



---

## **CCBE RESPONSE TO EUROPEAN COMMISSION PROPOSAL FOR A DIRECTIVE ON PUBLIC PROCUREMENT**

---

---

## **CCBE response to European Commission proposal for a directive on public procurement**

---

The Council of Bars and Law Societies of Europe (CCBE) is the representative organisation of around 1 million European lawyers through its member bars and law societies from 31 full member countries, and 11 further associate and observer countries.

Currently the legal framework on public procurement of legal services is governed by the provisions of [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.

On 27 January 2011, the European Commission published a [Green paper](#) on the modernisation of EU public procurement policy “Towards a more efficient European Procurement Market”. That public consultation closed on 18 April 2011, by which time the European Commission had received a total of 623 contributions.

The Commission’s [proposal for a Directive](#) on public procurement emerged on 20 December 2011.

The CCBE has drafted the following position paper in order to increase awareness among the relevant policy-makers of two key concerns raised by this proposal. The CCBE is not proposing to address any other possