communauté française de Belgique
- Conseil central de l'Économie — Centrale Raad voor het Bedrijfsleven
- Conseil économique et social de la Région wallonne
- Conseil national du Travail — Nationale Arbeidsraad
- Conseil supérieur de la Justice — Hoge Raad voor de Justitie
- Conseil supérieur des Indépendants et des petites et moyennes Entreprises — Hoge Raad voor Zelfstandigen en de kleine en middelgrote Ondernemingen
- Conseil supérieur des Classes moyennes
- Coopération technique belge — Belgische technische Coöperatie

## D

- Dienststelle der Deutschsprachigen Gemeinschaft für Personen mit einer Behinderung
- Dienst voor de Scheepvaart
- Dienst voor Infrastructuurwerken van het gesubsidieerd Onderwijs
- Domus Flandria

## E

- Entreprise publique des Technologies nouvelles de l'Information et de la Communication de la Communauté française
- Export Vlaanderen

## F

- Financieringsfonds voor Schuldafbouw en Eenmalige Investeringsuitgaven
- Financieringsinstrument voor de Vlaamse Visserij- en Aquicultuursector
- Fonds bijzondere Jeugdbijstand
- Fonds communautaire de Garantie des Bâtiments scolaires
- Fonds culturele Infrastructuur
- Fonds de Participation
- Fonds de Vieillessement — Zilverfonds
- Fonds d'Aide médicale urgente — Fonds voor dringende geneeskundige Hulp
- Fonds de Construction d'Institutions hospitalières et médico-sociales de la Communauté française
- Fonds de Pension pour les Pensions de Retraite du Personnel statutaire de Belgacom — Pensioenfondsen voor de Rustpensioenen van het statutair Personeel van Belgacom
- Fonds des Accidents du Travail — Fonds voor Arbeidsongevallen

- Fonds des Maladies professionnelles — Fonds voor Beroepsziekten
- Fonds d'Indemnisation des Travailleurs licenciés en cas de Fermeture d'Entreprises — Fonds tot Vergoeding van de in geval van Sluiting van Ondernemingen ontslagen Werknemers
- Fonds du Logement des Familles nombreuses de la Région de Bruxelles-Capitale — Woningfonds van de grote Gezinnen van het Brusselse hoofdstedelijk Gewest
- Fonds du Logement des Familles nombreuses de Wallonie
- Fonds Film in Vlaanderen
- Fonds national de Garantie des Bâtiments scolaires — Nationaal Warborgfonds voor Schoolgebouwen
- Fonds national de Garantie pour la Réparation des Dégâts houillers — Nationaal Waarborgfonds inzake Kolenmijnenschade
- Fonds piscicole de Wallonie
- Fonds pour le Financement des Prêts à des Etats étrangers — Fonds voor Financiering van de Leningen aan Vreemde Staten
- Fonds pour la Rémunération des Mousses — Fonds voor Scheepsjongens
- Fonds régional bruxellois de Refinancement des Trésoreries communales — Brussels gewestelijk Herfinancieringsfonds van de gemeentelijke Thesaurieën
- Fonds voor flankerend economisch Beleid
- Fonds wallon d'Avances pour la Réparation des Dommages provoqués par des Pompages et des Prises d'Eau souterraine

## G

- Garantiefonds der Deutschsprachigen Gemeinschaft für Schulbauten
- Grindfonds

## H

- Herplaatsingfonds
- Het Gemeenschapsonderwijs
- Hulpfonds tot financieel Herstel van de Gemeenten

## I

- Institut belge de Normalisation — Belgisch Instituut voor Normalisatie
- Institut belge des Services postaux et des Télécommunications — Belgisch Instituut voor Postdiensten en Telecommunicatie
- Institut bruxellois francophone pour la Formation professionnelle
- Institut bruxellois pour la Gestion de l'Environnement — Brussels Instituut voor Milieubeheer
- Institut d'Aéronomie spatiale — Instituut voor Ruimte — aëronomie
- Institut de Formation permanente pour les Classes moyennes et les petites et moyennes Entreprises
- Institut des Comptes nationaux — Instituut voor de nationale Rekeningen
- Institut d'Expertise vétérinaire — Instituut voor veterinaire Keuring
- Institut du Patrimoine wallon
- Institut für Aus- und Weiterbildung im Mittelstand und in kleinen und mittleren Unternehmen
- Institut géographique national — Nationaal geografisch Instituut
- Institution pour le Développement de la Gazéification souterraine — Instelling voor de Ontwikkeling van ondergrondse Vergassing
- Institution royale de Messine — Koninklijke Gesticht van Mesen
- Institutions universitaires de droit public relevant de la Communauté flamande — Universitaire instellingen van publiek recht afangende van de Vlaamse Gemeenschap

- Institutions universitaires de droit public relevant de la Communauté française — Universitaire instellingen van publiek recht afhankelijk van de Franse Gemeenschap
  - Institut national d'Assurance Maladie-Invalidité — Rijksinstituut voor Ziekte — en Invaliditeitsverzekering
  - Institut national d'Assurances sociales pour Travailleurs indépendants — Rijksinstituut voor de sociale Verzekeringen der Zelfstandigen
  - Institut national des Industries extractives — Nationaal Instituut voor de Extractiebedrijven
  - Institut national de Recherche sur les Conditions de Travail — Nationaal Onderzoeksinstituut voor Arbeidsomstandigheden
  - Institut national des Invalides de Guerre, anciens Combattants et Victimes de Guerre — Nationaal Instituut voor Oorlogsinvaliden, Oudstrijders en Oorlogsslachtoffers
  - Institut national des Radioéléments — Nationaal Instituut voor Radio-Elementen
  - Institut national pour la Criminalistique et la Criminologie — Nationaal Instituut voor Criminalistiek en Criminologie
  - Institut pour l'Amélioration des Conditions de Travail — Instituut voor Verbetering van de Arbeidsvoorwaarden
  - Institut royal belge des Sciences naturelles — Koninklijk Belgisch Instituut voor Natuurwetenschappen
  - Institut royal du Patrimoine culturel — Koninklijk Instituut voor het Kunstpatrimonium
  - Institut royal météorologique de Belgique — Koninklijk meteorologisch Instituut van België
  - Institut scientifique de Service public en Région wallonne
  - Institut scientifique de la Santé publique — Louis Pasteur — Wetenschappelijk Instituut Volksgezondheid — Louis Pasteur
  - Instituut voor de Aanmoediging van Innovatie door Wetenschap en Technologie in Vlaanderen
  - Instituut voor Bosbouw en Wildbeheer
  - Instituut voor het archeologisch Patrimonium
  - Investeringsdienst voor de Vlaamse autonome Hogescholen
  - Investeringsfonds voor Grond- en Woonbeleid voor Vlaams-Brabant
- J
- Jardin botanique national de Belgique — Nationale Plantentuin van België
- K
- Kind en Gezin
  - Koninklijk Museum voor schone Kunsten te Antwerpen
- L
- Loterie nationale — Nationale Loterij
- M
- Mémorial national du Fort de Breendonk — Nationaal Gedenkteken van het Fort van Breendonk
  - Musée royal de l'Afrique centrale — Koninklijk Museum voor Midden-Afrika
  - Musées royaux d'Art et d'Histoire — Koninklijke Musea voor Kunst en Geschiedenis
  - Musées royaux des Beaux-Arts de Belgique — Koninklijke Musea voor schone Kunsten van België
- O
- Observatoire royal de Belgique — Koninklijke Sterrenwacht van België
  - Office central d'Action sociale et culturelle du Ministère de la Défense — Centrale Dienst voor sociale en culturele Actie van het Ministerie van Defensie
  - Office communautaire et régional de la Formation professionnelle et de l'Emploi

- Office de Contrôle des Assurances — Controledienst voor de Verzekeringen
- Office de Contrôle des Mutualités et des Unions nationales de Mutualités — Controledienst voor de Ziekenfondsen en de Landsbonden van Ziekenfondsen
- Office de la Naissance et de l'Enfance
- Office de Promotion du Tourisme
- Office de Sécurité sociale d'Outre-Mer — Dienst voor de overzeese sociale Zekerheid
- Office for Foreign Investors in Wallonia
- Office national d'Allocations familiales pour Travailleurs salariés — Rijksdienst voor Kinderbijslag voor Werknemers
- Office national de l'Emploi — Rijksdienst voor Arbeidsvoorziening
- Office national de Sécurité sociale — Rijksdienst voor sociale Zekerheid
- Office national de Sécurité sociale des Administrations provinciales et locales — Rijksdienst voor sociale Zekerheid van de provinciale en plaatselijke Overheidsdiensten
- Office national des Pensions — Rijksdienst voor Pensioenen
- Office national des Vacances annuelles — Rijksdienst voor jaarlijkse Vakantie
- Office national du Ducroire — Nationale Delcrederedienst
- Office régional bruxellois de l'Emploi — Brusselse gewestelijke Dienst voor Arbeidsbemiddeling
- Office régional de Promotion de l'Agriculture et de l'Horticulture
- Office régional pour le Financement des Investissements communaux
- Office wallon de la Formation professionnelle et de l'Emploi
- Openbaar psychiatrisch Ziekenhuis-Geel
- Openbaar psychiatrisch Ziekenhuis-Rekem
- Openbare Afvalstoffenmaatschappij voor het Vlaams Gewest
- Orchestre national de Belgique — Nationaal Orkest van België
- Organisme national des Déchets radioactifs et des Matières fissiles — Nationale Instelling voor radioactief Afval en Splijtstoffen

## P

- Palais des Beaux-Arts — Paleis voor schone Kunsten
- Participatiemaatschappij Vlaanderen
- Pool des Marins de la Marine marchande — Pool van de Zeelieden der Koopvaardij

## R

- Radio et Télévision belge de la Communauté française
- Régie des Bâtiments — Regie der Gebouwen
- Reproductiefonds voor de Vlaamse Musea

## S

- Service d'Incendie et d'Aide médicale urgente de la Région de Bruxelles-Capitale — Brusselse hoofdstedelijk Dienst voor Brandweer en dringende medische Hulp
- Société belge d'Investissement pour les pays en développement — Belgische Investeringsmaatschappij voor Ontwikkelingslanden
- Société d'Assainissement et de Rénovation des Sites industriels dans l'Ouest du Brabant wallon
- Société de Garantie régionale
- Sociaal economische Raad voor Vlaanderen
- Société du Logement de la Région bruxelloise et sociétés agréées — Brusselse Gewestelijke Huisvestingsmaatschappij en erkende maatschappijen
- Société publique d'Aide à la Qualité de l'Environnement



- Société publique d'Administration des Bâtiments scolaires bruxellois
- publique d'Administration des Bâtiments scolaires du Brabant wallon
- Société publique d'Administration des Bâtiments scolaires du Hainaut
- Société publique d'Administration des Bâtiments scolaires de Namur
- Société publique d'Administration des Bâtiments scolaires de Liège
- Société publique d'Administration des Bâtiments scolaires du Luxembourg
- Société publique de Gestion de l'Eau
- Société wallonne du Logement et sociétés agréées
- Sofibail
- Sofibru
- Sofico

## T

- Théâtre national
- Théâtre royal de la Monnaie — De Koninklijke Muntchouwborg
- Toerisme Vlaanderen
- Tunnel Liefkenshoek

## U

- Universitair Ziekenhuis Gent

## V

- Vlaams Commissariaat voor de Media
- Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding
- Vlaams Egalisatie Rente Fonds
- Vlaamse Hogescholenraad
- Vlaamse Huisvestingsmaatschappij en erkende maatschappijen
- Vlaamse Instelling voor technologisch Onderzoek
- Vlaamse interuniversitaire Raad
- Vlaamse Landmaatschappij
- Vlaamse Milieuholding
- Vlaamse Milieumaatschappij
- Vlaamse Onderwijsraad
- Vlaamse Opera
- Vlaamse Radio- en Televisieomroep
- Vlaamse Reguleringsinstantie voor de Elektriciteit- en Gasmarkt
- Vlaamse Stichting voor Verkeerskunde
- Vlaams Fonds voor de Lastendelging
- Vlaams Fonds voor de Letteren
- Vlaams Fonds voor de sociale Integratie van Personen met een Handicap
- Vlaams Informatiecentrum over Land- en Tuinbouw
- Vlaams Infrastructuurfonds voor Persoonsgebonden Aangelegenheden
- Vlaams Instituut voor de Bevordering van het wetenschappelijk- en technologisch Onderzoek in de Industrie
- Vlaams Instituut voor Gezondheidspromotie

- Vlaams Instituut voor het Zelfstandig ondernemen
- Vlaams Landbouwinvesteringsfonds
- Vlaams Promotiecentrum voor Agro- en Visserijmarketing
- Vlaams Zorgfonds
- Vlaams Woningenfonds voor de grote Gezinnen

## II — DENMARK

### **Bodies**

- Danmarks Radio
- Det landsdækkende TV2
- Danmarks Nationalbank
- Sund og Bælt Holding A/S
- A/S Storebælt
- A/S Øresund
- Øresundskonsortiet
- Ørestadsselskabet I/S
- Byfornylsesselskabet København
- Hovedstadsområdet Sygehusfællesskab
- Statens og Kommunernes Indkøbsservice
- Post Danmark
- Arbejdsmarkedets Tillægspension
- Arbejdsmarkedets Feriefond
- Lønmodtagernes Dyrtidsfond
- Naviair

### **Categories**

- De Almene Boligorganisationer (social housing organisations),
- Lokale kirkelige myndigheder (local church administrations),
- Andre forvaltningssubjekter (other public administrative bodies).

## III — GERMANY

### **1. Categories**

Authorities, establishments and foundations governed by public law and created by Federal, State or local authorities particularly in the following fields:

#### *1.1. Authorities*

- Wissenschaftliche Hochschulen und verfasste Studentenschaften (universities and established student bodies),
- berufsständige Vereinigungen (Rechtsanwalts-, Notar-, Steuerberater-, Wirtschaftsprüfer-, Architekten-, Ärzte- und Apothekerkammern) [professional associations representing lawyers, notaries, tax consultants, accountants, architects, medical practitioners and pharmacists],
- Wirtschaftsvereinigungen (Landwirtschafts-, Handwerks-, Industrie- und Handelskammern, Handwerksinnungen, Handwerkerschaften) [business and trade associations: agricultural and craft associations, chambers of industry and commerce, craftsmen's guilds, tradesmen's associations],
- Sozialversicherungen (Krankenkassen, Unfall- und Rentenversicherungsträger) [social security institutions: health, accident and pension insurance funds],
- kassenärztliche Vereinigungen (associations of panel doctors),
- Genossenschaften und Verbände (cooperatives and other associations).

### 1.2. Establishments and foundations

Non-industrial and non-commercial establishments subject to State control and operating in the general interest, particularly in the following fields:

- Rechtsfähige Bundesanstalten (Federal institutions having legal capacity),
- Versorgungsanstalten und Studentenwerke (pension organisations and students' unions),
- Kultur-, Wohlfahrts- und Hilfsstiftungen (cultural, welfare and relief foundations).

### 2. Legal persons governed by private law

Non-industrial and non-commercial establishments subject to State control and operating in the general interest, including kommunale Versorgungsunternehmen (municipal utilities), particularly in the following fields:

- Gesundheitswesen (Krankenhäuser, Kurmittelbetriebe, medizinische Forschungseinrichtungen, Untersuchungs- und Tierkörperbeseitigungsanstalten) [health: hospitals, health resort establishments, medical research institutes, testing and carcase-disposal establishments],
- Kultur (öffentliche Bühnen, Orchester, Museen, Bibliotheken, Archive, zoologische und botanische Gärten) [culture: public theatres, orchestras, museums, libraries, archives, zoological and botanical gardens],
- Soziales (Kindergärten, Kindertagesheime, Erholungseinrichtungen, Kinder- und Jugendheime, Freizeiteinrichtungen, Gemeinschafts- und Bürgerhäuser, Frauenhäuser, Altersheime, Obdachlosenunterkünfte) [social welfare: nursery schools, children's playschools, rest-homes, children's homes, hostels for young people, leisure centres, community and civic centres, homes for battered wives, old people's homes, accommodation for the homeless],
- Sport (Schwimmbäder, Sportanlagen und -einrichtungen) [sport: swimming baths, sports facilities],
- Sicherheit (Feuerwehren, Rettungsdienste) [safety: fire brigades, other emergency services],
- Bildung (Umschulungs-, Aus-, Fort- und Weiterbildungseinrichtungen, Volkshochschulen) [education: training, further training and retraining establishments, adult evening classes],
- Wissenschaft, Forschung und Entwicklung (Großforschungseinrichtungen, wissenschaftliche Gesellschaften und Vereine, Wissenschaftsförderung) [science, research and development: large-scale research institutes, scientific societies and associations, bodies promoting science],
- Entsorgung (Straßenreinigung, Abfall- und Abwasserbeseitigung) [refuse and garbage disposal services: street cleaning, waste and sewage disposal],
- Bauwesen und Wohnungswirtschaft (Stadtplanung, Stadtentwicklung, Wohnungsunternehmen soweit im Allgemeininteresse tätig, Wohnraumvermittlung) [building, civil engineering and housing: town planning, urban development, housing, enterprises (insofar as they operate in the general interest), housing agency services],
- Wirtschaft (Wirtschaftsförderungsgesellschaften) (economy: organizations promoting economic development),
- Friedhofs- und Bestattungswesen (cemeteries and burial services),
- Zusammenarbeit mit den Entwicklungsländern (Finanzierung, technische Zusammenarbeit, Entwicklungshilfe, Ausbildung) [cooperation with developing countries: financing, technical cooperation, development aid, training].

## IV — GREECE

### Categories

- a) Public enterprises and public entities
- b) Legal persons governed by private law which are State-owned or which regularly receive at least 50 % of their annual budget in the form of State subsidies, pursuant to the applicable rules, or in which the State has a capital holding of at least 51 %.
- c) Legal persons governed by private law which are owned by legal persons governed by public law, by local authorities of any level, including the Greek Central Association of Local Authorities (Κ.Ε.Δ.Κ.Ε.), by local associations of 'communes', (local administrative areas) or by public enterprises or entities, or by legal persons as referred to in b) or which regularly receive at least 50 % of their annual budget in the form of subsidies from such legal persons, pursuant to the applicable rules or to their own articles of association, or legal persons as referred to above which have a capital holding of at least 51 % in such legal persons governed by public law.

## V — SPAIN

### Categories

- Bodies and entities governed by public law which are subject to the «Ley de Contratos de las Administraciones Públicas», [Spanish State legislation on procurement] other than those which are part of the Administración General del Estado (general national administration).
- Bodies and entities governed by public law which are subject to the «Ley de Contratos de las Administraciones Públicas», — other than those which are part of the — l'Administración de las Comunidades Autónomas (administration of the autonomous regions).
- Bodies and entities governed by public law which are subject to the «Ley de Contratos de las Administraciones Públicas», — other than those which are part of the — Corporaciones Locales (local authorities).
- Entidades Gestoras y los Servicios Comunes de la Seguridad Social (administrative entities and common services of the health and social services).

## VI — FRANCE

**Bodies**

- Collège de France
- Conservatoire national des arts et métiers
- Observatoire de Paris
- Institut national d'histoire de l'art (INHA)
- Centre national de la recherche scientifique (CNRS)
- Institut national de la recherche agronomique (INRA)
- Institut national de la santé et de la recherche médicale (INSERM)
- Institut de recherche pour le développement (IRD)
- Agence nationale pour l'emploi (ANPE)
- Caisse nationale des allocations familiales (CNAF)
- Caisse nationale d'assurance maladie des travailleurs salariés (CNAMTS)
- Caisse nationale d'assurance vieillesse des travailleurs salariés (CNAVTS)
- Compagnies et établissements consulaires: chambres de commerce et d'industrie (CCI), chambres des métiers et chambres d'agriculture
- Office national des anciens combattants et victimes de guerre (ONAC)

**Categories**1. *National public bodies*

- Agences de l'eau (water supply agencies)
- Écoles d'architecture (schools of architecture)
- Universités (universities)
- Instituts universitaires de formation des maîtres (IUFM) (Higher Education Teacher Training Institutes)

2. *Administrative public bodies at regional, departmental and local level*

- collèges (secondary schools)
- lycées (secondary schools)
- établissements publics hospitaliers (public hospitals)
- offices publics d'habitations à loyer modéré (OPHLM) (public offices for low-cost housing)

3. *Groupings of territorial authorities*

- établissements publics de coopération intercommunale (public establishments for cooperation between local authorities)
- institutions interdépartementales et interrégionales (institutions common to more than one Département and interregional institutions)

## VII — IRELAND

**Bodies**

- Enterprise Ireland [Marketing, technology and enterprise development]
- Forfás [Policy and advice for enterprise, trade, science, technology and innovation]
- Industrial Development Authority
- Enterprise Ireland
- FÁS [Industrial and employment training]
- Health and Safety Authority
- Bord Fáilte Éireann [Tourism development]
- CERT [Training in hotel, catering and tourism industries]

Irish Sports Council  
National Roads Authority  
Údarás na Gaeltachta [Authority for Gaelic speaking regions]  
Teagasc [Agricultural research, training and development]  
An Bord Bia [Food industry promotion]  
An Bord Glas [Horticulture industry promotion]  
Irish Horseracing Authority  
Bord na gCon [Greyhound racing support and development]  
Marine Institute  
Bord Iascaigh Mhara [Fisheries Development]  
Equality Authority  
Legal Aid Board

### **Categories**

Regional Health Boards  
Hospitals and similar institutions of a public character  
Vocational Education Committees  
Colleges and educational institutions of a public character  
Central and Regional Fisheries Boards  
Regional Tourism Organisations  
National Regulatory and Appeals bodies [such as in the telecommunications, energy, planning etc. areas]  
Agencies established to carry out particular functions or meet needs in various public sectors [e.g. Healthcare Materials Management Board, Health Sector Employers Agency, Local Government Computer Services Board, Environmental Protection Agency, National Safety Council, Institute of Public Administration, Economic and Social Research Institute, National Standards Authority, etc.]  
Other public bodies falling within the definition of a body governed by public law in accordance with Article 1(7) of this Directive.

## VIII — ITALY

### **Bodies**

Società 'Stretto di Messina'  
Ente autonomo mostra d'oltremare e del lavoro italiano nel mondo  
Ente nazionale per l'aviazione civile — ENAC  
Ente nazionale per l'assistenza al volo — ENAV  
ANAS S.p.A

### **Categories**

— Enti portuali e aeroportuali (port and airport authorities),  
— Consorzi per le opere idrauliche (consortia for water engineering works),  
— Università statali, gli istituti universitari statali, i consorzi per i lavori interessanti le università (State universities, State university institutes, consortia for university development work),  
— Istituzioni pubbliche di assistenza e di beneficenza (public welfare and benevolent institutions),

- Istituti superiori scientifici e culturali, osservatori astronomici, astrofisici, geofisici o vulcanologici (higher scientific and cultural institutes, astronomical, astrophysical, geophysical or vulcanological observatories),
- Enti di ricerca e sperimentazione (organizations conducting research and experimental work),
- Enti che gestiscono forme obbligatorie di previdenza e di assistenza (agencies administering compulsory social security and welfare schemes),
- Consorzi di bonifica (land reclamation consortia),
- Enti di sviluppo e di irrigazione (development and irrigation agencies),
- Consorzi per le aree industriali (associations for industrial areas),
- Comunità montane (groupings of municipalities in mountain areas),
- Enti preposti a servizi di pubblico interesse (organisations providing services in the public interest),
- Enti pubblici preposti ad attività di spettacolo, sportive, turistiche e del tempo libero (public bodies engaged in entertainment, sport, tourism and leisure activities),
- Enti culturali e di promozione artistica (organisations promoting culture and artistic activities).

#### IX — LUXEMBOURG

##### Categories

- Établissements publics de l'État placés sous la surveillance d'un membre du gouvernement (public establishments of the State placed under the supervision of a member of the Government),
- Établissements publics placés sous la surveillance des communes (public establishments placed under the supervision of the 'communes') (local authorities),
- Syndicats de communes créés en vertu de la loi du 23 février 2001 concernant les syndicats de communes (associations of local authorities created under the law of 23 February 2001 on associations of 'communes').

#### X — NETHERLANDS

##### Bodies

###### *Ministerie van Binnenlandse Zaken en Koninkrijksrelaties (Ministry of the Interior and Kingdom Relations)*

- Nederlands Instituut voor Brandweer en rampenbestrijding (NIBRA) (Netherlands Institute for the Fire Service and for Combating Emergencies)
- Nederlands Bureau Brandweer Examens (NBBE) (Netherlands Fire Service Examination Board)
- Landelijk Selectie- en Opleidingsinstituut Politie (LSOP) (National Institute for Selection and Education of Policemen)
- 25 afzonderlijke politieregio's (25 individual police regions)
- Stichting ICTU (ICTU Foundation)

###### *Ministry of Economic Affairs*

- Stichting Syntens (Syntens)
- Van Swinden Laboratorium B.V. (NMI van Swinden Laboratory)
- Nederlands Meetinstituut B.V. (NMI Institute for Metrology and Technology)
- Instituut voor Vliegtuigontwikkeling en Ruimtevaart (NIVR) (Netherlands Agency for Aerospace Programmes)
- Stichting Toerisme Recreatie Nederland (TRN) (Netherlands Board of Tourism)
- Samenwerkingsverband Noord Nederland (SNN) (Cooperative Body of the provincial governments of the Northern Netherlands)
- Gelderse Ontwikkelingsmaatschappij (GOM) (Gelderland Development Company)

- Overijsselse Ontwikkelingsmaatschappij (OOM) (OOM International Business Development)
- LIOF (Limburg Investment Development Company LIOF)
- Noordelijke Ontwikkelingsmaatschappij (NOM) (NOM Investment Development)
- Brabantse Ontwikkelingsmaatschappij (BOM) (Brabant Development Agency)
- Onafhankelijke Post en Telecommunicatie Autoriteit (Independent Post and Telecommunications Authority)

*Ministry of Finance*

- De Nederlandse Bank N.V. (Netherlands Central Bank)
- Autoriteit Financiële Markten (Netherlands Authority for the Financial Markets)
- Pensioen- & Verzekeringskamer (Pensions and Insurance Supervisory Authority of the Netherlands)

*Ministry of Justice*

- Stichting Reclassering Nederland (SRN) (Netherlands Rehabilitation Agency)
- Stichting VEDIVO (VEDIVO Agency, Association for Managers in the (Family) Guardianship)
- Voogdij- en gezinsvoogdij instellingen (Guardianship and Family Guardianship Institutions)
- Stichting Halt Nederland (SHN) (Netherlands Halt (the alternative) Agency)
- Particuliere Internaten (Private Boarding Institutions)
- Particuliere Jeugdinstellingen (Penal Institutions for Juvenile Offenders)
- Schadefonds Geweldsmisdrijven (Damages Fund for Violent Crimes)
- Centraal orgaan Opvang Asielzoekers (COA) (Agency for the Reception of Asylum Seekers)
- Landelijk Bureau Inning Onderhoudsbijdragen (LBIO) (National Support and Maintenance Agency)
- Landelijke organisaties slachtofferhulp (National Victim Compensation Organisations)
- College Bescherming Persoonsgegevens (Netherlands Data Protection Authority)
- Stichting Studiecentrum Rechtspleging (SSR) (Administration of Justice Study Centre Agency)
- Raden voor de Rechtsbijstand (Legal Assistance Councils)
- Stichting Rechtsbijstand Asiel (Asylum Seekers Legal Advice Centres)
- Stichtingen Rechtsbijstand (Legal Assistance Agencies)
- Landelijk Bureau Racisme bestrijding (LBR) (National Bureau against Racial Discrimination)
- Clara Wichman Instituut (Clara Wichman Institute)
- Tolkencentra (Interpreting Centres)

*Ministry of Agriculture, Nature Management and Fisheries*

- Bureau Beheer Landbouwgronden (Land Management Service)
- Faunafonds (Fauna Fund)
- Staatsbosbeheer (National Forest Service)
- Stichting Voorlichtingsbureau voor de Voeding (Netherlands Bureau for Food and Nutrition Education)
- Universiteit Wageningen (Wageningen University and Research Centre)
- Stichting DLO (Agricultural Research Department)
- (Hoofd) productschappen (Commodity Boards)

*Ministry of Education, Cultural Affairs and Science*

A. General descriptions

- public schools or publicly funded private schools for primary education within the meaning of the Wet op het primair onderwijs (Law on Primary Education)

- public or publicly funded schools for special education, secondary special education or institutions for special and secondary education within the meaning of the Wet op de expertisecentra (Law on Resource Centres)
- public schools or publicly funded private schools or institutions for secondary education within the meaning of the Wet op het Voortgezet Onderwijs (Law on Secondary Education)
- public institutions or publicly funded private institutions within the meaning of the Wet Educatie en Beroepsonderwijs (Law on Education and Vocational Education)
- public schools or publicly funded private schools within the meaning of the Experimentenwet Onderwijs (Law on Experimental Education)
- publicly funded universities and higher education institutions, the Open University, and the university hospitals, within the meaning of the Wet op het hoger onderwijs en wetenschappelijk onderzoek (Law on Higher Education and Scientific Research), and institutions for international education where more than 50 % of their budget comes from public funds
- schools advisory services within the meaning of the Wet op het primair onderwijs (Law on Primary Education) or the Wet op de expertisecentra (Law on Resource Centres)
- national teachers' centres within the meaning of the Wet subsidiëring landelijke onderwijsondersteunende activiteiten (Law on Subsidies for National Educational Support Activities)
- broadcasting organisations within the meaning of the Mediawet (Media Law)
- funds within the meaning of the Wet op het Specifiek Cultuurbeleid (Law on Specific Cultural Policy)
- national bodies for vocational education
- foundations within the meaning of the Wet Verzelfstandiging Rijksmuseum Diensten (Law on Privatisation of National Museum Services)
- other museums which receive more than 50 % of their funds from the Ministry of Education, Cultural Affairs and Science
- other organisations and institutions in the field of education, culture and science which receive more than 50 % of their funds from Ministry of Education, Cultural Affairs and Science

#### B. List of names

- Informatie Beheer Groep
- Stichting Participatiefonds voor het Onderwijs
- Stichting Uitvoering Kinderopvangregelingen/Kintent
- Stichting voor Vluchteling-Studenten UAF
- Koninklijke Nederlandse Academie van Wetenschappen
- Nederlandse organisatie voor internationale samenwerking in het hoger onderwijs (Nuffic)
- Stichting Nederlands Interdisciplinair Demografisch Instituut
- Nederlandse Organisatie voor Wetenschappelijk Onderzoek
- Nederlandse Organisatie voor toegepast-natuurwetenschappelijk onderzoek
- College van Beroep voor het hoger Onderwijs
- Vereniging van openbare bibliotheken NBLC
- Koninklijke Bibliotheek
- Stichting Muziek Centrum van de Omroep
- Stichting Ether Reclame
- Stichting Radio Nederland Wereldomroep
- Nederlandse Programma Stichting
- Nederlandse Omroep Stichting
- Commissariaat voor de Media
- Stichting Stimuleringsfonds Nederlandse Culturele Omroepproducties
- Stichting Lezen
- Dienst Omroepbijdragen
- Centrum voor innovatie en opleidingen



- Bedrijfsfonds voor de Pers
- Centrum voor innovatie van opleidingen
- Instituut voor Toetsontwikkeling (Cito)
- Instituut voor Leerplanontwikkeling
- Landelijk Dienstverlenend Centrum voor Studie- en Beroepskeuzevoorlichting
- Max Goote Kenniscentrum voor Beroepsonderwijs en Volwasseneneducatie
- Stichting Vervangingsfonds en Bedrijfsgezondheidszorg voor het Onderwijs
- BVE-Raad
- Colo, Vereniging kenniscentra beroepsonderwijs bedrijfsleven
- Stichting kwaliteitscentrum examinering beroepsonderwijs
- Vereniging Jongerenorganisatie Beroepsonderwijs
- Combo Stichting Combinatie Onderwijsorganisatie
- Stichting Financiering Struktureel Vakbondsverlof Onderwijs
- Stichting Samenwerkende Centrales in het COPWO
- Stichting SoFoKles
- Europees Platform
- Stichting mobiliteitsfonds HBO
- Nederlands Audiovisueel Archiefcentrum
- Stichting minderheden Televisie Nederland
- Stichting omroep allochtonen
- Stichting multiculturele Activiteiten Utrecht
- School der Poëzie
- Nederlands Perscentrum
- Nederlands Letterkundig Museum en documentatiecentrum
- Bibliotheek voor varenden
- Christelijke bibliotheek voor blinden en slechtzienden
- Federatie van Nederlandse Blindenbibliotheken
- Nederlandse luister- en braillebibliotheek
- Federatie Slechtzienden- en Blindenbelang
- Bibliotheek Le Sage Ten Broek
- Doe Maar Dicht Maar
- ElHizra
- Fonds Bijzondere Journalistieke Projecten
- Fund for Central and East European Book Projects
- Jongeren Onderwijs Media

*Ministry of Social Affairs and Employment*

- Sociale Verzekeringsbank (Social Insurance Bank)
- Arbeidsvoorzieningsorganisatie (Employment Service)
- Stichting Silicose Oud Mijnwerkers (Foundation for Former Miners suffering from Silicosis)
- Stichting Pensioen- & Verzekeringskamer (Pensions and Insurance Supervisory Authority of the Netherlands)
- Sociaal Economische Raad (SER) (Social and Economic Council in the Netherlands)

- Raad voor Werk en Inkomen (RWI) (Council for Work and Income)
- Centrale organisatie voor werk en inkomen (Central Organisation for Work and Income)
- Uitvoeringsinstituut werknemersverzekeringen (Implementing body for employee insurance schemes)

*Ministry of Transport, Communications and Public Works*

- RDW Voertuig informatie en toelating (Vehicle information and administration service)
- Luchtverkeersbeveiligingsorganisatie (LVB) (Air Traffic Control Agency)
- Nederlandse Loodsencorporatie (NLC) (Netherlands maritime pilots association)
- Regionale Loodsencorporatie (RLC) (Regional maritime pilots association)

*Ministry of Housing, Planning and the Environment*

- Kadaster (Public Registers Agency)
- Centraal Fonds voor de Volkshuisvesting (Central Housing Fund)
- Stichting Bureau Architectenregister (Architects Register)

*Ministry of Health, Welfare and Sport*

- Commissie Algemene Oorlogsongevallenregeling Indonesië (COAR)
- College ter beoordeling van de Geneesmiddelen (CBG) (Medicines Evaluation Board)
- Commissies voor gebiedsaanwijzing
- College sanering Ziekenhuisvoorzieningen (National Board for Redevelopment of Hospital Facilities)
- Zorgonderzoek Nederland (ZON) (Health Research and Development Council)
- Inspection bodies under the Wet medische hulpmiddelen (Law on Medical Appliances)
- N.V. KEMA/Stichting TNO Certification (KEMA/TNO Certification)
- College Bouw Ziekenhuisvoorzieningen (CBZ) (National Board for Hospital Facilities)
- College voor Zorgverzekeringen (CVZ) (Health Care Insurance Board)
- Nationaal Comité 4 en 5 mei (National 4 and 5 May Committee)
- Pensioen- en Uitkeringsraad (PUR) (Pension and Benefit Board)
- College Tarieven Gezondheidszorg (CTG) (Health Service Tariff Tribunal)
- Stichting Uitvoering Omslagregeling Wet op de Toegang Ziektekostenverzekering (SUO)
- Stichting tot bevordering van de Volksgezondheid en Milieuhygiëne (SVM) (Foundation for the Advancement of Public Health and Environment)
- Stichting Facilitair Bureau Gemachtigden Bouw VWS
- Stichting Sanquin Bloedvoorziening (Sanquin Blood Supply Foundation)
- College van Toezicht op de Zorgverzekeringen organen ex artikel 14, lid 2c, Wet BIG (Supervisory Board of Health Care Insurance Committees for registration of professional health care practices)
- Ziekenfondsen (Health Insurance Funds)
- Nederlandse Transplantatiestichting (NTS) (Netherlands Transplantation Foundation)
- Regionale Indicatieorganen (RIO's) (Regional bodies for Need Assessment).

XI — AUSTRIA

All bodies under the budgetary control of the „Rechnungshof“ (Court of Auditors) except those of an industrial or commercial nature.

## XII — PORTUGAL

**Categories**

- Institutos públicos sem carácter comercial ou industrial (public institutions without commercial or industrial character),
- Serviços públicos personalizados (public services having legal personality)
- Fundações públicas (public foundations),
- Estabelecimentos públicos de ensino, investigação científica e saúde (public institutions for education, scientific research and health),

## XIII — FINLAND

Public or publicly controlled bodies and undertakings except those of an industrial or commercial nature.

## XIV — SWEDEN

All non-commercial bodies whose public contracts are subject to supervision by the National Board for Public Procurement.

## XV — UNITED KINGDOM

**Bodies**

- Design Council
- Health and Safety Executive
- National Research Development Corporation
- Public Health Laboratory Service Board
- Advisory, Conciliation and Arbitration Service
- Commission for the New Towns
- National Blood Authority
- National Rivers Authority
- Scottish Enterprise
- Scottish Homes
- Welsh Development Agency

**Categories**

- Maintained schools
  - Universities and colleges financed for the most part by other contracting authorities
  - National Museums and Galleries
  - Research Councils
  - Fire Authorities
  - National Health Service Strategic Health Authorities
  - Police Authorities
  - New Town Development Corporations
  - Urban Development Corporations
-

## ANNEX IV

CENTRAL GOVERNMENT AUTHORITIES <sup>(1)</sup>

## BELGIUM

— l'Etat	— de Staat	— the State
— les communautés	— de gemeenschappen	— the communities
— les commissions communautaires	— de gemeenschapscommissies	— the community commissions
— les régions	— de gewesten	— the regions
— les provinces	— de provincies	— the provinces
— les communes	— de gemeenten	— the communes
— les centres publics d'aide sociale	— de openbare centra voor maatschappelijk welzijn	— public centres for social assistance
— les fabriques d'églises et les organismes chargés de la gestion du temporel des autres cultes reconnus	— de kerkfabrieken en de instellingen die belast zijn met het beheer van de temporalien van de erkende erediensten	— church councils and organisations responsible for managing the assets of other recognised religious orders
— les sociétés de développement régional	— de gewestelijke ontwikkelingsmaatschappijen	— regional development companies
— les polders et wateringues	— de polders en wateringues	— the polders and water boards
— les comités de remembrement des biens ruraux	— de ruilverkavelingscomités	— land-consolidation committees
— les zones de police	— de politiezones	— police zones
— les associations formées par plusieurs des pouvoirs adjudicateurs ci-dessus.	— de verenigingen gevormd door een of meerdere aanbestedende overheden hierboven.	— associations formed by several of the above awarding authorities.

## DENMARK

1. Folketinget — The Danish Parliament	Rigsrevisionen — The National Audit Office
2. Statsministeriet — The Prime Minister's Office	
3. Udenrigsministeriet — Ministry of Foreign Affairs	
4. Beskæftigelsesministeriet — Ministry of Employment	5 styrelser og institutioner — 5 agencies and institutions
5. Domstolsstyrelsen — The Court Administration	
6. Finansministeriet — Ministry of Finance	5 styrelser og institutioner — 5 agencies and institutions
7. Forsvarsministeriet — Ministry of Defence	Adskillige institutioner — Several institutions
8. Indenrigs- og Sundhedsministeriet — Ministry of the Interior and Health	Adskillige styrelser og institutioner, herunder Statens Serum Institut — Several agencies and institutions, including Statens Serum Institut
9. Justitsministeriet — Ministry of Justice	Rigspolitietschefen, 2 direktorater samt et antal styrelser — Commissioner of Police, 2 directorates and a number of agencies
10. Kirkeministeriet — Ministry of Ecclesiastical Affairs	10 stiftsøvrigheder — 10 diocesan authorities
11. Kulturministeriet — Ministry of Culture	Departement samt et antal statsinstitutioner — A department and a number of institutions
12. Miljøministeriet — Ministry of the Environment	6 styrelser — 6 agencies

<sup>(1)</sup> For the purposes of this Directive 'central government authorities' means the authorities that are listed by way of indication in this Annex and, insofar as corrections or amendments have been made at national level, their successor entities.

13. Ministeriet for Flygtninge, Indvandrere og Integration — Ministry for Refugee, Immigration and Integration Affairs	1 styrelse — 1 agency
14. Ministeriet for Fødevarer, Landbrug og Fiskeri — Ministry of Food, Agriculture and Fisheries	9 direktorater og institutioner — 9 directorates and institutions
15. Ministeriet for Videnskab, Teknologi og herunder Udvikling — Ministry of Science, Technology and Innovation	Adskillige styrelser og institutioner, Forskningscenter Risø og Statens uddannelsesbygninger — Several agencies and institutions, including Risoe National Laboratory and Danish National Research and Education Buildings
16. Skatteministeriet — Ministry of Taxation	1 styrelse og institutioner — 1 agency and several institutions
17. Socialministeriet — Ministry of Social Affairs	3 styrelser og institutioner — 3 agencies and several institutions
18. Trafikministeriet — Ministry of Transport	12 styrelser og institutioner, herunder Øresundsbrokonsortiet — 12 agencies and institutions, including Øresundsbrokonsortiet
19. Undervisningsministeriet — Ministry of Education	3 styrelser, 4 undervisningsinstitutioner og 5 andre institutioner — 3 agencies, 4 educational establishments, 5 other institutions
20. Økonomi- og Erhvervsministeriet — Ministry of Economic and Business Affairs	Adskillige styrelser og institutioner — Several agencies and institutions

## GERMANY

Auswärtiges Amt	Federal Ministry for Foreign Affairs (Federal Foreign Office)
Bundesministerium des Innern (nur zivile Güter)	Federal Ministry of the Interior (only civil goods)
Bundesministerium der Justiz	Federal Ministry of Justice
Bundesministerium der Finanzen	Federal Ministry of Finance
Bundesministerium für Wirtschaft und Arbeit	Federal Ministry of Economics and Labour
Bundesministerium für Verbraucherschutz, Ernährung und Landwirtschaft	Federal Ministry of Consumer Protection, Food and Agriculture
Bundesministerium der Verteidigung (keine militärischen Güter)	Federal Ministry of Defence (no military goods)
Bundesministerium für Familie, Senioren, Frauen und Jugend	Federal Ministry for Family Affairs, Senior Citizens, Women and Youth
Bundesministerium für Gesundheit und Soziale Sicherheit	Federal Ministry for Health and Social Security
Bundesministerium für Verkehr, Bau- und Wohnungswesen	Federal Ministry of Transport, Building and Housing
Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit	Federal Ministry for the Environment, Nature Conservation and Nuclear Safety
Bundesministerium für Bildung und Forschung	Federal Ministry of Education and Research
Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung	Federal Ministry for Economic Cooperation and Development

## GREECE

1. Υπουργείο Εσωτερικών, Δημόσιας Διοίκησης και Αποκέντρωσης	Ministry of the Interior, Public Administration and Decentralization
2. Υπουργείο Εξωτερικών	Ministry of Foreign Affairs
3. Υπουργείο Οικονομίας και Οικονομικών	Ministry of Economy and Finance
4. Υπουργείο Ανάπτυξης	Ministry of Development
5. Υπουργείο Δικαιοσύνης	Ministry of Justice
6. Υπουργείο Εθνικής Παιδείας και Θρησκευμάτων	Ministry of Education and Religion
7. Υπουργείο Πολιτισμού	Ministry of Culture

8. Υπουργείο Υγείας – Πρόνοιας	Ministry of Health and Welfare
9. Υπουργείο Περιβάλλοντος, Χωροταξίας και Δημοσίων Έργων	Ministry of Environment, Physical Planning and Public Works
10. Υπουργείο Εργασίας και Κοινωνικών Ασφαλίσεων	Ministry of Labour and Social Security
11. Υπουργείο Μεταφορών και Επικοινωνιών	Ministry of Transport and Communications
12. Υπουργείο Γεωργίας	Ministry of Agriculture
13. Υπουργείο Εμπορικής Ναυτιλίας	Ministry of Merchant Marine
14. Υπουργείο Μακεδονίας- Θράκης	Ministry of Macedonia and Thrace
15. Υπουργείο Αιγαίου	Ministry of the Aegean
16. Υπουργείο Τύπου και Μέσων Μαζικής Ενημέρωσης	Ministry of Press
17. Γενική Γραμματεία Νέας Γενιάς	General Secretariat for Youth
18. Γενική Γραμματεία Ισότητας	General Secretariat of Equality
19. Γενική Γραμματεία Κοινωνικών Ασφαλίσεων	General Secretariat for Social Security
20. Γενική Γραμματεία Απόδημου Ελληνισμού	General Secretariat for Greeks Living Abroad
21. Γενική Γραμματεία Βιομηχανίας	General Secretariat for Industry
22. Γενική Γραμματεία Έρευνας και Τεχνολογίας	General Secretariat for Research and Technology
23. Γενική Γραμματεία Αθλητισμού	General Secretariat for Sports
24. Γενική Γραμματεία Δημοσίων Έργων	General Secretariat for Public Works
25. Γενική Γραμματεία Εθνικής Στατιστικής Υπηρεσίας Ελλάδος	National Statistical Service
26. Εθνικός Οργανισμός Κοινωνικής Φροντίδας	National Welfare Organisation
27. Οργανισμός Εργατικής Κατοικίας	Workers' Housing Organisation
28. Εθνικό Τυπογραφείο	National Printing Office
29. Γενικό Χημείο του Κράτους	General State Laboratory
30. Ταμείο Εθνικής Οδοποιίας	Greek Highway Fund
31. Εθνικό Καποδιστριακό Πανεπιστήμιο Αθηνών	University of Athens
32. Αριστοτέλειο Πανεπιστήμιο Θεσσαλονίκης	University of Thessaloniki
33. Δημοκρίτειο Πανεπιστήμιο Θράκης	University of Thrace
34. Πανεπιστήμιο Αιγαίου	University of Aegean
35. Πανεπιστήμιο Ιωαννίνων	University of Ioannina
36. Πανεπιστήμιο Πατρών	University of Patras
37. Πανεπιστήμιο Μακεδονίας	University of Macedonia
38. Πολυτεχνείο Κρήτης	Polytechnic School of Crete
39. Σιβιτανίδειος Δημόσια Σχολή Τεχνών και Επαγγελμάτων	Sivitanidios Technical School
40. Αιγινήτειο Νοσοκομείο	Eginitio Hospital
41. Αρεταίοιο Νοσοκομείο	Areteio Hospital
42. Εθνικό Κέντρο Δημόσιας Διοίκησης	National Centre of Public Administration
43. Οργανισμός Διαχείρισης Δημοσίου Υλικού Α.Ε.	Public Material Management Organisation
44. Οργανισμός Γεωργικών Ασφαλίσεων	Farmers' Insurance Organisation
45. Οργανισμός Σχολικών Κτιρίων	School Building Organisation

46. Γενικό Επιτελείο Στρατού <sup>(1)</sup>	Army General Staff
47. Γενικό Επιτελείο Ναυτικού <sup>(1)</sup>	Navy General Staff
48. Γενικό Επιτελείο Αεροπορίας <sup>(1)</sup>	Airforce General Staff
49. Ελληνική Επιτροπή Ατομικής Ενέργειας	Greek Atomic Energy Commission
50. Γενική Γραμματεία Εκπαίδευσης Ενηλίκων	General Secretariat for Further Education

<sup>(1)</sup> Non-warlike materials covered by Annex V.

#### SPAIN

Presidencia del Gobierno	Office of the Prime Minister
Ministerio de Asuntos Exteriores	Ministry of Foreign Affairs
Ministerio de Justicia	Ministry of Justice
Ministerio de Defensa	Ministry of Defence
Ministerio de Hacienda	Ministry of Finance
Ministerio de Interior	Ministry of the Interior
Ministerio de Fomento	Ministry of Internal Development
Ministerio de Educación, Cultura y Deportes	Ministry of Education, Culture and Sport
Ministerio de Trabajo y Asuntos Sociales	Ministry of Labour and Social Affairs
Ministerio de Agricultura, Pesca y Alimentación	Ministry of Agriculture, Fisheries and Food
Ministerio de la Presidencia	Ministry of the Office of the Prime Minister
Ministerio de Administraciones Públicas	Ministry of Public Administration
Ministerio de Sanidad y Consumo	Ministry of Health and Consumer Affairs
Ministerio de Economía	Ministry of Economic Affairs
Ministerio de Medio Ambiente	Ministry of the Environment
Ministerio de Ciencia y Tecnología	Ministry of Science and Technology

#### FRANCE

##### 1. Ministries

— Services du Premier ministre	— Office of the Prime Minister
— Ministère des affaires étrangères	— Ministry of Foreign Affairs
— Ministère des affaires sociales, du travail et de la solidarité	— Ministry of Social Affairs, Labour and Solidarity
— Ministère de l'agriculture, de l'alimentation, de la pêche et des affaires rurales	— Ministry of Agriculture, Food, Fisheries and Rural Affairs
— Ministère de la culture et de la communication	— Ministry of Culture and Communication
— Ministère de la défense <sup>(1)</sup>	— Ministry of Defence
— Ministère de l'écologie et du développement durable	— Ministry of Ecology and Sustainable Development
— Ministère de l'économie, des finances et de l'industrie	— Ministry of Economic Affairs, Finance and Industry

— Ministère de l'équipement, des transports, du logement, du tourisme et de la mer	— Ministry of Infrastructure, Transport, Housing, Tourism and the Sea
— Ministère de la fonction publique, de la réforme de l'Etat et de l'aménagement du territoire	— Ministry of the Civil Service, State Reform and Regional Planning
— Ministère de l'intérieur, de la sécurité intérieure et des libertés locales	— Ministry of the Interior, Internal Security and Local Freedoms
— Ministère de la justice	— Ministry of Justice
— Ministère de la jeunesse, de l'éducation nationale et de la recherche	— Ministry of Youth, Education and Research
— Ministère de l'outre-mer	— Ministry of Overseas Territories
— Ministère de la santé, de la famille et des personnes handicapées	— Ministry of Health, the Family and Disabled Persons
— Ministère des sports	— Ministry of Sport

(<sup>1</sup>) Non-warlike materials.

## 2. National public establishments

— Académie de France à Rome	— Academy of France in Rome
— Académie de marine	— Naval Academy
— Académie des sciences d'outre-mer	— Overseas Academy of Sciences
— Agence centrale des organismes de sécurité sociale (ACOSS)	— Central Agency for Social Security Bodies
— Agence nationale pour l'amélioration des conditions de travail (ANACT)	— National Agency for the Improvement of Working Conditions
— Agence nationale pour l'amélioration de l'habitat (ANAH)	— National Agency for the Improvement of the Habitat
— Agence nationale pour l'indemnisation des français d'outre-mer (ANIFOM)	— National Agency for Compensation of French Overseas Nationals
— Assemblée permanente des chambres d'agriculture (APCA)	— Permanent Assembly of the Regional Chambers of Agriculture
— Bibliothèque nationale de France	— National Library of France
— Bibliothèque nationale et universitaire de Strasbourg	— National and University Library of Strasbourg
— Bibliothèque publique d'information	— Public Information Library
— Caisse des dépôts et consignations	— Deposits and Consignments Fund
— Caisse nationale des autoroutes (CNA)	— National Highways Fund
— Caisse nationale militaire de sécurité sociale (CNMSS)	— National Social Security Fund for the Military
— Centre des monuments nationaux (CMN)	— National Monuments Centre
— Caisse de garantie du logement locatif social	— Social Housing Guarantee Fund
— Casa de Velasquez	— Casa de Velázquez
— Centre d'enseignement zootechnique	— Centre for Zootechnical Studies
— Centre d'études du milieu et de pédagogie appliquée du ministère de l'agriculture	— Ministry of Agriculture's Centre for Environmental Studies and Applied Teaching
— Centre d'études supérieures de sécurité sociale	— Centre for Higher Social Security Studies



— Centres de formation professionnelle agricole	— Agricultural Training Centres
— Centre national d'art et de culture Georges Pompidou	— Georges Pompidou National Centre of Art and Culture
— Centre national de la cinématographie	— National Cinematography Centre
— Centre national d'études et de formation pour l'enfance inadaptée	— National Study and Training Centre for Professionals working with Children with Adaptation Difficulties
— Centre national d'études et d'expérimentation du machinisme agricole, du génie rural, des eaux et des forêts (CEMAGREF)	— National Institute for Agricultural and Environmental Engineering
— Centre national des lettres	— National Literary Arts Centre
— Centre national de documentation pédagogique	— National Teaching Documentation Centre
— Centre national des oeuvres universitaires et scolaires (CNOUS)	— National Centre for Assistance to School and University Students
— Centre hospitalier des Quinze-Vingts	— Quinze-Vingts Hospital
— Centre national de promotion rurale de Marmilhat	— Marmilhat National Rural Development Centre
— Centres d'éducation populaire et de sport (CREPS)	— Adult Education and Sports Centres
— Centres régionaux des œuvres universitaires (CROUS)	— Regional Centres for Assistance to University Students
— Centres régionaux de la propriété forestière	— Regional Forest Property Centres
— Centre de sécurité sociale des travailleurs migrants	— Social Security Centre for Migrant Workers
— Commission des opérations de bourse	— Stock Exchange Operations Commission
— Conseil supérieur de la pêche	— Fisheries Council
— Conservatoire de l'espace littoral et des rivages lacustres	— Coast and Lakeshore Conservation Agency
— Conservatoire national supérieur de musique de Paris	— Paris Higher National Music Conservatoire
— Conservatoire national supérieur de musique de Lyon	— Lyon Higher National Music Conservatoire
— Conservatoire national supérieur d'art dramatique	— National Drama School
— École centrale — Lyon	— National College of Engineering and Research, Lyon
— École centrale des arts et manufactures	— National College of Engineering and Science, Paris
— Ecole du Louvre	— Ecole du Louvre Art
— École française d'archéologie d'Athènes	— French School of Archaeology in Athens
— École française d'Extrême-Orient	— French School of Far East Studies
— École française de Rome	— French School in Rome
— École des hautes études en sciences sociales	— College of Advanced Studies in Social Sciences
— École nationale d'administration	— National Public Administration College
— École nationale de l'aviation civile (ENAC)	— National Civil Aviation College
— École nationale des Chartes	— Chartres National College
— École nationale d'équitation	— National Equitation College
— École nationale du génie rural des eaux et des forêts (ENGREF)	— National College of Rural, Water and Forestry Engineering

— Écoles nationales d'ingénieurs	— National Engineering Colleges
— École nationale d'ingénieurs des techniques des industries agricoles et alimentaires	— National College for Agro-Food Industry Engineers
— Écoles nationales d'ingénieurs des travaux agricoles	— National College of Agricultural Engineers
— École nationale du génie de l'eau et de l'environnement de Strasbourg	— Strasbourg National College of Water and Environmental Engineering
— École nationale de la magistrature	— National College for the Judiciary
— Écoles nationales de la marine marchande	— National Merchant Navy Colleges
— École nationale de la santé publique (ENSP)	— National Public Health College
— École nationale de ski et d'alpinisme	— National Skiing and Mountaineering College
— École nationale supérieure agronomique — Montpellier	— Montpellier National Higher College of Agronomy
— École nationale supérieure agronomique — Rennes	— National Higher College of Agronomy, Rennes
— École nationale supérieure des arts décoratifs	— National Higher College of the Decorative Arts
— École nationale supérieure des arts et industries — Strasbourg	— National Higher College of Arts and Industries, Strasbourg
— École nationale supérieure des arts et industries textiles — Roubaix	— National Higher College of Arts and Textile Industries, Roubaix
— Écoles nationales supérieures d'arts et métiers	— National Higher Colleges of Engineering
— École nationale supérieure des beaux-arts	— National Higher College of Fine Arts
— École nationale supérieure des bibliothécaires	— National Higher College for Librarians
— École nationale supérieure de céramique industrielle	— National Higher College of Industrial Ceramics
— École nationale supérieure de l'électronique et de ses applications (ENSEA)	— National Higher College of Electronics and Electrical Engineering
— École nationale supérieure des industries agricoles alimentaires	— National Higher College for the Agri-Food Industries
— École nationale supérieure du paysage	— National Higher College of Landscape Design
— Écoles nationales vétérinaires	— National Colleges of Veterinary Medicine
— École nationale de voile	— National Sailing College
— Écoles normales nationales d'apprentissage	— National Teacher Training Colleges
— Écoles normales supérieures	— Higher Teacher Training Colleges
— École polytechnique	— Polytechnical College
— École technique professionnelle agricole et forestière de Meymac (Corrèze)	— Meymac Agricultural and Forestry Training College (Corrèze)
— École de sylviculture — Crogny (Aube)	— Crogny Forestry College (Aube)
— École de viticulture et d'oenologie de la Tour-Blanche (Gironde)	— Tour Blanche College of Viticulture and Oenology (Gironde)
— École de viticulture — Avize (Marne)	— Avize Viticulture College (Marne)
— Hôpital national de Saint-Maurice	— Saint-Maurice National Hospital
— Établissement national des invalides de la marine (ENIM)	— National Social Security Institute for Disabled Sea Workers

— Établissement national de bienfaisance Koenigswarter	— Koenigswarter National Charitable Organisation
— Établissement de maîtrise d'ouvrage des travaux culturels (EMOC)	— Corporation for Supervision of Work on State-Owned Buildings of Cultural or Educational Interest
— Établissement public du musée et du domaine national de Versailles	— Public Corporation for the Museum and National Domain of Versailles
— Fondation Carnegie	— Carnegie Foundation
— Fondation Singer-Polignac	— Singer-Polignac Foundation
— Fonds d'action et de soutien pour l'intégration et la lutte contre les discriminations	— Action and Support Fund for Integration and the Fight against Discrimination
— Institut de l'élevage et de médecine vétérinaire des pays tropicaux (IEMVPT)	— Institute for Stockfarming and Veterinary Medicine in Tropical Countries
— Institut français d'archéologie orientale du Caire	— French Eastern Archaeology Institute in Cairo
— Institut français de l'environnement	— French Environmental Institute
— Institut géographique national	— National Geographical Institute
— Institut industriel du Nord	— Industrial Institute of the Nord Region
— Institut national agronomique de Paris-Grignon	— Paris-Grignon National Agronomics Institute,
— Institut national des appellations d'origine (INAO)	— National Institute for Designations of Origin
— Institut national d'astronomie et de géophysique (INAG)	— National Astronomy and Geophysics Institute
— Institut national de la consommation (INC)	— National Consumption Institute
— Institut national d'éducation populaire (INEP)	— National Adult Education Institute
— Institut national d'études démographiques (INED)	— National Institute of Demographic Studies
— Institut national des jeunes aveugles — Paris	— National Institute for Young Blind People, Paris
— Institut national des jeunes sourds — Bordeaux	— National Institute for Young Deaf People, Bordeaux
— Institut national des jeunes sourds — Chambéry	— National Institute for Young Deaf People, Chambéry
— Institut national des jeunes sourds — Metz	— National Institute for Young Deaf People, Metz
— Institut national des jeunes sourds — Paris	— National Institute for Young Deaf People, Paris
— Institut national du patrimoine	— French National Heritage Institute
— Institut national de physique nucléaire et de physique des particules (I.N2.P3)	— National Institute of Nuclear Physics and Particle Physics
— Institut national de la propriété industrielle	— National Intellectual Property Institute
— Institut national de recherches archéologiques préventives	— National Institute for Preventive Archaeological Research
— Institut national de recherche pédagogique (INRP)	— National Institute for Educational Research
— Institut national des sports et de l'éducation physique	— National Institute for Sport and Physical Education
— Instituts nationaux polytechniques	— National Polytechnical Colleges
— Instituts nationaux des sciences appliquées	— National Institutes of Applied Sciences
— Institut national supérieur de chimie industrielle de Rouen	— Rouen Higher National Institute of Industrial Chemistry

— Institut national de recherche en informatique et en automatique (INRIA)	— National Institute for Computer Science and Control Research
— Institut national de recherche sur les transports et leur sécurité (INRETS)	— National Institute for Transport and Safety Research
— Instituts régionaux d'administration	— Regional Public Administration Colleges
— Institut supérieur des matériaux et de la construction mécanique de Saint-Ouen	— Saint-Ouen Higher Institute of Materials and Mechanical Construction
— Musée Auguste-Rodin	— Auguste-Rodin Museum
— Musée de l'armée	— Military Museum
— Musée Gustave-Moreau	— Gustave-Moreau Museum
— Musée du Louvre	— Louvre Museum
— Musée du quai Branly	— Quai Branly Museum
— Musée national de la marine	— Naval Museum
— Musée national J.-J.-Henner	— National J.J. Henner Museum
— Musée national de la Légion d'honneur	— National Museum of the Legion of Honour
— Muséum national d'histoire naturelle	— National Natural History Museum
— Office de coopération et d'accueil universitaire	— University Cooperation and Reception Office
— Office français de protection des réfugiés et apatrides	— French Office for the Protection of Refugees and Stateless Persons
— Office national de la chasse et de la faune sauvage	— National Office for Hunting and Wild Fauna
— Office national d'information sur les enseignements et les professions (ONISEP)	— National Office for Information on Higher Education and Careers
— Office des migrations internationales (OMI)	— International Migration Office
— Office universitaire et culturel français pour l'Algérie	— French University and Cultural Office for Algeria
— Palais de la découverte	— Discovery Museum
— Parcs nationaux	— National Parks
— Syndicat des transports parisiens d'Ile-de-France	— Ile-de-France and Paris Transport Authority
— Thermes nationaux — Aix-les-Bains	— National Thermal Baths at Aix-les-Bains

### 3. Autre organisme public national — Other national public body

— Union des groupements d'achats publics (UGAP)	— Public Procurement Department
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### IRELAND

President's Establishment

Houses of the Oireachtas [Parliament] and European Parliament

Department of the Taoiseach [Prime Minister]

Central Statistics Office

Department of Finance

Office of the Comptroller and Auditor General

Office of the Revenue Commissioners

Office of Public Works

State Laboratory

Office of the Attorney General

Office of the Director of Public Prosecutions

Valuation Office

Civil Service Commission

Office of the Ombudsman

Chief State Solicitor's Office

Department of Justice, Equality and Law Reform

Courts Service

Prisons Service

Office of the Commissioners of Charitable Donations and Bequests

Department of the Environment and Local Government

Department of Education and Science

Department of Communications, Marine and Natural Resources

Department of Agriculture and Food

Department of Transport

Department of Health and Children

Department of Enterprise, Trade and Employment

Department of Arts, Sports and Tourism

Department of Defence

Department of Foreign Affairs

Department of Social and Family Affairs

Department of Community, Rural and Gaeltacht [Gaelic speaking regions] Affairs

Arts Council

National Gallery.

## ITALY

**1. Purchasing bodies**

1. Presidenza del Consiglio dei Ministri	Presidency of the Council of Ministers
2. Ministero degli Affari Esteri	Ministry of Foreign Affairs
3. Ministero dell'Interno	Ministry of Interior
4. Ministero della Giustizia	Ministry of Justice
5. Ministero della Difesa	Ministry of Defence <sup>(1)</sup>
6. Ministero dell'Economia e delle Finanze	Ministry of Economy and Finance (former Ministry of Treasury and Ministry of Finance)
7. Ministero delle Attività Produttive	Ministry of Productive Activities (former Ministry of Industry, trade, handicraft tourism and Ministry of foreign trade)
8. Ministero delle Comunicazioni	Ministry of Communications (former Ministry of posts and telecommunications)
9. Ministero delle Politiche agricole e forestali	Ministry of Agricultural and Forestal Policies (former Ministry of agricultural resources)
10. Ministero dell'Ambiente e tutela del Territorio	Ministry of Environment and defence of Territory (former Ministry of environment)
11. Ministero delle Infrastrutture e Trasporti	Ministry of Infrastructures and Transports (former Ministry of transports and Ministry of Public works)
12. Ministero del Lavoro e delle politiche sociali	Ministry of Employment and social policies (former Ministry of employment and social security)
13. Ministero della Salute	Ministry of Health
14. Ministero dell'Istruzione, Università e Ricerca	Ministry of Education, University and scientific Research
15. Ministero per i Beni e le attività culturali	Ministry for Cultural heritage and activities

<sup>(1)</sup> Non-warlike materials.

**2. Other national public body**

ONSIP SPA (Concessionaire of Public Informatic Services) <sup>(1)</sup>      CONSIP (Concessionaria Servizi Informatici Pubblici)

<sup>(1)</sup> Acts as the central purchasing entity for all the Ministries and, at request, for other public entities on the basis of a concession or framework agreement.

## LUXEMBOURG

1. Ministère de l'Agriculture, de la Viticulture et du Développement rural: Administration des services techniques de l'agriculture.	1. Ministry of Agriculture, Viticulture and Rural Development: Administration of Agricultural Technical Departments
2. Ministère des Affaires étrangères, du Commerce extérieur, de la Coopération et de la Défense: Armée.	2. Ministry of Foreign Affairs, Foreign Trade, Cooperation and Defence: Army
3. Ministère de l'Education nationale, de la Formation professionnelle et des Sports: Lycées d'enseignement secondaire et d'enseignement secondaire technique.	3. Ministry of Education, Vocational Training and Sport: Secondary Schools and Secondary Technical Schools
4. Ministère de l'Environnement: Administration de l'environnement.	4. Ministry of the Environment: Environment Administration
5. Ministère d'Etat, département des Communications: Entreprise des P et T (Postes seulement).	5. Ministry of the State, Communications Department: Postal Services and Telecommunications Company (Post division only)
6. Ministère de la Famille, de la Solidarité sociale et de la Jeunesse: Maisons de retraite de l'Etat, Homes d'enfants.	6. Ministry of the Family, Social Solidarity and Youth: State retirement homes, children's homes

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| 7. Ministère de la Fonction publique et de la Réforme administrative: Centre informatique de l'Etat, Service central des imprimés et des fournitures de bureau de l'Etat. | 7. Ministry of the Civil Service and Administrative Reform: State Computer Science Centre, Central Department for State Printed Matter and Office Supplies |
| 8. Ministère de la Justice: Etablissements pénitentiaires.  | 8. Ministry of Justice: Penitentiary Institutions  |
| 9. Ministère de l'Intérieur: Police grand-ducale, Service national de la protection civile.   | 9. Ministry of the Interior: National Police Service, National Civil Protection Office   |
| 10. Ministère des Travaux publics: Administration des bâtiments publics; Administration des ponts et chaussées.   | 10. Ministry of Public Works: Public Buildings Administration; Bridges and Roads Administration  |

## NETHERLANDS

**Ministerie van Algemene Zaken (Ministry of General Affairs)**

- Bestuursdepartement (Central policy and staff departments)
- Bureau van de Wetenschappelijke Raad voor het Regeringsbeleid (Advisory Council on Government Policy)
- Rijksvoorlichtingsdienst: (The Netherlands Government Information Service)

**Ministerie van Binnenlandse Zaken en Koninkrijksrelaties (Ministry of the Interior)**

- Bestuursdepartement (Central policy and staff departments)
- Agentschap Informatievoorziening Overheidspersoneel (IVOP) (Agency for Government Personnel Information)
- Centrale Archiefselectiedienst (CAS) (Central Records Selection Service)
- Algemene Inlichtingen- en Veiligheidsdienst (AIVD) (General Intelligence and Security Service)
- Beheerorganisatie GBA (Personnel Records and Travel Documents Agency)
- Organisatie Informatie- en communicatietechnologie OOV (ITO) (Information and Communication Technology Organisation)
- Korps Landelijke Politiediensten (National Police Services Agency)

**Ministerie van Buitenlandse Zaken (Ministry of Foreign Affairs)**

- Directoraat Generaal Regiobeleid en Consulaire Zaken (DGRC) (Directorate-General for Regional Policy and Consular Affairs)
- Directoraat Generaal Politieke Zaken (DGPZ) (Directorate-General for Political Affairs)
- Directoraat Generaal Internationale Samenwerking (DGIS) (Directorate-General for International Cooperation)
- Directoraat Generaal Europese Samenwerking (DGES) (Directorate-General for European Cooperation)
- Centrum tot Bevordering van de Import uit Ontwikkelingslanden (CBI) (Centre for the Promotion of Imports from Developing Countries)
- Centrale diensten ressorterend onder P/PlvS (support services falling under the Secretary-General and Deputy Secretary-General)
- Buitenlandse Posten (ieder afzonderlijk) (the various Foreign Missions)

**Ministerie van Defensie (Ministry of Defence)**

- Bestuursdepartement (Central policy and staff departments)
- Staf Defensie Interservice Commando (DICO) (Staff Defence Interservice Command for Support Services)
- Defensie Telematica Organisatie (DTO) (Defence Telematics Organisation)
- Centrale directie van de Dienst Gebouwen, Werken en Terreinen (Defence Infrastructure Agency, Central Directorate)
- De afzonderlijke regionale directies van de Dienst Gebouwen, Werken en Terreinen (Defence Infrastructure Agency, Regional Directorates)

- Directie Materieel Koninklijke Marine (Directorate of Material Royal Netherlands Navy)
- Directie Materieel Koninklijke Landmacht — Directorate of Material Royal Netherlands Army)
- Directie Materieel Koninklijke Luchtmacht (Directorate of Material Royal Netherlands Air Force)
- Landelijk Bevoorradersbedrijf Koninklijke Landmacht (LBBKL) (Royal Netherlands Army National Supply Agency)
- Defensie Pijpleiding Organisatie (DPO) (Defence Pipeline Organisation)
- Logistiek Centrum Koninklijke Luchtmacht (Logistic Centre Royal Netherlands Air Force)
- Koninklijke Marine, Marinebedrijf (Royal Netherlands Navy, Maintenance Establishment)

#### **Ministerie van Economische Zaken (Ministry of Economic Affairs)**

- Bestuursdepartement (Central policy and staff departments)
- Centraal Bureau voor de Statistiek (CBS) (Netherlands Central Bureau of Statistics)
- Centraal Planbureau (CPB) (Central Plan Bureau)
- Bureau voor de Industriële Eigendom (BIE) (Industrial Property Office)
- Senter (Senter)
- Staatstoezicht op de Mijnen (SodM) (State Supervision of Mines)
- Nederlandse Mededingingsautoriteit (NMa) (Netherlands Competition Authority)
- Economische Voorlichtingsdienst (EVD) (Netherlands Foreign Trade Agency)
- Nederlandse Onderneming voor Energie en Milieu BV (Novem) (Agency for Energy and Environment)
- Agentschap Telecom (Telecom Agency)

#### **Ministerie van Financiën (Ministry of Finance)**

- Bestuursdepartement (Central policy and staff departments)
- Belastingdienst Automatiseringscentrum (Tax and Custom Computer and Software Centre)
- Belastingdienst (Tax and Customs Administration)
  - de afzonderlijke Directies der Rijksbelastingen (the various Divisions of the Tax and Customs Administration throughout the Netherlands)
  - Fiscale Inlichtingen- en Opsporingsdienst (incl. Economische Controle dienst (ECD)) (Fiscal Information and Investigation Service (the Economic Investigation Service included))
  - Belastingdienst Opleidingen (Tax and Customs Training Centre)
- Dienst der Domeinen (State Property Service)

#### **Ministerie van Justitie (Ministry of Justice)**

- Bestuursdepartement (Central policy and staff departments)
- Dienst Justitiële Inrichtingen (Correctional Institutions Agency)
- Raad voor de Kinderbescherming (Child Care and Protection Agency)
- Centraal Justitie Incasso Bureau (Central Fine Collection Agency)
- Openbaar Ministerie (Public Prosecution Service)



- Immigratie en Naturalisatiedienst (Immigration and Naturalisation Service)
- Nederlands Forensisch Instituut (Netherlands Forensic Institute)
- Raad voor de Rechtspraak (Judicial Management and Advisory Board)

**Ministerie van Landbouw, Natuurbeheer en Visserij (Ministry of Agriculture, Nature Management and Fisheries)**

- Bestuursdepartement (Central policy and staff departments)
- Agentschap Landelijke Service bij Regelingen (LASER) (National Service for the Implementation of Regulations (Agency))
- Agentschap Plantenziekte kundige Dienst (PD) (Plant Protection Service (Agency))
- Algemene Inspectiedienst (AID) (General Inspection Service)
- De afzonderlijke Regionale Beleidsdirecties (Regional Policy departments)
- Agentschap Bureau Heffingen (Levies Office (Agency))
- Dienst Landelijk Gebied (DLG) (Government Service for Sustainable Rural Development )
- De afzonderlijke Regionale Beleidsdirecties

**Ministerie van Onderwijs, Cultuur en Wetenschappen (Ministry of Education, Culture and Science)**

- Bestuursdepartement (Central policy and staff departments)
- Inspectie van het Onderwijs (Inspectorate of Education)
- Inspectie Cultuurbezit (Inspectorate of cultural heritage)
- Centrale Financiën Instellingen (Central Funding of Institutions Agency)
- Nationaal archief (National Archives)
- Rijksdienst voor de archeologie (State inspectorate for archaeology)
- Rijksarchiefinspectie (Public Records Inspectorate)
- Adviesraad voor Wetenschaps- en Technologiebeleid (Advisory Council for Science and Technology Policy)
- Onderwijsraad (Education Council)
- Rijksinstituut voor Oorlogsdocumentatie
- Instituut Collectie Nederland (Netherlands Institute for Cultural Heritage)
- Raad voor Cultuur (Council for Culture)
- Rijksdienst voor de Monumentenzorg (Netherlands Department for Conservation of Monuments)
- Rijksdienst Oudheidkundig Bodemonderzoek (National Service for archaeological heritage)

**Ministerie van Sociale Zaken en Werkgelegenheid (Ministry of Social Affairs and Employment)**

- Bestuursdepartement (Central policy and staff departments)

**Ministerie van Verkeer en Waterstaat (Ministry of Transport, Public Works and Watermanagement)**

- Bestuursdepartement (Central policy and staff departments)
- Directoraat-Generaal Luchtvaart (Directorate-General for Civil Aviation)

- Directoraat-Generaal Goederenvervoer (Directorate-General for Freight Transport)
- Directoraat-Generaal Personenvervoer — Directorate-General for Passenger Transport
- Directoraat-Generaal Rijkswaterstaat (Directorate-General of Public Works and Water Management)
- Hoofdkantoor Directoraat-Generaal Rijks Waterstaat (Public Works and Water Management Head Office)
- De afzonderlijke regionale directies van Rijkswaterstaat (Each individual regional department of the Directorate-General of Public Works and Water Management)
- De afzonderlijke specialistische diensten van Rijkswaterstaat (Each individual specialist service of the Directorate-General of Public Works and Water Management)
- Directoraat-Generaal Water (Directorate-General for Water Affairs)
- Inspecteur-Generaal, Inspectie Verkeer en Waterstaat (Inspector-General, Transport and Water Management Inspectorate)
- Divisie Luchtvaart van de Inspecteur-Generaal, Inspectie Verkeer en Waterstaat (Civil Aviation Authority of the Inspector-General, Transport and Water Management Inspectorate)
- Divisie Vervoer van de Inspecteur-Generaal, Inspectie Verkeer en Waterstaat (Transport Inspectorate of the Inspector-General, Transport and Water Management Inspectorate)
- Divisie Scheepvaart van de Inspecteur-Generaal, Inspectie Verkeer en Waterstaat (Shipping Inspectorate Netherlands of the Inspector-General, Transport and Water Management Inspectorate)
- Centrale Diensten (Central Services)
- Koninklijk Nederlands Meteorologisch Instituut (KNMI) (Royal Netherlands Meteorological Institute)

**Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer (Ministry for Housing, Spatial Planning and the Environment)**

- Bestuursdepartement (Central policy and staff departments)
- Directoraat-Generaal Wonen (Directorate General for Housing)
- Directoraat-Generaal Ruimte (Directorate General for Spatial Policy)
- Directoraat General Milieubeheer (Directorate General for Environmental Protection)
- Rijksgebouwendienst (Government Buildings Agency)
- VROM inspectie (Inspectorate)

**Ministerie van Volksgezondheid, Welzijn en Sport (Ministry of Health, Welfare Sports)**

- Bestuursdepartement (Central policy and staff departments)
- Inspectie Gezondheidsbescherming, Waren en Veterinaire Zaken (Inspectorate for Health Protection and Veterinary Public Health)
- Inspectie Gezondheidszorg (Health Care Inspectorate)
- Inspectie Jeugdhulpverlening en Jeugdbescherming (Youth Services and Youth Protection Inspectorate)
- Rijksinstituut voor de Volksgezondheid en Milieu (RIVM) (National Institute of Public Health and Environment)
- Sociaal en Cultureel Planbureau (Social and Cultural Planning Office)
- Agentschap t.b.v. het College ter Beoordeling van Geneesmiddelen (Medicines Evaluation Board Agency)

**Tweede Kamer der Staten-Generaal (Second Chamber of the States General)**

**Eerste Kamer der Staten-Generaal (First Chamber of the States General)**

**Raad van State (Council of State)**

**Algemene Rekenkamer (Netherlands Court of Audit)**

**Nationale Ombudsman (National Ombudsman)**

**Kanselarij der Nederlandse Orden (Chancellery of the Netherlands Order)**

**Kabinet der Koningin (Queen's Cabinet)**

#### AUSTRIA

1. Bundeskanzleramt	Federal Chancellery
2. Bundesministerium für auswärtige Angelegenheiten	Federal Ministry for Foreign Affairs
3. Bundesministerium für Bildung, Wissenschaft und Kultur	Federal Ministry for Education, Science and Culture
4. Bundesministerium für Finanzen	Federal Ministry of Finance
5. Bundesministerium für Gesundheit und Frauen	Federal Ministry of Health and Women
6. Bundesministerium für Inneres	Federal Ministry of Internal Affairs
7. Bundesministerium für Justiz	Federal Ministry of Justice
8. Bundesministerium für Landesverteidigung	Federal Ministry of Defence
9. Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft	Federal Ministry for Agriculture and Forestry, the Environment and Water Management
10. Bundesministerium für soziale Sicherheit, Generationen und Konsumentenschutz	Federal Ministry for Social Security, Generations and Consumer Protection
11. Bundesministerium für Verkehr, Innovation und Technologie	Federal Ministry for Transport, Innovation and Technology
12. Bundesministerium für Wirtschaft und Arbeit	Federal Ministry for Economic Affairs and Employment
13. Bundesamt für Eich- und Vermessungswesen	Federal Office for Calibration and Measurement
14. Österreichische Forschungs- und Prüfzentrum Arsenal Gesellschaft m.b.H	Austrian Research and Test Centre Arsenal Ltd
15. Bundesprüfanstalt für Kraftfahrzeuge	Federal Testing Institute for Automobiles
16. Bundesbeschaffung G.m.b.H	Federal Procurement Ltd
17. Bundesrechenzentrum G.m.b.H	Federal Data Processing Centre Ltd

#### PORTUGAL

— Presidência do Conselho de Ministros;	Presidency of the Council of Ministers
— Ministério das Finanças;	Ministry of Finance
— Ministério da Defesa Nacional; (1)	Ministry of Defence

— Ministério dos Negócios Estrangeiros e das Comunidades Portuguesas;	Ministry of Foreign Affairs and Portuguese Communities
— Ministério da Administração Interna;	Ministry of Internal Affairs
— Ministério da Justiça;	Ministry of Justice
— Ministério da Economia;	Ministry of Economy
— Ministério da Agricultura, Desenvolvimento Rural e Pescas;	Ministry of Agriculture, Rural Development and Fishing
— Ministério da Educação;	Ministry of Education
— Ministério da Ciência e do Ensino Superior;	Ministry of Science and University Education
— Ministério da Cultura;	Ministry of Culture
— Ministério da Saúde;	Ministry of Health
— Ministério da Segurança Social e do Trabalho;	Ministry of Social Security and Labour
— Ministério das Obras Públicas, Transportes e Habitação;	Ministry of Public Works, Transports and Housing
— Ministério das Cidades, Ordenamento do Território e Ambiente.	Ministry of Cities, Land Management and Environment

(<sup>1</sup>) Non-warlike materials covered by Annex V.

#### FINLAND

OIKEUSKANSLERINVIRASTO – JUSTITIEKANSLERSÄMBETET	OFFICE OF THE CHANCELLOR OF JUSTICE
KAUPPA- JA TEOLLISUUSMINISTERIÖ – HANDELS- OCH INDUSTRIEMINISTERIET	MINISTRY OF TRADE AND INDUSTRY
Kuluttajavirasto – Konsumentverket	Finnish Consumer Agency
Kilpailuvirasto – Konkurrensverket	Finnish Competition Authority
Kuluttajavalituslautakunta – Konsumentklagonämnden	Consumer Complaint Board
Patentti- ja rekisterihallitus – Patent- och registerstyrelsen	National Board of Patents and Registration
LIKENNE- JA VIESTINTÄMINISTERIÖ – KOMMUNIKATIONS- MINISTERIET	MINISTRY OF TRANSPORT AND COMMUNICATIONS
Viestintävirasto – Kommunikationsverket	Finnish Communications Regulatory Authority
MAA- JA METSÄTALOUSHUSMINISTERIÖ – JORD- OCH SKOGSBRUKSMINISTERIET	MINISTRY OF AGRICULTURE AND FORESTRY
Elintarvikevirasto – Livsmedelsverket	National Food Agency
Maanmittauslaitos – Lantmäteriverket	National Land Survey of Finland
OIKEUSMINISTERIÖ – JUSTITIEMINISTERIET	MINISTRY OF JUSTICE
Tietosuojavaltuutetun toimisto – Dataombudsmannens byrå	Office of the Data Protection Ombudsman
Tuomioistuimet – domstolar	Courts of Law
Korkein oikeus – Högsta domstolen	Supreme Court
Korkein hallinto-oikeus – Högsta förvaltningsdomstolen	Supreme Administrative Court
Hovioikeudet – hovrätter	Courts of Appeal
Käräjäoikeudet – tingsrätter	District Courts
Hallinto-oikeudet –förvaltningsdomstolar	Administrative Courts

Markkinaoikeus - Marknadsdomstolen	Market Court
Työtuomioistuin - Arbetsdomstolen	Labour Court
Vakuutusoiikeus - Försäkringsdomstolen	Insurance Court
Vankeinhoitolaitos - Fångvårdsväsendet	Prison Service
OPETUSMINISTERIÖ - UNDERVISNINGSMINISTERIET	MINISTRY OF EDUCATION
Opetushallitus - Utbildningsstyrelsen	National Board of Education
Valtion elokuvataarkastamo - Statens filmgranskningsbyrå	Finnish Board of Film Classification
PUOLUSTUSMINISTERIÖ - FÖRSVARSMINISTERIET	MINISTRY OF DEFENCE
Puolustusvoimat <sup>(1)</sup> - Försvarsmakten	Finnish Defence Forces
SISÄASIAINMINISTERIÖ - INRIKESMINISTERIET	MINISTRY OF THE INTERIOR
Väestörekisterikeskus - Befolkningsregistercentralen	Population Register Centre
Keskusrikospoliisi - Centralkriminalpolisen	National Bureau of Investigation
Liikkuva poliisi - Rörliga polisen	National Traffic Police
Rajavartiolaitos <sup>(1)</sup> - Gränsbevakningsväsendet	Frontier Guard
SOSIAALI- JA TERVEYSMINISTERIÖ	MINISTRY OF SOCIAL AFFAIRS AND HEALTH
Työttömyysturvalautakunta - Arbetslöshetsnämnden	Unemployment Appeal Board
Tarkastuslautakunta - Prövningsnämnden	Appeal Tribunal
Lääkelaitos - Läkemedelsverket	National Agency for Medicines
Terveydenhuollon oikeusturvakeskus - Rättsskyddscentralen för hälsovården	National Authority for Medicolegal Affairs
Tapaturmavirasto - Olycksfallsverket	State Accident Compensation Office
Säteilyturvakeskus - Strålsäkerhetscentralen	Radiation and Nuclear Safety Authority
TYÖMINISTERIÖ - ARBETSMINISTERIET	MINISTRY OF LABOUR
Valtakunnansovittelijain toimisto - Riksförlikningsmännens byrå	National Conciliators' Office
Valtion turvapaikanhakijoiden vastaanottokeskukset - Statliga förläggningar för asylsökande	Reception Centres
Työneuvosto - Arbetsrådet i Finland	Labour Council
ULKOASIAINMINISTERIÖ - UTRIKESMINISTERIET	MINISTRY FOR FOREIGN AFFAIRS
VALTIOVARAINMINISTERIÖ - FINANSMINISTERIET	MINISTRY OF FINANCE
Valtiontalouden tarkastusvirasto - Statens revisionsverk	State Audit Office
Valtiokonttori - Statskontoret	State Treasury
Valtion työmarkkinalaitos - Statens arbetsmarknadsverk	State Employer's Office
Verohallinto - Skatteförvaltningen	Tax Administration
Tullilaitos - Tullverket	Customs
Valtion vakuusrahassto - Statsgarantifonden	Government Guarantee Fund
YMPÄRISTÖMINISTERIÖ - MILJÖMINISTERIET	MINISTRY OF ENVIRONMENT

<sup>(1)</sup> Non-warlike materials.

## SWEDEN

## A

Akademien för de fria konsterna	Royal Academy of Fine Arts
Alkoholinspektionen	National Alcohol Board
Alkoholsortimentsnämnden	Alcoholic Beverages Product Range Board
Allmänna pensionsfonden	National Swedish Pension Fund
Allmänna reklamationsnämnd	National Board for Consumer Complaints
Ambassader	Embassies
Arbetsdomstolen	Labour Court
Arbetsgivarverk, statens	National Agency for Government Employers
Arbetslivsfonden	Working Lives Fund
Arbetslivsinstitutet	National Institute for Working Life
Arbetsmarknadsstyrelsen	National Labour Market Board
Arbetsmiljöfonden	Work Environment Fund
Arbetsmiljöinstitutet	National Institute of Occupational Health
Arbetsmiljönämnd, statens	Board of Occupational Safety and Health for Government Employees
Arbetsmiljöverket	Swedish Work Environment Authority
Arkitekturmuseet	Swedish Museum of Architecture
Arrendenämnder (12)	Regional Tenancies Tribunals (12)

## B

Banverket	National Rail Administration
Barnombudsmannen	Office of the Children's Ombudsman
Beredning för utvärdering av medicinsk metodik, statens	Swedish Council on Technology Assessment in Health Care
Besvärnämnden för rättshjälp	Legal Aid Appeals Commission
Biografbyrå, statens	National Board of Film Censors
Biografiskt lexikon, svenskt	Dictionary of Swedish Biography
Birgittaskolan	Birgitta School
Blekinge tekniska högskola	Blekinge Institute of Technology
Bokföringsnämnden	Swedish Accounting Standards Board
Bostadskreditnämnd, statens (BKN)	National Housing Credit Guarantee Board
Boverket	National Board of Housing, Building and Planning
Brottsförebyggande rådet	National Council for Crime Prevention
Brottsoffermyndigheten	Criminal Victim Compensation and Support Authority
Brottsskadenämnden	Criminal Injuries Compensation Board
Byggforskningsrådet	Council for Building Research

## C

Centrala försöksdjursnämnden	Central Committee for Laboratory Animals
Centrala studiestödsnämnden	National Board of Student Aid
Centralnämnden för fastighetsdata	Central Board for Real-Estate Data

## D

Danshögskolan	University Collage of Dance
Datainspektionen	Data Inspection Board
Delegationen för utländska investeringar Sverige, ISA	Invest in Sweden Agency
Departementen	Ministries (Government Departments)
Domstolsverket	National Courts Administration
Dramatiska institutet	University Collage of Film, Radio, Television and Theatre

## E

Ekeskolan	Eke School
Ekobrottsmyndigheten	Economic Crimes Bureau
Ekonomistyrningsverket	National Financial Management Authority
Elsäkerhetsverket	National Electrical Safety Board
Energimyndigheten, statens	Swedish National Energy Administration
EU/FoU-rådet	Swedish EU-R&D Council
Exportkreditnämnden	Export Credits Guarantee Board
Exportråd, Sveriges	Swedish Trade Council

## F

Fastighetsmäklarnämnden	Board of Supervision of Estate Agents
Fastighetsverk, statens	National Property Board
Fideikommissnämnden	Entailed Estates Council
Finansinspektionen	Financial Supervisory Authority
Fiskeriverket	National Board of Fisheries
Flygmedicincentrum	Aero Medical Centre
Flygtekniska försöksanstalten	Aeronautical Research Institute
Folkhälsoinstitut, statens	Institute of Public Health
Fonden för fukt- och mögelskador	National Organisation for Aid to Owners of Private Small Houses
Forskningsrådet för miljö, areella näringar och samhällsbyggande, Formas	Swedish Research Council for Environment, Agricultural Sciences and Spatial Planning
Fortifikationsverket	National Fortifications Administration
Förläkningsmännaexpedition, statens	National Conciliators' Office
Försvarets forskningsanstalt	National Defence Research Establishment
Försvarets materielverk	Defence Matériel Administration
Försvarets radioanstalt	National Defence Radio Establishment
Försvarshistoriska museer, statens	National Swedish Museums of Military History

Försvarshögskolan	National Defence College
Försvarsmakten	Swedish Armed Forces
Försäkringskassorna (21)	Social Insurance Offices (21)
G	
Gentekniknämnden	Swedish Gene Technology Advisory Board
Geologiska undersökning, Sveriges	Geological Survey of Sweden
Geotekniska institut, statens	Swedish Geotechnical Institute
Giftinformationscentralen	Swedish Poisons Information Centre
Glesbyggsverket	National Rural Area Development Agency
Grafiska institutet och institutet för högre kommunikation- och reklamutbildning	Graphic Institute and the Graduate School of Communications
Granskningsnämnden för radio och TV	Swedish Broadcasting Commission
Göteborgs universitet	Göteborg University
H	
Handelsflottans kultur- och fritidsråd	Swedish Government Seamen's Service
Handelsflottans pensionsanstalt	Merchant Pensions Institute
Handikappombudsmannen	Office of the Disability Ombudsman
Handikappråd, statens	National Council for the Disabled
Haverikommission, statens	Board of Accident Investigation
Historiska museer, statens	National Historical Museums
Hjälpmedelsinstitutet	Swedish Handicap Institute
Hovrätterna (6)	Courts of Appeal (6)
Hyresnämnder (12)	Regional Rent Tribunals (12)
Häktena (30)	Remand Prisons (30)
Hälso- och sjukvårdens ansvarsnämnd	Committee on Medical Responsibility
Högskolan Dalarna	Dalarna University College
Högskolan i Borås	University College of Borås
Högskolan i Gävle	University College of Gävle
Högskolan i Halmstad	University College of Halmstad
Högskolan i Kalmar	University College of Kalmar
Högskolan i Karlskrona/Ronneby	University College of Karlskrona/Ronneby
Högskolan i Kristianstad	Kristianstad University College
Högskolan i Skövde	University College of Skövde
Högskolan i Trollhättan/Uddevalla	University College of Trollhättan/Uddevalla
Högskolan på Gotland	Gotland University College
Högskoleverket	National Agency for Higher Education
Högsta domstolen	Supreme Court



## I

Idrottshögskolan i Stockholm	Stockholm University College of Physical Education and Sports
Inspektionen för strategiska produkter	National Inspectorate of Strategic Products
Institut för byggnadsforskning, statens	Council for Building Research
Institut för ekologisk hållbarhet, statens	Swedish Institute for Ecological Sustainability
Institut för kommunikationsanalys, statens	Swedish Institute for Transport and Communications Analysis
Institut för psykosocial miljömedicin, statens	National Institute for Psycho-Social Factors and Health
Institut för särskilt utbildningsstöd	Swedish National Attendants' Service
Institutet för arbetsmarknadspolitisk utvärdering	Office of Labour Market Policy Evaluation
Institutet för rymdfysik	Swedish Institute of Space Physics
Institutionsstyrelse, Statens	National Board of Institutional Care
Insättningsgarantinämnden	Deposit Guarantee Board
Integrationsverket	Swedish Integration Board
Internationella adoptionsfrågor, Statens nämnd för	National Board for Intercountry Adoptions
Internationella programkontoret för utbildningsområdet	International Programme Office for Education and Training

## J

Jordbruksverk, statens	Swedish Board of Agriculture
Justitiekanslern	Office of the Chancellor of Justice
Jämställhetsombudsmannen	Office of the Equal Opportunities Ombudsman

## K

Kammarkollegiet	Legal, Financial and Administrative Services Agency
Kammarrätterna (4)	Administrative Courts of Appeal (4)
Karlstads universitet	Karlstad University
Karolinska Institutet	Karolinska Institutet
Kemikalieinspektionen	National Chemicals Inspectorate
Kommerskollegium	National Board of Trade
Koncessionsnämnden för miljöskydd	National Franchise Board for Environment Protection
Konjunkturinstitutet	National Institute of Economic Research
Konkurrensverket	Swedish Competition Authority
Konstfack	College of Arts, Crafts and Design
Konsthögskolan	College of Fine Arts
Konstmuseer, statens	National Art Museums
Konstnärsnämnden	Arts Grants Committee
Konstråd, statens	National Art Council
Konsulat	Consulates
Konsumentverket	Swedish Consumer Agency
Kriminaltekniska laboratorium, statens	National Laboratory of Forensic Science
Kriminalvårdens regionkanslier (4)	Correctional Region Offices (4)

Kriminalvårdsanstalterna (35)	National/ Local Institutions (35)
Kriminalvårdsstyrelsen	National Prison and Probation Administration
Kristinaskolan	Kristina School
Kronofogdemyndigheterna (10)	Enforcement Services (10)
Kulturråd, statens	National Council for Cultural Affairs
Kungl. Biblioteket	Royal Library
Kungl. Konsthögskolan	Royal University Collage of Fine Arts
Kungl. Musikhögskolan	Royal University Collage of Music in Stockholm
Kungl. Tekniska högskolan	Royal Institute of Technology
Kustbevakningen	Swedish Coast Guard
Kvalitets- och kompetensråd, statens	National Council for Quality and Development
Kärnkraftinspektion, statens	Swedish Nuclear Power Inspectorate
L	
Lagrådet	Council on Legislation
Lantbruksuniversitet, Sveriges	Swedish University of Agricultural Sciences
Lantmäteriverket	National Land Survey
Linköpings universitet	Linköping University
Livrustkammaren, Skoklosters slott och Hallwylska museet	Royal Armoury
Livsmedelsverk, statens	National Food Administration
Ljud- och bildarkiv, statens	National Archive of Recorded Sound and Moving Images
Lotteriinspektionen	National Gaming Board
Luftfartsverket	Civil Aviation Administration
Luleå tekniska universitet	Luleå University of Technology
Lunds universitet	Lund University
Läkemedelsverket	Medical Products Agency
Länsarbetsnämnderna (20)	County Labour Boards (20)
Länsrätterna (23)	County Administrative Courts (23)
Länsstyrelserna (21)	County Administrative Boards (21)
Lärarhögskolan i Stockholm	Stockholm Institute of Education
M	
Malmö högskola	Malmö University
Manillaskolan	Manilla School, Special School for Deaf and Hard-of-Hearing Children
Marknadsdomstolen	Market Court
Medlingsinstitutet	National Mediation Office
Meteorologiska och hydrologiska institut, Sveriges	Swedish Meteorological and Hydrological Institute
Migrationsverket	Swedish Migration Board
Militärhögskolor	Military Academies
Mitthögskolan	Mid Sweden University
Moderna museet	Modern Museum

Museer för världskultur, statens	National Museums of World Culture
Musiksamlingar, statens	Music Library of Sweden
Myndigheten för kvalificerad yrkesutbildning	Swedish Agency for Advanced Vocational Education
Myndigheten för Sveriges nätuniversitet	Swedish Agency for Distance Education
Mälardalens högskola	University Collage of Mälardalen
N	
Nationalmuseum	National Museum of Fine Arts
Nationellt centrum för flexibelt lärande	National Agency for Flexible Learning
Naturhistoriska riksmuseet	Museum of Natural History
Naturvårdsverket	Swedish Environmental Protection Agency
Nordiska Afrikainstitutet	Nordic Africa Institute
Notarienämnden	Recorders Committee
Nämnden för offentlig upphandling	National Board for Public Procurement
O	
Ombudsmannen mot diskriminering på grundav sexuell läggning	Office of the Ombudsman against Discrimination on the grounds of Sexual Orientation
Ombudsmannen mot etnisk diskriminering	Office of the Ethnic Discrimination Ombudsman
Operahögskolan i Stockholm	University Collage of Opera, Stockholm
P	
Patent- och registreringsverket	Patents and Registration Office
Patentbesvärsträtten	Court of Patent Appeals
Pensionsverk, statens	The National Government Employee Pensions Board
Person- och adressregisternämnd, statens	Co-ordinated Population and Address Register
Pliktverk, Totalförsvarets	National Service Administration
Polarforskningssekretariatet	Swedish Polar Research Secretariat
Polismyndigheter (21)	Police authorities (21)
Post- och telestyrelsen	National Post and Telecoms Agency
Premiepensionsmyndigheten	Premium Pension Authority
Presstödsnämnden	Press Subsidies Council
R	
Radio- och TV-verket	Radio and TV Authority
Regeringskansliet	Government Offices
Regeringsrätten	Supreme Administrative Court
Revisorsnämnden	Supervisory Board of Public Accountants
Riksantikvarieämbetet	Central Board of National Antiquities
Riksarkivet	National Archives
Riksbanken	Bank of Sweden

Riksdagens förvaltningskontor	Administration Department of the Swedish Parliament
Riksdagens ombudsmän	The Parliamentary Ombudsmen
Riksdagens revisorer	The Parliamentary Auditors
Riksförsäkringsverket	National Social Insurance Board
Riksgäldskontoret	National Debt Office
Rikspolisstyrelsen	National Police Board
Riksrevisionsverket	National Audit Bureau
Riksskatteverket	National Tax Board
Rikstrafiken	The National Public Transport Agency
Riksutställningar, Stiftelsen	Travelling Exhibitions Service
Riksåklagaren	Office of the Prosecutor- General
Rymdstyrelsen	National Space Board
Råd för byggnadsforskning, statens	Council for Building Research
Rådet för grundläggande högskoleutbildning	Council for Renewal of Undergraduate Education
Räddningsverk, statens	Swedish Rescue Services Agency
Rättshjälpsmyndigheten	National Legal Aid Authority
Rättsmedicinalverket	National Board of Forensic Medicine
S	
Sameskolstyrelsen och sameskolor	Sami School Board and Sami Schools
Sametinget	Sami Parliament
Sjöfartsverket	Swedish Maritime Administration
Sjöhistoriska museer, statens	National Maritime Museums
Skattemyndigheterna (10)	Tax Offices (10)
Skogsstyrelsen	National Board of Forestry
Skolverk, statens	National Agency for Education
Smittskyddsinstitutet	Swedish Institute for Infectious Disease Control
Socialstyrelsen	National Board of Health and Welfare
Specialpedagogiska institutet	Swedish Institute for Special Needs Education
Specialskolemyndigheten	National Agency for Special Schools for the Deaf and Hard-of-Hearing
Språk- och folkminnesinstitutet	Institute for Dialectology, Onomastics and Folklore Research
Sprängämnesinspektionen	National Inspectorate of Explosives and Flammables
Statens personregisternämnd, SPAR-nämnden	Swedish Population Address Register Board
Statistiska centralbyrån	Statistics Sweden
Statskontoret	The Swedish Agency for Public Management
Stockholms universitet	Stockholm University
Strålskyddsinstitut, statens	Swedish Radiation Protection Authority
Styrelsen för ackreditering och teknisk kontroll	Swedish Board for Accreditation and Conformity Assessment
Styrelsen för internationell utvecklings- samarbete, SIDA	Swedish International Development Cooperation Authority

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Styrelsen för psykologiskt försvar	National Board of Psychological Defence
Svenska institutet	Swedish Institute
Säkerhetspolisen	Swedish Security Service
Södertörns högskola	University College of South Stockholm
T	
Talboks- och punktskriftsbiblioteket	Library of Talking Books and Braille Publications
Teaterhögskolan	University College of Acting
Tekniska museet, stiftelsen	National Museum of Science and Technology
Tingsrätterna (72)	District and City Courts (72)
Tjänsteförslagsnämnden för domstolsväsendet	Judges Nomination Proposal Committee
Totalförsvarets forskningsinstitut	Swedish Defence Research Agency
Transportforskningsberedningen	Transport Research Board
Transportrådet	Board of Transport
Tullverket	Customs Administration
Turistdelegationen	Swedish Tourist Authority
U	
Umeå universitet	Umeå University
Ungdomsstyrelsen	National Board for Youth Affairs
Uppsala universitet	Uppsala University
Utlänningsnämnden	Aliens Appeals Board
Utsädeskontroll, statens	Swedish Seed Testing and Certification Institute
V	
Valmyndigheten	Election Authority
Vatten- och avloppsnämnd, statens	National Water Supply and Sewage Tribunal
Vattenöverdomstolen	Water Rights Court of Appeal
Verket för högskoleservice (VHS)	National Agency for Higher Education
Verket för innovationssystem (VINNOVA)	Swedish Agency for Innovation Systems
Verket för näringslivsutveckling (NUTEK)	Swedish Business Development Agency
Vetenskapsrådet	Swedish Research Council
Veterinärmedicinska anstalt, statens	National Veterinary Institute
Vägverket	Swedish National Road Administration
Vänerskolan	Väner School
Växjö universitet	Växjö University
Växsortsnämnd, statens	National Plant Variety Board

## Å

Åklagarmyndigheterna	Regional Public Prosecution Offices (6)
Åsbackaskolan	Åsbacka School

Ö

Örebro universitet	Örebro University
Östervångsskolan	Östervång School
Överbefälhavaren	Supreme Commander of the Armed Forces
Överstyrelsen för civil beredskap	Swedish Agency for Civil Emergency Planning

## UNITED KINGDOM

- Cabinet Office
  - Civil Service College
  - Office of the Parliamentary Counsel
- Central Office of Information
- Charity Commission
- Crown Prosecution Service
- Crown Estate Commissioners (Vote Expenditure Only)
- HM Customs and Excise
- Department for Culture, Media and Sport
  - British Library
  - British Museum
  - Historic Buildings and Monuments Commission for England (English Heritage)
  - Imperial War Museum
  - Museums and Galleries Commission
  - National Gallery
  - National Maritime Museum
  - National Portrait Gallery
  - Natural History Museum
  - Royal Commission on Historical Manuscripts
  - Royal Commission on Historical Monuments of England
  - Royal Fine Art Commission (England)
  - Science Museum
  - Tate Gallery
  - Victoria and Albert Museum
  - Wallace Collection

- Department for Education and Skills
  - Higher Education Funding Council for England
- Department for Environment, Food and Rural Affairs
  - Agricultural Dwelling House Advisory Committees
  - Agricultural Land Tribunals
  - Agricultural Wages Board and Committees
  - Cattle Breeding Centre
  - Countryside Agency
  - Plant Variety Rights Office
  - Royal Botanic Gardens, Kew
  - Royal Commission on Environmental Pollution
- Department of Health
  - Central Council for Education and Training in Social Work
  - Dental Practice Board
  - National Board for Nursing, Midwifery and Health Visiting for England
  - National Health Service Strategic Health Authorities and Trusts
  - Prescription Pricing Authority
  - Public Health Service Laboratory Board
  - UK Central Council for Nursing, Midwifery and Health Visiting
- Department for International Development
- Department for National Savings
- Department for Transport
  - Maritime and Coastguard Agency
- Department for Work and Pensions
  - Disability Living Allowance Advisory Board
  - Independent Tribunal Service
  - Medical Boards and Examining Medical Officers (War Pensions)
  - Occupational Pensions Regulatory Authority
  - Regional Medical Service
  - Social Security Advisory Committee
- Department of the Procurator General and Treasury Solicitor
  - Legal Secretariat to the Law Officers

- Department of Trade and Industry
  - Central Transport Consultative Committees
  - Competition Commission
  - Electricity Committees
  - Employment Appeal Tribunal
  - Employment Tribunals
  - Gas Consumers' Council
  - National Weights and Measures Laboratory
  - Office of Manpower Economics
  - Patent Office
- Export Credits Guarantee Department
- Foreign and Commonwealth Office
  - Wilton Park Conference Centre
- Government Actuary's Department
- Government Communications Headquarters
- Home Office
  - Boundary Commission for England
  - Gaming Board for Great Britain
  - Inspectors of Constabulary
  - Parole Board and Local Review Committees
- House of Commons
- House of Lords
- Inland Revenue, Board of
- Lord Chancellor's Department
  - Circuit Offices and Crown, County and Combined Courts (England and Wales)
  - Combined Tax Tribunal
  - Council on Tribunals
  - Court of Appeal — Criminal
  - Immigration Appellate Authorities
  - Immigration Adjudicators
  - Immigration Appeals Tribunal
  - Lands Tribunal
  - Law Commission
  - Legal Aid Fund (England and Wales)
  - Office of the Social Security Commissioners
  - Pensions Appeal Tribunals



- Public Trust Office
- Supreme Court Group (England and Wales)
- Transport Tribunal
- Ministry of Defence
  - Meteorological Office
  - Defence Procurement Agency
- National Assembly for Wales
  - Higher Education Funding Council for Wales
  - Local Government Boundary Commission for Wales
  - Royal Commission for Ancient and Historical Monuments in Wales
  - Valuation Tribunals (Wales)
  - Welsh National Health Service Authorities and Trusts
  - Welsh Rent Assessment Panels
  - Welsh National Board for Nursing, Midwifery and Health Visiting
- National Audit Office
- National Investment and Loans Office
- Northern Ireland Assembly Commission
- Northern Ireland Court Service
  - Coroners Courts
  - County Courts
  - Court of Appeal and High Court of Justice in Northern Ireland
  - Crown Court
  - Enforcement of Judgements Office
  - Legal Aid Fund
  - Magistrates Courts
  - Pensions Appeals Tribunals
- Northern Ireland, Department for Employment and Learning
- Northern Ireland, Department for Regional Development
- Northern Ireland, Department for Social Development
- Northern Ireland, Department of Agriculture and Rural Development
- Northern Ireland, Department of Culture, Arts and Leisure
- Northern Ireland, Department of Education
- Northern Ireland, Department of Enterprise, Trade and Investment
- Northern Ireland, Department of the Environment
- Northern Ireland, Department of Finance and Personnel
- Northern Ireland, Department of Health, Social Services and Public Safety
- Northern Ireland, Department of Higher and Further Education, Training and Employment
- Northern Ireland, Office of the First Minister and Deputy First Minister

- Northern Ireland Office
  - Crown Solicitor's Office
  - Department of the Director of Public Prosecutions for Northern Ireland
  - Forensic Science Agency of Northern Ireland
  - Office of Chief Electoral Officer for Northern Ireland
  - Police Service of Northern Ireland
  - Probation Board for Northern Ireland
  - State Pathologist Service
- Office of Fair Trading
- Office for National Statistics
  - National Health Service Central Register
  - Office of the Parliamentary Commissioner for Administration and Health Service Commissioners
- Office of the Deputy Prime Minister
  - Rent Assessment Panels
- Paymaster General's Office
- Postal Business of the Post Office
- Privy Council Office
- Public Record Office
- Royal Commission on Historical Manuscripts
- Royal Hospital, Chelsea
- Royal Mint
- Rural Payments Agency
- Scotland, Auditor-General
- Scotland, Crown Office and Procurator Fiscal Service
- Scotland, General Register Office
- Scotland, Queen's and Lord Treasurer's Remembrancer
- Scotland, Registers of Scotland
- The Scotland Office
- The Scottish Executive Corporate Services
- The Scottish Executive Education Department
  - National Galleries of Scotland
  - National Library of Scotland
  - National Museums of Scotland
  - Scottish Higher Education Funding Council
- The Scottish Executive Development Department
- The Scottish Executive Enterprise and Lifelong Learning Department
- The Scottish Executive Finance
- The Scottish Executive Health Department
  - Local Health Councils
  - National Board for Nursing, Midwifery and Health Visiting for Scotland

- Scottish Council for Postgraduate Medical Education
  - Scottish National Health Service Authorities and Trusts
  - The Scottish Executive Justice Department
    - Accountant of Court's Office
    - High Court of Justiciary
    - Court of Session
    - HM Inspectorate of Constabulary
    - Lands Tribunal for Scotland
    - Parole Board for Scotland and Local Review Committees
    - Pensions Appeal Tribunals
    - Scottish Land Court
    - Scottish Law Commission
    - Sheriff Courts
    - Scottish Criminal Record Office
    - Scottish Crime Squad
    - Scottish Fire Service Training Squad
    - Scottish Police College
    - Social Security Commissioners' Office
  - The Scottish Executive Rural Affairs Department
    - Crofters Commission
    - Red Deer Commission
    - Rent Assessment Panel and Committees
    - Royal Botanic Garden, Edinburgh
    - Royal Commission on the Ancient and Historical Monuments of Scotland
    - Royal Fine Art Commission for Scotland
  - The Scottish Executive Secretariat
  - The Scottish Parliamentary Body Corporate
  - Scottish Record Office
  - HM Treasury
  - Office of Government Commerce
  - The Wales Office (Office of the Secretary of State for Wales)
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## ANNEX V

**LIST OF PRODUCTS REFERRED TO IN ARTICLE 7 WITH REGARD TO CONTRACTS AWARDED BY CONTRACTING AUTHORITIES IN THE FIELD OF DEFENCE <sup>(1)</sup>**

- Chapter 25: Salt, sulphur, earths and stone, plastering materials, lime and cement
- Chapter 26: Metallic ores, slag and ash
- Chapter 27: Mineral fuels, mineral oils and products of their distillation, bituminous substances, mineral waxes  
except:  
ex 27.10: special engine fuels
- Chapter 28: Inorganic chemicals, organic and inorganic compounds of precious metals, of rare-earth metals, of radioactive elements and of isotopes  
except:  
ex 28.09: explosives  
ex 28.13: explosives  
ex 28.14: tear gas  
ex 28.28: explosives  
ex 28.32: explosives  
ex 28.39: explosives  
ex 28.50: toxic products  
ex 28.51: toxic products  
ex 28.54: explosives
- Chapter 29: Organic chemicals  
except:  
ex 29.03: explosives  
ex 29.04: explosives  
ex 29.07: explosives  
ex 29.08: explosives  
ex 29.11: explosives  
ex 29.12: explosives  
ex 29.13: toxic products  
ex 29.14: toxic products  
ex 29.15: toxic products  
ex 29.21: toxic products  
ex 29.22: toxic products  
ex 29.23: toxic products  
ex 29.26: explosives  
ex 29.27: toxic products  
ex 29.29: explosives

<sup>(1)</sup> The only text applicable for the purpose of this Directive is that within Annex 1, point 3 of the Agreement.

- Chapter 30: Pharmaceutical products
- Chapter 31: Fertilisers
- Chapter 32: Tanning and dyeing extracts, tannings and their derivatives, dyes, colours, paints and varnishes, putty, fillers and stoppings, inks
- Chapter 33: Essential oils and resinoids, perfumery, cosmetic or toilet preparations
- Chapter 34: Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing and scouring preparations, candles and similar articles, modelling pastes and 'dental waxes'
- Chapter 35: Albuminoidal substances, glues, enzymes
- Chapter 37: Photographic and cinematographic goods
- Chapter 38: Miscellaneous chemical products,  
except:  
ex 38.19: toxic products
- Chapter 39: Artificial resins and plastic materials, celluloses esters and ethers, articles thereof,  
except:  
ex 39.03: explosives
- Chapter 40: Rubber, synthetic rubber, factice, and articles thereof,  
except:  
ex 40.11: bullet-proof tyres
- Chapter 41: Raw hides and skins (other than furskins) and leather
- Chapter 42: Articles of leather, saddlery and harness, travel goods, handbags and similar containers, articles of animal gut (other than silk-worm gut)
- Chapter 43: Furskins and artificial fur, manufactures thereof
- Chapter 44: Wood and articles of wood, wood charcoal
- Chapter 45: Cork and articles of cork
- Chapter 46: Manufactures of straw of esparto and of other plaiting materials, basketware and wickerwork
- Chapter 47: Paper-making material
- Chapter 48: Paper and paperboard, articles of paper pulp, of paper or of paperboard
- Chapter 49: Printed books, newspapers, pictures and other products of the printing industry, manuscripts, type-scripts and plans
- Chapter 65: Headgear and parts thereof
- Chapter 66: Umbrellas, sunshades, walking-sticks, whips, riding-crops and parts thereof
- Chapter 67: Prepared feathers and down and articles made of feathers or of down, artificial flowers, articles of human hair
- Chapter 68: Articles of stone, of plaster, of cement, of asbestos, of mica and of similar materials
- Chapter 69: Ceramic products
- Chapter 70: Glass and glassware

- Chapter 71: Pearls, precious and semi-precious stones, precious metals, rolled precious metals, and articles thereof; imitation jewellery
- Chapter 73: Iron and steel and articles thereof
- Chapter 74: Copper and articles thereof
- Chapter 75: Nickel and articles thereof
- Chapter 76: Aluminium and articles thereof
- Chapter 77: Magnesium and beryllium and articles thereof
- Chapter 78: Lead and articles thereof
- Chapter 79: Zinc and articles thereof
- Chapter 80: Tin and articles thereof
- Chapter 81: Other base metals employed in metallurgy and articles thereof
- Chapter 82: Tools, implements, cutlery, spoons and forks, of base metal, parts thereof, except:  
ex 82.05: tools  
ex 82.07: tools, parts
- Chapter 83: Miscellaneous articles of base metal
- Chapter 84: Boilers, machinery and mechanical appliances, parts thereof, except:  
ex 84.06: engines  
ex 84.08: other engines  
ex 84.45: machinery  
ex 84.53: automatic data-processing machines  
ex 84.55: parts of machines under heading No 84.53  
ex 84.59: nuclear reactors
- Chapter 85: Electrical machinery and equipment, parts thereof, except:  
ex 85.13: telecommunication equipment  
ex 85.15: transmission apparatus
- Chapter 86: Railway and tramway locomotives, rolling-stock and parts thereof, railway and tramway tracks fixtures and fittings, traffic signalling equipment of all kinds (not electrically powered), except:  
ex 86.02: armoured locomotives, electric  
ex 86.03: other armoured locomotives  
ex 86.05: armoured wagons  
ex 86.06: repair wagons  
ex 86.07: wagons

- Chapter 87: Vehicles, other than railway or tramway rolling-stock, and parts thereof,  
except:  
ex 87.08: tanks and other armoured vehicles  
ex 87.01: tractors  
ex 87.02: military vehicles  
ex 87.03: breakdown lorries  
ex 87.09: motorcycles  
ex 87.14: trailers
- Chapter 89: Ships, boats and floating structures,  
except:  
ex 89.01A: warships
- Chapter 90: Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus, parts thereof,  
except:  
ex 90.05: binoculars  
ex 90.13: miscellaneous instruments, lasers  
ex 90.14: telemeters  
ex 90.28: electrical and electronic measuring instruments  
ex 90.11: microscopes  
ex 90.17: medical instruments  
ex 90.18: mechano-therapy appliances  
ex 90.19: orthopaedic appliances  
ex 90.20: X-ray apparatus
- Chapter 91: Manufacture of watches and clocks
- Chapter 92: Musical instruments, sound recorders or reproducers, television image and sound recorders or reproducers, parts and accessories of such articles
- Chapter 94: Furniture and parts thereof, bedding, mattresses, mattress supports, cushions and similar stuffed furnishings,  
except:  
ex 94.01A: aircraft seats
- Chapter 95: Articles and manufactures of carving or moulding material
- Chapter 96: Brooms, brushes, powder-puffs and sieves
- Chapter 98: Miscellaneous manufactured articles
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## ANNEX VI

**DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS**

For the purposes of this Directive:

1. (a) 'technical specification', in the case of public works contracts, means the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a material, product or supply, which permits a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting authority. These characteristics shall include levels of environmental performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling and production processes and methods. They shall also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;
- (b) 'technical specification', in the case of public supply or service contracts, means a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods and conformity assessment procedures;
2. 'standard' means a technical specification approved by a recognised standardising body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:
  - international standard: a standard adapted by an international standards organisation and made available to the general public,
  - European standard: a standard adopted by a European standards organisation and made available to the general public,
  - national standard: a standard adopted by a national standards organisation and made available to the general public;
3. 'European technical approval' means a favourable technical assessment of the fitness for use of a product for a particular purpose, based on the fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. European technical approvals are issued by an approval body designated for this purpose by the Member State;
4. 'Common technical specification' means a technical specification laid down in accordance with a procedure recognised by the Member States which has been published in the *Official Journal of the European Union*;
5. 'technical reference': any product produced by European standardisation bodies, other than official standards, according to procedures adopted for the development of market needs.

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## ANNEX VII

## INFORMATION TO BE INCLUDED IN NOTICES

## ANNEX VII A

## INFORMATION WHICH MUST BE INCLUDED IN PUBLIC CONTRACT NOTICES

## NOTICE OF THE PUBLICATION OF A PRIOR INFORMATION NOTICE ON A BUYER PROFILE

1. Country of the contracting authority
2. Name of the contracting authority
3. Internet address of the 'buyer profile' (URL)
4. CPV Nomenclature reference No(s)

## PRIOR INFORMATION NOTICE

1. The name, address, fax number and email address of the contracting authority and, if different, of the service from which additional information may be obtained and, in the case of services and works contracts, of the services, e.g. the relevant governmental internet site, from which information can be obtained concerning the general regulatory framework for taxes, environmental protection, employment protection and working conditions applicable in the place where the contract is to be performed.
2. Where appropriate, indicate whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes.
3. In the case of public works contracts: the nature and extent of the works and the place of execution; if the work is to be subdivided into several lots, the essential characteristics of those lots by reference to the work; if available, an estimate of the range of the cost of the proposed works; Nomenclature reference No(s).

In the case of public supply contracts: the nature and quantity or value of the products to be supplied, Nomenclature reference No(s).

In the case of public services contracts: the total value of the proposed purchases in each of the service categories in Annex II A; Nomenclature reference No(s).

4. Estimated date for initiating the award procedures in respect of the contract or contracts, in the case of public service contracts by category.
5. Where appropriate, indicate whether a framework agreement is involved.
6. Where appropriate, other information.
7. Date of dispatch of the notice or of dispatch of the notice of the publication of the prior information notice on the buyer profile.
8. Indicate whether the contract is covered by the Agreement.

## CONTRACT NOTICES

Open and restricted procedures, competitive dialogues, procedures, negotiated procedures:

1. Name, address, telephone and fax number, email address of the contracting authority.
2. Where appropriate, indicate whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes.
3. (a) The award procedure chosen;  
(b) Where appropriate, the reasons for use of the accelerated procedure (in restricted and negotiated procedures);  
(c) Where appropriate, indicate whether a framework agreement is involved;

- (d) Where appropriate, indicate whether a dynamic purchasing system is involved;
- (e) Where appropriate, the holding of an electronic auction (in the event of open, restricted or negotiated procedures, in the situation covered by Article 30(1)(a)).
4. Form of the contract.
5. Place of execution/performance of the works, for delivery of products or of the provision of services.
6. (a) Public works contracts:
- nature and extent of the works and general nature of the work. Indication in particular of options concerning supplementary works, and, if known, the provisional timetable for recourse to these options as well as the number of possible renewals, if any. If the work or the contract is subdivided into several lots, the size of the different lots; Nomenclature reference number(s),
  - information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects,
  - in the event of a framework agreement, indication also of the planned duration of the framework agreement, the estimated total value of the works for the entire duration of the framework agreement and, as far as possible, the value and the frequency of the contracts to be awarded.
- (b) Public supply contracts:
- nature of the products to be supplied, indicating in particular whether tenders are requested with a view to purchase, lease rental, hire or hire purchase or a combination of these, nomenclature reference number. Quantity of products to be supplied, indicating in particular options concerning supplementary purchases and, if known, the provisional timetable for recourse to these options as well as the number of renewals, if any. Nomenclature reference number(s),
  - in the case of regular or renewable contracts during the course of a given period, indicate also, if known, the timetable for subsequent contracts for purchase of intended supplies,
  - in the event of a framework agreement, indication also of the planned duration of the framework agreement, the estimated total value of the supplies for the entire duration of the framework agreement and, as far as possible, the value and the frequency of the contracts to be awarded.
- (c) Public service contracts:
- category and description of service. Nomenclature reference number(s). Quantity of services to be provided. Indicate in particular options concerning supplementary purchases and, if known, the provisional timetable for recourse to these options as well as the number of renewals, if any. In the case of renewable contracts over a given period, an estimate of the time frame, if known, for subsequent public contracts for purchase of intended services,
  - in the event of a framework agreement, indication also of the planned duration of the framework agreement, the estimated total value of the services for the entire duration of the framework agreement and, as far as possible, the value and the frequency of the contracts to be awarded,
  - indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.  
  
Reference to the law, regulation or administrative provision.
  - indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service.
7. If the contracts are subdivided into lots, indication of the possibility of tendering for one, for several or for all the lots.
8. Any time limit for completion of works/supplies/services or duration of the works/supply/services contract; where possible any time limit by which works will begin or any time limit by which delivery of supplies or services will begin.
9. Admission or prohibition of variants.
10. Where applicable particular conditions to which the performance of the contract is subject.

11. In the case of open procedures:
  - (a) name, address, telephone and telefax number and electronic address of the service from which contract documents and additional documents can be requested;
  - (b) where appropriate, time limit for submission of such requests;
  - (c) where appropriate, cost of and payment conditions for obtaining these documents.
12. (a) Time limit for receipt of tenders or indicative tenders where a dynamic purchasing system is being used (open procedures);
  - (b) time limit for receipt of request to participate (restricted and negotiated procedures);
  - (c) address where these have to be transmitted;
  - (d) the language or languages in which they must be drawn up.
13. In the case of open procedures:
  - (a) persons authorised to be present at the opening of tenders;
  - (b) date, time and place for such opening.
14. Where appropriate any deposit and guarantees required.
15. Main terms concerning financing and payment and/or references to the texts in which these are contained.
16. Where applicable, the legal form to be taken by the grouping of economic operators to whom the contract is to be awarded.
17. Selection criteria regarding the personal situation of economic operators that may lead to their exclusion, and required information proving that they do not fall within the cases justifying exclusion. Selection criteria and information concerning the economic operators' personal situation, information and any necessary formalities for assessment of the minimum economic and technical standards required of the economic operator. Minimum level(s) of standards possibly required.
18. Where there is a framework agreement: the number and, where appropriate, proposed maximum number of economic operators who will be members of it, the duration of the framework agreement provided for, stating, if appropriate, the reasons for any duration exceeding four years.
19. In the case of a competitive dialogue or a negotiated procedure with the publication of a contract notice, indicate, if appropriate, recourse to a staged procedure in order gradually to reduce the number of solutions to be discussed or tenders to be negotiated.
20. In the case of a restricted procedure, a competitive dialogue or a negotiated procedure with the publication of a contract notice, when recourse is had to the option of reducing the number of candidates to be invited to submit tenders, to engage in dialogue or to negotiate: minimum and, if appropriate, proposed maximum number of candidates and objective criteria to be used to choose that number of candidates.
21. Time frame during which the tenderer must maintain its tender (open procedures).
22. Where appropriate, names and addresses of economic operators already selected by the contracting authority (negotiated procedures).
23. Criteria referred to in Article 53 to be used for award of the contract: 'lowest price' or 'most economically advantageous tender'. Criteria representing the most economically advantageous tender as well as their weighting shall be mentioned where they do not appear in the specifications or, in the event of a competitive dialogue, in the descriptive document.

24. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals, or if need be the name, address, telephone number, fax number and email address of the service from which this information may be obtained.
25. Date(s) of publication of the prior information notice in accordance with the technical specifications of publication indicated in Annex VIII or statement that no such publication was made.
26. Date of dispatch of the notice.
27. Indicate whether the contract is covered by the Agreement.

#### SIMPLIFIED CONTRACT NOTICE FOR USE IN A DYNAMIC PURCHASING SYSTEM

1. Country of contracting authority.
2. Name and e-mail address of contracting authority.
3. Publication reference of the contract notice for the dynamic purchasing system.
4. E-mail address at which the technical specification and additional documents relating to the dynamic purchasing system are available.
5. Subject of contract: description by reference number(s) of 'CPV' nomenclature and quantity or extent of the contract to be awarded.
6. Time frame for submitting indicative tenders.

#### CONTRACT AWARD NOTICES

1. Name and address of the contracting authority.
  2. Award procedures chosen. In the case of negotiated procedure without prior publication of a contract notice (Article 28), justification.
  3. Public works contracts: nature and extent of the contract, general characteristics of the work.  
Public supply contracts: nature and quantity of products supplied, where appropriate, by the supplier; nomenclature reference number.  
Public service contracts: category and description of the service; nomenclature reference number; quantity of services bought.
  4. Date of contract award.
  5. Contract award criteria.
  6. Number of tenders received.
  7. Name and address of the successful economic operators.
  8. Price or range of prices (minimum/maximum) paid.
  9. Value of the tender (tenders) retained or the highest tender and lowest tender taken into consideration for the contract award.
  10. Where appropriate, value and proportion of contract likely to be subcontracted to third parties.
  11. Date of publication of the tender notice in accordance with the technical specifications for publication in Annex VIII.
  12. Date of dispatch of the notice.
  13. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning the deadline for lodging appeals, or if need be the name, address, telephone number, fax number and email address of the service from which this information may be obtained.
-

## ANNEX VII B

**INFORMATION WHICH MUST APPEAR IN PUBLIC WORKS CONCESSION NOTICES**

1. Name, address, fax number and email address of the contracting authority
2. (a) Place of execution  
(b) Subject of the concession; nature and extent of the services
3. (a) Time limit for the submission of applications  
(b) Address to which they must be sent  
(c) Language(s) in which they must be written
4. Personal, technical and financial conditions to be met by the candidates
5. Criteria which will be applied in the award of the contract
6. If appropriate, the minimum proportion of the works which will be contracted out
7. Date of dispatch of the notice
8. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning the deadline for lodging appeals, or if need be the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

## ANNEX VII C

**INFORMATION WHICH MUST APPEAR IN WORKS CONTRACT NOTICES OF CONCESSIONNAIRES WHO ARE NOT CONTRACTING AUTHORITIES**

1. (a) Place of execution  
(b) Nature and extent of the services, general characteristics of the works
2. Any time limit for completion imposed
3. Name and address of the body from whom the specifications and the additional documents may be requested
4. (a) Time limit for the receipt of applications to participate and/or the receipt of tenders  
(b) Address to which they must be sent  
(c) Language(s) in which they must be written
5. Any deposits or guarantees required
6. Economic and technical conditions to be met by the contractor
7. Criteria which will be applied in the award of the contract
8. Date of dispatch of the notice

## ANNEX VII D

**INFORMATION WHICH MUST APPEAR IN DESIGN CONTEST NOTICES**

## CONTEST NOTICES

1. Name, address, fax number and email address of the contracting authority and those of the service from which the additional documents may be obtained
2. Description of the project
3. Type of contest: open or restricted
4. In the event of an open contest: time limit for the submission of projects
5. In the event of a restricted contest:
  - (a) number of participants contemplated
  - (b) names of the participants already selected, if any
  - (c) criteria for the selection of participants
  - (d) time limit for requests to participate
6. If appropriate, indicate that the participation is restricted to a specified profession
7. Criteria which will be applied in the evaluation of the projects
8. Names of any members of the jury who have already been selected
9. Indicate whether the jury's decision is binding on the contracting authority
10. Number and value of any prizes
11. Payments to be made to all participants, if any
12. Indicate whether any contracts following the contest will or will not be awarded to the winner or winners of the contest
13. Date of dispatch of the notice

## NOTICE OF THE RESULTS OF A CONTEST

1. Name, address, fax number and email address of the contracting authority
  2. Description of the project
  3. Total number of participants
  4. Number of foreign participants
  5. Winner(s) of the contest
  6. Any prizes
  7. Reference of the contest notice
  8. Date of dispatch of the notice
-

## ANNEX VIII

**FEATURES CONCERNING PUBLICATION****1. Publication of notices**

- (a) Notices referred to in Articles 35, 58, 64 and 69 are sent by the contracting authorities to the Office for Official Publications of the European Communities in the format required by Commission Directive 2001/78/EC of 13 September 2001 on the use of standard forms in the publication of public contract notices<sup>(1)</sup>. The prior information notices referred to in Article 35(1), first subparagraph, published on a buyer profile as described in point 2(b), must also use that format, as must the notice of such publication.
- (b) Notices referred to in Articles 35, 58, 64 and 69 are published by the Office for Official Publications of the European Communities or by the contracting authorities in the event of a prior information notice published on a buyer profile in accordance with Article 35(1), first subparagraph.

In addition, contracting authorities may publish this information on the Internet on a 'buyer profile' as referred to in point 2(b).

- (c) The Office for Official Publications of the European Communities will give the contracting authority the confirmation referred to in Article 36(8).

**2. Publication of complementary or additional information**

- (a) Contracting authorities are encouraged to publish the specifications and the additional documents in their entirety on the Internet.
- (b) The buyer profile may include prior information notices as referred to in Article 35(1), first subparagraph, information on ongoing invitations to tender, scheduled purchases, contracts concluded, procedures cancelled and any useful general information, such as a contact point, a telephone and a fax number, a postal address and an e-mail address.

**3. Format and procedures for sending notices electronically**

The format and procedure for sending notices electronically are accessible at the Internet address '<http://simap.eu.int>'.

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<sup>(1)</sup> OJ L 285, 29.10.2001, p. 1.

## ANNEX IX

## REGISTERS

ANNEX IX A <sup>(1)</sup>

## PUBLIC WORKS CONTRACTS

The professional registers and corresponding declarations and certificates for each Member State are:

- in Belgium, the 'Registre du commerce'/ 'Handelsregister';
- in Denmark, the 'Erhvervs-og Selskabsstyrelsen';
- in Germany, the 'Handelsregister' and the 'Handwerksrolle';
- in Greece, the 'Μητρώο Εργοληπτικών Επιχειρήσεων' – MEEP of the Ministry for Environment, Town and Country Planning and Public Works (ΥΠΕΧΩΔΕ);
- in Spain, the 'Registro Oficial de Empresas Clasificadas del Ministerio de Hacienda';
- in France, the 'Registre du commerce et des sociétés' and the 'Répertoire des métiers';
- in Ireland, the contractor may be requested to provide a certificate from the Registrar of companies or the Registrar of Friendly Societies or, if this is not the case, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established, in a specific place and under a given business name;
- in Italy, the 'Registro della Camera di commercio, industria, agricoltura e artigianato';
- in Luxembourg, the 'Registre aux firmes' and the 'Rôle de la chambre des métiers';
- in the Netherlands, the 'Handelsregister';
- in Austria, the 'Firmenbuch', the 'Gewerberegister', the 'Mitgliederverzeichnisse der Landeskammern';
- in Portugal, the 'Instituto dos Mercados de Obras Públicas e Particulares e do Imobiliário' (IMOPPI)(CAEOPP);
- in Finland, the 'Kaupparekisteri'/ 'Handelsregistret';
- in Sweden, 'aktiebolags-, handels- eller föreningsregistren';
- in the United Kingdom, the contractor may be requested to provide a certificate from the Registrar of Companies or, if this is not the case, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established, in a specific place and under a given business name.

<sup>(1)</sup> For the purposes of Article 46, 'professional and trade registers' means those listed in this Annex and, where changes have been made at national level, the registers which have replaced them.



## ANNEX IX B

**PUBLIC SUPPLY CONTRACTS**

The relevant professional or trade registers and the corresponding declarations and certificates are:

- in Belgium, the 'Registre du commerce/Handelsregister';
  - in Denmark, 'Erhvers- og Selskabsstyrelsen';
  - in Germany, the 'Handelsregister' and 'Handwerksrolle';
  - in Greece, the 'Βιοτεχνικό ή Εμπορικό ή Βιομηχανικό Επιμελητήριο';
  - in Spain, the 'Registro Mercantil' or, in the case of non-registered individuals, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question;
  - in France, the 'Registre du commerce et des sociétés' and 'Répertoire des métiers';
  - in Ireland, the supplier may be requested to provide a certificate from the Registrar of companies or the Registrar of Friendly Societies that he is certified as incorporated or registered or, if he is not so certified, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established, in a specific place under a given business name and under a specific trading name;
  - in Italy, the 'Registro della Camera di commercio, industria, agricoltura e artigianato', and 'Registro delle commissioni provinciali per l'artigianato';
  - in Luxembourg, the 'Registre aux firmes' and 'Rôle de la chambre des métiers';
  - in the Netherlands, the 'Handelsregister';
  - in Austria, the 'Firmenbuch', the 'Gewerberegister', the 'Mitgliederverzeichnisse der Landeskammern';
  - in Portugal, the 'Registo Nacional das Pessoas Colectivas';
  - in Finland, the 'Kaupparekisteri' and 'Handelsregistret';
  - in Sweden, 'aktiebolags-, handels- eller föreningsregistren';
  - in the United Kingdom, the supplier may be requested to provide a certificate from the Registrar of Companies stating that he is certified as incorporated or registered or, if he is not so certified, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established in a specific place under a given business name and under a specific trading name.
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## ANNEX IX C

**PUBLIC SERVICE CONTRACTS**

The relevant professional and trade registers or declarations or certificates are:

- in Belgium, the 'Registre du commerce/Handelsregister' and the 'Ordres professionnels/Beroepsorden';
  - in Denmark, 'Erhvervs- og Selskabsstyrelsen';
  - in Germany, the 'Handelsregister', the 'Handwerksrolle', the 'Vereinsregister', 'Partnerschaftsregister' and the 'Mitgliedsverzeichnisse der Berufskammern der Ländern';
  - in Greece, the service provider may be asked to provide a declaration on the exercise of the profession concerned made on oath before a notary; in the cases provided for by existing national legislation, for the provision of research services as mentioned in Annex I A, the professional register 'Μητρώο Μελετητών' and 'Μητρώο Γραφείων Μελετών';
  - in Spain, the 'Registro Oficial de Empresas Clasificadas del Ministerio de Hacienda';
  - in France, the 'Registre du commerce' and the 'Répertoire des métiers';
  - in Ireland, the service provider may be requested to provide a certificate from the Registrar of companies or the Registrar of Friendly Societies or, if he is not so certified, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established, in a specific place under a given business name and under a specific trading name;
  - in Italy, the 'Registro della Camera di commercio, industria, agricoltura e artigianato', the 'Registro delle commissioni provinciali per l'artigianato' or the 'Consiglio nazionale degli ordini professionali';
  - in Luxembourg, the 'Registre aux firmes' and the 'Rôle de la chambre des métiers';
  - in the Netherlands, the 'Handelsregister';
  - in Austria, the 'Firmenbuch', the 'Gewerberegister', the 'Mitgliederverzeichnisse der Landeskammern';
  - in Portugal, the 'Registo nacional das Pessoas Colectivas';
  - in Finland, the 'Kaupparekisteri' and 'Handelsregistret';
  - in Sweden, 'aktiebolags-, handels- eller föreningsregistren';
  - in the United Kingdom, the service provider may be requested to provide a certificate from the Registrar of Companies or, if he is not so certified, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established in a specific place under a given business name.
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## ANNEX X

**REQUIREMENTS RELATING TO DEVICES FOR THE ELECTRONIC RECEIPT OF TENDERS, REQUESTS FOR PARTICIPATION AND PLANS AND PROJECTS IN CONTESTS**

Devices for the electronic receipt of tenders, requests for participation and plans and projects in contests must at least guarantee, through technical means and appropriate procedures, that:

- (a) electronic signatures relating to tenders, requests to participate and the forwarding of plans and projects comply with national provisions adopted pursuant to Directive 1999/93/EC;
  - (b) the exact time and date of the receipt of tenders, requests to participate and the submission of plans and projects can be determined precisely;
  - (c) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under these requirements;
  - (d) if that access prohibition is infringed, it may be reasonably ensured that the infringement is clearly detectable;
  - (e) only authorised persons may set or change the dates for opening data received;
  - (f) during the different stages of the contract award procedure or of the contest access to all data submitted, or to part thereof, must be possible only through simultaneous action by authorised persons;
  - (g) simultaneous action by authorised persons must give access to data transmitted only after the prescribed date;
  - (h) data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith.
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## ANNEX XI

## DEADLINES FOR TRANSPOSITION AND APPLICATION (Article 80)

Directives	Deadlines for transposition and application
92/50/CEE (OJ L 209, 24.7.1992, p. 1) Austria, Finland, Sweden (*)	1 July 1993 1 January 1995
93/36/EEC (OJ L 199, 09.08.93, p. 1) Austria, Finland, Sweden (*)	13 June 1994 1 January 1995
93/37/EEC (OJ L 199, 09.08.93, p. 54) consolidation of directives: — 71/305/EEC (OJ L 185, 16.08.71, p. 5): — EC of 6 — DK, IRL, UK — Greece — Spain, Portugal — Austria, Finland, Sweden (*) — 89/440/EEC (OJ L 210, 21.07.1989, p. 1): — EC of 9 — Greece, Spain, Portugal — Austria, Finland, Sweden (*)	30 July 1972 1 January 1973 1 January 1981 1 January 1986 1 January 1995  19 July 1990 1 March 1992 1 January 1995
97/52/EC (OJ L 328, 28.11.97, p. 1)	13 October 1998
(*) EEA: 1 January 1994.	

## ANNEX XII

CORRELATION TABLE <sup>(1)</sup>

This Directive	Directive 93/37/EEC	Directive 93/36/EEC	Directive 92/50/EEC	Other acts	
Art. 1, par.1	Art. 1, first line, adapted	Art. 1, first line, adapted	Art. 1, first line, adapted		
Art. 1, par. 2, point (a)	Art. 1, point (a), first part of sentence	Art. 1, point (a), first and last parts of first sentence	Art. 1, point a)		Amended
Art. 1, par. 2, point (b)	Art. 1, point (a) and point (c), adapted	—	—		
Art. 1, par. 2, point (c), first subparagraph	—	Art. 1, point (a), second part of the first sentence and second sentence, adapted	—		
Art. 1, par. 2, point (c), second subparagraph	—	Art. 1, point (a), adapted	—		
Art. 1, par. 2, point (d), first subparagraph	—	—	—		New
Art. 1, par. 2, point (d), second subparagraph	—	—	Art. 2, adapted		
Art. 1, par. 2, point (d), third subparagraph	—	—	16th recital adapted		
Art. 1, par. 3	Art. 1, point (d)	—	—		
Art. 1, par. 4	—	—	—		New
Art. 1, par. 5	—	—	—		New
Art. 1, par. 6	—	—	—		New
Art. 1, par. 7	—	—	—		New
Art. 1, par. 8, first subparagraph	—	—	Art. 1, point (c), first sentence adapted		
Art. 1, par. 8, second subparagraph	—	—	—		New
Art. 1, par. 8, third subparagraph	Art. 1, point h)	Art. 1, point (c)	Art. 1, point (c), second sentence		Amended

<sup>(1)</sup> 'Adapted' means that the wording of the text was changed, while the meaning of the repealed directives was preserved. Changes to the meaning of the provisions of the repealed directives are indicated by the term 'amended'. This term appears in the last column when the amendment concerns the provisions of the three repealed directives. When the amendment affects only one or two of these directives, the term 'amended' is included in the column of the directives concerned.

This Directive	Directive 93/37/EEC	Directive 93/36/EEC	Directive 92/50/EEC	Other acts	
Art. 1, par. 9	Art. 1, point (b), adapted	Art. 1 point (b), adapted	Art. 1, point (b), adapted		
Art. 1, par. 10	—	—	—		New
Art. 1, par. 11, first subparagraph	Art. 1, point (e), adapted	Art. 1, point (d), adapted	Art. 1, point (d), adapted		
Art. 1, par. 11, second subparagraph	Art. 1, point (f), adapted	Art. 1, point (e), adapted	Art. 1, point (e), adapted		
Art. 1, par. 11, third subparagraph	—	—	—		New
Art. 1, par. 11, fourth subparagraph	Art. 1, point (g), adapted	Art. 1, point (f), adapted	Art. 1, point (f), adapted		
Art. 1, par. 11, fifth subparagraph	—	—	Art. 1, point (g), adapted		
Art. 1, par. 12	—	—	—		New
Art. 1, par. 13	—	—	—		New
Art. 1, par. 14	—	—	—		New
Art. 1, par. 15	—	—	—		New
Art. 2	Art. 6, par. 6	Art. 5, par. 7	Art. 3, par. 2		Amended
Art. 3	—	Art. 2, par. 2	—		
Art. 4, par. 1	New	New	Art. 26, par. 2 and 3, adapted		
Art. 4, par. 2	Art. 21 amended	Art. 18 adapted	Art. 26, par. 1 amended		
Art. 5	Art. 33a adapted	Art. 28 amended	Art. 38a adapted		
Art. 6	—	Art. 15, par. 2	—		Amended
Art. 7, points (a) and (b)	—	Art. 5, par. 1, point (a), adapted	Art. 7, par. 1, point (a), adapted		
Art. 7, point (c)	Art. 6, par. 1, point (a), adapted	—	—		
Art. 8	Art. 2 and Art. 6, par. 1, point (b), adapted	—	Art. 3, par. 3 and Art. 7, par. 1, point (a), adapted		
Art. 9, par. 1, first subparagraph	—	Art. 5, par. 5	Art. 7, par. 2 and 7		Amended

This Directive	Directive 93/37/EEC	Directive 93/36/EEC	Directive 92/50/EEC	Other acts	
Art. 9, par. 1, second subparagraph	—	—	—		New
Art. 9, par. 2	—	Art. 5, par. 1, point (b)	—		Amended
Art. 9, par. 3	Art. 6, par. 4	Art. 5, par. 6	Art. 7, par. 3, second clause		
Art. 9, par. 4	Art. 6, par. 5, adapted				
Art. 9, par. 5, point (a)	Art. 6, par. 3, adapted	—	Art. 7, par. 4, third subparagraph, adapted		
Art. 9, par. 5, point (b)	—	Art. 5, par. 4	—		Amended
Art. 9, par. 6	—	Art. 5, par. 2	—		
Art. 9, par. 7	—	Art. 5, par. 3	Art. 7, par. 6		
Art. 9, par. 8, point (a)	—	—	Art. 7, par. 4,		Amended
Art. 9, par. 8, point (b)	—	—	Art. 7, par. 5,		Amended
Art. 9, par. 9	—	—	—		New
Art. 10	New	Art. 3 adapted	Art. 4, par. 1 adapted		
Art. 11	—	—	—		New
Art. 12	Art. 4, point (a)	Art. 2, point (a)	Art. 1, point (a) (ii)		Amended
Art. 13	—	—	—		New
Art. 14	Art. 4, point (b)	Art. 2, par. 1, point (b)	Art. 4, par. 2		
Art. 15, point (a)	Art. 5, point (a) adapted	Art. 4, point (a) adapted	Art. 5, point (a) adapted		
Art. 15, points (b) and (c)	Art. 5, points (b) and (c)	Art. 4, points (b) and (c)	Art. 5, points (b) and (c)		
Art. 16	—	—	Art. 1, point (a), (iii) to (ix), adapted		
Art. 17	—	—	—		New
Art. 18	—	—	Art. 6		Amended
Art. 19	—	—	—		New
Art. 20	—	—	Art. 8		
Art. 21			Art. 9		

This Directive	Directive 93/37/EEC	Directive 93/36/EEC	Directive 92/50/EEC	Other acts	
Art. 22	—	—	Art. 10		
Art. 23	Art. 10	Art. 8	Art. 14		Amended
Art. 24, par. 1 to 4, first subparagraph	Art. 19	Art. 16, par. 1,	Art. 24, par. 1		Amended
Art. 24, par. 4, second subparagraph	—	Art. 16, par. 2, adapted	Art. 24, par. 2, adapted		
Art. 25, first paragraph	Art. 20, first paragraph	Art. 17, first paragraph	Art. 25, first paragraph		Amended
Art. 25, second paragraph	Art. 20, second paragraph	Art. 17, second paragraph	Art. 25, second paragraph		
Art. 26	—	—	—		New
Art. 27, first paragraph	Art. 23, par. 1	—	Art. 28, par. 1		Amended
Art. 27, second and third paragraphs	Art. 23, par. 2	—	Art. 28, par. 2		
Art. 28, first paragraph	Art. 7, par. 1 adapted	Art. 6, par. 1 adapted	Art. 11, par. 1 adapted		
Art. 28, second paragraph	Art. 7, par. 4	Art. 6, par. 4	Art. 11, par. 4		Amended
Art. 29	—	—	—		New
Art. 30, par. 1, point (a)	Art. 7, par. 2, point (a)	Art. 6, par. 2	Art. 11, par. 2, point (a)		
Art. 30, par 1, point (b)	Art. 7, par. 2, point (c)	New	Art. 11, par. 2, point (b)		
Art. 30, par. 1, point (c)		—	Art. 11, par. 2, point (c)		
Art. 30, par. 1, point (d)	Art. 7, par. 2, point (b)	—	—		
Art. 30, paragraphs 2, 3 and 4	—	—	—		New
Art. 31, point (1), point (a)	Art. 7, par. 3 point (a)	Art. 6, par. 3, point (a)	Art. 11, par. 3, point (a)		
Art. 31, point (1), point (b)	Art. 7, par. 3, point (b)	Art. 6, par. 3, point (c)	Art. 11, par. 3, point (b)		
Art. 31, point (1), point (c)	Art. 7, par. 3, point (c)	Art. 6, par. 3, point (d)	Art. 11, par. 3, point (d)		
Art. 31, point (2), point (a)	—	Art. 6, par. 3, point (b)	—		



This Directive	Directive 93/37/EEC	Directive 93/36/EEC	Directive 92/50/EEC	Other acts	
Art. 31, point (2), point (b)	—	Art. 6, par. 3, point (e)	—		
Art. 31, point (2), point (c)	—	New	—		
Art. 31, point (2), point (d)	—	New	—		
Art. 31, point (3)	—	—	Art. 11, par. 3, point (c)		
Art. 31, point (4), point (a)	Art. 7, par. 3, point (d)	—	Art. 11, par. 3, point (e)		
Art. 31, point (4), point (b)	Art. 7, par. 3, point (e)	—	Art. 11, par. 3, point (f)		
Art. 32	—	—	—		New
Art. 33	—	—	—		New
Art. 34, first and second paragraphs	Art. 9, first and second paragraphs	—	—		
Art. 34, third paragraph	Art. 9, third paragraph				Amended
Art. 35, par. 1, first subparagraph, point (a), first subparagraph	—	Art. 9, par. 1, first subparagraph	—		
Art. 35, par. 1, first subparagraph, point (a), second subparagraph	—	Art. 9, par. 1, second subparagraph, first sentence	—		Amended
Art. 35, par. 1, first subparagraph, point (b)	—	—	Art. 15, par. 1		
Art. 35, par. 1, first subparagraph, point (c)	Art. 11, par. 1	—	—		
Art. 35, par. 1, second subparagraph	—	Art. 9, par. 5, second subparagraph	Art. 17, par. 2, second subparagraph		Amended
Art. 35, par. 1, third subparagraph	Art. 11, par. 7, second subparagraph	—	—		Amended
Art. 35, par. 1, fourth, fifth and sixth subparagraphs	—	—	—		New
Art. 35, par. 2	Art. 11, par. 2	Art. 9, par. 2	Art. 15, par. 2		Amended
Art. 35, par. 3	—	—	—		New

This Directive	Directive 93/37/EEC	Directive 93/36/EEC	Directive 92/50/EEC	Other acts	
Art. 35, par. 4, first subparagraph	Art. 11, par. 5, first sentence	Art. 9, par. 3, first sentence	Art. 16, par. 1		Amended
Art. 35, par. 4, second and third subparagraphs	—	—	—		New
Art. 35, par. 4, fourth subparagraph			Art. 16, par. 3 and 4		
Art. 35, par. 4, fifth subparagraph	Art. 11, par. 5, second sentence	Art. 9, par. 3, second sentence	Art. 16, par. 5		Amended
Art. 36, par. 1	Art. 11, par. 6, first subparagraph, adapted	Art. 9, par. 4, first sentence, adapted	Art. 17, par. 1, first sentence, adapted		
Art. 36, par. 2, first subparagraph	Art. 11, par. 7, first sentence	Art. 9, par. 5, first subparagraph	Art. 17, par. 2, first subparagraph		Amended
Art. 36, par. 2, second subparagraph	—	—	—		New
Art. 36, par. 3	Art. 11, par. 10	Art. 9, par. 8	Art. 17, par. 5		Amended
Art. 36, par. 4	Art. 11, par. 8 and 13	Art. 9, par. 6 and 11	Art. 17, par. 4 and 8		Amended
Art. 36, par. 5	Art. 11, par. 11, adapted	Art. 9, par. 9, adapted	Art. 17, par. 6, adapted		
Art. 36, par. 6	Art. 11, par. 13, second sentence	Art. 9, par. 11, second sentence	Art. 17, par. 8, second sentence		Amended
Art. 36, par. 7, first subparagraph	Art. 11, par. 12	Art. 9, par. 10	Art. 17, par. 7		
Art. 36, par. 7, second subparagraph	—	—	—		New
Art. 37	Art. 17	Art. 13	Art. 21		Amended
Art. 38, par. 1	—	—	—		New
Art. 38, par. 2	Art. 12, par. 2, adapted	Art. 10, par. 1, adapted	Art. 18, par. 1, adapted		
Art. 38, par. 3	Art. 13, par. 1 and 3, adapted	Art. 11, par. 1 and 3, adapted	Art. 19, par. 1 and 3, adapted		Amended
Art. 38, par. 4	Art. 12, par. 2 and Art. 13, par. 4, adapted	Art. 10, par. 1a and Art. 11, par. 3a, adapted	Art. 18, par. 2 and Art. 19, par. 4, adapted		
Art. 38, par. 5 and 6	—	—	—		New
Art. 38, par. 7	Art. 12, par. 5	Art. 10, par. 4	Art. 18, par. 5		Amended

This Directive	Directive 93/37/EEC	Directive 93/36/EEC	Directive 92/50/EEC	Other acts	
Art. 38, par. 8	Art. 14, par. 1	Art. 12, par. 1	Art. 20, par. 1		Amended
Art. 39	Art. 12, par. 3 and 4, Art. 13, par. 6, and Art. 14, par. 2 adapted	Art. 10, par. 2 and 3, Art. 11, par. 5, and Art. 12, par. 2 adapted	Art. 18, par. 3 and 4, Art. 19, par. 6 and Art. 20, par. 2 adapted		
Art. 40	Art. 13, par. 2, and Art. 14, par. 3	Art. 11, par. 2, and Art. 12, par. 3	Art. 19, par. 2, and Art. 20, par. 3		Amended
Art. 41, par. 1	Art. 8, par. 2, first sentence, adapted	Art. 7, par. 2, first sentence, adapted	Art. 12, par. 2, first sentence, adapted		
Art. 41, par. 2	Art. 8, par. 1, first subparagraph, adapted	Art. 7, par. 1, first subparagraph, adapted	Art. 12, par. 1, first subparagraph, adapted		
Art. 41, par. 3	Art. 8, par. 1, second subparagraph, adapted	Art. 7, par. 1, second subparagraph, adapted	Art. 12, par. 1, sec- ond subparagraph, adapted		
	Art. 8, par. 2, last sen- tence	Art. 7, par. 2, last sen- tence	Art. 12, par. 2, last sentence		Deleted
Art. 42, par. 1, 3 and 6	Art. 13, par. 5, and Art. 18, par. 2	Art. 11, par. 4, and Art. 15, par. 3	Art. 19, par. 5, and Art. 23, par. 2		Amended
Art. 42, par. 2, 4 and 5	—	—	—		New
Art. 43	Art. 8, par. 3	Art. 7, par.3	Art.12, par. 3		Amended
Art. 44, par. 1	Art. 18, par. 1 adapted	Art. 15, par. 1 adapted	Art. 23, par. 1 adapted		Amended
Art. 44, par. 2	—	—	—		New
Art. 44, par. 3	Art. 22	Art. 23, par. 3	Art. 32, par. 4		Amended
Art. 44, par. 4	—	—	—		New
Art. 45, par. 1	—	—	—		New
Art. 45, par. 2, first subparagraph	Art. 24, first para- graph, adapted	Art. 20, par. 1, adapted	Art. 29, first para- graph, adapted		
Art. 45, par. 2, second subparagraph	—	—	—		New
Art. 45, par. 3	Art. 24, second and third paragraphs, adapted	Art. 20, par. 2 and 3 adapted	Art. 29, second and third paragraphs, adapted		
Art. 45, par. 4	Art. 24, fourth para- graph	Art. 20, par. 4	Art. 29, fourth para- graph		Amended
Art. 46, first paragraph	Art. 25, first sentence amended	Art. 21, par. 1 and par. 2, first sentence, adapted	Art. 30, par. 1 and 3, first sentence, adapted		

This Directive	Directive 93/37/EEC	Directive 93/36/EEC	Directive 92/50/EEC	Other acts	
Art. 46, second paragraph	—	—	Art. 30, par. 2		
Art. 47, par. 1, points (a) and (b)	Art. 26, par. 1, points (a) and (b), adapted	Art. 22, par. 1, points (a) and (b), adapted	Art. 31, par. 1, points (a) and (b), adapted		
Art. 47, par. 1, point (c)	Art. 26, par. 1, point (c)	Art. 22, par. 1, point (c)	Art. 31, par. 1, point (c)		Amended
Art. 47, par. 2 and 3	—	—	—		New
Art. 47, par. 4 and 5	Art. 26, par. 2 and 3, adapted	Art. 22, par. 2 and 3, adapted	Art. 31, par. 2 and 3, adapted		Amended
Art. 48, par. 1 and par. 2, points (a) to (e) and (g) to (j)	Art. 27, par. 1, adapted	Art. 23, par. 1, adapted	Art. 32, par. 2, adapted		
Art. 48, par. 2, point (f)	—		—		New
Art. 48, par. 3 and 4	—	—	—		New
Art. 48, par. 5	New	New	Art. 32, par. 1, adapted		
Art. 48, par. 6	Art. 27, par. 2	Art. 23, par. 2	Art. 32, par. 3		
Art. 49	New	New	Art. 33		Amended
Art. 50	—	—	—		New
Art. 51	Art. 28	Art. 24	Art. 34		
Art. 52	Art. 29	Art. 25	Art. 35		Amended
Art. 53, par. 1	Art. 30, par. 1 adapted	Art. 26, par. 1 adapted	Art. 36, par. 1 adapted		
Art. 53, par. 2	Art. 30, par. 2	Art. 26, par. 2	Art. 36, par. 2		Amended
	Art. 30, par. 3	—	—		Deleted
Art. 54	—	—	—		New
Art. 55	Art. 30, par. 4, first and second subparagraphs	Art. 27, first and second paragraphs	Art. 37, first and second paragraphs		Amended
—	Art. 30, par. 4, third subparagraph	Art. 27, third paragraph	Art. 37, third paragraph		Deleted
—	Art. 30, par. 4, fourth subparagraph	—	—		Deleted
—	Art. 31	—	—		Deleted

This Directive	Directive 93/37/EEC	Directive 93/36/EEC	Directive 92/50/EEC	Other acts	
—	Art. 32	—	—		Deleted
Art. 56	Art. 3, par. 1, adapted				
Art. 57	—				New
Art. 58	Art. 11 par. 3, par. 6 to 11 and par. 13				Amended
Art. 59	Art. 15	—	—		
Art. 60	Art. 3, par. 2	—	—		
Art. 61	New	—	—		
Art. 62	Art. 3, par. 3				
Art. 63	Art. 3, par. 4				Amended
Art. 64	Art. 11, par. 4, par. 6, first subparagraph, par. 7, first subparagraph, and par. 9	—	—		Amended
Art. 65	Art. 16				
Art. 66	—	—	Art. 13, par. 3 and 4		
Art. 67, par 1	—	—	Art. 13, par. 1, first subparagraph and par. 2, first subparagraph		
Art. 67, par.2			Art. 13, par. 1, indents 1 to 3 and par. 2, indents 1 to 3		Amended
Art. 68	—	—	New		
Art. 69, par. 1	—	—	Art. 15, par. 3		
Art. 69, par. 2, first subparagraph	—	—	Art. 16, par. 1 and par. 2, second indent		Amended
Art. 69, par. 2, second subparagraph and par. 3	—	—	New		
Art. 70	—	—	Art. 17, par. 1, par. 2, first and third subparagraphs, par. 3 to 6 and par. 8		Amended
Art. 71	—	—	New		
Art. 72	—	—	Art. 13, par. 5		

This Directive	Directive 93/37/EEC	Directive 93/36/EEC	Directive 92/50/EEC	Other acts	
Art. 73	—	—	Art. 13, par. 6, first subparagraph		
Art. 74	—	—	Art. 13, par. 6, second subparagraph		Amended
	Art. 33	Art. 30	Art. 38		Deleted
Art. 75	Art. 34, par. 1, adapted	Art. 31, par. 1, adapted	Art. 39, par. 1, adapted		
Art. 76	Art. 34, par. 2	Art. 31, par. 2	Art. 39, par. 2		Amended
			Art. 39, par. 2, point (d), second subparagraph		Deleted
Art. 77, par. 1	—	Art. 32, par. 1	Art. 40, par. 1		
Art. 77, par. 2	Art. 35, par. 3	Art. 32, par. 2	Art. 40, par. 3		Amended
	—	—	Art. 40, par. 2		Deleted
Art. 77, par. 3	—	Art. 32, par. 3	Art. 40, par. 4		Amended
Art. 78, par. 1 and 2					New
Art. 78, par. 3 and 4	Art. 6, par. 2, point (a),	Art. 5, par. 1, point (d)	Art. 7, par. 1, point (c)		Amended
Art. 79, point (a)	Art. 6, par. 1, point (b), adapted	Art. 5, par. 1, point (c), second subparagraph, adapted	Art. 7, par. 1, point (b), second subparagraph, adapted		
Art. 79, point (b)	Art. 35, par. 2	—	Art. 16, par. 4		Amended
Art. 79, point (c)	—	—	—		New
Art. 79, point (d)	Art. 35, par. 1, adapted	—	—		
Art. 79, point (e)		Art. 29, par. 3, adapted	—		
Art. 79, point (f)	Art. 35, par. 2 adapted	—	—		New
Art. 79, point (g)	—	—	—		
Art. 79, points (h) and (i)	—	—	—		New
Art. 80					
Art. 81					
Art. 82					
Art. 83					

This Directive	Directive 93/37/EEC	Directive 93/36/EEC	Directive 92/50/EEC	Other acts	
Art. 84					
Annex I	Annex II				Amended
Annexes II A and II B	—	—	Annexes IA and IB		Amended
Annex III	Annex I	—	—	Acts on the accession of Austria, Finland and Sweden	Adapted
Annex IV	—	Annex I	—	Acts on the accession of Austria, Finland and Sweden	Adapted
Annex V	—	Annex II	—		Amended
Annex VI	Annex III	Annex III	Annex II		Amended
Annex VII A, B, C and D	Annexes IV, V and VI	Annex IV	Annexes III and IV		Amended
Annex VIII	—	—	—		New
Annex IX					Adapted
Annex IX A	—	Art. 21, par. 2	—	Acts on the accession of Austria, Finland and Sweden	Adapted
Annex IX B	—	—	Art. 30, par. 3	Acts on the accession of Austria, Finland and Sweden	Adapted
Annex IX C	Art. 25, adapted	—	—	Acts on the accession of Austria, Finland and Sweden	Adapted
Annex X					New
Annex XI					New
Annex XII					New



EUROPEAN COMMISSION

Brussels, 20.12.2011  
COM(2011) 896 final

2011/0438 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on public procurement**

(Text with EEA relevance)

{SEC(2011) 1585 final}

{SEC(2011) 1586 final}



## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

The Europe 2020 strategy for smart, sustainable and inclusive growth [COM(2010) 2020] is based on three interlocking and mutually reinforcing priorities: developing an economy based on knowledge and innovation; promoting a low-carbon, resource-efficient and competitive economy; and fostering a high-employment economy delivering social and territorial cohesion.

Public procurement plays a key role in the Europe 2020 strategy as one of the market-based instruments to be used to achieve these objectives by improving the business environment and conditions for business to innovate and by encouraging wider use of green procurement supporting the shift towards a resource efficient and low-carbon economy. At the same time, the Europe 2020 strategy stresses that public procurement policy must ensure the most efficient use of public funds and that procurement markets must be kept open Union-wide.

In the face of these challenges, the existing public procurement legislation needs to be revised and modernised in order to make it better suited to deal with the evolving political, social and economic context.

In its communication of 13 April 2011 on ‘The Single Market Act: Twelve levers to boost growth and confidence’, the Commission included among its twelve key priority actions to be adopted by the EU institutions before the end of 2012, a revised and modernised public procurement legislative framework to make the award of contracts more flexible and enable public contracts to be put to better use in support of other policies.

This proposal has two complementary objectives:

- Increase the efficiency of public spending to ensure the best possible procurement outcomes in terms of value for money. This implies in particular a simplification and flexibilisation of the existing public procurement rules. Streamlined, more efficient procedures will benefit all economic operators and facilitate the participation of SMEs and cross-border bidders.
- Allow procurers to make better use of public procurement in support of common societal goals such as protection of the environment, higher resource and energy efficiency, combating climate change, promoting innovation, employment and social inclusion and ensuring the best possible conditions for the provision of high quality social services.

- **General context**

Public procurement plays an important role in the overall economic performance of the European Union. In Europe, public authorities spend around 18% of GDP on supplies, works and services. Given the volume of purchases, public procurement can be used as a powerful lever for achieving a Single Market fostering smart, sustainable and inclusive growth.

The current generation of public procurement Directives — Directives 2004/17/EC<sup>1</sup> and 2004/18/EC<sup>2</sup> — are the product of a long evolution that started in 1971 with the adoption of Directive 71/305/EEC. By guaranteeing transparent and non-discriminatory procedures, these Directives principally aim to ensure that economic operators from across the Single Market benefit fully from the basic freedoms in competing for public contracts.

A comprehensive economic evaluation has shown that the public procurement Directives have achieved their objectives to a considerable extent. They have resulted in greater transparency and higher levels of competition while achieving measurable savings through lower prices.

Stakeholders have nevertheless voiced demand for a review of the public procurement directives to simplify the rules, increase their efficiency and effectiveness and make them better suited to deal with the evolving political, social and economic context. Streamlined, more efficient procedures will increase flexibility for contracting authorities, benefit all economic operators and facilitate the participation of SMEs and cross-border bidders. Improved public procurement rules will also allow contracting authorities to make better use of public procurement in support of common societal goals, such as the protection of the environment, higher resource and energy efficiency and combating climate change, promoting innovation and social inclusion, and ensuring the best possible conditions for the provision of high quality social services. These orientations were confirmed by the results of a consultation of stakeholders conducted by the Commission in spring 2011, where a very large majority of stakeholders supported the proposal to review the public procurement Directives in order to adapt them better to the new challenges faced by public procurers and economic operators alike.

- **Existing provisions in the area of the proposal**

Together with the proposed new utilities Directive, the proposal will replace Directives 2004/17/EC and 2004/18/EC as the core elements of the European Union public procurement legislative framework.

The Directive will be complemented by the further elements of that legislative framework:

- Directive 2009/81/EC<sup>3</sup> sets specific rules for defence and sensitive security procurement,
- Directive 89/665/EEC<sup>4</sup> establishes common standards for national review procedures to ensure that rapid and effective means of redress is available in all EU countries in cases where bidders consider that contracts have been awarded unfairly.

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<sup>1</sup> Directive 2004/17/EC of 31 March 2004 coordinating the procurement procedures of entities in the water, energy, transport and postal services sectors, OJ L 134, 30.4.2004, p. 1.

<sup>2</sup> Directive 2004/18/EC of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, OJ L 134, 30.4.2004, p. 114.

<sup>3</sup> Directive 2009/81/EC of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC, OJ L 216, 20.8.2009, p. 76.

<sup>4</sup> 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, OJ L 395, 30.12.1989, p. 33.

- **Consistency with the other policies and objectives of the Union**

This initiative implements the Europe 2020 strategy for smart, sustainable and inclusive growth [COM(2010) 2020] and the Europe 2020 Flagship Initiatives on a Digital Agenda for Europe [COM(2010) 245], the Innovation Union [COM(2010) 546], an Integrated Industrial Policy for the Globalisation Era [COM(2010) 614], Energy 2020 [COM(2010) 639] and a Resource Efficient Europe [COM(2011) 21]. It also implements the Single Market Act [COM(2011) 206], in particular its twelfth key action ‘Revised and Modernised Public Procurement Legislative Framework’. It is a CWP 2011 strategic initiative.

## 2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

### *Consultation methods, main sectors targeted and general profile of respondents*

The Commission published on 27 January 2011 a *Green Paper on the modernisation of EU public procurement policy — Towards a more efficient European Procurement Market*<sup>5</sup> launching a broad public consultation on options for legislative changes to make the award of contracts easier and more flexible and enable public contracts to be put to better use in support of other policies. The purpose of the Green Paper was to identify a number of key areas for reform and ask for stakeholders’ views on concrete options for legislative change. Among the issues covered were the needs for simplifying and flexibilising procedures, strategic use of public procurement to promote other policy objectives, improving access of SMEs to public contracts and combating favouritism, corruption and conflicts of interest.

The public consultation closed on 18 April 2011 and met with a high response. In total, 623 replies were received, coming from a wide variety of stakeholder groups including central Member State authorities, local and regional public purchasers and their associations, undertakings, industry associations, academics, civil society organisations (including trade unions) and individual citizens. The majority of replies originated from the United Kingdom, Germany, France and, to a lesser degree, Belgium, Italy, the Netherlands, Austria, Sweden, Spain and Denmark.

The results of the consultation were summarised in a synthesis paper<sup>6</sup> and presented and discussed at a public conference on 30 June 2011<sup>7</sup>.

### *Summary of responses and how they have been taken into account*

A very large majority of stakeholders appreciated the initiative of the Commission to review the current public procurement policy. Amongst the different subjects discussed in the Green Paper, stakeholders put a particularly strong emphasis on the need to simplify procedures and make them more flexible. For instance, a clear majority of all stakeholder groups supported

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<sup>5</sup> COM(2011) 15: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0015:FIN:EN:PDF>.

<sup>6</sup> [http://ec.europa.eu/internal\\_market/consultations/docs/2011/public\\_procurement/synthesis\\_document\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2011/public_procurement/synthesis_document_en.pdf).

<sup>7</sup> [http://ec.europa.eu/internal\\_market/publicprocurement/modernising\\_rules/conferences/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/modernising_rules/conferences/index_en.htm).

the idea of allowing greater use of a competitive procedure with negotiation. There was also strong support for measures to alleviate administrative burdens related to the choice of bidder.

On the strategic use of public procurement to achieve the societal goals of the Europe 2020 strategy, stakeholders' opinions were mixed. Many stakeholders, especially businesses, showed a general reluctance to the idea of using public procurement in support of other policy objectives. Other stakeholders, notably civil society organisations, were strongly in favour of such strategic use and advocated far-reaching changes to the very principles of the European Union public procurement policy.

- **Collection and use of expertise**

In addition to the Green Paper consultation, the Commission conducted in 2010/2011 a comprehensive evaluation of the impact and effectiveness of EU public procurement legislation drawing on an extensive body of evidence and new independent research. The studies assessed mainly the cost and effectiveness of procurement procedures, issues of cross border procurement, SMEs' access to public procurement markets and the strategic use of public procurement in Europe.

The findings of the evaluation showed clearly that the public procurement Directives 2004/17/EC and 2004/18/EC have helped to establish a culture of transparency and outcome-driven procurement, generating savings and improvements in the quality of procurement outcomes that far exceed the costs, for public purchasers and suppliers, of running those procedures. The evaluation has also found that differences in implementation and application of the Directives have led to different outcomes in different Member States. The time taken to complete procedures and the cost to public purchasers vary widely across Member States.

- **Impact assessment**

The impact assessment and its executive summary give an overview of the different options for each of the five groups of basic problems (administrative organisation, scope, procedures, strategic procurement and access to procurement markets). Based on an analysis of the advantages and disadvantages of the different options, a package of preferred options was identified that should optimise the synergies between the different solutions allowing savings due to one type of action to neutralise related costs caused by another (e.g. possible increased procedural requirements caused by strategic procurement actions could partially be neutralised by savings related to the improved design of procurement procedures). These preferred options form the basis of the present proposal.

The draft Impact Assessment report was scrutinised by the Impact Assessment Board, who asked for amendments concerning in particular the identification of the specific elements of the legislative framework to be addressed, the description of the options under discussion, a more in-depth cost-benefit analysis of the selected headline actions and the systematic integration of stakeholder views, both in the problem definition and to complement the analysis of impacts. These recommendations for improvement were integrated in the final report. The opinions of the Impact Assessment Board on the report are published together with this proposal, as well as the final Impact Assessment report and its executive summary.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

- **Legal basis**

The proposal is based on Articles 53(1), 62 and 114 of the Treaty on the Functioning of the European Union (TFEU).

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the EU.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason:

The coordination of procedures for public procurement above certain thresholds has proven an important tool for the achievement of the Internal Market in the field of public purchasing by ensuring effective and equal access to public contracts for economic operators across the Single Market. Experience with Directives 2004/17/EC and 2004/18/EC and the earlier generations of public procurement Directives has shown that European-wide procurement procedures provide transparency and objectivity in public procurement resulting in considerable savings and improved procurement outcomes that benefit Member States' authorities and, ultimately, the European taxpayer.

This objective could not be sufficiently achieved through action by Member States which would inevitably result in divergent requirements and possibly conflicting procedural regimes increasing regulatory complexity and causing unwarranted obstacles for cross-border activities.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle since it does not go beyond what is necessary in order to achieve the objective of ensuring the proper functioning of the Internal Market through a set of European-wide coordinated procurement procedures. Moreover, the proposal is based on a 'tool box' approach, allowing Member State a maximum of flexibility in adapting the procedures and tools to their specific situation.

Compared to the current public procurement Directives, the proposal will considerably reduce administrative burden related to the conduct of the procedure both for contracting authorities and economic operators; where new requirements are foreseen (for instance, in the context of strategic procurement), these will be compensated by the removal of constraints in other areas.

- **Choice of instruments**

Since the proposal is based on Articles 53(1), 62 and 114 TFEU the use of a Regulation for the provisions applying both to the procurement of goods and services would not be permitted by the Treaty. The instrument proposed is therefore a Directive.

During the impact assessment process, non-legislative options were discarded for reasons set out in detail in the impact assessment.

#### **4. BUDGETARY IMPLICATION**

The proposal has no budgetary implications.

#### **5. ADDITIONAL INFORMATION**

- **Repeal of existing legislation**

The adoption of the proposal will lead to the repeal of existing legislation (Directive 2004/18/EEC).

- **Review/revision/sunset clause**

The proposal contains a review clause concerning the economic effects of the threshold amounts.

- **Transposition measures and explanatory documents**

The proposal concerns an area where Union legislation has a coordination purpose, with a significant impact on a wide range of national legal sectors. Notwithstanding the coordination purpose, many provisions constitute full harmonisation and the proposal includes a large number of legal obligations. Member States supplement Union rules with national additional provisions so as the whole system becomes operational.

In this context, the Commission has identified a number of factors which render explanations by Member States necessary both for the correct understanding of transposing measures and for the functioning of the whole picture of procurement rules at national level:

- transposing and implementing measures are adopted at different institutional levels (national / federal, regional, local);
- in addition to the different regulatory layers, in many Member States rules are also established according to the sector involved or the type of procurement concerned;
- administrative measures of general or specific nature complement and in some cases overlap the main legal framework.

Only Member States can explain how the different measures transpose the Union directives in the public procurement sector and how the same measures interact each with the others.

For these reasons, the communication of documents explaining the relationship between the various parts of this directive and the corresponding parts of national transposition measures should be communicated together with the transposing measures, in particular concordance tables, which constitute an operational tool for the analysis of the national measures.

- **European Economic Area**

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

- **Detailed explanation of the proposal**

*1) Simplification and flexibilisation of procurement procedures*

The proposed Directive provides for a simplification and flexibilisation of the procedural regime set by the current public procurement Directives. For this purpose, it contains the following measures:

*Clarification of scope:* The basic concept of ‘procurement’ which appears also in the title of the proposed Directive has been newly introduced in order to better determine the scope and purpose of procurement law and to facilitate the application of the thresholds. The definitions of certain key notions determining the scope of the Directive (such as body governed by public law, public works and service contracts, mixed contracts) have been revised in the light of the case-law of the Court of Justice. At the same time, the proposal endeavours to keep continuity in the use of notions and concepts that have been developed over the years through the Court’s case-law and are well known to practitioners. In this context, it should be noted that minor deviations from the wording and presentation known from the previous Directives do not necessarily imply a change of substance, but may be due to simplification of texts.

The traditional distinction between so-called priority and non-priority services (‘A’ and ‘B’ services) will be abolished. The results of the evaluation have shown that it is no longer justified to restrict the full application of procurement law to a limited group of services. However, it became also clear that the regular procurement regime is not adapted to social services which need a specific set of rules (see below).

*Toolbox approach:* Member State systems will provide two basic forms of procedure, open and restricted procedure. They may, in addition, foresee, subject to certain conditions, the competitive procedure with negotiation, the competitive dialogue and/or the innovation partnership, a new form of procedure for innovative procurement (see below).

Contracting authorities will furthermore have at their disposal a set of six specific procurement techniques and tools intended for aggregated and electronic procurement: framework agreements, dynamic purchasing systems, electronic auctions, electronic catalogues, central purchasing bodies and joint procurement. Compared to the existing Directive, these tools have been improved and clarified with a view to facilitating e-procurement.

*Lighter regime for sub-central contracting authorities:* In line with the WTO Government Procurement Agreement, the proposal provides a simplified procurement regime that applies to all contracting authorities below the central government level, such as local and regional authorities. These purchasers may use a prior information notice as a means of calling for competition. If they make use of this faculty, they don’t have to publish a separate contract notice before launching the procurement procedure. They may also set certain time limits in a more flexible way by mutual agreement with participants.

*Promotion of e-procurement:* The use of electronic communications and transaction processing by public purchasers can deliver significant savings and improved procurement outcomes while reducing waste and error. The proposal aims at helping Member States to

achieve the switchover to e-procurement enabling suppliers to take part in online procurement procedures across the Internal Market. For this purpose, the proposed Directive provides for the mandatory transmission of notices in electronic form, the mandatory electronic availability of the procurement documents and imposes the switch to fully electronic communication, in particular e-submission, in all procurement procedures within a transition period of two years. It streamlines and improves Dynamic Purchasing Systems and electronic catalogues, fully electronic procurement tools that are particularly adapted to highly aggregated procurement done by Central Purchasing Bodies. The e-procurement instrument would also enable contracting authorities to prevent, detect and correct errors generally due to wrong understanding or interpretation of public procurement rules.

*Modernisation of procedures:* The proposal provides a more flexible and user-friendly approach for certain important features of procurement procedures. Time-limits for participations and submission of offers have been shortened, allowing for quicker and more streamlined procurement. The distinction between selection of tenderers and award of the contract which is often a source of errors and misunderstandings has been made more flexible, allowing it for contracting authorities to decide on the most practical sequencing by examining award criteria before selection criteria and to take into account the organisation and quality of the staff assigned to performing the contract as an award criterion.

The grounds for exclusion of candidates and tenderers have been reviewed and clarified. Contracting authorities will be entitled to exclude economic operators which have shown significant or persistent deficiencies in performing prior contracts. The proposal provides also for the possibility of ‘self-cleaning’: contracting authorities may accept candidates or tenderers in spite of the existence of an exclusion ground if they have taken appropriate measures to remedy the consequences of any illicit behaviour and effectively prevent further occurrences of the misbehaviour.

The modification of contracts during their term has become an increasingly relevant and problematic issue for practitioners. A specific provision on modification of contracts takes up the basic solutions developed by case-law and provides a pragmatic solution for dealing with unforeseen circumstances requiring an adaption of a public contract during its term.

## 2) *Strategic use of public procurement in response to new challenges*

The proposed Directive is based on *enabling approach* providing contracting authorities with the instruments needed to contribute to the achievement of the Europe 2020 strategic goals by using their purchasing power to procure goods and services that foster innovation, respect the environment and combat climate change while improving employment, public health and social conditions.

*Life-cycle costing:* The proposal gives public purchasers the possibility to base their award decisions on life-cycle costs of the products, services or works to be purchased. The life cycle covers all stages of the existence of a product or works or provision of a service, from raw material acquisition or generation of resources until disposal, clearance and finalisation. The costs to be taken into account do not only include direct monetary expenses, but also external environmental costs if they can be monetised and verified. Where a common European Union methodology for the calculation of life-cycle costs has been developed, contracting authorities have to make use of it.



*Production process:* Contracting authorities may refer to all factors directly linked to the production process in the technical specifications and in the award criteria, as long as they refer to aspects of the production process which are closely related to the specific production or provision of the good or service purchased. This excludes requirements not related to the process of producing the products, works or services covered by the procurement, such as general corporate social responsibility requirements covering the whole operation of the contractor.

*Labels:* Contracting authorities may require that works, supplies or services bear specific labels certifying environmental, social or other characteristics, provided that they accept also equivalent labels. This applies for instance to European or (multi-)national eco-labels or labels certifying that a product is free of child-labour. The certification schemes in question must concern characteristics linked to the subject-matter of the contract and be drawn up on the basis of scientific information, established in an open and transparent procedure and accessible to all interested parties.

*Sanctioning violations of mandatory social, labour or environmental law:* Under the proposed Directive, a contracting authority can exclude economic operators from the procedure, if it identifies infringements of obligations established by Union legislation in the field of social, labour or environmental law or of international labour law provisions. Moreover, contracting authorities will be obliged to reject tenders if they have established that they are abnormally low because of violations of Union legislation in the field of social, labour or environmental law.

*Social services:* The evaluation on the impact and effectiveness of EU public procurement legislation has shown that social, health and education services have specific characteristics which make them inappropriate for the application of the regular procedures for the award of public service contracts. These services are typically provided within a specific context that varies widely between Member States due to different administrative, organisational and cultural circumstances. The services have, by their very nature, only a very limited cross-border dimension. Member States should therefore have large discretion to organise the choice of service providers. The proposal takes account of this by providing a specific regime for public contracts for these services, with a higher threshold of EUR 500 000 and imposing only the respect of basic principles of transparency and equal treatment. A quantitative analysis of the values of contracts for the relevant services awarded to economic operators from abroad has shown that contracts below this value have typically no cross-border interest.

*Innovation:* Research and innovation play a central role in the Europe 2020 strategy for smart, sustainable and inclusive growth. Public purchasers should be enabled to buy innovative products and services promoting future growth and improving efficiency and quality of public services. The proposal provides for this purpose the innovation partnership, a new special procedure for the development and subsequent purchase of new, innovative products, works and services, provided they can be delivered to agreed performance levels and costs. In addition, the proposal improves and simplifies the competitive dialogue procedure and facilitates cross-border joint procurement which is an important instrument for innovative purchasing.

### *3) Better access to the market for SMEs and Start-ups*

Small and medium-sized enterprises (SMEs) have a huge potential for job creation, growth and innovation. Easy access to procurement markets can help them unlock this potential while

allowing contracting authorities to broaden their supplier base, with positive effects of higher competition for public contracts. In order to make public contracts as accessible as possible to SMEs, the Commission published in 2008 the ‘European Code of Best Practices facilitating access by SMEs to public procurement contracts’<sup>8</sup>. The proposal builds on this work and provides concrete measures to remove barriers for market access by SMEs.

*Simplification of information obligations:* The general simplification of information obligations in procurement procedures will greatly benefit SMEs. The proposal provides for the mandatory acceptance of self-declarations as prima-facie evidence for selection purposes. The actual production of documentary evidence will be facilitated by a standardised document, the European Procurement Passport which is a means of proof for the absence of grounds for exclusion.

*Division into lots:* Contracting authorities will be invited to divide public contracts into — homogeneous or heterogeneous — lots to make them more accessible for SMEs. If they decide not to do so, they will be obliged to provide a specific explanation.

*Limitation on requirements for participation:* To avoid unjustified barriers in the way of participation by SMEs, the proposed Directive contains an exhaustive list of possible conditions for participation in procurement procedures and states explicitly that any such conditions shall be restricted ‘to those that are appropriate to ensure that a candidate or tenderer has the ... capacities and ... abilities to perform the contract to be awarded’. Turnover requirements which are frequently a formidable obstacle to access by SMEs are explicitly limited to three times the estimated contract value, except in duly justified cases. Finally, any conditions for participation by groups of economic operators — an instrument of particular relevance for SMEs — must be justified by objective reasons and proportionate.

*Direct payment of subcontractors:* In addition, Member State can provide that subcontractors may request for direct payment by the contracting authority of supplies, works and services provided to the main contractor in the context of the contract performance. This offers subcontractors which are often SMEs an efficient way of protecting their interest in being paid.

#### 4) Sound procedures

The financial interests at stake and the close interaction between the public and the private sector make public procurement a risk area for unsound business practices such as conflict of interest, favouritism and corruption. The proposal improves the existing safeguards against such risks and provides for additional protection.

*Conflicts of interest:* The proposal contains a specific provision on conflicts of interest covering actual, potential or perceived conflict of interest situations affecting staff members of the contracting authority or of procurement service providers intervening in the procedure and members of the contracting authority’s management who may influence the outcome of a procurement procedure even if they are not formally involved in it.

*Illicit conduct:* The proposal contains a specific provision against illicit behaviour by candidates and tenderers, such as attempts to improperly influence the decision-making process or entering into agreements with other participants to manipulate the outcome of the

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<sup>8</sup> Commission Staff Working Document SEC(2008) 2193.

procedure have to be excluded from the procedure. Such illicit activities violate basic principles of European Union result and can result in serious distortions of competition.

*Unfair advantages:* Market consultations are a useful instrument for contracting authorities to obtain information on the structure, capability and capacity of a market while at the same time informing market actors on public purchasers' procurement projects and requirements. However, preliminary contacts with market participants must not result in unfair advantages and distortions of competitions. The proposal contains therefore a specific provision on safeguards against undue preference in favour of participants who have advised the contracting authority or been involved in the preparation of the procedure.

## 5) Governance

*National oversight bodies:* The evaluation has shown that not all Member States are consistently and systematically monitoring the implementation and functioning of the public procurement rules. This compromises the efficient and uniform application of European Union law. The proposal provides therefore that Member States designate a single national authority in charge of monitoring, implementation and control of public procurement. Only a single body with overarching tasks will ensure an overview of main implementation difficulties and will be able to suggest appropriate remedies to more structural problems. It will be in the position to provide immediate feedback on the functioning of the policy and the potential weaknesses in national legislation and practice, thus contributing to the quick identification of solutions and the improvement of the procurement procedures.

*Knowledge centres:* In many cases, contracting authorities do not have the internal expertise to deal with complex procurement projects. Appropriate and independent professional support by administrative structures could considerably improve procurement outcomes by expanding the knowledge base and the professionalism of public procurers and delivering assistance to businesses, notably SMEs. The proposal obliges therefore Member States to provide support structures offering legal and economic advice, guidance, training and assistance in preparing and conducting procurement procedures. Support structures or mechanisms exist already at national level, although organised in very different manners and covering different areas of interest for contracting authorities. Member States will therefore be able to use these mechanisms, build on their expertise and promote their services as an appropriate and modern tool capable to provide appropriate support to contracting authorities and economic operators.

To reinforce the fight against corruption and favouritism, contracting authorities will be obliged to transmit the text of concluded contracts to the oversight body, which will thus be able to scrutinize these contracts for suspicious patterns, and give access to these documents to interested persons to the extent that legitimate public or private interests are not jeopardized. However, the creation of disproportionate administrative burden must be avoided; the obligation to transmit the full text of concluded contracts should therefore remain limited to relatively high value contracts. The thresholds proposed would strike the right balance between increasing administrative burden and ensuring greater transparency: with a threshold of 1 000 000 EUR for supplies and services, and of 10 000 000 EUR, this obligation would apply to 10 - 20 % of all procurement published in the Official Journal.

It is not foreseen that requirements concerning oversight bodies and knowledge centres will generate overall additional financial burden for Member States. If some costs are expected to re-organise or fine tune the activities of existing mechanisms and structures, they will be neutralised by a reduction of litigation costs (both for contracting authorities and business),

costs related to delays in the attribution of contracts, due to misapplication of public procurement rules or to the bad preparation of the procurement procedures, as well as costs related to the fact that advice to contracting authorities is currently provided in a fragmented and inefficient manner.

*Administrative cooperation:* The proposal provides also for effective cooperation allowing national oversight bodies to share information and best practices and to cooperate through the Internal Market Information System (IMI).

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on public procurement**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1), Article 62 and Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments<sup>9</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>10</sup>,

Having regard to the opinion of the Committee of the Regions<sup>11</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The award of public contracts by or on behalf of Member States authorities has to comply with the principles of the Treaty on the Functioning of the European Union, and in particular the free movement of goods, freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. However, for public contracts above a certain value, provisions should be drawn up coordinating national procurement procedures so as to ensure that these principles are given practical effect and public procurement is opened up to competition.
- (2) Public procurement plays a key role in the Europe 2020 strategy<sup>12</sup> as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal

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<sup>9</sup> OJ C ....

<sup>10</sup> OJ C ....

<sup>11</sup> OJ C ....

<sup>12</sup> COM(2010) 2020 final, 3.3-2010.

services sectors<sup>13</sup> and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts<sup>14</sup> have to be revised and modernised in order to increase the efficiency of public spending, facilitating in particular the participation of small and medium-sized enterprises in public procurement and to enable procurers to make better use of public procurement in support of common societal goals. There is also a need to clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

- (3) The increasingly diverse forms of public action have made it necessary to define more clearly the notion of procurement itself. The Union rules on public procurement are not intended to cover all forms of disbursement of public money, but only those aimed at the acquisition of works, supplies or services for consideration. The notion of acquisition should be understood broadly in the sense of obtaining the benefits of the works, supplies or services in question, not necessarily requiring a transfer of ownership to the contracting authorities. Furthermore, the mere financing of an activity, which is frequently linked to the obligation to reimburse the amounts received where they are not used for the purposes intended, does not usually fall under the public procurement rules.
- (4) It has also proven necessary to clarify what should be understood as a single procurement, with the effect that the aggregate value of all contracts concluded for the purpose of this procurement has to be taken into account with regard to the thresholds of this directive, and that the procurement should be advertised as a whole, possibly split into lots. The concept of single procurement encompasses all supplies, works and services needed to carry out a particular project, for instance a works project or an entirety of works, supplies and/or services. Indications for the existence of one single project can for instance consist in overall prior planning and conception by the contracting authority, the fact that the different elements purchased fulfil a single economic and technical function or that they are otherwise logically interlinked and carried out in a narrow time frame.
- (5) Under Article 11 of the Treaty on the Functioning of the European Union, environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development. This Directive clarifies how the contracting authorities may contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring that they can obtain the best value for money for their contracts.
- (6) Even if they do not necessarily lead to corrupt conduct, actual, potential or perceived conflicts of interest have a high potential to improperly influence public procurement decisions with the effect of distorting competition and jeopardising equal treatment of tenderers. Effective mechanisms should therefore be set up to prevent, identify and remedy conflicts of interest.

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<sup>13</sup> OJ L 134, 30.4.2004, p. 1.

<sup>14</sup> OJ L 134, 30.4.2004, p. 114.

- (7) Illicit conduct by participants in a procurement procedure, such as attempts to unduly influence the decision-making process or to enter into agreements with other candidates to manipulate the outcome of the procedure, can result in violations of the basic principles of Union law and in serious distortions of competition. Economic operators should therefore be required to submit a declaration on honour that they do not engage in such illicit activities and be excluded if this declaration proves to be false.
- (8) Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the Agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994)<sup>15</sup> approved in particular the World Trade Organisation Agreement on Government Procurement, hereinafter referred to as the ‘Agreement’. The aim of the Agreement is to establish a multilateral framework of balanced rights and obligations relating to public contracts with a view to achieving the liberalisation and expansion of world trade. For contracts covered by the Agreement, as well as by other relevant international agreements by which the Union is bound, contracting authorities fulfil the obligations under these agreements by applying this Directive to economic operators of third countries that are signatories to the agreements.
- (9) The Agreement applies to contracts above certain thresholds, set in the Agreement and expressed as special drawing rights. The thresholds laid down by this Directive should be aligned to ensure that they correspond to the euro equivalents of the thresholds of the Agreement. Provision should also be made for periodic reviews of the thresholds expressed in euros so as to adjust them, by way of a purely mathematical operation, to possible variations in the value of the euro in relation to the special drawing right.
- (10) The results of the Evaluation on the Impact and Effectiveness of EU Public Procurement Legislation<sup>16</sup> demonstrated that the exclusion of certain services from the full application of the Directive should be reviewed. As a result, the full application of this directive is extended to a number of services (such as hotel and legal services, which both showed a particularly high percentage of cross-border trade).
- (11) Other categories of services continue by their very nature to have a limited cross-border dimension, namely what are known as services to the person, such as certain social, health and educational services. These services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for public contracts for these services, with a higher threshold of EUR 500 000. Services to the person with values below this threshold will typically not be of interest to providers from other Member States, unless there are concrete indications to the contrary, such as Union financing for transborder projects. Contracts for services to the person above this threshold should be subject to Union-wide transparency. Given the importance of the cultural context and the sensitivity of these services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this directive take account of that imperative, imposing only observance of basic principles of transparency and equal treatment and making sure

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<sup>15</sup> OJ L 336, 23.12.1994, p. 1.

<sup>16</sup> SEC(2011) 853 final, 27.6.2011.

that contracting authorities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee<sup>17</sup>. Member States and/or public authorities remain free to provide these services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting authority, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

- (12) Public contracts that are awarded by contracting authorities operating in the water, energy, transport and postal services sectors and fall within the scope of those activities are covered by Directive [...] of the European Parliament and of the Council of [...] on procurement by entities operating in the water, energy, transport and postal services sectors<sup>18</sup>. Contracts awarded by contracting authorities in the context of their operation of maritime, coastal or river transport services fall within the scope of this Directive.
- (13) Being addressed to Member States, this directive does not apply to procurement carried out by international organisations on their own behalf and for their own account. There is, however, a need to clarify to what extent this directive should be applied to procurement governed by specific international rules.
- (14) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by public procurement rules. The relevant case-law of the Court of Justice of the European Union is interpreted divergently between Member States and even between contracting authorities. It is therefore necessary to clarify in what cases contracts concluded between contracting authorities are not subject to the application of public procurement rules. Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. The sole fact that both parties to an agreement are themselves contracting authorities does not as such rule out the application of procurement rules. However, the application of public procurement rules should not interfere with the freedom of public authorities to decide how to organise the way they carry out their public service tasks. Contracts awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities should therefore be exempted from the application of the rules if the conditions set out in this directive are fulfilled. This directive should aim to ensure that any exempted public-public cooperation does not cause a distortion of competition in relation to private economic operators. Neither should the participation of a contracting authority as a tenderer in a procedure for the award of a public contract cause any distortion of competition.
- (15) There is a widespread need for additional flexibility and in particular for wider access to a procurement procedure providing for negotiations, as is explicitly foreseen in the Agreement, where negotiation is allowed in all procedures. Contracting authorities should, unless otherwise provided in the legislation of the Member State concerned, be

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<sup>17</sup> SPC/2010/10/8 final,6.10.2010.

<sup>18</sup> ...



able to use a competitive procedure with negotiation as provided for in this Directive, in various situations where open or restricted procedures without negotiations are not likely to lead to satisfactory procurement outcomes. This procedure should be accompanied by adequate safeguards ensuring observance of the principles of equal treatment and transparency. This will give greater leeway to contracting authorities to buy works, supplies and services perfectly adapted to their specific needs. At the same time, it should also increase cross-border trade, as the evaluation has shown that contracts awarded by negotiated procedure with prior publication have a particularly high success rate of cross-border tenders.

- (16) For the same reasons, contracting authorities should be free to use the competitive dialogue. The use of this procedure has significantly increased in terms of contract values over the last years. It has shown itself to be of use in cases where contracting authorities are unable to define the means of satisfying their needs or of assessing what the market can offer in terms of technical, financial or legal solutions. This situation may arise in particular with innovative projects, the implementation of major integrated transport infrastructure projects, large computer networks or projects involving complex and structured financing.
- (17) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. Public authorities should make the best strategic use of public procurement to spur innovation. Buying innovative goods and services plays a key role in improving the efficiency and quality of public services while addressing major societal challenges. It contributes to achieving best value for public money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative products and services and thus promoting sustainable economic growth. This directive should contribute to facilitating public procurement of innovation and help Member States in achieving the Innovation Union targets. A specific procurement procedure should therefore be provided for which allows contracting authorities to establish a long-term innovation partnership for the development and subsequent purchase of a new, innovative product, service or works provided it can be delivered to agreed performance levels and costs. The partnership should be structured in such a way that it can provide the necessary 'market-pull', incentivising the development of an innovative solution without foreclosing the market.
- (18) In view of the detrimental effects on competition, negotiated procedures without prior publication of a contract notice should only be used in very exceptional circumstances. This exception should be limited to cases where publication is either not possible, for reasons of force majeure in line with the standing case-law of the Court of Justice of the European Union, or where it is clear from the outset that publication would not trigger more competition, not least because there is objectively only one economic operator that can perform the contract. Only situations of objective exclusivity can justify the use of the negotiated procedure without publication, where the situation of exclusivity has not been created by the contracting authority itself with a view to the future procurement procedure, and where there are no adequate substitutes, the availability of which should be assessed thoroughly.
- (19) Electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency and transparency of procurement

processes. They should become the standard means of communication and information exchange in procurement procedures. The use of electronic means also leads to time savings. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Union level. Moreover, electronic means of information and communication including adequate functionalities can enable contracting authorities to prevent, detect and correct errors that occur during procurement procedures.

- (20) There is a strong trend emerging across Union public procurement markets towards the aggregation of demand by public purchasers, with a view to obtaining economies of scale, including lower prices and transaction costs, and to improving and professionalising procurement management. This can be achieved by concentrating purchases either by the number of contracting authorities involved or by volume and value over time. However, the aggregation and centralisation of purchases should be carefully monitored in order to avoid excessive concentration of purchasing power and collusion, and to preserve transparency and competition, as well as market access opportunities for small and medium-sized enterprises.
- (21) The instrument of framework agreements has been widely used and is considered as an efficient procurement technique throughout Europe. It should therefore be maintained largely as is. However, certain concepts need to be clarified, in particular the conditions for the use of a framework agreement by contracting authorities which are not themselves party to it.
- (22) In view of the experience acquired, there is also a need to adjust the rules governing dynamic purchasing systems to enable contracting authorities to take full advantage of the possibilities afforded by this instrument. The systems need to be simplified, in particular by operating them in the form of a restricted procedure, hence eliminating the need for indicative tenders, which have been identified as one of the major burdens associated with these systems. Thus any economic operator that submits a request to participate and meets the selection criteria should be allowed to take part in procurement procedures carried out through the dynamic purchasing system. This purchasing technique allows the contracting authority to have a particularly broad range of tenders and hence to ensure optimum use of public funds through broad competition.
- (23) In addition, new electronic purchasing techniques are constantly being developed, such as electronic catalogues. They help to increase competition and streamline public purchasing, particularly in terms of savings in time and money. Certain rules should however be laid down to ensure that the use of the new techniques complies with the rules of this Directive and the principles of equal treatment, non-discrimination and transparency. In particular, where competition has been reopened under a framework agreement or where a dynamic purchasing system is being used and where sufficient guarantees are offered in respect of ensuring traceability, equal treatment and predictability, contracting authorities should be allowed to generate tenders in relation to specific purchases on the basis of previously transmitted electronic catalogues. In line with the requirements of the rules for electronic means of communication, contracting authorities should avoid unjustified obstacles to economic operators' access to procurement procedures in which tenders are to be presented in the form of

electronic catalogues and which guarantee compliance with the general principles of non-discrimination and equal treatment.

- (24) Centralised purchasing techniques are increasingly used in most Member States. Central purchasing bodies are responsible for making acquisitions or awarding public contracts/framework agreements for other contracting authorities. In view of the large volumes purchased, such techniques help increase competition and professionalise public purchasing. Provision should therefore be made for a Union definition of central purchasing bodies dedicated to contracting authorities, without preventing the continuation of less institutionalised and systematic common purchasing or the established practice of having recourse to service providers that prepare and manage procurement procedures on behalf and for the account of a contracting authority. Rules should also be laid down for allocating responsibility for the observance of the obligations pursuant to this Directive, also in the case of remedies, among the central purchasing body and the contracting authorities procuring from or through the central purchasing body. Where the latter has sole responsibility for the conduct of the procurement procedures, it should also be solely and directly responsible for the legality of the procedures. Where a contracting authority conducts certain parts of the procedure, for instance the reopening of competition under a framework agreement or the award of individual contracts based on a dynamic purchasing system, it should continue to be responsible for the stages it conducts.
- (25) Electronic means of communication are particularly well suited to support centralised purchasing practices and tools because of the possibility they offer to re-use and automatically process data and to minimise information and transaction costs. The use of such electronic means of communication should therefore, as a first step, be rendered compulsory for central purchasing bodies, while also facilitating converging practices across the Union. This should be followed by a general obligation to use electronic means of communication in all procurement procedures after a transition period of two years.
- (26) Joint awarding of public contracts by contracting authorities from different Member States currently encounters specific legal difficulties, with special reference to conflicts of national laws. Despite the fact that Directive 2004/18/EC implicitly allowed for cross-border joint public procurement, in practice several national legal systems have explicitly or implicitly rendered cross-border joint procurement legally uncertain or impossible. Contracting authorities from different Member States may be interested in cooperating and in jointly awarding public contracts in order to derive maximum benefit from the potential of the internal market in terms of economies of scale and risk-benefit sharing, not least for innovative projects involving a greater amount of risk than reasonably bearable by a single contracting authority. Therefore new rules on cross-border joint procurement designating the applicable law should be established in order to facilitate cooperation between contracting authorities across the Single Market. In addition, contracting authorities from different Member States may set up joint legal bodies established under national or Union law. Specific rules should be established for such form of joint procurement.
- (27) The technical specifications drawn up by public purchasers need to allow public procurement to be opened up to competition. To that end, it must be possible to submit tenders that reflect the diversity of technical solutions so as to obtain a sufficient level of competition. Consequently, technical specifications should be drafted in such a way

to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications in terms of functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on equivalent arrangements must be considered by contracting authorities. To demonstrate equivalence, tenderers can be required to provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits.

- (28) Contracting authorities that wish to purchase works, supplies or services with specific environmental, social or other characteristics should be able to refer to particular labels, such as the European Eco-label, (multi-)national eco-labels or any other label provided that the requirements for the label are linked to the subject-matter of the contract, such as the description of the product and its presentation, including packaging requirements. It is furthermore essential that these requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations, can participate, and that the label is accessible and available to all interested parties.
- (29) For all procurement intended for use by persons, whether general public or staff of the contracting authority, it is necessary that contracting authorities lay down technical specifications so as to take into account accessibility criteria for people with disabilities or design for all users, except in duly justified cases.
- (30) In order to foster the involvement of small and medium-sized enterprises (SMEs) in the public procurement market, contracting authorities should be encouraged to divide contracts into lots, and be obliged to state the reasons for not doing so. Where contracts are divided into lots, contracting authorities may, for instance in order to preserve competition or to ensure security of supply, limit the number of lots for which an economic operator may tender; they may also limit the number of lots that may be awarded to any one tenderer.
- (31) Overly demanding requirements concerning economic and financial capacity frequently constitute an unjustified obstacle to the involvement of SMEs in public procurement. Contracting authorities should therefore not be allowed to require economic operators to have a minimum turnover exceeding three times the estimated contract value. However, in duly justified circumstances, higher requirements may be applied. Such circumstances may relate to the high risks attached to the performance of the contract or the fact that its timely and correct performance is critical, for instance because it constitutes a necessary preliminary for the performance of other contracts.
- (32) Many economic operators, and not least SMEs, find that a major obstacle to their participation in public procurement consists in administrative burdens deriving from the need to produce a substantial number of certificates or other documents related to exclusion and selection criteria. Limiting such requirements, for example through self-

declarations, can result in considerable simplification for the benefit of both contracting authorities and economic operators. The tenderer to which it has been decided to award the contract should, however, be required to provide the relevant evidence and contracting authorities should not conclude contracts with tenderers unable to do so. Further simplification can be achieved through standardised documents such as the European Procurement Passport, which should be recognized by all contracting authorities and widely promoted among economic operators, in particular SMEs, for whom they can substantially lessen the administrative burden.

- (33) The Commission provides and manages an electronic system — e-Certis, which is updated and verified on a voluntary basis by national authorities. The aim of e-Certis is to facilitate the exchange of certificates and other documentary evidence frequently required by contracting authorities. Experience acquired so far indicates that voluntary updating and verification is insufficient to ensure that e-Certis can deliver its full potential for simplifying and facilitating documentary exchanges for the benefit of small and medium-sized enterprises in particular. Maintenance should therefore be rendered obligatory in a first step; recourse to e-Certis will be made mandatory at a later stage.
- (34) Public contracts should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Furthermore, contracting authorities should be given the possibility to exclude candidates or tenderers for violations of environmental or social obligations, including rules on accessibility for disabled persons or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights.
- (35) Allowance should, however, be made for the possibility that economic operators may adopt compliance measures aimed at remedying the consequences of any criminal offences or misconduct and at effectively preventing further occurrences of the misbehaviour. These measures may consist in particular in personnel and organisation measures such as the severance of all links with persons or organisations involved in the misbehaviour, appropriate staff reorganisation measures, the implementation of reporting and control systems, the creation of an internal audit structure to monitor compliance and the adoption of internal liability and compensation rules. Where such measures offer sufficient guarantees, the economic operator in question should no longer be excluded on these grounds. Economic operators should have the possibility to request that contracting authorities examine the compliance measures taken with a view to possible admission to the procurement procedure.
- (36) Contracting authorities may require that environmental management measures or schemes are to be applied during the performance of a public contract. Environmental management schemes, whether or not they are registered under Union instruments such as Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)<sup>19</sup>, can demonstrate that the economic

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<sup>19</sup> OJ L 342, 22.12.2009, p. 1.

operator has the technical capability to perform the contract. A description of the measures implemented by the economic operator to ensure the same level of environmental protection should be accepted as an alternative to environmental management registration schemes as a form of evidence, where the economic operator concerned has no access to such environmental management registration schemes or no possibility of obtaining them within the relevant time limits.

- (37) Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of transparency, non-discrimination and equal treatment. These criteria should guarantee that tenders are assessed in conditions of effective competition, also where contracting authorities require high-quality works, supplies and services that are optimally suited to their needs, for instance where the chosen award criteria include factors linked to the production process. As a result, contracting authorities should be allowed to adopt as award criteria either ‘the most economically advantageous tender’ or ‘the lowest cost’, taking into account that in the latter case they are free to set adequate quality standards by using technical specifications or contract performance conditions.
- (38) Where contracting authorities choose to award a contract to the most economically advantageous tender, they must determine the award criteria on the basis of which they will assess tenders in order to identify which one offers the best value for money. The determination of these criteria depends on the subject-matter of the contract since they must allow the level of performance offered by each tender to be assessed in the light of the subject-matter of the contract, as defined in the technical specifications, and the value for money of each tender to be measured. Furthermore, the chosen award criteria should not confer an unrestricted freedom of choice on the contracting authority and they should ensure the possibility of effective competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified.
- (39) It is of utmost importance to fully exploit the potential of public procurement to achieve the objectives of the Europe 2020 Strategy for sustainable growth. In view of the important differences between individual sectors and markets, it would however not be appropriate to set general mandatory requirements for environmental, social and innovation procurement. The Union legislature has already set mandatory procurement requirements for obtaining specific goals in the sectors of road transport vehicles (Directive 2009/33/EC of the European Parliament and the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles<sup>20</sup>) and office equipment (Regulation (EC) No 106/2008 of the European Parliament and the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment<sup>21</sup>). In addition, the definition of common methodologies for life cycle costing has significantly advanced. It therefore appears appropriate to continue on that path, leaving it to sector-specific legislation to set mandatory objectives and targets in function of the particular policies and conditions prevailing in the relevant sector and to promote the development and use of European approaches to life-cycle costing as a further underpinning for the use of public procurement in support of sustainable growth.

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<sup>20</sup> OJ L 120, 15.5.2009, p. 5.

<sup>21</sup> OJ L 39, 13.2.2008, p. 1.

- (40) These sector-specific measures must be complemented by an adaptation of the public procurement Directives empowering contracting authorities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting authorities can determine the most economically advantageous tender and the lowest cost using a life-cycle costing approach, provided that the methodology to be used is established in an objective and non-discriminatory manner and accessible to all interested parties. The notion of life-cycle costing includes all costs over the life cycle of works, supplies or services, both their internal costs (such as development, production, use, maintenance and end-of-life disposal costs) and their external costs, provided they can be monetised and monitored. Common methodologies should be developed at the level of the Union for the calculation of life-cycle costs for specific categories of supplies or services; whenever such a methodology is developed its use should be made compulsory.
- (41) Furthermore, in technical specifications and in award criteria, contracting authorities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the public contract. In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender, characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services<sup>22</sup> and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender.
- (42) Tenders that appear abnormally low in relation to the works, supplies or services might be based on technically, economically or legally unsound assumptions or practices. In order to prevent possible disadvantages during contract performance, contracting authorities should be obliged to ask for an explanation of the price charged where a tender significantly undercuts the prices demanded by other tenderers. Where the tenderer cannot provide a sufficient explanation, the contracting authority should be entitled to reject the tender. Rejection should be mandatory in cases where the contracting authority has established that the abnormally low price charged results

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<sup>22</sup> OJ L 18, 21.1.1997, p.1.

from non-compliance with mandatory Union legislation in the fields of social, labour or environmental law or international labour law provisions.

- (43) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked to the subject-matter of the contract and are indicated in the contract notice, the prior information notice used as a means of calling for competition or the procurement documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment, protection of the environment or animal welfare. For instance, mention may be made, amongst other things, of the requirements — applicable during performance of the contract — to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, even where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation.
- (44) The laws, regulations and collective agreements, at both national and Union level, that are in force in the areas of employment conditions and safety at work apply during the performance of a public contract, provided that such rules, and their application, comply with Union law. In cross-border situations, where workers from one Member State provide services in another Member State for the purpose of performing a public contract, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services<sup>23</sup> lays down the minimum conditions that must be observed by the host country in respect of such posted workers. Where national law contains provisions to this effect, non-compliance with those obligations may be considered to be grave misconduct on the part of the economic operator concerned, liable to lead to the exclusion of that economic operator from the procedure for the award of a public contract.
- (45) It is necessary to clarify the conditions under which modifications of a contract during its performance require a new procurement procedure, taking into account the relevant case-law of the Court of Justice of the European Union. A new procurement procedure is required in case of material changes to the initial contract, in particular to the scope and content of the mutual rights and obligations of the parties, including the distribution of intellectual property rights. Such changes demonstrate the parties' intention to renegotiate essential terms or conditions of that contract. This is the case in particular if the amended conditions would have had an influence on the outcome of the procedure, had they been part of the initial procedure.
- (46) Contracting authorities can be faced with external circumstances that they could not foresee when they awarded the contract. In this case, a certain degree of flexibility is needed to adapt the contract to these circumstances without a new procurement procedure. The notion of unforeseeable circumstances refers to circumstances that could not have been predicted despite reasonably diligent preparation of the initial award by the contracting authority, taking into account its available means, the nature and characteristics of the specific project, good practice in the field in question and the

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<sup>23</sup> OJ L 18, 21.1.1997, p. 1.



need to ensure an appropriate relationship between the resources spent in preparing the award and its foreseeable value. However, this cannot apply in cases where a modification results in an alteration of the nature of the overall procurement, for instance by replacing the works, supplies or services to be procured by something different or by fundamentally changing the type of procurement since, in such a situation, a hypothetical influence on the outcome may be assumed.

- (47) In line with the principles of equal treatment and transparency, the successful tenderer should not be replaced by another economic operator without reopening the contract to competition. However, the successful tenderer performing the contract may undergo certain structural changes during the performance of the contract, such as purely internal reorganisations, mergers and acquisitions or insolvency. Such structural changes should not automatically require new procurement procedures for all public contracts performed by that undertaking.
- (48) Contracting authorities should, in the individual contracts themselves, have the possibility to provide for modifications to a contract by way of review clauses, but such clauses should not give them unlimited discretion. This directive should therefore set out to what extent modifications may be provided for in the initial contract.
- (49) The evaluation has shown that Member States do not consistently and systematically monitor the implementation and functioning of public procurement rules. This has a negative impact on the correct implementation of provisions stemming from these directives, which is a major source of cost and uncertainty. Several Member States have appointed a national central body dealing with public procurement issues, but the tasks entrusted to such bodies vary considerably across Member States. Clearer, more consistent and authoritative monitoring and control mechanisms would increase knowledge of the functioning of procurement rules, improve legal certainty for businesses and contracting authorities, and contribute to establishing a level playing field. Such mechanisms could serve as tools for the detection and early resolution of problems, especially with regard to projects cofunded by the Union, and for the identification of structural deficiencies. There is in particular a strong need to coordinate these mechanisms to ensure consistent application, control and monitoring of public procurement policy, as well as systematic assessment of the outcomes of procurement policy across the Union.
- (50) Member States should designate a single national authority in charge of monitoring, implementation and control of public procurement. Such a central body should have first-hand and timely information, particularly in relation to different problems affecting the implementation of public procurement law. It should be able to provide immediate feedback on the functioning of the policy and the potential weaknesses in national legislation and practice and contribute to the quick identification of solutions. In view of efficiently fighting corruption and fraud, this central body and the general public should also have the possibility to inspect the texts of concluded contracts. High-value contracts should hence be transmitted to the oversight body with a possibility of interested persons to have access to these documents, to the extent that legitimate public or private interests are not jeopardized.
- (51) Not all contracting authorities may have the internal expertise to deal with economically or technically complex contracts. Against this background, appropriate professional support would be an effective complement to monitoring and control

activities. On the one hand, this objective can be achieved by knowledge sharing tools (knowledge centres) offering technical assistance to contracting authorities; on the other hand, business, not least SMEs, should benefit from administrative assistance, in particular when participating in procurement procedures on a cross-border basis.

- (52) Monitoring, oversight and support structures or mechanisms exist already at national level and can of course be used to ensure monitoring, implementation and control of public procurement and to provide the required support to contracting authorities and economic operators.
- (53) Effective cooperation is necessary to ensure consistent advice and practice within each Member State and across the Union. Bodies designated for monitoring, implementation, control and technical assistance should be able to share information and cooperate; in the same context, the national authority designated by each Member State should act as the preferred contact point with the Commission services for the purpose of collecting data, exchanging information and monitoring the implementation of Union public procurement law.
- (54) In order to adapt to rapid technical, economic and regulatory developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of a number of non-essential elements of this Directive. In fact, due to the need to comply with international agreements, the Commission should be empowered to modify the technical procedures for the calculation methods concerning thresholds as well as to periodically revise the thresholds themselves and to adapt Annexes V and XI; the lists of central government authorities are subject to variations due to administrative changes at national level. These are notified to the Commission, which should be empowered to adapt the Annex I; references to the CPV nomenclature may undergo regulatory changes at EU level and it is necessary to reflect those changes into the text of this Directive; the technical details and characteristics of the devices for electronic receipt should be kept up to date with technological developments and administrative needs; it is also necessary to empower the Commission to make mandatory technical standards for electronic communication to ensure the interoperability of technical formats, processes and messaging in procurement procedures conducted using electronic means of communication taking into account technological developments and administrative needs; and the content of the European Procurement Passport to reflect administrative needs and regulatory changes at both national and EU level; the list of legislative acts of the Union establishing common methodologies for the calculation of life-cycle costs should be quickly adapted to incorporate the measures adopted on a sectoral basis. In order to satisfy these needs, the Commission should be empowered to keep the list of legislative acts including LCC methodologies up-to date.
- (55) It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. When preparing and drawing up delegated acts, the Commission should ensure simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.
- (56) In order to ensure uniform conditions for the implementation of this Directive, as for the drawing up of the standard forms for the publication of notices, the standard form for the European Procurement Passport and the common template to be used by the

oversight bodies for drawing up the implementation and statistical report, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No. 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers<sup>24</sup>. The advisory procedure should be used for the adoption of these implementing acts, which do not have any impact either from the financial point of views or on the nature and scope of obligations stemming from this Directive. On the contrary, these acts are characterised by a mere administrative purpose and serve to facilitate the application of the rules set by this Directive.

- (57) Since the objective of this Directive, namely the coordination of laws, regulations and administrative provisions of the Member States applying to certain public procurement procedures, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (58) Directive 2004/18/EC should therefore be repealed.
- (59) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of [date], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

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### **CHAPTER I: Scope and definitions**

#### SECTION 1: Subject-matter and definitions

Article 1: Subject-matter

Article 2: Definitions

Article 3: Mixed procurement

#### SECTION 2: Thresholds

Article 4: Thresholds amounts

Article 5: Methods for calculating the estimated value of procurement

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<sup>24</sup> OJ L 55, 28.2.2011, p. 13.

Article 6: Revision of the thresholds

### SECTION 3: Exclusions

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

Article 8: Specific exclusions in the field of telecommunications

Article 9: Contracts awarded and design contests organised pursuant to international rules

Article 10: Specific exclusions for service contracts

Article 11: Relations between public authorities

### SECTION 4: SPECIFIC SITUATIONS

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Article 21: Conflicts of interest

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# TITLE I

## SCOPE, DEFINITIONS AND GENERAL PRINCIPLES

### CHAPTER I

#### *Scope and definitions*

#### SECTION 1

##### SUBJECT-MATTER AND DEFINITIONS

##### *Article 1*

###### *Subject-matter and scope*

1. This Directive establishes rules on the procedures for procurement by contracting authorities with respect to public contracts as well as design contests, whose value is estimated to be not less than the thresholds laid down in Article 4.
2. Procurement within the meaning of this Directive is the purchase or other forms of acquisition of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities, whether or not the works, supplies or services are intended for a public purpose.

An entirety of works, supplies and/or services, even if purchased through different contracts, constitutes a single procurement within the meaning of this Directive, if the contracts are part of one single project.

##### *Article 2*

###### *Definitions*

For the purposes of this Directive, the following definitions shall apply:

- (1) ‘contracting authorities’ means the State, regional or local authorities, bodies governed by public law, associations formed by one or more such authorities or one or more such bodies governed by public law;
- (2) ‘central government authorities’ means the contracting authorities listed in Annex I and, insofar as corrections or amendments have been made at national level, their successor entities;
- (3) ‘sub-central contracting authorities’ means all contracting authorities which are not central government authorities ;

- (4) ‘regional authorities’ include all authorities of the administrative units falling under NUTS 1 and 2, as referred to by Regulation (EC) No. 1059/2003 of the European Parliament and of the Council<sup>25</sup>;
- (5) ‘local authorities’ include all authorities of the administrative units falling under NUTS 3 and smaller administrative units, as referred to by Regulation (EC) No. 1059/2003;
- (6) ‘bodies governed by public law’ means bodies that have all of the following characteristics:
- (a) they are established for or have the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; for that purpose, a body which operates in normal market conditions, aims to make a profit, and bears the losses resulting from the exercise of its activity does not have the purpose of meeting needs in the general interest, not having an industrial or commercial character;
  - (b) they have legal personality;
  - (c) they are financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.
- (7) ‘public contracts’ means contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services within the meaning of this Directive;
- (8) ‘public works contracts’ means public contracts having as their object one of the following:
- (a) the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex II;
  - (b) the execution, or both the design and execution, of a work;
  - (c) the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work;
- (9) ‘a work’ means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function;
- (10) ‘public supply contracts’ means public contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products. A public

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<sup>25</sup> OJ L 154, 21.6.2003, p. 1.

supply contract may include, as an incidental matter, siting and installation operations;

- (11) 'public service contracts' means public contracts having as their object the provision of services other than those referred to in point (8);
- (12) 'economic operator' means any natural or legal person or public entity or group of such persons and/or entities which offers the execution of works and/or a work, the supply of products or the provision of services on the market;
- (13) 'tenderer' means an economic operator that has submitted a tender;
- (14) 'candidate' means an economic operator that has sought an invitation or has been invited to take part in a restricted procedure, in a competitive procedure with negotiation or in a negotiated procedure without prior publication, in a competitive dialogue or in an innovation partnership;
- (15) 'procurement documents' means all documents produced or referred to by the contracting authority to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice where it is used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents.
- (16) 'centralised purchasing activities' means activities conducted on a permanent basis, in one of the following forms:
  - (a) the acquisition of supplies and/or services intended for contracting authorities,
  - (b) the award of public contracts or the conclusion of framework agreements for works, supplies or services intended for contracting authorities;
- (17) 'ancillary purchasing activities' means activities consisting in the provision of support to purchasing activities, in particular in the following forms:
  - (a) technical infrastructure enabling contracting authorities to award public contracts or to conclude framework agreements for works, supplies or services;
  - (b) advice on the conduct or design of public procurement procedures;
  - (c) preparation and management of procurement procedures on behalf and for the account of the contracting authority concerned;
- (18) 'central purchasing body' means a contracting authority providing centralised purchasing activities and, possibly, ancillary purchasing activities;
- (19) 'procurement service provider' means a public or private body which offers ancillary purchasing activities on the market;

- (20) ‘written’ or ‘in writing’ means any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means;
- (21) ‘electronic means’ means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;
- (22) ‘life cycle’ means all consecutive and/or interlinked stages, including production, transport, use and maintenance, throughout the existence of a product or a works or the provision of a service, from raw material acquisition or generation of resources to disposal, clearance and finalisation.
- (23) ‘design contests’ means those procedures which enable the contracting authority to acquire, mainly in the fields of town and country planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes.

*Article 3*  
*Mixed procurement*

1. Contracts which have as their subject two or more types of procurement (works, services or supplies) shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject of the contract in question.

In the case of mixed contracts consisting of services within the meaning of Chapter I of Title III and other services or of services and supplies, the main object shall be determined by a comparison of the values of the respective services or supplies.

2. In the case of contracts which have as their object procurement covered by this Directive as well as procurement or other elements not covered by it or by Directives [replacing 2004/17/EC] or 2009/81/EC<sup>26</sup>, the part of the contract which constitutes procurement covered by this Directive shall be awarded in accordance with the provisions of this Directive.

In the case of mixed contracts containing elements of public contracts and of concessions, the part of the contract which constitutes a public contract covered by this Directive shall be awarded in accordance with the provisions of this Directive.

Where the different parts of the contract in question are objectively not separable, the application of this Directive shall be determined on the basis of the main subject of that contract.

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<sup>26</sup> OJ L 217, 20.8.2009, p. 76.

## SECTION 2 THRESHOLDS

### *Article 4 Thresholds amounts*

This Directive shall apply to procurements with a value exclusive of value-added tax (VAT) estimated to be equal to or greater than the following thresholds:

- (a) EUR 5 000 000 for public works contracts;
- (b) EUR 130 000 for public supply and service contracts awarded by central government authorities and design contests organised by such authorities; where public supply contracts are awarded by contracting authorities operating in the field of defence, that threshold shall apply only to contracts concerning products covered by Annex III;
- (c) EUR 200 000 for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities.
- (d) EUR 500 000 for public contracts for social and other specific services listed in Annex XVI.

### *Article 5 Methods for calculating the estimated value of procurement*

1. The calculation of the estimated value of a procurement shall be based on the total amount payable, net of VAT, as estimated by the contracting authority, including any form of option and any renewals of the contract.

Where the contracting authority provides for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of the contract.

2. The choice of the method used to calculate the estimated value of a procurement shall not be made with the intention of excluding it from the scope of this Directive. A single procurement shall therefore not be subdivided with the effect of preventing it from falling within the scope of this Directive, unless justified by objective reasons.
3. This estimate shall be valid at the moment at which the call for competition is sent, or, in cases where such notice is not foreseen, at the moment at which the contracting authority commences the procurement procedure, in particular by defining the essential characteristics of the intended procurement.
4. With regard to framework agreements and dynamic purchasing systems, the value to be taken into consideration shall be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the framework agreement or the dynamic purchasing system.

5. In the case of innovation partnerships, the value to be taken into consideration shall be the maximum estimated value net of VAT of the research and development activities to take place during the all stages of the envisaged partnership as well as of the supplies, services or works to be developed and procured at the end of the envisaged partnership.
6. With regard to public works contracts, calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies and services that are made available to the contractor by the contracting authorities provided that they are necessary for executing the works.
7. Where a proposed work or purchase of services may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots.

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 4, this Directive shall apply to the awarding of each lot.

8. Where a proposal for the acquisition of similar supplies may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots when applying Article 4(b) and (c).

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 4, this Directive shall apply to the awarding of each lot.

9. Contracting authorities may award contracts for individual lots without applying the procedures provided for under this Directive, provided that the estimated value net of VAT of the lot concerned is less than EUR 80 000 for supplies or services or EUR 1 million for works. However, the aggregate value of the lots thus awarded without applying this Directive shall not exceed 20% of the aggregate value of all the lots into which the proposed work, the proposed acquisition of similar supplies or the proposed purchase of services has been divided.

10. In the case of public supply or service contracts which are regular in nature or which are intended to be renewed within a given period, the calculation of the estimated contract value shall be based on the following:

- (a) either the total actual value of the successive contracts of the same type awarded during the preceding 12 months or financial year adjusted, where possible, to take account of the changes in quantity or value which would occur in the course of the 12 months following the initial contract;

- (b) or the total estimated value of the successive contracts awarded during the 12 months following the first delivery, or during the financial year where that is longer than 12 months.

11. With regard to public supply contracts relating to the leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:

- (a) in the case of fixed-term public contracts, where that term is less than or equal to 12 months, the total estimated value for the term of the contract or, where

the term of the contract is greater than 12 months, the total value including the estimated residual value;

- (b) in the case of public contracts without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.
12. With regard to public service contracts, the basis for calculating the estimated contract value shall, where appropriate, be the following:
- (a) insurance services: the premium payable and other forms of remuneration;
  - (b) banking and other financial services: the fees, commissions, interest and other forms of remuneration;
  - (c) design contracts: fees, commission payable and other forms of remuneration.
13. With regard to public service contracts which do not indicate a total price, the basis for calculating the estimated contract value shall be the following:
- (a) in the case of fixed-term contracts, where that term is less than or equal to 48 months: the total value for their full term;
  - (b) in the case of contracts without a fixed term or with a term greater than 48 months: the monthly value multiplied by 48.

#### *Article 6* *Revision of the thresholds*

1. Every two years from 30 June 2014, the Commission shall verify that the thresholds set out in points (a), (b) and (c) of Article 4 correspond to the thresholds established in the Government Procurement Agreement and shall, where necessary, revise them.

In accordance with the calculation method set out in the Government Procurement Agreement, the Commission shall calculate the value of these thresholds on the basis of the average daily value of the euro in terms of the special drawing rights (SDRs), over a period of 24 months terminating on the last day of August preceding the revision with effect from 1 January. The value of the thresholds thus revised shall, where necessary, be rounded down to the nearest thousand euros so as to ensure that the thresholds in force provided for by the Agreement, expressed in SDRs, are observed.

2. When carrying out the revision pursuant to paragraph 1 of this Article, the Commission shall, in addition, revise:
- (a) the threshold established in point (a) of the first paragraph of Article 12 by aligning it with the revised threshold applying to public works contracts;
  - (b) the threshold established in point (b) of the first paragraph of Article 12 by aligning it with the revised threshold applying to public service contracts awarded by sub-central contracting authorities.

3. Every two years from 1 January 2014, the Commission shall determine the values, in the national currencies of the Member States which are not participating in monetary union, of the thresholds referred to in points (a), (b) and (c) of Article 4, revised pursuant to paragraph 1 of this Article.

At the same time, the Commission shall determine the value, in the national currencies of the Member States which are not participating in monetary union, of the threshold referred to in point (d) of Article 4.

In accordance with the calculation method set out in the Government Procurement Agreement, the determination of such value shall be based on the average daily values of those currencies corresponding to the applicable threshold expressed in euros over the 24 months terminating on the last day of August preceding the revision with effect from 1 January.

4. The revised thresholds referred to in paragraph 1 and their corresponding values in the national currencies referred to in paragraph 3 shall be published by the Commission in the *Official Journal of the European Union* at the beginning of the month of November following their revision.
5. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to adapt the methodology set out in the second subparagraph of paragraph 1 to any change in the methodology provided in the Government Procurement Agreement for the revision of the thresholds referred to in points (a), (b) and (c) of Article 4 and for the determination of the thresholds in the national currencies of the Member States not participating in monetary union, as referred to in paragraph 3 of this Article.

It shall also be empowered to adopt delegated acts in accordance with Article 89 to revise the thresholds referred to in points (a), (b) and (c) of Article 4 pursuant to paragraph 1 of this Article. It shall also be empowered to adopt delegated acts in accordance with Article 89 to revise the thresholds referred to in points (a) and (b) of the first paragraph of Article 12 pursuant to paragraph 2 of this Article.

6. Where it is necessary to revise the thresholds referred to in points (a), (b) and (c) of Article 4 and the thresholds referred to in points (a) and (b) of the first paragraph of Article 12 and time constraints prevent the use of the procedure set in article 89 and therefore imperative grounds of urgency so require, the procedure provided for in Article 90 shall apply to delegated acts adopted pursuant to the second subparagraph of paragraph 5 of this Article.

### **SECTION 3** **EXCLUSIONS**

#### *Article 7*

#### *Contracts in the water, energy, transport and postal services sectors*

This Directive shall not apply to public contracts and design contests which, under [Directive replacing 2004/17/EC], are awarded or organised by contracting authorities exercising one or



more of the activities referred to in Articles [5 to 11] of that Directive and are awarded for the pursuit of those activities, or to public contracts excluded from the scope of that Directive under [Articles 15, 20 and 27] thereof.

#### *Article 8*

##### *Specific exclusions in the field of electronic communications*

This Directive shall not apply to public contracts and design contests for the principal purpose of permitting the contracting authorities to provide or exploit public communications networks or to provide to the public one or more electronic communications services.

For the purposes of this Article:

- (a) 'public communications network' means an electronic communications network used wholly or mainly for the provision of electronic communications services available to the public which support the transfer of information between network termination points;
- (b) 'electronic communications network' means transmission systems and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;
- (c) a 'network termination point' (NTP) means the physical point at which a subscriber is provided with access to a public communications network; in the case of networks involving switching or routing, the NTP is identified by means of a specific network address, which may be linked to a subscriber number or name;
- (d) 'electronic communications services' means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services, as defined in Article 1 of Directive 98/34/EC, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks.

#### *Article 9*

##### *Contracts awarded and design contests organised pursuant to international rules*

This Directive shall not apply to public contracts and design contests which the contracting authority is obliged to award or organise in accordance with procurement procedures different from those of this Directive established by any of the following:

- (a) an international agreement concluded in conformity with the Treaty between a Member State and one or more third countries and covering works, supplies or

services intended for the joint implementation or exploitation of a project by the signatory States;

- (b) an international agreement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;
- (c) a particular procedure of an international organisation;
- (d) procurement rules provided by an international organisation or international financing institution for public contracts and design contests fully financed by this organisation or institution; in the case of public contracts and design contests co-financed to a considerable extent by an international organisation or international financing institution the parties shall agree on applicable procurement procedures, which shall be in conformity with the Treaty.

All agreements referred to in point (a) of the first subparagraph shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts referred to in Article 91.

*Article 10*  
*Specific exclusions for service contracts*

This Directive shall not apply to public service contracts for:

- (a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; however, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;
- (b) the acquisition, development, production or co-production of programme material intended for audiovisual media services, that are awarded by broadcasters, or contracts for broadcasting time that are awarded to audiovisual media service providers;
- (c) arbitration and conciliation services;
- (d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council<sup>27</sup>, central bank services and operations conducted with the European Financial Stability Facility;
- (e) employment contracts;
- (f) public passenger transport services by rail or metro.

The audiovisual media services referred to in point (b) of the first paragraph shall include any transmission and distribution using any form of electronic network.

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<sup>27</sup> OJ L 145, 30.4.2004, p. 1.

*Article 11*  
*Relations between public authorities*

1. A contract awarded by a contracting authority to another legal person shall fall outside the scope of this Directive where the following cumulative conditions are fulfilled:
  - (a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments.
  - (b) at least 90% of the activities of that legal person are carried out for the controlling contracting authority or for other legal persons controlled by that contracting authority;
  - (c) there is no private participation in the controlled legal person.

A contracting authority shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments within the meaning of point (a) of the first subparagraph where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person.

2. Paragraph 1 also applies where a controlled entity which is a contracting authority awards a contract to its controlling entity, or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract.
3. A contracting authority, which does not exercise over a legal person control within the meaning of paragraph 1, may nevertheless award a public contract without applying this Directive to a legal person which it controls jointly with other contracting authorities, where the following conditions are fulfilled:
  - (a) the contracting authorities exercise jointly over the legal person a control which is similar to that which they exercise over their own departments;
  - (b) at least 90% of the activities of that legal person are carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;
  - (c) there is no private participation in the controlled legal person.

For the purposes of point (a), contracting authorities shall be deemed to jointly control a legal person where the following cumulative conditions are fulfilled:

- (a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities;
- (b) those contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person;
- (c) the controlled legal person does not pursue any interests which are distinct from that of the public authorities affiliated to it;

- (d) the controlled legal person does not draw any gains other than the reimbursement of actual costs from the public contracts with the contracting authorities.
4. An agreement concluded between two or more contracting authorities shall not be deemed to be a public contract within the meaning of Article 2(6) of this Directive where the following cumulative conditions are fulfilled:
- (a) the agreement establishes a genuine cooperation between the participating contracting authorities aimed at carrying out jointly their public service tasks and involving mutual rights and obligations of the parties;
  - (b) the agreement is governed only by considerations relating to the public interest;
  - (c) the participating contracting authorities do not perform on the open market more than 10 % in terms of turnover of the activities which are relevant in the context of the agreement;
  - (d) the agreement does not involve financial transfers between the participating contracting authorities, other than those corresponding to the reimbursement of actual costs of the works, services or supplies;
  - (e) there is no private participation in any of the contracting authorities involved.
5. The absence of private participation referred to in paragraphs 1 to 4 shall be verified at the time of the award of the contract or of the conclusion of the agreement.

The exclusions provided for in paragraphs 1 to 4 shall cease to apply from the moment any private participation takes place, with the effect that ongoing contracts need to be opened to competition through regular procurement procedures.

## **SECTION 4**

### **SPECIFIC SITUATIONS**

#### *Article 12*

##### *Contracts subsidised by contracting authorities*

This Directive shall apply to the awarding of the following contracts:

- (a) works contracts which are subsidised directly by contracting authorities by more than 50 % and the estimated value of which, net of VAT, is equal to or greater than EUR 5 000 000, where those contracts involve one of the following activities:
  - (i) civil engineering activities within the meaning of Annex II,
  - (ii) building work for hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes;

- (b) service contracts which are subsidised directly by contracting authorities by more than 50% and the estimated value of which, net of VAT, is equal to or greater than EUR 200000 and which are connected to a works contract within the meaning of point (a).

The contracting authorities providing the subsidies referred to in points (a) and (b) of the first subparagraph shall ensure compliance with this Directive where they do not award themselves the subsidised contracts or where they award that contract for and on behalf of other entities.

### *Article 13* *Research and development services*

1. This Directive shall apply to public service contracts for research and development services with CPV reference numbers 73000000-2 to 73436000-7, except 73200000-4, 73210000-7 or 73220000-0, provided that the following conditions are both fulfilled:
  - (a) the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs,
  - (b) the service provided is wholly remunerated by the contracting authority.

This Directive shall not apply to public service contracts for research and development services with CPV reference numbers 73000000-2 to 73436000-7, except 73200000-4, 73210000-7 or 73220000-0 where one of the conditions referred to in points (a) or (b) of the first subparagraph is not met.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend the CPV reference numbers referred to in paragraph 1 to reflect changes in the CPV nomenclature provided that such amendments do not imply a modification of the scope of this Directive.

### *Article 14* *Defence and security*

1. Subject to Article 346 of the Treaty on the Functioning of the European Union, this Directive shall apply to the awarding of public contracts and to design contests organised in the fields of defence and security, with the exception of the following contracts:
  - (a) contracts falling within the scope of Directive 2009/81/EC;
  - (b) contracts to which Directive 2009/81/EC does not apply pursuant to Articles 8, 12 and 13 thereof.
2. This Directive shall not apply to public contracts and design contests other than those referred to in paragraph 1 to the extent that the protection of the essential security interests of a Member State cannot be guaranteed in a procurement procedure as provided for in this Directive.

## CHAPTER II

### *General rules*

#### *Article 15*

##### *Principles of procurement*

Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate way.

The design of the procurement shall not be made with the objective of excluding it from the scope of this Directive or of artificially narrowing competition.

#### *Article 16*

##### *Economic operators*

1. Economic operators that, under the law of the Member State in which they are established, are entitled to provide the relevant service, shall not be rejected solely on the ground that, under the law of the Member State in which the contract is awarded, they would be required to be either natural or legal persons.

However, in the case of public service and public works contracts as well as public supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the names and relevant professional qualifications of the staff to be responsible for the performance of the contract in question.

2. Groups of economic operators may submit tenders or put themselves forward as candidates. Contracting authorities shall not establish specific conditions for participation of such groups in procurement procedures which are not imposed on individual candidates. In order to submit a tender or a request to participate, those groups shall not be required by the contracting authorities to assume a specific legal form.

Contracting authorities may establish specific conditions for the performance of the contract by a group, provided that those conditions are justified by objective reasons and proportionate. Those conditions may require a group to assume a specific legal form once it has been awarded the contract, to the extent that this change is necessary for the satisfactory performance of the contract.

#### *Article 17*

##### *Reserved contracts*

Member States may reserve the right to participate in public procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled and disadvantaged workers or provide for such contracts to be performed in the context of sheltered employment programmes, provided that more than 30%

of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.

The call for competition shall make reference to this provision.

*Article 18*  
*Confidentiality*

1. Unless otherwise provided in this Directive or in the national law concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 48 and 53 of this Directive, the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.
2. Contracting authorities may impose on economic operators requirements aimed at protecting the confidential nature of information which the contracting authorities make available throughout the procurement procedure.

*Article 19*  
*Rules applicable to communication*

1. Except where use of electronic means is mandatory pursuant to Articles 32, 33, 34, 35(4), 49(2) or 51 of this Directive, contracting authorities may choose between the following means of communication for all communication and information exchange:
  - (a) electronic means in accordance with paragraphs 3, 4 and 5;
  - (b) post or fax;
  - (c) telephone in the cases and circumstances referred to in paragraph 6;
  - (d) a combination of those means.

Member States may make mandatory the use of electronic means of communication in other situations than those provided for in Articles 32, 33, 34, 35(2), 49(2) or 51 of this Directive.

2. The means of communication chosen must be generally available and not restrict economic operators' access to the procurement procedure.

In all communication, exchange and storage of information, contracting authorities shall ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved. They shall examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.

3. The tools to be used for communicating by electronic means, as well as their technical characteristics, shall be non-discriminatory, generally available and

interoperable with the information and communication technology products in general use and shall not restrict economic operators' access to the procurement procedure. The technical details and characteristics of the devices for the electronic receipts to be deemed in compliance with the first subparagraph of this paragraph are set out in Annex IV.

The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend the technical details and characteristics set out in Annex IV due to technical developments or administrative reasons.

To ensure the interoperability of technical formats as well as of process and messaging standards, especially in a cross-border context, the Commission shall be empowered to adopt delegated acts in accordance with Article 89 to establish the mandatory use of specific technical standards, at least with regard to the use of e-submission, electronic catalogues and means for electronic authentication.

4. Contracting authorities may, where necessary, require the use of tools which are not generally available, provided that they offer alternative means of access.

Contracting authorities shall be deemed to offer suitable alternative means of access in any of the following situations:

- (a) They offer unrestricted and full direct access by electronic means to these tools from the date of publication of the notice in accordance with Annex IX or from the date when the invitation to confirm interest is sent; the text of the notice or the invitation to confirm interest shall specify the internet address at which these tools are accessible;
  - (b) ensure that tenderers established in other Member States than the contracting authority's may access the procurement procedure through the use of provisional tokens made available online at no extra cost;
  - (c) support an alternative channel for electronic submission of tenders.
5. The following rules shall apply to devices for the electronic transmission and receipt of tenders and for the electronic receipt of requests to participate:
  - (a) information on specifications for the electronic submission of tenders and requests to participate, including encryption and time-stamping, shall be available to interested parties;
  - (b) devices, methods for authentication and electronic signatures shall comply with the requirements of Annex IV;
  - (c) contracting authorities shall specify the level of security required for the electronic means of communication in the various stages of the specific procurement procedure; the level shall be proportionate to the risks attached;



- (d) where advanced Electronic Signatures as defined by Directive 1999/93/EC of the European Parliament and of the Council<sup>28</sup> are required, contracting authorities shall, as long as the signature is valid, accept signatures supported by a qualified electronic certificate referred to in the Trusted List provided for in the Commission Decision 2009/767/EC<sup>29</sup>, created with or without a secure signature creation device, subject to compliance with the following conditions:
  - (i) they must establish the required advanced signature format on the basis of formats established in Commission Decision 2011/130/EU<sup>30</sup> and put in place necessary measures to be able to process these formats technically;
  - (ii) where a tender is signed with the support of a qualified certificate that is included in the Trusted list, they must not apply additional requirements that may hinder the use of those signatures by tenderers.

6. The following rules shall apply to the transmission of requests to participate:

- (a) requests to participate in procedures for the award of public contracts may be made in writing or by telephone; in the latter case, a written confirmation must be sent before expiry of the time limit set for their receipt;
- (b) contracting authorities may require that requests for participation made by fax must be confirmed by post or by electronic means, where this is necessary for the purposes of legal proof.

For the purposes of point (b), the contracting authority shall indicate in the contract notice or in the invitation to confirm interest that it requires requests to participate made by fax to be confirmed by post or by electronic means and the time limit for sending such confirmation.

7. Member States shall ensure that, at the latest 2 years after the date provided for in Article 92(1), all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

This obligation shall not apply where the use of electronic means would require specialised tools or file formats that are not generally available in all the Member States within the meaning of paragraph 3. It is the responsibility of the contracting authorities using other means of communication for submission of tenders to demonstrate in the procurement documents that the use of electronic means, due to the particular nature of the information to be exchanged with the economic operators, would require specialised tools or file formats that are not generally available in all the Member States.

Contracting authorities shall be deemed to have legitimate reasons not to request electronic means of communication in the submission process in the following cases:

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<sup>28</sup> OJ L 13, 19.1.2000, p. 12.

<sup>29</sup> OJ L 274, 20.10.2009, p. 36.

<sup>30</sup> OJ L 53, 26.2.2011, p. 66.

- (a) the description of the technical specifications, due to the specialised nature of the procurement, cannot be rendered using file formats that are generally supported by commonly used applications;
  - (b) the applications supporting file formats that are suitable for the description of the technical specifications are under a proprietary licensing schema and cannot be made available for downloading or remote use by the contracting authority;
  - (c) the applications supporting file formats that are suitable for the description of the technical specifications use file formats that cannot be handled by any other open or downloadable applications.
8. Contracting authorities may use the data processed electronically for public procurement procedures in order to prevent, detect and correct errors occurring at each stage by developing appropriate tools.

*Article 20*  
*Nomenclatures*

1. Any references to nomenclatures in the context of public procurement shall be made using the ‘Common Procurement Vocabulary (CPV)’ as adopted by Regulation (EC) No 2195/2002<sup>31</sup>.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to adapt the reference numbers used in Annex II and XVI, whenever changes in the CPV nomenclature must be reflected in this Directive and they do not imply a modification of the scope of this Directive.

*Article 21*  
*Conflicts of interests*

1. Member States shall provide for rules to effectively prevent, identify and immediately remedy conflicts of interests arising in the conduct of procurement procedures that are subject to this Directive, including the design and preparation of the procedure, the drawing-up of the procurement documents, the selection of candidates and tenderers and the award of the contract, so as to avoid any distortion of competition and ensure equal treatment of all tenderers.

The notion of conflict of interests shall at least cover any situation where the categories of persons referred to in paragraph 2 have, directly or indirectly, a private interest in the outcome of the procurement procedure, which may be perceived to impair the impartial and objective performance of their duties.

For the purposes of this Article, ‘private interests’ means any family, emotional life, economic, political or other shared interests with the candidates or the tenderers, including conflicting professional interests.

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<sup>31</sup> OJ L 340, 16.12.2002, p. 1.

2. The rules referred to in paragraph 1 shall apply to conflicts of interests involving at least the following categories of persons:
  - (a) staff members of the contracting authority, procurement service providers or staff members of other service providers who are involved in the conduct of the procurement procedure;
  - (b) the chairperson of the contracting authority and members of decision-making bodies of the contracting authority who, without necessarily being involved in the conduct of the procurement procedure, may nevertheless influence the outcome of that procedure.
3. Member States shall ensure in particular:
  - (a) that staff members referred to in paragraph 2(a) are required to disclose any conflict of interests in relation to any of the candidates or tenderers, as soon as they become aware of such conflicts, in order to enable the contracting authority to take remedial action;
  - (b) that candidates and tenderers are required to submit at the beginning of the procurement procedure a declaration on the existence of any privileged links with the persons referred to in paragraph 2(b), which are likely to place those persons in a situation of conflict of interests; the contracting authority shall indicate in the individual report referred to in Article 85 whether any candidate or tenderer has submitted a declaration.

In the event of a conflict of interests, the contracting authority shall take appropriate measures. Those measures may include the recusal of the staff member in question from involvement in the affected procurement procedure or the re-assignment of the staff member's duties and responsibilities. Where a conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.

Where privileged links are identified, the contracting authority shall immediately inform the oversight body designated in accordance with Article 84 and take appropriate measures to avoid any undue influence on the award process and ensure equal treatment of candidates and tenderers. Where the conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.

4. All measures taken pursuant to this Article shall be documented in the individual report referred to in Article 85.

#### *Article 22* *Illicit conduct*

Candidates shall be required at the beginning of the procedure to provide a declaration on honour that they have not undertaken and will not undertake to:

- (a) unduly influence the decision-making process of the contracting authority or obtain confidential information that may confer upon them undue advantages in the procurement procedure;
- (b) enter into agreements with other candidates and tenderers aimed at distorting competition;
- (c) deliberately provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.

# TITLE II

## RULES ON PUBLIC CONTRACTS

### CHAPTER I

#### *Procedures*

##### *Article 23*

##### *Conditions relating to the Government Procurement Agreement and other international agreements*

1. As far as covered by Annexes I, II, IV and V and the General Notes to the European Union's Appendix 1 to the Government Procurement Agreement and by the other international agreements by which the Union is bound, as listed in Annex V to this Directive, contracting authorities shall accord to the works, supplies, services and economic operators of the signatories to those agreements treatment no less favourable than the treatment accorded to the works, supplies, services and economic operators of the Union. By applying this Directive to economic operators of the signatories to those agreements, contracting authorities shall comply with those agreements.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend the list in Annex V, where necessary due to the conclusion of new international agreements or modification of existing international agreements.

##### *Article 24*

##### *Choice of procedures*

1. In awarding their public contracts, contracting authorities shall apply the national procedures adjusted to be in conformity with this Directive, provided that, without prejudice to Article 30, a call for competition has been published in accordance with this Directive.

Member States shall provide that contracting authorities may apply open or restricted procedures as regulated in this Directive.

Member States may provide that contracting authorities may apply innovation partnerships as regulated in this Directive.

They may also provide that contracting authorities may use a competitive procedure with negotiation or a competitive dialogue in any of the following cases:

- (a) with regard to works, where the works contract has as its object both the design and the execution of works within the meaning of Article 2(8) or where negotiations are needed to establish the legal or financial makeup of the project;

- (b) in respect of public works contracts, for works which are performed solely for purposes of research or innovation, testing or development and not with the aim of ensuring profitability or recovering research and development costs;
- (c) with regard to services or supplies, where the technical specifications cannot be established with sufficient precision with reference to any of the standards, European technical approvals, Common technical specifications or technical references within the meaning of points 2 to 5 of Annex VIII;
- (d) in the event of irregular or unacceptable tenders within the meaning of Article 30(2)(a) in response to an open or a restricted procedure;
- (e) due to specific circumstances related to the nature or the complexity of the works, supplies or services or the risks attaching thereto, the contract cannot be awarded without prior negotiations.

Member States may decide not to transpose into their national law the competitive procedure with negotiation, the competitive dialogue and the innovation partnership procedures.

2. The call for competition may be made by one of the following means:

- (a) a contract notice pursuant to Article 47,
- (b) where the contract is awarded by restricted or competitive procedure with negotiation by a sub-central contracting authority, by means of a prior information notice pursuant to Article 46(2).

In the case referred to in point (b), economic operators having expressed their interest following the publication of the prior information notice shall subsequently be invited to confirm their interest in writing by means of an 'invitation to confirm interest' in conformity with Article 52.

3. Member States may provide that contracting authorities may apply a negotiated procedure without prior publication only in the specific cases and circumstances referred to expressly in Article 30.

#### *Article 25* *Open procedure*

1. In open procedures, any interested economic operator may submit a tender in response to a call for competition.

The minimum time limit for the receipt of tenders shall be 40 days from the date on which the contract notice was sent.

The tender shall be accompanied by the requested information for qualitative selection.

2. Where contracting authorities have published a prior information notice which is not used as a means of calling for competition, the minimum time limit for the receipt of

tenders, as laid down in the second subparagraph of paragraph 1 of this Article, may be shortened to 20 days, provided that both of the following conditions are fulfilled:

- (a) the prior information notice has included all the information required for the contract notice in section I of part B of Annex VI, insofar as that information is available at the time the prior information notice is published;
  - (b) it was sent for publication between 45 days and 12 months before the date on which the contract notice was sent.
3. Where a state of urgency duly substantiated by the contracting authorities renders impracticable the time limit laid down in the second subparagraph of paragraph 1, they may fix a time limit which shall be not less than 20 days from the date on which the contract notice was sent.
  4. The contracting authority may reduce by five days the time limit for receipt of tenders set out in the second subparagraph of paragraph 1 where it accepts that tenders may be submitted by electronic means in accordance with Article 19(3), (4) and (5).

*Article 26*  
*Restricted procedure*

1. In restricted procedures any economic operator may submit a request to participate in response to a call for competition by providing the requested information for qualitative selection.

The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent.

2. Only those economic operators invited by the contracting authority following their assessment of the requested information may submit a tender. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.

The minimum time limit for the receipt of tenders shall be 35 days from the date on which the invitation to tender is sent.

3. Where contracting authorities have published a prior information notice which is not used as a means of calling for competition, the minimum time limit for the receipt of tenders as laid down in the second subparagraph of paragraph 2 of this Article may be shortened to 15 days, provided that all of the following conditions are fulfilled:
  - (a) the prior information notice has included all the information required for the contract notice in section I of part B of Annex VI, insofar as that information is available at the time the prior information notice is published;
  - (b) it was sent for publication between 45 days and 12 months before the date on which the contract notice was sent.

4. Sub-central contracting authorities may set the time limit for the receipt of tenders by mutual agreement between the contracting authority and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders. Where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting authority shall fix a time limit which shall be at least 10 days from the date of the invitation to tender.
5. The time limit for receipt of tenders provided for in paragraph 2 may be reduced by five days where the contracting authority accepts that tenders may be submitted by electronic means in conformity with Article 19(3), (4) and (5).
6. Where a state of urgency duly substantiated by the contracting authorities renders impracticable the time limits laid down in this Article, they may fix:
  - (a) a time limit for the receipt of requests to participate which shall not be less than 15 days from the date on which the contract notice was sent;
  - (b) a time limit for the receipt of tenders which shall be not less than 10 days from the date on which the invitation to tender is sent.

#### *Article 27*

#### *Competitive procedure with negotiation*

1. In competitive procedures with negotiation, any economic operator may submit a request to participate in response to a call for competition by providing the requested information for qualitative selection.

In the contract notice or in the invitation to confirm interest contracting authorities shall describe the procurement and the minimum requirements to be met and specify the award criteria so as to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the negotiations. In the technical specifications, contracting authorities shall specify which parts thereof define the the minimum requirements.

The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent; the minimum time limit for the receipt of tenders shall be 30 days from the date on which the invitation is sent. Article 26 (3) to (6) shall apply.

2. Only those economic operators invited by the contracting authority following their assessment of the requested information may submit a written tender which shall be the basis for the subsequent negotiations. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.
3. Contracting authorities shall negotiate with tenderers the tenders submitted by them to improve the content of the offers in order to better correspond to the award criteria and minimum requirements referred to in the second subparagraph of paragraph 1.

The following shall not be changed in the course of the negotiations:



- (a) the description of the procurement;
  - (b) the part of the technical specifications which define the minimum requirements;
  - (c) the award criteria.
4. During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. They shall take particular care to ensure that all tenderers, whose tenders have not been eliminated pursuant to paragraph 5, are informed in writing of any changes to the technical specifications other than those setting out the minimum requirements, in adequate time to allow such tenderers to modify and re-submit amended tenders following these changes, as appropriate.

Contracting authorities shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific solutions or other confidential information.

5. Competitive procedures with negotiation may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in the procurement documents. In the contract notice, the invitation to confirm interest or the procurement documents, the contracting authority shall indicate whether it will use this option.
6. Where the contracting authority intends to conclude the negotiations, it shall inform the remaining tenderers and set a common deadline to submit any new or revised tenders. They shall assess the tenders as negotiated on the basis of the initially indicated award criteria and award the contract in accordance with Articles 66 to 69.

#### *Article 28* *Competitive dialogue*

1. In competitive dialogues, any economic operator may submit a request to participate in response to a call for competition by providing the requested information for qualitative selection.

The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice is sent.

Only those economic operators invited by the contracting authority following the assessment of the requested information may participate in the dialogue. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64. The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1)(a).

2. Contracting authorities shall set out their needs and requirements in the contract notice and they shall define these needs and requirements in the notice and/or in a descriptive document. At the same time and in the same documents, they shall also set out and define the chosen award criteria.
3. Contracting authorities shall open, with the candidates selected in accordance with the relevant provisions of Articles 54 to 65, a dialogue the aim of which shall be to identify and define the means best suited to satisfying their needs. They may discuss all aspects of the contract with the chosen candidates during this dialogue.

During the dialogue, contracting authorities shall ensure equality of treatment among all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.

Contracting authorities shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific solutions or other specific confidential information.

4. Competitive dialogues may take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria defined in the contract notice or in the descriptive document. In the contract notice or the descriptive document, the contracting authority shall indicate whether it will use this option.
5. The contracting authority shall continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.
6. Having declared that the dialogue is concluded and having so informed the participants, contracting authorities shall ask them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. Those tenders shall contain all the elements required and necessary for the performance of the project.
7. Contracting authorities shall assess the tenders received on the basis of the award criteria laid down in the contract notice or in the descriptive document.

Where necessary, in order to finalise financial commitments or other terms of the contract, the contracting authority may negotiate the final terms of the contract with the tenderer identified as having submitted the most economically advantageous tender in accordance with Article 66(1)(a) provided such negotiations do not have the effect of modifying essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document and does not risk distorting competition or causing discrimination.

8. The contracting authorities may specify prizes or payments to the participants in the dialogue.

*Article 29*  
*Innovation partnership*

1. In innovation partnerships, any economic operator may submit a request to participate in response to a contract notice with a view to establishing a structured partnership for the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works provided that they correspond to the agreed performance levels and costs.
2. The partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, possibly up to the manufacturing of the supply or the provision of the services. It shall provide for intermediate targets to be attained by the partner and provide for payment of the remuneration in appropriate instalments. Based on those targets, the contracting authority may decide after each stage to terminate the partnership and launch a new procurement procedure for the remaining phases, provided that it has acquired the relevant intellectual property rights.
3. The contract shall be awarded in accordance with the rules for a competitive procedure with negotiation set out in Article 27.

In selecting candidates, contracting authorities shall pay particular attention to criteria concerning the tenderers' capacity and experience in the field of research and development and of developing innovative solutions. They may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.

Only those economic operators invited by the contracting authority following its assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by the contracting authority that cannot be met by existing solutions. The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1)(a).

4. The structure of the partnership and, in particular, the duration and value of the different phases shall reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The value and duration of a contract for the purchase of the resulting supply, service or works shall remain within appropriate limits, taking into account the need to recover the costs, including those incurred in developing an innovative solution, and to achieve an adequate profit.

Contracting authorities shall not use innovation partnerships in such a way as to prevent, restrict or distort competition.

*Article 30*  
*Use of the negotiated procedure without prior publication*

1. Member States may provide that contracting authorities may award public contracts by a negotiated procedure without prior publication only in the cases laid down in paragraphs (2) to (5).

2. The negotiated procedure without prior publication may be foreseen for public works contracts, public supply contracts and public service contracts in any of the following cases:

- (a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission or the national oversight body designated according to Article 84 where they so request.
- (b) where the aim of the procurement is the creation or obtention of a work of art;
- (c) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:
  - (i) the absence of competition for technical reasons;
  - (ii) the protection of patents, copyrights or other intellectual property rights;
  - (iii) the protection of other exclusive rights.

This exception only applies when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

- (d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by force majeure, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

For the purposes of point (a), a tender shall be considered not to be suitable where:

- it is irregular or unacceptable, and
- it is completely irrelevant to the contract, being incapable of meeting the contracting authority's needs as specified in the procurement documents.

In particular, tenders shall be considered to be irregular, where they do not comply with the procurement documents or where the prices offered are sheltered from normal competitive forces.

In particular, tenders shall be considered to be unacceptable in any of the following cases:

- (a) they have been received late;
- (b) they have been submitted by tenderers that do not have the requisite qualifications;

- (c) their price either exceeds the contracting authority's budget as determined prior to the launching of the procurement procedure; the prior determination of the budget must be documented in writing;
  - (d) they have been found to be abnormally low in accordance with Article 69.
3. The negotiated procedure without prior publication may be foreseen for public supply contracts:
- (a) where the products involved are manufactured purely for the purpose of research, experimentation, study or development; this provision does not extend to quantity production to establish commercial viability or to recover research and development costs;
  - (b) for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the duration of such contracts as well as that of recurrent contracts shall not, as a general rule, exceed three years;
  - (c) for supplies quoted and purchased on a commodity market or other similar markets such as electricity exchanges;
  - (d) for the purchase of supplies on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the liquidator in an insolvency procedure, an arrangement with creditors, or a similar procedure under national laws or regulations.
4. The negotiated procedure without prior publication may be foreseen for public service contracts, where the contract concerned follows a design contest organised in accordance with this Directive and is to be awarded, under the applicable rules, to the winner or one of the winners of the design contest; in the latter case, all winners must be invited to participate in the negotiations.
5. The negotiated procedure without prior publication may be foreseen for new works or services consisting in the repetition of similar works or services entrusted to the economic operator to which the same contracting authorities awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded according to a procedure in accordance with Article 24(1). The basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded.

As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authorities when they apply Article 4.

This procedure may be used only during the three years following the conclusion of the original contract.

## **CHAPTER II**

### **Techniques and instruments for electronic and aggregated procurement**

#### *Article 31* *Framework agreements*

1. Contracting authorities may conclude framework agreements, provided that they apply the procedures provided for in this Directive.

A framework agreement means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

The term of a framework agreement shall not exceed four years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

2. Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in this paragraph and paragraphs 3 and 4.

Those procedures may be applied only between those contracting authorities clearly identified for this purpose in the call for competition or the invitation to confirm interest and those economic operators originally party to the framework agreement.

Contracts based on a framework agreement may under no circumstances make substantial modifications to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 3.

Contracting authorities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.

3. Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement.

For the award of those contracts, contracting authorities may consult the operator party to the framework agreement in writing, requesting it to supplement its tender as necessary.

4. Where a framework agreement is concluded with more than one economic operator, it may be performed in one of the two following ways:

- (a) following the terms and conditions of the framework agreement, without reopening competition, where it sets out all the terms governing the provision of the works, services and supplies concerned and the objective conditions for determining which of the economic operators, party to the framework agreement, shall perform them; the latter conditions shall be indicated in the procurement documents;

- (b) where not all the terms governing the provision of the works, services and supplies are laid down in the framework agreement, through reopening competition amongst the economic operators parties to the framework agreement.
5. The competition referred to in paragraph (4)(b) shall be based on the same terms as applied for the award of the framework agreement and, where necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the specifications of the framework agreement, in accordance with the following procedure:
- (a) for every contract to be awarded, contracting authorities shall consult in writing the economic operators capable of performing the contract;
  - (b) contracting authorities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in tenders;
  - (c) tenders shall be submitted in writing, and their content shall not be opened until the stipulated time limit for reply has expired;
  - (d) contracting authorities shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.

*Article 32*  
*Dynamic purchasing systems*

1. For commonly used purchases the characteristics of which, as generally available on the market, meet the requirements of the contracting authorities, contracting authorities may use a dynamic purchasing system. The dynamic purchasing system shall be operated as a completely electronic process, open throughout its validity to any economic operator that satisfies the selection criteria.
2. In order to award contracts under a dynamic purchasing system, contracting authorities shall follow the rules of the restricted procedure. All the candidates satisfying the selection criteria shall be admitted to the system; the number of candidates to be admitted to the system shall not be limited in accordance with Article 64. All communications in the context of a dynamic purchasing system shall only be made with electronic means in accordance with Article 19(2) to (6).
3. For the purposes of awarding contracts under a dynamic purchasing system, contracting authorities shall:
  - (a) publish a call for competition making it clear that a dynamic purchasing system is involved;
  - (b) indicate in the specifications at least the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the

purchasing system, the electronic equipment used and the technical connection arrangements and specifications;

(c) offer unrestricted and full direct access, as long as the system is valid, to the specifications and to any additional documents in conformity with Article 51.

4. Contracting authorities shall give any economic operator, throughout the entire duration of the dynamic purchasing system, the possibility of requesting to participate in the system under the conditions referred to in paragraph 2. Contracting authorities shall finalise their assessment of such requests according to the selection criteria within 10 working days following their receipt.

The contracting authority shall inform the economic operator referred to in the first subparagraph at the earliest possible opportunity of whether or not it has been admitted to the dynamic purchasing system.

5. Contracting authorities shall invite all qualified participants to submit a tender for each specific procurement under the dynamic purchasing system, in accordance with Article 52.

They shall award the contract to the tenderer that submitted the best tender on the basis of the award criteria set out in the contract notice for the dynamic purchasing system or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest. Those criteria may, where appropriate, be formulated more precisely in the invitation to tender.

6. Contracting authorities shall indicate the duration of the dynamic purchasing system in the call for competition. They shall notify the Commission of any change in duration, using the following standard forms:
  - (a) where the duration is changed without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;
  - (b) where the system is terminated, a contract award notice referred to in Article 48.
7. No charges may be billed to the interested economic operators or to parties to the dynamic purchasing system.

### *Article 33* *Electronic auctions*

1. Contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

For this purpose, contracting authorities shall use a repetitive electronic process (electronic auction), which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.



2. In open, restricted or competitive procedures with negotiation, the contracting authorities may decide that the award of a public contract shall be preceded by an electronic auction when the tender specifications can be established with precision.

In the same circumstances, an electronic auction may be held on the reopening of competition among the parties to a framework agreement as provided for in Article 31(4)(b) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 32.

3. The electronic auction shall be based on one of the the following criteria:
  - (a) solely on prices where the contract is awarded to the tender offering the lowest cost;
  - (b) on prices and/or on the new values of the features of the tenders indicated in the specifications where the contract is awarded to the most economically advantageous tender.
4. Contracting authorities which decide to hold an electronic auction shall state that fact in the contract notice or in the invitation to confirm interest. The specifications shall include at least the information set out in Annex VII.
5. Before proceeding with an electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with the award criterion or criteria and with the weighting fixed for them.

A tender shall be considered admissible where it has been submitted by a qualified tenderer and is in conformity with the technical specifications.

All tenderers that have submitted admissible tenders shall be invited simultaneously by electronic means to participate in the electronic auction using, as of the specified date and time, the connections in accordance with the instructions set out in the invitation. The electronic auction may take place in a number of successive phases. The electronic auction shall not start sooner than two working days after the date on which invitations are sent out.

6. Where the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied by the outcome of a full evaluation of the relevant tenderer, carried out in accordance with the weighting provided for in the first subparagraph of Article 66(5).

The invitation shall also state the mathematical formula to be used in the electronic auction to determine the automatic re-rankings on the basis of the new prices and/or new values submitted. That formula shall incorporate the weighting of all the criteria established to determine the most economically advantageous tender, as indicated in the notice used as a means of calling for competition or in the specifications. For that purpose, any ranges shall, however, be reduced beforehand to a specified value.

Where variants are authorised, a separate formula shall be provided for each variant.

7. Throughout each phase of an electronic auction the contracting authorities shall instantaneously communicate to all tenderers at least sufficient information to enable

them to ascertain their relative rankings at any moment and they may, where this has been previously indicated, communicate other information concerning other prices or values submitted as well as announcing the number of participants in any specific phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.

8. Contracting authorities shall close an electronic auction in one or more of the following manners:
  - (a) at the previously indicated date and time;
  - (b) when they receive no more new prices or new values which meet the requirements concerning minimum differences, provided that they have previously stated the time which they will allow to elapse after receiving the last submission before they close the electronic auction;
  - (c) when the previously indicated number of phases in the auction has been completed.

Where the contracting authorities have decided to close an electronic auction in accordance with point (c), possibly in combination with the arrangements laid down in point (b), the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

9. After closing an electronic auction contracting authorities shall award the contract in accordance with Article 66 on the basis of the results of the electronic auction.

#### *Article 34* *Electronic catalogues*

1. Where contracting authorities require the use of electronic means of communication pursuant to Article 19, they may require tenders to be presented in the format of an electronic catalogue.

Member States may render the use of electronic catalogues mandatory in connection with certain types of procurement.

Tenders presented in the form of an electronic catalogue may be accompanied by other documents, completing the tender.

2. Electronic catalogues shall be established by the candidates or tenderers with a view to participating in a specific procurement procedure in accordance with the technical specifications and format established by the contracting authority.

Furthermore, electronic catalogues shall comply with the requirements for electronic communication tools as well as with any additional requirements set by the contracting authority in accordance with Article 19.

3. Where the presentation of tenders in the form of electronic catalogues is accepted or required, contracting authorities shall:

- (a) state so in the contract notice or in the invitation to confirm interest where a prior information notice is used as a means of calling for competition;
  - (b) indicate in the specifications all the necessary information pursuant to Article 19(5) concerning the format, the electronic equipment used and the technical connection arrangements and specifications for the catalogue.
4. Where a framework agreement has been concluded with more than one economic operator following the submission of tenders in the form of electronic catalogues, contracting authorities may provide that the reopening of competition for specific contracts takes place on the basis of updated catalogues. In such case, contracting authorities shall use one of the following alternative methods:
- (a) invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the specific contract in question;
  - (b) notify tenderers that they intend to collect from the catalogues which have already been submitted the information needed to constitute tenders adapted to the requirements of the specific contract in question (hereinafter ‘punch out’); provided that the use of this method has been announced in the procurement documents for the framework agreement.
5. Where contracting authorities reopen competition for specific contracts in accordance with point (b) of paragraph (4), they shall specify the date and time at which they intend to collect the information needed to constitute tenders adapted to the requirements of the specific contract in question and shall give tenderers the possibility to refuse such collection of information.

Contracting authorities shall allow for an adequate period between the notification and the actual collection of information.

Before awarding the contract, contracting authorities shall present the collected information to the tenderer concerned so as to give it the opportunity to contest or confirm the correctness of the tender thus constituted.

6. Contracting authorities may award contracts based on a dynamic purchasing system through a punch out provided that the request for participation in the dynamic purchasing system is accompanied by an electronic catalogue in accordance with the technical specifications and format established by the contracting authority. This catalogue shall be completed subsequently by the candidates, when they are informed of the contracting authority’s intention to constitute tenders by means of a punch out. The punch out shall be conducted in conformity with point (b) of paragraph 4 and paragraph 5.

### *Article 35*

#### *Centralised purchasing activities and central purchasing bodies*

1. Contracting authorities may purchase works, supplies and/or services from or through a central purchasing body.

2. Member States shall provide for the possibility for contracting authorities to have recourse to centralised purchasing activities offered by central purchasing bodies established in another Member State.
3. A contracting authority fulfils its obligations pursuant to this Directive when it procures by having recourse to centralised purchasing activities, to the extent that the procurement procedures concerned and their performance are conducted by the central procurement body alone in all its stages from the publication of the call for competition to the end of the execution of the ensuing contract or contracts.

However, where certain stages of the procurement procedure or the performance of the ensuing contracts are carried out by the contracting authority concerned, the contracting authority continues to be responsible for fulfilling the obligations pursuant to this Directive in respect of the stages it conducts.
4. All procurement procedures conducted by a central purchasing body shall be performed using electronic means of communication, in accordance with the requirements of Article 19.
5. Contracting authorities may, without applying the procedures provided for in this Directive, choose a central purchasing body to provide centralised purchasing activities, including where the central purchasing body is remunerated for so doing.
6. Central purchasing bodies shall ensure the documentation of all transactions performed in the course of the execution of the contracts, framework agreements or dynamic purchasing systems they conclude in the course of their central purchasing activities.

*Article 36*  
*Ancillary purchasing activities*

The providers of ancillary purchasing activities shall be chosen in accordance with the procurement procedures set out in this Directive.

*Article 37*  
*Occasional joint procurement*

1. One or more contracting authorities may agree to perform certain specific procurements jointly.
2. Where one contracting authority alone conducts the procurement procedures concerned in all its stages from the publication of the call for competition to the end of the performance of the ensuing contract or contracts, that contracting authority shall have sole responsibility for fulfilling the obligations pursuant to this Directive.

However, where the conduct of the procurement procedures and the performance of the ensuing contracts is carried out by more than one of the participating contracting authorities, each shall continue to be responsible for fulfilling its obligations pursuant to this Directive in respect of the stages it conducts.

### Article 38

#### *Joint procurement between contracting authorities from different Member States*

1. Without prejudice to Article 11, contracting authorities from different Member States may jointly award public contracts by using one of the means described in this Article.
2. Several contracting authorities may purchase works, supplies and/or services from or through a central purchasing body located in another Member State. In that case, the procurement procedure shall be conducted in accordance with the national provisions of the Member State where the central purchasing body is located.
3. Several contracting authorities from different Member States may jointly award a public contract. In that case, the participating contracting authorities shall conclude an agreement that determines:
  - (a) which national provisions shall apply to the procurement procedure.
  - (b) the internal organisation of the procurement procedure, including the management of the procedure, the sharing of responsibilities, the distribution of the works, supplies or services to be procured, and the conclusion of contracts.

When determining the applicable national law in accordance with point (a), contracting authorities may choose the national provisions of any Member State in which at least one of the participating authorities is located.

4. Where several contracting authorities from different Member States have set up a joint legal entity, including European Groupings of territorial cooperation under Regulation (EC) N° 1082/2006 of the European Parliament and of the Council<sup>32</sup> or other entities established under Union law, the participating contracting authorities shall, by a decision of the competent body of the joint legal entity, agree on the applicable national procurement rules of one of the following Member States:
  - (a) the national provisions of the Member State where the joint legal entity has its registered office;
  - (b) the national provisions of the Member State where the joint legal entity is carrying out its activities.

This agreement may either apply for an undetermined period, when fixed in the constitutive act of the joint legal entity, or may be limited to a certain period of time, certain types of contracts or to one or more individual contract awards.

5. In the absence of an agreement determining the applicable public procurement law, the national legislation governing the contract award shall be determined following the rules set out below:

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<sup>32</sup> OJ L 210 of 31.7.2006, p. 19

- (a) where the procedure is conducted or managed by one participating contracting authority on behalf of the others, the national provisions of the Member State of that contracting authority shall apply;
  - (b) where the procedure is not conducted or managed by one participating contracting authority on behalf of the others, and
    - (i) concerns a works contract, contracting authorities shall apply the national provisions of the Member State where most of the works are located;
    - (ii) concerns a service or supply contract, contracting authorities shall apply the national provisions of the Member State where the major part of the services or supplies is provided;
  - (c) where it is not possible to determine the applicable national law pursuant to points (a) or (b), contracting authorities shall apply the national provisions of the Member State of the contracting authority which bears the biggest share of the costs.
6. In the absence of an agreement determining the applicable public procurement law under paragraph 4, the national legislation governing procurement procedures conducted by joint legal entities set up by several contracting authorities from different Member States shall be determined following the following rules:
- (a) where the procedure is conducted or managed by the competent organ of the joint legal entity, the national provisions of the Member State where the legal entity has its registered office shall apply.
  - (b) where the procedure is conducted or managed by a member of the legal entity on behalf of that legal entity, the rules set out in points (a) and (b) of paragraph 5 shall apply.
  - (c) where it is not possible to determine the applicable national law pursuant to points (a) or (b) of paragraph 5, the contracting authorities shall apply the national provisions of the Member State where the legal entity has its registered office.
7. One or more contracting authorities may award individual contracts under a framework agreement concluded by or jointly with a contracting authority located in another Member State, provided that the framework agreement contains specific provisions enabling the respective contracting authority or contracting authorities to award the individual contracts.
8. Decisions on the award of public contracts in cross-border public procurement shall be subject to the ordinary review mechanisms available under the national law applicable.
9. In order to enable the effective operation of review mechanisms, Member States shall ensure that the decisions of review bodies within the meaning of Council Directive

89/665/EEC<sup>33</sup> located in other Member States are fully executed in their domestic legal order, where such decisions involve contracting authorities established on their territory participating in the relevant cross-border public procurement procedure.

## **CHAPTER III**

### **Conduct of the procedure**

#### **SECTION 1**

#### **PREPARATION**

##### *Article 39*

##### *Preliminary market consultations*

1. Before launching a procurement procedure, contracting authorities may conduct market consultations in order to assess the structure, capability and capacity of the market and to inform economic operators of their procurement plans and requirements.

For this purpose, contracting authorities may seek or accept advice from administrative support structures or from third parties or market participants, provided that such advice does not have the effect of precluding competition and does not result in a violation of the principles of non-discrimination and transparency.

2. Where a candidate or tenderer or an undertaking related to a candidate or tenderer has advised the contracting authority or has otherwise been involved in the preparation of the procurement procedure, the contracting authority shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer.

Such measures shall include the communication to the other candidates and tenderers of any relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

Prior to any such exclusion, candidates or tenderers shall be given the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting competition. The measures taken shall be documented in the individual report required by Article 85.

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<sup>33</sup> OJ L 395, 30.12. 1989, p. 33.

*Article 40*  
*Technical specifications*

1. The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply.

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2.

The technical specifications shall also specify whether the transfer of intellectual property rights will be required.

For all procurement the subject of which is intended for use by persons, whether general public or staff of the contracting authority, those technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for people with disabilities or design for all users.

Where mandatory accessibility standards are adopted by a legislative act of the Union, technical specifications shall, as far as accessibility criteria are concerned, be defined by reference thereto.

2. Technical specifications shall guarantee equal access of economic operators to the procurement procedure and not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.
3. Without prejudice to mandatory national technical rules, to the extent that they are compatible with Union law, the technical specifications shall be formulated in one of the following ways:
  - (a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;
  - (b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or — when those do not exist — national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words ‘or equivalent’;
  - (c) in terms of performance or functional requirements as referred to in point (a), with reference to the technical specifications referred to in point (b) as a means of presuming conformity with such performance or functional requirements;
  - (d) by reference to the technical specifications referred to in point (b) for certain characteristics, and by reference to the performance or functional requirements referred to in point (a) for other characteristics.



4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words "or equivalent".
5. Where a contracting authority uses the option of referring to the specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the grounds that the works, supplies and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in its tender by whatever appropriate means, including the means of proof referred to in Article 42, that the solutions it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.
6. Where a contracting authority uses the option laid down in point (a) of paragraph 3 to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for works, supplies or services which comply with a national standard transposing a European standard, a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardisation body, where those specifications address the performance or functional requirements which it has laid down.

In its tender, the tenderer shall prove by any appropriate means, including those referred to in Article 42, that the work, supply or service in compliance with the standard meets the performance or functional requirements of the contracting authority.

#### *Article 41*

##### *Labels*

1. Where contracting authorities lay down environmental, social or other characteristics of a works, service or supply in terms of performance or functional requirements as referred to in point (a) of Article 40(3) they may require that these works, services or supplies bear a specific label, provided that all of the following conditions are fulfilled:
  - (a) the requirements for the label only concern characteristics which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;
  - (b) the requirements for the label are drawn up on the basis of scientific information or based on other objectively verifiable and non-discriminatory criteria;
  - (c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations, may participate,

- (d) the labels are accessible to all interested parties;
- (e) the criteria of the label are set by a third party which is independent from the economic operator applying for the label.

Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting authorities. For products that do not bear the label, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.

2. Where a label fulfils the conditions provided in points (b), (c), (d) and (e) of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting authorities may define the technical specification by reference to those of the detailed specifications of that label, or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

#### *Article 42*

##### *Test reports, certification and other means of proof*

1. Contracting authorities may require that economic operators provide a test report from a recognised body or a certificate issued by such a body as means of proof of conformity with the technical specifications.

Where contracting authorities require the submission of certificates drawn up by recognised bodies attesting conformity with a particular technical specification, certificates from equivalent other recognised bodies shall also be accepted by the contracting authorities.

2. Contracting authorities shall accept other appropriate means of proof than those referred to in paragraph 1, such as a technical dossier of the manufacturer where the economic operator concerned has no access to the certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits.
3. Recognised bodies within the meaning of paragraph 1 of this Article shall be test and calibration laboratories and any certification and inspection bodies accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council<sup>34</sup>.
4. Member States shall make available to other Member States, upon request, any information related to the evidence and documents submitted in accordance with Article 40(6), Article 41 and paragraphs 1, 2 and 3 of this Article to prove compliance with technical requirements. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 88.

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<sup>34</sup> OJ L 218, 13.8.2008, p. 30.

*Article 43*  
*Variants*

1. Contracting authorities may authorise tenderers to submit variants. They shall indicate in the contract notice or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest whether or not they authorise variants. Variants shall not be authorised without such indication.
2. Contracting authorities authorising variants shall state in the procurement documents the minimum requirements to be met by the variants and any specific requirements for their presentation. They shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.
3. Only variants meeting the minimum requirements laid down by the contracting authorities shall be taken into consideration.

In procedures for awarding public supply or service contracts, contracting authorities that have authorised variants shall not reject a variant on the sole ground that it would, where successful, lead to either a service contract rather than a public supply contract or a supply contract rather than a public service contract.

*Article 44*  
*Division of contracts into lots*

1. Public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.

Contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, whether tenders are limited to one or more lots only.

2. Contracting authorities may, even where the possibility to tender for all lots has been indicated, limit the number of lots that may be awarded to a tenderer, provided that the maximum number is stated in the contract notice or in the invitation to confirm interest. Contracting authorities shall determine and indicate in the procurement documents the objective and non-discriminatory criteria or rules for awarding the different lots where the application of the chosen award criteria would result in the award to one tenderer of more lots than the maximum number.
3. Where more than one lot may be awarded to the same tenderer, contracting authorities may provide that they will either award a contract per lot or one or more contracts covering several or all lots.

Contracting authorities shall specify in the procurement documents whether they reserve the right to make such a choice and, if so, which lots may be grouped together under one contract.

Contracting authorities shall first determine the tenders fulfilling best the award criteria set out pursuant to Article 66 for each individual lot. They may award a contract for more than one lot to a tenderer that is not ranked first in respect of all individual lots covered by this contract, provided that the award criteria set out pursuant to Article 66 are better fulfilled with regard to all the lots covered by that contract. Contracting authorities shall specify the methods they intend to use for such comparison in the procurement documents. Such methods shall be transparent, objective and non-discriminatory.

4. Contracting authorities may require that all contractors coordinate their activities under the direction of the economic operator to which has been awarded a lot involving the coordination of the entire project or its relevant parts.

*Article 45*  
*Setting time limits*

1. When fixing the time limits for the receipt of tenders and requests to participate, contracting authorities shall take account of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set out in Articles 24 to 30.
2. Where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the procurement documents, the time limits for the receipt of tenders shall be extended so that all economic operators concerned may be aware of all the information needed to produce tenders.

**SECTION 2**  
**PUBLICATION AND TRANSPARENCY**

*Article 46*  
*Prior information notices*

1. Contracting authorities may make known their intentions of planned procurements through the publication of a prior information notice as soon as possible after the beginning of the budgetary year. Those notices shall contain the information set out in Annex VI part B section I. They shall be published either by the Commission or by the contracting authorities on their buyer profiles in accordance with point 2(b) of Annex IX. Where the notice is published by the contracting authorities on their buyer profile, they shall send a notice of the publication on their buyer profile in accordance with point 3 of Annex IX.
2. For restricted and competitive procedures with negotiation, sub-central contracting authorities may use a prior information notice as a call for competition pursuant to Article 24(2), provided that the notice fulfils all of the following conditions:
  - (a) it refers specifically to the supplies, works or services that will be the subject of the contract to be awarded;

- (b) it indicates that the contract will be awarded by restricted or competitive procedure with negotiation without further publication of a call for competition and invites interested economic operators to express their interest in writing;
- (c) it contains, in addition to the information set out in Annex VI part B section I, the information set out in Annex VI part B section II;
- (d) it has been published not more than 12 months prior to the date on which the invitation referred to in Article 52(1) is sent.

Such notices shall not be published on a buyer profile.

*Article 47*  
*Contract notices*

All contracting authorities may use a contract notice as a means of calling for competition in respect of all procedures. Such notices shall contain the information set out in Annex VI part C and shall be published in accordance with Article 49.

*Article 48*  
*Contract award notices*

1. Not later than 48 days after the award of a contract or the conclusion of a framework agreement, contracting authorities shall send a contract award notice on the results of the procurement procedure.

Such notices shall contain the information set out in Annex VI part D and be published in accordance with Article 49.

2. Where the call for competition for the contract concerned has been made in the form of a prior information notice and the contracting authority does not intend to award further contracts during the 12-month period covered by the prior information notice, the contract award notice shall contain a specific indication to that effect.

In the case of framework agreements concluded in accordance with Article 31, contracting authorities shall not be bound to send a notice of the results of the procurement procedure for each contract based on that agreement.

3. Contracting authorities shall send a notice of the result of the award of contracts based on a dynamic purchasing system within 48 days of the award of each contract. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within 48 days of the end of each quarter.
4. Certain information on the contract award or the conclusion of the framework agreement may be withheld from publication where its release would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

*Article 49*  
*Form and manner of publication of notices*

1. Notices referred to in Articles 46, 47 and 48 shall include the information set out in Annex VI in the format of standard forms, including standard forms for corrigenda.

The Commission shall establish those standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.

2. Notices referred to in Articles 46, 47 and 48 shall be drawn up, transmitted by electronic means to the Commission and published in accordance with Annex IX. Notices shall be published not later than five days after they are sent. The costs of publication of the notices by the Commission shall be borne by the Union.
3. Notices referred to in Article 46(2) and Article 47 shall be published in full in an official language of the Union as chosen by the contracting authority. That language version shall constitute the sole authentic text. A summary of the important elements of each notice shall be published in the other official languages.
4. The Commission shall ensure that the full text and the summary of prior information notices referred to in Article 46(2) and calls for competition setting up a dynamic purchasing system, as referred to in Article 32(3)(a) continue to be published:
  - (a) in the case of prior information notices, for 12 months or until receipt of a contract award notice as provided for in Article 48 indicating that no further contracts will be awarded during the 12-month period covered by the call for competition;
  - (b) in the case of calls for competition setting up a dynamic purchasing system, for the period of validity of the dynamic purchasing system.
5. Contracting authorities shall be able to supply proof of the dates on which notices are dispatched.

The Commission shall give the contracting authority confirmation of the receipt of the notice and of the publication of the information sent, indicating the date of that publication. Such confirmation shall constitute proof of publication.

6. Contracting authorities may publish notices for public contracts that are not subject to the publication requirement laid down in this Directive provided those notices are sent to the Commission by electronic means in accordance with the format and procedures for transmission indicated in Annex IX.

*Article 50*  
*Publication at national level*

1. Notices referred to in Articles 46, 47 and 48 and the information contained therein shall not be published at national level before the publication pursuant to Article 49.
2. Notices published at national level shall not contain information other than that contained in the notices dispatched to the Commission or published on a buyer

profile, but shall indicate the date of dispatch of the notice to the Commission or its publication on the buyer profile.

3. Prior information notices shall not be published on a buyer profile before the dispatch to the Commission of the notice of their publication in that form. They shall indicate the date of that dispatch.

#### *Article 51*

##### *Electronic availability of procurement documents*

1. Contracting authorities shall offer unrestricted and full direct access free of charge by electronic means to the procurement documents from the date of publication of the notice in accordance with Article 49 or the date on which the invitation to confirm interest is sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which this documentation is accessible.
2. Provided that it has been requested in good time, the contracting authorities or competent departments shall supply additional information relating to the specifications and any supporting documents not later than six days before the deadline fixed for the receipt of tenders. In the event of an accelerated procedure as referred to in Articles 25(3) and 26(5), that period shall be four days.

#### *Article 52*

##### *Invitations to submit a tender or to participate in the dialogue; invitations to confirm interest*

1. In restricted procedures, competitive dialogue procedures, innovation partnerships and competitive procedures with negotiation, contracting authorities shall simultaneously and in writing invite the selected candidates to submit their tenders or, in the case of a competitive dialogue, to take part in the dialogue.

Where a prior information notice is used as a call for competition pursuant to Article 46(2), contracting authorities shall simultaneously and in writing invite the economic operators having expressed their interest to confirm their continuing interest.

2. The invitations referred to in paragraph 1 shall include a reference to the electronic address on which the specifications or the descriptive document and any other supporting documents have been made directly available by electronic means. In addition, they shall include the information set out in Annex X.

#### *Article 53*

##### *Informing candidates and tenderers*

1. Contracting authorities shall as soon as possible inform each candidate and tenderer of decisions reached concerning the conclusion of a framework agreement, the award of the contract or admittance to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement, not to award a contract for which there has been a call for competition, to recommence the procedure or not to implement a dynamic purchasing system.

2. On request from the party concerned, the contracting authority shall as quickly as possible, and in any case within 15 days from receipt of a written request, inform:
  - (a) any unsuccessful candidate of the reasons for the rejection of its request to participate,
  - (b) any unsuccessful tenderer of the reasons for the rejection of its tender, including, for the cases referred to in Article 40(5) and (6), the reasons for its decision of non-equivalence or its decision that the works, supplies or services do not meet the performance or functional requirements,
  - (c) any tenderer that has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework agreement,
  - (d) any tenderer that has made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers.
3. Contracting authorities may decide to withhold certain information referred to in paragraph 1, regarding the contract award, the conclusion of framework agreements or admittance to a dynamic purchasing system, where the release of such information would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between them.

### **SECTION 3**

#### **CHOICE OF PARTICIPANTS AND AWARD OF CONTRACTS**

##### *Article 54*

##### *General principles*

1. Contracts shall be awarded on the basis of the criteria laid down in Articles 66 to 69, provided that the following cumulative conditions are fulfilled:
  - (a) the tender complies with the requirements, conditions and criteria set out in the contract notice or the invitation to confirm interest and in the procurement documents, taking into account Article 43;
  - (b) the tender comes from a tenderer that is not excluded in accordance with Articles 21 and 55 and that meets the selection criteria set out by the contracting authority in accordance with Article 56 and, where appropriate, the non-discriminatory rules and criteria referred to in Article 64.
2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.



3. In open procedures, contracting authorities may decide to examine tenders before verifying the fulfilment of the selection criteria, provided that the relevant provisions of this section are observed, including the rule that the contract shall not be awarded to a tenderer that should have been excluded pursuant to Article 55 or that does not meet the selection criteria set out by the contracting authority, in accordance with subsection 1 of this section.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend the list in Annex XI, where necessary due to the conclusion of new international agreements or modification of existing international agreements.

## **SUBSECTION 1**

### **CRITERIA FOR QUALITATIVE SELECTION**

#### *Article 55* *Exclusion grounds*

1. Any candidate or tenderer that has been the subject of a conviction by final judgment for one of the following reasons shall be excluded from participation in a public contract:
  - (a) participation in a criminal organisation, as defined in Article 2(1) of Council Framework Decision 2008/841/JHA<sup>35</sup>;
  - (b) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union<sup>36</sup> and Article 2 of Council Framework Decision 2003/568/JHA<sup>37</sup> as well as corruption as defined in the national law of the contracting authority or the economic operator;
  - (c) fraud within the meaning of Article 1 of the Convention on the protection of the financial interests of the European Communities<sup>38</sup>;
  - (d) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Framework Decision 2002/475/JHA<sup>39</sup> respectively, or inciting, aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;
  - (e) money laundering, as defined in Article 1 of Council Directive 91/308/EEC<sup>40</sup>.

The obligation to exclude a candidate or tenderer from participation in a public contract shall also apply where the conviction by final judgment has condemned

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<sup>35</sup> OJ L 300, 11.11.2008, p. 42.

<sup>36</sup> OJ C 195, 25.6.1997, p. 1.

<sup>37</sup> OJ L 192, 31.7.2003, p. 54.

<sup>38</sup> OJ C 316, 27.11.1995, p. 48.

<sup>39</sup> OJ L 164, 22.6.2002, p.3.

<sup>40</sup> OJ L 166, 28.6.1991, p. 77.

company directors or any other any persons having powers of representation, decision or control in respect of the candidate or tenderer.

2. Any economic operator shall be excluded from participation in a contract where the contracting authority is aware of a decision having the force of *res judicata* establishing that it has not fulfilled obligations relating to the payment of taxes or social security contributions in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority.
3. A contracting authority may exclude from participation in a public contract any economic operator if one of the following conditions is fulfilled:
  - (a) where it is aware of any violation of obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.
  - (b) where the economic operator is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it has entered into an arrangement with creditors, where it has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;
  - (c) where the contracting authority can demonstrate by any means that the economic operator is guilty of other grave professional misconduct;
  - (d) where the economic operator has shown significant or persistent deficiencies in the performance of any substantive requirement under a prior contract or contracts of a similar nature with the same contracting authority.

In order to apply the ground for exclusion referred to in point (d) of the first subparagraph, contracting authorities shall provide a method for the assessment of contractual performance that is based on objective and measurable criteria and applied in a systematic, consistent and transparent way. Any performance assessment shall be communicated to the contractor in question, which shall be given the opportunity to object to the findings and to obtain judicial protection.

4. Any candidate or tenderer that is in one of the situations referred to in paragraphs 1, 2 and 3 may provide the contracting authority with evidence demonstrating its reliability despite the existence of the relevant ground for exclusion.

For this purpose, the candidate or tenderer shall prove that it has compensated any damage caused by the criminal offence or misconduct, clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities and taken concrete technical, organisational and personal measures that are appropriate to prevent further criminal offences or misconduct. Contracting authorities shall evaluate the measures taken by the candidates and tenderers taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the contracting authority considers the measures to be insufficient, it shall state the reasons for its decision.

5. Member States shall ensure that contracting authorities and economic operators can easily obtain information and assistance with regard to the application of this Article through the liaison point provided for in Article 88.
6. Member States shall make available to other Member States, upon request, any information related to the exclusion grounds listed in this Article. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 88.

*Article 56*  
*Selection criteria*

1. Contracting authorities may establish conditions for participation relating to:
  - (a) suitability to pursue the professional activity;
  - (b) economic and financial standing;
  - (c) technical and professional ability.

They are not obliged to impose all the conditions listed in paragraphs 2, 3 and 4, but they shall not provide requirements other than those listed.

Contracting authorities shall limit any conditions for participation to those that are appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the commercial and technical abilities to perform the contract to be awarded. All requirements shall be related and strictly proportionate to the subject-matter of the contract, taking into account the need to ensure genuine competition.

2. With regard to suitability to pursue the professional activity, contracting authorities may require economic operators to be enrolled on one of the professional or trade registers kept in their Member State of establishment, as described in Annex XII.

In procedures for the award of public service contracts, insofar as candidates or tenderers have to possess a particular authorisation or to be members of a particular organisation in order to be able to perform in their country of origin the service concerned, the contracting authority may require them to prove that they hold such authorisation or membership.

3. With regard to sufficient economic and financial standing, contracting authorities may require economic operators to have adequate financial and economic capacity. For that purpose, they may require that economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract and an adequate professional risk indemnity insurance.

The minimum yearly turnover shall not exceed three times the estimated contract value, except in duly justified circumstances relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate such exceptional circumstances in the procurement documents.

Where a contract is divided into lots this Article shall apply in relation to each individual lot. However, the contracting authority may set the minimum yearly turnover by reference to groups of lots for the event that the successful tenderer is awarded several lots to be executed at the same time.

Where contracts based on a framework agreement are to be awarded following a reopening of competition, the maximum yearly turnover requirement referred to in the second subparagraph of this paragraph shall be calculated on the basis of the expected maximum size of specific contracts that will be performed at the same time, or, where it is not known, on the basis of the estimated value of the framework agreement.

4. With regard to technical and professional ability, contracting authorities may require that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard. Contracting authorities may conclude that economic operators will not perform the contract to an appropriate quality standard where the contracting authority established that they have conflicting interests which may negatively affect the performance of the contract.

In procedures for awarding public contracts having as their object supplies requiring siting or installation work, the provision of services or the execution of works, the ability of economic operators to provide the service or to execute the installation or the work may be evaluated with regard to their skills, efficiency, experience and reliability.

5. Contracting authorities shall indicate the required conditions of participation, which may be expressed as minimum levels of ability, together with the appropriate means of proof, in the contract notice or in the invitation to confirm interest.

#### *Article 57*

#### *Self-declarations and other means of proof*

1. Contracting authorities shall accept self-declarations as preliminary evidence that candidates and tenderers fulfil any of the following conditions:
  - (a) they are not in one of the situations referred to in Article 55 in which economic operators shall or may be excluded;
  - (b) they meet the selection criteria that have been set out pursuant to Article 56;
  - (c) where applicable, they meet the objective rules and criteria that have been set out pursuant to Article 64;
  - (d) they will be able, upon request and without delay, to provide the supporting documentation that contracting authorities have required in accordance with Articles 59, 60 and, where appropriate, Articles 61 and 63.
2. A contracting authority may ask a candidate or tenderer at any moment during the procedure to submit all or parts of the required documentation where this appears necessary to ensure the proper conduct of the procedure.

Before awarding the contract, the contracting authority shall require the tenderer to which it has decided to award the contract to submit the documentation in accordance with Articles 59 and 60 and, where appropriate, Article 61. The contracting authority may invite economic operators to supplement or clarify the certificates and documents submitted pursuant to Articles 59, 60 and 61.

3. Contracting authorities shall not require certificates other than those referred to in Articles 60 and 61; in respect of Article 62, economic operators may rely on any appropriate means to prove to the contracting authority that they will have at their disposal the resources necessary.

Candidates and tenderers shall not be required to re-submit a certificate or other documentary evidence that has already been submitted to the same contracting authority within the past four years in an earlier procedure and is still valid.

4. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information related to the exclusion grounds listed in Article 55, to the suitability, financial and technical capacities of tenderers described in Article 56 and to the content or nature of the means of proof indicated in this Article.

#### *Article 58*

##### *Online repository of certificates (e-Certis)*

1. With a view to facilitating cross-border tendering, Member States shall ensure that the information concerning certificates and other forms of documentary evidence introduced in e-Certis is constantly kept up to date.
2. Recourse to e-Certis shall become obligatory and contracting authorities shall be obliged to require only such of types of certificates or forms of documentary evidence that are available in e-Certis at the latest 2 years after the date provided for in Article 92(1).

#### *Article 59*

##### *European Procurement Passport*

1. National authorities shall issue, at the request of an economic operator established in the relevant Member State and fulfilling the necessary conditions, a European Procurement Passport. The European Procurement Passport shall contain the particulars set out in Annex XIII and shall be drawn up on the basis of a standard form.

The Commission shall be empowered to adopt delegated acts in accordance with Article 89 in order to modify Annex XIII due to technical progress or for administrative reasons. It shall also establish the standard form for the European Procurement Passport. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.

2. At the latest 2 years after the date provided for in Article 92(1), the passport shall be provided exclusively in electronic form.

3. The authority issuing the passport shall seek the relevant information directly from the competent authorities, except where prohibited by national rules on the protection of personal data.
4. The European Procurement Passport shall be recognised by all contracting authorities as proof of fulfilment of the conditions for participation covered by it and shall not be questioned without justification. Such justification may be related to the fact that the passport was issued more than six months earlier.
5. Member States shall make available to other Member States, upon request, any information relating to the authenticity and content of the European Procurement Passport. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 88.

*Article 60*  
*Certificates*

1. Contracting authorities shall accept the following as sufficient evidence that none of the cases specified in Article 55 apply to the economic operator:
  - (a) as regards paragraph 1 of that Article, the production of an extract from the relevant register, such as judicial records or, failing that, of an equivalent document issued by a competent judicial or administrative authority in the country of origin or the country where the economic operator is established showing that those requirements have been met;
  - (b) as regards paragraph 2 and point (b) of paragraph 3 of that Article, a certificate issued by the competent authority in the Member State concerned;
  - (c) where the country in question does not issue such documents or certificates, or where these do not cover all the cases specified in paragraphs 1, 2 and point (b) of paragraph 3 of that Article, they may be replaced by an official declaration to that effect by the national liaison point designated in accordance with Article 88.
2. Proof of the economic operator's economic and financial standing may, as a general rule, be provided by one or more of the references listed in Annex XIV, part 1.

Where, for any valid reason, the economic operator is unable to provide the references requested by the contracting authority, it may prove its economic and financial standing by any other document which the contracting authority considers appropriate.
3. Evidence of the economic operators' technical abilities may be provided by one or more of the means listed in Annex XIV, part 2, according to the nature, quantity or importance, and use of the works, supplies or services.
4. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information relating to the evidence on exclusion grounds, the documents attesting the suitability to pursue the professional activity,

and financial and technical capacities of tenderers, as well as any other means of proof referred to in paragraphs 1, 2 and 3 of this Article.

#### *Article 61*

##### *Quality assurance standards and environmental management standards*

1. Where they require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, contracting authorities shall refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.
2. Where contracting authorities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management schemes or standards, they shall refer to the European Union Eco-Management and Audit Scheme (EMAS) or to other environmental management schemes as recognized in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council<sup>41</sup> or other environmental management standards based on the relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.
3. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information relating to the documents produced as evidence of compliance with quality and environmental standards referred to in paragraphs 1 and 2 of this Article.

#### *Article 62*

##### *Reliance on the capacities of other entities*

1. With regard to criteria relating to economic and financial standing as set out pursuant to Article 56(3), and to criteria relating to technical and professional ability as set out pursuant to Article 56(4), an economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It shall in that case prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing an undertaking by those entities to that effect. In the case of economic and financial standing, contracting authorities may require that the economic operator and those entities are jointly liable for the execution of the contract.

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<sup>41</sup> OJ L 342, 22.12.2009, p. 1.

Under the same conditions, a group of economic operators as referred to in Article 16 may rely on the capacities of participants in the group or of other entities.

2. In the case of works contracts, service contracts and siting and installation operations in the context of a supply contract, contracting authorities may require that certain critical tasks be performed directly by the tenderer itself or, where a tender is submitted by a group of economic operators as referred to in Article 6, a participant in the group.

### *Article 63*

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

1. Member States may establish or maintain either official lists of approved contractors, suppliers or service providers or provide for a certification by certification bodies complying with European certification standards within the meaning of Annex VIII.

They shall inform the Commission and the other Member States of the address of the certification body or the body responsible for the official lists, to which applications shall be sent.

2. Member States shall adapt the conditions for registration on the lists referred to in paragraph 1 and for the issue of certificates by certification bodies to the provisions of this subsection.

Member States shall also adapt those conditions to Article 62 as regards applications for registration submitted by economic operators belonging to a group and claiming resources made available to them by the other companies in the group. In such cases, those operators shall prove to the authority establishing the official list that they will have those resources at their disposal throughout the period of validity of the certificate attesting to their registration in the official list and that throughout the same period those companies continue to fulfil the qualitative selection requirements encompassed by the official list or certificate on which operators rely for their registration.

3. Economic operators registered on the official lists or having a certificate may, for each contract, submit to the contracting authority a certificate of registration issued by the competent authority or the certificate issued by the competent certification body. Those certificates shall state the references which enabled those economic operators to be registered in the list or to obtain certification and the classification given in that list.
4. Certified registration on official lists by the competent bodies or a certificate issued by the certification body shall constitute a presumption of suitability with regard to requirements for qualitative selection encompassed by the list or certificate.
5. Information that can be deduced from registration on official lists or certification shall not be questioned without justification. With regard to the payment of social security contributions and taxes, an additional certificate may be required of any registered economic operator whenever a contract is to be awarded.



The contracting authorities of other Member States shall apply paragraph 3 and the first subparagraph of this paragraph only in favour of economic operators established in the Member State holding the official list.

6. The requirements of proof for the criteria for qualitative selection encompassed by the list or certificate shall comply with Articles 59, 60 and, where appropriate, Article 61. For any registration of economic operators of other Member States in an official list or for their certification, no further proof or statements shall be required other than those requested of national economic operators.

Economic operators may request at any time their registration in an official list or for the issuance of a certificate. They shall be informed within a reasonably short period of time of the decision of the authority drawing up the list or of the competent certification body.

7. Economic operators from other Member States shall not be obliged to undergo such registration or certification in order to participate in a public contract. The contracting authorities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other equivalent means of proof.
8. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information relating to the documents produced as evidence that the economic operators fulfil the requirements to be registered in the list of approved economic operators or as evidence that economic operators from another Member State possess an equivalent certification. .

## **SUBSECTION 2**

### **REDUCTION OF NUMBERS OF CANDIDATES, TENDERS AND SOLUTIONS**

#### *Article 64*

#### *Reduction of the number of otherwise qualified candidates to be invited to participate*

1. In restricted procedures, competitive procedures with negotiation, competitive dialogue procedures and innovation partnerships, contracting authorities may limit the number of candidates meeting the selection criteria that they will invite to tender or to conduct a dialogue, provided a sufficient number of qualified candidates is available.

The contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, the objective and non-discriminatory criteria or rules they intend to apply, the minimum number of candidates they intend to invite and, where appropriate, the maximum number.

2. In the restricted procedure the minimum number of candidates shall be five. In the competitive procedure with negotiation, in the competitive dialogue procedure and in the innovation partnership the minimum shall be three. In any event the number of candidates invited shall be sufficient to ensure genuine competition.

The contracting authorities shall invite a number of candidates at least equal to the minimum number. Where the number of candidates meeting the selection criteria and the minimum levels of ability as referred to in Article 56(5) is below the minimum number, the contracting authority may continue the procedure by inviting the candidates with the required capabilities. In the context of the same procedure, the contracting authority shall not include other economic operators that did not request to participate, or candidates that do not have the required capabilities.

*Article 65*  
*Reduction of the number of tenders and solutions*

Where contracting authorities exercise the option of reducing the number of tenders to be negotiated as provided for in Article 27(5) or of solutions to be discussed as provided for in Article 28(4), they shall do so by applying the award criteria stated in the contract notice, in the specifications or in the descriptive document. In the final stage, the number arrived at shall make for genuine competition insofar as there are enough solutions or qualified candidates.

**SUBSECTION 3**  
**AWARD OF THE CONTRACT**

*Article 66*  
*Contract award criteria*

1. Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, the criteria on which contracting authorities shall base the award of public contracts shall be one of the following:

- (a) the most economically advantageous tender;
- (b) the lowest cost.

Costs may be assessed, on the choice of the contracting authority, on the basis of the price only or using a cost-effectiveness approach, such as a life-cycle costing approach, under the conditions set out in Article 67.

2. The most economically advantageous tender referred to in point (a) of paragraph 1 from the point of view of the contracting authority shall be identified on the basis of criteria linked to the subject-matter of the public contract in question. Those criteria shall include, in addition to the price or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter of the public contract in question, such as:

- (a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative character;
- (b) for service contracts and contracts involving the design of works, the organisation, qualification and experience of the staff assigned to performing the contract in question may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced with

the consent of the contracting authority, which must verify that replacements ensure equivalent organisation and quality;

- (c) after-sales service and technical assistance, delivery date and delivery period or period of completion;
  - (d) the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2, to the extent that those criteria are specified in accordance with paragraph 4 and they concern factors directly involved in these processes and characterise the specific process of production or provision of the requested works, supplies or services.
3. Member States may provide that the award of certain types of contracts shall be based on the most economically advantageous tender as referred to in point (a) of paragraph 1 and in paragraph 2.
  4. Award criteria shall not confer an unrestricted freedom of choice on the contracting authority. They shall ensure the possibility of effective competition and shall be accompanied by requirements that allow the information provided by the tenderers to be effectively verified. Contracting authorities shall verify effectively, on the basis of the information and proof provided by the tenderers, whether the tenders meet the award criteria.
  5. In the case referred to in point (a) of paragraph 1 the contracting authority shall specify, in the contract notice, in the invitation to confirm interest, in the procurement documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.

Those weightings may be expressed by providing for a range with an appropriate maximum spread.

Where weighting is not possible for objective reasons, the contracting authority shall indicate the criteria in decreasing order of importance.

#### *Article 67* *Life-cycle costing*

1. Life-cycle costing shall to the extent relevant cover the following costs over the life cycle of a product, service or works as defined in point (22) of Article 2:
  - (a) internal costs, including costs relating to acquisition, such as production costs, use, such as energy consumption, maintenance costs, and end of life, such as collection and recycling costs and
  - (b) external environmental costs directly linked to the life cycle, provided their monetary value can be determined and verified, which may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

2. Where contracting authorities assess the costs using a life-cycle costing approach, they shall indicate in the procurement documents the methodology used for the calculation of the life-cycle costs. The methodology used must fulfil all of the following conditions:
  - (a) it has been drawn up on the basis of scientific information or is based on other objectively verifiable and non-discriminatory criteria;
  - (b) it has been established for repeated or continuous application;
  - (c) it is accessible to all interested parties.

Contracting authorities shall allow economic operators, including economic operators from third countries, to apply a different methodology for establishing the life-cycle costs of their offer, provided that they prove that this methodology complies with the requirements set out in points a, b and c and is equivalent to the methodology indicated by the contracting authority.

3. Whenever a common methodology for the calculation of life-cycle costs is adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 66(1).

A list of such legislative and delegated acts is set out in Annex XV. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary.

#### *Article 68* *Impediments to award*

Contracting authorities shall not award the contract to the tenderer submitting the best tender where one of the following conditions is fulfilled:

- (a) the tenderer is not able to provide the certificates and documents required pursuant to Articles 59, 60 and 61;
- (b) the declaration provided by the tenderer pursuant to Article 22 is false;
- (c) the declaration provided by the tenderer pursuant to Article 21(3)(b) is false.

#### *Article 69* *Abnormally low tenders*

1. Contracting authorities shall require economic operators to explain the price or costs charged, where all of the following conditions are fulfilled:
  - (a) the price or cost charged is more than 50 % lower than the average price or costs of the remaining tenders

- (b) the price or cost charged is more than 20 % lower than the price or costs of the second lowest tender;
  - (c) at least five tenders have been submitted.
- 2. Where tenders appear to be abnormally low for other reasons, contracting authorities may also request such explanations.
- 3. The explanations referred to in paragraphs 1 and 2 may in particular relate to:
  - (a) the economics of the construction method, the manufacturing process or the services provided;
  - (b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the execution of the work or for the supply of the goods or services;
  - (c) the originality of the work, supplies or services proposed by the tenderer;
  - (d) compliance, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI or, where not applicable, with other provisions ensuring an equivalent level of protection;
  - (e) the possibility of the tenderer obtaining State aid.
- 4. The contracting authority shall verify the information provided by consulting the tenderer. It may only reject the tender where the evidence does not justify the low level of price or costs charged, taking into account the elements referred to in paragraph 3.

Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with obligations established by Union legislation in the field of social and labour law or environmental law or by the international social and environmental law provisions listed in Annex XI.
- 5. Where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was compatible with the internal market within the meaning of Article 107 of the Treaty. Where the contracting authority rejects a tender in those circumstances, it shall inform the Commission thereof.
- 6. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information relating to the evidence and documents produced in relation to details listed in paragraph 3.

## **CHAPTER IV**

### ***Contract performance***

#### *Article 70*

##### *Conditions for performance of contracts*

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

#### *Article 71*

##### *Subcontracting*

1. In the procurement documents, the contracting authority may ask or may be required by a Member State to ask the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.
2. Member States may provide that at the request of the subcontractor and where the nature of the contract so allows, the contracting authority shall transfer due payments directly to the subcontractor for services, supplies or works provided to the main contractor. In such case, Member States shall put in place appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment shall be set out in the procurement documents.
3. Paragraphs 1 and 2 shall be without prejudice to the question of the principal economic operator's liability.

#### *Article 72*

##### *Modification of contracts during their term*

1. A substantial modification of the provisions of a public contract during its term shall be considered as a new award for the purposes of this Directive and shall require a new procurement procedure in accordance with this Directive.
2. A modification of a contract during its term shall be considered substantial within the meaning of paragraph 1, where it renders the contract substantially different from the one initially concluded. In any case, without prejudice to paragraph 3 and 4, a modification shall be considered substantial where one of the following conditions is met:
  - (a) the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the selection of other

candidates than those initially selected or would have allowed for awarding the contract to another tenderer;

- (b) the modification changes the economic balance of the contract in favour of the contractor;
- (c) the modification extends the scope of the contract considerably to encompass supplies, services or works not initially covered.

3. The replacement of the contractual partner shall be considered a substantial modification within the meaning of paragraph 1.

However, the first subparagraph shall not apply in the event of universal or partial succession into the position of the initial contractor, following corporate restructuring operations or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive.

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 4 and where it is below 5% of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

5. Contract modifications shall not be considered substantial within the meaning of paragraph 1 where they have been provided for in the procurement documents in clear, precise and unequivocal review clauses or options. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the contract.

6. By way of derogation from paragraph 1, a substantial modification shall not require a new procurement procedure where the following cumulative conditions are fulfilled:

- (a) the need for modification has been brought about by circumstances which a diligent contracting authority could not foresee;
- (b) the modification does not alter the overall nature of the contract;
- (c) any increase in price is not higher than 50% of the value of the original contract.

Contracting authorities shall publish in the *Official Journal of the European Union* a notice on such modifications. Such notices shall contain the information set out in Annex VI part G and be published in accordance with Article 49.

7. Contracting authorities shall not have recourse to modifications of the contract in the following cases:

- (a) where the modification would aim at remedying deficiencies in the performance of the contractor or the consequences, which can be remedied through the enforcement of contractual obligations;
- (b) where the modification would aim at compensating risks of price increases that have been hedged by the contractor.

*Article 73*  
*Termination of contracts*

Member States shall ensure that contracting authorities have the possibility, under the conditions determined by the applicable national contract law, to terminate a public contract during its term, where one of the following conditions is fulfilled:

- (a) the exceptions provided for in Article 11 cease to apply following a private participation in the legal person awarded the contract pursuant to Article 11(4);
- (b) a modification of the contract constitutes a new award within the meaning of Article 72;
- (c) the Court of Justice of the European Union finds, in a procedure pursuant to Article 258 of the Treaty, that a Member State has failed to fulfil its obligations under the Treaties due to the fact that a contracting authority belonging to that Member State has awarded the contract in question without complying with its obligations under the Treaties and this Directive.



## **Title III**

### **Particular procurement regimes**

#### **CHAPTER I**

##### *Social and other specific services*

*Article 74*  
*Award of contracts for social and other specific services*

Contracts for social and other specific services listed in Annex XVI shall be awarded in accordance with this Chapter, where the value of the contracts is equal to or greater than the threshold indicated in Article 4 (d).

*Article 75*  
*Publication of notices*

1. Contracting authorities intending to award a public contract for the services referred to in Article 74 shall make known their intention by means of a contract notice.
2. Contracting authorities that have awarded a public contract for the services referred to in Article 74 shall make known the results of the procurement procedure by means of a contract award notice.
3. The notices referred to in paragraphs 1 and 2 shall contain the information referred to in Annexes VI Part H and I, in accordance with the standard forms.

The Commission shall establish the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.

4. The notices referred to in paragraphs 1 and 2 shall be published in accordance with Article 49.

*Article 76*  
*Principles of awarding contracts*

1. Member States shall put in place appropriate procedures for the award of contracts subject to this Chapter, ensuring full compliance with the principles of transparency and equal treatment of economic operators and allowing contracting authorities to take into account the specificities of the services in question.
2. Member States shall ensure that contracting authorities may take into account the need to ensure quality, continuity, accessibility, availability and comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment of users and innovation. Member States may also provide that the

choice of the service provider shall not be made solely on the basis of the price for the provision of the service.

## **CHAPTER II**

### ***RULES GOVERNING DESIGN CONTESTS***

#### *Article 77* *General provisions*

1. The rules for the organisation of design contests shall be in conformity with this Chapter and shall be communicated to those interested in participating in the contest.
2. The admission of participants to design contests shall not be limited:
  - (a) by reference to the territory or part of the territory of a Member State;
  - (b) on the grounds that, under the law of the Member State in which the contest is organised, they would be required to be either natural or legal persons.

#### *Article 78* *Scope*

This Chapter shall apply to:

- (a) design contests organised as part of a procedure leading to the award of a public service contract;
- (b) design contests with prizes or payments to participants.

In the cases referred to in point (a), the threshold referred to in Article 4 is calculated on the basis of the estimated value net of VAT of the public service contract, including any possible prizes or payments to participants.

#### *Article 79* *Notices*

1. Contracting authorities that intend to carry out a design contest shall make known their intention by means of a contest notice.

Where they intend to award a subsequent service contract pursuant to Article 30(3), this shall be indicated in the contest notice.

2. Contracting authorities that have held a design contest shall send a notice of the results of the contest in accordance with Article 49 and shall be able to prove the date of dispatch.

Where the release of information on the outcome of the contest would impede law enforcement, be contrary to the public interest, or prejudice the legitimate

commercial interests of a particular enterprise, whether public or private, or might prejudice fair competition between service providers, such information may be withheld from publication.

3. The notices referred to in paragraphs 1 and 2 of this Article shall be published in accordance with Article 49(2) to (6) and Article 50. They shall include the information set out in Annex VI part G in the format of the standard forms.

The Commission shall establish the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.

#### *Article 80*

##### *Rules on the organisation of design contests and the selection of participants*

1. When organising design contests, contracting authorities shall apply procedures which are adapted to the provisions of this Directive.
2. Where design contests are restricted to a limited number of participants, the contracting authorities shall lay down clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.

#### *Article 81*

##### *Composition of the jury*

The jury shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required from participants in a contest, at least a third of the members of the jury shall have that qualification or an equivalent qualification.

#### *Article 82*

##### *Decisions of the jury*

1. The jury shall be autonomous in its decisions or opinions.
2. The jury shall examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.
3. The jury shall record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points that may need clarification.
4. Anonymity shall be observed until the jury has reached its opinion or decision.
5. Candidates may be invited, if need be, to answer questions that the jury has recorded in the minutes to clarify any aspect of the projects.
6. Complete minutes shall be drawn up of the dialogue between jury members and candidates.

# TITLE IV

## GOVERNANCE

### *Article 83* *Enforcement*

In conformity with Council Directive 89/665/EEC, Member States shall ensure correct application of this Directive by effective, available and transparent mechanisms which complement the system in place for the review of decisions taken by contracting authorities.

### *Article 84* *Public oversight*

1. Member States shall appoint a single independent body responsible for the oversight and coordination of implementation activities (hereinafter 'the oversight body'). Member States shall inform the Commission of their designation.

All contracting authorities shall be subject to such oversight.

2. The competent authorities involved in the implementation activities shall be organised in such a manner that conflicts of interests are avoided. The system of public oversight shall be transparent. For this purpose, all guidance and opinion documents and an annual report illustrating the implementation and application of rules laid down in this Directive shall be published.

The annual report shall include the following:

- (a) an indication of the success rate of small and medium-sized enterprises (SMEs) in public procurement; where the percentage is lower than 50 % in terms of values of contracts awarded to SMEs, the report shall provide an analysis of the reasons therefore;
  - (b) a global overview of the implementation of sustainable procurement policies, including on procedures taking into account considerations linked to the protection of the environment, social inclusion including accessibility for persons with disabilities, or fostering innovation;
  - (c) information on the monitoring and follow-up of breaches to procurement rules affecting the budget of the Union in accordance with paragraphs 3 to 5 of the present article;
  - (d) centralized data about reported cases of fraud, corruption, conflict of interests and other serious irregularities in the field of public procurement, including those affecting projects cofinanced by the budget of the Union.
3. The oversight body shall be responsible for the following tasks:

- (a) monitoring the application of public procurement rules and the related practice by contracting authorities and in particular by central purchasing bodies;
- (b) providing legal advice to contracting authorities on the interpretation of public procurement rules and principles and on the application of public procurement rules in specific cases;
- (c) issuing own-initiative opinions and guidance on questions of general interest pertaining to the interpretation and application of public procurement rules, on recurring questions and on systemic difficulties related to the application of public procurement rules, in the light of the provisions of this Directive and of the relevant case-law of the Court of Justice of the European Union;
- (d) establishing and applying comprehensive, actionable 'red flag' indicator systems to prevent, detect and adequately report instances of procurement fraud, corruption, conflict of interest and other serious irregularities;
- (e) drawing the attention of the national competent institutions, including auditing authorities, to specific violations detected and to systemic problems;
- (f) examining complaints from citizens and businesses on the application of public procurement rules in specific cases and transmitting the analysis to the competent contracting authorities, which shall have the obligation to take it into account in their decisions or, where the analysis is not followed, to explain the reasons for disregarding it;
- (g) monitoring the decisions taken by national courts and authorities following a ruling given by the Court of Justice of the European Union on the basis of Article 267 of the Treaty or findings of the European Court of Auditors establishing violations of Union public procurement rules related to projects cofinanced by the Union; the oversight body shall report to the European Anti-Fraud Office any infringement to Union procurement procedures where these were related to contracts directly or indirectly funded by the European Union.

The tasks referred to in point (e) shall be without prejudice to the exercise of rights of appeal under national law or under the system established on the basis of Directive 89/665/EEC.

Member States shall empower the oversight body to seize the jurisdiction competent according to national law for the review of contracting authorities' decisions where it has detected a violation in the course of its monitoring and legal advising activity.

4. Without prejudice to the general procedures and working methods established by the Commission for its communications and contacts with Member States, the oversight body shall act as a specific contact point for the Commission when it monitors the application of Union law and the implementation of the budget from the Union on the basis of Article 17 of the Treaty on the European Union and Article 317 of the Treaty on the Functioning of the European Union. It shall report to the Commission any violation of this Directive in procurement procedures for the award of contracts directly or indirectly funded by the Union.

The Commission may in particular refer to the oversight body the treatment of individual cases where a contract is not yet concluded or a review procedure can still be carried out. It may also entrust the oversight body with the monitoring activities necessary to ensure the implementation of the measures to which Member States are committed in order to remedy a violation of Union public procurement rules and principles identified by the Commission.

The Commission may require the oversight body to analyse alleged breaches to Union public procurement rules affecting projects co-financed by the budget of the Union. The Commission may entrust the oversight body to follow-up certain cases and to ensure that the appropriate consequences of breaches to Union public procurement rules affecting projects co-financed are taken by the competent national authorities which will be obliged to follow its instructions.

5. The investigation and enforcement activities carried out by the oversight body to ensure that contracting authorities' decisions comply with this Directive and the principles of the Treaty shall not replace or prejudice the institutional role of the Commission as guardian of the Treaty. When the Commission decides to refer the treatment of an individual case pursuant to paragraph 4, it shall also retain the right to intervene in accordance with the powers conferred to it by the Treaty.
6. Contracting authorities shall transmit to the national oversight body the full text of all concluded contracts with a value equal to or greater than
  - (a) 1 000 000 EUR in the case of public supply contracts or public service contracts;
  - (b) 10 000 000 EUR in the case of public works contracts.
7. Without prejudice to the national law concerning access to information, and in accordance with national and EU legislation on data protection, the oversight body shall, upon written request, give unrestricted and full direct access, free of charge, to the concluded contracts referred to in paragraph 6. Access to certain parts of the contracts may be refused where their disclosure would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

Access to the parts that may be released shall be given within a reasonable delay and no later than 45 days from the date of the request.

The applicants filing a request for access to a contract shall not need to show any direct or indirect interest related to that particular contract. The recipient of information should be allowed to make it public.

8. A summary of all the activities carried out by the oversight body in accordance with paragraphs 1 to 7 shall be included in the annual report referred to in paragraph 2.

*Article 85*  
*Individual reports on procedures for the award of contracts*

For every contract or framework agreement, and every time a dynamic purchasing system is established, contracting authorities shall draw up a written report which shall include at least the following:

- (a) the name and address of the contracting authority, the subject-matter and value of the contract, framework agreement or dynamic purchasing system;
- (b) the names of the successful candidates or tenderers and the reasons for their selection;
- (c) the names of the candidates or tenderers rejected and the reasons for their rejection;
- (d) the reasons for the rejection of tenders found to be abnormally low;
- (e) the name of the successful tenderer and the reasons why its tender was selected and, where known, the share of the contract or framework agreement which the successful tenderer intends to subcontract to third parties;
- (f) for negotiated procedures without prior publication, the circumstances referred to in Article 30 which justify the use of this procedure;
- (g) where necessary, the reasons why the contracting authority has decided not to award a contract or framework agreement or to establish a dynamic purchasing system
- (h) where applicable, conflicts of interests detected and subsequent measures taken.

The contracting authorities shall document the progress of all procurement procedures, whether or not those are conducted by electronic means. To that end, they shall document all stages in the procurement procedure, including all communications with economic operators and internal deliberations, preparation of the tenders, dialogue or negotiation if any, selection and award of the contract.

The report, or its main elements, shall be communicated to the Commission or to the national oversight body where they so request.

*Article 86*  
*National reporting and lists of contracting authorities*

1. The bodies established or appointed in accordance with Article 84 shall forward to the Commission an implementation and statistical report on each year, based on a standard form, not later than 31 October of the following year.
2. The report referred to in paragraph 1 shall contain at least the following information:
  - (a) a complete and up-to-date list of all central government authorities, sub-central contracting authorities and bodies governed by public law, including sub-central authorities and associations of contracting authorities awarding public contracts or framework agreements, indicating for each authority the unique

identification number where such number is provided for in national legislation; this list shall be grouped by type of authority;

- (b) a complete and up-to-date list of all central purchasing bodies;
- (c) for all contracts above the thresholds laid down in Article 4 of this Directive:
  - (i) the number and value of contracts awarded broken down for each type of authority by procedure and by works, supplies and services identified by division of the CPV nomenclature;
  - (ii) where the contracts have been concluded under the negotiated procedure without prior publication, the data referred to in point (i) shall also be broken down according to the circumstances referred to in Article 30 and shall specify the number and value of contracts awarded, by Member State and third country of the successful contractor;
- (d) for all contracts which fall below the thresholds laid down in Article 4 of this Directive, but would be covered by this Directive if their value exceeded the threshold, the number and value of contracts awarded broken down by each type of authority.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend Annex I, in order to update the list of contracting authorities following notifications from Member States, where such amendments prove necessary to correctly identify contracting authorities;

The Commission may periodically publish the list of bodies governed by public law transmitted according to point (a) of paragraph 2 for information in the *Official Journal of the European Union*.

4. Member States shall make available to the Commission information on their institutional organisation related to the implementation, monitoring and enforcement of this Directive, as well as on national initiatives taken to provide guidance on or assist in implementation of Union rules on public procurement, or to respond to challenges confronting the implementation of those rules.
5. The Commission shall establish the standard form for the annual implementation and statistical report referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.

#### *Article 87*

##### *Assistance to contracting authorities and businesses*

1. Member States shall make available technical support structures in order to provide legal and economic advice, guidance and assistance to contracting authorities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting authority can obtain competent assistance and advice on individual questions.



2. With a view to improving access to public procurement for economic operators, in particular SMEs, and in order to facilitate correct understanding of the provisions of this Directive, Member States shall ensure that appropriate assistance can be obtained, including by electronic means or using existing networks dedicated to business assistance.
3. Specific administrative assistance shall be available to economic operators intending to participate in a procurement procedure in another Member State. Such assistance shall at least cover administrative requirements in the Member State concerned, as well as possible obligations related to electronic procurement.

Member States shall ensure that interested economic operators have easy access to appropriate information on the obligations relating to taxes, environmental protection, and to social and labour law obligations, which are in force in the Member State, in the region or locality where the works are to be carried out or the services are to be provided and which will be applicable to the works carried out on site or to the services provided during the performance of the contract.

4. For the purposes of paragraphs 1, 2 and 3, Member States may appoint a single body or several bodies or administrative structures. Member States shall ensure due coordination between those bodies and structures.

#### *Article 88* *Administrative cooperation*

1. Member States shall provide mutual assistance to each other, and shall put in place measures for effective cooperation with one another, in order to ensure exchange of information on issues referred to in Articles 40, 41, 42, 55, 57, 59, 60, 61, 63 and 69. They shall ensure the confidentiality of the information which they exchange.
2. The competent authorities of all Member States concerned shall exchange information in compliance with personal data protection legislation provided for in Directives 95/46/EC of the European Parliament and of the Council<sup>42</sup> and 2002/58/EC of the European Parliament and of the Council<sup>43</sup>.
3. For the purposes of this Article, Member States shall designate one or more liaison points, the contact details of which shall be communicated to the other Member States, the oversight bodies and the Commission. Member States shall publish and regularly update the list of liaison points. The oversight body shall be in charge of the coordination of such liaison points.
4. The exchange of information shall take place via the Internal Market Information system established pursuant to Regulation (EU) N° XXX/XXXX of the European Parliament and Council<sup>44</sup> [proposal for a Regulation of the European Parliament and Council on the administrative cooperation through the Internal Market Information System ('the IMI Regulation') COM(2011) 522]. Member States shall supply

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<sup>42</sup> OJ L 281, 23.11.1995, p. 31.

<sup>43</sup> OJ L 201, 31.7.2002, p. 37.

<sup>44</sup> OJ L [...]

information requested by other Member States within the shortest possible period of time.

# TITLE V

## DELEGATED POWERS, IMPLEMENTING POWERS AND FINAL PROVISIONS

### *Article 89*

#### *Exercise of the delegation of powers*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Articles 6, 13, 19, 20, 23, 54, 59, 67 and 86 shall be conferred on the Commission for an indeterminate period of time from the [date of entry into force of the present Directive].
3. The delegation of power referred to in Articles 6, 13, 19, 20, 23, 54, 59, 67 and 86 may be revoked at any time by the European Parliament or by the Council. A revocation decision shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to this Article shall enter into force only where no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of the act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

### *Article 90*

#### *Urgency procedure*

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.
2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 89(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or the Council.

*Article 91*  
*Committee procedure*

1. The Commission shall be assisted by the Advisory Committee for Public Contracts established by Council Decision 71/306/EEC<sup>45</sup>. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this Article, Article 4 of Regulation (EU) No 182/2011 shall apply.

*Article 92*  
*Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2014 at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 93*  
*Repeals*

Directive 2004/18/EC shall be repealed with effect from 30 June 2014.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex XVII.

*Article 94*  
*Review*

The Commission shall review the economic effects on the internal market resulting from the application of the thresholds set in Article 4 and report thereon to the European Parliament and the Council by 30 June 2017.

In the event of any change to the threshold amounts applicable under the Agreement, the report shall, where appropriate, be followed by a legislative proposal amending the thresholds set out in this Directive.

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<sup>45</sup> OJ L 185, 16.8.1971, p. 15.

*Article 95*  
*Entry into force*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 96*  
*Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

**ANNEX I**  
**CENTRAL GOVERNMENT AUTHORITIES**

**Belgium**

1. Services publics fédéraux (Ministries):	1. Federale Overheidsdiensten (Ministries):
SPF Chancellerie du Premier Ministre;	FOD Kanselarij van de Eerste Minister;
SPF Personnel et Organisation;	FOD Kanselarij Personeel en Organisatie;
SPF Budget et Contrôle de la Gestion;	FOD Budget en Beheerscontrole;
SPF Technologie de l'Information et de la Communication (Fedict);	FOD Informatie- en Communicatietechnologie (Fedict);
SPF Affaires étrangères, Commerce extérieur et Coopération au Développement;	FOD Buitenlandse Zaken, Buitenlandse Handel en Ontwikkelingssamenwerking;
SPF Intérieur;	FOD Binnenlandse Zaken;
SPF Finances;	FOD Financiën;
SPF Mobilité et Transports;	FOD Mobiliteit en Vervoer;
SPF Emploi, Travail et Concertation sociale;	FOD Werkgelegenheid, Arbeid en sociaal overleg
SPF Sécurité Sociale et Institutions publiques de Sécurité Sociale;	FOD Sociale Zekerheid en Openbare Instellingen van sociale Zekerheid
SPF Santé publique, Sécurité de la Chaîne alimentaire et Environnement;	FOD Volksgezondheid, Veiligheid van de Voedselketen en Leefmilieu;
SPF Justice;	FOD Justitie;
SPF Economie, PME, Classes moyennes et Energie;	FOD Economie, KMO, Middenstand en Energie;
Ministère de la Défense;	Ministerie van Landsverdediging;
Service public de programmation Intégration sociale, Lutte contre la pauvreté et Economie sociale;	Programmatorische Overheidsdienst Maatschappelijke Integratie, Armoedsbestrijding en sociale Economie;
Service public fédéral de Programmation Développement durable;	Programmatorische federale Overheidsdienst Duurzame Ontwikkeling;
Service public fédéral de Programmation Politique scientifique;	Programmatorische federale Overheidsdienst Wetenschapsbeleid;
2. Régie des Bâtiments;	2. Regie der Gebouwen;

Office national de Sécurité sociale;	Rijksdienst voor sociale Zekerheid;
Institut national d'Assurance sociales pour travailleurs indépendants	Rijksinstituut voor de sociale Verzekeringen der Zelfstandigen;
Institut national d'Assurance Maladie-Invalidité;	Rijksinstituut voor Ziekte- en Invaliditeitsverzekering;
Office national des Pensions;	Rijksdienst voor Pensioenen;
Caisse auxiliaire d'Assurance Maladie-Invalidité;	Hulpkas voor Ziekte-en Invaliditeitsverzekering;
Fond des Maladies professionnelles;	Fonds voor Beroepsziekten;
Office national de l'Emploi;	Rijksdienst voor Arbeidsvoorziening

### **Bulgaria**

- Администрация на Народното събрание
- Администрация на Президента
- Администрация на Министерския съвет
- Конституционен съд
- Българска народна банка
- Министерство на външните работи
- Министерство на вътрешните работи
- Министерство на държавната администрация и административната реформа
- Министерство на извънредните ситуации
- Министерство на земеделието и храните
- Министерство на здравеопазването
- Министерство на икономиката и енергетиката
- Министерство на културата
- Министерство на образованието и науката
- Министерство на околната среда и водите
- Министерство на отбраната
- Министерство на правосъдието

- Министерство на регионалното развитие и благоустройството
- Министерство на транспорта
- Министерство на труда и социалната политика
- Министерство на финансите

State agencies, state commissions, executive agencies and other state authorities established by law or by Council of Ministers' decree having a function relating to the exercise of executive power:

- Агенция за ядрено регулиране
- Висшата атестационна комисия
- Държавна комисия за енергийно и водно регулиране
- Държавна комисия по сигурността на информацията
- Комисия за защита на конкуренцията
- Комисия за защита на личните данни
- Комисия за защита от дискриминация
- Комисия за регулиране на съобщенията
- Комисия за финансов надзор
- Патентно ведомство на Република България
- Сметна палата на Република България
- Агенция за приватизация
- Агенция за следприватизационен контрол
- Български институт по метрология
- Държавна агенция 'Архиви'
- Държавна агенция 'Държавен резерв и военновременни запаси'
- Държавна агенция 'Национална сигурност'
- Държавна агенция за бежанците
- Държавна агенция за българите в чужбина
- Държавна агенция за закрила на детето
- Държавна агенция за информационни технологии и съобщения



- Държавна агенция за метрологичен и технически надзор
- Държавна агенция за младежта и спорта
- Държавна агенция по горите
- Държавна агенция по туризма
- Държавна комисия по стоковите борси и тържища
- Институт по публична администрация и европейска интеграция
- Национален статистически институт
- Национална агенция за оценяване и акредитация
- Националната агенция за професионално образование и обучение
- Национална комисия за борба с трафика на хора
- Агенция ‘Митници’
- Агенция за държавна и финансова инспекция
- Агенция за държавни вземания
- Агенция за социално подпомагане
- Агенция за хората с увреждания
- Агенция по вписванията
- Агенция по геодезия, картография и кадастър
- Агенция по енергийна ефективност
- Агенция по заетостта
- Агенция по обществени поръчки
- Българска агенция за инвестиции
- Главна дирекция ‘Гражданска въздухоплавателна администрация’
- Дирекция ‘Материално-техническо осигуряване и социално обслужване’ на Министерство на вътрешните работи
- Дирекция ‘Оперативно издирване’ на Министерство на вътрешните работи
- Дирекция ‘Финансово-ресурсно осигуряване’ на Министерство на вътрешните работи
- Дирекция за национален строителен контрол

- Държавна комисия по хазарта
- Изпълнителна агенция ‘Автомобилна администрация’
- Изпълнителна агенция ‘Борба с градушките’
- Изпълнителна агенция ‘Българска служба за акредитация’
- Изпълнителна агенция ‘Военни клубове и информация’
- Изпълнителна агенция ‘Главна инспекция по труда’
- Изпълнителна агенция ‘Държавна собственост на Министерството на отбраната’
- Изпълнителна агенция ‘Железопътна администрация’
- Изпълнителна агенция ‘Изпитвания и контролни измервания на въоръжение, техника и имущества’
- Изпълнителна агенция ‘Морска администрация’
- Изпълнителна агенция ‘Национален филмов център’
- Изпълнителна агенция ‘Пристанищна администрация’
- Изпълнителна агенция ‘Проучване и поддържане на река Дунав’
- Изпълнителна агенция ‘Социални дейности на Министерството на отбраната’
- Изпълнителна агенция за икономически анализи и прогнози
- Изпълнителна агенция за насърчаване на малките и средни предприятия
- Изпълнителна агенция по лекарствата
- Изпълнителна агенция по лозата и виното
- Изпълнителна агенция по околна среда
- Изпълнителна агенция по почвените ресурси
- Изпълнителна агенция по рибарство и аквакултури
- Изпълнителна агенция по селекция и репродукция в животновъдството
- Изпълнителна агенция по сортоизпитване, апробация и семеконтрол
- Изпълнителна агенция по трансплантация
- Изпълнителна агенция по хидромелиорации
- Комисията за защита на потребителите
- Контролно-техническата инспекция

- Национален център за информация и документация
- Национален център по радиобиология и радиационна защита
- Национална агенция за приходите
- Национална ветеринарномедицинска служба
- Национална служба ‘Полиция’
- Национална служба ‘Пожарна безопасност и защита на населението’
- Национална служба за растителна защита
- Национална служба за съвети в земеделието
- Национална служба по зърното и фуражите
- Служба ‘Военна информация’
- Служба ‘Военна полиция’
- Фонд ‘Републиканска пътна инфраструктура’
- Авиоотряд 28

### **Czech Republic**

- Ministerstvo dopravy
- Ministerstvo financí
- Ministerstvo kultury
- Ministerstvo obrany
- Ministerstvo pro místní rozvoj
- Ministerstvo práce a sociálních věcí
- Ministerstvo průmyslu a obchodu
- Ministerstvo spravedlnosti
- Ministerstvo školství, mládeže a tělovýchovy
- Ministerstvo vnitra
- Ministerstvo zahraničních věcí
- Ministerstvo zdravotnictví
- Ministerstvo zemědělství

- Ministerstvo životního prostředí
- Poslanecká sněmovna PČR
- Senát PČR
- Kancelář prezidenta
- Český statistický úřad
- Český úřad zeměměřičský a katastrální
- Úřad průmyslového vlastnictví
- Úřad pro ochranu osobních údajů
- Bezpečnostní informační služba
- Národní bezpečnostní úřad
- Česká akademie věd
- Vězeňská služba
- Český báňský úřad
- Úřad pro ochranu hospodářské soutěže
- Správa státních hmotných rezerv
- Státní úřad pro jadernou bezpečnost
- Česká národní banka
- Energetický regulační úřad
- Úřad vlády České republiky
- Ústavní soud
- Nejvyšší soud
- Nejvyšší správní soud
- Nejvyšší státní zastupitelství
- Nejvyšší kontrolní úřad
- Kancelář Veřejného ochránce práv
- Grantová agentura České republiky
- Státní úřad inspekce práce

- Český telekomunikační úřad

## **Denmark**

- Folketinget

Rigsrevisionen

- Statsministeriet
- Udenrigsministeriet

- Beskæftigelsesministeriet

5 styrelser og institutioner (5 agencies and institutions)

- Domstolsstyrelsen

- Finansministeriet

5 styrelser og institutioner (5 agencies and institutions)

- Forsvarsministeriet

5 styrelser og institutioner (5 agencies and institutions)

- Ministeriet for Sundhed og Forebyggelse

Adskillige styrelser og institutioner, herunder Statens Serum Institut (Several agencies and institutions, including Statens Serum Institut)

- Justitsministeriet

Rigspolitechefen, anklagemyndigheden samt 1 direktorat og et antal styrelser (Commissioner of Police, the public prosecutor, 1 directorate and a number of agencies)

- Kirkeministeriet

10 stiftsøvrigheder (10 diocesan authorities)

- Kulturministeriet — Ministry of Culture

4 styrelser samt et antal statsinstitutioner (4 departments and a number of institutions)

- Miljøministeriet

5 styrelser (5 agencies)

- Ministeriet for Flygtninge, Invandrere og Integration

1 styrelse (1 agency)

- Ministeriet for Fødevarer, Landbrug og Fiskeri

4 direktorater og institutioner (4 directorates and institutions)

- Ministeriet for Videnskab, Teknologi og Udvikling

Adskillige styrelser og institutioner, Forskningscenter Risø og Statens uddannelsesbygninger (Several agencies and institutions, including Risoe National Laboratory and Danish National Research and Education Buildings)

- Skatteministeriet

1 styrelse og institutioner (1 agency and several institutions)

- Velfærdsministeriet

3 styrelser og institutioner (3 agencies and several institutions)

- Transportministeriet

7 styrelser og institutioner, herunder Øresundsbrokonsortiet (7 agencies and institutions, including Øresundsbrokonsortiet)

- Undervisningsministeriet

3 styrelser, 4 undervisningsinstitutioner og 5 andre institutioner (3 agencies, 4 educational establishments, 5 other institutions)

- Økonomi- og Erhvervsministeriet

Adskilligestyrelser og institutioner (Several agencies and institutions)

- Klima- og Energiministeriet

3 styrelse og institutioner (3 agencies and institutions)

## **Germany**

- Auswärtiges Amt

- Bundeskanzleramt

- Bundesministerium für Arbeit und Soziales

- Bundesministerium für Bildung und Forschung

- Bundesministerium für Ernährung, Landwirtschaft und Verbraucherschutz

- Bundesministerium der Finanzen

- Bundesministerium des Innern (only civil goods)

- Bundesministerium für Gesundheit

- Bundesministerium für Familie, Senioren, Frauen und Jugend

- Bundesministerium der Justiz
- Bundesministerium für Verkehr, Bau und Stadtentwicklung
- Bundesministerium für Wirtschaft und Technologie
- Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung
- Bundesministerium der Verteidigung (no military goods)
- Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit

### **Estonia**

- Vabariigi Presidendi Kantselei;
- Eesti Vabariigi Riigikogu;
- Eesti Vabariigi Riigikohus;
- Riigikontroll;
- Õiguskantsler;
- Riigikantselei;
- Rahvusrhhiiv;
- Haridus- ja Teadusministeerium;
- Justiitsministeerium;
- Kaitseministeerium;
- Keskkonnaministeerium;
- Kultuuriministeerium;
- Majandus- ja Kommunikatsiooniministeerium;
- Põllumajandusministeerium;
- Rahandusministeerium;
- Siseministeerium;
- Sotsiaalministeerium;
- Välisministeerium;
- Keeleinspektsioon;
- Riigiprokuratuur;

- Teabeamet;
- Maa-amet;
- Keskkonnainspeksioon;
- Metsakaitse- ja Metsauuenduskeskus;
- Muinsuskaitseamet;
- Patendiamet;
- Tarbijakaitseamet;
- Riigihangete Amet;
- Taimetoodangu Inspeksioon;
- Põllumajanduse Registrite ja Informatsiooni Amet;
- Veterinaar- ja Toiduamet
- Konkurentsiamet;
- Maksu –ja Tolliamet;
- Statistikaamet;
- Kaitsepolitseiamet;
- Kodakondsus- ja Migratsiooniamet;
- Piirivalveamet;
- Politseiamet;
- Eesti Kohtuekspertiisi Instituut;
- Keskkriminaalpolitsei;
- Päästeamet;
- Andmekaitse Inspeksioon;
- Ravimiamet;
- Sotsiaalkindlustusamet;
- Tööturuamet;
- Tervishoiuamet;
- Tervisekaitseinspeksioon;



- Tööinspektsioon;
- Lennuamet;
- Maanteeamet;
- Veeteede Amet;
- Julgestuspolitsei;
- Kaitseressursside Amet;
- Kaitseväe Logistikakeskus;
- Tehnilise Järelevalve Amet.

### **Ireland**

- President's Establishment
- Houses of the Oireachtas — [Parliament]
- Department of the Taoiseach — [Prime Minister]
- Central Statistics Office
- Department of Finance
- Office of the Comptroller and Auditor General
- Office of the Revenue Commissioners
- Office of Public Works
- State Laboratory
- Office of the Attorney General
- Office of the Director of Public Prosecutions
- Valuation Office
- Office of the Commission for Public Service Appointments
- Public Appointments Service
- Office of the Ombudsman
- Chief State Solicitor's Office
- Department of Justice, Equality and Law Reform
- Courts Service

- Prisons Service
- Office of the Commissioners of Charitable Donations and Bequests
- Department of the Environment, Heritage and Local Government
- Department of Education and Science
- Department of Communications, Energy and Natural Resources
- Department of Agriculture, Fisheries and Food
- Department of Transport
- Department of Health and Children
- Department of Enterprise, Trade and Employment
- Department of Arts, Sports and Tourism
- Department of Defence
- Department of Foreign Affairs
- Department of Social and Family Affairs
- Department of Community, Rural and Gaeltacht — [Gaelic speaking regions] Affairs
- Arts Council
- National Gallery.

### **Greece**

- Υπουργείο Εσωτερικών;
- Υπουργείο Εξωτερικών;
- Υπουργείο Οικονομίας και Οικονομικών;
- Υπουργείο Ανάπτυξης;
- Υπουργείο Δικαιοσύνης;
- Υπουργείο Εθνικής Παιδείας και Θρησκευμάτων;
- Υπουργείο Πολιτισμού;
- Υπουργείο Υγείας και Κοινωνικής Αλληλεγγύης;
- Υπουργείο Περιβάλλοντος, Χωροταξίας και Δημοσίων Έργων;
- Υπουργείο Απασχόλησης και Κοινωνικής Προστασίας;

- Υπουργείο Μεταφορών και Επικοινωνιών;
- Υπουργείο Αγροτικής Ανάπτυξης και Τροφίμων;
- Υπουργείο Εμπορικής Ναυτιλίας, Αιγαίου και Νησιωτικής Πολιτικής;
- Υπουργείο Μακεδονίας- Θράκης;
- Γενική Γραμματεία Επικοινωνίας;
- Γενική Γραμματεία Ενημέρωσης;
- Γενική Γραμματεία Νέας Γενιάς;
- Γενική Γραμματεία Ισότητας;
- Γενική Γραμματεία Κοινωνικών Ασφαλίσεων;
- Γενική Γραμματεία Απόδημου Ελληνισμού;
- Γενική Γραμματεία Βιομηχανίας;
- Γενική Γραμματεία Έρευνας και Τεχνολογίας;
- Γενική Γραμματεία Αθλητισμού;
- Γενική Γραμματεία Δημοσίων Έργων;
- Γενική Γραμματεία Εθνικής Στατιστικής Υπηρεσίας Ελλάδος;
- Εθνικό Συμβούλιο Κοινωνικής Φροντίδας;
- Οργανισμός Εργατικής Κατοικίας;
- Εθνικό Τυπογραφείο;
- Γενικό Χημείο του Κράτους;
- Ταμείο Εθνικής Οδοποιίας;
- Εθνικό Καποδιστριακό Πανεπιστήμιο Αθηνών;
- Αριστοτέλειο Πανεπιστήμιο Θεσσαλονίκης;
- Δημοκρίτειο Πανεπιστήμιο Θράκης;
- Πανεπιστήμιο Αιγαίου;
- Πανεπιστήμιο Ιωαννίνων;
- Πανεπιστήμιο Πατρών;
- Πανεπιστήμιο Μακεδονίας;

- Πολυτεχνείο Κρήτης;
- Σιβιτανίδειος Δημόσια Σχολή Τεχνών και Επαγγελμάτων;
- Αιγινήτειο Νοσοκομείο;
- Αρεταίειο Νοσοκομείο;
- Εθνικό Κέντρο Δημόσιας Διοίκησης;
- Οργανισμός Διαχείρισης Δημοσίου Υλικού;
- Οργανισμός Γεωργικών Ασφαλίσεων;
- Οργανισμός Σχολικών Κτιρίων;
- Γενικό Επιτελείο Στρατού;
- Γενικό Επιτελείο Ναυτικού;
- Γενικό Επιτελείο Αεροπορίας;
- Ελληνική Επιτροπή Ατομικής Ενέργειας;
- Γενική Γραμματεία Εκπαίδευσης Ενηλίκων;
- Υπουργείο Εθνικής Άμυνας;
- Γενική Γραμματεία Εμπορίου.

### **Spain**

- Presidencia de Gobierno
- Ministerio de Asuntos Exteriores y de Cooperación
- Ministerio de Justicia
- Ministerio de Defensa
- Ministerio de Economía y Hacienda
- Ministerio del Interior
- Ministerio de Fomento
- Ministerio de Educación, Política Social y Deportes
- Ministerio de Industria, Turismo y Comercio
- Ministerio de Trabajo e Inmigración
- Ministerio de la Presidencia

- Ministerio de Administraciones Públicas
- Ministerio de Cultura
- Ministerio de Sanidad y Consumo
- Ministerio de Medio Ambiente y Medio Rural y Marino
- Ministerio de Vivienda
- Ministerio de Ciencia e Innovación
- Ministerio de Igualdad

## **France**

### 1. Ministries

- Services du Premier ministre
- Ministère chargé de la santé, de la jeunesse et des sports
- Ministère chargé de l'intérieur, de l'outre-mer et des collectivités territoriales
- Ministère chargé de la justice
- Ministère chargé de la défense
- Ministère chargé des affaires étrangères et européennes
- Ministère chargé de l'éducation nationale
- Ministère chargé de l'économie, des finances et de l'emploi
- Secrétariat d'Etat aux transports
- Secrétariat d'Etat aux entreprises et au commerce extérieur
- Ministère chargé du travail, des relations sociales et de la solidarité
- Ministère chargé de la culture et de la communication
- Ministère chargé du budget, des comptes publics et de la fonction publique
- Ministère chargé de l'agriculture et de la pêche
- Ministère chargé de l'enseignement supérieur et de la recherche
- Ministère chargé de l'écologie, du développement et de l'aménagement durables
- Secrétariat d'Etat à la fonction publique
- Ministère chargé du logement et de la ville

- Secrétariat d’Etat à la coopération et à la francophonie
- Secrétariat d’Etat à l’outre-mer
- Secrétariat d’Etat à la jeunesse, des sports et de la vie associative
- Secrétariat d’Etat aux anciens combattants
- Ministère chargé de l’immigration, de l’intégration, de l’identité nationale et du co-développement
- Secrétariat d’Etat en charge de la prospective et de l’évaluation des politiques publiques
- Secrétariat d’Etat aux affaires européennes,
- Secrétariat d’Etat aux affaires étrangères et aux droits de l’homme
- Secrétariat d’Etat à la consommation et au tourisme
- Secrétariat d’Etat à la politique de la ville
- Secrétariat d’Etat à la solidarité
- Secrétariat d’Etat en charge de l’industrie et de la consommation
- Secrétariat d’Etat en charge de l’emploi
- Secrétariat d’Etat en charge du commerce, de l’artisanat, des PME, du tourisme et des services
- Secrétariat d’Etat en charge de l’écologie
- Secrétariat d’Etat en charge du développement de la région-capitale
- Secrétariat d’Etat en charge de l’aménagement du territoire

## 2. Institutions, independent authorities and jurisdictions

- Présidence de la République
- Assemblée Nationale
- Sénat
- Conseil constitutionnel
- Conseil économique et social
- Conseil supérieur de la magistrature
- Agence française contre le dopage
- Autorité de contrôle des assurances et des mutuelles

- Autorité de contrôle des nuisances sonores aéroportuaires
- Autorité de régulation des communications électroniques et des postes
- Autorité de sûreté nucléaire
- Autorité indépendante des marchés financiers
- Comité national d'évaluation des établissements publics à caractère scientifique, culturel et professionnel
- Commission d'accès aux documents administratifs
- Commission consultative du secret de la défense nationale
- Commission nationale des comptes de campagne et des financements politiques
- Commission nationale de contrôle des interceptions de sécurité
- Commission nationale de déontologie de la sécurité
- Commission nationale du débat public
- Commission nationale de l'informatique et des libertés
- Commission des participations et des transferts
- Commission de régulation de l'énergie
- Commission de la sécurité des consommateurs
- Commission des sondages
- Commission de la transparence financière de la vie politique
- Conseil de la concurrence
- Conseil des ventes volontaires de meubles aux enchères publiques
- Conseil supérieur de l'audiovisuel
- Défenseur des enfants
- Haute autorité de lutte contre les discriminations et pour l'égalité
- Haute autorité de santé
- Médiateur de la République
- Cour de justice de la République
- Tribunal des Conflits
- Conseil d'Etat

- Cours administratives d'appel
- Tribunaux administratifs
- Cour des Comptes
- Chambres régionales des Comptes
- Cours et tribunaux de l'ordre judiciaire (Cour de Cassation, Cours d'Appel, Tribunaux d'instance et Tribunaux de grande instance)

### 3. National public establishments

- Académie de France à Rome
- Académie de marine
- Académie des sciences d'outre-mer
- Académie des technologies
- Agence centrale des organismes de sécurité sociale (ACOSS)
- Agence de biomédecine
- Agence pour l'enseignement du français à l'étranger
- Agence française de sécurité sanitaire des aliments
- Agence française de sécurité sanitaire de l'environnement et du travail
- Agence Nationale pour la cohésion sociale et l'égalité des chances
- Agence nationale pour la garantie des droits des mineurs
- Agences de l'eau
- Agence Nationale de l'Accueil des Etrangers et des migrations
- Agence nationale pour l'amélioration des conditions de travail (ANACT)
- Agence nationale pour l'amélioration de l'habitat (ANAH)
- Agence Nationale pour la Cohésion Sociale et l'Egalité des Chances
- Agence nationale pour l'indemnisation des français d'outre-mer (ANIFOM)
- Assemblée permanente des chambres d'agriculture (APCA)
- Bibliothèque publique d'information
- Bibliothèque nationale de France
- Bibliothèque nationale et universitaire de Strasbourg



- Caisse des Dépôts et Consignations
- Caisse nationale des autoroutes (CNA)
- Caisse nationale militaire de sécurité sociale (CNMSS)
- Caisse de garantie du logement locatif social
- Casa de Velasquez
- Centre d'enseignement zootechnique
- Centre d'études de l'emploi
- Centre d'études supérieures de la sécurité sociale
- Centres de formation professionnelle et de promotion agricole
- Centre hospitalier des Quinze-Vingts
- Centre international d'études supérieures en sciences agronomiques (Montpellier Sup Agro)
- Centre des liaisons européennes et internationales de sécurité sociale
- Centre des Monuments Nationaux
- Centre national d'art et de culture Georges Pompidou
- Centre national des arts plastiques
- Centre national de la cinématographie
- Centre National d'Etudes et d'expérimentation du machinisme agricole, du génie rural, des eaux et des forêts (CEMAGREF)
- Centre national du livre
- Centre national de documentation pédagogique
- Centre national des œuvres universitaires et scolaires (CNOUS)
- Centre national professionnel de la propriété forestière
- Centre National de la Recherche Scientifique (C.N.R.S)
- Centres d'éducation populaire et de sport (CREPS)
- Centres régionaux des œuvres universitaires (CROUS)
- Collège de France
- Conservatoire de l'espace littoral et des rivages lacustres

- Conservatoire National des Arts et Métiers
- Conservatoire national supérieur de musique et de danse de Paris
- Conservatoire national supérieur de musique et de danse de Lyon
- Conservatoire national supérieur d’art dramatique
- Ecole centrale de Lille
- Ecole centrale de Lyon
- École centrale des arts et manufactures
- École française d’archéologie d’Athènes
- École française d’Extrême-Orient
- École française de Rome
- École des hautes études en sciences sociales
- Ecole du Louvre
- École nationale d’administration
- École nationale de l’aviation civile (ENAC)
- École nationale des Chartes
- École nationale d’équitation
- Ecole Nationale du Génie de l’Eau et de l’environnement de Strasbourg
- Écoles nationales d’ingénieurs
- Ecole nationale d’ingénieurs des industries des techniques agricoles et alimentaires de Nantes
- Écoles nationales d’ingénieurs des travaux agricoles
- École nationale de la magistrature
- Écoles nationales de la marine marchande
- École nationale de la santé publique (ENSP)
- École nationale de ski et d’alpinisme
- École nationale supérieure des arts décoratifs
- École nationale supérieure des arts et techniques du théâtre
- École nationale supérieure des arts et industries textiles Roubaix

- Écoles nationales supérieures d'arts et métiers
- École nationale supérieure des beaux-arts
- École nationale supérieure de céramique industrielle
- École nationale supérieure de l'électronique et de ses applications (ENSEA)
- Ecole nationale supérieure du paysage de Versailles
- Ecole Nationale Supérieure des Sciences de l'information et des bibliothécaires
- Ecole nationale supérieure de la sécurité sociale
- Écoles nationales vétérinaires
- École nationale de voile
- Écoles normales supérieures
- École polytechnique
- École technique professionnelle agricole et forestière de Meymac (Corrèze)
- École de sylviculture Croigny (Aube)
- École de viticulture et d'œnologie de la Tour- Blanche (Gironde)
- École de viticulture — Avize (Marne)
- Etablissement national d'enseignement agronomique de Dijon
- Établissement national des invalides de la marine (ENIM)
- Établissement national de bienfaisance Koenigswarter
- Établissement public du musée et du domaine national de Versailles
- Fondation Carnegie
- Fondation Singer-Polignac
- Haras nationaux
- Hôpital national de Saint-Maurice
- Institut des hautes études pour la science et la technologie
- Institut français d'archéologie orientale du Caire
- Institut géographique national
- Institut National de l'origine et de la qualité

- Institut national des hautes études de sécurité
- Institut de veille sanitaire
- Institut National d’enseignement supérieur et de recherche agronomique et agroalimentaire de Rennes
- Institut National d’Etudes Démographiques (I.N.E.D)
- Institut National d’Horticulture
- Institut National de la jeunesse et de l’éducation populaire
- Institut national des jeunes aveugles — Paris
- Institut national des jeunes sourds — Bordeaux
- Institut national des jeunes sourds — Chambéry
- Institut national des jeunes sourds — Metz
- Institut national des jeunes sourds — Paris
- Institut national de physique nucléaire et de physique des particules (I.N.P.N.P.P)
- Institut national de la propriété industrielle
- Institut National de la Recherche Agronomique (I.N.R.A)
- Institut National de la Recherche Pédagogique (I.N.R.P)
- Institut National de la Santé et de la Recherche Médicale (I.N.S.E.R.M)
- Institut national d’histoire de l’art (I.N.H.A.)
- Institut national de recherches archéologiques préventives
- Institut National des Sciences de l’Univers
- Institut National des Sports et de l’Education Physique
- Institut national supérieur de formation et de recherche pour l’éducation des jeunes handicapés et les enseignements inadaptés
- Instituts nationaux polytechniques
- Instituts nationaux des sciences appliquées
- Institut national de recherche en informatique et en automatique (INRIA)
- Institut national de recherche sur les transports et leur sécurité (INRETS)
- Institut de Recherche pour le Développement

- Instituts régionaux d’administration
  - Institut des Sciences et des Industries du vivant et de l’environnement (Agro Paris Tech)
  - Institut supérieur de mécanique de Paris
  - Institut Universitaires de Formation des Maîtres
  - Musée de l’armée
  - Musée Gustave-Moreau
  - Musée national de la marine
  - Musée national J.-J.-Henner
  - Musée du Louvre
  - Musée du Quai Branly
  - Muséum National d’Histoire Naturelle
  - Musée Auguste-Rodin
  - Observatoire de Paris
  - Office français de protection des réfugiés et apatrides
  - Office National des Anciens Combattants et des Victimes de Guerre (ONAC)
  - Office national de la chasse et de la faune sauvage
  - Office National de l’eau et des milieux aquatiques
  - Office national d’information sur les enseignements et les professions (ONISEP)
  - Office universitaire et culturel français pour l’Algérie
  - Ordre national de la Légion d’honneur
  - Palais de la découverte
  - Parcs nationaux
  - Universités
4. Other national public bodies
- Union des groupements d’achats publics (UGAP)
  - Agence Nationale pour l’emploi (A.N.P.E)
  - Caisse Nationale des Allocations Familiales (CNAF)

- Caisse Nationale d'Assurance Maladie des Travailleurs Salariés (CNAMS)
- Caisse Nationale d'Assurance-Vieillesse des Travailleurs Salariés (CNAVTS)

### **Italy**

- Purchasing bodies
  - Presidenza del Consiglio dei Ministri
  - Ministero degli Affari Esteri
  - Ministero dell'Interno
  - Ministero della Giustizia e Uffici giudiziari (esclusi i giudici di pace)
  - Ministero della Difesa
  - Ministero dell'Economia e delle Finanze
  - Ministero dello Sviluppo Economico
  - Ministero delle Politiche Agricole, Alimentari e Forestali
  - Ministero dell'Ambiente — Tutela del Territorio e del Mare
  - Ministero delle Infrastrutture e dei Trasporti
  - Ministero del Lavoro, della Salute e delle Politiche Sociali
  - Ministero dell' Istruzione, Università e Ricerca
  - Ministero per i Beni e le Attività culturali, comprensivo delle sue articolazioni periferiche
- Other national public bodies:
  - CONSIP (Concessionaria Servizi Informatici Pubblici)

### **Cyprus**

- Προεδρία και Προεδρικό Μέγαρο
  - Γραφείο Συντονιστή Εναρμόνισης
- Υπουργικό Συμβούλιο
- Βουλή των Αντιπροσώπων
- Δικαστική Υπηρεσία
- Νομική Υπηρεσία της Δημοκρατίας
- Ελεγκτική Υπηρεσία της Δημοκρατίας

- Επιτροπή Δημόσιας Υπηρεσίας
- Επιτροπή Εκπαιδευτικής Υπηρεσίας
- Γραφείο Επιτρόπου Διοικήσεως
- Επιτροπή Προστασίας Ανταγωνισμού
- Υπηρεσία Εσωτερικού Ελέγχου
- Γραφείο Προγραμματισμού
- Γενικό Λογιστήριο της Δημοκρατίας
- Γραφείο Επιτρόπου Προστασίας Δεδομένων Προσωπικού Χαρακτήρα
- Γραφείο Εφόρου Δημοσίων Ενισχύσεων
- Αναθεωρητική Αρχή Προσφορών
- Υπηρεσία Εποπτείας και Ανάπτυξης Συνεργατικών Εταιρειών
- Αναθεωρητική Αρχή Προσφύγων
- Υπουργείο Άμυνας
- Υπουργείο Γεωργίας, Φυσικών Πόρων και Περιβάλλοντος
  - Τμήμα Γεωργίας
  - Κτηνιατρικές Υπηρεσίες
  - Τμήμα Δασών
  - Τμήμα Αναπτύξεως Υδάτων
  - Τμήμα Γεωλογικής Επισκόπησης
  - Μετεωρολογική Υπηρεσία
  - Τμήμα Αναδασμού
  - Υπηρεσία Μεταλλείων
  - Ινστιτούτο Γεωργικών Ερευνών
  - Τμήμα Αλιείας και Θαλάσσιων Ερευνών
- Υπουργείο Δικαιοσύνης και Δημοσίας Τάξεως
  - Αστυνομία
  - Πυροσβεστική Υπηρεσία Κύπρου

- Τμήμα Φυλακών
- Υπουργείο Εμπορίου, Βιομηχανίας και Τουρισμού
  - Τμήμα Εφόρου Εταιρειών και Επίσημου Παραλήπτη
- Υπουργείο Εργασίας και Κοινωνικών Ασφαλίσεων
  - Τμήμα Εργασίας
  - Τμήμα Κοινωνικών Ασφαλίσεων
  - Τμήμα Υπηρεσιών Κοινωνικής Ευημερίας
  - Κέντρο Παραγωγικότητας Κύπρου
  - Ανώτερο Ξενοδοχειακό Ινστιτούτο Κύπρου
  - Ανώτερο Τεχνολογικό Ινστιτούτο
  - Τμήμα Επιθεώρησης Εργασίας
  - Τμήμα Εργασιακών Σχέσεων
- Υπουργείο Εσωτερικών
  - Επαρχιακές Διοικήσεις
  - Τμήμα Πολεοδομίας και Οικήσεως
  - Τμήμα Αρχείου Πληθυσμού και Μεταναστεύσεως
  - Τμήμα Κτηματολογίου και Χωρομετρίας
  - Γραφείο Τύπου και Πληροφοριών
  - Πολιτική Άμυνα
  - Υπηρεσία Μέριμνας και Αποκαταστάσεων Εκτοπισθέντων
  - Υπηρεσία Ασύλου
- Υπουργείο Εξωτερικών
- Υπουργείο Οικονομικών
  - Τελωνεία
  - Τμήμα Εσωτερικών Προσόδων
  - Στατιστική Υπηρεσία
  - Τμήμα Κρατικών Αγορών και Προμηθειών



- Τμήμα Δημόσιας Διοίκησης και Προσωπικού
- Κυβερνητικό Τυπογραφείο
- Τμήμα Υπηρεσιών Πληροφορικής
- Υπουργείο Παιδείας και Πολιτισμού
- Υπουργείο Συγκοινωνιών και Έργων
  - Τμήμα Δημοσίων Έργων
  - Τμήμα Αρχαιοτήτων
  - Τμήμα Πολιτικής Αεροπορίας
  - Τμήμα Εμπορικής Ναυτιλίας
  - Τμήμα Οδικών Μεταφορών
  - Τμήμα Ηλεκτρομηχανολογικών Υπηρεσιών
  - Τμήμα Ηλεκτρονικών Επικοινωνιών
- Υπουργείο Υγείας
  - Φαρμακευτικές Υπηρεσίες
  - Γενικό Χημείο
  - Ιατρικές Υπηρεσίες και Υπηρεσίες Δημόσιας Υγείας
  - Οδοντιατρικές Υπηρεσίες
  - Υπηρεσίες Ψυχικής Υγείας

### **Latvia**

- Ministries, secretariats of ministers for special assignments, and their subordinate institutions
  - Aizsardzības ministrija un tās padotībā esošās iestādes
  - Ārlietu ministrija un tas padotībā esošās iestādes
  - Bērnu un ģimenes lietu ministrija un tās padotībā esošās iestādes
  - Ekonomikas ministrija un tās padotībā esošās iestādes
  - Finanšu ministrija un tās padotībā esošās iestādes
  - Iekšlietu ministrija un tās padotībā esošās iestādes
  - Izglītības un zinātnes ministrija un tās padotībā esošās iestādes

- Kultūras ministrija un tās padotībā esošās iestādes
- Labklājības ministrija un tās padotībā esošās iestādes
- Reģionālās attīstības un pašvaldības lietu ministrija un tās padotībā esošās iestādes
- Satiksmes ministrija un tās padotībā esošās iestādes
- Tieslietu ministrija un tās padotībā esošās iestādes
- Veselības ministrija un tās padotībā esošās iestādes
- Vides ministrija un tās padotībā esošās iestādes
- Zemkopības ministrija un tās padotībā esošās iestādes
- Īpašu uzdevumu ministra sekretariāti un to padotībā esošās iestādes
- Satversmes aizsardzības birojs
- Other state institution
  - Augstākā tiesa
  - Centrālā vēlēšanu komisija
  - Finanšu un kapitāla tirgus komisija
  - Latvijas Banka
  - Prokuratūra un tās pārraudzībā esošās iestādes
  - Saeimas kanceleja un tās padotībā esošās iestādes
  - Satversmes tiesa
  - Valsts kanceleja un tās padotībā esošās iestādes
  - Valsts kontrole
  - Valsts prezidenta kanceleja
  - Tiesībsarga birojs
  - Nacionālā radio un televīzijas padome
  - Citas valsts iestādes, kuras nav ministriju padotībā (Other state institutions not subordinate to ministries)

### **Lithuania**

- Prezidentūros kancelelija
- Seimo kancelelija

- Institutions accountable to the Seimas [Parliament]:
  - Lietuvos mokslo taryba;
  - Seimo kontrolierių įstaiga;
  - Valstybės kontrolė;
  - Specialiųjų tyrimų tarnyba;
  - Valstybės saugumo departamentas;
  - Konkurencijos taryba;
  - Lietuvos gyventojų genocido ir rezistencijos tyrimo centras;
  - Vertybinių popierių komisija;
  - Ryšių reguliavimo tarnyba;
  - Nacionalinė sveikatos taryba;
  - Etninės kultūros globos taryba;
  - Lygių galimybių kontrolieriaus tarnyba;
  - Valstybinė kultūros paveldo komisija;
  - Vaiko teisių apsaugos kontrolieriaus įstaiga;
  - Valstybinė kainų ir energetikos kontrolės komisija;
  - Valstybinė lietuvių kalbos komisija;
  - Vyriausioji rinkimų komisija;
  - Vyriausioji tarnybinės etikos komisija;
  - Žurnalistų etikos inspektorius tarnyba.
- Vyriausybės kanceliarija
- Institutions accountable to the Vyriausybės [Government]:
  - Ginklų fondas;
  - Informacinės visuomenės plėtros komitetas;
  - Kūno kultūros ir sporto departamentas;
  - Lietuvos archyvų departamentas;
  - Mokestinių ginčų komisija;

- Statistikos departamentas;
  - Tautinių mažumų ir išeivijos departamentas;
  - Valstybinė tabako ir alkoholio kontrolės tarnyba;
  - Viešųjų pirkimų tarnyba;
  - Narkotikų kontrolės departamentas;
  - Valstybinė atominės energetikos saugos inspekcija;
  - Valstybinė duomenų apsaugos inspekcija;
  - Valstybinė lošimų priežiūros komisija;
  - Valstybinė maisto ir veterinarijos tarnyba;
  - Vyriausioji administracinių ginčų komisija;
  - Draudimo priežiūros komisija;
  - Lietuvos valstybinis mokslo ir studijų fondas;
  - Lietuvių grįžimo į Tėvynę informacijos centras
- Konstitucinis Teismas
  - Lietuvos bankas
  - Aplinkos ministerija
  - Institutions under the Aplinkos ministerija [Ministry of Environment]:
    - Generalinė miškų urėdija;
    - Lietuvos geologijos tarnyba;
    - Lietuvos hidrometeorologijos tarnyba;
    - Lietuvos standartizacijos departamentas;
    - Nacionalinis akreditacijos biuras;
    - Valstybinė metrologijos tarnyba;
    - Valstybinė saugomų teritorijų tarnyba;
    - Valstybinė teritorijų planavimo ir statybos inspekcija.
  - Finansų ministerija
  - Institutions under the Finansų ministerija [Ministry of Finance]:

- Muitinės departamentas;
- Valstybės dokumentų technologinės apsaugos tarnyba;
- Valstybinė mokesčių inspekcija;
- Finansų ministerijos mokymo centras.
- Krašto apsaugos ministerija
- Institutions under the Krašto apsaugos ministerijos [Ministry of National Defence]:
  - Antrasis operatyvinių tarnybų departamentas;
  - Centralizuota finansų ir turto tarnyba;
  - Karo prievolės administravimo tarnyba;
  - Krašto apsaugos archyvas;
  - Krizių valdymo centras;
  - Mobilizacijos departamentas;
  - Ryšių ir informacinių sistemų tarnyba;
  - Infrastruktūros plėtros departamentas;
  - Valstybinis pilietinio pasipriešinimo rengimo centras.
- Lietuvos kariuomenė
- Krašto apsaugos sistemos kariniai vienetai ir tarnybos
- Kultūros ministerija
- Institutions under the Kultūros ministerijos [Ministry of Culture]:
  - Kultūros paveldo departamentas;
  - Valstybinė kalbos inspekcija.
- Socialinės apsaugos ir darbo ministerija
- Institutions under the Socialinės apsaugos ir darbo ministerijos [Ministry of Social Security and Labour]:
  - Garantinio fondo administracija;
  - Valstybės vaiko teisių apsaugos ir įvaikinimo tarnyba;
  - Lietuvos darbo birža;
  - Lietuvos darbo rinkos mokymo tarnyba;

- Trišalės tarybos sekretoriatas;
  - Socialinių paslaugų priežiūros departamentas;
  - Darbo inspekcija;
  - Valstybinio socialinio draudimo fondo valdyba;
  - Neįgalumo ir darbingumo nustatymo tarnyba;
  - Ginčų komisija;
  - Techninės pagalbos neįgaliesiems centras;
  - Neįgaliųjų reikalų departamentas.
- Susisiekimo ministerija
- Institutions under the Susisiekimo ministerijos [Ministry of Transport and Communications]:
    - Lietuvos automobilių kelių direkcija;
    - Valstybinė geležinkelio inspekcija;
    - Valstybinė kelių transporto inspekcija;
    - Pasienio kontrolės punktų direkcija.
- Sveikatos apsaugos ministerija
- Institutions under the Sveikatos apsaugos ministerijos [Ministry of Health]:
    - Valstybinė akreditavimo sveikatos priežiūros veiklai tarnyba;
    - Valstybinė ligonių kasa;
    - Valstybinė medicininio audito inspekcija;
    - Valstybinė vaistų kontrolės tarnyba;
    - Valstybinė teismo psichiatrijos ir narkologijos tarnyba;
    - Valstybinė visuomenės sveikatos priežiūros tarnyba;
    - Farmacijos departamentas;
    - Sveikatos apsaugos ministerijos Ekstremalių sveikatai situacijų centras;
    - Lietuvos bioetikos komitetas;
    - Radiacinės saugos centras.
- Švietimo ir mokslo ministerija

- Institutions under the Švietimo ir mokslo ministerijos [Ministry of Education and Science]:
  - Nacionalinis egzaminų centras;
  - Studijų kokybės vertinimo centras.
- Teisingumo ministerija
- Institutions under the Teisingumo ministerijos [Ministry of Justice]:
  - Kalėjų departamentas;
  - Nacionalinė vartotojų teisių apsaugos taryba;
  - Europos teisės departamentas
- Ūkio ministerija
- Įstaigos prie the Ūkio ministerijos [Ministry of Economy]:
  - Įmonių bankroto valdymo departamentas;
  - Valstybinė energetikos inspekcija;
  - Valstybinė ne maisto produktų inspekcija;
  - Valstybinis turizmo departamentas
- Užsienio reikalų ministerija
- Diplomatines atstovybes ir konsulinės įstaigos užsienyje bei atstovybes prie tarptautinių organizacijų
- Vidaus reikalų ministerija
- Institutions under the Vidaus reikalų ministerijos [Ministry of the Interior]:
  - Asmens dokumentų išrašymo centras;
  - Finansinių nusikaltimų tyrimo tarnyba;
  - Gyventojų registro tarnyba;
  - Policijos departamentas;
  - Priešgaisrinės apsaugos ir gelbėjimo departamentas;
  - Turto valdymo ir ūkio departamentas;
  - Vadovybės apsaugos departamentas;
  - Valstybės sienos apsaugos tarnyba;
  - Valstybės tarnybos departamentas;

- Informatikos ir ryšių departamentas;
- Migracijos departamentas;
- Sveikatos priežiūros tarnyba;
- Bendrasis pagalbos centras.
- Žemės ūkio ministerija
- Institutions under the Žemės ūkio ministerijos [Ministry of Agriculture]:
  - Nacionalinė mokėjimo agentūra;
  - Nacionalinė žemės tarnyba;
  - Valstybinė augalų apsaugos tarnyba;
  - Valstybinė gyvulių veislininkystės priežiūros tarnyba;
  - Valstybinė sėklų ir grūdų tarnyba;
  - Žuvininkystės departamentas
- Teismai [Courts]:
  - Lietuvos Aukščiausiasis Teismas;
  - Lietuvos apeliacinis teismas;
  - Lietuvos vyriausiasis administracinis teismas;
  - apygardų teismai;
  - apygardų administraciniai teismai;
  - apylinkių teismai;
  - Nacionalinė teismų administracija
- Generalinė prokuratūra
- Other Central Public Administration Entities (institucijos [institutions], įstaigos [establishments], tarnybos[agencies])
  - Aplinkos apsaugos agentūra;
  - Valstybinė aplinkos apsaugos inspekcija;
  - Aplinkos projektų valdymo agentūra;
  - Miško genetinių išteklių, sėklų ir sodmenų tarnyba;
  - Miško sanitarinės apsaugos tarnyba;



- Valstybinė miškotvarkos tarnyba;
- Nacionalinis visuomenės sveikatos tyrimų centras;
- Lietuvos AIDS centras;
- Nacionalinis organų transplantacijos biuras;
- Valstybinis patologijos centras;
- Valstybinis psichikos sveikatos centras;
- Lietuvos sveikatos informacijos centras;
- Slaugos darbuotojų tobulinimosi ir specializacijos centras;
- Valstybinis aplinkos sveikatos centras;
- Respublikinis mitybos centras;
- Užkrečiamųjų ligų profilaktikos ir kontrolės centras;
- Trakų visuomenės sveikatos priežiūros ir specialistų tobulinimosi centras;
- Visuomenės sveikatos ugdymo centras;
- Muitinės kriminalinė tarnyba;
- Muitinės informacinių sistemų centras;
- Muitinės laboratorija;
- Muitinės mokymo centras;
- Valstybinis patentų biuras;
- Lietuvos teismo ekspertizės centras;
- Centrinė hipotekos įstaiga;
- Lietuvos metrologijos inspekcija;
- Civilinės aviacijos administracija;
- Lietuvos saugios laivybos administracija;
- Transporto investicijų direkcija;
- Valstybinė vidaus vandenių laivybos inspekcija;
- Pabėgėlių priėmimo centras

### **Luxembourg**

- Ministère d’Etat
- Ministère des Affaires Etrangères et de l’Immigration
- Ministère de l’Agriculture, de la Viticulture et du Développement Rural
- Ministère des Classes moyennes, du Tourisme et du Logement
- Ministère de la Culture, de l’Enseignement Supérieur et de la Recherche
- Ministère de l’Economie et du Commerce extérieur
- Ministère de l’Education nationale et de la Formation professionnelle
- Ministère de l’Egalité des chances
- Ministère de l’Environnement
- Ministère de la Famille et de l’Intégration
- Ministère des Finances
- Ministère de la Fonction publique et de la Réforme administrative
- Ministère de l’Intérieur et de l’Aménagement du territoire
- Ministère de la Justice
- Ministère de la Santé
- Ministère de la Sécurité sociale
- Ministère des Transports
- Ministère du Travail et de l’Emploi
- Ministère des Travaux publics

### **Hungary**

- Egészségügyi Minisztérium
- Földművelésügyi és Vidékfejlesztési Minisztérium
- Gazdasági és Közlekedési Minisztérium
- Honvédelmi Minisztérium
- Igazságügyi és Rendészeti Minisztérium
- Környezetvédelmi és Vízügyi Minisztérium
- Külügyminisztérium

- Miniszterelnöki Hivatal
- Oktatási és Kulturális Minisztérium
- Önkormányzati és Területfejlesztési Minisztérium
- Pénzügyminisztérium
- Szociális és Munkaügyi Minisztérium
- Központi Szolgáltatási Főigazgatóság

### **Malta**

- Uffiċċju tal-Prim Ministru (Office of the Prime Minister)
- Ministeru għall-Familja u Solidarjeta' Soċjali (Ministry for the Family and Social Solidarity)
- Ministeru ta' l-Edukazzjoni Zghazagh u Impjieg (Ministry for Education Youth and Employment)
- Ministeru tal-Finanzi (Ministry of Finance)
- Ministeru tar-Riżorsi u l-Infrastruttura (Ministry for Resources and Infrastructure)
- Ministeru tat-Turiżmu u Kultura (Ministry for Tourism and Culture)
- Ministeru tal-Ġustizzja u l-Intern (Ministry for Justice and Home Affairs)
- Ministeru għall-Affarijiet Rurali u l-Ambjent (Ministry for Rural Affairs and the Environment)
- Ministeru għal Għawdex (Ministry for Gozo)
- Ministeru tas-Sahħa, l-Anzjani u Kura fil-Kommunita' (Ministry of Health, the Elderly and Community Care)
- Ministeru ta' l-Affarijiet Barranin (Ministry of Foreign Affairs)
- Ministeru għall-Investimenti, Industrija u Teknologija ta' Informazzjoni (Ministry for Investment, Industry and Information Technology)
- Ministeru għall-Kompetittivà u Komunikazzjoni (Ministry for Competitiveness and Communications)
- Ministeru għall-Iżvilupp Urban u Toroq (Ministry for Urban Development and Roads)

### **Netherlands**

- Ministerie van Algemene Zaken
  - Bestuursdepartement

- Bureau van de Wetenschappelijke Raad voor het Regeringsbeleid
- Rijksvoorlichtingsdienst
- Ministerie van Binnenlandse Zaken en Koninkrijksrelaties
  - Bestuursdepartement
  - Centrale Archiefselectiedienst (CAS)
  - Algemene Inlichtingen- en Veiligheidsdienst (AIVD)
  - Agentschap Basisadministratie Persoonsgegevens en Reisdocumenten (BPR)
  - Agentschap Korps Landelijke Politiediensten
- Ministerie van Buitenlandse Zaken
  - Directoraat-generaal Regiobeleid en Consulaire Zaken (DGRC)
  - Directoraat-generaal Politieke Zaken (DGPZ)
  - Directoraat-generaal Internationale Samenwerking (DGIS)
  - Directoraat-generaal Europese Samenwerking (DGES)
  - Centrum tot Bevordering van de Import uit Ontwikkelingslanden (CBI)
  - Centrale diensten ressorterend onder S/PlvS (Support services falling under the Secretary-general and Deputy Secretary-general)
  - Buitenlandse Posten (ieder afzonderlijk)
- Ministerie van Defensie — (Ministry of Defence)
  - Bestuursdepartement
  - Commando Diensten Centra (CDC)
  - Defensie Telematica Organisatie (DTO)
  - Centrale directie van de Defensie Vastgoed Dienst
  - De afzonderlijke regionale directies van de Defensie Vastgoed Dienst
  - Defensie Materieel Organisatie (DMO)
  - Landelijk Bevoorradingsbedrijf van de Defensie Materieel Organisatie
  - Logistiek Centrum van de Defensie Materieel Organisatie
  - Marinebedrijf van de Defensie Materieel Organisatie
  - Defensie Pijpleiding Organisatie (DPO)

- Ministerie van Economische Zaken
  - Bestuursdepartement
  - Centraal Planbureau (CPB)
  - SenterNovem
  - Staatstoezicht op de Mijnen (SodM)
  - Nederlandse Mededingingsautoriteit (NMa)
  - Economische Voorlichtingsdienst (EVD)
  - Agentschap Telecom
  - Kenniscentrum Professioneel & Innovatief Aanbesteden, Netwerk voor Overheidsopdrachtgevers (PIANOo)
  - Regiebureau Inkoop Rijksoverheid
  - Octrooicentrum Nederland
  - Consumentenautoriteit
- Ministerie van Financiën
  - Bestuursdepartement
  - Belastingdienst Automatiseringscentrum
  - Belastingdienst
  - de afzonderlijke Directies der Rijksbelastingen (the various Divisions of the Tax and Customs Administration throughout the Netherlands)
  - Fiscale Inlichtingen- en Opsporingsdienst (incl. Economische Controle dienst (ECD))
  - Belastingdienst Opleidingen
  - Dienst der Domeinen
- Ministerie van Justitie
  - Bestuursdepartement
  - Dienst Justitiële Inrichtingen
  - Raad voor de Kinderbescherming
  - Centraal Justitie Incasso Bureau

- Openbaar Ministerie
- Immigratie en Naturalisatiedienst
- Nederlands Forensisch Instituut
- Dienst Terugkeer & Vertrek
- Ministerie van Landbouw, Natuur en Voedselkwaliteit
  - Bestuursdepartement
  - Dienst Regelingen (DR)
  - Agentschap Plantenziektenkundige Dienst (PD)
  - Algemene Inspectiedienst (AID)
  - Dienst Landelijk Gebied (DLG)
  - Voedsel en Waren Autoriteit (VWA)
- Ministerie van Onderwijs, Cultuur en Wetenschappen
  - Bestuursdepartement
  - Inspectie van het Onderwijs
  - Erfgoedinspectie
  - Centrale Financiën Instellingen
  - Nationaal Archief
  - Adviesraad voor Wetenschaps- en Technologiebeleid
  - Onderwijsraad
  - Raad voor Cultuur
- Ministerie van Sociale Zaken en Werkgelegenheid
  - Bestuursdepartement
  - Inspectie Werk en Inkomen
  - Agentschap SZW
- Ministerie van Verkeer en Waterstaat
  - Bestuursdepartement
  - Directoraat-Generaal Transport en Luchtvaart

- Directoraat-generaal Personenvervoer
- Directoraat-generaal Water
- Centrale diensten (Central Services)
- Shared services Organisatie Verkeer en Watersaat
- Koninklijke Nederlandse Meteorologisch Instituut KNMI
- Rijkswaterstaat, Bestuur
- De afzonderlijke regionale Diensten van Rijkswaterstaat (Each individual regional service of the Directorate-general of Public Works and Water Management)
- De afzonderlijke specialistische diensten van Rijkswaterstaat (Each individual specialist service of the Directorate-general of Public Works and Water Management)
- Adviesdienst Geo-Informatie en ICT
- Adviesdienst Verkeer en Vervoer (AVV)
- Bouwdienst
- Corporate Dienst
- Data ICT Dienst
- Dienst Verkeer en Scheepvaart
- Dienst Weg- en Waterbouwkunde (DWW)
- Rijksinstituut voor Kunst en Zee (RIKZ)
- Rijksinstituut voor Integraal Zoetwaterbeheer en Afvalwaterbehandeling (RIZA)
- Waterdienst
- Inspectie Verkeer en Waterstaat, Hoofddirectie
- Port state Control
- Directie Toezichtontwikkeling Communicatie en Onderzoek (TCO)
- Toezichthouder Beheer Eenheid Lucht
- Toezichthouder Beheer Eenheid Water
- Toezichthouder Beheer Eenheid Land
- Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer

- Bestuursdepartement
- Directoraat-generaal Wonen, Wijken en Integratie
- Directoraat-generaal Ruimte
- Directoraat-generaal Milieubeheer
- Rijksgebouwendienst
- VROM Inspectie
- Ministerie van Volksgezondheid, Welzijn en Sport
  - Bestuursdepartement
  - Inspectie Gezondheidsbescherming, Waren en Veterinaire Zaken
  - Inspectie Gezondheidszorg
  - Inspectie Jeugdhulpverlening en Jeugdbescherming
  - Rijksinstituut voor de Volksgezondheid en Milieu (RIVM)
  - Sociaal en Cultureel Planbureau
  - Agentschap t.b.v. het College ter Beoordeling van Geneesmiddelen
- Tweede Kamer der Staten-Generaal
- Eerste Kamer der Staten-Generaal
- Raad van State
- Algemene Rekenkamer
- Nationale Ombudsman
- Kanselarij der Nederlandse Orden
- Kabinet der Koningin
- Raad voor de rechtspraak en de Rechtbanken

### **Austria**

- Bundeskanzleramt
- Bundesministerium für europäische und internationale Angelegenheiten
- Bundesministerium für Finanzen
- Bundesministerium für Gesundheit, Familie und Jugend



- Bundesministerium für Inneres
- Bundesministerium für Justiz
- Bundesministerium für Landesverteidigung
- Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft
- Bundesministerium für Soziales und Konsumentenschutz
- Bundesministerium für Unterricht, Kunst und Kultur
- Bundesministerium für Verkehr, Innovation und Technologie
- Bundesministerium für Wirtschaft und Arbeit
- Bundesministerium für Wissenschaft und Forschung
- Österreichische Forschungs- und Prüfzentrum Arsenal Gesellschaft m.b.H
- Bundesbeschaffung G.m.b.H
- Bundesrechenzentrum G.m.b.H

### **Poland**

- Kancelaria Prezydenta RP
- Kancelaria Sejmu RP
- Kancelaria Senatu RP
- Kancelaria Prezesa Rady Ministrów
- Sąd Najwyższy
- Naczelny Sąd Administracyjny
- Wojewódzkie sądy administracyjne
- Sądy powszechne — rejonowe, okręgowe i apelacyjne
- Trybunał Konstytucyjny
- Najwyższa Izba Kontroli
- Biuro Rzecznika Praw Obywatelskich
- Biuro Rzecznika Praw Dziecka
- Biuro Ochrony Rządu
- Biuro Bezpieczeństwa Narodowego

- Centralne Biuro Antykorupcyjne
- Ministerstwo Pracy i Polityki Społecznej
- Ministerstwo Finansów
- Ministerstwo Gospodarki
- Ministerstwo Rozwoju Regionalnego
- Ministerstwo Kultury i Dziedzictwa Narodowego
- Ministerstwo Edukacji Narodowej
- Ministerstwo Obrony Narodowej
- Ministerstwo Rolnictwa i Rozwoju Wsi
- Ministerstwo Skarbu Państwa
- Ministerstwo Sprawiedliwości
- Ministerstwo Infrastruktury
- Ministerstwo Nauki i Szkolnictwa Wyższego
- Ministerstwo Środowiska
- Ministerstwo Spraw Wewnętrznych i Administracji
- Ministerstwo Spraw Zagranicznych
- Ministerstwo Zdrowia
- Ministerstwo Sportu i Turystyki
- Urząd Komitetu Integracji Europejskiej
- Urząd Patentowy Rzeczypospolitej Polskiej
- Urząd Regulacji Energetyki
- Urząd do Spraw Kombatantów i Osób Represjonowanych
- Urząd Transportu Kolejowego
- Urząd Dozoru Technicznego
- Urząd Rejestracji Produktów Leczniczych, Wyrobów Medycznych i Produktów Biobójczych
- Urząd do Spraw Repatriacji i Cudzoziemców
- Urząd Zamówień Publicznych

- Urząd Ochrony Konkurencji i Konsumentów
- Urząd Lotnictwa Cywilnego
- Urząd Komunikacji Elektronicznej
- Wyższy Urząd Górniczy
- Główny Urząd Miar
- Główny Urząd Geodezji i Kartografii
- Główny Urząd Nadzoru Budowlanego
- Główny Urząd Statystyczny
- Krajowa Rada Radiofonii i Telewizji
- Generalny Inspektor Ochrony Danych Osobowych
- Państwowa Komisja Wyborcza
- Państwowa Inspekcja Pracy
- Rządowe Centrum Legislacji
- Narodowy Fundusz Zdrowia
- Polska Akademia Nauk
- Polskie Centrum Akredytacji
- Polskie Centrum Badań i Certyfikacji
- Polska Organizacja Turystyczna
- Polski Komitet Normalizacyjny
- Zakład Ubezpieczeń Społecznych
- Komisja Nadzoru Finansowego
- Naczelna Dyrekcja Archiwów Państwowych
- Kasa Rolniczego Ubezpieczenia Społecznego
- Generalna Dyrekcja Dróg Krajowych i Autostrad
- Państwowa Inspekcja Ochrony Roślin i Nasiennictwa
- Komenda Główna Państwowej Straży Pożarnej
- Komenda Główna Policji

- Komenda Główna Straży Granicznej
- Inspekcja Jakości Handlowej Artykułów Rolno-Spożywczych
- Główny Inspektorat Ochrony Środowiska
- Główny Inspektorat Transportu Drogowego
- Główny Inspektorat Farmaceutyczny
- Główny Inspektorat Sanitarny
- Główny Inspektorat Weterynarii
- Agencja Bezpieczeństwa Wewnętrznego
- Agencja Wywiadu
- Agencja Mienia Wojskowego
- Wojskowa Agencja Mieszkaniowa
- Agencja Restrukturyzacji i Modernizacji Rolnictwa
- Agencja Rynku Rolnego
- Agencja Nieruchomości Rolnych
- Państwowa Agencja Atomistyki
- Polska Agencja Żeglugi Powietrznej
- Polska Agencja Rozwiązywania Problemów Alkoholowych
- Agencja Rezerw Materiałowych
- Narodowy Bank Polski
- Narodowy Fundusz Ochrony Środowiska i Gospodarki Wodnej
- Państwowy Fundusz Rehabilitacji Osób Niepełnosprawnych
- Instytut Pamięci Narodowej — Komisja Ścigania Zbrodni Przeciwko Narodowi Polskiemu
- Rada Ochrony Pamięci Walk i Męczeństwa
- Służba Celną Rzeczypospolitej Polskiej
- Państwowe Gospodarstwo Leśne ‘Lasy Państwowe’
- Polska Agencja Rozwoju Przedsiębiorczości
- Urzędy wojewódzkie

- Samodzielne Publiczne Zakłady Opieki Zdrowotnej, jeśli ich organem założycielskim jest minister, centralny organ administracji rządowej lub wojewoda

### **Portugal**

- Presidência do Conselho de Ministros
- Ministério das Finanças e da Administração Pública
- Ministério da Defesa Nacional
- Ministério dos Negócios Estrangeiros
- Ministério da Administração Interna
- Ministério da Justiça
- Ministério da Economia e da Inovação
- Ministério da Agricultura, Desenvolvimento Rural e Pescas
- Ministério da Educação
- Ministério da Ciência, Tecnologia e do Ensino Superior
- Ministério da Cultura
- Ministério da Saúde
- Ministério do Trabalho e da Solidariedade Social
- Ministério das Obras Públicas, Transportes e Comunicações
- Ministério do Ambiente, do Ordenamento do Território e do Desenvolvimento Regional
- Presidência da República
- Tribunal Constitucional
- Tribunal de Contas
- Provedoria de Justiça

### **Romania**

- Administrația Prezidențială
- Senatul României
- Camera Deputaților
- Inalta Curte de Casație și Justiție
- Curtea Constituțională

- Consiliul Legislativ
- Curtea de Conturi
- Consiliul Superior al Magistraturii
- Parchetul de pe lângă Inalta Curte de Casație și Justiție
- Secretariatul General al Guvernului
- Cancelaria primului ministru
- Ministerul Afacerilor Externe
- Ministerul Economiei și Finanțelor
- Ministerul Justiției
- Ministerul Apărării
- Ministerul Internelor și Reformei Administrative
- Ministerul Muncii, Familiei și Egalității de Sanse
- Ministerul pentru Intreprinderi Mici și Mijlocii, Comerț, Turism și Profesii Liberale
- Ministerul Agriculturii și Dezvoltării Rurale
- Ministerul Transporturilor
- Ministerul Dezvoltării, Lucrărilor Publice și Locuinței
- Ministerul Educației Cercetării și Tineretului
- Ministerul Sănătății Publice
- Ministerul Culturii și Cultelor
- Ministerul Comunicațiilor și Tehnologiei Informației
- Ministerul Mediului și Dezvoltării Durabile
- Serviciul Român de Informații
- Serviciul de Informații Externe
- Serviciul de Protecție și Pază
- Serviciul de Telecomunicații Speciale
- Consiliul Național al Audiovizualului
- Consiliul Concurenței (CC)

- Direcția Națională Anticorupție
- Inspectoratul General de Poliție
- Autoritatea Națională pentru Reglementarea și Monitorizarea Achizițiilor Publice
- Consiliul Național de Soluționare a Contestațiilor
- Autoritatea Națională de Reglementare pentru Serviciile Comunitare de Utilități Publice(ANRSC)
- Autoritatea Națională Sanitară Veterinară și pentru Siguranța Alimentelor
- Autoritatea Națională pentru Protecția Consumatorilor
- Autoritatea Navală Română
- Autoritatea Feroviară Română
- Autoritatea Rutieră Română
- Autoritatea Națională pentru Protecția Drepturilor Copilului
- Autoritatea Națională pentru Persoanele cu Handicap
- Autoritatea Națională pentru Turism
- Autoritatea Națională pentru Restituirea Proprietăților
- Autoritatea Națională pentru Tineret
- Autoritatea Națională pentru Cercetare Științifică
- Autoritatea Națională pentru Reglementare în Comunicații și Tehnologia Informației
- Autoritatea Națională pentru Serviciile Societății Informaționale
- Autoritatea Electorală Permanente
- Agenția pentru Strategii Guvernamentale
- Agenția Națională a Medicamentului
- Agenția Națională pentru Sport
- Agenția Națională pentru Ocuparea Forței de Muncă
- Agenția Națională de Reglementare în Domeniul Energiei
- Agenția Română pentru Conservarea Energiei
- Agenția Națională pentru Resurse Minerale
- Agenția Română pentru Investiții Străine

- Agenția Națională pentru Intreprinderi Mici și Mijlocii și Cooperatie
- Agenția Națională a Funcționarilor Publici
- Agenția Națională de Administrare Fiscală
- Agenția de Compensare pentru Achiziții de Tehnică Specială
- Agenția Națională Anti-doping
- Agenția Nucleară
- Agenția Națională pentru Protecția Familiei
- Agenția Națională pentru Egalitatea de Sanse între Bărbați și Femei
- Agenția Națională pentru Protecția Mediului
- Agenția națională Antidrog

### **Slovenia**

- Predsednik Republike Slovenije
- Državni zbor Republike Slovenije
- Državni svet Republike Slovenije
- Varuh človekovih pravic
- Ustavno sodišče Republike Slovenije
- Računsko sodišče Republike Slovenije
- Državna revizijska komisija za revizijo postopkov oddaje javnih naročil
- Slovenska akademija znanosti in umetnosti
- Vladne službe
- Ministrstvo za finance
- Ministrstvo za notranje zadeve
- Ministrstvo za zunanje zadeve
- Ministrstvo za obrambo
- Ministrstvo za pravosodje
- Ministrstvo za gospodarstvo
- Ministrstvo za kmetijstvo, gozdarstvo in prehrano



- Ministrstvo za promet
- Ministrstvo za okolje in, prostor
- Ministrstvo za delo, družino in socialne zadeve
- Ministrstvo za zdravje
- Ministrstvo za javno upravo
- Ministrstvo za šolstvo in šport
- Ministrstvo za visoko šolstvo, znanost in tehnologijo
- Ministrstvo za kulturo
- Vrhovno sodišče Republike Slovenije
- višja sodišča
- okrožna sodišča
- okrajna sodišča
- Vrhovno državno tožilstvo Republike Slovenije
- Okrožna državna tožilstva
- Državno pravobranilstvo
- Upravno sodišče Republike Slovenije
- Višje delovno in socialno sodišče
- delovna sodišča
- Davčna uprava Republike Slovenije
- Carinska uprava Republike Slovenije
- Urad Republike Slovenije za preprečevanje pranja denarja
- Urad Republike Slovenije za nadzor prirejanja iger na srečo
- Uprava Republike Slovenije za javna plačila
- Urad Republike Slovenije za nadzor proračuna
- Policija
- Inšpektorat Republike Slovenije za notranje zadeve
- General štab Slovenske vojske

- Uprava Republike Slovenije za zaščito in reševanje
- Inšpektorat Republike Slovenije za obrambo
- Inšpektorat Republike Slovenije za varstvo pred naravnimi in drugimi nesrečami
- Uprava Republike Slovenije za izvrševanje kazenskih sankcij
- Urad Republike Slovenije za varstvo konkurence
- Urad Republike Slovenije za varstvo potrošnikov
- Tržni inšpektorat Republike Slovenije
- Urad Republike Slovenije za intelektualno lastnino
- Inšpektorat Republike Slovenije za elektronske komunikacije, elektronsko podpisovanje in pošto
- Inšpektorat za energetiko in rudarstvo
- Agencija Republike Slovenije za kmetijske trge in razvoj podeželja
- Inšpektorat Republike Slovenije za kmetijstvo, gozdarstvo in hrano
- Fitosanitarna uprava Republike Slovenije
- Veterinarska uprava Republike Slovenije
- Uprava Republike Slovenije za pomorstvo
- Direkcija Republike Slovenije za caste
- Prometni inšpektorat Republike Slovenije
- Direkcija za vodenje investicij v javno železniško infrastrukturo
- Agencija Republike Slovenije za okolje
- Geodetska uprava Republike Slovenije
- Uprava Republike Slovenije za jedrsko varstvo
- Inšpektorat Republike Slovenije za okolje in prostor
- Inšpektorat Republike Slovenije za delo
- Zdravstveni inšpektorat
- Urad Republike Slovenije za kemikalije
- Uprava Republike Slovenije za varstvo pred sevanji
- Urad Republike Slovenije za meroslovje

- Urad za visoko šolstvo
- Urad Republike Slovenije za mladino
- Inšpektorat Republike Slovenije za šolstvo in šport
- Arhiv Republike Slovenije
- Inšpektorat Republike Slovenije za kulturo in medije
- Kabinet predsednika Vlade Republike Slovenije
- Generalni sekretariat Vlade Republike Slovenije
- Služba vlade za zakonodajo
- Služba vlade za evropske zadeve
- Služba vlade za lokalno samoupravo in regionalno politiko
- Urad vlade za komuniciranje
- Urad za enake možnosti
- Urad za verske skupnosti
- Urad za narodnosti
- Urad za makroekonomske analize in razvoj
- Statistični urad Republike Slovenije
- Slovenska obveščevalno-varnostna agencija
- Protokol Republike Slovenije
- Urad za varovanje tajnih podatkov
- Urad za Slovence v zamejstvu in po svetu
- Služba Vlade Republike Slovenije za razvoj
- Informacijski pooblaščenec
- Državna volilna komisija

### **Slovakia**

Ministries and other central government authorities referred to as in Act No. 575/2001 Coll. on the structure of activities of the Government and central state administration authorities in wording of later regulations:

- Kancelária Prezidenta Slovenskej republiky

- Národná rada Slovenskej republiky
- Ministerstvo hospodárstva Slovenskej republiky
- Ministerstvo financií Slovenskej republiky
- Ministerstvo dopravy, pôšt a telekomunikácií Slovenskej republiky
- Ministerstvo pôdohospodárstva Slovenskej republiky
- Ministerstvo výstavby a regionálneho rozvoja Slovenskej republiky
- Ministerstvo vnútra Slovenskej republiky
- Ministerstvo obrany Slovenskej republiky
- Ministerstvo spravodlivosti Slovenskej republiky
- Ministerstvo zahraničných vecí Slovenskej republiky
- Ministerstvo práce, sociálnych vecí a rodiny Slovenskej republiky
- Ministerstvo životného prostredia Slovenskej republiky
- Ministerstvo školstva Slovenskej republiky
- Ministerstvo kultúry Slovenskej republiky
- Ministerstvo zdravotníctva Slovenskej republiky
- Úrad vlády Slovenskej republiky
- Protimonopolný úrad Slovenskej republiky
- Štatistický úrad Slovenskej republiky
- Úrad geodézie, kartografie a katastra Slovenskej republiky
- Úrad jadrového dozoru Slovenskej republiky
- Úrad pre normalizáciu, metrológiu a skúšobníctvo Slovenskej republiky
- Úrad pre verejné obstarávanie
- Úrad priemyselného vlastníctva Slovenskej republiky
- Správa štátnych hmotných rezerv Slovenskej republiky
- Národný bezpečnostný úrad
- Ústavný súd Slovenskej republiky
- Najvyšší súd Slovenskej republiky

- Generálna prokuratúra Slovenskej republiky
- Najvyšší kontrolný úrad Slovenskej republiky
- Telekomunikačný úrad Slovenskej republiky
- Úrad priemyselného vlastníctva Slovenskej republiky
- Úrad pre finančný trh
- Úrad na ochranu osobných údajov
- Kancelária verejného ochranu prav

### **Finland**

- Oikeuskanslerinvirasto — Justitiekanslersämbetet
- Liikenne- Ja Viestintäministeriö — Kommunikationsministeriet
  - Ajoneuvohallintokeskus AKE — Fordonsförvaltningscentralen AKE
  - Ilmailuhallinto — Luftfartsförvaltningen
  - Ilmatieteen laitos — Meteorologiska institutet
  - Merenkulkulaitos — Sjöfartsverket
  - Merentutkimuslaitos — Havsforskningsinstitutet
  - Ratahallintokeskus RHK — Banförvaltningscentralen RHK
  - Rautatievirasto — Järnvägsverket
  - Tiehallinto — Vägförvaltningen
  - Viestintävirasto — Kommunikationsverket
- Maa- Ja Metsätalousministeriö — Jord- Och Skogsbruksministeriet
  - Elintarviketurvallisuusvirasto — Livsmedelssäkerhetsverket
  - Maanmittauslaitos — Lantmäteriverket
  - Maaseutuvirasto — Landsbygdsverket
- Oikeusministeriö — Justitieministeriet
  - Tietosuojavaltuutetun toimisto — Dataombudsmannens byrå
  - Tuomioistuimet — domstolar
  - Korkein oikeus — Högsta domstolen

- Korkein hallinto-oikeus — Högsta förvaltningsdomstolen
- Hovioikeudet — hovrätter
- Käräjäoikeudet — tingsrätter
- Hallinto-oikeudet –förvaltningsdomstolar
- Markkinaoikeus — Marknadsdomstolen
- Työtuomioistuin — Arbetsdomstolen
- Vakuutusosasto — Försäkringsdomstolen
- Kuluttajariitalautakunta — Konsumenttvistenämnden
- Vankeinhoitolaitos — Fångvårdsväsendet
- HEUNI — Yhdistyneiden Kansakuntien yhteydessä toimiva Euroopan kriminaalipolitiikan instituutti — HEUNI — Europeiska institutet för kriminalpolitik, verksamt i anslutning till Förenta Nationerna
- Konkurssiasiamiehen toimisto — Konkursombudsmannens byrå
- Kuluttajariitalautakunta — Konsumenttvistenämnden
- Oikeushallinnon palvelukeskus — Justitieförvaltningens servicecentral
- Oikeushallinnon tietotekniikkakeskus — Justitieförvaltningens datateknikcentral
- Oikeuspoliittinen tutkimuslaitos (Optula) — Rättspolitiska forskningsinstitutet
- Oikeusrekisterikeskus — Rättsregistercentralen
- Onnettomuustutkintakeskus — Centralen för undersökning av olyckor
- Rikosseuraamusvirasto — Brottspåföljdsverket
- Rikosseuraamusalan koulutuskeskus — Brottspåföljdsområdets utbildningscentral
- Rikoksentorjuntaneuvosto Rådet för brottsförebyggande
- Saamelaiskäräjät — Sametinget
- Valtakunnansyyttäjänvirasto — Riksåklagarämbetet
- Vankeinhoitolaitos — Fångvårdsväsendet
- Opetusministeriö — Undervisningsministeriet
  - Opetushallitus — Utbildningsstyrelsen
  - Valtion elokuvatarkastamo — Statens filmgranskningsbyrå

- Puolustusministeriö — Försvarsministeriet
  - Puolustusvoimat — Försvarsmakten
- Sisäasiainministeriö — Inrikesministeriet
  - Väestörekisterikeskus — Befolkningsregistercentralen
  - Keskusrikospoliisi — Centralkriminalpolisen
  - Liikkuva poliisi — Rörliga polisen
  - Rajavartiolaitos — Gränsbevakningsväsendet
  - Lääninhallitukset — Länstyrelserna
  - Suojelupoliisi — Skyddspolisen
  - Poliisiammattikorkeakoulu — Polisyreshögskolan
  - Poliisin tekniikkakeskus — Polisens teknikcentral
  - Poliisin tietohallintokeskus — Polisens datacentral
  - Helsingin kihlakunnan poliisilaitos — Polisrättningen i Helsingfors
  - Pelastusopisto — Räddningsverket
  - Hätäkeskuslaitos — Nödcentralverket
  - Maahanmuuttovirasto — Migrationsverket
  - Sisäasiainhallinnon palvelukeskus — Inrikesförvaltningens servicecentral
  - Sosiaali- Ja Terveysministeriö — Social- Och Hälsovårdsministeriet
  - Työttömyysturvan muutoksenhakulautakunta — Besvärnämnden för utkomstskyddsärenden
  - Sosiaaliturvan muutoksenhakulautakunta — Besvärnämnden för socialtrygghet
  - Lääkelaitos — Läkemedelsverket
  - Terveysturvakeskus — Rättsskyddscentralen för hälsovården
  - Säteilyturvakeskus — Strålsäkerhetscentralen
  - Kansanterveyslaitos — Folkhälsoinstitutet
  - Lääkehoidon kehittämiskeskus ROHTO — Utvecklingscentralen för läkemedelsbe-handling

- Sosiaali- ja terveydenhuollon tuotevalvontakeskus — Social- och hälsovårdens produktill-synscentral
- Sosiaali- ja terveystieteiden tutkimus- ja kehittämiskeskus Stakes — Forsknings- och utvecklingscentralen för social- och hälsovården Stakes
- Vakuutusvalvontavirasto — Försäkringsinspektionen
- Työ- ja Elinkeinoministeriö — Arbets- Och Näringsministeriet
- Kuluttajavirasto — Konsumentverket
- Kilpailuvirasto — Konkurrensverket
- Patentti- ja rekisterihallitus — Patent- och registerstyrelsen
- Valtakunnansovittelijain toimisto — Riksförlikningsmännens byrå
- Valtion turvapaikanhakijoiden vastaanottokeskukset– Statliga förläggningar för asylsökande
- Energi- ja maankäyttöministeriö – Energimarknadsverket
- Geologian tutkimuskeskus — Geologiska forskningscentralen
- Huoltovarmuuskeskus — Försörjningsberedskapscentralen
- Kuluttajatutkimuskeskus — Konsumentforskningscentralen
- Matkailun edistämiskeskus (MEK) — Centralen för turistfrämjande
- Mittatekniikan keskus (MIKES) — Mätteknikcentralen
- Tekes — teknologian ja innovaatioiden kehittämiskeskus –Tekes — utvecklingscentralen för teknologi och innovationer
- Turvatekniikan keskus (TUKES) — Säkerhetsteknikcentralen
- Valtion teknillinen tutkimuskeskus (VTT) — Statens tekniska forskningscentral
- Syrjintälautakunta — Nationella diskrimineringsnämnden
- Työneuvosto — Arbetsrådet
- Vähemmistövaltuutetun toimisto — Minoritetsombudsmännens byrå
- Ulkoasiainministeriö — Utrikesministeriet
- Valtioneuvoston Kanslia — Statsrådets Kansli
- Valtiovarainministeriö — Finansministeriet
  - Valtiokonttori — Statskontoret



- Verohallinto — Skatteförvaltningen
- Tullilaitos — Tullverket
- Tilastokeskus — Statistikcentralen
- Valtiontaloudellinen tutkimuskeskus — Statens ekonomiska forskningscentral
- Ympäristöministeriö — Miljöministeriet
  - Suomen ympäristökeskus — Finlands miljöcentral
  - Asumisen rahoitus- ja kehityskeskus — Finansierings- och utvecklingscentralen för boendet
- Valtiontalouden Tarkastusvirasto — Statens Revisionsverk

### **Sweden**

#### **A**

- Affärsverket svenska kraftnät
- Akademien för de fria konsterna
- Alkohol- och läkemedelssortiments-nämnden
- Allmänna pensionsfonden
- Allmänna reklamationsnämnden
- Ambassader
- Ansvarsnämnd, statens
- Arbetsdomstolen
- Arbetsförmedlingen
- Arbetsgivarverk, statens
- Arbetslivsinstitutet
- Arbetsmiljöverket
- Arkitekturmuseet
- Arrendenämnder
- Arvsfondsdelegationen
- Arvsfondsdelegationen

## B

- Banverket
- Barnombudsmannen
- Beredning för utvärdering av medicinsk metodik, statens
- Bergsstaten
- Biografbyrå, statens
- Biografiskt lexikon, svenskt
- Birgittaskolan
- Blekinge tekniska högskola
- Bokföringsnämnden
- Bolagsverket
- Bostadsnämnd, statens
- Bostadskreditnämnd, statens
- Boverket
- Brottsförebyggande rådet
- Brottsoffermyndigheten

## C

- Centrala studiestödsnämnden

## D

- Danshögskolan
- Datainspektionen
- Departementen
- Domstolsverket
- Dramatiska institutet

## E

- Ekeskolan
- Ekobrottsmyndigheten

- Ekonomistyrningsverket
- Ekonomiska rådet
- Elsäkerhetsverket
- Energimarknadsinspektionen
- Energimyndighet, statens
- EU/FoU-rådet
- Exportkreditnämnden
- Exportråd, Sveriges

## F

- Fastighetsmäklarnämnden
- Fastighetsverk, statens
- Fideikommissnämnden
- Finansinspektionen
- Finanspolitiska rådet
- Finsk-svenska gränsälvskommissionen
- Fiskeriverket
- Flygmedicincentrum
- Folkhälsoinstitut, statens
- Fonden för fukt- och mögelskador
- Forskningsrådet för miljö, areella näringar och samhällsbyggande, Formas
- Folke Bernadotte Akademin
- Forskarskattenämnden
- Forskningsrådet för arbetsliv och socialvetenskap
- Fortifikationsverket
- Forum för levande historia
- Försvarets materielverk
- Försvarets radioanstalt

- Försvarets underrättelsenämnd
- Försvarshistoriska museer, statens
- Försvarshögskolan
- Försvarsmakten
- Försäkringskassan

## G

- Gentekniknämnden
- Geologiska undersökning
- Geotekniska institut, statens
- Giftinformationscentralen
- Glesbygdsverket
- Grafiska institutet och institutet för högre kommunikation- och reklamutbildning
- Granskningsnämnden för radio och TV
- Granskningsnämnden för försvarsuppfinningar
- Gymnastik- och Idrottshögskolan
- Göteborgs universitet

## H

- Handelsflottans kultur- och fritidsråd
- Handelsflottans pensionsanstalt
- Handelssekreterare
- Handelskamrar, auktoriserade
- Handikappombudsmannen
- Handikappråd, statens
- Harpsundsnämnden
- Haverikommission, statens
- Historiska museer, statens
- Hjälpmedelsinstitutet

- Hovrätterna
- Hyresnämnder
- Häktena
- Hälso- och sjukvårdens ansvarsnämnd
- Högskolan Dalarna
- Högskolan i Borås
- Högskolan i Gävle
- Högskolan i Halmstad
- Högskolan i Kalmar
- Högskolan i Karlskrona/Ronneby
- Högskolan i Kristianstad
- Högskolan i Skövde
- Högskolan i Trollhättan/Uddevalla
- Högskolan på Gotland
- Högskolans avskiljandenämnd
- Högskoleverket
- Högsta domstolen

## I

- ILO kommittén
- Inspektionen för arbetslöshetsförsäkringen
- Inspektionen för strategiska produkter
- Institut för kommunikationsanalys, statens
- Institut för psykosocial medicin, statens
- Institut för särskilt utbildningsstöd, statens
- Institutet för arbetsmarknadspolitisk utvärdering
- Institutet för rymdfysik
- Institutet för tillväxtpolitiska studier

- Institutionsstyrelse, statens
- Insättningsgarantinämnden
- Integrationsverket
- Internationella programkontoret för utbildningsområdet

## J

- Jordbruksverk, statens
- Justitiekanslern
- Jämställdhetsombudsmannen
- Jämställdhetsnämnden
- Järnvägar, statens
- Järnvägsstyrelsen

## K

- Kammarkollegiet
- Kammarrätterna
- Karlstads universitet
- Karolinska Institutet
- Kemikalieinspektionen
- Kommerskollegium
- Konjunkturinstitutet
- Konkurrensverket
- Konstfack
- Konsthögskolan
- Konstnärsnämnden
- Konstråd, statens
- Konsulat
- Konsumentverket
- Krigsvetenskapsakademin

- Krigsförsäkringsnämnden
- Kriminaltekniska laboratorium, statens
- Kriminalvården
- Krisberedskapsmyndigheten
- Kristinaskolan
- Kronofogdemyndigheten
- Kulturråd, statens
- Kungl. Biblioteket
- Kungl. Konsthögskolan
- Kungl. Musikhögskolan i Stockholm
- Kungl. Tekniska högskolan
- Kungl. Vitterhets-, historie- och antikvitetsakademien
- Kungl Vetenskapsakademin
- Kustbevakningen
- Kvalitets- och kompetensråd, statens
- Kärnavfallsfondens styrelse

## L

- Lagrådet
- Lantbruksuniversitet, Sveriges
- Lantmäteriverket
- Linköpings universitet
- Livrustkammaren, Skoklosters slott och Hallwylska museet
- Livsmedelsverk, statens
- Livsmedelsekonomiska institutet
- Ljud- och bildarkiv, statens
- Lokala säkerhetsnämnderna vid kärnkraftverk
- Lotteriinspektionen

- Luftfartsverket
- Luftfartsstyrelsen
- Luleå tekniska universitet
- Lunds universitet
- Läkemedelsverket
- Läkemedelsförmånsnämnden
- Länsrätterna
- Länsstyrelserna
- Lärarhögskolan i Stockholm

## M

- Malmö högskola
- Manillaskolan
- Maritima muséer, statens
- Marknadsdomstolen
- Medlingsinstitutet
- Meteorologiska och hydrologiska institut, Sveriges
- Migrationsverket
- Militärhögskolor
- Mittuniversitetet
- Moderna museet
- Museer för världskultur, statens
- Musikaliska Akademien
- Musiksamlingar, statens
- Myndigheten för handikappolitisk samordning
- Myndigheten för internationella adoptionsfrågor
- Myndigheten för skolutveckling
- Myndigheten för kvalificerad yrkesutbildning



- Myndigheten för nätverk och samarbete inom högre utbildning
- Myndigheten för Sveriges nätuniversitet
- Myndigheten för utländska investeringar i Sverige
- Mälardalens högskola

## N

- Nationalmuseum
- Nationellt centrum för flexibelt lärande
- Naturhistoriska riksmuseet
- Naturvårdsverket
- Nordiska Afrikainstitutet
- Notarienämnden
- Nämnd för arbetstagares uppfinningar, statens
- Nämnden för statligt stöd till trossamfund
- Nämnden för styrelserepresentationsfrågor
- Nämnden mot diskriminering
- Nämnden för elektronisk förvaltning
- Nämnden för RH anpassad utbildning
- Nämnden för hemslöjdsfrågor

## O

- Oljekrisnämnden
- Ombudsmannen mot diskriminering på grund av sexuell läggning
- Ombudsmannen mot etnisk diskriminering
- Operahögskolan i Stockholm

## P

- Patent- och registreringsverket
- Patentbesvärsrätten
- Pensionsverk, statens

- Personregisternämnd statens, SPAR-nämnden
- Pliktverk, Totalförsvarets
- Polarforskningssekretariatet
- Post- och telestyrelsen
- Premiepensionsmyndigheten
- Presstödsnämnden

## R

- Radio- och TV-verket
- Rederinämnden
- Regeringskansliet
- Regeringsrätten
- Resegarantinämnden
- Registernämnden
- Revisorsnämnden
- Riksantikvarieämbetet
- Riksarkivet
- Riksbanken
- Riksdagsförvaltningen
- Riksdagens ombudsmän
- Riksdagens revisorer
- Riksgäldskontoret
- Rikshemvärnsrådet
- Rikspolisstyrelsen
- Riksrevisionen
- Rikstrafiken
- Riksutställningar, Stiftelsen
- Riksvärderingsnämnden

- Rymdstyrelsen
- Rådet för Europeiska socialfonden i Sverige
- Räddningsverk, statens
- Rättshjälpsmyndigheten
- Rättshjälpsnämnden
- Rättsmedicinalverket

## S

- Samarbetsnämnden för statsbidrag till trossamfund
- Sameskolstyrelsen och sameskolor
- Sametinget
- SIS, Standardiseringen i Sverige
- Sjöfartsverket
- Skatterättsnämnden
- Skatteverket
- Skaderegleringsnämnd, statens
- Skiljenämnden i vissa trygghetsfrågor
- Skogsstyrelsen
- Skogsvårdsstyrelserna
- Skogs och lantbruksakademien
- Skolverk, statens
- Skolväsendets överklagandenämnd
- Smittskyddsinstitutet
- Socialstyrelsen
- Specialpedagogiska institutet
- Specialskolemyndigheten
- Språk- och folkminnesinstitutet
- Sprängämnesinspektionen

- Statistiska centralbyrån
  - Statskontoret
  - Stockholms universitet
  - Stockholms internationella miljöinstitut
  - Strålsäkerhetsmyndigheten
  - Styrelsen för ackreditering och teknisk kontroll
  - Styrelsen för internationellt utvecklingssamarbete, SIDA
  - Styrelsen för Samefonden
  - Styrelsen för psykologiskt försvar
  - Stängselnämnden
  - Svenska institutet
  - Svenska institutet för europapolitiska studier
  - Svenska ESF rådet
  - Svenska Unescorådet
  - Svenska FAO kommittén
  - Svenska Språknämnden
  - Svenska Skeppshypotekskassan
  - Svenska institutet i Alexandria
  - Sveriges författarfond
  - Säkerhetspolisen
  - Säkerhets- och integritetsskyddsnämnden
  - Södertörns högskola
- T
- Taltidningsnämnden
  - Talboks- och punktskriftsbiblioteket
  - Teaterhögskolan i Stockholm
  - Tingsrätterna

- Tjänstepensions och grupplivnämnd, statens
- Tjänsteförslagsnämnden för domstolsväsendet
- Totalförsvarets forskningsinstitut
- Totalförsvarets pliktverk
- Tullverket
- Turistdelegationen

## U

- Umeå universitet
- Ungdomsstyrelsen
- Uppsala universitet
- Utlandslönenämnd, statens
- Utlänningsnämnden
- Utrikesförvaltningens antagningsnämnd
- Utrikesnämnden
- Utsädeskontroll, statens

## V

- Valideringsdelegationen
- Valmyndigheten
- Vatten- och avloppsnämnd, statens
- Vattenöverdomstolen
- Verket för förvaltningsutveckling
- Verket för högskoleservice
- Verket för innovationssystem (VINNOVA)
- Verket för näringslivsutveckling (NUTEK)
- Vetenskapsrådet
- Veterinärmedicinska anstalt, statens
- Veterinära ansvarsnämnden

- Väg- och transportforskningsinstitut, statens
- Vägverket
- Vänerskolan
- Växjö universitet
- Växsortsnämnd, statens

## Å

- Åklagarmyndigheten
- Åsbackaskolan

## Ö

- Örebro universitet
- Örlogsmannasällskapet
- Östervångsskolan
- Överbefälhavaren
- Överklagandenämnden för högskolan
- Överklagandenämnden för nämndemanna-uppdrag
- Överklagandenämnden för studiestöd
- Överklagandenämnden för totalförsvaret

## **United Kingdom**

- Cabinet Office
  - Office of the Parliamentary Counsel
- Central Office of Information
- Charity Commission
- Crown Estate Commissioners (Vote Expenditure Only)
- Crown Prosecution Service
- Department for Business, Enterprise and Regulatory Reform
  - Competition Commission
  - Gas and Electricity Consumers' Council

- Office of Manpower Economics
- Department for Children, Schools and Families
- Department of Communities and Local Government
  - Rent Assessment Panels
- Department for Culture, Media and Sport
  - British Library
  - British Museum
  - Commission for Architecture and the Built Environment
  - The Gambling Commission
  - Historic Buildings and Monuments Commission for England (English Heritage)
  - Imperial War Museum
  - Museums, Libraries and Archives Council
  - National Gallery
  - National Maritime Museum
  - National Portrait Gallery
  - Natural History Museum
  - Science Museum
  - Tate Gallery
  - Victoria and Albert Museum
  - Wallace Collection
- Department for Environment, Food and Rural Affairs
  - Agricultural Dwelling House Advisory Committees
  - Agricultural Land Tribunals
  - Agricultural Wages Board and Committees
  - Cattle Breeding Centre
  - Countryside Agency
  - Plant Variety Rights Office

- Royal Botanic Gardens, Kew
- Royal Commission on Environmental Pollution
- Department of Health
  - Dental Practice Board
  - National Health Service Strategic Health Authorities
  - NHS Trusts
  - Prescription Pricing Authority
- Department for Innovation, Universities and Skills
  - Higher Education Funding Council for England
  - National Weights and Measures Laboratory
  - Patent Office
- Department for International Development
- Department of the Procurator General and Treasury Solicitor
  - Legal Secretariat to the Law Officers
- Department for Transport
  - Maritime and Coastguard Agency
- Department for Work and Pensions
  - Disability Living Allowance Advisory Board
  - Independent Tribunal Service
  - Medical Boards and Examining Medical Officers (War Pensions)
  - Occupational Pensions Regulatory Authority
  - Regional Medical Service
  - Social Security Advisory Committee
- Export Credits Guarantee Department
- Foreign and Commonwealth Office
  - Wilton Park Conference Centre
- Government Actuary's Department



- Government Communications Headquarters
- Home Office
  - HM Inspectorate of Constabulary
- House of Commons
- House of Lords
- Ministry of Defence
  - Defence Equipment & Support
  - Meteorological Office
- Ministry of Justice
  - Boundary Commission for England
  - Combined Tax Tribunal
  - Council on Tribunals
  - Court of Appeal — Criminal
  - Employment Appeals Tribunal
  - Employment Tribunals
  - HMCS Regions, Crown, County and Combined Courts (England and Wales)
  - Immigration Appellate Authorities
  - Immigration Adjudicators
  - Immigration Appeals Tribunal
  - Lands Tribunal
  - Law Commission
  - Legal Aid Fund (England and Wales)
  - Office of the Social Security Commissioners
  - Parole Board and Local Review Committees
  - Pensions Appeal Tribunals
  - Public Trust Office
  - Supreme Court Group (England and Wales)

- Transport Tribunal
- The National Archives
- National Audit Office
- National Savings and Investments
- National School of Government
- Northern Ireland Assembly Commission
- Northern Ireland Court Service
  - Coroners Courts
  - County Courts
  - Court of Appeal and High Court of Justice in Northern Ireland
  - Crown Court
  - Enforcement of Judgements Office
  - Legal Aid Fund
  - Magistrates’ Courts
  - Pensions Appeals Tribunals
- Northern Ireland, Department for Employment and Learning
- Northern Ireland, Department for Regional Development
- Northern Ireland, Department for Social Development
- Northern Ireland, Department of Agriculture and Rural Development
- Northern Ireland, Department of Culture, Arts and Leisure
- Northern Ireland, Department of Education
- Northern Ireland, Department of Enterprise, Trade and Investment
- Northern Ireland, Department of the Environment
- Northern Ireland, Department of Finance and Personnel
- Northern Ireland, Department of Health, Social Services and Public Safety
- Northern Ireland, Office of the First Minister and Deputy First Minister
- Northern Ireland Office

- Crown Solicitor’s Office
- Department of the Director of Public Prosecutions for Northern Ireland
- Forensic Science Laboratory of Northern Ireland
- Office of the Chief Electoral Officer for Northern Ireland
- Police Service of Northern Ireland
- Probation Board for Northern Ireland
- State Pathologist Service
- Office of Fair Trading
- Office for National Statistics
  - National Health Service Central Register
- Office of the Parliamentary Commissioner for Administration and Health Service Commissioners
- Paymaster General’s Office
- Postal Business of the Post Office
- Privy Council Office
- Public Record Office
- HM Revenue and Customs
  - The Revenue and Customs Prosecutions Office
- Royal Hospital, Chelsea
- Royal Mint
- Rural Payments Agency
- Scotland, Auditor-General
- Scotland, Crown Office and Procurator Fiscal Service
- Scotland, General Register Office
- Scotland, Queen’s and Lord Treasurer’s Remembrancer
- Scotland, Registers of Scotland
- The Scotland Office
- The Scottish Ministers

- Architecture and Design Scotland
- Crofters Commission
- Deer Commission for Scotland
- Lands Tribunal for Scotland
- National Galleries of Scotland
- National Library of Scotland
- National Museums of Scotland
- Royal Botanic Garden, Edinburgh
- Royal Commission on the Ancient and Historical Monuments of Scotland
- Scottish Further and Higher Education Funding Council
- Scottish Law Commission
- Community Health Partnerships
- Special Health Boards
- Health Boards
- The Office of the Accountant of Court
- High Court of Justiciary
- Court of Session
- HM Inspectorate of Constabulary
- Parole Board for Scotland
- Pensions Appeal Tribunals
- Scottish Land Court
- Sheriff Courts
- Scottish Police Services Authority
- Office of the Social Security Commissioners
- The Private Rented Housing Panel and Private Rented Housing Committees
- Keeper of the Records of Scotland
- The Scottish Parliamentary Body Corporate

- HM Treasury
  - Office of Government Commerce
  - United Kingdom Debt Management Office
- The Wales Office (Office of the Secretary of State for Wales)
- The Welsh Ministers
  - Higher Education Funding Council for Wales
  - Local Government Boundary Commission for Wales
  - The Royal Commission on the Ancient and Historical Monuments of Wales
  - Valuation Tribunals (Wales)
  - Welsh National Health Service Trusts and Local Health Boards
  - Welsh Rent Assessment Panels

**ANNEX II**  
**LIST OF THE ACTIVITIES REFERRED TO IN ARTICLE 2(8)(a)**

In the event of any difference of interpretation between the CPV and the NACE, the CPV nomenclature will apply.

NACE Rev. 1 <sup>(1)</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
45			Construction	This division includes: — construction of new buildings and works, restoring and common repairs.	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	This class includes: — demolition of buildings and other structures, — clearing of building sites, — earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc. — site preparation for mining: — overburden removal and other development and preparation of mineral properties and sites.  This class also includes: — building site drainage. — drainage of agricultural or forestry land.	45110000
		45.12	Test drilling and boring	This class includes: — test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes.	45120000

				<p>This class excludes:</p> <ul style="list-style-type: none"> <li>— drilling of production oil or gas wells, see 11.20.</li> <li>— water well drilling, see 45.25,</li> <li>— shaft sinking, see 45.25,</li> <li>— oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20.</li> </ul>	
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000
		45.21	General construction of buildings and civil engineering works	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— construction of all types of buildings construction of civil engineering constructions,</li> <li>— bridges, including those for elevated highways, viaducts, tunnels and subways,</li> <li>— long-distance pipelines, communication and power lines,</li> <li>— urban pipelines, urban communication and power lines,</li> <li>— ancillary urban works,</li> <li>— assembly and erection of prefabricated constructions on the site.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— service activities incidental to oil and gas extraction, see 11.20,</li> <li>— erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28,</li> <li>— construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports</li> </ul>	<p>45210000</p> <p>Except:</p> <ul style="list-style-type: none"> <li>- 45213316</li> <li>45220000</li> <li>45231000</li> <li>45232000</li> </ul>

				installations, see 45.23, — building installation, see 45.3, — building completion, see 45.4, — architectural and engineering activities, see 74.20, — project management for construction, see 74.20.	
		45.22	Erection of roof covering and frames	This class includes: — erection of roofs, — roof covering, — waterproofing.	45261000
		45.23	Construction of highways, roads, airfields and sport facilities	This class includes: — construction of highways, streets, roads, other vehicular and pedestrian ways, — construction of railways, — construction of airfield runways, — construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, — painting of markings on road surfaces and car parks.  This class excludes: — preliminary earth moving, see 45.11.	45212212 and DA03 45230000 except: - 45231000 - 45232000 - 45234115
		45.24	Construction of water projects	This class includes — construction of: — waterways, harbour and river works, pleasure ports (marinas), locks, etc., — dams and dykes, — dredging,	45240000



				— subsurface work.	
		45.25	Other construction work involving special trades	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment,</li> <li>— construction of foundations, including pile driving,</li> <li>— water well drilling and construction, shaft sinking,</li> <li>— erection of non-self-manufactured steel elements,</li> <li>— steel bending,</li> <li>— bricklaying and stone setting,</li> <li>— scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms,</li> <li>— erection of chimneys and industrial ovens.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— renting of scaffolds without erection and dismantling, see 71.32</li> </ul>	45250000 45262000
	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	<p>This class includes:</p> <p>installation in buildings or other construction projects of:</p> <ul style="list-style-type: none"> <li>— electrical wiring and fittings,</li> <li>— telecommunications systems,</li> <li>— electrical heating systems,</li> <li>— residential antennas and aerials,</li> <li>— fire alarms,</li> </ul>	45213316 45310000 Except: - 45316000

				<ul style="list-style-type: none"> <li>— burglar alarm systems,</li> <li>— lifts and escalators,</li> <li>— lightning conductors, etc.</li> </ul>	
		45.32	Insulation work activities	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation in buildings or other construction projects of thermal, sound or vibration insulation.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— waterproofing, see 45.22.</li> </ul>	45320000
		45.33	Plumbing	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation in buildings or other construction projects of:</li> <li>— plumbing and sanitary equipment,</li> <li>— gas fittings,</li> <li>— heating, ventilation, refrigeration or air-conditioning equipment and ducts,</li> <li>— sprinkler systems.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— installation of electrical heating systems, see 45.31.</li> </ul>	45330000
		45.34	Other building installation	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation of illumination and signalling systems for roads, railways, airports and harbours,</li> <li>— installation in buildings or other construction projects of fittings and fixtures n.e.c.</li> </ul>	45234115 45316000 45340000
	45.4		Building completion		45400000
		45.41	Plastering	<p>This class includes:</p>	45410000

				— application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials.	
		45.42	Joinery installation	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials,</li> <li>— interior completion such as ceilings, wooden wall coverings, movable partitions, etc.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— laying of parquet and other wood floor coverings, see 45.43.</li> </ul>	45420000
		45.43	Floor and wall covering	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— laying, tiling, hanging or fitting in buildings or other construction projects of:</li> <li>—</li> <li>— ceramic, concrete or cut stone wall or floor tiles,</li> <li>— parquet and other wood floor coverings carpets and linoleum floor coverings,</li> <li>— including of rubber or plastic,</li> <li>— terrazzo, marble, granite or slate floor or wall coverings,</li> <li>— wallpaper.</li> </ul>	45430000
		45.44	Painting and glazing	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— interior and exterior painting of buildings,</li> <li>— painting of civil engineering structures,</li> <li>— installation of glass, mirrors, etc.</li> </ul> <p>This class excludes:</p>	45440000

				— installation of windows, see 45.42,	
		45.45	Other building completion	<p>This class includes:</p> <p>— installation of private swimming pools,</p> <p>— steam cleaning, sand blasting and similar activities for building exteriors,</p> <p>— other building completion and finishing work n.e.c.</p> <p>This class excludes:</p> <p>— interior cleaning of buildings and other structures, see 74.70.</p>	45212212 and DA04 45450000
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50	Renting of construction or demolition equipment with operator	<p>This class excludes:</p> <p>— renting of construction or demolition machinery and equipment without operators, see 71.32.</p>	45500000
<p>(1) Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1), regulation as amended by Commission Regulation (EEC) No 761/93 (OJ L 83, 3.4.1993, p. 1).</p>					

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

The only text applicable for the purposes of this Directive is that in Annex 1 point 3 of the Government Procurement Agreement on which the following indicative list of products is based:

Chapter 25:	Salt, sulphur, earths and stone, plastering materials, lime and cement
Chapter 26:	Metallic ores, slag and ash
Chapter 27:	Mineral fuels, mineral oils and products of their distillation, bituminous substances, mineral waxes  except:  ex 27.10: special engine fuels
Chapter 28:	emicals, organic and inorganic compounds of precious metals, of rare-earth metals, of elements and of isotopes  except:  ex 28.09: explosives  ex 28.13: explosives  ex 28.14: tear gas  ex 28.28: explosives  ex 28.32: explosives  ex 28.39: explosives  ex 28.50: toxic products  ex 28.51: toxic products  ex 28.54: explosives
Chapter 29:	Organic chemicals  except:  ex 29.03: explosives

	<p>ex 29.04: explosives</p> <p>ex 29.07: explosives</p> <p>ex 29.08: explosives</p> <p>ex 29.11: explosives</p> <p>ex 29.12: explosives</p> <p>ex 29.13: toxic products</p> <p>ex 29.14: toxic products</p> <p>ex 29.15: toxic products</p> <p>ex 29.21: toxic products</p> <p>ex 29.22: toxic products</p> <p>ex 29.23: toxic products</p> <p>ex 29.26: explosives</p> <p>ex 29.27: toxic products</p> <p>ex 29.29: explosives</p>
Chapter 30:	Pharmaceutical products
Chapter 31:	Fertilisers
Chapter 32:	Tanning and dyeing extracts, tannings and their derivatives, dyes, colours, paints and varnishes, putty, fillers and stoppings, inks
Chapter 33:	Essential oils and resinoids, perfumery, cosmetic or toilet preparations
Chapter 34:	Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing and scouring preparations, candles and similar articles, modelling pastes and 'dental waxes'
Chapter 35:	Albuminoidal substances, glues, enzymes
Chapter 37:	Photographic and cinematographic goods

Chapter 38:	Miscellaneous chemical products, except: ex 38.19: toxic products
Chapter 39:	Artificial resins and plastic materials, celluloses esters and ethers, articles thereof, except: ex 39.03: explosives
Chapter 40:	Rubber, synthetic rubber, factice, and articles thereof, except: ex 40.11: bullet-proof tyres
Chapter 41:	Raw hides and skins (other than fur skins) and leather
Chapter 42:	Articles of leather, saddlery and harness, travel goods, handbags and similar containers, articles of animal gut (other than silk-worm gut)
Chapter 43:	Fur skins and artificial fur, manufactures thereof
Chapter 44:	Wood and articles of wood, wood charcoal
Chapter 45:	Cork and articles of cork
Chapter 46:	Manufactures of straw of esparto and of other plaiting materials, basketware and wickerwork
Chapter 47:	Paper-making material
Chapter 48:	Paper and paperboard, articles of paper pulp, of paper or of paperboard
Chapter 49:	Printed books, newspapers, pictures and other products of the printing industry, manuscripts, typescripts and plans
Chapter 65:	Headgear and parts thereof

Chapter 66:	Umbrellas, sunshades, walking-sticks, whips, riding-crops and parts thereof
Chapter 67:	Prepared feathers and down and articles made of feathers or of down, artificial flowers, articles of human hair
Chapter 68:	Articles of stone, of plaster, of cement, of asbestos, of mica and of similar materials
Chapter 69:	Ceramic products
Chapter 70:	Glass and glassware
Chapter 71:	Pearls, precious and semi-precious stones, precious metals, rolled precious metals, and articles thereof; imitation jewellery
Chapter 73:	Iron and steel and articles thereof
Chapter 74:	Copper and articles thereof
Chapter 75:	Nickel and articles thereof
Chapter 76:	Aluminium and articles thereof
Chapter 77:	Magnesium and beryllium and articles thereof
Chapter 78:	Lead and articles thereof
Chapter 79:	Zinc and articles thereof
Chapter 80:	Tin and articles thereof
Chapter 81:	Other base metals employed in metallurgy and articles thereof
Chapter	Tools, implements, cutlery, spoons and forks, of base metal, parts thereof,



82:	<p>except:</p> <p>ex 82.05: tools</p> <p>ex 82.07: tools, parts</p>
Chapter 83:	Miscellaneous articles of base metal
Chapter 84:	<p>Boilers, machinery and mechanical appliances, parts thereof,</p> <p>except:</p> <p>ex 84.06: engines</p> <p>ex 84.08: other engines</p> <p>ex 84.45: machinery</p> <p>ex 84.53: automatic data-processing machines</p> <p>ex 84.55: parts of machines under heading No 84.53</p> <p>ex 84.59: nuclear reactors</p>
Chapter 85:	<p>Electrical machinery and equipment, parts thereof,</p> <p>except:</p> <p>ex 85.13: telecommunication equipment</p> <p>ex 85.15: transmission apparatus</p>
Chapter 86:	<p>Railway and tramway locomotives, rolling-stock and parts thereof, railway and tramway tracks fixtures and fittings, traffic signalling equipment of all kinds (not electrically powered),</p> <p>except:</p> <p>ex 86.02: armoured locomotives, electric</p> <p>ex 86.03: other armoured locomotives</p> <p>ex 86.05: armoured wagons</p> <p>ex 86.06: repair wagons</p> <p>ex 86.07: wagons</p>
Chapter	Vehicles, other than railway or tramway rolling-stock, and parts thereof,

87:	<p>except:</p> <p>ex 87.08: tanks and other armoured vehicles</p> <p>ex 87.01: tractors</p> <p>ex 87.02: military vehicles</p> <p>ex 87.03: breakdown lorries</p> <p>ex 87.09: motorcycles</p> <p>ex 87.14: trailers</p>
Chapter 89:	<p>Ships, boats and floating structures,</p> <p>except:</p> <p>ex 89.01A: warships</p>
Chapter 90:	<p>Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus, parts thereof,</p> <p>except:</p> <p>ex 90.05: binoculars</p> <p>ex 90.13: miscellaneous instruments, lasers</p> <p>ex 90.14: telemeters</p> <p>ex 90.28: electrical and electronic measuring instruments</p> <p>ex 90.11: microscopes</p> <p>ex 90.17: medical instruments</p> <p>ex 90.18: mechano-therapy appliances</p> <p>ex 90.19: orthopaedic appliances</p> <p>ex 90.20: X-ray apparatus</p>
Chapter 91:	<p>Manufacture of watches and clocks</p>
Chapter 92:	<p>Musical instruments, sound recorders or reproducers, television image and sound recorders or reproducers, parts and accessories of such articles</p>
Chapter	<p>Furniture and parts thereof, bedding, mattresses, mattress supports, cushions and similar</p>

94:	stuffed furnishings, except: ex 94.01A: aircraft seats
Chapter 95:	Articles and manufactures of carving or moulding material
Chapter 96:	Brooms, brushes, powder-puffs and sieves
Chapter 98:	Miscellaneous manufactured articles

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

Devices for the electronic receipt of tenders, requests for participation and plans and projects in contests must at least guarantee, through technical means and appropriate procedures, that:

- (a) the exact time and date of the receipt of tenders, requests to participate and the submission of plans and projects can be determined precisely;
- (b) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under these requirements;
- (c) where that access prohibition is infringed, it may be reasonably ensured that the infringement is clearly detectable;
- (d) only authorised persons may set or change the dates for opening data received;
- (e) during the different stages of the procurement procedure or of the contest access to all data submitted, or to part thereof, must be possible only through simultaneous action by authorised persons;
- (f) simultaneous action by authorised persons must give access to data transmitted only after the prescribed date;
- (g) data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith, and
- (h) authentication of tenders must conform to the requirements set out in this Annex.

**ANNEX V**  
**LIST OF INTERNATIONAL AGREEMENTS REFERRED TO IN ARTICLE 23**

Agreements with the following countries or groupings of countries:

- Albania (OJ L 107, 28.4.2009)
- Former Yugoslav Republic of Macedonia (OJ L 87, 20.03.2004)
- CARIFOUM (OJ L 289, 30.10.2008)
- Chile (OJ L352, 30.12.2002)
- Croatia (OJ L 26, 28.1.2005)
- Mexico (OJ L 276, 28.10.2000, L 157/30.6.2000)
- Montenegro (OJ L 345 of 28.12.2007)
- South Korea - (OJ L 127/14.5.2011)
- Switzerland (OJ L 300, 31/12/1972)

**ANNEX VI**  
**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**  
**(as referred to in Article 46(1))**

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
2. Type of contracting authority and main activity exercised.
3. Where appropriate, indication that the contracting authority is a centralised purchasing body; or that any other form of joint procurement is involved.
4. CPV Nomenclature reference No(s).
5. Internet address of the "buyer profile" (URL).
6. Date of dispatch of the notice of the publication of the prior information notice on the buyer profile.

**PART B**  
**INFORMATION TO BE INCLUDED IN PRIOR INFORMATION NOTICES**  
**(as referred to in Article 46)**

*I. INFORMATION TO BE INCLUDED IN ALL CASES*

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
2. Email or internet address at which the specifications and any supporting documents will be available for unrestricted and full direct access, free of charge.
3. Type of contracting authority and main activity exercised.
4. Where appropriate, indication that the contracting authority is a centralised purchasing body or that any other form of joint procurement is involved.
5. CPV Nomenclature reference No(s); where the contract is divided into lots, this information shall be provided for each lot.
6. NUTS code for the main location of works in case of works contracts or NUTS code for the main place of delivery or performance in supply and service contracts; where the contract is divided into lots, this information shall be provided for each lot.

7. Brief description of the procurement: nature and extent of works, nature and quantity or value of supplies, nature and extent of services.
8. Where this notice is not used as a means of calling for competition, estimated date(s) for publication of a contract notice or contract notices in respect of the contract(s) referred to in this prior information notice
9. Date of dispatch of the notice.
10. Any other relevant information.
11. Indication whether the contract is covered by the Agreement.

*II. ADDITIONAL INFORMATION TO BE SUPPLIED WHERE THE NOTICE IS USED AS A MEANS OF CALLING FOR COMPETITION (ARTICLE 46(2))*

1. A reference to the fact that interested economic operators shall advise the authority of their interest in the contract or contracts.
2. Type of award procedure (restricted or competitive procedures with negotiation, dynamic purchasing system, competitive dialogue or innovation partnership).
3. Where appropriate, indication whether:
  - (a) a framework agreement is involved,
  - (b) a dynamic purchasing system is involved.
4. As far as already known, time-frame for delivery or provision of goods, works or services and duration of the contract.
5. As far as already known, conditions for participation, including:
  - (a) where appropriate, indication whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,
  - (b) where appropriate, indication whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession,
  - (c) brief description of selection criteria.
6. As far as already known, brief description of criteria to be used for award of the contract: 'lowest cost' or 'most economically advantageous tender'.
7. As far as already known, estimated total value of contract(s); where the contract is divided into lots, this information shall be provided for each lot.
8. Time limits for receipt of expressions of interest.
9. Address where expressions of interest shall be transmitted.
10. Language or languages authorised for the presentation of candidatures or tenders.

11. Where appropriate, indication whether:
  - (a) E-submission of tenders or requests to participate will be required/accepted,
  - (b) E-ordering will be used,
  - (c) E-invoicing will be used,
  - (d) E-payment will be accepted.
12. Information whether the contract is related to a project and /or programme financed by European Union funds.
13. Name and address of the oversight body and the body responsible for review and, where appropriate, mediation procedures. Precise information concerning time limits for review procedures, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

**PART C**  
**INFORMATION TO BE INCLUDED IN CONTRACT NOTICES**  
**(as referred to in Article 47)**

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
2. Email or internet address at which the specifications and any supporting documents will be available for unrestricted and full direct access, free of charge.
3. Type of contracting authority and main activity exercised.
4. Where appropriate, indication that the contracting authority is a central purchasing body or that any other form of joint procurement is involved.
5. CPV Nomenclature reference No(s); where the contract is divided into lots, this information shall be provided for each lot.
6. NUTS code for the main location of works in case of works contracts or NUTS code for the main place of delivery or performance in supply and service contracts; where the contract is divided into lots, this information shall be provided for each lot.
7. Description of the procurement: nature and extent of works, nature and quantity or value of supplies, nature and extent of services. Where the contract is divided into lots, this information shall be provided for each lot. Where appropriate, description of any options.
8. Estimated total value of contract(s); where the contract is divided into lots, this information shall be provided for each lot.
9. Admission or prohibition of variants.



10. Time-frame for delivery or provision of supplies, works or services and, as far as possible, duration of the contract.
  - (a) In the case of a framework agreement, indication of the planned duration of the framework agreement, stating, where appropriate, the reasons for any duration exceeding four years; as far as possible, indication of value and frequency of contracts to be awarded, number and, where appropriate, proposed maximum number of economic operators to participate.
  - (b) In the case of a dynamic purchasing system, indication of the planned duration of the system; as far as possible, indication of value and frequency of contracts to be awarded.
11. Conditions for participation, including:
  - (a) where appropriate, indication whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,
  - (b) where appropriate, indication whether the provision of the service is reserved by law, regulation or administrative provision to a particular profession; reference to the relevant law, regulation or administrative provision,
  - (c) a list and brief description of criteria regarding the personal situation of economic operators that may lead to their exclusion and of selection criteria; minimum level(s) of standards possibly required; indication of required information (self-declarations, documentation).
12. Type of award procedure; where appropriate, reasons for use of an accelerated procedure (in open, restricted and competitive procedure with negotiation);
13. Where appropriate, indication whether:
  - (a) a framework agreement is involved,
  - (b) a dynamic purchasing system is involved,
  - (c) an electronic auction is involved (in the event of open, restricted or competitive procedures with negotiation).
14. Where the contract is to be subdivided into lots, indication of the possibility of tendering for one, for several or for all of the lots; indication of any possible limitation of the number of lots that may be awarded to any one tenderer. Where the contract is not subdivided into lots, indication of the reasons therefore.
15. In the case of a restricted procedure, a competitive procedure with negotiation, a competitive dialogue or an innovation partnership, where recourse is made to the option of reducing the number of candidates to be invited to submit tenders, to negotiate or to engage in dialogue: minimum and, where appropriate, proposed maximum number of candidates and objective criteria to be used to choose the candidates in question.

16. In the case of a competitive procedure with negotiation, a competitive dialogue or an innovation partnership, indication, where appropriate, of recourse to a staged procedure in order gradually to reduce the number of tenders to be negotiated or solutions to be discussed.
17. Where appropriate, particular conditions to which performance of the contract is subject.
18. Criteria to be used for award of the contract or contracts ‘lowest cost’ or ‘most economically advantageous tender’. Criteria representing the most economically advantageous tender as well as their weighting shall be indicated where they do not appear in the specifications or, in the event of a competitive dialogue, in the descriptive document.
19. Time limit for receipt of tenders (open procedures) or requests to participate (restricted procedures, competitive procedures with negotiation, dynamic purchasing systems, competitive dialogues, innovation partnerships).
20. Address where tenders or requests to participate shall be transmitted.
21. In the case of open procedures:
  - (a) time frame during which the tenderer must maintain its tender,
  - (b) date, time and place for the opening of tenders,
  - (c) persons authorised to be present at such opening.
22. Language or languages in which tenders or requests to participate must be drawn up.
23. Where appropriate, indication whether:
  - (a) E-submission of tenders or requests to participate will be accepted,
  - (b) E-ordering will be used,
  - (c) E-invoicing will be accepted,
  - (d) E-payment will be used.
24. Information whether the contract is related to a project and/or programme financed by European Union funds.
25. Name and address of the oversight body and the body responsible for review and, where appropriate, mediation procedures. Precise information concerning deadlines for review procedures, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.
26. Date(s) and reference(s) of previous publications in the *Official Journal of the European Union* relevant to the contract(s) advertised in this notice.

27. In the case of recurrent procurement, estimated timing for further notices to be published.
28. Date of dispatch of the notice.
29. Indication whether the contract is covered by the Agreement.
30. Any other relevant information.

**PART D**  
**INFORMATION TO BE INCLUDED IN CONTRACT AWARD NOTICES**  
**(as referred to in Article 48)**

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
2. Type of contracting authority and main activity exercised.
3. Where appropriate, indication whether the contracting authority is a central purchasing body or that any other form of joint procurement is involved.
4. CPV Nomenclature reference No(s).
5. NUTS code for the main location of works in case of works contracts or NUTS code for the main place of delivery or performance in supply and service contracts.
6. Description of the procurement: nature and extent of works, nature and quantity or value of supplies, nature and extent of services. Where the contract is divided into lots, this information shall be provided for each lot. Where appropriate, description of any options.
7. Type of award procedure; in the case of negotiated procedure without prior publication (Article 30), justification.
8. Where appropriate, indication whether:
  - (a) a framework agreement was involved,
  - (b) a dynamic purchasing system was involved.
9. Criteria referred to in Article 66 which were used for award of the contract or contracts. Where appropriate, indication whether the holding of an electronic auction was involved (in the event of open, restricted or competitive procedures with negotiation).
10. Date of contract award decision or decisions;
11. Number of tenders received with respect of each award, including:
  - (a) number of tenders received from economic operators which are small and medium enterprises,

- (b) number of tenders received from abroad,
  - (c) number of tenders received electronically.
12. For each award, name, address including NUTS code, telephone, fax number, email address and internet address of the successful tenderer(s) including
    - (a) information whether the successful tenderer is small and medium enterprise,
    - (b) information whether the contract was awarded to a consortium.
  13. Value of the successful tender (tenders) or the highest tender and lowest tender taken into consideration for the contract award or awards;
  14. Where appropriate, for each award, value and proportion of contract likely to be subcontracted to third parties.
  15. Information whether the contract is related to a project and /or programme financed by European Union funds.
  16. Name and address of the oversight body and the body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained
  17. Date(s) and reference(s) of previous publications in the *Official Journal of the European Union* relevant to the contract(s) advertised in this notice.
  18. Date of dispatch of the notice.
  19. Any other relevant information.

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

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
2. Email or internet address at which the specifications and any supporting documents will be available for unrestricted and full direct access, free of charge.
3. Type of contracting authority and main activity exercised
4. Where appropriate, indication whether the contracting authority is a central purchasing body or that any other form of joint procurement is involved.
5. CPV Nomenclature reference No(s); where the contract is divided into lots, this information shall be provided for each lot.

6. Description of the principal characteristics of the project.
7. Number and value of any prizes.
8. Type of contest (open or restricted).
9. In the event of an open contest, time limit for the submission of projects.
10. In the event of a restricted contest:
  - (a) number of participants contemplated,
  - (b) names of the participants already selected, if any,
  - (c) criteria for the selection of participants,
  - (d) time limit for requests to participate.
11. Where appropriate, indication that the participation is restricted to a specified profession.
12. Criteria to be applied in the evaluation of the projects.
13. Names of any members of the jury who have already been selected.
14. Indication whether the jury's decision is binding on the contracting authority.
15. Payments to be made to all participants, if any.
16. Indication whether any contracts following the contest will or will not be awarded to the winner or winners of the contest.
17. Date of dispatch of the notice.
18. Any other relevant information.

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

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
2. Type of contracting authority and main activity exercised.
3. Where appropriate, indication whether the contracting authority is a central purchasing body or that any other form of joint procurement is involved.
4. CPV Nomenclature reference No(s).

5. Description of the principal characteristics of the project.
6. Value of the prizes.
7. Type of contest (open or restricted).
8. Criteria which were applied in the evaluation of the projects.
9. Date of the jury decision.
10. Number of participants.
  - (a) Number of participants who are small and medium enterprises.
  - (b) Number of participants from abroad.
11. Name, address including NUTS code, telephone, fax number, email address and internet address of the winner(s) of the contest and indication whether the winner(s) are small and medium enterprises.
12. Information whether the design contest is related to a project or programme financed by Union funds.
13. Date(s) and reference(s) of previous publications in the *Official Journal of the European Union* relevant to the project(s) concerned by this notice.
14. Date of dispatch of the notice.
15. Any other relevant information.

**PART G**  
**INFORMATION TO BE INCLUDED IN NOTICES OF MODIFICATIONS OF A**  
**CONTRACT DURING ITS TERM**  
**(as referred to in Article 72(6))**

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
2. CPV Nomenclature reference No(s);
3. NUTS code for the main location of works in case of works contracts or NUTS code for the main place of delivery or performance in supply and service contracts;
4. Description of the procurement before and after the modification: nature and extent of the works, nature and quantity or value of supplies, nature and extent of services.
5. Where applicable, increase in price caused by the modification.
6. Description of the circumstances which have rendered necessary the modification.
7. Date of contract award decision.

8. Where applicable, the name, address including NUTS code, telephone, fax number, email address and internet address of the new economic operator or operators.
9. Information whether the contract is related to a project and /or programme financed by European Union funds.
10. Name and address of the oversight body and the body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.
11. Date(s) and reference(s) of previous publications in the *Official Journal of the European Union* relevant to the contract(s) concerned by this notice.
12. Date of dispatch of the notice.
13. Any other relevant information.

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

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
2. Where appropriate, email or internet address at which the specifications and any supporting documents will be available.
3. Type of contracting authority and main activity exercised.
4. Where appropriate, indication whether the contracting authority is a central purchasing body or that any other form of joint procurement is involved.
5. CPV Nomenclature reference No(s); where the contract is divided into lots, this information shall be provided for each lot.
6. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in case of supplies and services
7. Description of the services and where applicable, incidental works and supplies to be procured
8. Estimated total value of contract(s); where the contract is divided into lots, this information shall be provided for each lot.
9. Conditions for participation, including

- (a) where appropriate, indication whether the contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,
  - (b) where appropriate, indication whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.
10. Time limit(s) for contacting the contracting authority in view of participation.
  11. Brief description of the main features of the award procedure to be applied.
  12. Any other relevant information.

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

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
2. Type of contracting authority and main activity exercised.
3. Where appropriate, indication whether the contracting authority is a central purchasing body or that any other form of joint procurement is involved.
4. CPV Nomenclature reference No(s); where the contract is divided into lots, this information shall be provided for each lot.
5. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in case of supplies and services ;
6. Brief description of the services, and where applicable, incidental works and supplies procured.
7. Number of tenders received.
8. Price or range of prices (maximum/minimum) paid.
9. For each award, name, address including NUTS code, telephone, fax number, email address and internet address of the successful economic operator or operators.
10. Any other relevant information.



**ANNEX VII**  
**INFORMATION TO BE INCLUDED IN THE SPECIFICATIONS IN ELECTRONIC**  
**AUCTIONS**  
**(Article 33(4))**

The specifications to be used where contracting authorities have decided to hold an electronic auction shall include at least the following details:

- (a) the features, the values for which will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;
- (b) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;
- (c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;
- (d) the relevant information concerning the electronic auction process;
- (e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
- (f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

**ANNEX VIII**  
**DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS**

For the purposes of this Directive:

- (1) "technical specification" means one of the following:
  - (a) in the case of public works contracts the totality of the technical prescriptions contained in particular in the procurement documents, defining the characteristics required of a material, product or supply, so that it fulfils the use for which it is intended by the contracting authority; those characteristics include levels of environmental and climate performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions and production processes and methods at any stage of the life cycle of the works; those characteristics also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;
  - (b) in the case of public supply or service contracts a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods at any stage of the life cycle of the supply or service and conformity assessment procedures;
- (2) "standard" means a technical specification approved by a recognised standardising body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:
  - (a) international standard: a standard adopted by an international standards organisation and made available to the general public,
  - (b) European standard: a standard adopted by a European standards organisation and made available to the general public,
  - (c) national standard: a standard adopted by a national standards organisation and made available to the general public;
- (3) "European technical approval" means a favourable technical assessment of the fitness for use of a product for a particular purpose, based on the fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. European technical

approvals are issued by an approval body designated for this purpose by the Member State;

- (4) "Common technical specification" means a technical specification laid down in accordance with a procedure recognised by the Member States or in accordance with Articles 9 and 10 of Parliament and Council Regulation [XXX] on European standardisation [and amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/105/EC and 2009/23/EC of the European Parliament and the Council] which has been published in the *Official Journal of the European Union*;
- (5) "Technical reference" means any deliverable produced by European standardisation bodies, other than European standards, according to procedures adapted to the development of market needs.

**ANNEX IX**  
**FEATURES CONCERNING PUBLICATION**

1. Publication of notices

The notices referred to in Articles 46, 47, 48, 75 and 79 must be sent by the contracting authorities to the Publications Office of the European Union and published in accordance with the following rules:

Notices referred to in Articles 46, 47, 48, 75 and 79 shall be published by the Publications Office of the European Union or by the contracting authorities in the event of a prior information notice published on a buyer profile in accordance with Article 46(1).

In addition, contracting authorities may publish this information on the Internet on a 'buyer profile' as referred to in point 2(b).

The Publications Office of the European Union will give the contracting authority the confirmation referred to in Article 49(5), second subparagraph.

2. Publication of complementary or additional information

(a) Contracting authorities shall publish the specifications and the additional documents in their entirety on the Internet.

(b) The buyer profile may include prior information notices as referred to in Article 46(1), information on ongoing invitations to tender, scheduled purchases, contracts concluded, procedures cancelled and any useful general information, such as a contact point, a telephone and a fax number, a postal address and an e-mail address.

3. Format and procedures for sending notices electronically

The format and procedure for sending notices electronically as established by the Commission are made accessible at the Internet address '<http://simap.europa.eu>'.

**ANNEX X**  
**CONTENTS OF THE INVITATIONS TO SUBMIT A TENDER, PARTICIPATE IN**  
**THE DIALOGUE OR TO CONFIRM INTEREST PROVIDED FOR UNDER**  
**ARTICLE 52**

1. The invitation to submit a tender or to participate in the dialogue provided for under Article 52 must contain at least:
  - (a) a reference to the call for competition published;
  - (b) the deadline for the receipt of the tenders, the address to which the tenders must be sent and the language or languages in which the tenders must be drawn up;
  - (c) in the case of competitive dialogue the date and the address set for the start of consultation and the language or languages used;
  - (d) a reference to any possible adjoining documents to be submitted, either in support of verifiable declarations by the tenderer in accordance with Articles 59 and 60 and, where appropriate, Article 61 or to supplement the information referred to in those Articles, and under the conditions laid down in Articles 59, 60 and 61;
  - (e) the relative weighting of criteria for the award of the contract or, where appropriate, the descending order of importance for such criteria, where they are not given in the contract notice, in the invitation to confirm interest, in the specifications or the descriptive document.

However, in the case of contracts awarded through a competitive dialogue or an innovation partnership, the information referred to in point (b) shall not appear in the invitation to participate in the dialogue or to negotiate but it shall appear in the invitation to submit a tender.

2. When a call for competition is made by means of a prior information notice, contracting authorities shall subsequently invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers or participants in negotiations.

This invitation shall include at least the following information:

- (a) nature and quantity, including all options concerning complementary contracts and, where possible, the estimated time available for exercising these options for renewable contracts, the nature and quantity and, where possible, the estimated publication dates of future notices of competition for works, supplies or services to be put out to tender;
- (b) type of procedure: restricted or competitive procedure with negotiation;
- (c) where appropriate, the date on which the delivery of supplies or the execution of works or services is to commence or terminate;

- (d) the address and closing date for the submission of requests for procurement documents and the language or languages in which they are to be drawn up;
- (e) the address of the entity which is to award the contract and the information necessary for obtaining the specifications and other documents;
- (f) economic and technical conditions, financial guarantees and information required from economic operators;
- (g) the amount and payment procedures for any sum payable for obtaining procurement documents;
- (h) the form of the contract which is the subject of the invitation to tender: purchase, lease, hire or hire-purchase, or any combination of these; and
- (i) the contract award criteria and their weighting or, where appropriate, the order of importance of such criteria, where this information is not given in the prior information notice or the specifications or in the invitation to tender or to negotiate.

**ANNEX XI**  
**LIST OF INTERNATIONAL SOCIAL AND ENVIRONMENTAL CONVENTIONS**  
**REFERRED TO IN ARTICLES 54(2), 55(3)(a) AND 69(4)**

- Convention 87 on Freedom of Association and the Protection of the Right to Organise;
- Convention 98 on the Right to Organise and Collective Bargaining;
- Convention 29 on Forced Labour;
- Convention 105 on the Abolition of Forced Labour;
- Convention 138 on Minimum Age;
- Convention 111 on Discrimination (Employment and Occupation);
- Convention 100 on Equal Remuneration;
- Convention 182 on Worst Forms of Child Labour;
- Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);
- Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention);
- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10/09/1998 and its 3 regional Protocols.

## ANNEX XII REGISTERS<sup>46</sup>

The relevant professional and trade registers and corresponding declarations and certificates for each Member State are:

- in Belgium the "Registre du Commerce"/"Handelsregister", and, *in the case of service contracts*, the "Ordres professionnels/Beroepsorden";
- in Bulgaria, the "Търговски регистър";
- in the Czech Republic, the "obchodní rejstřík";
- in Denmark, the "Erhvervs- og Selskabsstyrelsen";
- in Germany, the "Handelsregister", the "Handwerksrolle", and, *in the case of service contracts*, the "Vereinsregister", the "Partnerschaftsregister" and the "Mitgliedsverzeichnisse der Berufskammern der Länder";
- in Estonia, the "Registrite ja Infosüsteemide Keskus";
- in Ireland, the economic operator may be requested to provide a certificate from the Registrar of Companies or the Registrar of Friendly Societies or, where he is not so certified, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established, in a specific place under a given business name;
- in Greece, the "Μητρώο Εργοληπτικών Επιχειρήσεων — ΜΕΕΠ" of the Ministry for Environment, Town and Country Planning and Public Works (Υ.Π.Ε.ΧΩ.Δ.Ε) *in respect of works contracts*; the "Βιοτεχνικό ή Εμπορικό ή Βιομηχανικό Επιμελητήριο" and the "Μητρώο Κατασκευαστών Αμυντικού Υλικού" *in the case of supplies contracts*; *in the case of service contracts*, the service provider may be asked to provide a declaration on the exercise of the profession concerned made on oath before a notary; in the cases provided for by existing national legislation, for the provision of research services as referred to in Annex I, the professional register "Μητρώο Μελετητών" and the "Μητρώο Γραφείων Μελετών";
- in Spain, the "Registro Oficial de Licitadores y Empresas Clasificadas del Estado" *in respect of works and services contracts*, and, *in the case of supplies contracts*, the "Registro Mercantil" or, in the case of non-registered individuals, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question;
- in France, the "Registre du commerce et des sociétés" and the "Répertoire des métiers";
- in Italy, the "Registro della Camera di commercio, industria, agricoltura e artigianato"; *in the case of supplies and services contracts* also the "Registro delle

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<sup>46</sup> For the purposes of Article 56(2), "professional or trade registers" means those listed in this Annex and, where changes have been made at national level, the registers which have replaced them.



commissioni provinciali per l'artigianato" or, in addition to the already mentioned registers, the "Consiglio nazionale degli ordini professionali" *in respect of services contracts*;

- in Cyprus, the contractor may be requested to provide a certificate from the "Council for the Registration and Audit of Civil Engineering and Building Contractors (Συμβούλιο Εγγραφής και Ελέγχου Εργοληπτών Οικοδομικών και Τεχνικών Έργων)" in accordance with the Registration and Audit of Civil Engineering and Building Contractors Law *in respect of works contracts; in the case of supplies and services contracts* the supplier or service provider may be requested to provide a certificate from the "Registrar of Companies and Official Receiver" (Εφορος Εταιρειών και Επίσημος Παραλήπτης) or, where this is not the case, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established, in a specific place and under a given business name;
- in Latvia, the "Uzņēmumu reģistrs";
- in Lithuania, the "Juridinių asmenų registras";
- in Luxembourg, the "Registre aux firmes" and the "Rôle de la Chambre des métiers";
- in Hungary, the "Cégnyilvántartás", the "egyéni vállalkozók jegyzői nyilvántartása" and, *in the case of service contracts*, some "szakmai kamarák nyilvántartása" or, in the case of some activities, a certificate stating that the person concerned is authorised to be engaged in the commercial activity or profession in question;
- in Malta, the economic operator obtains his "numru ta' registrazzjoni tat-Taxxa tal-Valur Miżjud (VAT) u n-numru tal-licenzja ta' kummerc", and, in the case of a partnership or company, the relevant registration number as issued by the Malta Financial Services Authority;
- in the Netherlands, the "Handelsregister";
- in Austria, the "Firmenbuch", the "Gewerberegister", the "Mitgliederverzeichnisse der Landeskammern";
- in Poland, the "Krajowy Rejestr Sądowy";
- in Portugal, the "Instituto da Construção e do Imobiliário" (INCI) *in respect of works contracts*; the "Registo Nacional das Pessoas Colectivas" in the case of *supplies and services contracts*;
- in Romania, the "Registrul Comerțului";
- in Slovenia, the "Sodni register" and the "obrtni register";
- in Slovakia, the "Obchodný register";
- in Finland, the "Kaupparekisteri"/"Handelsregistret";
- in Sweden, the "aktiebolags-, handels- eller föreningsregistren";

- in the United Kingdom, the economic operator may be requested to provide a certificate from the Registrar of Companies stating that he is certified as incorporated or registered or, where he is not so certified, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in a specific place under a given business name.

**ANNEX XIII**  
**CONTENT OF EUROPEAN PROCUREMENT PASSPORT**

The European Procurement Passport contains the following particulars:

- (a) Identification of the economic operator;
- (b) Certification that the economic operator has not been the subject of a conviction by final judgment for one of the reasons listed in Article 55(1);
- (c) Certification that the economic operator is not the subject of insolvency or winding-up proceedings as referred to in Article 55(3)(b) ;
- (d) Where applicable, certification of enrolment in a professional or trade register prescribed in the Member State of establishment, as referred to in Article 56(2);
- (e) Where applicable, certification that the economic operator possesses a particular authorisation or is member of a particular organisation within the meaning of Article 56(2);
- (f) Indication of the period of validity of the Passport, which shall be not less than 6 months.

**ANNEX XIV**  
**MEANS OF PROOF OF SELECTION CRITERIA**

*Part I: Economic and financial standing*

Proof of the economic operator's economic and financial standing may, as a general rule, be furnished by one or more of the following references:

- (a) appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;
- (b) the presentation of balance-sheets or extracts from the balance-sheets, where publication of the balance-sheet is required under the law of the country in which the economic operator is established;
- (c) a statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the contract for a maximum of the last three financial years available, depending on the date on which the undertaking was set up or the economic operator started trading, as far as the information on these turnovers is available.

*Part II: Technical ability*

Means providing evidence of the economic operators' technical abilities, as referred to in Article 56:

- (a) the following lists:
  - (i) a list of the works carried out over at the most the past five years, accompanied by certificates of satisfactory execution for the most important works; where necessary in order to ensure an adequate level of competition, contracting authorities may indicate that evidence of relevant works carried out more than five years before will be taken into account;
  - (ii) a list of the principal deliveries effected or the main services provided over at the most the past three years, with the sums, dates and recipients, whether public or private, involved. Where necessary in order to ensure an adequate level of competition, contracting authorities may indicate that evidence of relevant supplies or services delivered or performed more than three years before will be taken into account;
- (b) an indication of the technicians or technical bodies involved, whether or not belonging directly to the economic operator's undertaking, especially those responsible for quality control and, in the case of public works contracts, those upon whom the contractor can call in order to carry out the work;
- (c) a description of the technical facilities and measures used by the economic operator for ensuring quality and the undertaking's study and research facilities;
- (d) where the products or services to be supplied are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authorities or on

their behalf by a competent official body of the country in which the supplier or service provider is established, subject to that body's agreement, on the production capacities of the supplier or the technical capacity of the service provider and, where necessary, on the means of study and research which are available to it and the quality control measures it will operate;

- (e) the educational and professional qualifications of the service provider or contractor or those of the undertaking's managerial staff;
- (f) an indication of the environmental management measures that the economic operator will be able to apply when performing the contract;
- (g) a statement of the average annual manpower of the service provider or contractor and the number of managerial staff for the last three years;
- (h) a statement of the tools, plant or technical equipment available to the service provider or contractor for carrying out the contract;
- (i) an indication of the proportion of the contract which the economic operator intends possibly to subcontract;
- (j) with regard to the products to be supplied:
  - (i) samples, descriptions or photographs, the authenticity of which must be certified where the contracting authority so requests;
  - (ii) certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of products clearly identified by references to specifications or standards.

**ANNEX XV**  
**LIST OF EU LEGISLATION REFERRED TO IN ARTICLE 67(3)**

Directive 2009/33/EC<sup>47</sup>

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<sup>47</sup> OJ L 120, 15.5.2009, p. 5.

**ANNEX XVI**  
**SERVICES REFERRED TO IN ARTICLE 74**

CPV Code	Description
79611000-0 and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2)	Health and social services
75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80100000- 5 to 80660000-8 (except 80533000-9, 80533100-0, 80533200-1); from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9, 92232000-6)	Administrative educational, healthcare and cultural services
75300000-9	Compulsory social security services
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	Benefit services
98000000-3	Other community, social and personal services
98120000-0	Services furnished by trade unions
98131000-0	Religious services

**ANNEX XVII**  
**CORRELATION TABLE<sup>48</sup>**

This Directive	Directive 2004/18/EC	
Art. 1		new
Art. 2, point (1)	Art. 1, par. 9, 1 <sup>st</sup> subparagraph	=
Art. 2, point (2)	Art. 7, point (a)	adapted
Art. 2, point (3)		new
Art. 2, point (4)		new
Art. 2, point (5)		new
Art. 2, point (6) (a), 1 <sup>st</sup> part	Art. 1, par. 9, 2 <sup>nd</sup> subparagraph, point (a)	=
Art. 2, point (6) (a), 2 <sup>nd</sup> part		new
Art. 2, point (6) (b)	Art. 1, par. 9, 2 <sup>nd</sup> subparagraph, point (b)	=
Art. 2, point (6) (c)	Art. 1, par. 9, 2 <sup>nd</sup> subparagraph, point (c)	=
Art. 2, point (7)	Art. 1, par. 2, point (a)	=
Art. 2, point (8)	Art. 1, par. 2, point (b), 1 <sup>st</sup> sentence	amended
Art. 2 point (9)	Art. 1, par. 2, point (b), 2 <sup>nd</sup> sentence	=
Art. 2, point (10)	Art. 1, par. 2, point (c)	adapted
Art. 2, point (11)	Art. 1, par. 2, point (d)	amended
Art. 2, point (12)	Art. 1, par. 8, 2 <sup>nd</sup> subparagraph	adapted
Art. 2, point (13)	Art. 1, par. 8, 3 <sup>rd</sup> subparagraph	adapted
Art. 2, point (14)	Art. 1, par. 8, 3 <sup>rd</sup>	amended

<sup>48</sup>

"Adapted" means that the wording of the text was changed, while the meaning of the repealed directives was preserved. Changes to the meaning of the provisions of the repealed directive are indicated by the term "amended".



	subparagraph	
Art. 2, point (15)	Art. 23, par. 1	amended
Art. 2, point (16)	Art. 1, par. 10	amended
Art. 2, point (17)		new
Art. 2, point (18)	Art. 1, par. 10	amended
Art. 2, point (19)		new
Art. 2, point (20)	Art. 1, par. 12	=
Art. 2, point (21)	Art. 1, par. 13	=
Art. 2, point (22)		new
Art. 2, point (23)	Art. 1, par. 11, point (e)	=
Art. 3, par. 1, 1 <sup>st</sup> subparagraph		new
Art. 3, par. 1, 2 <sup>nd</sup> subparagraph	Art. 1, par. 2, point (d)	amended
Art. 3, par. 2		new
Art. 4	Art. 7, 67	amended
Art. 5, par. 1	Art. 9, par. 1	adapted
Art. 5, par. 2	Art. 9, par. 3, Art. 9 par. 7, 2 <sup>nd</sup> subparagraph,	amended
Art. 5, par. 3	Art. 9, par. 2	amended
Art. 5, par. 4	Art. 9, par. 9	=
Art. 5, par. 5		new
Art. 5, par. 6	Art. 9, par. 4	amended
Art. 5, par. 7	Art. 9, par. 5, point (a), 1 <sup>st</sup> and 2 <sup>nd</sup> subparagraph	=
Art. 5, par. 8	Art. 9, par. 5, point (b), 1 <sup>st</sup> and 2 <sup>nd</sup> subparagraph	=
Art. 5, par. 9	Art. 9, par. 5, point (a), 3 <sup>rd</sup> subparagraph Art. 9, par. 5, point (b), 3 <sup>rd</sup>	adapted

	subparagraph	
Art. 5, par. 10	Art. 9, par. 7	=
Art. 5, par. 11	Art. 9, par. 6	=
Art. 5, par. 12	Art. 9, par. 8, point (a)	=
Art. 5, par. 13	Art. 9, par. 8, point (b)	=
Art. 6	Art. 78, Art. 79, par. 2, point (a)	adapted
Art. 7	Art. 12	amended
Art. 8, 1 <sup>st</sup> subparagraph	Art. 13	amended
Art. 8, 2 <sup>nd</sup> subparagraph	Art. 1, par. 15	amended
Art. 9, point (a)	Art. 15, point (a)	adapted
Art. 9, point (b)	Art. 15, point (b)	=
Art. 9, point (c)	Art. 15, point (c)	=
Art. 9, point (d)		new
Art. 10, point (a)	Art. 16, point (a)	=
Art. 10, point (b)	Art. 16, point (b)	adapted
Art. 10, point (c)	Art. 16, point (c)	=
Art. 10, point (d)	Art. 16, point (d)	amended
Art. 10, point (e)	Art. 16, point (e)	=
Art. 10, point (f)		new
Art. 11		new
Art. 12	Art. 8	adapted
Art. 13, par. 1	Art. 16, point (f)	adapted
Art. 13, par. 2.	Art. 79, par. 2, point (f)	adapted
Art. 14	Art. 10	amended
Art. 15	Art. 2	amended
Art. 16, par. 1	Art. 4, par. 1	adapted

Art. 16, par. 2	Art. 4, par. 2	amended
Art. 17	Art. 19	amended
Art. 18, par. 1	Art. 6	adapted
Art. 18, par. 2		new
Art. 19, par. 1	Art. 42, par. 1, Art. 71, par. 1	amended
Art. 19, par. 2	Art. 42, par. 2 and 3, Art. 71 par. 1	adapted
Art. 19, par. 3, 1 <sup>st</sup> subparagraph	Art. 42, par. 4, Art. 71 par. 1	amended
Art. 19, par. 3, 2 <sup>nd</sup> subparagraph	Art. 79, par. 2, point (g)	=
Art. 19, par. 3, 3 <sup>rd</sup> subparagraph		new
Art. 19, par. 4		new
Art. 19, par. 5	Art. 42, par. 5, Art. 71 par. 3	amended
Art. 19, par. 6	Art. 42, par. 6	adapted
Art. 19, par. 7		new
Art. 19, par. 8		new
Art. 20, par. 1	Art. 1, par. 14	adapted
Art. 20, par. 2	Art. 79, par. 2 points (e) and (f)	adapted
Art. 21		new
Art. 22		new
Art. 23, par. 1	Art. 5	amended
Art. 23, par. 2		new
Art. 24	Art. 28, Art. 30 par. 1	amended
Art. 25, par. 1	Art. 38, par. 2, Art. 1 par. 11 point (a)	amended

Art. 25, par. 2	Art. 38, par. 4	amended
Art. 25, par. 3	[see Art. 38, par. 8]	new
Art. 25, par. 4		new
Art. 26, par. 1	Art. 38, par. 3, Art. 1 par. 11 point (b)	amended
Art. 26, par. 2	Art. 38, par. 3	amended
Art. 26, par. 3	Art. 38, par. 4	amended
Art. 26, par. 4		new
Art. 26, par. 5		new
Art. 26, par. 6	Art. 38, par. 8	amended
Art. 27, par. 1		new
Art. 27, par. 2	Art. 1 par. 11 point (d)	amended
Art. 27, par. 3	Art. 30, par. 2	amended
Art. 27, par. 4	Art. 30, par. 3	amended
Art. 27, par. 5	Art. 30, par. 4	adapted
Art. 27, par. 6	Art. 30, par. 2	amended
Art. 28, par. 1	Art. 38, par. 3; Art. 1 par. 11 point (c)	amended
Art. 28, par. 2	Art. 29, par. 2, Art. 29 par. 7	adapted
Art. 28, par. 3	Art. 29, par. 3; Art. 1 par. 11 point (c)	amended
Art. 28, par. 4	Art. 29, par. 4	adapted
Art. 28, par. 5	Art. 29, par. 5	adapted
Art. 28, par. 6	Art. 29, par. 6	amended
Art. 28, par. 7	Art. 29, par. 7	amended
Art. 28, par. 8	Art. 29, par. 8	=
Art. 29		new

Art. 30, par. 1	Art. 31, 1 <sup>st</sup> sentence	amended
Art. 30, par. 2, 1 <sup>st</sup> subparagraph, point (a)	Art. 31, point (1) (a)	amended
Art. 30, par. 2, 1 <sup>st</sup> subparagraph, point (b)	Art. 31, point (1) (b)	amended
Art. 30, par. 2, 1 <sup>st</sup> subparagraph, point (c)	Art. 31, point (1) (b)	amended
Art. 30, par. 2, 1 <sup>st</sup> subparagraph, point (d)	Art. 31, point (1) (c)	adapted
Art. 30, par. 2, 2 <sup>nd</sup> – 4 <sup>th</sup> subparagraph		new
Art. 30, par. 3, point (a)	Art. 31, point (2) (a)	=
Art. 30, par. 3, point (b)	Art. 31, point (2) (b)	=
Art. 30, par. 3, point (c)	Art. 31, point (2) (c)	amended
Art. 30, par. 3, point (d)	Art. 31, point (2) (d)	adapted
Art. 30, par. 4	Art. 31, point (3)	adapted
Art. 30, par. 5	Art. 31, point (4) (b)	adapted
Art. 31, par. 1	Art. 32, par. 1, Art. 1, par. 5	amended
Art. 31, par. 2	Art. 32, par. 2	adapted
Art. 31, par. 3	Art. 32, par. 3	=
Art. 31, par. 4	Art. 32, par. 4	adapted
Art. 31, par. 5	Art. 32, par. 4	adapted
Art. 32, par. 1	Art. 33, par. 1; Art. 1, par. 6	amended
Art. 32, par. 2	Art. 33, par. 2	amended
Art. 32, par. 3	Art. 33, par. 3	adapted
Art. 32, par. 4	Art. 33, par. 4	amended
Art. 32, par. 5	Art. 33, par. 6	amended
Art. 32, par. 6		new

Art. 32, par. 7	Art. 33, par. 7, 3 <sup>rd</sup> subparagraph	=
Art. 33, par. 1	Art. 54, par. 1; Art. 1, par. 7	amended
Art. 33, par. 2	Art. 54, par. 2	adapted
Art. 33, par. 3	Art. 54, par. 2, 3 <sup>rd</sup> subparagraph	adapted
Art. 33, par. 4	Art. 54, par. 3	adapted
Art. 33, par. 5	Art. 54, par. 4	adapted
Art. 33, par. 6	Art. 54, par. 5	adapted
Art. 33, par. 7	Art. 54, par. 6	=
Art. 33, par. 8	Art. 54, par. 7	adapted
Art. 33, par. 9	Art. 54, par. 8, 1 <sup>st</sup> subparagraph	=
Art. 34		new
Art. 35, par. 1	Art. 11, par. 1	amended
Art. 35, par. 2		new
Art. 35, par. 3	Art. 11, par. 2	amended
Art. 35, par. 4		new
Art. 35, par. 5	Art. 11, par. 2	amended
Art. 35, par. 6		new
Art. 36		new
Art. 37		new
Art. 38		new
Art. 39, par. 1	Recital (8)	amended
Art. 39, par. 2		new
Art. 40, par. 1	Art. 23, par. 1	amended
Art. 40, par. 2	Art. 23, par. 2	adapted
Art. 40, par. 3	Art. 23, par. 3	adapted

Art. 40, par. 4	Art. 23, par. 8	=
Art. 40, par. 5	Art. 23, par. 4	adapted
Art. 40, par. 6	Art. 23, par. 5	amended
Art. 41, par. 1	Art. 23, par. 6	amended
Art. 41, par. 2	Art. 23, par. 6	adapted
Art. 41, par. 3		new
Art. 42, par. 1	Art. 23, par. 4, 5, 6, 7	amended
Art. 42, par. 2	Art. 23, par. 4, 5, 6	amended
Art. 42, par. 3	Art. 23, par. 7	adapted
Art. 42, par. 4		new
Art. 43, par. 1	Art. 24, par. 1 and 2	amended
Art. 43, par. 2	Art. 24, par. 3	adapted
Art. 43, par. 3	Art. 24, par. 4	adapted
Art. 44		new
Art. 45, par. 1	Art. 38, par. 1	adapted
Art. 45, par. 2	Art. 38, par. 7	amended
Art. 46, par. 1	Art. 35, par. 1	adapted
Art. 46, par. 2		new
Art. 47	Art. 35, par. 2; Art. 36, par. 1	adapted
Art. 48	Art. 35, par. 4	amended
Art. 49, par. 1	Art. 36, par. 1, Art. 79, par. 1, point (a)	amended
Art. 49, par. 2	Art. 36, par. 2, 3 and par. 4, 2nd subpar.	amended
Art. 49, par. 3	Art. 36, par. 4	adapted
Art. 49, par. 4		new
Art. 49, par. 5	Art. 36, par. 7 and 8	Amended

Art. 49, par. 6	Art. 37	amended
Art. 50, par. 1	Art. 36, par. 5, 1 <sup>st</sup> subpar.	amended
Art. 50, par. 2 and 3	Art. 36, par. 5, 2 <sup>nd</sup> & 3 <sup>rd</sup> subpar.	adapted
Art. 51	Art. 38, par. 6, Art. 39, par. 2	amended
Art. 52	Art. 40, par. 1, 2	adapted
Art. 53, par. 1	Art. 41, par. 1	adapted
Art. 53, par. 2	Art. 41, par. 2	adapted
Art. 53, par. 3	Art. 41, par. 3	=
Art. 54, par. 1	Art. 44, par 1	adapted
Art. 54, par. 2		new
Art. 54, par. 3		new
Art. 54, par. 4		new
Art. 55, par. 1,	Art. 45, par. 1	amended
Art. 55, par. 2	Art. 45, par. 2 (e), (f)	amended
Art. 55 par. 3	Art. 45, par. 2	amended
Art. 55, par. 4		new
Art. 55, par. 5 and 6	Art. 45, par. 4	amended
Art. 56, par. 1	Art. 44, par. 1, 2	amended
Art. 56, par. 2	Art. 46	adapted
Art. 56, par. 3	Art. 47	amended
Art. 56, par. 4	Art. 48	amended
Art. 56, par. 5	Art. 44, par. 2	adapted
Art. 57		new
Art. 58		new
Art. 59		new



Art. 60, par. 1	Art. 45 par. 3	adapted
Art. 60, par. 2	Art. 47	adapted
Art. 60, par. 3	Art. 48	adapted
Art. 60, par. 4		new
Art. 61, par. 1	Art. 49	amended
Art. 61, par. 2	Art. 50	amended
Art. 61, par. 3		new
Art. 62, par. 1	Art. 47, par. 2, 3; Art. 48, par. 3,4	adapted
Art. 62, par. 2		new
Art. 63, par. 1	Art. 52, par. 1, Art. 52 par. 7	adapted
Art. 63, par. 2, 1 <sup>st</sup> subparagraph	Art. 52, par. 1, 2 <sup>nd</sup> subparagraph	amended
Art. 63, par. 2, 2 <sup>nd</sup> subparagraph	Art. 52, par. 1, 3 <sup>rd</sup> subparagraph	=
Art. 63, par. 3	Art. 52, par. 2	=
Art. 63, par. 4	Art. 52, par. 3	amended
Art. 63, par. 5, 1 <sup>st</sup> subparagraph	Art. 52, par. 4, 1 <sup>st</sup> subparagraph	adapted
Art. 63, par. 5, 2 <sup>nd</sup> subparagraph	Art. 52, par. 4, 2 <sup>nd</sup> subparagraph	=
Art. 63, par. 6, 1 <sup>st</sup> subparagraph	Art. 52, par. 5, 1 <sup>st</sup> subparagraph	adapted
Art. 63, par. 6, 2 <sup>nd</sup> subparagraph	Art. 52, par. 6	=
Art. 63, par. 7	Art. 52, par. 5, 2 <sup>nd</sup> subparagraph	=
Art. 63, par. 8, 1 <sup>st</sup> subparagraph	Art. 52, par. 8	=
Art. 63, par. 8, 2 <sup>nd</sup>		new

subparagraph		
Art. 64	Art. 44, par. 3	adapted
Art. 65	Art. 44, par 4	=
Art. 66, par. 1	Art. 53, par 1	amended
Art. 66, par. 2	Art. 53, par 1, point (a)	amended
Art. 66, par. 3		new
Art. 66, par. 4	Recital 1; Recital 46, 3 <sup>rd</sup> par.	amended
Art. 66, par. 5	Art. 53, par. 2	amended
Art. 67		new
Art. 68		new
Art. 69, par. 1	Art. 55, par. 1	amended
Art. 69, par. 2	Art. 55, par. 1	adapted
Art. 69, par. 3, point (a)	Art. 55, point (a)	=
Art. 69, par. 3, point (b)	Art. 55, point (b)	=
Art. 69, par. 3, point (c)	Art. 55, point (c)	=
Art. 69, par. 3, point (d)	Art. 55, point (d)	amended
Art. 69, par. 3, point (e)	Art. 55, point (e)	=
Art. 69, par. 4, 1 <sup>st</sup> subparagraph	Art. 55, par. 2	amended
Art. 69, par. 4, 2 <sup>nd</sup> subparagraph		new
Art. 69, par. 5	Art. 55, par. 3	adapted
Art. 69, par. 6		new
Art. 70	Art. 26	amended
Art. 71, par. 1	Art. 25, 1 <sup>st</sup> subparagraph	=
Art. 71, par. 2		new
Art. 71, par. 3	Art. 25, 2 <sup>nd</sup> subparagraph	adapted

Art. 72, par. 1 – 4, 5, 7		new
Art. 72, par. 6	Art. 31, par. 4, point a	amended
Art. 72, par. 7		new
Art. 73		new
Art. 74		new
Art. 75		new
Art. 76		new
Art. 77	Art. 66	=
Art. 78	Art. 67	adapted
Art. 79, par. 1 - 2	Art. 69	adapted
Art. 79, par. 3	Art. 70; Art. 79, par. 1, point (a)	adapted
Art. 80, par. 1		new
Art. 80, par. 2	Art. 72	=
Art. 81	Art. 73	=
Art. 82	Art. 74	=
Art. 83	Art. 81, 1 <sup>st</sup> subparagraph	adapted
Art. 84, par. 1	Art. 81, 2 <sup>nd</sup> subparagraph	amended
Art. 84, par. 2 - 8		new
Art. 85	Art. 43	amended
Art. 86, par. 1	Art. 75	adapted
Art. 86, par. 2	Art. 76	amended
Art. 86, par. 3		new
Art. 86, par. 4		new
Art. 86, par. 5	Art. 79, par. 1, point (a)	adapted
Art. 87		new
Art. 88		new

Art. 89	Art. 77, par. 3 and 4	amended
Art. 90	Art. 77, par. 5	amended
Art. 91	Art. 77, par. 1, 2	adapted
Art. 92	Art. 80	adapted
Art. 93	Art. 82	adapted
Art. 94		new
Art. 95	Art. 83	amended
Art. 96	Art. 84	=
Annex I	Annex IV	=
Annex II	Annex I	=; except first sentence (amended)
Annex III	Annex V	=
Annex IV, (a) – (g)	Annex X (b) - (h)	=
Annex IV, (h)		new
Annex V		new
Annex VI	Annex VII	amended
Annex VII	Art. 54, par. 3, points (a) – (f)	=
Annex VIII	Annex VI	adapted (except for point (4), amended)
Annex IX	Annex VIII	adapted
Annex X, 1.	Article 40, par. 5	adapted
Annex X, 2.		new
Annex XI		new
Annex XII	Annex IX	adapted
Annex XIII		new
Annex XIV, Part 1	Article 47, par. 1	=
Annex XIV, Part 2	Article 48, par. 2	=; amended for points (a), (e)

		and (f)
Annex XV		new
Annex XVI	Annex II	amended
Annex XVII	Annex XII	amended

# THE BUILD-FOR-ALL REFERENCE MANUAL

## GOOD INTENTIONS ARE NOT ENOUGH

A guide to the implementation of accessibility to the built environment through Public Procurement

This Reference Manual is produced by:

The Architects' Council of Europe (ACE); Cooperative Integrate Onlus (CO.IN); The Council of European Municipalities and Regions (CEMR); EUROCITIES; The European Committee for Standardization (CEN); The European Construction Industry Federation (FIEC); The European Disability Forum (EDF); The European Institute for Design and Disability (EIDD); The European Lifts Association (ELA); AGE - The European Older People's Platform; The National Disability Council of Luxembourg (Info-Handicap); NEUMANNCONSULT; ProASolutions; The City of Gdynia

supported by the European Commission

Pilot project on actions to mainstream disability policies submitted under the open call for proposals for transnational projects VP/2004/008



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**DRAFT PUBLIC CONSULTATION DOCUMENT, January 2006**



**Build for All** is a Pilot Project to mainstream disability policies, supported by the European Commission promoting Accessibility to the built environment through the implementation of Design for All.

The Expert Group of the European Commission on Full Accessibility delivered its conclusions at the end of 2003, the European Year of People with Disabilities. The report, entitled “**2010, a Europe Accessible to All**”<sup>1</sup>, identified a lack of awareness in the professional sector, as one of the most important obstacles to achieving accessibility in the built environment. The report also identified the key role that public authorities play in changing attitudes and practices relating to accessibility and the leverage that they can exert when calling for tenders for public Works and services.

The Build for All project gives guidance on three main areas:

1. The need to provide public authorities with guidance in the establishment of essential accessibility criteria, and a methodology for step-by-step implementation of accessibility as provided for by the EU Public Procurement Directives.
2. The need to inform private sector and professional stakeholders about how to meet the demands of the accessibility criteria.
3. The need to bring together the representatives of disability organisations and older people’s organisations at European, national and local level together with their counterparts from the other professional and stakeholder groups - the local and regional authorities, the construction industry, the lift manufacturers and architects - in order to promote and create lasting and ongoing constructive dialogue.

[www.build-for-all.net](http://www.build-for-all.net)

***This is a Public Consultation Document.***

**Build-for-All Reference Manual for the inclusion of accessibility criteria in public calls for tender under the Public Procurement Directives of the European Union.**

Part 1. Handbook

Part 2. Toolkit

Copyright: InfoHandicap and the “Build-for All” project, Luxembourg, 2006.

**Please visit [www-build-for-all.net](http://www.build-for-all.net) for updates**

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<sup>1</sup> “2010 A Europe Accessible for All” - available from the Internet at <http://www.eca.lu/upload/egafin.pdf>

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## 1. Introduction

This Reference Manual is a product of work carried out by the partners of the European funded project known as *Build-for-All*. The principal objectives of the project are to raise awareness of accessibility to the built environment (buildings, outdoor spaces and facilities), and to provide practical guidance to those who prepare calls for tender for design and construction Works under the Public Procurement Directives of the European Union. It consists of two documents - a Handbook and a Toolkit:

**1. The Handbook** provides background information for raising the awareness of decision makers and public servants about the importance of accessibility in the built environment for all citizens and the supporting role which Public Procurement can play in achieving this.

**2. The Toolkit** gives a practical approach for contracting authorities to include certain procedures and technical requirements in procurement, so as to ensure that accessibility criteria are met in design and construction work.

### Target Audience

The Reference Manual is intended for those whose work brings them into contact with the Public Procurement process – either directly or indirectly. These include:

- **Legislators at National and Regional Levels**, officially responsible for the transposition of the EU Directives to national and regional law;
- **National, Regional and Local Governments across Europe**, in their specific role as procurers, owners and managers of public infrastructure, including buildings;
- **Public Authorities and entities**, including all publicly funded bodies and agencies that procure Works through the use of the Public Procurement procedures established by European Law<sup>2</sup>;
- **Economic Operators**, as a source of information to them on how Contracting Authorities approach the making of calls for tender.

The motivation for preparing this Reference Manual arises from the introduction of revised European Union Directives on Public Procurement<sup>3</sup> that (when transposed

<sup>2</sup> Annex IV of the Directives names all central public entities in each Member State that will have to meet the requirements of the Directive, in addition to public authorities at all levels.



into national law), must be respected by Contracting Authorities when tendering for public Works. These Directives offer scope to Contracting Authorities **to promote full accessibility for all, including disabled persons, older persons and others, to the built environment** - both to public buildings, the outdoor environment of streets, pavements, roads and to any Works procured by the public sector.

The goal of full accessibility to the built environment was recognised internationally as long ago as 1993 in The United Nations Standard Rules on the Equalisation of Opportunities for Disabled Persons<sup>4</sup>. Despite almost every country in the world signing up to the Standard Rules, the issue of access, which is dealt with in Rule number 5, remains a major technical and societal problem.

The revised Public Procurement Directives offer scope for contracting authorities to consider social and accessibility issues. Public authorities, at all levels, are being encouraged to positively implement these provisions as far as the new rules allow.

The Directive provides for

- criteria for qualitative selection (Art. 45-52),
- contract award criteria (Art. 53),
- technical specifications (Art. 23 and Ann. VI) and, finally,
- conditions of performance of contracts (Art. 26).

These categories, each in a different way, allow public authorities to include accessibility aspects in the procurement process.

While the Public Procurement Directives do not oblige Contracting Authorities to include accessibility criteria in calls for tender, there are significant benefits from the adoption of this approach. National Legislation may, in certain countries, require this obligation and this is strongly welcomed by the Build-for-All partners, but the aim of the work of the project is to encourage the voluntary adoption of accessibility requirements in procurement by public authorities in all European Union Member States.

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### **3 DIRECTIVE 2004/17/EC**

Of the European Parliament and of the Council, 31st March 2004

Coordinating the Procurement procedures of entities operating in the water, energy, transport and postal services sectors.

and

### **DIRECTIVE 2004/18/EC**

Of the European Parliament and of Council of the of 31<sup>st</sup> March 2004

Coordinating the procedures for the award of public works contracts, Public supply contracts and public service contracts

<sup>4</sup> United Nations. Standard Rules on the Equalization of Opportunities for Persons with Disabilities. A/RES/48/96. 85<sup>th</sup> plenary meeting. 20 December 1993. The full document can be read online at: <http://www.un.org/documents/ga/res/48/a48r096.htm>



Fundamentally, the Build-for-All partners believe that by following the principles and advice presented in this Reference Manual, Public Procurement can lead to better functioning, more comfortable and safer environments for **all** people in society.

# THE BUILD-FOR-ALL HANDBOOK

## GOOD INTENTIONS ARE NOT ENOUGH

Background information for raising the awareness of decision makers and public servants about the importance of accessibility in the built environment for all citizens.

By  
The **Build-For-All** Partnership.  
Info-Handicap, Luxembourg

supported by the European Commission

Pilot project on actions to mainstream disability policies submitted under the open call for proposals for transnational projects VP/2004/008



Sole responsibility lies with the authors and the Commission is not responsible for any use that may be made of the information contained.

**DRAFT PUBLIC CONSULTATION DOCUMENT, January 2006**

**Please visit [www-build-for-all.net](http://www-build-for-all.net) for updates**



## 2. Handbook Introduction

**This Handbook** provides background information for raising the awareness of decision makers and public servants about the importance of accessibility in the built environment for all citizens, and the supporting role which Public Procurement can play in achieving this.

The Handbook is specifically aimed at those who wish to know about the provisions of the European Union Directives on Public Procurement Procedures, and the importance of accessibility and the “Design for All”<sup>5</sup> approach.

In particular, the partners in the Build-for-All project believe that the Handbook will be especially useful to elected members of Local, Regional and National government and to managers who have to weigh up whether or not to include a particular set of criteria in a call for tender or to adopt new policies within their administration, reflecting equal opportunities in society.

This Handbook therefore addresses a wide range of issues, which administrations might take into account to bring accessibility issues into focus. Further reference material is listed in the Appendixes and in the Bibliography.

### **Motivation:**

Did you know that by including accessibility in Public Procurement tenders, you will promote social inclusion, contribute to full employment, save public money and ultimately foster economic growth?

Did you know that disabled people, older people and other persons with temporary reduced mobility together make up 40% of the population of Europe?

Did you know that, according to UN figures, 34.5% of the European population will be aged 60+ in 2050 compared to 20.3% in 2000?

Did you know that European and national legislation are increasingly requiring disability access to the built environment and to public Works?

Did you know that Public Procurement transactions account for approximately 16% of the European Union's GDP, equivalent to 1500 billion Euros per year?

Did you know that Public Procurement rules have a direct impact on the daily lives of European citizens?

<sup>5</sup> For a description of the “Design for All” approach, please see section (3).



### 3. The Importance of Full Accessibility and “Design for All”

This section of the Handbook concerns “full accessibility”, a term which indicates the growing demand for full participation and equal opportunities for all people in society.

The goal of full accessibility to the built environment was recognised internationally as long ago as 1993 in The United Nations Standard Rules on the Equalisation of Opportunities for Disabled Persons<sup>6</sup>. Despite almost every country in the world signing up to the Standard Rules, the issue of access, which is dealt with in Rule number 5, remains a major technical and societal problem.

In recent years, European planners, designers and proponents of accessibility, have laid particular emphasis on the practice of “Design for All” as an approach to design and construction that can contribute to full accessibility.

*“Design for All” means designing developing and marketing mainstream products, services, systems and environments to be accessible and usable by as broad a range of users as possible.<sup>7</sup>*

*This can be achieved in three ways:*

- *by designing products, services and applications that are readily usable by most potential users without any modifications*
- *by designing products that are easily adaptable to different users (e.g. by adapting their user interfaces)*
- *by standardising interfaces of products to be compatible with specialised equipment (e.g. technological aids for disabled persons).*

*Through supporting the application of design for all to all areas of life – home, education, work, leisure, transport, etc. – it is possible to make significant progress towards avoiding access barriers which currently prevent citizens with disabilities from participating fully and on equal terms with non-disabled people”.*

Source: Background Document of the European Conference “Discrimination by Design” held on the European Day of Disabled People, 3<sup>rd</sup> December 2001.

<sup>6</sup> United Nations. Standard Rules on the Equalization of Opportunities for Persons with Disabilities. A/RES/48/96. 85<sup>th</sup> plenary meeting. 20 December 1993. The full document can be read online at: <http://www.un.org/documents/ga/res/48/a48r096.htm>

<sup>7</sup> This definition of “Design for All” is also quoted in: Treffers, B. (2004) *Design for All: a history of discrimination by design, future cities for all*” available at: <http://www.eca.lu/upload/History%20of%20Discrimination%20by%20Design.pdf>



### Who benefits from the Design for All approach?

People with disabilities and older people are the most obvious beneficiaries of a fully accessible environment, but it must be emphasised that people of all ages and abilities appreciate the advantages of accessible surroundings and facilities.

Design for All is recognised as an important tool for ensuring *physical accessibility* for people with physical disabilities, but there are many other types of accessibility which depend on mental and social factors. If our surroundings have been designed to take into account the diversity of human dimensions, perceptual, motor and cognitive abilities, they can better support human functioning.

“... dimensional, perceptual, motor and cognitive diversity have to be taken into account when developing environments because everybody has the WISH, the NEED and the RIGHT to be independent, to choose his/her way of life and to live it without the environment putting barriers in his/her way” .

Source: ECA- European Concept of Accessibility 2003- Technical Assistance Manual, 2003

During the human life cycle, changes are inevitable. Everybody happens, at some point in their lives, to have temporary problems interacting with the environment. Some changes may be brought forward or postponed as a result of an individual's attitude to their surroundings: what they feel is possible or not. It is also the case that accidents, illnesses or personal choices also affect ways of relating to the environment, especially when it is not possible to avoid certain places or to choose when to be there.

The importance of promoting Design for All in the context of Public Procurement is that it can help to raise the quality of life in society and in our surroundings, by ensuring more accessible environments, products, services and communications. Furthermore, a fully accessible environment contributes in a fundamental way to social solidarity by facilitating interaction between people.



#### 4. The social model of disability within the concepts of Design for All and Corporate Social Responsibility

Design for All, a European development of the 1990's, recognizes that "Inclusion" equals "Accessibility" and applies to Social, Cultural, Intellectual and Environmental conditions. Thus it challenges decision makers to ensure accessibility to the built environment, transport facilities and public spaces.

EIDD (European Institute for Design and Disability), on the occasion of its Annual General Meeting in **Stockholm** on 9 May 2004, adopted the following Declaration:

Across Europe, human diversity in age, culture and ability is greater than ever. We now survive illness and injury and live with disability as never before. Although today's world is a complex place, it is one of our own making, one in which we therefore have the possibility – and the responsibility – to base our designs on the principle of inclusion.

Design for All is design for human diversity, social inclusion and equality. This holistic and innovative approach constitutes a creative and ethical challenge for all planners, designers, entrepreneurs, administrators and political leaders.

Design for All aims to enable all people to have equal opportunities to participate in every aspect of society. To achieve this, the built environment, everyday objects, services, culture and information – in short, everything that is designed and made by people to be used by people – must be accessible, convenient for everyone in society to use and responsive to evolving human diversity.

Based on the **social model of disability**, Design for All is design for human diversity, social inclusion and equality.

The social model of disability recognises that when a person loses the use of a particular function they employ alternative functions to cope with living situations. For example, a blind person uses touch and sound, a deaf person uses touch and sight, a person who cannot walk uses a wheelchair operated by hand, to become mobile. The problem then arises when the environment does not permit them to use that function. For example, a blind person uses non-visual means to obtain information and becomes disabled from *reading* when books are only available in print. A blind person is disabled when traffic signals are given silently by means of coloured lights. Similarly, a deaf person operates through tactile and visual means and is disabled when fire alarms are only given by means of a ringing bell or howling siren. A person who cannot walk overcomes the problem of immobility by using a wheelchair to allow





him or her to move around but becomes disabled when presented with a step at the entrance to a building or a door that is too narrow.

“The disadvantage or restriction of activity caused by a contemporary social organisation which takes little or no account of people who have a physical, sensory, learning, mental health or emotional impairment and thus excludes them from participation in the mainstream of social activities.”

As quoted in Fundamental Principles of Disability, Union of Physically Impaired Against Segregation (UPIAS) London, 1976.

The concept of **Corporate Social Responsibility**<sup>8</sup> is increasingly pressed for by political decision makers at all levels of Government and, as a result, is increasingly being highlighted as an important criterion in Public Procurement decisions. That is to say that there is a growing tendency to require that companies who are entrusted with the execution of large public Works contracts are actively engaged in pursuing Corporate Social Responsibility within their structures.

#### Corporate Social Responsibility

- is a concept of business ethics based on the principle that companies have stakeholders who are broadly defined as any person or group affected by the activities of the company. The idea of Corporate Social Responsibility is that a company should be accountable to its stakeholders for all of its actions. For this reason the Corporate Social Responsibility focuses on how companies should identify and “engage” stakeholders and how they should determine, measure and report the impact of their activities on others.

[www.ethicaltrade.org/Z/ethtrd/gloss/index.shtml](http://www.ethicaltrade.org/Z/ethtrd/gloss/index.shtml)

- highlights the voluntary role of business in contributing to a better society and a cleaner environment beyond its financial and capital commitments.

[www.smallbusinesseurope.org/Glossary/](http://www.smallbusinesseurope.org/Glossary/)

- is concerned with treating the stakeholders of the firm ethically or in a socially responsible manner. Stakeholders exist both within a firm and outside it. Consequently, socially responsible behaviour will increase the human development of stakeholders both within and outside the corporation.

Source: Michael Hopkins: A Planetary Bargain: Corporate Social Responsibility Comes of Age (Macmillan, UK, 1998)

<sup>8</sup> Corporate Social Responsibility is defined by the European Commission as “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis” Source: <http://europa.eu.int/scadplus/leg/en/lvb/n26034.htm>



Corporate Social Responsibility recognises that the problems preventing social inclusion are structural in essence and result neither solely nor primarily from an individual's disabilities but from economic, social and technological changes occurring throughout human society. This is the same concept that is expressed in the social model of disability on which Design for All is based.

The European Commission<sup>9</sup> recognizes that *"Within a business, Corporate Social Responsibility relates to quality employment, lifelong learning, information, consultation and participation of workers, equal opportunities, integration of people with disabilities, anticipation of industrial change and restructuring."*

Preventing and combating exclusion demands effort and the involvement of the persons experiencing exclusion together with national, regional and local authorities, welfare associations, non-governmental organisations, social partners and businesses.

Leading business corporations understand that exclusion constitutes a waste of human resources and a threat to social cohesion; it is a contributory factor in the rise in collective costs and financial burdens for businesses. Companies are also involved in Corporate Social Responsibility for ethical reasons and, in particular, to demonstrate their awareness of the twin concepts of progress and responsibility.

'...Corporate Social Responsibility becomes both business and stakeholder-led, to open the discussion to all people, and all groups concerned. Employers, trade unions, consumers and investors finding common solutions and agreements that respond to their diverse needs...'

Anna Diamantopoulou, former European Commissioner for Employment and Social Affairs. Source: <http://europa.eu.int/rapid/pressReleasesAction.do?reference=SPEECH/02/485&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>9</sup> Communication from the Commission concerning Corporate Social Responsibility: A business contribution to Sustainable Development COM(2002) 347 final



## 5. Design for All Considerations in Public Procurement

There are significant benefits and advantages to be gained by the adoption of a Design for All approach in the preparation of calls for tender for public Works. These benefits and advantages accrue in many different ways, to many of the affected actors in the process. Not least of these is the Contracting Authority itself, whose standing in the community is certain to be improved and whose overall budget will benefit as the advantages of accessible, friendly environments pay dividends in encouraging more involvement by more people in the use of public facilities.

The inclusion of Design for All principles in the Procurement of public Works will:

1. Take account of human diversity, social inclusion and equal opportunity
2. Enable all people to have equal opportunities to participate in every aspect of society
3. Act as an instrument for obtaining sustainable development and social cohesion
4. Assist in facing the challenges concerning the increasing cultural and functional diversity of the population in Europe
5. Create a win-win situation by providing an environment that everybody can enjoy
6. Create environments that can be adapted to different requirements both spatially and over time
7. Copes with interesting and new market consequences, generates an increased number of consumers and greater commercial opportunities

Alongside the principal advantages and benefits listed above, there are other benefits that arise from the adoption of the Design for All philosophy:

- **Social Impacts and Opportunities**

The population of the European Union is a diverse population. It is made up of people of different social, historical, economical, cultural and religious backgrounds. This diversity will increase as new countries join the Union. Accordingly, there is a need to create environments which are accessible for all and which bring economic and social opportunities to all. The Design for All approach is one of the most important solutions for the future of Europe and offers opportunities to advance social inclusion and economic development within the community. These new opportunities apply to society as a whole, as well to businesses and individual persons.



To achieve social effects and equal opportunities, the built environment, everyday objects, services, culture and information, everything that is designed and made by people to be used by people, must be accessible, convenient for everyone in society to use and responsive to evolving human diversity.

- **Demographic Change in Europe**

Europe is facing an important demographic change<sup>10</sup>. The most significant impact will be the ageing population in Europe. By 2050 34.5 % will be over the age of 60 years old. Since there is a strong correlation between getting older and increasing prevalence of functional impairments, an accessible environment is imperative for maintaining an active ageing population.

Environments designed and built according to Design for All and accessibility principles will ensure that also older persons and disabled persons are able to enjoy their independence over the longer term. These possibilities for being independent also offer an important service to society. Older people are knowledgeable, they have many years of experience, and above all they have the desire to go on being useful and the need to continue their chosen way of life on their own terms.

An accessible building stock and built environment allows full social participation and offers the opportunity for a:

- Safer and healthier use
- More comfortable use
- More efficient use

Thus, the adoption of this approach increases the demonstrable factors that allow a Contracting Authority to show to its constituency that it is taking its public duties seriously.

- **Economic Impacts and Opportunities**

Disabled persons and older persons represent a significant consumer market that is both insufficiently catered for at the present time and under-exploited. When it is realised that applying accessibility criteria has no negative effects on other groups in the population, there is no reason why their use should be limited or curtailed.

There are strong socio-economic and market incentives to apply the Design for All, accessibility and usability approaches that should go hand in hand with everyday development and evolution of the built environment.

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<sup>10</sup> 2005 EU Green Paper on demographic change:  
[http://europa.eu.int/comm/employment\\_social/social\\_situation/green\\_paper\\_en.html](http://europa.eu.int/comm/employment_social/social_situation/green_paper_en.html)

**Example:** Study on Accessibility in the tourism industry

A study on the behaviour of disabled travellers and other travellers with activity limitations in Germany has shown that:

- 36 % did not travel because the service proposed was not accessible
- 48 % would travel more often if the service provided was more accessible
- 62 % would spend more to pay for accessible services
- 17 % travelled abroad because of more accessible offers

(Source: Federal Ministry of Economics and Labour, 2004)



## 6. About the EU Public Procurement Directives

The revised Public Procurement Directives<sup>11</sup> offer scope for contracting authorities to consider social and accessibility issues. Public authorities, at all levels, are being encouraged to positively implement these provisions as far as the new rules allow.

The Directive provides for

- criteria for qualitative selection (Art. 45-52),
- contract award criteria (Art. 53),
- technical specifications (Art. 23 and Ann. VI) and, finally,
- conditions of performance of contracts (Art. 26).

These categories, each in a different way, allow to include accessibility aspects

In this way the Directives can positively influence the inclusion and employment of people with disabilities and unemployed people, the safety of the workplace or even social care fiscal obligations

### General Description of the Directives

The principal aim of the Directives coordinating the award procedures of Public Procurement is to ensure that the taxpayers' money is spent in a way to have "best value for money", respecting, at the same time, the principles of equal treatment, non-discrimination and transparency.

Accessibility criteria can be introduced as technical specifications or performance conditions in both, the "lowest-price" and the "most economically advantageous" tender procedure, however, accessibility issues, as award criteria, can only be considered in the case of the most economically advantageous offer

A Public Procurement procedure consists of several successive phases, each of which allows, to a varying degree, taking environmental and social criteria (of which accessibility criteria are a part) into consideration. In any case, the basic principles of equal treatment, non-discrimination and transparency remain to be respected throughout all phases.

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<sup>11</sup> **DIRECTIVE 2004/17/EC**

Of the European Parliament and of the Council, 31st March 2004

Coordinating the Procurement procedures of entities operating in the water, energy, transport and postal services sectors.

and

**DIRECTIVE 2004/18/EC**

Of the European Parliament and of Council of the of 31<sup>st</sup> March 2004

Coordinating the procedures for the award of public works contracts, Public supply contracts and public service contracts

**PHASE 1: Identification of the needs, preparation of the tender notice**

The public client has to identify its needs. This consists of defining the subject-matter of the contract, as well as drafting the contract notice, including technical specifications and contract performance conditions (refer also to PHASE 4). Only if all of these have been published can Tenderers be expected to correctly respond to a call for tender.

Accessibility criteria, of a technical nature, can be included in the technical specifications, where appropriate with references to technical standards. This defines the characteristics of the building or goods to be purchased.

**PHASE 2: Selection of the qualified contractors**

Once the public client has received the tenders, they have to evaluate the Tenderers on the basis of the so-called "selection criteria". The selection phase serves to exclude those Tenderers who are not qualified for the job. Tenderers who do not satisfy the selection criteria, will be excluded from the further procedure.

The "classical" Directive (2004/18/EC) deals with the "criteria for qualitative selection" in Articles 45 to 52. Tenderers that have been convicted ("final judgment") for organised crime, corruption, fraud or money laundering **shall** be excluded from participation in the procedure.

Tenderers having been convicted ("final judgment") for a list of other things **may** be excluded. In this list, there is reference to offences concerning professional conduct<sup>12</sup> and not fulfilling obligations relating to payment of social security or taxes.

At the selection stage, accessibility criteria can be introduced under the heading of "technical and/or professional ability" (see 2004/18/EC, Art. 48). For example, a list of accessible Works carried out over the past five years, an indication of the specialised accessibility technicians or technical bodies involved, a description of the technical facilities and measures for ensuring quality and respect of accessibility criteria, the educational and professional qualifications of the persons who will be chosen to deliver the expertise required in the execution of the contract.

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<sup>12</sup> Recital 43: Non-observance of national provisions implementing the Council Directives 2000/78/EC (1) and 76/207/EEC (2) concerning equal treatment of workers, which has been the subject of a final judgment or a decision having equivalent effect may be considered an offence concerning the professional conduct of the economic operator concerned or grave misconduct.

**PHASE 3: Evaluation of the tenders, award of the contract**

Once the unqualified Tenderers are eliminated from the procedure, the public client is left with the tenders submitted by qualified Tenderers and can now proceed to the material evaluation of the tenders. This evaluation is based on the so-called "award criteria" (2004/18/EC, Art. 53).

In the case of the award being made to the most economically advantageous tender, from the point of view of the Contracting Authority, such award criteria must be linked to the subject matter of the public contract in question. The Directive gives the following examples: quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after sales service and technical assistance, delivery date and delivery period or period to completion.

Based on the examples given, it is also possible to specifically mention accessibility criteria in the award criteria. This would allow the evaluation of the Tenderers' specific track record on accessibility including experience, references, know how etc.

**PHASE 4: Execution and performance of the contract**

Once the public client has awarded and signed the contract, they should monitor the correct implementation of the contract and all obligations deriving there from, including the "contract performance clauses" mentioned above and described at the Contract Notice stage of the procedure.

It should be noted that the Public Procurement Directives do not set out procedures or conditions for this stage of the Procurement of a work. This is because the procedures set out in the Directives will have been fulfilled at this point.

Social criteria can be included as contract performance conditions.

For example:

- to recruit more disabled persons than are required under national legislation
- to favour on-site vocational training
- the employment of people experiencing particular difficulty in achieving integration
- the fight against unemployment
- to recruit long-term job-seekers





- to implement training measures for the unemployed or young persons
- to comply in substance with the provisions of the basic International Labour Organisation (ILO) Conventions, assuming that such provisions have not been implemented in national law

As these contract performance conditions are part of the contract, they have to be respected by the appointed contractor (the “winner” of the procedure) during the execution of the contract, but not earlier. Each Tenderer is deemed to have based their tender on the published conditions. Consequently, respect of such performance conditions is an integral part of the contract and must not be used as a selection or award criterion.

### Key elements of the Directive from an Accessibility Perspective

- When drawing up a call for tender, public authorities are required to identify all of the characteristics that the product, Works or service will have to meet. Rules and an outline of the kind of characteristics that can be included are specified in the Articles and Annexes of the Directives that relate to technical specifications of a tender. In particular, the EU Directives refer specifically to technical specifications relating to accessibility for disabled people and Design for All requirements.
- Public authorities can also decide to impose contract performance conditions on the company that wins a call for tender. These may range from environmental requirements to accessibility requirements to the obligation to employ a certain percentage of disabled people to do the job. However, any such conditions must be set out in the call for tender so as to allow Tenderers to take account of them in their offers.
- The Directives also include rules on the possibility to **reserve contracts** for certain kinds of companies, which benefit undertakings such as sheltered Workshops<sup>13</sup> that employ a majority of people with disabilities.
- Social considerations such as accessibility and employment of disabled people can be a selection criterion to the extent that a firm does not respect a statutory obligation to employ disabled persons or engages discrimination and is convicted. It can also be a "contract performance condition", to be respected by the successful Tenderer. These must be specified in the call for tender.
- When making the final choice for a tender, according to the most economically advantageous tender, public authorities can take accessibility and social considerations into account under some conditions.

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<sup>13</sup> Under certain conditions, and concerning accessibility criteria, there is a partial exception to some of these principles, called a "special arrangement" in the classical Directive (2004/18). In fact, Art. 19 (explained in recital 28) gives the possibility to reserve the right to participate in a Public Procurement procedure to "sheltered workshops" or to programmes in which most of the employees concerned are disabled persons who "cannot carry on occupation under normal conditions".



## 7. Points to consider

In this section the main points that should be considered in following the procedures presented in the Public Procurement Directives for the preparation of a call for tenders are set out.

The most important point to consider is the fact that the Public Procurement Directives allow for the inclusion of social and environmental criteria and that it specifically mentions "accessibility criteria for people with disabilities" and "design for all users" as being valid criteria that should, wherever possible, be taken into account when defining technical specifications (Article 23, §1). Although this means that the inclusion of social and environmental (Article 53 §1a) considerations is optional in the text of the European Union Directives, it is clearly a strongly expressed wish of the European Union that they be included, as stated in the first two introductory recitals. It is therefore essential that in transposing the requirements of the EU Directives into the national law, these are studied and understood by those preparing calls for tender.

In cases where the national law does not require the inclusion of social and environmental considerations or criteria and where there is no other law requiring the implementation of a Design for All approach (such as Disability Acts), a Contracting Authority can still include accessibility and Design for All in the criteria for the realisation of public Works contracts.

Having studied the text of the Directives, the Build-for-All partners wish to highlight the main points that need to be considered as being desirable for inclusion in the calls for tender and in the procedures that surround the award of contracts for the execution of public Works contracts.

### 1. Accessibility as part of social and environmental considerations.

#### Relevant Articles and Recitals:

Article 2 – Recitals 1 &2

Recitals 1 and 2, which between them, set out the general background for the Directives, support the inclusion of social and environmental considerations in the awarding phase of contracts. These recitals are to be read in conjunction with Article 2 which states unequivocally that Contracting Authorities shall treat economic operators equally and non-discriminatorily and in a transparent manner, and article 53 on the award criteria.

These provisions therefore allow for the full inclusion of accessibility and Design for All approaches.



## 2. Design for all and Accessibility in the technical specifications of a contract

### Relevant Articles and Recitals:

Article 23, §1- Recital 29 & Annex VI

Article 23, §1, as mentioned in the introductory text specifically mentions the inclusion of accessibility and Design for All principles in the context of the technical specifications that a Contracting Authority can include in the call for tenders.

These specifications are further detailed in Annex VI.

## 3. All electronic means of communication and all documents used in the procedures must, in accordance with the principles of equal treatment and non-discrimination, be available in accessible formats.

### Relevant Articles and Recitals:

Article 23 & Recital 29

Article 28

Article 29

Article 38

Article 39

Article 40

Article 41

Article 42

Article 44

Article 54 & Recitals 12, 13, 14

The large numbers of references relevant to this point are the Articles that describe the procedures that are open to Contracting Authorities to choose in deciding on how to structure a call for tender. It is important to realise that many economic operators that will receive the documents may employ disabled persons and so it is essential, to achieve the non-discrimination and transparency requirements of the Directive, to ensure that they are accessible to all persons. For example, this means that calls for tender cannot be available in print alone and that any electronic means used, including equipment, is in compliance with WAI<sup>14</sup> guidelines or similar national guidelines.

The same principles must be applied to the procedures adopted for possible "technical dialogues" before launching an award procedure (Recital 8) with economic entities so that all participating persons have full access to all relevant information.

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<sup>14</sup> The Web Accessibility Initiative (WAI) works with organizations around the world to develop strategies, guidelines, and resources to help make the Web accessible to people with disabilities. Source: <http://www.w3.org/WAI/>



**4. The Directives permit, under certain conditions the reservation of contracts to sheltered Workshops.**

**Relevant Articles and Recitals:**

Article 19

Recital 28

These provisions of the Directive are aimed at guaranteeing equal opportunities for all and they contribute to integration into society of people with disabilities. Contracting Authorities should consider the possibility of taking up this option as often as it can reasonably be pursued as it demonstrates a clear commitment to corporate social responsibility.

**5. The inclusion of Design for All and accessibility principles in the various criteria and conditions for the performance of contracts is encouraged by some of the provisions of the Directives.**

**Relevant Articles and Recitals**

Article 26 & Recitals 33, 44

Article 27 & Recitals 34, 43 (at the end)

Article 34

The various contract performance clauses can, in particular, relate to social and environmental matters and, therefore, to accessibility and they should be disability-proofed in order that they are non-discriminatory.

Some provisions also allow for the exclusion of Tenderers, in the selection phase, that have been convicted for breach of social and employment legislation, including of measures fighting discrimination of disabled people in employment.

The inclusion of these principles will assist Contracting Authorities to define and demonstrate non-discriminatory criteria in consultation with people with disabilities.

**6. The Directive allows for the assessment of the technical and/or professional ability of Tenderers to be undertaken.**

**Relevant Articles**

Article 48

Article 52

Recital 45

These provisions of the Directives are very important to the potential to successfully introduce and implement accessibility and Design for All criteria and relate to the power of the Contracting Authority to assess the expertise on offer from an economic operator and to use this as a criterion for selection. It is therefore particularly



important to ensure that Tenderers are requested to demonstrate the level and quality of skills that they can bring to the project in the field of accessibility and Design for All. Furthermore they will allow the Contracting Authority to require that specific expertise and successful experience in the field of accessibility and Design for All is proven.

**7. Only using the "most economically advantageous" approach to the choice of contractor allows the weighted evaluation of Design for All and accessibility criteria for the award of the contract.**

**Relevant Article**

Article 53 & recital 1,2, 5, 6  
Recitals 46, 47

In deciding on the criteria to use for the award of a contract, the Build-for-All partners recommend that Contracting Authorities use the option open to them to include Design for All and accessibility criteria: by making the award to the tender most economically advantageous from the point of view of the contracting authority.

If the decision to do so is taken, then this must be stated in the Contract Notice.



## 8. Briefing Note on the use of Quality/Price Tender Evaluation Models

Tenders may be evaluated on the basis of the most economically advantageous tender (quality based approach) or on the basis of price alone (lowest price approach). In the former case a range of non-price based criteria might be included as legitimate evaluation criteria of the best tender and the partners of the Build-for-All project consider this to be the best way to evaluate tenders in the Procurement of public Works as it allows the Contracting Authority to take accessibility fully into account. Factors relating to access to facilities of people with disabilities, may be legitimately included as award criteria.

The extent to which quality issues may be taken into account in the evaluation of tenders may vary. It is for the selection panel to agree the quality factors, and their impact on the evaluation process, in advance of inviting tenders. However, in certain circumstances, it might be appropriate to increase the balance further in favour of quality, and an evaluation based entirely on quality might sometimes be legitimate.

Key steps are:

- Form a Panel of experts for the award phase;
- Clarify your award criteria (key success factors), including the relative importance of accessibility and all other criteria;
- Ensure tender invitation documents include a full explanation of the evaluation process;
- Compile robust evaluation and scoring methodologies and keep to them;
- Pay adequate attention to how presentations and interviews are to be structured;
- Fully record each stage of the evaluation process;
- Debrief unsuccessful candidates immediately after having identified the successful tender and sufficiently prior to effectively awarding the contract.

# THE BUILD-FOR-ALL TOOLKIT

Practical approach for contracting authorities to include certain procedures and technical requirements in procurement, so as to ensure that accessibility criteria are met in design and construction work

By  
The **Build-For-All** Partnership.  
Info-Handicap, Luxembourg

supported by the European Commission

Pilot project on actions to mainstream disability policies submitted under the open call for proposals for transnational projects VP/2004/008



Sole responsibility lies with the authors and the Commission is not responsible for any use that may be made of the information contained.

**DRAFT PUBLIC CONSULTATION DOCUMENT, January 2006**  
**Please visit [www-build-for-all.net](http://www-build-for-all.net) for updates**



## 9. Toolkit Introduction

This **Toolkit** concentrates on delivering the means by which Contracting Authorities can ensure that, in their procurement procedures, they take adequate account of the accessibility issue which is so fundamentally important.

If you are unfamiliar with the concepts of accessibility and Design for All, or with the content and objectives of the Public Procurement Directives, you are advised to read the **Handbook**, which is Part 1 of this Reference Manual. If these matters are familiar to you, then you should find the tools in this short Toolkit useful when planning and carrying out public Calls for Tender.

The Toolkit is specifically aimed at the procurement officers who work, on a daily basis to write calls for tender for public Works and who are familiar with the provisions of the European Union Directives on Public Procurement Procedures and/or the equivalent national legislation. It will also be informative to those who respond to calls for tender, as it gives an insight into how such calls are structured, at least as far as the inclusion of accessibility criteria is concerned.

As the Public Procurement Directives do not oblige Contracting Authorities to include accessibility criteria in calls for tender, it is worth noting that there are significant benefits from the adoption of this practice. National Legislation may, in certain countries, require this obligation and this is strongly welcomed by the Build-for-All partners, but the aim of the work of the project is to encourage the adoption of such inclusions in all European Union Member States in all design and construction of the built environment.





## 10. The Benefits and Advantages of Design for All

As stated in the Handbook, there are significant benefits and advantages to be gained by the adoption of a Design for All approach in the preparation of calls for tender for public Works. These benefits and advantages can affect many actors in the process. Not least of these is the Contracting Authority itself, whose standing in the community is certain to be improved and whose overall budget will benefit as the advantages of accessible, friendly environments pay dividends in encouraging more involvement by more people in the use of public facilities.



## 11. Technical Guidance

### Introduction

This chapter does not contain the full description of the process of preparing the tender documents, a process that is familiar to all those who regularly prepare calls for tender. Rather it shows only the moments where the inclusion of accessibility issues make a difference in the specific steps undertaken.

It should be noted that the accessibility guidelines are only part of the “big picture”. The other parts consists of employment issues as well as transportation, customer services and communications. These are addressed in a general way in the chapters of the Handbook.

The description of the step-by-step procedure is set out in accordance with the relevant phases of preparing the tender documents by procurement officers for the purposes of preparing tenders for buildings and outdoor environment facilities, funded with the use of public financing and procured by the public sector. The relevant items are described in the light of EU Directive on Public Procurement, Directive 2004/18/EC and all Article references below are from that Directive.

### General Conditions on Scope of Application

In principle the whole procedure applies in cases where the value of the contract exceeds EUR 5,923,000 (Art.7 § (c)). For public Works contracts of lower value the tender procedure described in this Toolkit can refer to the national Public Procurement legislation in force in each Member State of the European Union. However, in all cases the basic principles of the European Treaties have to be respected, namely transparency, equal treatment/non-discrimination and best value for money. Consequently, the guidance provided by this Toolkit is equally useful for projects below the thresholds.

In Art. 1. § ( 2/b ) a “work” is defined as “...*the outcome of building or civil engineering Works taken as a whole to fulfil an economic or technical function...*”

This means that buildings and outdoor environment facilities belong to the term “Works” in the meaning of this Directive.

The simplest method to get the desired result is to realise the differences in the approach of making a given facility and built environment accessible right at the beginning of both the design Works and the procurement procedures. The three main areas of concern to make the environment accessible to all can be considered as, firstly, eliminating barriers in existing facilities, secondly, issues associated with alterations and, thirdly issues associated with new construction.

Therefore it is helpful to consider the following division of the Works, all of which are



relevant to the guidance in this reference manual:

- New public buildings for general use (with the exclusions contained in the legislation of the Member States such as, for example, military facilities)
- New residential buildings (single-family houses excluded)
- Alterations and additions in existing buildings of any functional use including historical buildings, which are not classified as historical monuments, on the occasion of every renovation, modernisation adaptation or revitalisation Works
- Alterations and additions in existing buildings of any functional use, classified as historical monuments on the occasion of every renovation, modernisation, adaptation or revitalisation Works
- New outdoor facilities
- Alterations to existing outdoor facilities and existing outdoor spaces, not classified as historical monuments on the occasion of every renovation, modernisation, adaptation or revitalisation Works
- Alterations to existing outdoor facilities, classified as historical monuments on the occasion of every renovation, modernisation, adaptation or revitalisation Works
- For the buildings, facilities and outdoor spaces classified as historical monuments the relevant legislation concerning the historical heritage and culture protection in force in every Member State shall be applied

**For the buildings, facilities and outdoor spaces classified as historical monuments the relevant legislation concerning the historical heritage and culture protection in force in every Member State shall be applied**

The principal aim of the Directive coordinating the award procedures of Public Procurement is to ensure that the taxpayers' money is spent in a way to have "best value for money", respecting, at the same time, the principles of equal treatment, non-discrimination and transparency.

Accessibility criteria can be introduced as technical specifications or as contract performance conditions in both, the "lowest-price" and the "most economically advantageous" tender procedures. However, accessibility issues, as award criteria, can only be considered in the case of the most economically advantageous tender and this fact needs to be signalled at the time of the publishing the contract notice.

**The text that follows gives a series of guidance notes set out in accordance with the phases described in the Handbook.**

#### **PHASE 1: Identification of the needs, preparation of the tender notice**

The public client has to identify its needs. This consists of defining the subject matter of the contract, as well as drafting the tender notice, including technical specifications and contract performance conditions. Only if all of these have



been published can Tenderers be expected to correctly respond to a call for tender.

Accessibility criteria of a technical nature, can be included in the technical specifications, where appropriate, with references to technical standards. These define the characteristics of the building or goods to be purchased.

#### 4.01 Tender Notice and Notice of Invitation to pre-qualify

The contracting authority in preparing the Tender Notice and the Invitation to Pre-qualify should state that **accessibility and Design for All criteria will be included in the selection and award criteria**. The Notice must indicate the relative weighting that will be assigned to each of the award criteria (refer to Art. 23)

#### 4.02 Issue and Submission of Pre-qualification Documents

The Tenderers will have to respond to the published requirements. To this extent Art. 23 states that: *"...The technical specifications, as defined in point 1 of Annex VI, shall be set out in the contract documentation, such as contract notice, contract documents or additional documents. Whenever possible these technical specifications should be defined so as to take into account accessibility criteria for people with disabilities or Design for All users"*.

#### PHASE 2: Selection of the qualified contractors

The selection phase serves to exclude those Tenderers who are not qualified for the job. Tenderers who do not satisfy the so-called "selection criteria", will be excluded from the subsequent stages of the procedure.

The "classical" Directive (2004/18/EC) deals with the "criteria for qualitative selection" in Articles 45 to 52. Tenderers that have been convicted ("final judgment") for organised crime, corruption, fraud or money laundering **shall** be excluded from participation in the procedure.

Tenderers having been convicted ("final judgment") for a list of other things **may** be excluded. In this list, there is reference to offences concerning professional conduct<sup>15</sup> and not fulfilling obligations relating to payment of social security or taxes.

At the selection stage, accessibility criteria can be introduced under the heading of "technical and/or professional ability" (see Art. 48). For example, a list of accessible Works carried out over the past five years, an indication of the

<sup>15</sup> Recital 43: Non-observance of national provisions implementing the Council Directives 2000/78/EC (1) and 76/207/EEC (2) concerning equal treatment of workers, which has been the subject of a final judgment or a decision having equivalent effect may be considered an offence concerning the professional conduct of the economic operator concerned or grave misconduct.



specialised accessibility technicians or technical bodies involved, a description of the technical facilities and measures for ensuring quality and respect of accessibility criteria, the educational and professional qualifications of the persons who will be chosen to deliver the expertise required in the execution of the contract.

**4.03** The contracting authorities must establish the selection and award criteria, respecting the provisions of the Directives, and they can indicate which proof of (pre-) qualification they will accept in selecting the Economic Operator to take part in the tender. This can be done according to the following steps (4.04 to 4.08):

**4.04 The team.** The procurement officer should point to the fact that the composition of the technical staff of the Economic Operator should be composed so that:

- the role of every professional is specified, especially showing the expertise related to accessibility and Design for All,
- a staff organisation chart is included, specifying the role of every professional
- their educational and professional qualifications, their technical expertise related to the accessibility and Design for All, shall be included.

**4.05** There should be a **Clause** that the Tenderers (Economic Operators) will be asked to describe their entrepreneurial history with special regard to the correspondence of the described Works to accessibility and Design for All criteria. Also there should be a statement that a declaration that the Tenderer is not the subject of a judgement, of bankruptcy procedures and judgement which has the force of res judicata (see Art. 45), for example that they are not subject to an exclusion.

**4.06 Certifications – Internal Experts:** The procurement officer should point to the fact that the possession of quality certifications and membership of qualification lists (assessed by certification bodies established under national public or private law) of approved Economic Operators undertaking public Works, is needed. This includes certifications in the field of accessibility. If, in a given Member State, the figure of an Accessibility Expert is not recognised or identified then the Procurement Officer should ask the bidders to show the personal training and professional experience which could be referred to as the basis to assess the knowledge and competencies pertaining to accessible design (see Art. 48)

**4.07 Certifications – External Experts:** There is a possibility of using an external expert on accessibility – The procurement officer should point to the fact that the Economic Operator may rely on the economical and technical capabilities of other external operators - this guarantees that at least one of the Economic Operators involved in the Public Procurement, can prove possession of the required accessibility certifications. (see Art. 48 § 3)



**4.08 Exclusions** – the reasons for the exclusion of a Tenderer are set out in Art. 45. The Procurement Officer should point out these reasons for exclusion from participation in a Public Procurement process which include: involvement in criminal organisations, the re-use of revenues from illegal acts, corruption, fraud/tax evasion and failure to comply with non-discrimination legislation. (see Art. 45)

### **PHASE 3: Evaluation of the tenders, award of the contract**

Once the unqualified Tenderers are eliminated from the procedure, the public client invites the qualified Tenderers to submit their offers and it then proceeds to the material evaluation of the tenders. This evaluation is based on the "award criteria" set out in Art. 53.

In the case of the award being made to the most economically advantageous tender, from the point of view of the Contracting Authority, the award criteria must be linked to the subject matter of the public contract in question. The Directive gives the following examples: quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after sales service and technical assistance, delivery date and delivery period or period to completion.

Based on the examples given, it is also possible to specifically mention accessibility criteria in the award criteria. This allows for the evaluation of the Tenderers' specific track record on accessibility including experience, references, know how etc.

**4.09** In this phase of the tender procedure, in the part concerning the **technical specifications** the Procurement Officer should again point to the fact that the **relevant special conditions** taking into account accessibility criteria for people with disabilities and Design for All users will be imposed. **The special conditions will be described in Technical Specifications part of the tender documentation** (see Art.23).

**4.10** It is recommended that contracting authorities should always decide to use the most economically advantageous tender procedure so that accessibility criteria can be a **part of the Contract Award Criteria**. The fact must be signalled from the outset of the procedure and the relative weighting that will be given to the criteria published. The objective should be that the proposals prepared with Design for All solutions in mind will be given a high weighting and therefore a high importance in the awarding of the contract.

**Explanation:** (The first part of Art. 53 is relevant: "...Contract award criteria: Without prejudice to national laws, regulations or administrative provisions



*concerning the remuneration of certain services, the criteria on which the contracting authorities shall base the award of public contracts shall be either:*

*...when the award is made to the most economically advantageous tender from the point of view of the contracting authority, various criteria linked to the subject-matter of the public contract in question, for example, **quality**, price, technical merit, **aesthetic and functional characteristics**, **environmental characteristics**, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion, or...*

**4.11** As the call for tender should describe the scope of the Works, the quality of the materials and the standards of workmanship that the successful Tenderer will be called upon to provide in carrying out the Works it should also convey other essential information having a bearing on the performance of the Works. Therefore it should be clearly stated that:

The building legislation mandatory in every Member State is obligatory for every Tenderer (Economic Operator) in the given Member State and it is not the intention of the document to make any kind of compilation of legislation in order to get specific standards. All the provisions described above are to comply with the Member State legislation being in force with regard to the superiority of European Union law.

#### **PHASE 4: Execution and performance of the contract**

Once the public client has awarded and signed the contract, it should monitor the correct implementation of the contract and all obligations deriving there from, including the "contract performance clauses" mentioned above and described at the Contract Notice stage of the procedure.

It should be noted that the Public Procurement Directives do not set out procedures or conditions for this stage of the procurement of a work. This is because the procedures set out in the Directives will have been fulfilled at this point.

**4.12** The Procurement Officer can prescribe, as contract performance conditions, the test, inspection and acceptance conditions of the finished Works. Any such conditions must be clearly set out in the contract notice and the invitation to tender and may include items such as:



- **audit** of the finished Works undertaken by independent experts from professional associations and public or private accessibility centres, if available in a given Member State
- **the end users' involvement** in prototypes analysis, virtual use, interviews etc. in a way complying with the legislation in force in a given Member State.

In case of alterations and/or additions to existing buildings and outdoor spaces, historically classified or not classified,, the Procurement Officer can additionally require the preparation of a survey identifying existing accessibility barriers.

Comentari [FIEC-UP1]: PAG  
E : 10  
NO, logically impossible to  
make a preparatory study party of  
the performance conditions (i.e. to  
be respected only by the successful  
tenderer after he has signed the  
contract.)





## 12. Examples of Good Procedural Practice in Public Procurement

The project partners were invited to submit examples of good procedural practice in Public Procurement projects. These have been compiled and are presented below without critical appraisal, for the information of the reader.

The following are examples of projects where good procedural approaches were adopted to the procurement of Works or services by Contracting Authorities. They are given so as to encourage the uptake of similar good and best practices across Europe.

It is essential that the accessibility issues to be solved are defined as early as possible in the process. Very recent (bad) examples abound of large public projects, where the most evident needs for accessibility have not been taken into account despite the billions of € and the large numbers of professionals involved.

A primary school for 500 pupils aged between 4 and 11 (case A) needs to accommodate pupils with permanent and temporary disabilities. A pupil with a broken leg requiring weeks or months using wheelchair or crutches is only too frequent.

In the much larger and farther-reaching examples of the metropolitan transport organization in Barcelona – Spain (cases B and C), the ambition to transport millions of people per year from door to door, requires an extensive study of passenger traffic flows, of commuting walking distances, of smooth levelling between all interconnecting areas and means of transport, of accessibility of all levels by lifts, escalators and moving walks. Buses, trams and trains need to provide full accessibility to all, without any discrimination. Platforms for buses, trams and trains should be at the exact level of the carriage. In the case of buses, a projecting platform and partial lowering of the bus are available solutions which are widely used around the world – but only where these requirements are specified. In other words, it means a clear understanding of the needs of the visually impaired, the persons with limited mobility, limited hearing and users with other disabilities. Technological solutions exist and their relative need should be identified early on in the Public Procurement process by experts in the field. All types of public buildings must be easily accessible to all.

In some cases, the social commitment of the administrative bodies involved, guarantees a good analysis of the needs and the level of accessibility requested, but in most cases, it is highly recommended to consult experts in the field of disabilities, who will clearly identify the accessibility issues to be covered by the project. In all cases, Design for All is an excellent tool for the companies to improve their business opportunities and their reputation.



All cases presented are related to a geographical region, showing that a local snowball effect can appear, through which more actors wish to be involved in the bettering of the built environment and improvement of social relations.

#### **Case A: Bleak Hill Primary School, St Helens, Lancashire**

The Bleak Hill project, a partnering contract between St Helens Metropolitan Borough Council and contractors Willmott Dixon, was the first example of a local authority awarding a partnering contract for a building based purely on the basis of quality with no mention of price.

##### **Context**

Bleak Hill is a 500-pupil county primary school for 4-11 year olds. Existing buildings occupied about 25% of the school grounds. The new school with infants and junior playgrounds was built in the playing fields, giving complete segregation of construction from school activity. The main 40-week construction period was followed by one week to transfer pupils and staff and a further 12 weeks for demolition of the old school and creation of a new multi-use sports field and running track, new main entrance and car park.

##### **Key Achievements**

- The production of a bigger school for a smaller budget.
- Some aspects, such as the M&E (IT, lighting control, energy saving), above average quality.
- Higher level of cost certainty than normal for the Council.
- 11% cost savings against traditional approaches.
- 32% faster construction than original programme.

##### **Key Drivers**

- **The People Factor** - Key officers at St. Helens believed that partnering could help them break out of the 'worst value' scenario often produced by traditional contracting.
- **Central Government** – Began linking adoption of 'Rethinking Construction' and Asset Management to local authority cash allocations. Treasury looking for annual savings of 2% under Best Value as a whole.

##### **Essential Success Factors**

- **Corporate Commitment** – St Helens ensured that they had contracts sub-committee buy in and because the change was driven from the top they did not have the difficulties with their standing orders that are sometimes encountered in local authority partnering.
- **Involvement of Stakeholders** – As well as the authority's building professionals and senior management, all stakeholders attended the final interviews. Local



councillors, head teacher, school governors, political leaders, education, audit and legal officers – some 30 people in all.

- **Trust** – In each other as well as in themselves to be able to deliver something different. The team had a total open book approach.

### **The Process**

Following its initial advertisement St Helens issued 52 copies of its comprehensive information pack on the project. This explained the partnering ethos and requested method statements for eight quality assessment criteria (not including price). The 26 responses were scored and the four best performing firms were invited for interview.

The decision at the interview to appoint Willmott Dixon was unanimous and at this stage they had not mentioned figures. Their proposal was based around experience in partnering and in schools, management team and added value they thought that they could bring to the project. The first of the key subcontractors, M&E contractor Drake & Scull, was then jointly appointed by both parties, using a scoring system weighted 70% quality and 30% price. Other subcontractors and suppliers were then brought into the partnership on a similar basis.

### **Shared Savings and Risk**

The form of contract used was the ACA Standard Form of Contract for Project

Partnering, written by Trowers & Hamlins, with the cost plan figure used as both a target price and a guaranteed maximum price (GMP). The contractors agreed to include profit and on-cost recovery within the cost plan, however if savings during construction were achieved they were shared 50:50. There was a 5% cap on extras over the GMP which meant that the Council's risk was identified in the agreement at 2.5%, half of the 5%, as was Willmott Dixon's. Beyond that shared risk, except for pre-defined areas, Willmott Dixon picked up all the risk.

### **Cost Plan within Budget**

This was done through a series of Value Engineering (VE) Workshops over an eight month period. The cost plan was revised 12 times to identify approximately £300,000-worth of savings and efficiency gains. The school was fully involved and everything was done on a completely open-book basis. Each item identified in the VE Workshops as a potential saving was championed by one or more members of the team, who took responsibility for bringing forward a workable solution to the next meeting.

### **Open Book**

Open book means that the actual accounts are the balance sheet for that project, and can therefore be inspected by the client. They include the fee structures for the design teams, the contractor and subcontractors on that particular scheme. The actual contract price is built up in a joint manner, so that the contractor's team is satisfied that the prices in it are correct, and the Quantity Surveyors are likewise satisfied that everything is correct. Adjustments are made in the Value Engineering



process, by the team together. Once the GMP is agreed and the work proceeds on site, the open-book approach means that if the client's representatives want to make sure that there is not a huge profit being generated from the scheme, or if, say, there are some extras and they want to justify them, the books are there to be examined, and to reveal how the calculations have been arrived at.

'We've been listened to and we've argued sensibly for the good of the pupils. We think we've got the best deal possible because of the expertise of the Partnership.' - Peter Isaac, Headmaster, Bleak Hill School

#### Case B

In 2005 the Entitat Metropolitana del Transport (transport authority of the metropolitan area of Barcelona-Spain) distributed among related administrative bodies and NGOs a draft of a call for tenders aiming to procure the service provision of door to door transport in Barcelona.

The Design for All Foundation answered to the invitation to comment the draft proposing several suggestions. The majority of these suggestions focused in to guarantee the quality of the service provision, like to adjust the number of vehicles to the demand, to inform about public accessible transport (as well as to foreigners), including interviews to the users in the quality assessment method, etc.

Another suggestion also accepted by the Transport Authority was to include CSR aspects in the awarding criteria. That is, it was suggested that 5% of the total score were related to social policies like employment of people with disabilities, balance in gender among employees, involvement in the community NGOs, etc.

#### Comments

It is innovative and a good tool for administrations not experienced in to include Design for All and disability issues in calls for tenders to distribute a draft of the call among related administrative bodies and NGOs that will help to improve the contents of the calls in these aspects.

It is also remarkable the inclusion of social aspects in the award criteria. A cheaper offer of a company lacking social responsibility would be more costly for society.

#### Case C

Since 1992, with the collaboration of experts and user organisations, Transports Metropolitans de Barcelona (Barcelona's public transport company) has been updating and improving throughout the years the technical description in the calls for tenders that they launch when purchasing buses. The technical requirements include detailed definitions, technical drawings and all the necessary elements (including the accessibility ones) to avoid mistakes in the construction process.

#### Comments



To produce well defined technical requirements not only helps to prevent mistakes and to purchase exactly what is intended but to facilitate the comparison between offers.

#### Case D

Applus Corporation is a multinational company with more than 6000 employees and present in 25 countries in three continents. The main business is certification, testing and audit in fields like automotive, safety, food, building, electronics, chemist, quality assurance, etc.

In 2004 the company decided that, due to the fact that their business guarantees the quality of products and services for the consumers, they decided to enlarge the concept of consumers including children, elderly and people with activity limitations.

As a consequence, the company developed the Corporate Social Responsibility policy based on the Design for All criteria. In practise that droved them to develop a plan to make their facilities accessible, to offer their clients a system to certify the accessibility of their premises, means of transport, and services and to use the income generated to disseminate the Design for All concepts through publications, conferences, etc.

#### Comments

The ethical approach of Applus has increased the reputation of the company among clients, companies, administrations and users facilitating their relationship with them.

But another unexpected outcome is that the employees realized in a very tangible way that the company is not only seeking for profit but also pursuing social ends.

Bearing in mind that, in Europe, one family out of four have a member with disability (and that also happens among the company's employees), the human resources of the corporation feel more involved to the philosophy of the company.

#### Case E

According to Spanish law companies with more than 50 employees have to employ at least 2% of its workforce with people with disabilities.

This law exists since 1982 but the companies didn't paid attention to and the administrative bodies didn't check up on this process.

In the last years, thanks to the pressure of NGOs, this question has been put in the social agenda. Beginning by requesting for a certificate of people with disability employment to have the right to participate in a call for tenders, nowadays to be candidate to be selected for any kind of administration's economical support (including Research & Development (R+D)) the company should demonstrate the fulfilment of this law.

**Comments**

Although it was hard for the companies in the beginning, throughout this process many companies realized that they already have employees with disability not being aware of the advantages in taxes that the company was losing and, on the other hand, by contracting new employees with disability, the attitudes of the human resources also improved regarding respect to diversity.

Regarding R+D initiatives it should be said that, since the 4<sup>th</sup> R+D Framework Program of the European Commission, when the projects associated with the improvement of quality of life, sustainable growth and information technologies include aspects related to Design for All, the elderly and people with disability tend to have more opportunities to achieve a better score in the calls for proposals.

**Case F**

In 2000, the Government of the Autonomous Region of Extremadura (Spain) passed the 202 Decree offering SMEs based in the region subsidies to cover up to 50% of the investments made by the companies implementing Design for All in their products and services.

This initiative supported by the regional Chamber of Commerce caused several companies from the food, transport and building sectors to develop plans in that respect.

**Comments**

In the past the belief was that the only way for administrative bodies to promote changes was through legislation, nowadays, both the Public Procurement considering social issues and economical support have become important tools for bringing out changes.



# THE BUILD-FOR-ALL APPENDICES

By  
The **Build-For-All** Partnership.  
Info-Handicap, Luxembourg

supported by the European Commission

Pilot project on actions to mainstream disability policies submitted under the open call for proposals for transnational projects VP/2004/008



Sole responsibility lies with the authors and the Commission is not responsible for any use that may be made of the information contained.

**DRAFT PUBLIC CONSULTATION DOCUMENT, January 2006**

**Please visit [www-build-for-all.net](http://www-build-for-all.net) for updates**



## Appendix 1 - List of accessibility relevant European standards (CEN norms)

The following CEN standards should be the support documents for the officers writing the invitations to tender as well as for the Tenderers:

### ISO TC 59: Building construction

ISO TR 9527:1994 *"Building construction – needs of disabled persons in buildings – design guidelines"* has been elaborated to give guidelines on the subject.

Sub Committee 16 "Accessibility and usability of the built environment", is currently drafting the ISO/CD 21542 *"Building construction — Accessibility and usability of the built environment"*

### CEN/TC 178 "Paving units and kerbs"

A specific standard for those with limited visual capacities is under development. It regards prEN 15209 *"Accessibility and usability of the built environment"*

### CEN/TC 10 "Lifts, escalators and moving walks"

EN 81-70:2003 *"Safety rules for the construction and installations of lifts - Particular applications for passenger and good passengers lifts - Part 70: Accessibility to lifts for persons including persons with disability"*

EN 115:1995 and its Amendments *"Safety rules for the construction and installation of escalators and passenger conveyors"*

Following standards are under preparation:

prEN 81-40 *"Safety rules for the construction and installation of lifts - Special lifts for the transport of persons and goods - Part 40: Stairlifts and inclined lifting platforms intended for persons with impaired mobility"*

prEN 81-41 *"Safety rules for the construction and installation of lifts - Special lifts for the transport of persons and goods - Part 41: Vertical lifting platforms intended for use by persons with impaired mobility"*

### CEN TC293: Technical aids for disabled persons

The primary objectives of this TC are:

- to produce standards on technical aids for persons with disabilities, including follow-up activities and revisions;
- to contribute to the development of mandates, the 'design for all' concept, and other centrally-located activities of importance to the field of technical aids for persons with disabilities;
- to inform about the CEN/TC 293 standards production and other activities.





TC293 is currently working, inter alia, on standards for hoists, walking aids, wheelchairs and prosthetics.

### **ISO TC 159: Ergonomics**

A specific ad hoc group “ergonomics for people with special requirements” has been set up. A new standard on usability of everyday products is under development. It regards:

ISO/DIS 20282-1 *“Ease of operation of everyday products – Part 1: Context of use and user characteristics”*

ISO/CD TS 20282-2 *“Ease of operation of everyday products -- Part 2: Test method”*

Also, the following project is under development:

ISO/AWI TR 22411 *“Ergonomic data and guidelines for the application of ISO/IEC Guide 71 in standards related to products and services to address the needs of older persons and persons with disabilities”*

### **ISO TC 22: Road vehicles**

Sub Committee 26 “Accessibility of vehicles to the physically handicapped” is preparing ISO/AWI 23688 *“Vehicles for the transport of people with reduced mobility with a maximum capacity of 8 seated passengers, driver not included”*

CEN/CENELEC Guide 6: *“Guidelines for standards developers to address the needs of older persons and persons with disabilities”*

This guide is primarily addressed to the standard’s writers and helps them to take into account the needs of older persons and persons with disabilities. But it is also a good tool for gathering information on the specific topic. The CEN/CENELEC Guide 6 is technically identical to the ISO/IEC Guide 71 and can be downloaded – free of charge – at following webpage:

<http://www.cenorm.be/boss/supporting/reference+documents/reference+documents.asp#8>

### **CEN Workshop: Design for All and Assistive Technologies in ICT.**

Two CWAs were elaborated:

- CWA 14661: 2003 containing guidelines to standardisers of ICT products and services in the CEN ICT domain (aimed to be a kind of ICT-sector guide, complementing CEN/CENELEC Guide 6)
- CWA 14835: 2003 containing guidelines for making information accessible through sign language on the web

Both CWAs reach the end of their 3 year life time during 2006. Unless resources are available for a major update to both of them, their validity will not be prolonged beyond 2006.

### **CEN/CENELEC Workshop: Accessibility in Collective Transport Systems (ACTS)**

This Workshop has drafted a CEN/CENELEC Workshop Agreement to provide guidance – to writers of relevant standards relating to collective transport systems -



how to take account of the needs of potential passengers with functional limitations, especially older persons and persons with disabilities.

The CWA 45546-1:2004 "*Guidelines to standardisers of Collective Transport Systems - Needs of older people and persons with disabilities - Part 1: Basic Guidelines*" can be considered as a sector specific supplement to CEN/CENELEC Guide 6.

Note: the development of standards is an ongoing process. For getting the latest information on the state of play, consult the website of CEN ([www.cenorm.be](http://www.cenorm.be)), CENELEC ([www.cenelec.org](http://www.cenelec.org)) or ISO ([www.iso.org](http://www.iso.org)).



## Appendix 2 - Implementing Accessibility Criteria in Practice

The ideas and statements of the lift, escalator and moving walks industry, drawing on the work of the Report of the Expert Group of the European Commission under the title of: *“Europe, accessible to all by 2010”* (2003), chapters 1.2, 1.3 and 2 are summarized below. They indicate numerous aspects of accessibility which should be taken into consideration in order to ensure that accessibility of the built environment is achieved by Contracting Authorities:

- The built environment must be fully accessible to all, keeping the mobility chain unimpaired and applying state-of-the-art safety
- All buildings should have horizontal and vertical easy access, to all floors or other spaces, suitable to all people.
- Where circumstances dictate, all main entrance and exit building doors will be powered
- No public building should be built without a lift if it has more than one floor.
- Level differences should be compensated by ramps or preferably lifting platforms. No step(s) up or down will hamper the access if no ramp is provided.
- All lifts should be equipped with audio and visual signals & controls which are designed for ease of use by every user and positioned at the right height in the lift car and on landings.
- Sanitary facilities should be accessible to all and will satisfy local requirements in terms of size and organisation
- Buildings signage must be integrated and displayed so that they will fulfil their function without being visually-discriminating, including the clear identification of glass areas for people with impaired vision.
- Lighting of public spaces should be sufficient to read signage in all conditions
- Every public building must provide means for the evacuation of ALL present in the building at all floors, in case of a fire or other emergency. The accessibility of fire-fighters and the evacuation of people with disabilities are priorities for officers writing public tenders.
- External connections of buildings with the public transport infrastructure will be optimized, with the necessary means, taking distance into account, avoiding level differences and enabling access to all able and less-able citizens.

**Further Measures that can be taken by Procurement bodies to achieve accessibility include:**

- Identification of the main issues affecting accessibility and inclusion



- Establishment of consultation groups
- Cooperation with representative organisations of and for disabled people
- Bringing accessibility expertise into construction projects
- Consulting or checking the accordance with pertinent CEN standards, related to specific areas (car parks), equipment (lifts, escalators & moving walks for ex.) and materials (tactile floors for ex.) (See list in Annex 1)
- Operating Disability proofing decision making to generate practical and pragmatic recommendations for accessible environments
- Conducting case studies in accessibility that demonstrate what can be achieved with careful thought and willingness to compromise



### Appendix 3 - Accessibility rules related to design

The fundamental accessibility criteria understood as **rules relating to design** are as following:

- Providing means for achieving equal spatial orientation to all users by the means of adequate spatial layout of the outdoor space and the spaces inside buildings, including the use of accessible signage, adequate way-finding and information systems.
- Providing means for achieving equal and unrestricted mobility to all users, outside and inside buildings, especially in terms of vertical circulation, horizontal circulation, spatial parameters of the spaces and facilities, having regard to site topography seen in the broader context, to the adequate illumination levels; mobility seen as elimination of hazardous elements, providing necessary infrastructure, selection of the adequate finishing materials and all necessary state-of- the art solutions.
- Providing means for achieving safe evacuation conditions from the buildings and from the outdoor facilities for everybody, having regard to their mobility possibilities.
- Providing means for assuring everyone's dignity in terms of creating the adequate conditions for personal hygiene in the inner spaces and in the use of the outdoor facilities.

This should be achieved by incorporating the requirements of Design for All in all groups of design and construction Works as specified in the Tender, according to the Member State Law, and according to the competencies of the Economic Operator. Compliance with these fundamental accessibility criteria should be clearly pointed out in the design and technical description of all kinds of Works by the Economic Operator .



## Appendix 4 - How to demonstrate Social Commitment

Having studied the range of issues and options open to an organisation in the field of adopting better practice approaches to disability and accessibility issues, it will be desirable to find ways of openly demonstrating this commitment to Corporate Social Responsibility<sup>16</sup> to the outside world. This can be done by adopting one or more of the following actions:

- Actively promoting diversity in your work force;
- Practicing equal opportunities recruitment;
- Undertaking positive action towards disabled persons (such as providing traineeships for disabled persons, targeted outreach towards disability organisations in the recruitment process; recruitment of disabled persons to the work force);
- Undertaking systematic disability awareness training for all company staff;
- Providing regular training of company staff in accessibility and Design for All;
- Undertaking specific initiatives to raise awareness about the benefits of accessibility and Design for All approaches;
- Ensuring the work place is accessible for disabled persons (both disabled clientele and disabled staff);
- Using new technologies to the advantage of people with disabilities, who stand to gain from more flexible forms of work and work organisation.
- Ensuring the provision of accessible goods and services
- Adopting a seamless approach to accessibility: implementation of this approach throughout all stages of the project from conception and design to implementation, construction and maintenance.
- Involving representative disability and older people's organisations in the design and implementation of project work

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<sup>16</sup> Corporate Social Responsibility is defined by the European Commission as "a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis"

**Good practice examples**

The Schindler Award for Architecture "Access for All": to raise awareness and promote training of architecture students on the issue of accessibility in built environment design.

Adecco is implementing a Corporate Social Responsibility program: "Disability & Skills" is currently being spread throughout the Adecco network to have all business units compliant in terms of employment of people with disabilities at Adecco's clients and for internal recruitment focusing on skills.

Hewlett-Packard Products and Services accessibility information - accessibility database to inform customers of how HP products meet accessibility requirements.



**Appendix 5 - Resources for training**

**A series of national training Workshops will be organised in 2006**

Target audience will be public authorities, professional organisations and disability organisations from national and local level.

The outcome of these events – to be included in the final version of this document at the end of 2006 - will contribute to improve the content of the present Reference Manual in order that it can be adapted to the particular national, regional or local situations in the Member States.

**Supplemental appendixes are being prepared, i.e.:**

- How to ensure Public Procurement Results in Accessibility
- Disability proof decision making

**In the meantime all interested persons should refer to the project Website [www.build-for-all.net](http://www.build-for-all.net), that will be updated always when new materials will be available.**





## Appendix 6 - Glossary

**'Built Environment'** The "European Concept for Accessibility" mentions two types of environment: natural and built.

Natural environments: their development depends solely on the action of natural elements (rain, wind). As soon as natural environments like for example forests are modified in order to be used by people, they become part of the built environment.

Built environments: these are environments created or modified by people so that people may live in them. Examples of built environments: buildings, squares, vehicles (transport), parking spaces, streets, children's play areas, monuments, water/gas installations, etc. natural parks - in which plant life is protected, and designated paths and different services are provided and beaches - with equipment (ramps, walkways on the sand, etc.) that facilitates access to them and the various services they offer, and which provides specific assistance in terms of bathing (floats for children, floating chairs for people with mobility problems, or buoys to indicate safe areas).

Thus, the built environment refers to any space or facility designed by people for people, whether public or private...

**'Disabled people'** Disability is a "general term denoting the negative aspects of the (WHO, 2001) interaction between a person (with a health condition) and that person's contextual factors, i.e. environmental and personal. This term is only used when reference to the three dimensions of the 2001 WHO International Classification of Functioning, Disability and Health (ICF) - **Body Functions & Structures, Activity and Participation** - is intended." (Source: Sustainable Design International Ltd. 2000-2002: Harmonized E.U. Vocabulary - Useful Terms & Definitions Relating to 'Disability & Human Perception')

**'People with Reduced Mobility'** As quoted in the EDF response to the European Commission Staff Working Paper : Rights of Persons with Reduced Mobility when Travelling by Air - DOC EDF 04/08 EN June 2004 The term "person with reduced mobility" has been widely used in European Community and European Civil Aviation conference (ECAC) documents. Some concerns have been raised by disability organisations that the term "persons with reduced mobility" is not sufficiently clear. There has been some concern that the term does not, in an explicit-enough way, relate to those individuals who are blind, partially sighted, deaf, hard of hearing, or those who have an intellectual disability as such individuals do not necessarily experience limited "mobility" when travelling.

Therefore, EDF stresses that the diversity of disability must be recognised in the draft Regulation and that the term "person with reduced mobility" should be interpreted broadly

**For the purposes of Directives 2004/18/EC and 2004/17/EC, the following definitions shall apply.**

(Source: L 134/128 EN Official Journal of the European Union 30.4.2004)

**'Public contracts'** are contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of Works, the supply of products or the provision of services within the meaning of this Directive.

**'Public Works contracts'** are public contracts having as their object either the execution, or both the design and execution, of Works related to one of the activities within the meaning of Annex I or a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority.

A **'work'** means the outcome of building or civil engineering Works taken as a whole which is sufficient of itself to fulfill an economic or technical function.

**'Public supply contracts'** are public contracts having as their object the purchase, lease, rental or hire purchase, with or without option to buy, of products. A public contract having as its object the supply of



products and which also covers, as an incidental matter, siting and installation operations shall be considered to be a 'public supply contract'.

**'Public service contracts'** are public contracts having as their object the provision of services referred to in Annex II. A public contract having as its object both products and services within the meaning of Annex II shall be considered to be a 'public service contract' if the value of the services in question exceeds that of the products covered by the contract.

A public contract having as its object services within the meaning of Annex II and including activities within the meaning of Annex I that are only incidental to the principal object of the contract shall be considered to be a public service contract.

**'Public Works concession'** is a contract of the same type as a public Works contract except for the fact that the consideration for the Works to be carried out consists either solely in the right to exploit the work or in this right together with payment.

**'Service concession'** is a contract of the same type as a public service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment.

A **'framework agreement'** is an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

A **'dynamic purchasing system'** is a completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting authority, which is limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification.

An **'electronic auction'** is a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods. Consequently, certain service contracts and certain Works contracts having as their subject-matter intellectual performances, such as the design of Works, may not be the object of electronic auctions.

The terms **'contractor'**, **'supplier'** and **'service provider'** mean any natural or legal person or public entity or group of such persons and/or bodies which offers on the market, respectively, the execution of Works and/or a work, products or services.

The term **'economic operator'** shall cover equally the concepts of contractor, supplier and service provider. It is used merely in the interest of simplification.

An economic operator who has submitted a tender shall be designated a **'Tenderer'**. One which has sought an invitation to take part in a restricted or negotiated procedure or a competitive dialogue shall be designated a **'candidate'**.

**'Contracting authorities'** means the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or one or several of such bodies governed by public law.

A **'body governed by public law'** means any body:

- (a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
- (b) having legal personality; and
- (c) financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.

Non exhaustive lists of bodies and categories of bodies governed by public law which fulfill the criteria referred to in (a), (b) and (c) of the second subparagraph are set out in Annex III. Member States shall periodically notify the Commission of any changes to their lists of bodies and categories of



bodies.

A **'central purchasing body'** is a contracting authority which:

- acquires supplies and/or services intended for contracting authorities, or
- awards public contracts or concludes framework agreements for Works, supplies or services intended for contracting authorities.

**'Open procedures'** means those procedures whereby any interested economic operator may submit a tender.

**'Restricted procedures'** means those procedures in which any economic operator may request to participate and whereby only those economic operators invited by the contracting authority may submit a tender.

**'Competitive dialogue'** is a procedure in which any economic operator may request to participate and whereby the contracting authority conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender.

For the purpose of recourse to the procedure mentioned in the first subparagraph, a public contract is considered to be **'particularly complex'** where the contracting authorities:

- are not objectively able to define the technical means in accordance with Article 23(3)(b), (c) or (d), capable of satisfying their needs or objectives, and/or
- are not objectively able to specify the legal and/or financial make-up of a project.

**'Negotiated procedures'** means those procedures whereby the contracting authorities consult the economic operators of their choice and negotiate the terms of contract with one or more of these.

**'Design contests'** means those procedures which enable the contracting authority to acquire, mainly in the fields of town and country planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes.

**'Written'** or **'in writing'** means any expression consisting of words or figures which can be read, reproduced and subsequently communicated. It may include information which is transmitted and stored by electronic means.

**'Electronic means'** means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.

The **'Common Procurement Vocabulary (CPV)'** shall designate the reference nomenclature applicable to public contracts as adopted by Regulation (EC) No 2195/2002, while ensuring equivalence with the other existing nomenclatures.

In the event of varying interpretations of the scope of this Directive, owing to possible differences between the CPV and NACE nomenclatures listed in Annex I, or between the CPV and CPC (provisional version) nomenclatures listed in Annex II, the NACE or the CPC nomenclature respectively shall take precedence.

**'public telecommunications network'** means the public telecommunications infrastructure which enables signals to be conveyed between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means;

a **'network termination point'** means all physical connections and their technical access specifications which form part of the public telecommunications network and are necessary for access to, and efficient communication through, that public network;

**'public telecommunications services'** means telecommunications services the provision of which the Member States have specifically assigned, in particular, to one or more telecommunications entities;



**'telecommunications services'** means services the provision of which consists wholly or partly in the transmission and routing of signals on the public telecommunications network by means of telecommunications processes, with the exception of broadcasting and television.

... to be continued



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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 1.12.2008  
COM(2008) 804 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**"Towards an accessible information society"**

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**"Towards an accessible information society"**

[SEC(2008) 2915]

[SEC(2008) 2916]



## 1. EXECUTIVE SUMMARY

As our society is evolving to an 'information society', we are becoming intrinsically more dependent on technology-based products and services in our daily lives. Yet poor e-accessibility means many Europeans with a disability are still unable to access the benefits of the information society.

This issue of e-accessibility has received high policy visibility and attention in recent years. In 2006, European Ministers agreed targets in their 'Riga Declaration' to deliver significant progress by 2010. In 2007, benchmarking showed that the pace of progress was still insufficient and that further efforts were needed in order to achieve the Riga targets. Web accessibility, especially the accessibility of public administration websites, has emerged as a high priority due to the growing importance of the Internet in everyday life.

The Commission considers it is now urgent to achieve a more **coherent, common and effective approach to e-accessibility, in particular web accessibility**, to hasten the advent of an accessible information society, as announced in the Renewed Social Agenda<sup>1</sup>. Through this Communication, the Commission describes the current state of play, establishes the rationale for European action and sets out key steps to be taken.

To achieve a common and coherent **e-accessibility approach**:

- European Standardisation Organisations (ESOs) should **pursue wider e-accessibility standardisation** activities to reduce market fragmentation and facilitate increased adoption of ICT-enabled goods and services.
- Member States, stakeholders and the Commission should **stimulate greater levels of innovation and deployment** in e-accessibility, in particular through the use of the EU research and innovation programmes and the Structural Funds.
- All stakeholders should **make full use of** the opportunities to address e-accessibility within **existing EU legislation**. The Commission will include appropriate e-accessibility requirements in revisions or new legislative developments.
- The Commission will **boost stakeholder cooperation activities** to enhance the coherence, coordination and impact of the actions. In particular, a new high-level ad hoc group will be mandated to provide guidance on the overall coherent approach to e-accessibility (including web accessibility) and propose priority actions to overcome e-accessibility barriers.

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<sup>1</sup> COM(2008)412.

To speed up progress in the special case of **web accessibility**:

- ESOs should **rapidly adopt European standards** for web accessibility, following the establishment of updated web guidelines (WCAG 2.0) by the World Wide Web Consortium.
- Member States should **step up work** on making public web sites **accessible** and **jointly prepare for swift adoption** of European web accessibility standards.
- The Commission will **monitor and publish progress** and may follow up at a later stage with legislative action.

## 2. E-ACCESSIBILITY

**E-accessibility** means overcoming the technical barriers and difficulties that people with disabilities, including many elderly people, experience when trying to participate on equal terms in the information society.

If everyone is to have equal opportunities for participation in today's society, the full range of ICT goods, products and services need to be accessible. This includes computers, telephones, TVs, online government, online shopping, call centres, self-service terminals such as automatic teller machines (ATMs) and ticket machines.

### 2.1. State of play

The scale of the accessibility challenge is huge and growing: around 15% of Europe's population has a disability and up to one in five working-age Europeans have impairments requiring accessible solutions. Overall, three out of every five people stand to benefit from e-accessibility, as it improves general usability<sup>2</sup>.

E-accessibility has socio-economic implications for both individuals and Europe as a whole. For example, accessible ICT-enabled solutions can help older workers to stay in employment and enhance the take-up of online public services such as e-Government and e-Health. Lack of e-accessibility excludes significant sectors of the population and prevents them from fully carrying out their professional, education, leisure, democratic participation and social activities. Strengthening e-accessibility will contribute to both economic and social inclusion goals.

Many countries have adopted at least some legislative or support measures to promote e-accessibility and parts of the ICT industry are making significant efforts to improve the accessibility of their products and services<sup>3</sup>.

E-accessibility is also a key element in the European e-Inclusion policy<sup>4</sup>. In a broader context, ICT falls within the scope of the proposed Directive on equal treatment that refers to access to and supply of goods and services available to the public<sup>5</sup>. The European Community and the

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<sup>2</sup> The Demographic Change — Impacts of New Technologies and Information Society.

<sup>3</sup> See details in accompanying Staff Working Paper.

<sup>4</sup> i2010 Communication COM(2005) 229, Communication on e-accessibility COM(2005) 425, and Communication on e-Inclusion COM(2007) 694.

<sup>5</sup> COM(2008) 426.

Member States also have to fulfil obligations under the United Nations Convention on the Rights of Persons with Disabilities in relation to accessibility of ICT goods and services. Some pieces of EU legislation already directly or indirectly address e-accessibility issues.

## 2.2. Rationale for further action

Despite the benefits and political attention, progress in e-accessibility is still unsatisfactory. There are many striking examples of accessibility deficits. E.g. text relay services, essential for deaf and speech-impaired people, are only available in half of the Member States; emergency services are directly accessible by text telephone in only seven Member States; broadcasting with audio description, subtitled TV programming and TV sign-language programming remains very poor; only 8% of ATMs installed by the two main European retail banks provide 'talking' output<sup>6</sup>.

The existing EU *acquis* relating to e-accessibility is limited. At Member State level, there is considerable fragmentation in the treatment of e-accessibility, both in the issues addressed (usually fixed telephony services, TV broadcast services and public website accessibility) and the completeness of policy instruments used. Faced with divergent requirements and uncertainties, the ICT industry suffers from this market fragmentation, making it difficult to achieve the economies of scale necessary to sustain widespread innovation and market growth. Parts of the industry are actively engaged and cooperating with users (e.g. on accessible digital television) but too many are watching from the sidelines.

The key issue in e-accessibility is that current efforts have insufficient impact due to a lack of coherence, unclear priority setting, and poor legislative and financial support.

**A common and coherent European approach** to e-accessibility is therefore key to achieving significant improvements.

## 2.3. Proposed actions

### (1) Delivering the change — strengthening policy priorities, coordination and stakeholder cooperation

At European level several activities have been put in place in recent years. Now is the time to increase synergies between these and reinforce individual areas of action for greater and more consistent impact.

Member States, users and industry need to step up their efforts and seek more impact through greater cooperation at European level and better exploitation of existing EU policy instruments. To support and strengthen coherence and effectiveness of a common approach and to help define priorities, the Commission will establish an **ad hoc high-level group on e-accessibility**, reporting to the i2010 high level group, involving consumer organisations and representatives of disabled and elderly users, ICT and assistive technology and service industries, academia and relevant authorities.

Early in 2009, the Commission will establish an **ad hoc high-level group** to provide guidance on priorities and a more coherent approach to e-accessibility. Stakeholders are called upon to commit to this cooperation.

<sup>6</sup> For details, see the MeAC study (Measuring progress of e-accessibility in Europe).

The Commission will **boost its existing support for cooperation** with and between stakeholders. In particular the groups following the implementation of i2010, standardisation matters, telecommunication issues and the disability action plan should use the guidance of the high-level group to inform their priorities. It is also important that users, relevant authorities, and industry reinforce their commitment and cooperation on e-accessibility matters.

Priorities for e-accessibility need to be selected. The first is web accessibility, where the proposed coherent and common approach can be applied. Next are the accessibility of digital television and electronic communications, including accessibility of the single European emergency number. For these, cooperation of users and industry should be increased and, with the help of the high-level group, better linked to the EU-level legislative and innovation support.

Self-service terminals and electronic banking is another high priority<sup>7</sup>. The closer cooperation of stakeholders will help to obtain guidance on further priorities and define a common programme of future work.

The Commission has already addressed e-accessibility in its proposal for a new version of the e-government European Interoperability Framework<sup>8</sup>, and will do so in its follow-up to the i2010 initiative and the disability action plan.

The Commission will ensure e-accessibility remains a **policy priority** in the follow-up to i2010 and disability action plan.

This closer coordination and cooperation will be further strengthened through enhanced exploitation of the activities mentioned below.

## (2) Monitoring progress and reinforcing good practice

The Commission will launch a study in 2009 to continue monitoring general e-accessibility and web accessibility progress and implementation, following up two studies conducted in 2006-2008<sup>9</sup>.

Under the 2009 Competitiveness and Innovation Programme (CIP), the Commission will propose a new thematic network on e-accessibility and web accessibility to further enhance stakeholder cooperation and the building up of experience and collection of good practices. It will also seek to reinforce the *ePractice* good practice exchange network on e-government, e-health and e-Inclusion, which has already amassed a vast amount of expertise on e-accessibility.

The Commission will monitor web-accessibility and e-accessibility progress and implementation, support cooperation and exchange of good practices via **studies** and a **CIP thematic network**, to be launched in 2009.

## (3) Supporting innovation and deployment

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<sup>7</sup> See report on the public consultation.

<sup>8</sup> <http://ec.europa.eu/idabc/en/document/7728>

<sup>9</sup> MeAC and study on accessibility of ICT products and services for disabled and elderly people.

There is already extensive support for e-accessibility research and innovation. In 2008, 13 new projects were funded with some €43m from the EU research programme. The Commission will continue to actively support e-accessibility and ICT for independent living of elderly people through the EU research programmes with a further call for proposals in 2009.

The Commission will **ensure e-accessibility is a strong research and innovation priority** in 2009 and beyond.

Member States and the Commission will use the Ambient Assisted Living joint research programme, launched in 2008, to stimulate innovative ICT-based solutions for independent living and the prevention and management of chronic conditions of elderly people.

Under the 2008 CIP, the Commission funded a pilot project on accessible TV and pilots on ICT for elderly people to accelerate technology deployment. In 2009, the Commission will fund a pilot on 'total conversation' (the combination of audio, text and video communications to support people with disabilities), which will help hearing- and speech-impaired persons to access the European '112' emergency number.

Member States and stakeholders are urged to **stimulate e-accessibility innovation and deployment** via the Structural Funds, FP7, the AAL programme and national programmes.

The Structural Funds Regulation<sup>10</sup> requires that the Member States consider accessibility for disabled persons as one of the criteria to receive funding. In this context, the Commission will provide a 'disability toolkit' in 2009, applicable to ICTs, and encourage Member States and Regions to ensure that ICT accessibility is incorporated in their procurement and funding criteria.

The Commission will provide a **disability toolkit** applicable to ICTs in 2009 for use in Structural Funds and other programmes.

#### **(4) Facilitating standardisation activities**

The Commission continues its strong support for e-accessibility in its standardisation work programme. In particular, Mandate 376 issued to the European Standardisation Organisations is an important standardisation activity to foster e-accessibility.<sup>11</sup> The Commission will promote the use of the results from this standardisation work and will seek a rapid continuation of Mandate 376 to deliver the actual standards and related conformity assessment schemes. This process will be complemented and supported by stakeholders' dialogue, exchange of good practices and deployment pilots, as referred to in the proposed actions of this Communication.

Under Mandate 376, ESOs should **rapidly develop EU standards** for e-accessibility, in cooperation with relevant stakeholders during 2009 and beyond.

<sup>10</sup> Council Regulation (EC) 1083/2006

<sup>11</sup> The aim of Mandate 376 is to enable the use of public procurement and practice for ICT's to remove barriers to participation in the Information Society by disabled and older people. The Mandate was given by the European Commission to the ESOs to come up with a solution for common requirements (for example for text sizes, screen contrast, keypad sizes etc) and conformance assessment.

## (5) Exploiting current and considering new legislation

There is a clear correlation at national level between the existence of legislation and the actual level of progress on e-accessibility<sup>12</sup>. Research points to the risks of legal fragmentation in the EU due to divergent legislative measures. Based on this, and building on the 2005 and 2007 Communications, the Commission has started exploring a more general legislative approach to e-accessibility.

However, given the vast, complex and evolving nature of the e-accessibility field, there is not yet a clear consensus on possible EU legislation dedicated to e-accessibility<sup>13</sup>, e.g. on elements such as scope, standards, compliance mechanisms and links to existing legislation. Furthermore, although there is a clear consensus on the need to act jointly to improve e-accessibility, there are different views on the next priorities to address. The Commission has therefore concluded that the time is not yet right for a specific e-accessibility legislative proposal, but will continue to assess its feasibility and relevance, taking into account actual progress in the field.

Nevertheless, there are provisions under current EU legislation that remain under-exploited, in particular for radio telecommunications equipment, electronic communications, public procurement, copyright in the information society, equality in employment, value added tax and state aid exemptions<sup>14</sup>. Making full use of these provisions would already significantly improve e-accessibility in Member States. The Commission therefore encourages Member States to make the most of these before new legislation is considered.

Several of the above pieces of EU legislation are under review or will be reviewed soon<sup>15</sup>. The Commission will work to ensure that, where appropriate, e-accessibility requirements are considered and reinforced in these revisions. Moreover, legislative proposals for electronic communications significantly strengthen provisions on disabled users under the current framework. The Commission will also carefully monitor the transposition and implementation of the audiovisual media services Directive<sup>16</sup> in particular its Article 3c that provides that Member States shall encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability.

**The Commission will ensure that appropriate e-accessibility provisions are integrated in revisions of EU legislation. Member States, stakeholders and the Commission should make full use of opportunities in current legislation to strengthen e-accessibility.**

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<sup>12</sup> See MeAC and study on accessibility of ICT products and services for disabled and elderly people.

<sup>13</sup> In the public consultation 90% of user organisations considered binding legislation a high priority, versus 33% of industry and public authorities.

<sup>14</sup> Directives 2000/78/EC, 2002/21/EC, 1999/5/EC, 2004/18/EC, 2001/29/CE, 2007/65/EC.

<sup>15</sup> For example, Directive 1999/5/EC on terminal equipment is under review: in this context, the Commission will make sure to maintain the possibility to activate the relevant Article 3(3)(f).

<sup>16</sup> Directive 2007/65/EC.

### 3. WEB ACCESSIBILITY

**Web accessibility** is an important aspect of e-accessibility which offers disabled people the possibility to perceive, understand, navigate, interact with and contribute to the Web. It also benefits other people confronted with visual, dexterity or cognitive limitations, such as elderly people. Web accessibility has become particularly important because of the explosive growth in online information and interactive services: online banking, shopping, government and public services, and communicating with distant relatives or friends.

#### 3.1. State of play

Despite its importance, the overall level of web accessibility remains poor across the EU. Several national and European surveys conducted over the last few years have found that the majority of websites, public and private, do not comply even with the most basic internationally accepted guidelines for accessibility. A recent survey found that only 5.3% of government websites and hardly any of the commercial websites surveyed were fully compliant with the basic accessibility guidelines<sup>17</sup>. This confirms why many people find important websites difficult to use and are therefore at risk of being partially or totally excluded from the information society.

The accessibility of public websites has received increasing policy attention in recent years in Member States<sup>18</sup>. At European level, a 2001 Communication on web accessibility encouraged Member States to endorse the Web Content Accessibility Guidelines (WCAG)<sup>19</sup>. In two Resolutions<sup>20</sup>, the Council stressed the need to speed up accessibility to the web and its content. The European Parliament suggested in 2002 that all public websites be fully accessible to disabled persons by 2003<sup>21</sup>. In 2006, the Riga Ministerial Declaration on an inclusive Information Society included a commitment that 100% of public websites be accessible by 2010.

Internationally, WCAG version 1 was adopted in 1999 by the World Wide Web Consortium (W3C). However, ambiguities led to fragmented implementations by Member States, and in view of new internet developments, WCAG 1.0 is becoming outdated. W3C has been working on a new version of the specifications (WCAG 2.0) for several years; these are now in the final stages of adoption. The challenge this time is to avoid a fragmented implementation.

#### 3.2. Rationale for further action

Making websites more accessible may be challenging in some cases, involving certain costs and expertise. However, there is increasing evidence and documented examples that making a website accessible delivers real benefits not only for disabled users, but also for website owners and users in general. Services are easier to use, simpler to maintain and accessed by more users<sup>22</sup>. As a result, improving website accessibility improves the situation for people

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<sup>17</sup> MeAC study.

<sup>18</sup> See related Staff Working Paper.

<sup>19</sup> COM(2001) 529.

<sup>20</sup> 2002/C 86/02 and 2003/C 39/03.

<sup>21</sup> C5-0074/2002-2002/2032(COS).

<sup>22</sup> Staff Working Paper.

with disabilities and also for others and can thus strengthen the competitiveness of European companies.

#### **Case study: benefits of an accessible website**

After making their website accessible, a financial services business in the UK identified as benefits:

- Customers found information more quickly and stayed on the site longer.
- New customers used the service, increasing online sales.
- Website maintenance was simpler, quicker and cheaper.
- The website achieved significantly higher search engine rankings.
- Compatibility problems were eliminated and mobile device access improved.
- 100% return on investment in less than 12 months.

Even so, persistent legislative fragmentation across Member States combined with the lack of clear legislative action at European level continues to hamper the internal market, constitutes barriers to consumers and citizens in this cross-border environment, and hinders industry development. The United Nations Convention on the Rights of Persons With Disabilities foresees obligations related to the internet which State Parties have to comply with. Further action at European level is therefore appropriate.

### **3.3. Proposed actions**

The primary responsibility for improving web accessibility rests with Member States and individual service providers. Nevertheless, there are actions that the Commission can undertake or facilitate that will help accelerate the improvement in web accessibility in Europe, even without specific EU legislative provisions on web accessibility. Overall success will be achieved through a common and consistent approach. The key action areas are:

#### **(1) Facilitate the rapid adoption and implementation of international guidelines in Europe**

There is broad consensus that WCAG 2.0 guidelines are the technical specifications to be closely adhered to for web accessibility. Once W3C reaches agreement on the guidelines, expected in the near future, Mandate 376 will be able to complete its harmonisation work at European level. In the meantime, Member States should undertake actions to ensure the Riga target for accessible public websites is achieved and prepare for the rapid incorporation of new web-accessibility specifications into national rules in a common and coherent way by:

- Publishing during 2009-2010 updated technical guidance and, where appropriate, translating relevant W3C specifications;
- Identifying during 2009 the public websites and intranets<sup>23</sup> concerned and achieving their accessibility by 2010.

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<sup>23</sup> In accordance with the Employment Equality Directive 2000/78/EC.



The Commission will continue its work to improve the accessibility of its own websites, updating its internal guidance to reflect the new specifications.

Non-public service providers, in particular owners of websites providing services of general interest<sup>24</sup>, and providers of commercial websites that are essential for participation in the economy and society are also encouraged to improve web accessibility (2008 onwards).

Member States should **achieve 100%** accessibility of public websites by 2010 and prepare for rapid transition to updated web accessibility specifications **in a common and coherent way**.

Websites owners providing services of general interest and other relevant website owners should improve the accessibility of their websites.

The European Standardisation Organisations, in cooperation with stakeholders, should rapidly develop **EU standards for web accessibility** building on WCAG 2.0.

The Commission is improving the accessibility of Commission websites, updating internal guidance to reflect the new specifications.

The Commission will monitor and support these developments, encouraging Member States to take rapid action on the key aspects of implementation and facilitating the collection and exchange of practical experience, primarily through the ePractice platform<sup>25</sup>. Depending on progress and when the standards are in place, the Commission will consider the need for common EU guidance, including legislative action<sup>26</sup>.

The Commission will monitor and publish progress and consider the need for common EU guidance, including legislative action (2009 onwards).

## (2) **Improve the understanding of and promote web accessibility**

There is a strong need for increased visibility, understanding and awareness of the needs and solutions for web accessibility. Member States should take a leading role in achieving this by:

- Widely promoting accessibility of websites by providing clear information and guidance on website accessibility, including assistive technologies<sup>27</sup>, and encouraging the use of accessibility statements<sup>28</sup>;
- Supporting training schemes, knowledge sharing and good practice exchange;
- Purchasing accessible tools and websites in their public procurement;
- Assigning a national contact point for web accessibility, e.g. via a website, in 2009;

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<sup>24</sup> As referred to in COM(2007) 725.

<sup>25</sup> [www.epractice.eu](http://www.epractice.eu).

<sup>26</sup> See Impact Assessment of COM 2007 (694)

<sup>27</sup> Pieces of ICT equipment that support functional capabilities of people with disabilities.

<sup>28</sup> Providing supporting information such as accessibility policy of the website, compliance with relevant specifications, support for persons with disabilities, complaint mechanisms.

- monitoring and reporting progress on compliance, user satisfaction and implementation costs for web accessibility on both public and other websites to the proposed high-level group and general public.

Member States should **lead in improving the awareness and understanding** of web accessibility in a coherent, efficient and effective manner and **report progress** to the high-level group.

#### 4. CONCLUSION

Common and coherent action is required on many fronts to achieve e-accessibility. In particular, immediate and rapid progress on web accessibility is essential. All stakeholders have decisive roles to play to achieve the common goal of a truly inclusive information society.

The Commission invites the Council, the European Parliament, the Committee of the Regions, and the Economic and Social Committee to express their views on the actions to be taken to make the information society accessible to all.

## Annex – Summary of actions

### E-accessibility

<i>Actions</i>	<i>Date</i>	<i>Responsible</i>
Establish an ad hoc <b>high-level group</b> to provide guidance on priorities and a more coherent approach to e-accessibility. Stakeholders are called upon to commit to this cooperation.	Early 2009	EC, stakeholders
Ensure e-accessibility remains a <b>policy priority</b> in the follow-up to i2010 and disability action plan.	2009-	EC
<b>Monitor web-accessibility and e-accessibility progress and implementation</b> , support cooperation and exchange of good practices via <b>studies</b> and a <b>CIP thematic network</b> .	2009-	EC, industry and stakeholders
Ensure e-accessibility is a strong <b>research and innovation priority</b> .	2009 -	EC
Stimulate <b>e-accessibility innovation and deployment</b> via the Structural Funds, FP7, the AAL programme and national programmes.	2009 -	MS, other stakeholders
Provide a <b>disability toolkit</b> applicable to ICTs for use in Structural Funds and other programmes.	2009	EC
Under Mandate 376, <b>rapidly develop EU standards</b> for e-accessibility, in cooperation with relevant stakeholders.	2009-	ESOs
Ensure appropriate <b>e-accessibility provisions are integrated in revisions</b> of EU legislation.	2008-	EC
<b>Make full use of opportunities in current legislation</b> to strengthen e-accessibility.	2008-	MS, EC industry and stakeholders

### Web-accessibility

Achieve 100% <b>accessibility of public websites</b> and prepare for rapid transition to updated web accessibility specifications in a <b>common and coherent way</b> .	2009-2010	MS
Rapidly develop <b>EU standards for web accessibility</b> building on WCAG 2.0.	2009-	ESOs (and stakeholders)
Improve the accessibility of <b>Commission websites</b> , updating internal guidance to reflect the new specifications.	2009-	EC
<b>Websites owners providing services of general interest</b> and other relevant website owners to improve the accessibility of their websites.	2009-	Other stakeholders
<b>Monitor and publish progress</b> and consider the need for common EU guidance, including legislative action.	2009-	EC
Lead in improving the <b>awareness and understanding</b> of web accessibility in a coherent, efficient and effective manner and report progress to the high-level group.	2008-	MS



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.9.2005  
COM(2005)425 final

**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL,  
THE EUROPEAN PARLIAMENT AND THE EUROPEAN ECONOMIC AND  
SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**eAccessibility**

**[SEC(2005)1095]**

**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL,  
THE EUROPEAN PARLIAMENT AND THE EUROPEAN ECONOMIC AND  
SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**eAccessibility**

Accessible Information and Communication Technologies (ICT) will improve the quality of life of people with disabilities significantly. At the same time, the lack of equal opportunities to access ICT can lead to exclusion. In this Communication, the Commission proposes a set of policy actions that foster eAccessibility. It calls on Member States and stakeholders to support voluntary positive actions to make accessible ICT products and services far more widely available in Europe.

This Communication on eAccessibility contributes to the implementation of the recently launched “**i2010 – A European Information Society for growth and employment**”<sup>1</sup> initiative, that presents a new strategic framework and broad policy orientations to promote an open and competitive digital economy, emphasising ICT as a driver of inclusion and quality of life. The Commission has the ambitious objective of achieving an “Information Society for All”, promoting an inclusive digital society that provides opportunities for all and minimises the risk of exclusion.

## **1. INTRODUCTION**

People with disabilities constitute about 15% of the European population and many of them encounter barriers when using ICT products and services. In certain cases, older people can be faced with similar problems. Accessible ICT products and services have now become a priority in Europe, due to the demographic shift: 18% of the European population was aged over 60 in 1990, while this is expected to rise to 30% by 2030.<sup>2</sup>

A recent study in the USA<sup>3</sup> found that 60% of working-age adults can benefit from the use of accessible technologies because they experience mild impairments or difficulties when using current technologies.

A 2002<sup>4</sup> study found that over 48% of 50 years+ persons in Europe considered that they are not being adequately addressed by manufacturers in the design of their products. Between 10 and 12 million were nevertheless potential customers of new mobile phones, computer and internet services.

The implications are clear: **making the benefits of ICT available to the widest possible number of people is a social, ethical and political imperative.** Furthermore, this creates markets of increasing economic significance.

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<sup>1</sup> COM(2005) 229 final of 1 June 2005.

<sup>2</sup> UN World Population Prospects (2002 Revision) and Eurostat Demographic projections

<sup>3</sup> The Wide Range of Abilities and Its Impact on Computer Technology – Forrester Research Inc., 2003.

<sup>4</sup> Seniorwatch IST-1999-29086 [www.seniorwatch.de](http://www.seniorwatch.de)

Overcoming the technical barriers and difficulties that people with disabilities and others experience when trying to participate on equal terms in the Information Society (IS) is known as “**eAccessibility**”. This is part of the broader eInclusion concept, which also addresses other types of barriers, such as financial, geographical or educational.

This Communication builds on previous work on eAccessibility under the two eEurope Action Plans and on the conclusions and results of RTD projects. It also integrates the main findings of an **online consultation**<sup>5</sup> that was held early 2005, which showed a very strong support (over 88% of responses) for the European Institutions to take initiatives to address a situation that is perceived by a significant majority (over 74%) as a lack of coherence among accessible ICT products and services in Europe. A wider availability of accessible products and services is also felt to be needed (84% of respondents).

**The main objective of this Communication is to promote a consistent approach to eAccessibility initiatives in the Member States on a voluntary basis, as well as to foster industry self-regulation.**

## **2. THE PRACTICAL CHALLENGES**

New technologies have already provided clear support to persons with disabilities and have enabled the realisation of functions in an independent manner that was only possible before with human assistance. However, despite efforts by industry, persons with disabilities still report a large number of problems when trying to use information technology products and services for example:

- lack of harmonised solutions, e.g. lack of access to the 112 emergency number from text phones in many Member States;
- lack of interoperable solutions for accessible ICT ;
- software not compatible with assistive devices, screen readers for blind users are often impossible to use after releases of new operating systems;
- interference between mainstream products and assistive devices, e.g. GSM telephones and hearing aids;
- lack of European-wide standards, e.g. the seven different, incompatible text phone systems for deaf and hard-of-hearing persons;
- lack of adequate services, e.g. many websites too complicated for cognitively impaired or inexperienced users or impossible to read and navigate through for visually impaired persons;
- lack of products and services for certain groups, e.g. telephone communication for sign language users;
- physical design difficult to use, e.g. keypads and displays on many devices;
- lack of accessible content;
- restricted choice of electronic communication services, quality and price.

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<sup>5</sup> Results available at:  
[http://europa.eu.int/information\\_society/policy/accessibility/com\\_ea\\_2005/a\\_documents/com\\_consult\\_res.html#\\_Toc97028181](http://europa.eu.int/information_society/policy/accessibility/com_ea_2005/a_documents/com_consult_res.html#_Toc97028181)

Most of these problems could, conceptually, be easily solved from a technical point of view, but require cooperation, coordination and determination at European level as market forces alone seem not to have been sufficient to date.

In the near future, examples of new technologies where accessibility aspects must be considered early include:

- digital television, e.g. regarding standards and compatibility as well as design of services and hardware;
- third generation mobile telephones, e.g. regarding design of hardware and software as well as services;
- broadband communication, e.g. using the possibilities of multimodal presentations in a way that enhances accessibility rather than the opposite.

Addressing these issues, previously thought to be of interest to a specific target segment of the population, will actually have positive consequences for the majority of technology users.

### **3. MARKET AND ECONOMY ISSUES**

ICT research and the market have come up with innovative solutions for some of these challenges. The main obstacles to their widespread availability are:

- until now they have been targeting a small market (seen essentially as people with disabilities and in some cases older people), mostly through SMEs at a national or regional level;
- the scarcity of applicable technical standards and technical specifications;
- relevant European legislation only recently explicitly contemplated the possibility of using accessibility requirements in the technical specifications in public procurement procedures;
- there are significant differences in the way some Member States have developed their own solutions.

As a consequence, the accessible ICT products and services market in Europe is still in an initial development phase, largely fragmented at national borders and lacking harmonised legislation and applicable technical standards. This does not facilitate the functioning of a single market and poses an increased burden on industry to comply with differing requirements in different Member States.

Increasingly, the target consumers are not seen anymore as only persons with disabilities and in some cases, older people, but as the whole population. This realization entails a market change we are just beginning to witness, as the bigger European industrial players are now turning their attention to this market sector, although they are still some time away before putting their full weight behind it.

This is also the case of the Telecommunications area – the pervasiveness of telecommunications products and services is now such that even this (relatively small for now) market niche is significant as a differentiator and growth generator, attracting interest from the bigger market players.

In conclusion, eAccessibility and related assistive technology products and services are now on the “midterm radar” of even the bigger mainstream technology providers, not only from Europe but also from other regions of the world.

#### 4. LEGAL AND POLICY ISSUES

On several occasions, Council has encouraged action at EU level for instance when it called on Member States and invited the Commission to “*Tap the Information Society’s potential for people with disabilities and, in particular, tackle the removal of technical and other barriers to their effective participation in the Knowledge Based Economy and Society*”<sup>6</sup>. The European Parliament has also supported this perspective<sup>7</sup>.

In particular, European policies and legislation have recognised employment and occupation as key elements in guaranteeing equal opportunities for all, contributing strongly to the full participation of citizens in economic, cultural and social life and to realising their potential. The potential impact on this from a wider availability of quality accessible ICT products and services is clear. It will foster greater employability, better social inclusion and give people the ability to live independently for longer.

The need to include all Europeans in the Information Society has been expressed by the European Institutions in many contexts. The Commission has taken initiatives in the two eEurope Action Plans to build a more accessible IS. The 2002 Action Plan included a separate action line addressing these issues. It recommended the adoption of the Web Accessibility Initiative (WAI)<sup>8</sup> guidelines, the development of a European Design for All (DFA) curriculum and strengthening assistive technology and DFA standardisation. In the eEurope 2005 Action Plan, the aim was to mainstream eInclusion in all action lines. It also proposed the introduction of accessibility requirements for ICT in public procurement.

Supporting this work, the Telecommunications Council has expressed the need to improve eAccessibility in Europe<sup>9</sup>. Furthermore the Ministerial Declaration<sup>10</sup> on eInclusion proposes taking all necessary actions towards an open, inclusive knowledge-based society accessible to all citizens.

Furthermore, in its 2003 Resolution on eAccessibility<sup>11</sup>, the Social Affairs Council called on Member States to tackle the removal of technical, legal and other barriers to the effective participation of people with disabilities in the knowledge-based economy and society.

In line with this, the European Parliament, in its 2002 Resolution on web accessibility<sup>12</sup>, “*reiterates the need to avoid any form of exclusion from the IS, and calls for the integration of*

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<sup>6</sup> Council Resolution on “eAccessibility for People with Disabilities”, 2-3 December 2002, [http://www.socialdialogue.net/docs/cha\\_key/consilium\\_2002\\_14892en2.pdf](http://www.socialdialogue.net/docs/cha_key/consilium_2002_14892en2.pdf)

<sup>7</sup> EP Resolution on eEurope 2002: Accessibility of Public Web Sites and their Content (2002 (0325))

<sup>8</sup> «eEurope 2002 : Accessibility of public websites and their content», COM(2001) 529 final, [http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001\\_0529en01.pdf](http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0529en01.pdf)

<sup>9</sup> Council Resolution on the eEurope Action Plan 2002 : Accessibility of public websites and their content, OJ C 86, 10.4.2002.

<sup>10</sup> Ministerial Declaration on eInclusion, 11 April 2003 <http://www.eu2003.gr/en/articles/2003/4/11/2502/>

<sup>11</sup> Council resolution 14892/02.

<sup>12</sup> EP Resolution on eEurope 2002: Accessibility of Public Web Sites and their Content (2002 (0325))



*disabled and elderly people in particular*". Furthermore in another Resolution, the use of sign language in Telecommunications in Europe<sup>13</sup> is mentioned.

In a general sense, Article 13 of the Treaty establishing the EC provides for action to combat discrimination, *inter alia* because of disability.

Based on this article, Council Directive 2000/78/EC of 27 November 2000<sup>14</sup>, has the explicit purpose (Article 1) "*...to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation*". In particular the Directive states that "*Appropriate measures should be provided, i.e. effective and practical measures to adapt the workplace to the disability, for example adapting premises **and equipment**...*"

Furthermore, a number of European Directives related to the Information Society have clauses referring to the inclusion of persons with disabilities and older people. These include the Electronic Communications Directives, in particular the Framework<sup>15</sup> and the Universal Service Directives<sup>16</sup>, the Directive on Radio and Telecommunication Terminals (RTTE)<sup>17</sup> the Public Procurement Directive<sup>18</sup> and the Employment Equality Directive<sup>19</sup>.

The Commission Action Plan<sup>20</sup> published in December 2003 on the follow-up of the European Year of People with Disabilities included as one of its four areas the access to, and use of, new technologies and describes actions undertaken to improved accessibility to the information society using instrument available at EU level.

Activities at EU level have an added value as several Member States are developing legislation, regulations, standards or guidelines to tackle these issues at national level. These actions are leading to similar but yet different eAccessibility requirements for products and services, thus creating a high risk for the European industry, i.e. being forced to operate in a fragmented market with the consequent loss of competitiveness and effectiveness.

The risk for consumers is even greater, particularly for people with disabilities and older persons: a fragmented market means costlier, more unfamiliar and incompatible products, more difficulty in accessing/moving information across borders, etc.

EU actions also take into account international experiences, like those in the USA and Canada, with which a dialogue has been initiated by the European Commission, particularly regarding the use of legislative provisions in the context of public procurement as a powerful leverage factor.

Consequently, basic conditions are set for initiatives to be taken at EU level – this was the view expressed by an overwhelming majority of the stakeholders during the public consultation process (84%).

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<sup>13</sup> EP Resolution on Sign Language - Resolution B4/ 0985/98.

<sup>14</sup> Available at

[http://europa.eu.int/comm/employment\\_social/fundamental\\_rights/pdf/legisln/2000\\_78\\_en.pdf](http://europa.eu.int/comm/employment_social/fundamental_rights/pdf/legisln/2000_78_en.pdf)

<sup>15</sup> Directive 2002/21/EC.

<sup>16</sup> Directive 2002/22/EC.

<sup>17</sup> Directive 1999/5/EC.

<sup>18</sup> Directives 2004/17/EC and 2004/18/EC.

<sup>19</sup> Directive 2000/78/EC.

<sup>20</sup> Equal opportunities for people with disabilities; A European Action Plan, COM(2003) 650 final.

## 5. ONGOING ACTIVITIES AT EU LEVEL

Several measures are already under way at EU level and will be strengthened and continued.

### *Accessibility requirements and standards*

Standards are a strategic tool for industry and for the public sector as well as a key enabler for new market opportunities. Although the production and implementation of standards are voluntary, they are an important tool to support the implementation of policy actions. European Standards on eAccessibility would contribute to the proper functioning of the single European market and consequently promote the development of new markets, competitiveness and employment. Thus, the Commission will continue to provide financial support to specific activities proposed by the European Standardisation Organisations (ESO) in the framework of the European Standardisation Action Plan or issuing mandates to the ESO<sup>21</sup>.

Accessibility requirements specified by standards must meet the needs of industry, designers and providers of products and services to avoid the hampering of creativity or innovation. At the same time they must meet user needs, and the involvement of users in the development of standards is therefore essential: a balance should be found between industrial and public interest. Standards should allow easy enforcement and reference in legislation, regulation and other instruments that promote accessibility. Free availability of standards or availability at a reduced cost would make their uptake easier, especially by SMEs with limited resources to purchase them and for users to access them.

Whilst promoting interoperability, care should be taken that patented technologies without reasonable and non-discriminatory (RAND) licensing are not promoted as standard solutions.

### *Design for All (DFA)*

The DFA methodology denotes the design of products and services to be accessible to as broad a range of users as possible<sup>22</sup>. DFA is now well established, although not yet widely practiced. It is therefore essential to continue raising awareness and promotion of DFA in Europe. To this end, the Commission has set up a network of centres of excellence known as EDEAN<sup>23</sup>, which has over one hundred members.

DFA not only allows a **more thorough consideration of accessibility requirements when designing a product or service**, but also fosters important **economies by avoiding costly redesign or technical fixes** after their deployment.

The basic structure for a European DFA curriculum for engineers and designers has been developed and several pilot courses have been provided in Member States. Strengthening its use in post secondary and professional education is a way of ensuring a future accessible IS.<sup>24</sup>

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<sup>21</sup> This process is governed by Directive 98/34:

[http://europa.eu.int/eur-lex/pri/en/oj/dat/1998/l\\_204/l\\_20419980721en00370048.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/1998/l_204/l_20419980721en00370048.pdf)

<sup>22</sup> There are three main strategies for DFA: 1) design for most users without modifications, 2) design for easy adaptation to different users (e.g. using adjustable interfaces), 3) design with a view to connect seamlessly to assistive devices.

<sup>23</sup> Website EDEAN (European Design for All e-Accessibility Network), <http://www.e-accessibility.org/>

<sup>24</sup> DFA curriculum report of IDCnet project.

The presence of an accessibility officer competent in DFA in relevant organisations, could be a way to professionalize eAccessibility.

### *Web accessibility*

A 2001 Commission Communication<sup>25</sup> on accessibility to public websites was followed by Council and Parliament resolutions in 2002. As a result, Member States have committed themselves to make their public websites accessible according to international guidelines<sup>26</sup>.

Through the eAccessibility Expert Group, the Commission with the Member States is monitoring developments, including new evaluation methods<sup>27</sup> and procedures, benchmarking, data collection and identification of best practices. **Web accessibility is an enabler** of accessible online services of public interest. To facilitate this process, it is important to encourage the development of authoring tools that encompass accessibility<sup>28</sup>.

A need for certification schemes of accessibility has arisen from the fact that several Member States have binding legislation that mandates accessibility and the need to assess compliance. A European Committee for Normalization (CEN) Workshop<sup>29</sup> is currently exploring adequate solutions.

### *Benchmarking and monitoring*

Several Member States are introducing benchmarking for accessibility and monitoring in their national legislation. At EU level, monitoring of web accessibility has been requested by Council and the European Parliament. The Parliament also requested monitoring subtitles and audio description for Digital TV.

To be able to further develop adequate European eAccessibility policies **it is essential to have European data comparable across Member States**. The Commission will build upon the ongoing European monitoring activities, taking account of the revised Lisbon approach.

The Commission maintains a dialogue with statistical bodies in order to develop and improve relevant indicators, in particular to mainstream accessibility questions in existing indicators.

### *Research*

Research and technological development (RTD) is a fundamental element in the push towards an accessible IS. Almost 200 European RTD projects since 1991, representing approximately €200 Million in EC co-financing<sup>30</sup> have already contributed to improving accessibility with increased knowledge of accessibility problems and required solutions.

Specific results demonstrated possible solutions such as accessible remote home services for older people (including alarms and emergency services). Solutions have been developed to

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<sup>25</sup> COM(2001) 529 final.

<sup>26</sup> W3C/WAI/WCAG1.0 Web Content Accessibility Guidelines 1.0. Version 2 is under preparation and will address the evolution that has taken place in web technologies and facilitate testing compliance.

<sup>27</sup> Web Accessibility Benchmarking (WAB) cluster.

<sup>28</sup> W3C/WAI/ATAG Authorising Tools Accessibility Guidelines (ATAG).

<sup>29</sup> <http://www.cenorm.be/cenorm/businessdomains/businessdomains/iss/activity/ws-wac.asp>

<sup>30</sup> For examples of projects, see <http://www.cordis.lu/ist/so/einclusion/home.html> and [http://www.cordis.lu/ist/directorate\\_f/einclusion/previous-research.htm](http://www.cordis.lu/ist/directorate_f/einclusion/previous-research.htm)

improve access to digital information by blind and partially sighted persons (text, graphics, 3D images, coded music, television programmes). Systems for motor impaired persons to facilitate mobility, manipulation and control have been demonstrated, as have services to improve communication possibilities of hearing impaired persons including sign language and lip movement generation. Other examples included computer environments to facilitate the integrated education of children with disabilities or employment of adults with disabilities and contributions to policy-making (eEurope i.e. Web Accessibility, Design for all).

Many of the results of Community projects have been further successfully elaborated in products in the market, or the knowledge developed has contributed to the improvement of the accessibility of ICT products and services.

As technologies continue to rapidly evolve, offering new technical solutions, it is essential to invest in research to reap the significant potential that they have for people with disabilities and older persons. The current proposal for the 7<sup>th</sup> Framework Programme integrates the **need to continue and, indeed, to expand RTD in eAccessibility** so as to further develop European assistive technology industry<sup>31</sup> and to make accessibility an everyday issue for mainstream industry.

## **6. INCREASING THE E-ACCESSIBILITY OF ICT PRODUCTS AND SERVICES IN EUROPE – THREE NEW APPROACHES**

In addition to promoting the ongoing measures just listed, the Commission will foster the use of three approaches not yet widely used in Europe: (i) accessibility requirements in public procurement, (ii) accessibility certification, and (iii) better use of existing legislation.

Two years after the publication of this Communication, the Commission will evaluate the outcome of these actions. Following the principle of Better Regulation<sup>32</sup> the Commission will hold an exchange of views with the Member States and, subject to full impact assessment, may consider the possibility of taking additional measures, including legislation if deemed necessary.

### **1. Public procurement**

The total public procurement in Europe is about 16% of the gross domestic product. Public authorities at all levels can require accessibility features in the goods and services they purchase. In fact, the European Public Procurement Directives specifically mention the possibility to include DFA and accessibility requirements in conditions for tender (technical specifications).

This implies a clear commitment to **an inclusion policy that makes the products and services available to more users, citizens and employees**. It encourages industrial companies to include accessibility as a built-in feature of their products and creates a larger market for accessible ICT. Such effects have been seen in the USA<sup>33</sup> where legislation mandates accessibility requirements to be included in federal procurement.

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<sup>31</sup> Access to Assistive Technology in the EU, a DG EMPL report, CE-V/5-03-003-EN-C

<sup>32</sup> European Commission 'White Paper on Governance' COM(2001) 428 final.

<sup>33</sup> Section 508 of the Rehabilitation Act as amended by the Workforce Investment Act of 1998.

In the online consultation over 90% of respondents favoured the principle of public agencies requiring all ICT products and services they buy to be accessible. Some Member States already include accessibility requirements in their public procurement. Shared accessibility requirements at EU level have the potential to reduce market fragmentation and to foster interoperability.

**There is a strong need for consistency of accessibility requirements in public procurement in Europe.** To this effect, the Commission is preparing a mandate to the European standardisation organisations to develop European accessibility requirements for public procurement of products and services in the ICT domain. The mandate is currently submitted to the Member States for consultation. It is foreseen to be issued to the European standardisation organisations by the end of 2005.

The Commission will encourage the debate on this subject with the Member States in the framework of the eAccessibility Expert Group<sup>34</sup>. It will continue to collect experiences from Europe and to encourage an international dialogue in particular with the US through the Transatlantic Economic Partnership (TEP) on harmonisation of eAccessibility requirements for public procurement.

## 2. *Certification*

It is not always obvious when buying ICT products what requirements they fulfil. This is particularly important when buying accessible ICT. Some standards exist or are under development defining how products and services can be made accessible. However, at present there is no reliable means to assess the conformity of products with those accessibility standards. Adequate certification schemes for accessibility of products, organisational processes and professionals (based on the European Key Mark<sup>35</sup> and on European standards) would provide guidance to customers and clients who want accessible products and services and might give manufacturers and service providers due recognition for their efforts. They would also facilitate the monitoring of compliance with regulations demanding accessibility.

In its January 2003 Resolution on eAccessibility, the Council called for an “eAccessibility mark” for goods and services. The 2002 Ministerial Declaration on eInclusion reflected that “*a European web accessibility label that certifies compliance with W3C WAI<sup>36</sup> guidelines could be considered in order to avoid market fragmentation*”.

The Commission will study together with the key stakeholders **possibilities for the development, introduction and implementation of certification schemes for accessible products and services**, including the definition of criteria testing, and evaluation methods. The possibility of self-declaration or third-party certification will also be investigated and the different options will be compared for their effectiveness<sup>37</sup>. The Commission will launch a study on this matter in the last quarter of 2005.<sup>38</sup>

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<sup>34</sup> The eAccessibility Experts Group coordinates experts from the Member States who support the implementation of the eEurope Action Plan.

<sup>35</sup> [http://www.cenorm.be/conf\\_assess/keymark/keymarktext.htm](http://www.cenorm.be/conf_assess/keymark/keymarktext.htm)

<sup>36</sup> World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI).

<sup>37</sup> The online consultation showed a strong support (over 72%) for the certification and labelling of eAccessible ICT products and services, with significant differences among target groups only 61.4% agreement among *Manufacturers, providers or sellers of eAccessibility products & services*). Additionally, among those supporting product certification and labelling, the groups “*Private*

### 3. *Better use of existing Legislation*

Several Directives have provisions that can be used to enforce eAccessibility (such as the Equal Treatment in Employment Directive<sup>39</sup>, the Directive on Radio and Telecommunication Terminals and the Public Procurement Directives). It is important to cooperate with the Member States, to develop a practical way of using these Directives to address eAccessibility.

In particular, implementing the Inclusive Communications Group (INCOM)<sup>40</sup> suggestions would resolve some existing European challenges, e.g. to ensure access by users with disabilities to emergency services using the single European number 112, to have harmonised frequencies in Europe for assistive wireless solutions, to ensure real time text and sign communication across Member States, and to facilitate the purchasing of accessible goods by public authorities. Possible difficulties in putting existing legislation into practice should be addressed.

The Commission, in its audiovisual policy dialogue, will encourage common or interoperable solutions in the field, for example, of improved access to digital TV programmes. Such common solutions will allow the exploitation of economies of scale.

**The “eAccessibility potential” of existing European legislation needs to be fully exploited.** The Commission will launch a study<sup>41</sup> in 2005 to identify best practices and establish a dialogue with Member States and key stakeholders through the relevant groups in charge of the implementation of the Directives.

## 7. CONCLUSIONS AND FOLLOW-UP

This Communication and the results of the online consultation process show and endorse the European Commission’s determination to address eAccessibility issues and find solutions that (i) convey to Member States the urgent need to work together towards a consistent approach to e-accessibility; (ii) encourage industry to develop accessible solutions for ICT products and services; (iii) demonstrate to users with disabilities the active commitment to improve accessibility in the Information Society.

During the next two years (2005-2007), the Commission will continue to raise awareness, promote the use of the proposed instruments, gather evidence and continue stakeholder consultation in order to take informed decisions in the eAccessibility domain.

To this effect, the Commission plans a study to begin in the last quarter of 2005 on “*Measuring progress of eAccessibility in Europe*” in order to identify and evaluate policy options aiming at improving eAccessibility in Europe. The initial results of the study will be available in early 2007.

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*individuals with a disability*” and “*Public Agencies*” clearly favouring mandatory schemes, while “*Manufacturers, providers or sellers of eAccessibility products & services*” favour voluntary procedures, with the remaining groups standing somewhere in between.

<sup>38</sup> See chapter Follow-up and conclusions.

<sup>39</sup> Council Directive 2000/78/EC of 27 November 2000 prohibits discrimination of persons with disabilities *inter alia* at work and encompasses reasonable accommodation including ICT.

<sup>40</sup> Formed in 2003 and made up of representatives of Member States, Telecoms operators, user organisations and standardisation bodies.

<sup>41</sup> See Follow-up and conclusions.

A follow-up that focuses on the eAccessibility situation will be made two years after the publication of this Communication. It will include an evaluation of the outcome of the approaches proposed here, following the principle of Better Regulation<sup>42</sup> and, subject to full impact assessment, the Commission may consider additional measures, including new legislation if deemed necessary. This eAccessibility work will in turn contribute to the already announced 2008 European Initiative on eInclusion<sup>43</sup>.

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<sup>42</sup> European Commission 'White Paper on Governance' COM(2001) 428 final.

<sup>43</sup> COM(2005) 229 "i2010 – A European Information Society for growth and employment".

In this list, the items in blue are still proposals, the ones marked with a "+" are instruments implementing the main legislation.

Dans cette liste, les entrées en bleu sont encore à l'état de proposition, celles marquées avec un "+" sont des instruments qui mettent en œuvre la législation principale.

Bei den blau markierten Einträgen dieser Liste handelt es sich noch um Vorschläge. Die Instrumente zur Politikumsetzung sind mit einem "+" gekennzeichnet.

### **List of secondary legislation relevant to "disability"**

- 1) **Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation**
  - 2) **Directive 2001/85/EC (relating to special provisions for vehicles used for the carriage of passengers comprising more than eight seats in addition to the driver's seat)**
  - 3) **Directive 1999/5/EC (on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity)**
  - 4) **Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and the free movement of such data**
  - 5) **Directive 95/16/EC of the European Parliament and of the Council of 29 June 1995 on the approximation of the laws of the Member States relating to lifts (OJ L 312, 7.9.1995, p.1)**
  - 6) **Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment**
  - 7) **Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air Text with EEA relevance. OJ L 204, 26.7.2006 p.1-9**
  - 8) **Regulation of the European Parliament and of the Council on rail passengers' rights and obligations**
  - 9) **Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)**
  - 10) **Regulation (EC) N° 1177/2003 of the EP and Council of 16 June 2003 concerning Community statistics on income and living conditions (EU-SILC)**
- + Commission Regulation (EC) N° 1981/2003 of 21 October 2003 implementing Regulation (EC) 1177/2003 of the EP and Council concerning Community statistics on income and living conditions (EU-SILC) as regards definitions and updated definitions.



+ Commission Regulation (EC) N° 1982/2003 of 21 October 2003 implementing Regulation (EC) 1177/2003 of the EP and Council concerning Community statistics on income and living conditions (EU-SILC) as regards the sampling and tracing rules.

+ Commission Regulation (EC) N° 1983/2003 of 7 November 2003 implementing Regulation (EC) 1177/2003 of the EP and Council concerning Community statistics on income and living conditions (EU-SILC) as regards the list of target primary variables.

+ Commission regulation (EC) N° 28/2004 of 5 January 2004 implementing Regulation (EC) 1177/2003 of the EP and Council concerning Community statistics on income and living conditions (EU-SILC) as regards the detailed content of intermediate and final quality reports.

+ Regulation (EC) N° 1553/2005 of the EP and Council of 7 September 2005 amending Regulation (EC) N° 1177/2003 of the EP and Council of 16 June 2003 concerning Community statistics on income and living conditions (EU-SILC).

+ Commission Regulation (EC) N° 698/2006 of 5 May 2006 amending Commission Regulation (EC) N° 1981/2003 implementing Regulation (EC) 1177/2003 of the EP and Council concerning Community statistics on income and living conditions (EU-SILC) as regards definitions and updated definitions.

#### **11) Council Regulation (EC) 577/98 of 9 March on the organisation of the Labour Force Sample Survey in the Community (LFS):**

**+ Commission Regulation (EC) N° 1571/98 of 20 July 1998 implementing Council Regulation (EC) N° 577/98 on the organisation of a labour force sample survey in the Community (OJ L 205, 22.7.98, p.40)**

+ Commission Regulation (EC) N° 1924/1999 of 8 September 1999 implementing Council Regulation (EC) 577/98 as regards the 2000 to 2002 programme of ad hoc modules to the LFS

**+ Commission Regulation (EC) N° 1566/2001 of 12 July 2001 implementing Council Regulation (EC) N° 577/98 on the organisation of a labour force sample survey in the Community concerning the specification of the 2002 ad hoc module on employment of disabled people \***

**+ Commission Regulation (EC) N° 1575/2000 of 19 July 2000 implementing Council Regulation (EC) N° 577/98 on the organisation of a labour force sample survey in the Community concerning the codification to be used for data transmission from 2001 onwards (OJ L 181, 20.7.2000, p.16)**

+ Commission Regulation (EC) N° 1626/2000 of 24 July 2000 implementing Council Regulation (EC) N° 577/98 on the organisation of a labour force sample survey in the Community as regards the 2001 to 2004 program of ad hoc modules to the labour force survey.

+ Regulation (EC) N° 1991/2002 of the EP and of the Council of 8 October 2002 amending Council Regulation (EC) N° 577/98 on the organisation of a labour force sample survey in the Community.

+ Regulation (EC) N° 2257/2003 of the EP and of the Council of 25 November 2003 amending Council Regulation (EC) N° 577/98 on the organisation of a labour force sample survey in the Community to adapt the list of survey characteristics.

+ **Commission Regulation (EC) N° 430/2005 of 15 March 2005 implementing Council Regulation (EC) N° 577/98 on the organisation of a labour force sample survey in the Community concerning the codification to be used for data transmission from 2006 onwards and the use of a sub-sample for collection of data on structural variables (OJ L 71, 17.3.2006, p.36).**

**12) Regulation (EC) No 458/2007 of the European Parliament and of the Council of 25 April 2007 on the European system of integrated social protection statistics (ESSPROS)**

**13) Proposal for a Regulation of the European Parliament and of the Council on Community statistics on public health and health and safety at work – COM(2007) 46 final**

**14) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax**

**15) Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty**

**16) Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes" (as amended by "Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes")**

**17) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)**

**18) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors**

**19) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts**

**20) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, as amended by Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 (OJ L 136, 30.4.2004, p.34)**

**21) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22 )**

- 22) **Directive 2003/24/EC of the European Parliament and of the Council of 14 April 2003 amending Council Directive 98/18/EC on safety rules and standards for passenger ships - OJ L 123, 17.5.2003, p. 18-21)**
- 23) **Directive 96/48/EC on the interoperability of the trans-European high-speed rail system (O J L 235, 17.09.1996, p. 6-24) as amended by Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 (O J L 164, 30.4.2004, p. 114-163 )**
- 24) **Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans European conventional rail system (O J L 110, 20.04.2001, p. 1-27) -as amended by Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 (O J L 164, 30.4.2004, p. 114-163 )**
- 25) **Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (Text with EEA relevance)(O J L 263, 9.10.2007, p 1)**
- 26) **Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (Text with EEA relevance) (OJ L 332, 18.12.2007, p. 27)**
- 27) **Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999**
- 28) **Decision 1720/2006/EC of the European Parliament and of the Council of 15 November 2007 establishing an action programme in the field of lifelong learning**
- 29) **Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)**
- 30) **Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services ("Framework Directive").**
- 31) **Council Decision 2005/600/EC of 12 July 2006 on guidelines for the employment policies of the Member States**  
  
+ Council Decision 2006/544/EC of 18 July 2006 on guidelines for the employment policies of the Member States
- 32) **Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide**
- 33) **Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society**

- 34) **Directive 2001/20/EC of the European Parliament and of the Council of 4 April 2001 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use**
- 35) **Proposal for a Regulation of the European Parliament and of the Council concerning the production and development of statistics on education and lifelong learning – COM(2005)625 final.**
- 36) **Directive 97/67/EC of the European Parliament and of the Council of 15 December on common rules for the development of the internal market of Community postal services and the improvement of quality of services(OJ L15 of 21.01.1998), page 14) as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services (OJ, L176 of 05.07.2002, page 21).**
- 37) **Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 -2013)**
- 38) **Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin**
- 39) **Decision 2119/98 of the European Parliament and of the Council of 24 September 1998 setting up a network for the epidemiological surveillance and control of communicable diseases in the Community**
- 40) **Directive 2004/23/EC of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissue and cells**
- 41) **Directive 2002/98/EC of the European Parliament and of the Council of 27 January 2003 setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood components and amending Directive 2001/83/EC**

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THE HIGH COURT  
[2011 No. 9548P]

BETWEEN

M.X. [APUM]  
PLAINTIFF  
AND  
HEALTH SERVICE EXECUTIVE

DEFENDANT  
AND  
BY ORDER

THE ATTORNEY GENERAL

NOTICE PARTY  
AND  
IRISH HUMAN RIGHTS COMMISSION

AMICUS CURIAE

JUDGMENT of Mr. Justice John MacMenamin delivered on Friday, the 23rd day of November, 2012

1. The unfortunate factual background to the proceedings to date has already been set out in a previous judgment in this matter, namely, HSE v X. [APUM] [2011] IEHC 326. Since that time, new proceedings have been initiated on behalf of the plaintiff, M.X. (hereinafter referred to as "X"). On her behalf, her counsel seeks to challenge a number of aspects of the procedure which have been adopted in her care regime. It is now claimed that the medical decisions, made in the context of her incapacity by reason of treatment-resistant paranoid schizophrenia, fail to have regard to her equal rights before the law as a citizen; and that she should be entitled to have the decision that she lacks capacity to decide whether or not to receive treatment subject to an independent review, ideally by an independent tribunal or court. While not fully alluded to in the pleadings, it is claimed that she is entitled to have the medical options concerning her treatment made on an "assisted decision-making" basis, which would give proper weight to her own wishes as to that treatment. It is contended that the plaintiff is being treated under s. 57 of the Mental Health Act 2001 ("the Act"), and that this provision is repugnant to the Constitution, incompatible with the European Convention on Human Rights ("ECHR"), and also fails to have due regard for the provisions of the United Nations

Convention on the Rights of Persons with Disabilities ("UNCRPD"). The Attorney General and the Irish Human Rights Commission have been joined as notice parties to the proceedings. As this judgment outlines, the law in this area is evolving, and this case must be decided on its very unusual, if not unique, facts. It is essential to bear in mind the nature of the treatment being administered against the plaintiff's will. It involves the regular administration of the drug Clozapine, together with the necessary involuntary abstraction by a syringe of blood samples from the plaintiff's veins. This is itself an invasion of the plaintiff's bodily integrity – a constitutionally protected right.

Issues to be considered

2. This judgment, first, considers how the plaintiff's assessment was carried out in the context of the Act of 2001, and in particular the precise provisions of that Statute which are applicable.

3. Second, in cases like the present, where challenges are brought to the constitutionality of legislation, and declarations as to the incompatibility of legislation with the European Convention on Human Rights are also sought, the sequencing approach which a court should follow has been set out in a number of decisions of the Supreme Court. The guiding principle regarding determinations of constitutionality was set out by Henchy J. in *The State (Woods) v. Attorney General* [1969] I.R. 385 at p. 400 where he stated "... that a court should not enter upon a question of constitutionality unless it is necessary for the determination of the case before it". Similarly, in *Murphy v. Roche* [1987] I.R. 106, Finlay C.J. stated at p. 110:-

"... where the issues between the parties can be determined and finally disposed of by the resolution of an issue of law other than constitutional law, the Court should proceed to determine that issue first and, if it determines the case, should refrain from expressing any view on the constitutional issue that may have been raised."

Therefore, a court must initially seek to resolve an issue by a means other than through constitutional reference. Here, counsel for the plaintiff contends, in a novel argument, that the UNCRPD is directly applicable within this jurisdiction, by virtue of the fact that the European Union is a signatory to that Convention. As will be explained later, the Court is not of the view that this Convention has direct effect in this jurisdiction at this time. That is not to say however that the provisions of that Convention are entirely immaterial, however.

4. Therefore, it will then be necessary to consider the other aspects of the plaintiff's claim, namely that the impugned provisions are unconstitutional, and/or incompatible with the ECHR. In accordance with the judgment in *Carmody v. Minister for Justice* [2010] 1 I.R. 635, this judgment will first assess questions of constitutionality before turning to consider the compatibility of the legislation with the ECHR. At p. 650 of *Carmody*, Murray C.J. pointed out:-

"... when a party makes a claim that an Act or any of its provisions is invalid for being repugnant to the Constitution and at the same time makes an application for a declaration of incompatibility of such Act or some of its provisions with the State's obligations under the Convention, the issue of constitutionality must first be decided.

If a court concludes that the statutory provisions in issue are incompatible with the Constitution and such a finding will resolve the issues between the parties as regards all the statutory provisions impugned, then that is the remedy which the Constitution envisages the party should have. Any such declaration means that the provisions in question are invalid and do not have the force of law. The question of a declaration pursuant to s. 5 concerning such provisions cannot then arise. If, in such a case, a court decides that the statutory provisions impugned are not inconsistent with the Constitution then it is open to the court to consider the application for a declaration pursuant to s. 5 if the provisions of the section including the absence of any other legal remedy, are otherwise met.”

5. As will be explained, the Court does not conclude that any of the statutory provisions impugned are inconsistent with the Constitution. The conclusion is, rather, that procedures which have been adopted in purported compliance with s. 60 of the Act of 2001 are to be applied in a constitutional manner, which process, in this specific category of cases, involves a right to independent review and assisted (rather than substituted) decision making. The incursion into the plaintiff’s constitutional rights is very significant. It involves medical treatment against her will. The conclusion is that it is only in this manner can the rights of the plaintiff under the Constitution be vindicated “as far as practicable” (Article 40.3 of the Constitution). I do not think such vindication can take place unless the steps outlined here are an integral part of the process and, allow for remedies commensurate with the protection of rights. To decide whether the plaintiff is entitled on a mandatory basis to an independent tribunal or court to determine the issues as to her treatment, and in light of the connections between rights identified in the Charter of Fundamental Rights in European Union jurisprudence and the ECHR, it will then be necessary to outline some current jurisprudence of the Strasbourg Court. The judgment follows the following sequence therefore. Having outlined the statute law and the evidence, it asks first can the issues be decided and finally disposed of by an issue of law other than constitutional law (section 1) (see *The State (Woods) v. Attorney General* and *Murphy v. Roche*). This question is answered in the negative. Section 2 addresses the constitutional issues (see *Carmody*). Section 3 addresses whether the plaintiff is entitled to a declaration regarding an independent tribunal or court under s. 5 of the European Convention of Human Rights Act 2003, in the absence of any other legal remedy.

6. Finally, the judgment addresses the issue of the plaintiff’s locus standi (section 4). While parts of this judgment may overlap with the earlier judgment relating to the same plaintiff, for completeness it is necessary to outline certain of the statutory provisions in detail.

The provisions of the Mental Health Act 2001

7. Section 2 of the Act provides:-

“2(1) In this Act, save where the context otherwise requires— ...  
‘treatment’, in relation to a patient, includes the administration of physical, psychological and other remedies relating to the care and rehabilitation of a

patient under medical supervision, intended for the purposes of ameliorating a mental disorder;”

...

Section 4 provides:-

“4(1) In making a decision under this Act concerning the care or treatment of a person (including a decision to make an admission order in relation to a person), the best interests of the person shall be the principal consideration with due regard being given to the interests of other persons who may be at risk of serious harm if the decision is not made.

(2) Where it is proposed to make a recommendation or an admission order in respect of a person, or to administer treatment to a person, under this Act, the person shall, so far as is reasonably practicable, be notified of the proposal and be entitled to make representations in relation to it and before deciding the matter due consideration shall be given to any representations duly made under this subsection.

(3) In making a decision under this Act concerning the care or treatment of a person (including a decision to make an admission order in relation to a person) due regard shall be given to the need to respect the right of the person to dignity, bodily integrity, privacy and autonomy.”

Part 4 of the Act deals with the question of consent to treatment. For present purposes ss. 56-60 must be read together. They provide as follows:-

“56. In this Part ‘consent’, in relation to a patient, means consent obtained freely without threats or inducements, where—

(a) the consultant psychiatrist responsible for the care and treatment of the patient is satisfied that the patient is capable of understanding the nature, purpose and likely effects of the proposed treatment; and

(b) the consultant psychiatrist has given the patient adequate information, in a form and language that the patient can understand, on the nature, purpose and likely effects of the proposed treatment.”

Section 57 of the Act provides:

“57(1) The consent of a patient shall be required for treatment except where, in the opinion of the consultant psychiatrist responsible for the care and treatment of the patient, the treatment is necessary to safeguard the life of the patient, to restore his or her health, to alleviate his or her condition, or to relieve his or her suffering, and by reason of his or her mental disorder the patient concerned is incapable of giving such consent.



(2) This section shall not apply to the treatment specified in sections 58, 59 or 60.”

8. It is important to point out, therefore, that s. 57 does not apply in relation to forms of treatment specified in s. 60. The latter section deals with a position where it is necessary to administer medicine for a continuous period of three months. The evidence now clearly establishes that the treatment regime adopted in the case of the plaintiff is that identified in s. 60, and, contrary to what is asserted on behalf of the plaintiff, not under s. 57 of the Act. Sections 58 and 59 of the Act are not relevant. However, s. 60 provides:-

“60. Where medicine has been administered to a patient for the purposes of ameliorating his or her mental disorder for a continuous period of 3 months, the administration of that medicine shall not be continued unless either—

(a) the patient gives his or her consent in writing to the continued administration of that medicine, or

(b) where the patient is unable or unwilling to give such consent—

(i) the continued administration of that medicine is approved by the consultant psychiatrist responsible for the care and treatment of the patient, and

(ii) the continued administration of that medicine is authorised (in a form specified by the Commission) by another consultant psychiatrist following referral of the matter to him or her by the first-mentioned psychiatrist,

and the consent, or as the case may be, approval and authorisation shall be valid for a period of 3 months and thereafter for periods of 3 months, if, in respect of each period, the like consent or, as the case may be, approval and authorisation is obtained.”

9. During the four day hearing, a number of witnesses testified regarding the treatment regime. I would emphasise that all the evidence indicates that the greatest care has been taken by each of the practitioners involved in the plaintiff's care in a unique and very difficult situation.

The evidence on capacity

Dr. Paul O'Connell

10. Dr. Paul O'Connell is employed as Consultant Forensic Psychiatrist in the Central Mental Hospital. Earlier in the case, he set out the nature of his first involvement in the provision of care to the plaintiff. He is the primary treating psychiatrist responsible for her care. He gave a detailed account of the course of her treatment, along with her medical and forensic history dating from 2007.

11. The plaintiff's diagnosis is one of treatment resistant paranoid schizophrenia, the salient symptoms of which include auditory hallucinations, which take the form of mocking voices, which are at different times attributed to members of the staff or laughter of small children. Associated with these hallucinations, the plaintiff has reported the delusional belief that she has been

controlled by the voices or, more often, by members of staff. When acutely psychotic, the plaintiff admits to urges to assault or kill members of staff. At times, she exhibits various behaviours including agitated pacing, facial expression of excitement and fixed staring at those she believes are mocking her. At such times she has made efforts to, and has assaulted, members of staff. As was pointed out earlier, prior to being placed in the Central Mental Hospital, she harboured urges to harm, or even to kill small children.

12. In the course of the hearing of these proceedings, Dr. O'Connell gave further testimony on the question of capacity. He was satisfied, as the treating consultant that the plaintiff was not capable of fully understanding the nature, purpose and likely risks of the proposed treatment. He concluded the plaintiff's understanding was made up of different components. His clinical view has remained consistently, that the plaintiff could not form a balanced judgment in relation to the treatment being afforded to her. She saw both the staff and himself as a threat to her. She was delusional, and while she would not admit to hallucinating, he was of the strong clinical conclusion that she was hallucinating. He was also of the firm clinical opinion that the plaintiff lacked capacity because of her mental disorder and therefore was, to quote him, "unable to consent to, or refuse, either the administration of anti-psychotic medication, or the ancillary and necessary blood tests associated with that treatment course".

13. The witness went on to conclude that the plaintiff's illness has the effect of impairing her reasoning, emotional regulation, and judgment. Although she is able to register and retain information with respect to her care and treatment, she remains unable to exercise her judgment in coming to a balanced decision about that treatment, insofar as she lacks insight and fails to appreciate the nature of her mental illness and the need to receive treatment. She fails to appreciate that her illness, if untreated, would represent a serious and immediate risk to herself and others, and would inevitably deteriorate, exacerbating that risk.

Professor Harry Kennedy

14. Professor Harry Kennedy, Consultant Forensic Psychiatrist and Executive Clinical Director of the National Mental Health Service at the Central Mental Hospital testified that his function was as leader of the team of psychiatrists working in the hospital. He described his responsibility for clinical governance and for the planning of modernised services. He testified that when ill, the plaintiff has homicidal preoccupations which focus particularly on children, or on the children of those who come into contact with her. He said that the plaintiff loses insight, and her capacity to give or withhold consent to treatment, is at its lowest. He, too, testified that when the plaintiff became agitated, she attacked doctors and nurses causing significant injuries. On such occasions, it was necessary that she be secluded for her own safety, and that of others. At times, this seclusion has had to be for prolonged periods which have been monitored by the Mental Health Commission Inspectorate of Mental Health Services.

15. Professor Kennedy pointed out, importantly, that capacity can fluctuate, and that many patients in the hospital experience differing levels of capacity at different times. He considered that it would be profoundly wrong to assume that all patients in the hospital lack capacity. Where a patient has capacity, they are encouraged to take their full role in the therapeutic decision making regarding their care and treatment. Professor Kennedy has a particular professional interest in this issue. He has led a research team that has published learned articles on the assessment of mental capacity to consent to treatment, and that subject forms part of his teaching responsibilities. He too, was of the strong professional opinion that the plaintiff lacked capacity to give or withhold consent to treatment. She does not understand the information about her mental health and the treatment options, lacks the ability to reason about these options, and is unable to compare such choices. She is unable to reason about the possible or potential side effects or consequences of the treatment. He testified that she is unable to appreciate the importance of information about mental health and mental illness for herself. She does not believe information because of her paranoia, her delusions, and her impaired capacity to reflect on her situation.

16. Professor Kennedy highlighted a number of the procedural safeguards in place in the Central Mental Hospital. All patients in the hospital are subjected to regular multi-disciplinary review. A treating doctor in a situation such as this does not act alone. He pointed out that there is in being, a process of obtaining second opinions from a consultant psychiatrist who is not attached to the hospital. This is not unique to this case but is rather a consistent feature of treatment in the hospital since the commencement of the Act of 2001.

17. The witness took issue with a typification of the treatment regime as being one "imposed against the plaintiff's will". He stated that, rather, treatment is provided in the absence of her capacity to make decisions, and subject always to independent review and safeguards. Second, he testified that it was the plaintiff's illness, and not the views of her treating doctors, that deprived her of the ability to consent to, or refuse treatment. Every effort is made to engage a patient in the decision-making process. If, and when, a patient such as the plaintiff regained sufficient mental capacity, she will then be again empowered to make decisions regarding her treatment including the then regained ability to give or withhold consent. Professor Kennedy also expressed the view that the UNCRPD, to which reference was made earlier, did not contain any explicit condemnation of "paternalism", which he summarised as being an ethical principle of protecting the best interests of vulnerable persons and which, he claimed, was not in conflict with a rights based respect for disabled people as persons. This part of the testimony is particularly relevant, and I will return to it later.

18. The witness took issue with a contention that disability was seen through medical criteria as a deviation from the norm which he characterised as a polemic "straw man". He distinguished between "disability" (not an inherently

medical categorisation being a qualitative term defining status in society before the law), and, on the other hand, medical measurements of impairment due to disorder which are quantitative. The former "qualitative" approach is inherently more reductive, and hence lends itself to ease of definition and legal convenience; as opposed to the latter quantitative medical approach which recognises degrees of impaired and restored mental capacity. He entirely rejected any suggestion that the plaintiff had been subjected to inhuman or degrading treatment. In fairness, it must be pointed out that any such suggestion was withdrawn by the plaintiff's legal advisers. Professor Kennedy's view was that it was the plaintiff's own lack of capacity which constituted an infringement on her rights and rendered her unable to exercise those rights. He described it as unhelpful and damaging to therapeutic relationships to imply that a "finding" by psychiatrists, rather than the absence of capacity of itself, was what was important.

Dr. Ian Bownes

19. It is important here to re-emphasise that the defendant, (the HSE), assisted in the retention of an independent psychiatrist to testify on behalf of the plaintiff. Dr. Ian Bownes is a Consultant Forensic Psychiatrist with the South Eastern Health and Social Trust in Northern Ireland. He is a Forensic Psychiatrist with the Northern Ireland Prison Service. His report was furnished to the Court and admitted in evidence. He examined the plaintiff on behalf of her solicitors, and presented a report to the court with his assessment of her condition. That assessment is largely, if not entirely corroborative of the views of Dr. O'Connell and Professor Kennedy.

Dr. Brendan Kelly's evidence – the "Form 17" procedure

20. Dr. Brendan Kelly is a Consultant Psychiatrist at the Mater Misericordiae University Hospital and Senior Lecturer in Psychiatry at University College, Dublin. He was retained by the HSE on a national panel of consultants who are in a position to carry out assessments for the purposes of s. 60 of the Act of 2001. He explained that the function of the independent psychiatrist, carrying out a s. 60 assessment, is to exercise a fully independent clinical judgment in appraising the situation. He noted that, in the past, he had had occasion to disagree with responsible consultant psychiatrists, and had no difficulty in so doing. On a number of occasions in this case, Dr. Kelly completed the Mental Health Commission forms recording his decisions pursuant to s. 60 authorising the continued administration of medicine without consent to the plaintiff. These forms are referred to as "Form 17".

21. In evidence, Dr. Kelly described the number of occasions when he carried out examinations in pursuance of the Form 17 procedure. He described the structure of such an examination as follows. First, the clinician considers whether a patient suffers from a mental disorder as understood in the 2001 Act. Second, that clinician considers the question of capacity and insight. This includes a consideration of whether the patient has any understanding of his or her illness, (including whether they accept that they are in fact ill), the proposed treatment, and the purposes of that treatment. Third, if the patient has capacity or is found to so have, the question of whether the patient is willing to undergo the treatment is next considered. Fourth, the proposed medication regime is

considered, and particularly, whether it will likely benefit the patient. Finally, the clinician records his notes in writing in accordance with the structured mental state examination structure. In doing so he summarises the key issues, before forming a view on the entire examination which is then reflected on the completed Form 17, which is checked and then signed.

22. Dr. Kelly was satisfied that each time he was requested to authorise the continuance of medication to the plaintiff without her consent, he carried out an independent examination and assessment, and concluded that, first, the plaintiff was unable to consent to treatment, and second, that she would benefit from the continuation of the treatment with the medication in question. He had examined the plaintiff on at least six occasions between November 2010 and December 2011. Finally, he agreed with an analysis of the plaintiff's doctors regarding the taking of blood samples in conjunction with the administration of the anti-psychotic medication in question, and noted that, to date, and to the best of his knowledge, nobody in the State had died from Agranulocytosis resulting from the administration of Clozapine following the introduction of a mandatory blood testing requirement.

Findings on the section 60 procedure

23. I am satisfied that each of the doctors faithfully complied with the procedure laid down under Form 17, which, itself, forms part of treatment under section 60. The evidence established conclusively that the situation which existed is not one where the treatment regime was being administered under s. 57 which, among other areas, deals with treatment which is required urgently to safeguard a patient's life or to restore him or her to health. Section 57 treatment arises when the patient is "incapable" of giving consent. The evidence clearly establishes that here the medicine has been, to use the terms deployed in s. 60 of the Act, "administered to a patient for the purposes of ameliorating ... her mental disorder for a continuous period of 3 months" and where "the patient is unable or unwilling to give consent".

24. Some idea of the extent of the difficulty in this case can be derived from Dr. Bownes reports, where he described visiting X on a number of occasions. On those occasions her mood fluctuated. On the first occasion, she was pacing backwards and forwards, muttering to herself relentlessly for the duration of the interview. She became increasingly agitated on questioning, and her narrative became tangential, poorly structured, contradictory and internally inconsistent.

25. On a later visit, on 26th February, 2012 the plaintiff welcomed him warmly with a handshake using his correct name and recalled the previous examination. She was able to sit at peace during the session. Nevertheless, during the course of the interview, her mood became increasingly low, irritable, and perplexed, and she evinced extraordinarily hostile and homicidal attitudes towards her doctors. She felt that her doctors were poisoning her, and were administering her medication which was in some sense being kept a secret from her. She also showed suicidal ideation, and stated that she would kill herself "at the first opportunity". She stated that her family never visited her, but that her

children were well looked after and there was now no need for her to stay alive. It is difficult, therefore, to exaggerate the extremely tragic nature of the plaintiff's illness.

26. Section 60 of the Act addresses the limited circumstances in which a finding of incapacity takes place. It requires that two decisions be made, the first on the appropriateness of the medicine proposed, and the second on the issue of consent by the responsible consultant. These decisions must then be approved by the independent consultant psychiatrist before the treatment can be authorised. All this was done in the plaintiff's case. The case, insofar as it relates to a challenge to the constitutionality of s. 57 of the Act is unsustainable. I am unable to conclude that the provisions of s. 57(1) are engaged at all. Moreover, I think it would be inconsistent with the earlier judgment in these proceedings to adopt anything but a broad and purposive approach to the concept of "treatment". As such, any treatment which is ancillary to principal "treatment" administered pursuant to s. 60 of the Act must benefit from the same protections and prescriptions as that principal treatment. This does not absolve the Court from a consideration of the issues arising from the treatment regime however.

The procedural safeguards under s. 60 of the Act

27. The focus of analysis in this judgment must be confined to the terms of s. 60 on the administration of medicine and the safeguards identified in that section. This is not a case where there is a dispute in relation to the correctness of the treatment. It is clear that the responsible treating consultant psychiatrist, and the independent consultant, Dr. Kelly, at an early stage clinically assessed the plaintiff's capacity to consent to the proposed treatment as part of their respective functions. Dr Bownes agreed with this diagnosis and proposed treatment.

Matters not addressed in Form 17

28. It is important also to emphasise, however, that the contents of Form 17 are set out in what might be termed "box" form. After a description of the patient, her location, the treating psychiatrist, the medication intended, and how it will benefit the patient, the form simply sets out options for the independent consultant to identify whether the patient is unable or unwilling to give consent to the treatment. Dr. Kelly indicated that the plaintiff was unable to give such consent. The form, thereafter, identifies the name of the independent consultant psychiatrist and how the details of the treatment will benefit the patient. However, it goes no further. The form does not address the patient's views at all. This has consequences which are addressed later in the judgment. I now turn to consider whether the UNCRPD is directly effective in the State.

Section 1 – Can the issues be decided and finally disposed of by an issue of law other than constitutional law?

The United Nations Convention on the Rights of Persons with Disabilities

29. The European Union acceded to the UNCRPD through Council Decision 2010/48/EC, formally adopted on 26 November, 2009. The instrument of ratification on behalf of the EU was then deposited in December 2010. This was

the first occasion that the EU became a party to an international human rights treaty, and that an intergovernmental organization had joined with a United Nations human rights treaty. Although a signatory to the UNCRPD, Ireland has not, as yet, itself ratified the Convention.

30. The Convention specifies rights and obligations with regard to persons with disabilities. Of particular relevance to the present case are Articles 12(1) and (2) which provide:

“1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.  
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.”

It is right to say that the values enunciated in the Convention constitute a “paradigm-shift” in the manner in which persons with disabilities are to be treated by, and before, the law. However, the Convention, in its preamble, also acknowledges the diversity of persons with disabilities. Therefore, in considering the applicability and the interpretation of the Convention, due regard must be had to the individual circumstances of each individual. What is the legal status of the Convention within the State?

31. Article 300(7) of the Treaty for the Establishment of the European Community (“TEC”) provides that international treaties, once concluded by the EU, are binding on European institutions and Member States, provided that they relate to areas of EU competence. The European Court of Justice (“ECJ”) has adopted a “monist” approach to international agreements, whereby such agreements have legal effect without the requirement for further active implementation (see the decision in *Haegem v. Belgium* [1974] E.C.R. 449). Under certain conditions, international agreements can, in principle, be invoked before a national court by an individual, if there is direct effect (see *Demirel v. Stadt Schwabish Gmund* [1987] ECR I-3719). In order for there to be such effect, the provisions sought to be relied on must be clear, precise and unconditional. It is argued that the terms of Article 12 come within these criteria.

32. Counsel for the plaintiff contends that the main objective of the UNCRPD is the equal treatment of, and the prohibition of discrimination against, disabled persons. It is important to the argument now made, to state that it is the plaintiff’s contention that this area is also covered in ‘large measure’ by Community law – for example, Directive 2000/43/EC, which governs non-discrimination on the grounds of ethnic origin; Directive 2000/78/EC, which establishes a general framework for equal treatment in employment and occupation; Directive 2002/73/EC, which governs the equal treatment of men and women in the employment sphere; and Directive 97/80/EC, which governs matters of proof in sexual discrimination cases. The plaintiff argues that as a Member State of the European Union, Irish law must give force to Article 12 as part of their obligations under the EU’s legal order.

33. Two questions arise from these contentions. First, this Court must consider whether the principles set out in the UNCRPD, despite Ireland's non-ratification, have the force of law in this jurisdiction. In order to establish her case, the plaintiff would be required to establish (a) that the relevant provision of the UNCRPD falls within a community competence which had been exercised to a "large degree" or was an "integral part of Community law"; and, also, (b) that the provision sought to be enforced is sufficiently clear, concise and unconditional as to be capable of itself directly regulating the legal position of individuals. Alternatively, the Court is asked to consider whether the UNCRPD is a "guiding instrument" in respect of the interpretation of the plaintiff's constitutional rights, or her rights under the European Convention of Human Rights.

(a) Community competence

34. The UNCRPD is a mixed international agreement where the EU, its member states, and other third party states are contracting parties. As a mixed agreement, the UNCRPD does, in fact, cover fields that, in part, fall within the competence of the EU; in part within the competence of member states; and in part within the shared competence of the EU and its member states. This issue will be explained in greater detail later. However, it is not the case that, once the EU ratifies an international convention, its subject matter automatically falls within its competence, and is thus directly enforceable in its member states. Nor is such convention enforceable simply by virtue of the fact that the EU has legislated in some of the areas which the Convention addresses.

35. Member states, when participating in mixed agreements, are subject to a duty of loyal cooperation between one another and the EU, deriving from Article 4(3) of the TFEU. This duty of loyal co-operation embraces two sets of obligations. First, member states must take appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the TFEU, or resulting from action taken by EU institutions. Second, member states must facilitate the achievement of the EU's tasks, and abstain from any measures which could jeopardise the attainment of the objectives of the TFEU.

36. The plaintiff relies on principles enunciated in *Commission v. France* [2004] E.C.R. I-09352, in which the issue was whether France, in failing to take all appropriate measures to prevent, abate and combat heavy pollution of the lagoon area known as the Étang de Berre, had breached its obligations under Articles 4(1) and 8 of the Convention for the Protection of the Mediterranean Sea Against Pollution and its Protocol, which had been signed and approved on behalf of the European Economic Community by two Council Decisions. The European Court of Justice held that the fact that there had been no EEC legislation covering the nature of the breach committed by France did not release that state from its obligations under the Convention. The breach fell within Community law, because the Convention and Protocol was a mixed agreement in a field in "a large measure covered by Community law". Thus, in such cases, there was "a Community interest in compliance by both the Community and its Member States with commitments entered into". Therefore, a member state must implement such a mixed agreement, provided the



measure to be implemented falls within the competence of the EU, either by way of being covered by Community legislation, or, where the particular issue was “covered in large measure” by Community legislation.

37. At Article 44(1), the UNCRPD requires regional integration organisations such as the EU, who accede to the Convention to declare the extent of their competence in their instruments of formal confirmation or accession. The Council Decision sets out the legal basis under the Treaties by which the EU has ratified the UNCRPD, and also lists EU instruments that demonstrate its competence. The Council Decision also provided that the extent of the EU’s competence must be assessed by reference to the precise provisions of each measure, and in particular, the extent to which the provisions establish common rules. The Decision goes on to say that the scope and the exercise of EU competence are subject to continuous development, and that the EU will complete or amend its declaration, if necessary in accordance with Article 44(1) of the UNCRPD. It is thus possible to identify which areas of the UNCRPD fall under EU competence, and which do not.

38. Despite a Commission proposal to use a number of legal bases (Articles 13, 26, 47(2), 55, 71(1), 80(2), 89, 93, 95 and 285 EC in conjunction with Article 300(2), and the first subparagraph of Article 300(3) EC), in fact the Council selected only two substantive legal bases, namely Article 13 and Article 95 EC, in conjunction with the (procedural) provisions of Article 300(2) EC and Article 300(3) EC, as authorising the EU to conclude the UNCRPD. This has some legal significance, in that the ECJ has ruled that the legal basis cited gives an indication to the other contracting parties of the extent of EU competence, and the division of competence between the EU and its member states (see *Commission v. Council* [2006] E.C.R I-00001). However, although the choice of legal basis for the decision is of some significance, it is not decisive for implementation, as the ECJ has also held that it is not necessary for the same provisions to be used as the legal basis for the adoption of the measures intended to implement the agreement at Community level (see *Commission v. Parliament* [2006] E.C.R. I-00107).

39. The Court has been referred to a report compiled by the European Foundation Centre in response to a request by the European Commission in 2010 to carry out a study in relation to the implementation of the UNCRPD. The aim of the study was to analyse in detail the obligations set out there, and to gather information about the various practices relating to the implementation of the Convention by the EU and its member states. This study was designed to support the objectives of the current EU Disability Action Plan; which, too, emphasised full participation and equal opportunities for all people with disabilities, and which was intended to contribute to the preparation of the new EU Disability Strategy, based more explicitly on the UNCRPD. The project team carrying out the study included a wide range of experts in the field of disability law and policy, including many persons who took part in the negotiations of the UNCRPD, and who made submissions to the ad hoc committee of the UNCRPD as to the drafting of the Convention. This report has

been admitted into the case without any dispute. I am prepared, therefore, to admit it as being a useful reference work and as an aid to interpretation. The plaintiff's submissions face an immediate difficulty here.

40. In a table provided therein at p. 40, the Article in question here, Article 12 is stated to fall solely within the competence of Member States. It is not within EU competence, or the shared competence of the EU and Member States.

41. The report also notes that before the Council Decision issued, the High Level Group on Disability (HLGD), in its first report on UNCRPD, identified nine areas of interest for the EU, considering both the EU, and its member states, with regard to implementation. These areas included legal capacity under Article 12. The Report points out that some of the matters addressed by the HLGD were beyond the EU competence to act. Notwithstanding this, in 2008, member states confirmed that collaboration at European level would be of added value in implementing the UNCRPD, and that the EU would become the "platform" to facilitate this collaboration. However, the only clear inference from this is that, as matters stand, Article 12 lies outside the EU competence. The Report also points out that some member states expressed reservations in relation to Article 12.

42. By way of distinction, the ECJ recent addressed the direct applicability of international agreements in *Lesoochranarske Zoskupenie*, C-240/09, 8th March 2011, where the issue at stake was Article 9(3) of the Aarhus Convention dealing with access to administrative or judicial procedures. There, the ECJ specifically held that the objective of the Aarhus Convention was consistent with the objectives of the Community's environmental policy listed in Article 174 of the EC Treaty. This was found to be an area in which the Community did share competence with its member states, and where a comprehensive body of legislation was evolving and contributing to the achievement of the objective of the Convention, not only by its institutions, but also by public bodies within its member states.

43. As matters stand, however, the same cannot be said of the law relating to mental capacity, an area in which to date, the EU has not assumed any large or appreciable jurisdiction. Furthermore, the measures to which the plaintiff referred, do not support the assertion that, at present, the EU has legislated or exercised a large degree of competence in the matters governed by Article 12. I am not convinced that Directive 2000/43/EC, Directive 2002/73/EC, nor Directive 97/80/EC are, in the relevant particulars, comparable to the questions of legal capacity, or to the detention and treatment of persons in the category of the plaintiff. I must accept the submission made on behalf of the Attorney General that the *Commission v. France* case is distinguishable as that case concerned a shared competence between the EU and member states.

44. There being no such competence here, I must conclude, therefore, that as the law stands, the plaintiff's argument on this point cannot succeed.

(b) Direct applicability

45. The question also arises as to whether Article 12 is capable of being directly applicable. It is contended on behalf of the Attorney General that the Article constitutes a “principle not a rule” and is dependent on subsequent measures to identify a particular manner in which the principle may be respected. It is not necessary for this Court to express a view on this point. For the reasons outlined earlier, the court does not consider that the UNCRPD can, as yet, be seen as a rule in the interpretation of an application of EHCR jurisprudence or, through that avenue, to E.U. rights law. This does not, however, prevent the UNCRPD being a guiding principle in the identification of standards of care and review of persons in this category.

46. As matters stand, the realm of EU law has not yet extended to the area of mental health law, nor to the issue of legal capacity. However, the rights of equal treatment and non-discrimination are core values in the EU legal order. As far as the present case goes, it has not been shown the right to equal treatment, as enshrined in the UNCRPD, is presently part of the EU’s legal order such that Article 12 UNCRPD creates directly enforceable rights or obligations.

47. The law in this area is evolving, both in the legislative and judicial realm. It is of interest that a recent judgment, *R. (on the application of NM) v. the London Borough of Islington and Northamptonshire County Council and Others* [2012] EWHC 414, Sales J. observed at para. 102 that:-

“In principle, a point might be reached when the [UN]CPRD has been ratified by sufficient European states, or when sufficient European states have brought their domestic law and practice into line with the standards set out in the CPRD, that the CPRD or the practice flowing from it could be taken to amount to a relevant European consensus to inform the interpretation and application of the Convention rights. Also, though the position is less clear, a point might be reached where the CPRD is taken to be a leading international instrument establishing an appropriate standard against which to judge the conduct of member states of the Council of Europe, as in relation to other international instruments...”

48. However, that judge expressed reservations as to whether the Convention has yet acquired this significance for the purposes of interpretation in light of the significant number of member states which have yet to ratify it. Sales J. observed that none of the Strasbourg authorities cited to him in that case went as far as to say that an individual could, in substance, rely on the provisions of UNCRPD under the guise of relying on ECHR rights. If the rights asserted here are not to be found in EU law which is directly effective in the State, can they be found elsewhere and if so, precisely which rights?

Section 2 – Decision as to the constitutionality of the impugned provisions

Constitutional requirements

49. What are the applicable constitutional and legal principles? The facts of the present case from two legal authorities where the question of consent has been very comprehensively considered. These were *Fitzpatrick & Anor. v. K.* [2009] 2 I.R. 7 and *Re Ward of Court (Withholding Medical Treatment) (No. 2)*

[1996] 2 I.R. 79. By way of distinction from Fitzpatrick, we are not dealing, here, with a person, who was, at least prima facie, of full capacity although as was held, there, that the patient's capacity had been affected by the influence of others. Nor are we considering a situation such as that which arose in *Re Ward of Court (No. 2)*, where the ward was in a condition known as P.V.S. or persistent vegetative state. But what is involved here is involuntary medication, together with the invasive taking of blood samples by a syringe on a regular basis. The plaintiff strongly objects to the procedure. The invasive nature of the treatment results in a loss of bodily integrity and dignity. (see the judgment of Denham J. in *Re Ward of Court*, cited above, at p.158 of the report)

50. In the latter case, the High Court, at first instance, had the opportunity of considering evidence from family members of the ward as to what her wishes would have been had she been in a position to speak about her tragic situation. By virtue of the ward's legal status, the court was vested with jurisdiction over all matters relating to her person and estate, and in the exercise of its jurisdiction, was subject only to the provisions of the Constitution. The High Court, and on appeal the Supreme Court, held that, in the exercise of that jurisdiction, the prime and paramount consideration must be the best interests of the ward. Both Courts found that, although the views of the committee and family of the ward were factors to be taken into consideration, they could not prevail over the court's view as to what was in the ward's best interests. The Supreme Court upheld the finding of the trial judge that the court should approach from the standpoint of a prudent, good and loving parent in deciding what course should be adopted, and held that the treatment being afforded by means of a gastrostomy tube, surgically inserted into the stomach was an intrusive interference with the ward's bodily integrity, and could not be regarded as a "means of nourishment". The care and treatment being afforded constituted medical treatment and not merely medical care. The Supreme Court held that the nature of the right to life, and its importance, imposed a strong presumption in favour of taking all steps capable of preserving it, save in exceptional circumstances. However, it concluded that, if the ward had been mentally competent, she would have had the right to forego or discontinue her treatment, and the exercise of that right would be lawful in the pursuance of her constitutional right to self determination implicit in her right to bodily integrity and privacy. However, this right did not include the right to have life terminated, or death accelerated, and was confined to the natural process of dying. The court decided that the loss by the ward of her mental capacity did not result in any diminution of her personal rights recognised by the Constitution, including the right to life, bodily integrity, privacy (including self determination), or the right to refuse medical treatment.

51. At the statutory level, s. 60 provides for a mechanism whereby the plaintiff's rights, and those of the community, can be balanced and protected. That is not to say, of course, that her rights could not also be vindicated under the inherent jurisdiction of this court, that jurisdiction having been invoked in this case. But there are constitutional dimensions to this case which cannot be ignored. In the next paragraphs, the main emphasis is on the concept of

decision making. It logically follows that the observations which are made here, also apply to a right of independent review, a statutory right provided by s. 60 itself.

52. The plaintiff's complaint is that the review procedure, as outlined earlier, insufficiently vindicates her constitutional rights, and fails to give recognition to rights identified in the jurisprudence of the European Court of Human Rights. Her counsel contends that the effect of the current procedure results in what is termed "substituted decision-making" (bearing the hallmarks of a paternalistic approach to the treatment of mental health patients), rather than "assisted decision-making" which better vindicates the range of rights engaged. For brevity, the range of values and rights involved will be collectively referred to as "personal capacity rights". These comprise the Article 40.3 values of self-determination, bodily integrity, privacy, autonomy and dignity, all unenumerated, but identified in case-law, as well as the explicit right to equality before the law, as identified in, and qualified by, Article 40.1 of the Constitution. For the purposes of consideration here, these are all, whether characterised as values or rights, capable of vindication in the courts. The case is now made that both the treatment regime, and the protections therein, fail properly to reflect the changes and provisions under the United Nations Convention on the Rights of Persons with Disabilities which, by contrast, aims at encouraging assisted decision-making and seeks to vindicate the interests of disabled persons.

53. Prior to a consideration of those rights, it is worthwhile recollecting the observations of Costello J. in *R.T. v. Director of the Central Mental Hospital* [1995] 2 I.R. 65, where he drew attention to the concept that, in considering the safeguards necessary to protect the rights of vulnerable people, regard should be had to the standards set by the recommendations and conventions of international organisations of which this country is a member. The superior courts have resorted to international human rights instruments in order to interpret appropriate constitutional standards in a number of cases. In *The State (Healy) v. Donoghue* [1976] I.R. 325, the Supreme Court had regard to Article 6 of the European Convention of Human Rights and also to the United States Constitution. In *O'Leary v. The Attorney General* [1993] 1 I.R. 102, Costello J. referred to Article 6(2) ECHR; Article 11 of the United Nations Universal Declaration on Human Rights; Article 8 (2) of the American Convention on Human Rights; and Article 7 of the African Charter of Human Rights in holding that the presumption of innocence in a criminal trial was one which enjoyed "universal recognition". Are these principles of interpretation applicable here?

54. Article 40.1 of the Constitution provides:-

"1.All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function...."

At Article 40.3 it is provided:-

"1. The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.  
2. The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen."

55. Hitherto, arising from the facts in each case, decisions of the Superior Courts in this area have tended to lay emphasis on a paternalistic intent of legislation concerning persons with incapacity. This approach, very much in line with long-established decided authority, was most recently reiterated by the Supreme Court in *E.H. v. Clinical Director of St. Vincent's Hospital* [2009] 3 I.R. 774.

56. By way of illustration of the approach, in *Gooden v. St. Otteran's Hospital* [2005] 3 I.R. 617, McGuinness J. pointed out, at p.633, that:-

"In *Re Philip Clarke* [1950] I.R. 235 the former Supreme Court considered the constitutionality of s. 165 of the Act of 1945. O'Byrne J. who delivered the judgment of the court described the general aim of the Act of 1945 at pp. 247-248 thus:-

'The impugned legislation is of a paternal character clearly intended for the care and custody of persons suspected to be suffering from mental infirmity and for the safety and wellbeing of the public generally. The existence of mental infirmity is too widespread to be overlooked and was, no doubt, present to the minds of the draftsmen/draughtsmen when it was proclaimed in Article 40.1 of the Constitution that though all citizens as human persons are to be held equal before the law, the State, may, nevertheless in its enactments, have due regard to differences of capacity, physical and moral, and of social function. We do not see how the common good would be promoted or the dignity and freedom of the individual assured by allowing persons, alleged to be suffering from such infirmity to remain at large to the possible danger of themselves and others.'" (emphasis added)

57. In *E.H.*, Kearns J., speaking on behalf of the Supreme Court, observed that the same principle should be adopted in interpreting the provisions of the Mental Health Act 2001, again, in issues concerning personal liberty. He stated:- "I do not see why any different approach should be adopted in relation to the Mental Health Act 2001, nor, having regard to the Convention, do I believe that any different approach is mandated or required by Article 5 of the European Convention on Human Rights 1950."

58. However, it is noteworthy that these observations, very understandably on the facts, deal with the interpretation and application of the statutes predominantly in the context of the right to liberty and the right to fair trial. The position here is distinct. The case before this Court does not concern the right to liberty or fair trial, but rather, the plaintiff's entitlements while being treated in involuntary care.

59. I do not think there is anything inconsistent with the avowedly paternalistic nature of the legislation or that jurisprudence, insofar as they concern liberty, in also ensuring that the wishes and choices of a person suffering from a disability, while under such care, should be guaranteed in a manner which, "as far as practicable" (to use the phrase adopted in Article 40.3.1 of the Constitution), vindicates his or her personal capacity rights. The interpretation of the Constitution in this area of the law should be informed by, and have regard to international conventions. This principle of interpretation, of course, applies a fortiori in relation to the regard which, as a matter of law, must be had to decisions of the European Court of Human Rights (see ss. 2-5 of the European Convention on Human Rights Act 2003).

60. That the Constitution is a living instrument which adapts to protect rights that develop over time cannot be controverted. In *The State (Healy) v. Donoghue* [1976] I.R. 325, O'Higgins C.J. observed of the values espoused in the preamble to the Constitution that:-

"The judges must therefore, as best they can from their training and their experience interpret these rights in accordance with their ideas of prudence, justice and charity. It is but natural that from time to time the prevailing ideas of these virtues may be conditioned by the passage of time; no interpretation of the Constitution is intended to be final for all time. It is given in the light of prevailing ideas and concepts..."

61. Should this Court then have reference to the UNCRPD if not as a rule, then at least as a guiding principle? The values in question here are in no sense contrary to any provision of the Constitution. The UN Convention affirms the contemporary existence of fundamental rights for persons with a mental disorder. Although the UN Convention itself is not part of our law, it can form a helpful reference point for the identification of "prevailing ideas and concepts", which are to be assessed in harmony with the constitutional requirements of what is "practicable" in mind. A court will, of course, (subject to the qualification pronounced in *McD. v L.* [2010] 2 I.R. 199) also "have regard" to the jurisprudence of the European Court of Human Rights to which Ireland also adheres on the basis of an international convention. As well as the UNCRPD itself, are there also relevant principles, ideas and concepts identified in Strasbourg case law? By virtue of ss. 2-5 of the European Convention on Human Rights Act 2003, this court is required to interpret laws of this State in compliance with the State's obligation under the ECHR provisions. Judicial notice is to be taken of decisions of the ECHR and the principles contained therein. This allows a court in an appropriate case to consider whether those principles may inform present day interpretation of "prevailing ideas and concepts" provided such principles accord with the Constitution.

62. *Shtukaturov v. Russia*, (Application no. 44009/05, ECHR, 27th June 2008) concerned the issue of capacity in mental health. There, the ECtHR had regard to "Principles concerning the legal protection of incapable adults", Recommendation No. R (99) 4, adopted by the Council of Europe on the 23rd February 1999. The Court referred in its judgment to Principle 3 of the Recommendation which stipulates that legislative frameworks relating to

persons suffering from incapacity should as far as possible recognise that different degrees of capacity may exist and that incapacity may vary from time to time. Accordingly, measures of protection should not result automatically in a complete removal of legal capacity. Principle 3.2 specifically provides that measures of protection should not automatically deprive a person of "... the right to consent or refuse consent in the health field..."

63. While it was suggested in argument in this case that the European Court of Human Rights had not specifically approved the United Nations Convention on the Rights of Persons with Disabilities, I do not think this is so. The judgment of the ECtHR in *Glor v. Switzerland* (Application No. 13444/04, ECHR, 30th April 2009), is noteworthy for pointing out that the UNCRPD signalled the existence of a European and universal consensus on the need to protect persons with disabilities from discriminatory treatment.

64. In *Kiss v. Hungary* (Application No. 38832/06, ECHR, 20th May, 2010) the ECtHR pointed out:-

"The court further considers that the treatment as a single class of those with intellectual or mental disabilities is a questionable classification, and the curtailment of their rights must be subject to strict scrutiny. This approach is reflected in other instruments of international law ..."

65. More immediately relevant is the decision of the ECtHR in *X v. Finland* (Application no. 34806/04, ECHR, 3rd July 2012). That judgment of the Court will now be analysed. The applicant complained that her involuntary confinement in a mental hospital following psychiatric examination was in breach of her right to liberty conferred by Article 5, particularly in the absence of an independent second opinion. The Court agreed with this contention. It stated at paras. 169-171:-

"169. The Court first draws attention to the fact that, in the present case, the decisions to continue the applicant's involuntary confinement after the initial care order were made by the head physician of the Vanha Vaasa hospital after having obtained a medical observation statement by another physician of that establishment. In the Finnish system the medical evaluation is thus made by two physicians of the same mental hospital in which the patient is detained. The patients do not therefore have a possibility to benefit from a second, independent psychiatric opinion. The Court finds such a possibility to be an important safeguard against possible arbitrariness in the decision-making when the continuation of confinement to involuntary care is concerned. In this respect the Court also refers to the CPT's recommendation that the periodic review of an order to treat a patient against his or her will in a psychiatric hospital should involve a psychiatric opinion which is independent of the hospital in which the patient is detained (see paragraph 133 above). This covers all of the criteria in section 8 of the Mental Health Act.

170. Secondly, the Court notes that the periodic review of the need to continue a person's involuntary treatment in Finnish mental hospitals takes place every six months. Leaving aside the question whether a period of six months can be



considered as a reasonable interval or not, the Court draws attention to the fact that, according to section 17(2) of the Mental Health Act, this renewal is initiated by the domestic authorities. A patient who is detained in a mental hospital does not appear to have any possibilities of initiating any proceedings in which the issue of whether the conditions for his or her confinement to an involuntary treatment are still met could be examined. The Court has found in its earlier case-law that a system of periodic review in which the initiative lay solely with the authorities was not sufficient on its own (see *mutatis mutandis* *Rakevich v. Russia*, no. 58973/00, §§ 43-44, 28 October 2003; and *Gorshkov v. Ukraine*, no. 67531/01, § 44, 8 November 2005). In the present case this situation is aggravated by the fact that in Finland a care order issued for an involuntary hospitalisation of a psychiatric patient is understood to contain also an automatic authorisation to treat the patient, even against his or her will. A patient cannot invoke any immediate remedy in that respect either.

171. The Court considers, in the light of the above considerations, that the procedure prescribed by national law did not provide in the present case adequate safeguards against arbitrariness. The domestic law was thus not in conformity with the requirements imposed by Article 5 § 1 (e) of the Convention and, accordingly, there has been a violation of the applicant's rights under that Article in respect of her initial confinement to involuntary care in a mental hospital."

66. The ECtHR further examined claims that the forced administration of medication was in breach of the applicant's rights under Article 8 of the ECHR. The Court noted that under Finnish law, an involuntary care order also included an automatic authorisation to treat such a patient, even against his or her will. It also found that the decisions of a treating doctor are not subject to appeal. In those circumstances, it concluded, at paras. 220-222:-

"220. The Court considers that forced administration of medication represents a serious interference with a person's physical integrity and must accordingly be based on a "law" that guarantees proper safeguards against arbitrariness. In the present case such safeguards were missing. The decision to confine the applicant to involuntary treatment included an automatic authorisation to proceed to forced administration of medication when the applicant refused the treatment. The decision-making was solely in the hands of the treating doctors who could take even quite radical measures regardless of the applicant's will. Moreover, their decision-making was free from any kind of immediate judicial scrutiny: the applicant did not have any remedy available whereby she could require a court to rule on the lawfulness, including proportionality, of the forced administration of medication and to have it discontinued.

221. On these grounds the Court finds that the forced administration of medication in the present case was implemented without proper legal safeguards. The Court concludes that, even if there could be said to be a general legal basis for the measures provided for in Finnish law, the absence of sufficient safeguards against forced medication by the treating doctors deprived the applicant of the minimum degree of protection to which she was entitled under the rule of law in a democratic society (see *Herczegfalvy v. Austria*, cited

above, § 91; and, mutatis mutandis, *Narinen v. Finland*, no. 45027/98, § 36, 1 June 2004).

222. The Court finds that in these circumstances it cannot be said that the interference in question was “in accordance with the law” as required by Article 8 § 2 of the Convention. There has therefore been a violation of Article 8 of the Convention.” (emphasis added)

67. The emphasised part of the passages quoted leave it unclear whether access to a court is thought to be mandatory, or, as I believe, whether there must be a right of access capable of vindication other than just by State initiative. This is considered in section 3 of this judgment.

68. The Article 13 contention, that the applicant was denied an effective remedy to challenge the forced administration of medication, was not examined on the basis of the findings in relation to Article 8.

“229. The Court reiterates that the applicant complained in essence about the lack of an effective remedy to challenge the forced administration of medication.

230. In view of the submissions of the applicant in the present case and of the grounds on which it has found a violation of Article 8 of the Convention, the Court considers that there is no need to examine separately the complaint under Article 13 of the Convention.”

69. The issues raised are relevant to the instant case. The decision clearly establishes that adequate safeguards must be placed in legislation apparently permitting a patient’s involuntary detention and involuntary treatment. It was held that these safeguards were not present in the Finnish legislation. In the instant case, the detention procedures are not being questioned. Therefore, this aspect of the case has limited application.

70. How then should these concepts and principles be applied here? Under the provisions of s. 60 itself, the right to independent review and independent determination of capacity are already, in effect, recognised statutory procedural rights; the provisions give effect to the duty of the State to vindicate the plaintiff’s personal capacity rights. Professor Kennedy’s evidence establishes that the proper vindication of these rights is “practicable”.

71. But what is at issue here are truly fundamental constitutional rights in more than just name. What is at stake is truly, in the words of Kenny J. in *Ryan v. Attorney General* [1965] I.R. 294 at p. 313, the right to the “integrity of the person”. Each of the rights affected under s. 60 fall within that category, should be policed and monitored by the courts, and are susceptible to judicial supervision, where necessary. Do they necessitate ancillary rights, analogous to the right to legal aid in defence of a serious criminal charge, which itself derives from the constitutional right under Article 38.1 to a criminal trial “in due course of law”?

72. As in the Irish and ECtHR authorities identified, I believe the broader range of constitutional “personal capacity rights” identified earlier, now fall to be informed by the United Nations Convention on the Rights of Persons with Disabilities, as well as the principles enunciated in the judgments of the European Court of Human Rights. The vindication of these rights to a sufficiently high level is necessary because of the serious incursion into bodily integrity and the other personal capacity rights which arises in the case of persons who are subject to orders made under s. 60 of the Act of 2001. Decisions of this type, involving the continued administration of an involuntary drug regime and the taking of blood samples require, in the words of the European Court of Human Rights, “heightened scrutiny”.

73. I believe a constitutional reading of s. 60 of the Act of 2001 now requires that this range of rights must be recognised at the constitutional as well as the legal level, especially if the present application of that legal provision does not vindicate those rights “as far as practicable”. The constitutional protections must act as an appropriate counterweight to the nature of the incursion into fundamental constitutional rights. Professor Kennedy’s evidence establishes that every effort is made to engage a patient in the decision-making process, and that when a patient regains sufficient mental capacity, they will again be empowered to make decisions regarding their treatment, including the then regained ability to give or withhold consent. Why then should the voice of a patient not be heard, and if not by the patient, then through a representative? This was not a situation, unfortunately, where the plaintiff had family members to speak for her. Such a situation may arise in other cases. What is necessary is to achieve the maximum protection which is “practicable”. If a patient lacks capacity, does it not follow that, in order to vindicate these rights, the patient should, where necessary, be assisted in expressing their view as part of the decision-making process? It cannot be said that such a process is impractical. I think the constitutional duty involved here is a positive one. I do not think even a retrospective declaration of incompatibility under the European Convention on Human Rights Act 2003 could be a sufficient protection. A sub-constitutional, and possibly retrospective, remedy is not commensurate with the nature of the rights engaged, and the extent of the possible incursion into such rights.

74. There is, of course, the irony that in this case, on its unique facts, the entire process involved in this extensive court hearing may already be seen as a vindication of each one of the rights claimed, including that of assisted decision-making. The function of counsel for the plaintiff in this case has been nothing less than to put forward, in as comprehensive a manner as is practicable, the views and choices of the plaintiff regarding her treatment regime under s. 60.

75. But the unique nature of the case gives rise to an obstacle from the plaintiff’s point of view. Decision-making, even assisted decision-making, does not predetermine the outcome of the deciding process. The nature of this case necessitated that it went to court because of the unusual legal issues which arose. The plaintiff has a right of access to court under the Constitution. As discussed at other points in this judgment, I do not envisage that a court

procedure will be necessary or mandatory in the vast range of other such cases involving patients subject to s. 60 of the Act. In my view, it would require a truly exceptional case to necessitate a court application. What I think is constitutionally necessary is a right of access to the courts, independent of any State agency, should the need arise. I do not think that an assisted decision-making process of this type need necessarily involve lawyers. The views of the patient might be expressed by carers, social workers or, perhaps most appropriately, by family members. Very frequently, such decisions are ones in which the courts will have little expertise. I would also observe that the evidence of Professor Kennedy indicates that, at least in part, these entitlements are already observed as a matter of course in the hospital where, as he testified, patients are asked to participate in decisions regarding their own treatment. This begs the question as to why this participation process cannot be performed on behalf of the incapacitated patient by another, suitably qualified, person. The case has not been made that assisted decision-making is not practicable; the contrary is so. To judge from experience in neighbouring jurisdictions, and in light of legislative proposals on mental capacity here, such a form of decision making must be seen as "practicable".

76. But, here, the plaintiff indisputably does not have capacity to make decisions. There is no controversy on the point. Therefore, having heard the parties, it fell to this court to make decisions as to her treatment, applying the best interest test identified in *Re Ward of Court* (No. 2). This test has been applied, having examined whether the choices made are the least restrictive, and involve the minimum practical incursion into the plaintiff's rights.

77. Having made that determination, however, it should not be thought that what is involved here is the application of what is termed a "status" approach. This involves making an "across the board" assessment of a person's capacity or views capacity in "all or nothing terms". A "once and for all" status approach in cases in this narrow category does not, I think, vindicate rights as far as practicable. It would not take into account patients whose capacity fluctuates, or those who have episodic mental illness. It may also not take into account the actual capacity of otherwise incapacitated individuals to make decisions in a particular sphere. However, here, there is the real problem that the patient wished to make a decision, which would be not only detrimental to her own health, but would place her life, and the life of others, at risk.

78. In adopting the best interest test, it might be suggested that what was applied then was an "outcome approach" involving the court assessing the patient's wishes, based on an assessment of the outcome of the process. Failure to make what might be a "prudent" decision will not always, of itself, be an indicator of want of decision making capacity. Here, one must look at not only the decision itself, but the quality of the plaintiff's decision making capacity. Unavoidably in this instance, the nature of the decision and the dangerous nature of the plaintiff's wishes must be a factor. The court cannot disregard that it has constitutional duties toward the plaintiff and the public.

79. As the ECtHR judgments point out, however, such decision-making in this area should seek to apply a “functional” approach” to capacity, involving both an issue-specific and time-specific assessment of the plaintiff’s decision-making ability. One determination should not be permanent; the process must refer to “differences in capacity” (Article 40.3 of the Constitution). This involves analysing, not only differences in capacity between patients, but also variations in each patient’s capacity at particular times. Only in that manner can their rights be properly vindicated in accordance with the constitutional requirement.

80. In all this, there must be both trust and commonsense. Every decision cannot be made by a court. This case is one where, sadly, on the indications so far, the plaintiff has an ongoing condition. While her capacity fluctuates, the evidence does not show that, at any point since the initiation of these proceedings, she has reached a point where she is capable of making a decision independently. It has not been suggested that any decisions have been made which were not in the plaintiff’s best interests, or at a time, when she actually had capacity to make decisions as to her treatment.

#### Conclusion

81. In summary, I conclude that the plaintiff is entitled to both an independent review and to an assisted decision-making process in vindication of her rights. But the entire process here involved a vindication of other rights. It has been necessary for this Court to make the ultimate decision because of her incapacity. In the strict sense, therefore, the plaintiff cannot be entitled to the reliefs she claims. It has not been shown that s. 60 of the Act of 2001, constitutionally interpreted, is repugnant to the Constitution. Applying the principle of double construction what then is necessary for a constitutional interpretation and application of the section? What is required is that it should be applied in a constitutional manner, giving effect to rights to be found within the Constitution itself (see *East Donegal Co-operative Ltd v Attorney General* [1970] I.R. 319). The constitutional application of that section should have regard to international norms and conventions identified in this part of the judgment.

82. For the future, I think it will be necessary to review the Form 17 procedure, adopted under s. 60. This can be done in a manner so as to ensure that the range of “personal capacity rights” of a patient objecting to treatment under s. 60 of the Act are vindicated, not only in form but in substance. There should be independent review and the patient’s decision or choice, albeit whether assisted or not, should be recorded and due regard given to it. The patient’s choice, however conveyed, will not always be determinative, but must always be part of the balance. But the role of the consultant psychiatrists remains pivotal. I turn now to another aspect of the relief claimed.

83. The plaintiff, at paragraph 1 of the statement of claim has sought also a declaration that the finding in respect of capacity must be subject to independent tribunal or court review. In this case, I think that right has already been vindicated to date, and will continue to be. But then the claim goes rather

deeper. Does a s. 60 treatment-decision necessitate ongoing court review on a mandatory basis?

Section 3 – Is the plaintiff entitled to a declaration of incompatibility under the ECHR Act and is there an ECHR right to an independent court or tribunal to consider future treatment?

84. It is now contended that, if the HSE should continue to administer treatment on the basis that the plaintiff lacks capacity, that defendant must convincingly show that such treatment is necessary before an independent tribunal or court. I would observe here that because of the highly unusual nature of this case it was proper that the matter should be dealt with by the Court. Can a genuine right to a court or tribunal hearing in all cases of this type be found? Do the constitutional rights, to be vindicated in each case, necessitate a mandatory ongoing court involvement in every such case? I am not persuaded that a mandatory engagement, even in a narrow category of cases involving difficult clinical decisions, can be seen as “practicable”. In my view, it would involve a degree of legal involvement in the field of psychiatry, which would be unprecedented, and, I believe, often impractical. Even on this basis alone, it would be very difficult to give recognition to such a right. Does such a right nonetheless exist under the ECHR? Is the plaintiff, therefore, entitled to a declaration that s. 60 is incompatible with the provisions of the ECHR under s. 5 of the Act of 2003?

85. Even having regard to the decision in *X v. Finland*, I am not persuaded that such a right exists in ECHR jurisprudence. That case must be seen as still pending as at present an application for admission to a Grand Chamber hearing remains to be considered. I think the passages cited earlier lack clarity as to whether what is in question is a right to a court hearing as alleged, or, rather a right of access to a court. The rights identified in the cases which follow lay particular emphasis on review of detention procedures. Clearly, at a minimum, there must be a right of court access. Decisions as to involuntary medical treatment must be subject to the rule of law, and must be independently reviewed. They must be capable of being assessed by a court, and cannot be arbitrary. The case of *Storck v Germany* (Application 61603/00, ECHR, 16th September 2005), addresses involuntary treatment and detention but is based on very different facts. There was a real question there as to the plaintiff’s incapacity, and as to the lawfulness of her detention. The ECtHR held that under Article 5 and Article 8 ECHR, there were positive obligations to ensure that an involuntary deprivation of liberty was carried out in accordance with a procedure prescribed by a rule of law. Significantly, it held that special procedural safeguards may be necessary to protect the interests of persons not fully capable of acting for themselves; that even a minor interference with the physical integrity of an individual was to be regarded as an interference with the respect for private life, if carried out against that person’s will; and that the State had a positive obligation to protect the applicant against interference with her private life guaranteed by Article 8 of the Convention. By way of distinction with that case, there is no question here that the plaintiff has been wrongly diagnosed, or as to her decision-making capacity. The detention process, here, is in accordance with law. The treatment has been independently

assessed by Dr. Kelly, Dr. Bownes and by this Court. It cannot be said that any part of the process is arbitrary therefore.

86. Earlier, in *Winterwerp v. The Netherlands* [1979 – 80] 2 E.H.R.R. 387, the applicant had been compulsorily detained pursuant to successive court orders, was not allowed to appear or be represented at proceedings and was not notified when such proceedings were in progress. As a consequence of his detention, the applicant also automatically lost the capacity to administer his property. There, the ECtHR unanimously held that the applicant's ability to have his detention reviewed by a court and the failure to hear him constituted a violation of Article 5(4) of the Convention. I do not think this case is on point here.

87. Three further decisions of the ECtHR were cited to this Court. All must now be seen in light of the decision in *X v. Finland*. The first, *Shtukaturov*, has already been briefly referred to. The applicant there suffered from a mental disorder but despite this was a relatively autonomous person. His mother lodged an application with the District Court of St. Petersburg seeking to deprive him of his legal capacity. An expert team assessed the applicant and concluded that he was suffering from "simple schizophrenia". A hearing then occurred, of which the applicant was neither notified nor present, where the judge declared the applicant to be legally incapable and his mother was appointed to be a legal guardian. The hearing lasted only ten minutes. At his mother's request he was then placed in a psychiatric institution where he was prohibited from having contact with the outside world. Unsurprisingly, the European Court of Human Rights in that case held that although domestic courts had a certain margin of appreciation, there had been a breach of the applicant's right to fair trial, as guaranteed under Article 6 of the Convention. This arose because, in assessing whether or not a particular measure such as the exclusion of the applicant from a hearing was necessary, relevant factors had to be taken into account including the nature and complexity of the issue which had been before the domestic courts, what had been at stake for the applicant and whether the applicant's appearance in person represented any threat to others or to himself. It was held that the domestic court proceedings had been unfair. The court observed that the applicant had played a double role in the proceedings, that of interested party and also the main object of the court's examination. His participation was therefore necessary not only so that he could present his own case but so as to afford the judge the opportunity to form an opinion about the applicant's mental capacity. The court also held that the declaration of the domestic court with the effect that the applicant was regarded as having full incapacity for an indefinite period which could not be challenged otherwise than through the guardian constituted a breach of Article 8 of the Convention.

88. It is significant in the context of this case that the ECtHR laid emphasis on the right of a person, the subject matter of an order, to representation and participation in the proceedings concerning a very significant incursion in their right to liberty and to private life.

89. Similar observations were made by the court in *Stanev. v. Bulgaria* (Application no. 36760/06, ECHR, 17th January 2012), where, in national court proceedings on capacity, the applicant was denied the right to have a lawyer of his choice. This had not been authorised by his guardian. He could not perform legal transactions or take part in court proceedings without his guardian's consent; although the guardian's decisions were subject to review by an authority, there was no clarity as to whether the applicant as a partially incapacitated person could challenge the decisions of that authority by way of judicial review. As a consequence, the court held that there were breaches of Article 5(4) involving an entitlement to institute proceedings reviewing a decision and a denial of direct access to courts in violation of Article 6(1) of the Convention. Again, the facts are very different from those in the instant case. The Wilkinson case

90. In the earlier judgment, I made reference to the decision in *R. (On the Application of Wilkinson) v. Broadmoor Special Hospital Authority and Others* [2002] 1 W.L.R 419. As well as pursuing remedies in domestic legislation, the plaintiff in that case, also sought to pursue his rights in the European Court of Human Rights in *Wilkinson v. United Kingdom*, (Application No. 14659/02, 28th February, 2006).

91. The applicant had been detained in a psychiatric institution under the Mental Health Act 1983 in England following conviction for rape of a minor in 1969. Though a clinical consensus existed at the relevant time that he suffered from psychopathic personality disorder, opposing views had been expressed as to whether he suffered from a recognised mental illness. In 1999, his treating doctor sought to administer antipsychotic medication without consent, on the basis that it was necessary to relieve the applicant of 'paranoid ideation'. The treatment was administered moments after an independent doctor approved it under s. 58(3) of the 1983 Act, without notice to the applicant (due to the prospect that he would respond violently). The applicant resisted the injections and had to be physically restrained. On the first occasion, he suffered an angina attack and had to be secluded. The medication was administered on one further occasion, and thereafter he engaged solicitors to contest the treatment.

92. Wilkinson is significant because the provisions at issue were broadly akin to those which arise in these proceedings. Section 63 of the 1983 United Kingdom Act removed the general requirement for obtaining a patient's consent for any treatment given to him for his mental disorder so long as the treatment was approved by the clinician in charge of his treatment subject to special requirements stipulated in the case of long term medication, ECT and psychosurgery, equivalent to ss. 58, 59 and 60 of the Act of 2001. However, I think that the observations of the ECtHR must now be seen in the light of the *Glor, Kiss and X v. Finland* judgments referred to earlier.

93. At the time of the hearing, I was not referred to any of the ECHR jurisprudence involving a right to ongoing court or tribunal engagement as to ongoing treatment decisions. However, counsel subsequently brought to my



attention the case of *X v. Finland* (Application no.34806/04, 3 July, 2012), where a request to the Grand Chamber is pending. The findings of the ECtHR have been set out earlier.

94. I fully agree that the interference with a patient's rights, in cases like the present, is so serious to require adequate safeguards against arbitrariness. What is necessary is a clearly defined procedure, in accordance with law, which vindicates ECHR rights to privacy and autonomy involving proper clinical decision-making procedures. I believe such safeguards are to be found in s. 60 through the requirement for a second opinion from an independent consultant, in relation to the proposed treatment, at regular three month intervals, together with such charges as may be necessitated by this judgment. I would add that a further consequence of assisted decision-making is that it enhances the right of access to the court on behalf of a s. 60 patient. But I do not think any of the ECtHR case law goes further than the rights identified here under the Constitution. In short, I do not understand the law, whether national or under the ECHR, presently to require a mandatory court hearing in every case. I note the *X. v Finland* case remains pending before the Grand Chamber. I should re-iterate that, in the instant case, the plaintiff here was, thanks both to the HSE and to her lawyers, able to have the legality of her treatment procedure reviewed by this Court. But the plaintiff is not, in my view, entitled to a declaration of incompatibility under s. 5. The provisions of s. 60 are of course to be interpreted and applied in a manner compatible with the State's obligations under the ECHR. On my understanding of the ECHR jurisprudence, this objective is achieved by virtue of the adherence to the constitutionally compliant procedures under s. 60 of the Act, outlined earlier in this judgment.

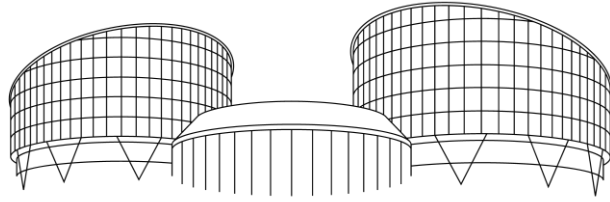
#### Section 4 - Locus Standi

95. It is necessary finally to address the question of the plaintiff's locus standi. This case directly arose from questions which were raised in the earlier case wherein the plaintiff in these proceedings was the defendant. The questions directly related to the proper interpretation of the Act of 2001. The plaintiff was directly concerned with how Part 4 of the Act applied to her. It must be recollected also that the HSE, the plaintiff in the original proceedings, as an alternative to the statutory argument, advanced the contention that the Court would be entitled to grant the reliefs sought, pursuant to its inherent jurisdiction. The issues in this case, in my view could only properly have been resolved by court proceedings.

96. Even though it cannot be said that the plaintiff has succeeded on the issues, this case comes within one of the exceptions identified by Henchy J. in *Cahill v. Sutton* [1980] I.R. 269, as being one where the legal provisions involved were directed to, or operable against a group which includes the plaintiff and where the plaintiff may be said to have a common interest, albeit in circumstances where it may be difficult to segregate the plaintiff's own position from the rights of other persons similarly affected. The law in this area is in a state of evolution and the issues here required judicial determination. In an area where the law required clarification, I therefore conclude that the plaintiff did have locus standi.

97. Having regard to all the circumstances, I must find that the plaintiff is not entitled to relief under the headings identified in the claim.

98. I would like to express appreciation to counsel for the parties and the notice parties whose submissions helped to chart the way through the shoals of this difficult area of jurisprudence. It is to be hoped their efforts have resulted in the arrival at a destination which best protects the interests and rights of the plaintiff and those in similar situations.



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

**CASE OF LASHIN v. RUSSIA**

*(Application no. 33117/02)*

JUDGMENT

STRASBOURG

22 January 2013

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Lashin v. Russia,**

The European Court of Human Rights (Chamber), sitting as a Chamber composed of:

Isabelle Berro-Lefèvre, *President*,

Elisabeth Steiner,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyev,

Linos-Alexandre Sicilianos,

Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 18 December 2012,

Delivers the following judgment, which was adopted on that date:

**PROCEDURE**

1. The case originated in an application (no. 33117/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Aleksandr Petrovich Lashin (“the applicant”), on 29 July 2002.

2. The applicant, who had been granted legal aid, was represented by Mr D. Bartenev, a lawyer practising in St Petersburg. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, about his status as a legally incapacitated person, his non-voluntary commitment to a psychiatric hospital and his inability to marry.

4. By a decision of 6 January 2011, the Court declared the application partly admissible.

5. The applicant and the Government each filed further written observations on the merits (Rule 59 § 1 of the Rules of Court). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other’s observations.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1960 and lives in Omsk.

#### **A. Deprivation of legal capacity**

7. The applicant suffers from schizophrenia, which was first diagnosed in 1987. In the 1980s and early 1990s he was employed as a bus driver, but in 1995 he stopped working. The applicant kept writing nonsensical letters to state officials and lodged numerous administrative complaints and lawsuits. At some point he started giving money and clothes to strangers and invited them to his house, explaining it by religious considerations. Such behaviour led to recurrent conflicts with his wife. The applicant became irritable, aggressive and once in 1996 tried to strangle her. As a result, they divorced. In 1998 the applicant was officially given the “2<sup>nd</sup> degree disability” status due to his mental disorder.

8. Between 1989 and 17 July 2000 the applicant was hospitalised nine times in the Omsk Regional Psychiatric Hospital. As follows from the opinion of the Serbskiy Institute of 19 August 1999 (a leading State psychiatric research centre based in Moscow) during that period the applicant considered himself as a “defender of justice”, believed that he knew important State secrets, and claimed that there was a conspiracy against him. Amongst other things, he challenged his diagnosis, complained of his confinement to the hospital, threatened the doctors who had been treating him in the Omsk Regional Psychiatric Hospital, and tried to institute criminal proceedings against them. The report did not mention any incidence of violence or self-destructive behaviour after 1996, and it was not alleged that during that period the applicant was unable to take care of himself in everyday life. However, it is clear that his mental condition had a persistent character, and that he kept harassing doctors from the Omsk Regional Psychiatric Hospital with complaints and litigations.

9. On 5 April 2000 the applicant underwent an examination in the Omsk Regional Psychiatric Hospital by a panel of doctors, who confirmed the previous diagnosis and the opinion by the Serbskiy Institute and concluded that the applicant was “incapable of understanding the meaning of his actions and was unable to control them”.

10. On 16 June 2000, following an application by the public prosecutor, the Kuybyshevskiy District Court of Omsk declared the applicant legally incapacitated because of his illness. The hearing took place in the absence of the applicant. On 30 August 2000 the Omsk Regional Court upheld the decision of the District Court.

11. On an unspecified date the Omsk Municipal Public Health Department appointed the applicant's father as his guardian.

## **B. Attempts to restore legal capacity**

### *1. First request*

12. On 2 October 2000 the applicant's daughter brought court proceedings seeking to restore his legal capacity. Her request was supported by the applicant's father as guardian. The plaintiffs claimed that the applicant's mental state had significantly improved and requested that the court conduct a new psychiatric examination of his health. As the plaintiffs did not trust doctors from the Omsk Regional Psychiatric Hospital, they insisted that the process of the psychiatric examination of the applicant be recorded on a videotape.

13. On 27 October 2000 the court commissioned a psychiatric examination of the applicant, but refused to order a video recording of it. The expert examination was entrusted to the Omsk Regional Psychiatric Hospital. However, the applicant failed to submit himself for an examination at the hospital, so the examination was not conducted.

14. On 19 March 2001 the Sovetskiy District Court of Omsk decided to confirm the status of legal incapacity and maintain the applicant's guardianship. It is unclear whether the applicant was present at the hearing. The court noted that because the new expert examination could not be conducted due to the applicant's failure to cooperate, the results of the examination of 5 April 2000 were still applicable. It appears that the decision of 19 March 2001 was not appealed against.

### *2. Second request*

15. On 9 July 2001 the applicant's father (as guardian) instituted court proceedings challenging the medical report of 5 April 2000 by the Omsk Regional Psychiatric Hospital which had served as grounds for declaring the applicant legally incapacitated. He also sought restoration of the applicant's legal capacity. Since the plaintiffs did not trust doctors from the Omsk Regional Psychiatric Hospital they requested that the court commission a panel of experts from the Independent Psychiatric Association of Russia, a non-State professional association of psychiatrists, based in Moscow, to assess the applicant's mental capacity.

16. On 26 February 2002 the Kuybyshevskiy District Court held a hearing in the applicant's absence, having decided in particular that:

“... [the applicant's] mental condition prevented him from taking part in the hearing, and, moreover, [his] presence would be prejudicial to his health”.

The court further refused to commission a new expert examination by a non-State psychiatric association, on the ground that only State-run

institutions were allowed by law to conduct such examinations and issue reports. The relevant part of the District Court judgment reads as follows:

“... under section 1 of the Psychiatric Care Act ... State forensic examination activity in judicial proceedings is carried out by State forensic examination institutions, and consists of organising and implementing the forensic examination”.

In conclusion the court found that the expert report of 5 April 2000 was still valid, that the applicant continued to suffer from a mental disorder and that, therefore, his status as a legally incapacitated person should be maintained.

17. The applicant’s father (as his guardian) appealed to the Omsk Regional Court, which on 15 May 2002 upheld the judgment of 26 February 2002.

### **C. Confinement of the applicant in the psychiatric hospital**

18. Some time later the applicant’s father solicited an opinion from Dr S., a psychiatrist not affiliated with the Omsk Regional Psychiatric Hospital, concerning the applicant’s mental condition. Dr S. examined the applicant and on 1 July 2002 he submitted a report according to which the applicant’s mental illness was not as serious as claimed by the doctors at the Omsk Regional Psychiatric Hospital.

19. On an unspecified date in 2002 the applicant’s father, as his guardian, delivered a power of attorney to a third person, mandating that person to act in the applicant’s name. However, a notary public refused to certify the power of attorney, on the basis that under the law a guardian should represent his ward personally and could not confer his duties on a third person. The applicant’s father brought proceedings against the notary public in court, but to no avail: on 10 October 2002 the Sovetskiy District Court of Omsk confirmed the lawfulness of the refusal.

20. On 2 December 2002 the applicant and his fiancée, Ms D., requested that the municipality register their marriage. According to the applicant, they received no reply from the municipality.

21. On 4 December 2002 a district psychiatrist (*uchastkovyi psikhiatr*) examined the applicant and concluded that the latter suffered from “paranoid schizophrenia with paraphrenic delusion of reformism”. The psychiatrist delivered a hospitalisation order, which relied strongly on the “nonsensical complaints” lodged by the applicant’s representatives.

22. On 6 December 2002 the Guardianship Council of the Omsk Region decided to strip the applicant’s father of his status as the applicant’s guardian. The decision was taken by the Guardianship Council without the applicant or his father being heard.

23. By virtue of the hospitalisation order the applicant was placed in the Omsk Regional Psychiatric Hospital on 9 December 2002. According to the



applicant, he and his father unambiguously opposed this provisional placement in the hospital.

24. On the same day a panel of three doctors from the Omsk Regional Psychiatric Hospital examined the applicant and concluded that he should stay in the hospital. They mostly based themselves on the medical history of the applicant that had led to the deprivation of legal capacity. The report stated that the worsening of the applicant's mental condition was demonstrated by the numerous complaints by which he had tried to recover his legal capacity and challenge the actions of the hospital.

25. On 10 December 2002 the Omsk Municipal Public Health Authority approved the decision taken by the Guardianship Council on 6 December 2002. From that moment on the applicant's father ceased to be his guardian and, according to the Government, the functions of the applicant's guardian were performed by the municipal authorities, namely the Omsk Public Health Authority.

26. On 11 December 2002 the Omsk Regional Psychiatric Hospital requested that the Kuybyshevskiy District Court authorise the applicant's further confinement. On the same day the judge, in accordance with section 33 of the Psychiatric Care Act, ordered that the applicant be held in the hospital for such time as was necessary for the examination of his case. The provisional order issued by the judge was a one-sentence annotation on the hospitalisation order of 4 December 2002: "I hereby authorise detention [in hospital] pending the examination [of the case] on the merits".

27. Having been informed of that ruling, the applicant asked the hospital staff to release him for home treatment. The hospital staff refused, however, and prohibited him from seeing his relatives or talking to them.

28. On 15 December 2002 the applicant lodged an application with the court for his release from the Omsk Regional Psychiatric Hospital. However, the judge informed the applicant by letter that such a provisional placement of a patient in a psychiatric hospital for a period necessary for the examination of the case on the merits was not subject to judicial review.

29. On 17 December 2002 the District Court held a hearing in the presence of the applicant, the applicant's father, the public prosecutor, and a representative of the hospital. From the case file it appears that the participants and the judge himself were not aware that the applicant's father was no longer the applicant's guardian.

30. At that hearing the applicant and his father claimed that the applicant's condition did not require hospitalisation. They insisted that the hospital had not proved the medical necessity of such a measure. The applicant and his father referred to the report by Dr. S. of 1 July 2002 (see paragraph 18 above). In order to clarify the matter, the applicant asked the court to commission a fresh medical examination of his mental health, in order to establish whether there had been any deterioration. The court rejected the request, while at the same time admitting the applicant's

medical record in evidence. At the end of the day the hearing was adjourned to 24 December 2002.

31. On 20 December 2002 the Guardianship Council appointed the administration of the Omsk Regional Psychiatric Hospital as the applicant's guardian and delivered an authorisation for his extended confinement in the hospital.

32. On 24 December 2002, without holding a hearing, the District Court closed the proceedings because the hospital, as the applicant's only legitimate guardian, had revoked its request for authorisation of his confinement. The applicant's confinement was thus considered to be "voluntary", and therefore did not require court approval.

33. On the same day, the applicant's father and fiancée asked the court to give them a copy of the decision, so that they could lodge an appeal. The judge refused because the applicant's father, who was no longer his guardian, could not act on behalf of the applicant. The court also denied a request to consider the applicant's fiancée to be his representative.

34. On 27 January 2003, the applicant's fiancée wrote a letter to the Guardianship Council where she requested that the council appoint her as the guardian of "her husband, Mr. Lashin". There is no information whether she received any reply.

35. On an unspecified date the applicant's father lodged an appeal against the decision of 24 December 2002. On 10 February 2003 the Regional Court refused to examine the appeal on the grounds that the applicant's father had no right to represent his son and that no decision on the merits of the case had been taken by the first-instance court.

36. On 2 February 2003 the applicant's fiancée lodged a supervisory review appeal, which was returned to her without examination on 13 February 2003 on the basis that she had no power to represent the applicant.

37. In the following months the applicant's father and fiancée lodged several criminal-law complaints against the hospital and its doctors. Their complaints were addressed to various state authorities and the courts. It appears that none of those complaints was successful.

38. On an unspecified date the applicant's father challenged the decision of the Guardianship Council of 6 December 2002, as approved by the municipal authorities on 10 December 2002, stripping him of his status as the applicant's guardian. On 16 July 2003 the Kuybyshevskiy District Court of Omsk upheld the decision of the Guardianship Council. The District Court found that the applicant's father had neglected his duties on many occasions and had tried to entrust the guardianship to a third party, referring in particular to the episode concerning the power of attorney (see paragraph 19 above). The court also noted that the applicant's father had failed to secure appropriate medical treatment for the applicant as prescribed by the doctors, as a result of which the applicant's condition had

worsened. According to the applicant, he lodged an appeal against that decision.

39. In their letters to the Court of 28 July 2002 and 25 July 2003 the applicant and his fiancée informed the Court of their desire to marry.

40. On 10 October 2003 the Guardianship Council decided to appoint the applicant's daughter as his guardian. That decision was approved by the municipality on 17 October 2003.

41. On 10 December 2003 the applicant was released from the town hospital. The medical report issued in connection with the applicant's discharge indicated that his mental health during his confinement had been predominantly characterised by "litigious" ideas similar to those he had presented at the time of his admission.

42. It appears that in 2006 the applicant's relatives brought court proceedings seeking to restore the applicant's full legal capacity. The Court has not been provided with any information about the outcome of those proceedings.

## II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

### A. Legal capacity

#### 1. Substantive provisions

43. Under Article 21 of the Civil Code of the Russian Federation of 1994, any individual aged 18 or more has, as a rule, full legal capacity (*дееспособность*), which is defined as "the ability to acquire and enjoy civil rights, [and] create and fulfil civil obligations by his own acts". Under Article 22 of the Civil Code, legal capacity can be limited, but only on the grounds defined by law and within a procedure prescribed by law.

44. According to Article 29 of the Civil Code, a person who cannot understand or control his or her actions as a result of a mental disease may be declared legally incapacitated by a court and placed in the care of a guardian (*опека*). All legal transactions on behalf of the incapacitated person are concluded by his guardian. In practical terms this means that the guardian ensures mandatory representation of the incapacitated person in all matters concerning his property, income, work relations, travel and residence, social contacts and so on. The incapacitated person can be declared fully capable if the grounds on which he or she was declared incapacitated cease to exist.

45. Article 30 of the Civil Code provides for the partial limitation of legal capacity. If a person's addiction to alcohol or drugs is creating serious financial difficulties for his family, he can be declared partially incapacitated. That means that he is unable to conclude large-scale

transactions. He can, however, dispose of his salary or pension and make small transactions, under the control of his guardian.

46. Under Article 35 (4), where a person deprived of legal capacity is placed under the supervision of a medical institution, that medical institution must take on the functions of the guardian.

47. It follows from Article 39 (3) of the Civil Code that the guardianship authority may revoke the authority of a guardian who neglects his duties.

## 2. *Incapacitation proceedings*

48. Article 258 of the Code of Civil Procedure of 1964, as in force at the material time (hereinafter “the old CCP”), established that members of the family of the person concerned, a prosecutor, a guardianship authority or a psychiatric hospital, as well as “trade unions and other organisations”, might apply to a court seeking to deprive a person of his legal capacity. The court, if there was evidence of a mental disorder, was required to commission a forensic psychiatric examination of the person concerned (Article 260). The case was required to be heard in the presence of the person concerned, provided that his presence was compatible with his state of health, and also in the presence of the prosecutor and a representative of the guardianship authority (*орган опеки и попечительства*, Article 261 paragraph 2 of the old CCP). Under Article 263 of the old CCP it was possible for legal capacity to be restored by a court decision upon the application of the guardian or the persons listed in Article 258, but not based on the application of the person declared incapacitated.

49. Article 32 of the old CCP provided that a person declared incapacitated could not bring an action before the courts. The guardian was entitled to do so in order to protect the rights of the incapacitated person.

## **B. Confinement to a psychiatric hospital**

50. The Psychiatric Care Act of 1992, as amended (hereinafter “the Act”), stipulates that any recourse to psychiatric aid must be voluntary. However, a person declared fully incapacitated may be subjected to psychiatric treatment at the request or with the consent of his official guardian (section 4 of the Act).

51. Section 5 (3) of the Act provides that the rights and freedoms of persons with mental illnesses cannot be limited solely based on their diagnosis or the fact that they have undergone treatment in a psychiatric hospital.

52. Under section 5 of the Act a patient in a psychiatric hospital can have a legal representative. However, pursuant to section 7 (2) the interests of a person declared fully incapacitated are represented by his official guardian or, in absence of an officially appointed guardian, the administration of the psychiatric hospital where the patient is confined.

53. Section 28 (1) of the Act (“Grounds for hospitalisation”) provides that a person suffering from a mental disorder may be placed in a psychiatric hospital for further examination or treatment on the basis of a decision by a psychiatrist or on the basis of a court order. Section 28 (3) and (4) states that a person declared incapacitated can be placed in a psychiatric hospital at the request or with the consent of his guardian. This hospitalisation is regarded as voluntary and, unlike non-voluntary hospitalisation, does not require court approval (sections 29 and 33 of the Act).

54. Section 29 sets out the grounds for non-voluntary placement in a psychiatric hospital in the following terms:

“A mentally disturbed individual may be hospitalised in a psychiatric hospital against his will or the will of his legal representative and before a court decision [on the matter] has been taken, if the individual’s examination or treatment can only be carried out in in-patient care, and the mental disorder is severe enough to give rise to:

- a) a direct danger to the person or to others, or
- b) the individual’s helplessness, i.e. inability to take care of himself, or
- c) a significant health impairment as a result of a deteriorating mental condition, if the affected person were to be left without psychiatric care.”

55. Section 32 of the Act specifies the procedure for the examination of patients compulsorily confined in a hospital:

“1. A person placed in a psychiatric hospital on the grounds defined by section 29 of the present Act shall be subject to compulsory examination within 48 hours by a panel of psychiatrists of the hospital, who shall take a decision as to the need for hospitalisation. ...

2. If hospitalisation is considered necessary, the conclusion of the panel of psychiatrists shall be forwarded to the court having territorial jurisdiction over the hospital, within 24 hours, for a decision as to the person’s further confinement in the hospital.”

56. Sections 33-35 set out the procedure for judicial review of applications for the non-voluntary in-patient treatment of mentally ill persons:

### **Section 33**

“1. Non-voluntary hospitalisation for in-patient psychiatric care on the grounds laid down in section 29 of the present Act shall be subject to review by the court having territorial jurisdiction over the hospital.

2. An application for the non-voluntary placement of a person in a psychiatric hospital shall be filed by a representative of the hospital where the person is detained ...

3. A judge who accepts an application for review shall simultaneously order the person’s detention in a psychiatric hospital for the term necessary for that review.”

**Section 34**

“1. An application for the non-voluntary placement of a person in a psychiatric hospital shall be reviewed by a judge, on the premises of the court or hospital, within five days of receipt of the application.

2. The person shall be allowed to participate personally in the hearing to determine whether he should be hospitalised. If, based on information provided by a representative of the psychiatric hospital, the person’s mental state does not allow him to participate personally in the hearing, the application shall be reviewed by the judge on the hospital’s premises. ...”

**Section 35**

“1. After examining the application on the merits, the judge shall either grant or refuse it. ...”

57. On 5 March 2009 the Constitutional Court of Russia adopted Ruling No. 544-*O-P* in which it examined the compatibility of sections 32 and 34 (1) and (2) of the Psychiatric Care Act with Article 22 of the Constitution of the Russian Federation, which provides that a person can be arrested without a court order for a maximum period of forty-eight hours. The Constitutional Court found that the Psychiatric Care Act did not allow non-voluntary hospitalisation in a mental clinic for more than forty-eight hours without a court order (point 2.3 of the Ruling). It appears from the last paragraph of point 2.2 of the Ruling that the Constitutional Court did not consider that an interim decision taken by a judge by virtue of section 33 (3) of the Act qualified as a “court order” within the meaning of Article 22 of the Constitution, since the judge in such a situation did not examine the reasons for the confinement and had no power to release the person concerned. However, the Constitutional Court did not declare the relevant provisions of the Psychiatric Care Act unconstitutional.

58. Section 36 (3) of the Act provides for the courts to verify every six months whether the patient’s non-voluntary confinement continues to be necessary.

59. Section 37 (2) establishes the rights of a patient in a psychiatric hospital. In particular, the patient has the right to communicate with his lawyer without censorship. However, under section 37 (3) the doctor may limit the patient’s rights to correspond with other persons, have telephone conversations and meet visitors.

60. Section 47 of the Act provides that the doctors’ actions are open to appeal before a court. Section 48 stipulates *inter alia* that the person whose rights are affected by the actions of the psychiatric institution must participate in the court proceedings if it is compatible with his or her mental condition.

### **C. State and private expert institutions**

61. The State Forensic Expert Activities Act of 2001 (no. 73-FZ) defines the basic principles of the functioning and organisation of the State forensic institutions, which are supposed to assist judges, prosecutors and investigators in their professional activities where technical or scientific knowledge in a particular field is needed. Section 41 of that Act provides that forensic examination may be conducted by experts not belonging to the State forensic institutions, in accordance with Russia's procedural laws.

62. Article 75 of the old CCP provided that an expert examination had to be entrusted to "experts of the appropriate expert institutions or to other specialists appointed by the court. Any person having the appropriate knowledge [to give expert evidence] might be called [to testify before the court]."

### **D. Family Code**

63. Article 14 of the Family Code of the Russian Federation of 1995 (Federal Law No. 223-FZ) makes it impossible to marry if at least one of the would-be spouses has been declared incapable by a court because of a mental illness.

64. Under Article 16 of the Family Code a marriage may be dissolved at the request of the guardian of a spouse who has been declared incapable by the court.

### **E. International instruments concerning legal capacity and confinement to a psychiatric institution**

65. On 23 February 1999 the Committee of Ministers of the Council of Europe adopted "Principles concerning the legal protection of incapable adults", Recommendation No. R (99) 4. The relevant provisions of these Principles read as follows:

#### **Principle 2 – Flexibility in legal response**

"1. The measures of protection and other legal arrangements available for the protection of the personal and economic interests of incapable adults should be sufficient, in scope or flexibility, to enable suitable legal responses to be made to different degrees of incapacity and various situations. ...

4. The range of measures of protection should include, in appropriate cases, those which do not restrict the legal capacity of the person concerned."

#### **Principle 3 – Maximum reservation of capacity**

"1. The legislative framework should, so far as possible, recognise that different degrees of incapacity may exist and that incapacity may vary from time to time. Accordingly, a measure of protection should not result automatically in a complete

removal of legal capacity. However, a restriction of legal capacity should be possible where it is shown to be necessary for the protection of the person concerned.

2. In particular, a measure of protection should not automatically deprive the person concerned of the right to vote, or to make a will, or to consent or refuse consent to any intervention in the health field, or to make other decisions of a personal character at any time when his or her capacity permits him or her to do so. ...”

#### **Principle 6 – Proportionality**

“1. Where a measure of protection is necessary it should be proportionate to the degree of capacity of the person concerned and tailored to the individual circumstances and needs of the person concerned.

2. The measure of protection should interfere with the legal capacity, rights and freedoms of the person concerned to the minimum extent which is consistent with achieving the purpose of the intervention. ...”

#### **Principle 13 – Right to be heard in person**

“The person concerned should have the right to be heard in person in any proceedings which could affect his or her legal capacity.”

#### **Principle 14 – Duration review and appeal**

“1. Measures of protection should, whenever possible and appropriate, be of limited duration. Consideration should be given to the institution of periodical reviews. ...

3. There should be adequate rights of appeal.”

66. The United Nations Convention on the Rights of Persons with Disabilities (the “CRPD”), which Russia signed on 24 September 2008 (but has not yet ratified), provides in Article 12 (3) that “persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life”. Article 12 (4) stipulates:

“States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity ... are proportional and tailored to the person’s circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person’s rights and interests. ...”

Article 23 (a) of the CRPD establishes that “the right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognised.”

### **F. Comparative law**

67. A comparative law research concerning the law of persons with mental disabilities to marry and covering 25 member States of the Council of Europe demonstrated that in approximately one half (13/25) of the States



an incapacitation decision automatically leads to the loss of the right to marry. In approximately one third (9/25) of them a guardian's consent to the conclusion of marriage of an incapacitated person is needed. An express ban on the right to marry for mentally disabled persons is in place in six of the 25 member States. The language and procedures used to verify the legal consequences of the mental insufficiency in the marital sphere vary considerably from one member State to another.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

68. The applicant complained about his inability to have his legal incapacity reviewed. The Court will examine this complaint under Article 8, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

#### A. The parties' submissions

##### 1. *The Government*

69. The Government started by summarising provisions of the Russian legislation on legal capacity. They admitted that deprivation of legal capacity would constitute an interference with the private life of the person concerned. However, in the applicant's case it had been necessary in view of his diagnosis – schizophrenia, twice confirmed by doctors at the Serbskiy Institute in Moscow and the Omsk Regional Psychiatric Hospital, in 1999 and 2000 respectively. In particular, the psychiatric examination report prepared in 2000 concluded that the applicant was incapable of understanding the meaning of his actions and unable to control them. The incapacitation decision had thus been taken in order to protect the interests of other people, as well as his own interests. Such a limitation of his rights was provided for by Article 29 of the Civil Code and had therefore been “lawful”. The decision to deprive him of legal capacity had been taken in the applicant's absence because he was in a psychiatric hospital at that time and his appearance before the court could therefore have been prejudicial to his health. The option of taking a decision without seeing the person

concerned was provided for under Article 261 of the Code of Civil Procedure. The case had been heard by courts at two levels of jurisdiction, which had both concluded that the applicant's illness warranted the deprivation of his legal capacity.

70. The Government further indicated that the applicant's father had ceased to be his guardian on 10 December 2002, when the Public Health Authority approved the decision of the Guardianship Council. Between 10 and 20 December 2002 the applicant had no guardian.

## *2. The applicant*

71. The applicant argued that the decision of 26 February 2002 had been procedurally flawed. The judge conducted the hearing in the applicant's absence without giving any explanation as to why the latter's mental health prevented him from attending the hearing. The applicant acknowledged that he had suffered from some psychiatric problems, but there had been no indication that the applicant was aggressive or incapable of understanding the proceedings. It was therefore important for the judge responsible for deciding whether to restore the applicant's legal capacity to form a personal opinion about his mental capacity.

72. During the 2002 proceedings the applicant's representatives had requested that the District Court commission an independent medical body (a panel of experts from the Independent Psychiatric Association of Russia) to assess his mental capacity. This application was dismissed because in the court's view the law did not allow private entities to perform such assessments. However, Section 41 of the State Forensic Expert Activities Act explicitly stated the contrary. Moreover, Article 75 of the old CCP had provided for expert assessments to be performed by experts from the relevant institutions or by other specialists appointed by the court.

73. The applicant also stressed that, having rejected the request to commission an independent panel of experts, the District Court had not made arrangements for any other expert assessment of his mental capacity. The only State expert psychiatric institution in the Omsk Region was the Omsk Regional Psychiatric Hospital whose actions the applicant had challenged in the proceedings in question, and which had previously sought the incapacity in 2000 by applying to the prosecutor's office. It would have been contrary to the principle of equality of arms to appoint experts from the respondent hospital to assess the applicant's mental capacity.

74. The applicant also complained that after the transferral of the guardianship on 20 December 2002 to the Omsk Regional Psychiatric Hospital he had lost any possibility to have his legal capacity reviewed.

75. As to the substance of the domestic decisions, the applicant recalled that he had been entirely deprived of his legal capacity in accordance with Article 29 of the Civil Code, that is to say on the sole basis that he suffered from a mental disorder. In 2002 the judge had simply reiterated the

conclusion of the 2000 expert report and of the incapacity judgment, without establishing the actual mental capacity of the applicant at the time of the hearing. Thus, in the court's view, the mere diagnosis of a mental disability had been enough to strip the applicant of all his fundamental rights. The judge had not examined the applicant's actual capacity in any meaningful way in order to establish whether his mental health still prevented him from understanding the meaning of his actions and from controlling them. In any event, the existing legislative framework had not left the judge any other choice than to declare the person concerned fully incapacitated. The Russian Civil Code distinguished between full capacity and full incapacity, but did not provide for any borderline situation, except for drug or alcohol addicts.

### **B. The Court's assessment**

76. The Court notes that the applicant's complaint is two-fold. First, he complained that his Article 8 rights had been breached in the 2002 proceedings seeking the restoration of his legal capacity. Second, he complained that after 20 December 2002 he had no possibility to have his legal incapacity reviewed. The Court will start its analysis by addressing the first limb of the applicant's complaint.

#### *1. The applicant's attempts to recover his legal capacity until 20 December 2002*

77. The Court recalls that deprivation of legal capacity may amount to an interference with the private life of the person concerned (see *Matter v. Slovakia*, no. 31534/96, § 68, 5 July 1999, and *Shtukaturov v. Russia*, no. 44009/05, § 83, ECHR 2008). The Government in the present case did not contest that the applicant's incapacitation had amounted to such an interference, and the Court does not see any reason to hold otherwise, especially in view of various serious limitations to the applicant's personal autonomy which that measure entailed.

78. Under the six-month rule in Article 35 of the Convention the Court is precluded from examining the original incapacitation proceedings of 2000. That being said, the Court may examine the applicant's situation under Article 8 of the Convention insofar as his attempts to have his capacity restored in 2002 are concerned (see the admissibility decision of 6 January 2011 in the present case).

79. An issue arises as to whether the applicant's inability to obtain the review of his status must be examined in terms of the interference by the State with his Article 8 rights or rather in view of the positive obligations of the State under that provision. The Court recalls in this respect that whether the case is analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicant's rights under

paragraph 1 of Article 8 or in terms of an interference by a public authority to be justified in accordance with paragraph 2, the applicable principles are broadly similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole (see *Oluić v. Croatia*, no. 61260/08, § 46, 20 May 2010, with further references). This approach is fully applicable in the case at hand: the Court will examine whether a fair balance was struck between his Article 8 rights and any other legitimate interest, private or public, which may have been at stake in the 2002 proceedings.

80. The Court accepts that depriving someone of his legal capacity and maintaining that status may pursue a number of legitimate aims, such as to protect the interests of the person affected by the measure. In deciding whether legal capacity may be restored, and to what extent, the national authorities have a certain margin of appreciation. It is in the first place for the national courts to evaluate the evidence before them; the Court's task is to review under the Convention the decisions of those authorities (see, *mutatis mutandis*, *Winterwerp v. the Netherlands*, 24 October 1979, § 40, Series A no. 33; *Luberti v. Italy*, 23 February 1984, Series A no. 75, § 27; and *Shtukurov v. Russia*, cited above, § 67).

81. That being said, the extent of the State's margin of appreciation in this context depends on two major factors. First, where the measure under examination has such a drastic effect on the applicant's personal autonomy as in the present case (compare *X. and Y. v. Croatia*, no. 5193/09, § 102, 3 November 2011), the Court is prepared to subject the reasoning of the domestic authorities to a somewhat stricter scrutiny. Second, the Court will pay special attention to the quality of the domestic procedure (see *Shtukurov v. Russia*, cited above, § 91). Whilst Article 8 of the Convention contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to ensure due respect of the interests safeguarded by Article 8 (see *Görgülü v. Germany*, no. 74969/01, § 52, 26 February 2004).

**(a) Procedural aspects**

82. As to the procedural aspect of the domestic decisions, the Court first of all observes that on 26 February 2002 the domestic court refused to restore the applicant's legal capacity. The court made this decision without seeing or hearing him (see paragraph 16 above). The Court recalls that in such cases the individual concerned is not only an interested party but also the main object of the court's examination (see *X. and Y.*, cited above, § 83, with further references; see also *mutatis mutandis*, *Winterwerp*, cited above, § 74). There are possible exceptions from the rule of personal presence (see, as an example, *Berková v. Slovakia*, no. 67149/01, §§ 138 et seq., 24 March 2009); however, departure from this rule is possible only where the domestic court carefully examined this issue. In the present case, however,

the District Court merely stated that the applicant's personal presence would be "prejudicial to his health", and there is no evidence that the court ever sought a doctor's opinion on that particular question, namely what effect appearing in court might have had on the applicant. The Court is not aware of any other obstacles to the applicant's personal appearance in court. The Court considers that a simple assumption that a person suffering from schizophrenia must be excluded from the proceedings is not sufficient.

83. The second aspect of the domestic proceedings of concern to the Court is the refusal of the domestic court to commission a new psychiatric examination of the applicant (see paragraphs 14 and 16 above). The Court recalls its findings in *Stanev v. Bulgaria* [GC] (no. 36760/06, § 241), ECHR 2012) where it held, in the context of the right of access to court under Article 6 § 1, that "the right to ask a court to review a declaration of incapacity is one of the most important rights for the person concerned".

84. The Court observes that in February 2002 more than a year and a half had elapsed since the original incapacitation decision had been taken in June 2000 (see paragraph 10 above). Nothing in the case file indicates that the applicant's condition was irreversible, or that the time elapsed since his incapacitation was too short for the question to be examined again. The Court concludes that in these circumstances the applicant was entitled to a full review of his status, which, as a matter of principle, should have included some sort of fresh expert assessment of his condition.

85. The applicant asked for a fresh examination of his mental condition and asked the court to entrust it to a non-State medical institution. However, the court refused on the sole ground that it was prohibited by law. The Court is not aware of any norm in Russian law that would prohibit a court from seeking an expert opinion from a clinic or a doctor not belonging to the State system of public health institutions. The Government did not refer to any such norm either. The fact that there is a State-run system of forensic institutions (see the domestic court's reasoning in paragraph 16 above) does not mean that they have a monopoly on providing expert opinions to the courts. On the contrary, Russian law at the time explicitly permitted examinations by experts not belonging to the State forensic institutions (see paragraph 61 above). The domestic court's decision in this respect appears to have no basis in the domestic law.

86. Further, the Court does not see what prevented the domestic court from seeking a fresh expert opinion from experts not directly affiliated with the Omsk Regional Psychiatric Hospital. The Court observes that one of the reasons for the applicant's many hospitalisations in the Omsk Regional Psychiatric Hospital were his numerous complaints about the doctors of that institution. His incapacitation was also based on the opinion of the doctors from that hospital. Nevertheless, when the applicant sought to restore his legal capacity (see paragraphs 12 et seq. above), the District Court entrusted his examination to the same hospital. In such circumstances the applicant's

demand was not frivolous: first, he refused to submit himself for an examination in the Omsk Regional Hospital, and then he asked for an examination by the doctors from the Independent Psychiatric Association of Russia (see paragraph 15 above).

87. The Court reiterates that where the opinion of an expert is likely to play a decisive role in the proceedings, as in the case at hand, the expert's neutrality becomes an important requirement which should be given due consideration. Lack of neutrality may result in a violation of the equality of arms guarantee under Article 6 of the Convention (see, *mutatis mutandis*, *Sara Lind Eggertsdóttir v. Iceland*, no. 31930/04, § 47, 5 July 2007, with further references). In the Court's opinion an expert's neutrality is equally important in the context of incapacitation proceedings, where the person's most basic rights under Article 8 are at stake.

88. The Court notes that the applicant never categorically refused to submit himself to an examination, and that he doubted the neutrality of the doctors from the Omsk Regional Psychiatric Hospital. Without taking a position as to whether his doubts were well-founded, the Court considers that in such circumstances it was the District Court's duty to make arrangements for a fresh examination of the applicant by an independent psychiatric institution – not necessarily private, but lacking direct affiliation to the Omsk Regional Psychiatric Hospital. The Government have not referred to any serious considerations that might have prevented the court from seeking such an examination.

89. The Court recalls that according to the judgment of 26 February 2002 the applicant continued to suffer from a mental disorder which had warranted his incapacitation in 2000. However, in a situation where the court did not see the person concerned personally and did not obtain a fresh assessment of his mental condition, such a conclusion cannot be regarded as reliable.

**(b) Substantive aspects**

90. As to the substance of the domestic decisions, the Court observes that the judgment of 26 February 2002 relied on the medical report prepared in 2000. The Court does not cast doubt on the findings of that report, in particular that in 2000 the applicant suffered from schizophrenia. However, the Court recalls that in the *Shtukurov* case, cited above, § 94, it held that “the existence of a mental disorder, even a serious one, cannot be the sole reason to justify full incapacitation. By analogy with cases concerning deprivation of liberty, in order to justify full incapacitation the mental disorder must be “of a kind or degree” warranting such a measure”. In *Shtukurov* the Court found that in the domestic proceedings the issue of “the kind and degree” of the applicant's mental illness remained unresolved.

91. In the present case the Court faces essentially the same situation as in *Shtukurov*. On the one hand, it is clear that the applicant suffered from a

serious and persistent mental disorder: he had delusory ideas, was a vexatious litigant, etc. On the other hand, the Serbskiy Institute report of 1999 did not refer to any particular incident of violent, self-destructive or otherwise grossly irresponsible behaviour on the part of the applicant since 1996, and did not allege that the applicant was completely unable to take care of himself (see paragraph 8 above).

92. The Court is ready to admit that some measure of protection in respect of the applicant might have been advisable. However, the Russian Civil Code did not provide for any intermediate form of limitation of legal capacity for mentally ill persons – this existed only in respect of drug or alcohol addicts (*ibid.*, § 95). Therefore, the domestic court in the present case, as in *Shtukaturov*, had no other choice than to apply and maintain full incapacity – the most stringent measure which meant total loss of autonomy in nearly all areas of life. That measure was, in the opinion of the Court and in the light of materials of the case, disproportionate to the legitimate aim pursued.

#### (c) Conclusion

93. In sum, the confirmation of the applicant's incapacity status in 2002 based on the report of 2000 was not justified for at least two reasons: first, because no fresh assessment of the applicant's mental condition was made (either by the doctors, or by the court itself) and the applicant was not personally present in court, and, second, because it is doubtful whether the applicant's mental condition, as described in the report of 2000, required full incapacitation. Therefore, there was a breach of Article 8 of the Convention on that account.

#### 2. *The applicant's inability to restore his legal capacity after 20 December 2002*

94. The Court will now turn to the applicant's situation after 20 December 2002, when the guardianship was transferred to the Omsk Regional Psychiatric Hospital (see paragraph 31 above). The Court recalls that before that date the applicant's guardian (his father) supported the applicant's attempts to restore legal capacity. Afterwards, the situation changed when the guardianship was transferred to the hospital administration. It is clear from the materials of the case that the hospital sought the applicant's confinement and was opposed to his attempts to recover his legal capacity. Thus, from 20 December 2002 onwards, the applicant had no opportunity of challenging his status.

95. Subsequently, the applicant's father tried to reinstate himself as the applicant's guardian (see paragraph 38 above). If successful, he would have been able to challenge the applicant's status again. However, the attempt failed with the judgment of 16 July 2003 by the Kuybyshevskiy District Court, which appears to have been the final decision on that matter. From

that date onwards the applicant was fully dependant on the psychiatric hospital.

96. The Court recalls its findings in the *Shtukatur* case, cited above, § 90, where it criticised the Russian law on incapacitation in the following terms:

“ [T]he Court notes that the interference with the applicant’s private life was very serious. As a result of his incapacitation the applicant became fully dependant on his official guardian in almost all areas of life. Furthermore, “full incapacitation” was applied for an indefinite period and could not, as the applicant’s case shows, be challenged otherwise than through the guardian, who opposed any attempts to discontinue the measure ...”

In the present case the situation was identical: the applicant could only challenge his status through the guardian, who opposed any attempts to discontinue the measure. That situation continued at least until 10 October 2003, when the applicant’s daughter was appointed as his guardian (see paragraph 40 above). It is unclear whether she wished to restore the applicant’s status: the Court does not have sufficient information about the proceedings allegedly initiated in 2006 by the applicant’s relatives (see paragraph 42 above). Be that as it may, it is clear that at least during the time when the role of the applicant’s guardian was assumed by the psychiatric hospital the applicant was unable to institute any legal proceedings to challenge his status.

97. The Court reiterates that in the vast majority of cases where the ability of a person to reason and to act rationally is affected by a mental illness, his situation is subject to change. This is why the Principles concerning the legal protection of incapable adults of 1999 (see paragraph 65 above, Principle 14), recommend a periodical re-assessment of the condition of such persons. A similar requirement follows from Article 12 (4) of the CPRD (see paragraph 66 above). In *Stanev*, cited above, the Court observed that “there is now a trend at European level towards granting legally incapacitated persons direct access to the courts to seek restoration of their capacity” (§ 243). In Russia at the time the law neither provided for an automatic review nor for a direct access to the court for an incapacitated person, so the latter was fully dependant on his guardian in this respect (see, *mutatis mutandis*, *Salontaji-Drobnjak v. Serbia*, no. 36500/05, § 134, 13 October 2009). Where, as in the present case, the guardian opposed the review of the status of his ward, the latter had no effective legal remedy to challenge the status. Having regard to what was at stake for the applicant, the Court concludes that his inability for a considerable period of time to assert his rights under Article 8 was incompatible with the requirements of that provision of the Convention. Consequently, there was a violation of Article 8 of the Convention.



## II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

98. The applicant complained that his confinement in a psychiatric hospital in 2002-2003 was contrary to Article 5 §§ 1 (e) and 4 of the Convention, which read as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(e) the lawful detention of persons ... of unsound mind ...;

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

### A. The parties' submissions

#### 1. *The Government*

99. The Government claimed that the applicant's rights under Article 5 of the Convention had not been violated. As to the placement of the applicant in a psychiatric hospital in December 2002, the Government indicated that he had been taken there at the request of the district psychiatrist. Upon his arrival at the hospital the applicant had been immediately examined by a doctor on duty. In the ensuing forty-eight hours he had been examined by a panel of three psychiatrists. Following that examination the hospital had sent a hospitalisation request to the court. Consequently, his confinement had been requested and authorised in accordance with the domestic procedural rules established in the Psychiatric Care Act of 1992.

100. Subsequently, his further hospitalisation had been ordered in connection with the state of his health. The applicant's mental illness had been diagnosed on many occasions. Thus, according to the letter of the Ministry of Public Health and Social Development, the applicant suffered from severe schizophrenia. He had thus been incapable of understanding his actions or controlling them. Occasionally he had been in remission, but without any stable improvement in his health. Towards the end of 2002 the applicant had suffered yet another deterioration of his mental condition. He had stopped taking his medicine and visiting the district psychiatrist regularly. As a result, without proper medical supervision and treatment, there had been a risk of further deterioration of his health. In such circumstances the doctors, in accordance with the Psychiatric Care Act of 1992, had ordered the applicant's confinement against his will.

101. As to the legal remedies in force at the material time, the Government submitted that the applicant's father had been stripped of his guardianship in accordance with the law. The applicant's further

hospitalisation had been requested by the hospital, which, from 20 December 2002, had been appointed to act as his guardian. The proceedings concerning the applicant's confinement had been terminated because, after the appointment of the hospital as his guardian, his confinement had become, in domestic law, voluntary. The first-instance court had examined the case on the merits because the judge had not been informed by the parties of the decision of the Guardianship Council stripping the applicant's father of his guardianship. Under the domestic law, the applicant had been able to act, including before the courts, albeit only through his guardian.

## *2. The applicant*

102. The applicant maintained that he had been admitted to the mental hospital against his own and his guardian's will. His psychiatric confinement in 2002 had probably been formally lawful, but his disorder had not been of a kind or degree warranting the confinement. It appears from the hospitalisation order that the psychiatrist had decided to confine the applicant in order to prevent him from lodging complaints. The Government had provided no explanation as to why the applicant's "reformist" behaviour indicated any real threat of further worsening of his state, if left without the prescribed treatment. The hospital's psychiatric report had never considered less restrictive measures such as out-patient treatment. The applicant had been detained in the mental hospital for a year, and upon his discharge his mental health remained the same as at the time of his admission.

103. The applicant noted that from 11 December 2002 his confinement had been authorised by the provisional detention order. However, in its decision of 5 March 2009 the Constitutional Court of the Russian Federation had held that a provisional detention order was not a judicial decision required in constitutional terms (see paragraph 57 above). Furthermore, in the present case the court had issued the order without hearing the applicant or his representative. Lastly, under Russian law its validity had been limited to five days, whereas the applicant had been detained pursuant to that provisional order at least until 20 December 2002, when his further confinement had been authorised by the Guardianship Council.

104. As regards the applicant's detention from 20 December 2002 onwards, the applicant noted that, formally speaking, his hospitalisation had become voluntary: the consent of the hospital – his new guardian and at the same time the detaining authority – had been considered sufficient under the domestic law for his indefinite detention without court order. In other words, he was detained on the basis of an administrative decision which was issued without the applicant being heard, and his objection to the hospital placement had been ignored. In the applicant's opinion, such consent was

no substitute for a judicial decision. His subsequent detention was therefore arbitrary.

105. The applicant further submitted that, under Russian law, the courts were required to verify every six months whether the patient's non-voluntary confinement continues to be necessary (see paragraph 58 above). It was not evident from the Government's submissions and from the documents appended thereto that the applicant had been regularly examined by a panel of psychiatrists in order to decide on the need for his continued confinement, and thus that the procedure prescribed by domestic law had been followed in this regard.

106. The applicant noted that the only way he could have applied for release from the hospital was through his guardian. However, since the detaining authority had become the applicant's guardian by virtue of law, it obtained unrestricted discretion to decide on the continuation of his detention. Thus, judicial review provided by Section 47 of the Psychiatric Care Act could not have been regarded as an effective remedy.

## **B. The Court's assessment**

### *1. Compliance with Article 5 § 1*

107. Insofar as the applicant's complaint under Article 5 § 1 of the Convention is concerned, his confinement in the mental hospital can be divided into two periods: between 9 and 20 December 2002, and after 20 December 2002, when the hospital became his guardian.

108. At the outset, the Court notes that it is not disputed by the parties that the applicant's confinement in the mental hospital constituted "deprivation of liberty" within the meaning of Article 5. The Government also conceded that the applicant had been confined against his will, even though subsequently the newly appointed guardian had approved that measure.

#### **(a) General principles**

109. The Court reiterates that in order to comply with Article 5 § 1, the detention in issue must comply with two major requirements. First of all, it must be "lawful" in domestic terms, including the observance of a procedure prescribed by law; in this respect the Convention refers back essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. Secondly, the Court's case-law under Article 5 requires that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness (see *Creangă v. Romania* [GC], no. 29226/03, § 84, 23 February 2012; *Herczegfalvy v. Austria*, 24 September 1992, § 63, Series A no. 244; see also *Venios v. Greece*, no. 33055/08, §§ 48, 5 July 2011, and

*Karamanof v. Greece*, no. 46372/09, §§ 40 et seq., 26 July 2011). That means that it does not suffice that the deprivation of liberty is in conformity with national law; it must also be necessary in the circumstances (see *Witold Litwa v. Poland*, no. 26629/95, § 78, ECHR 2000-III).

110. As to the second of the above conditions, an individual cannot be deprived of his liberty as being of “unsound mind” unless the following three minimum conditions are satisfied: firstly, he must reliably be shown to be of unsound mind; secondly, the mental disorder must be of a kind or degree warranting compulsory confinement (i.e. where the person needs therapy, medication or other clinical treatment to cure or alleviate his condition, or where he needs control and supervision to prevent him, for example, causing harm to himself or other persons - see *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 52, ECHR 2003-IV); thirdly, the validity of continued confinement depends upon the persistence of such a disorder (see *Winterwerp*, cited above, § 39; *Shtukaturov*, cited above, § 114; and *Varbanov v. Bulgaria*, no. 31365/96, § 45, ECHR 2000-X).

**(b) The period between 9 and 20 December 2002**

111. The Court will first examine whether the applicant’s detention between 9 and 20 December 2004 was lawful under domestic law. The Court observes that the parties involved in the proceedings at that moment seemed to be uncertain about the legal framework in which they operated. Thus, the Guardianship Council decided to strip the father of his status as guardian on 6 December 2002. It is difficult to say whether that decision became effective in its own right, or only upon further confirmation by the Public Health Authority (which was obtained on 10 December 2002). Be that as it may, during that period the hospital and the court acted as if the father was still the applicant’s guardian and, therefore, as if the confinement in the mental hospital was “non-voluntary”.

112. In this assumption, the provisions of Sections 32 et seq. of the Psychiatric Care Act of 1992 (see paragraphs 55 and 56 above) concerning non-voluntary confinement must have applied. According to the Act, the authorities may place a person in the “preliminary confinement” for eight days in order to decide whether his further confinement is necessary. Thus, the hospital has forty-eight hours to examine the patient (Section 32 (1) of the Act), and then twenty-four hours to submit a hospitalisation request to a competent judicial authority (Section 32 (2) of the Act), which, in turn, has five days to decide on that request (Section 34 (1) of the Act).

113. The Court notes that in 2009 the Constitutional Court examined the compatibility of those provisions with Article 22 of the Constitution (see paragraph 57 above). While the Psychiatric Care Act was not declared unconstitutional, the Ruling can reasonably be construed as requiring that a person confined in a psychiatric hospital obtain full judicial review of his situation not within eight days, as provided by the Act, but within forty-

eight hours – the maximum period of detention without a court order provided for by the Constitution. The Court observes, however, that the Ruling of the Constitutional Court was formulated in indecisive terms, and the validity of the Act was finally confirmed. In any event, nothing suggests that the 2009 Ruling should have had a retroactive effect and apply to the applicant's situation. The Court concludes, therefore, that the "lawfulness" of the applicant's confinement in 2002 must be established in terms of the provisions of the Psychiatric Care Act, as it could have reasonably be interpreted at the time of the events.

114. The applicant's initial admission to the Omsk Regional Psychiatric Hospital was ordered by a district psychiatrist on 4 December 2002 (see paragraph 21 above). It appears that at that stage the requirements of the law were respected: the applicant was suffering from a mental disorder and there was a decision of a psychiatrist to conduct his further examination in the hospital (see paragraph 53 above). After the applicant's placement in the hospital on 9 December 2002, the hospital, under Section 32 of the Act, had forty-eight hours to conduct a further assessment of the applicant's mental health and twenty-four hours to seek a hospitalisation order from the court (see paragraph 55 above). Although the panel examined the applicant on the same day, which was within the time-limits, the request for further detention was received by the court only on 11 December 2002, that is more than twenty-four hours. The court then had five days under the Act to examine the request and authorise further detention or order the applicant's release (see paragraph 56 above). That time-limit was not observed either – the first hearing on was held on 17 December 2002, and at the end of that hearing the judge, without taking any decision on the substance of the case, adjourned the hearing until 24 December 2002, although the Act did not provide for such a possibility (see *Rakevich v. Russia*, no. 58973/00, § 35, 28 October 2003). The Court concludes that the applicant's detention during this first period was not authorised in accordance with the procedure prescribed by the Psychiatric Care Act.

**(c) The period after 20 December 2002**

115. On 20 December 2002 the hospital, which had earlier requested the applicant's confinement, became the applicant's guardian by virtue of the decision of the Guardianship Council and in accordance with Article 35 (4) of the Civil Code. According to Section 28 of the Psychiatric Care Act, if the guardian consented to the hospitalisation it was deemed "voluntary", regardless of the actual wishes of the ward, and no court authorisation for the hospitalisation was required (see paragraph 53 above). The court proceedings concerning the applicant's confinement were consequently terminated.

116. The applicant's situation during the second period closely resembles the one examined by the Court in the *Shtukatur* case (cited

above, § 21). The Court reiterates that confinement in a psychiatric hospital does not necessarily become “voluntary” in Convention terms because the consent of the guardian was obtained. Although it is sometimes difficult to discern the genuine will of a mentally ill person (see, for example, *Storck v. Germany*, no. 61603/00, § 74, ECHR 2005-V), the Court is confident that in the present case the applicant did not agree to the hospitalisation. This is clearly demonstrated by the fact that his confinement was originally regarded as non-voluntary by all the parties involved. Despite that, from 20 December 2002 it became possible to keep him confined without a court order. As a result, the applicant was unable to enjoy the safeguards associated with the judicial process. This factor alone is sufficient, in the Court’s view, to conclude that the applicant’s detention was incompatible with Article 5 § 1 of the Convention.

117. Moreover, the guardian was the same medical institution which had initiated the hospitalisation, which was responsible for the patient’s further treatment and which had previously been attacked in court proceedings by the applicant. In other words, the impartiality of the newly appointed guardian vis-à-vis the applicant were open to doubt.

118. Finally, in the absence of a judicial decision on the substance of the applicant’s situation, it is difficult to say whether his confinement was justified in the light of the criteria set out in the *Winterwerp* case, cited above, § 39. Having examined the reports prepared by the district psychiatrist on 4 December 2002 and by the panel of three doctors inform the Omsk Regional Psychiatric Hospital on 9 December 2002, the Court notes that the applicant did indeed suffer from schizophrenia. However, those reports mostly referred to the history of the applicant’s illness and did not mention recent instances of aggressive or self-destructive behaviour. It appears that the major reason for the confinement in 2002 were his numerous complaints to various State bodies, in particular his complaints against his doctors, but those incidents were clearly not such as to warrant his confinement (cf. *Stanev v. Bulgaria*, cited above, § 157).

119. The Court reiterates that normally it would not review the opinion of a doctor whose impartiality and qualifications were not called into question and who had the benefit of direct contact with the patient. In the present case, however, the Court is prepared to take a critical view of the findings of the psychiatrists, mostly because (a) their conclusions were not submitted to judicial scrutiny at the domestic level, (b) their neutrality was open to doubt, and (c) their reports were not specific enough on points which are crucial for deciding whether compulsory hospitalisation was necessary.

**(d) Conclusion**

120. The above elements are sufficient for the Court to conclude that the applicant's hospitalisation between 9 December 2002 and 10 December 2003 was contrary to Article 5 § 1 of the Convention.

*2. Compliance with Article 5 § 4 of the Convention*

121. The Court reiterates the principle established in § 39 of the *Winterwerp* judgment to the effect that the validity of a person's continued confinement depends upon the persistence of mental illness of a kind or degree warranting compulsory confinement. The Psychiatric Care Act contains similar requirements, providing that the court should consider this issue every six months. However, its provisions concern only those who are confined to a hospital against their will. In domestic terms the applicant's detention was "voluntary" (see paragraph 53 above). Therefore, while the hospital remained the applicant's guardian, there was no possibility of automatic judicial review. In addition, the applicant himself, as an incapacitated person, was unable to seek release from the hospital. In a nearly identical situation the Court found that the inability of a patient of a psychiatric hospital to seek release from it otherwise than through his guardian, where there was no periodic judicial review of the lawfulness of his confinement, amounted to a violation of Article 5 § 4 of the Convention (see *D.D. v. Lithuania*, (no. 13469/06, §§ 164 et seq., 14 February 2012).

122. The Court concludes that in this situation the applicant was unable to "take proceedings by which the lawfulness of his detention [would] be decided ... by a court". There was, therefore, a breach of Article 5 § 4 of the Convention on this account.

**III. ALLEGED VIOLATION OF ARTICLES 12 OF THE CONVENTION**

123. The applicant complained that he had not been able to register a marriage with his fiancée. He referred to Article 12 of the Convention (right to marry), which reads as follows:

"Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

124. The Court observes that the applicant's inability to marry was one of many legal consequences of his incapacity status. The Court has already found that the maintenance of that status (the only measure of protection applicable under the Russian Civil Code to mentally ill persons) was in the circumstances disproportionate and violated Article 8 of the Convention (see paragraph 97 above). In other words, the applicant was unable to marry primarily because of the same two major factors analysed under Article 8, namely the deficiencies in the domestic decision-making process and the rigidity of the Russian law on incapacity. In view of its findings under

Article 8 of the Convention, the Court considers that there is no need for a separate examination under Article 12 of the Convention.

#### IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

125. The applicant also complained that he did not have effective remedies under Article 13 of the Convention in connection with his complaints under Articles 8 and 12, set out above. Article 13 reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

126. The Court notes that in analysing the proportionality of the measure complained of under Article 8 it took account of the fact that the applicant had been unable to challenge that measure independently from his guardian, and that the applicant had not obtained an effective review of his status even when his guardian had sought it. In these circumstances the Court does not consider it necessary to re-examine the issue of effective remedies under Article 13 of the Convention separately (see *Shtukurov*, cited above, §§ 132-133).

#### V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

127. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

##### **A. Damage**

128. The applicant claimed EUR 30,000 (thirty thousand euros) under the head of non-pecuniary damages. The Government disputed that figure as excessive and considered that the mere finding of a violation would constitute sufficient just satisfaction. The Court, taking into account the cumulative effect of the violations of the applicant’s rights, their duration, and the fact that the applicant, who suffered from a mental disorder, was in a particularly vulnerable situation, and ruling on an equitable basis, awards the applicant EUR 25,000 in respect of non-pecuniary damage.

129. If, at the moment of payment of the award, the applicant is legally incapacitated, the Government should ensure that the amount awarded is transferred to the guardian, on the applicant’s behalf and in his best interest.



## **B. Costs and expenses**

130. The applicant did not ask for reimbursement of costs and expenses incurred in connection with the proceedings. The Court therefore does not award anything under this head.

## **C. Default interest**

131. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Holds* that there has been a violation of Article 8 of the Convention on account of the maintenance of the applicant's status as an incapacitated person and his inability to have it reviewed in 2002 and 2003;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's hospitalisation in the psychiatric hospital in 2002-2003;
3. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the applicant's inability to obtain a review of the lawfulness of his detention in the psychiatric hospital;
4. *Holds* that it is not necessary to examine separately the applicant's complaint under Article 12 of the Convention;
5. *Holds* that it is not necessary to examine separately the applicant's complaint under Article 13 of the Convention;
6. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 25,000 (twenty-five thousand euros) in respect of non-pecuniary damage, to be converted into the Russian Roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate

equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 January 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Isabelle Berro-Lefèvre  
President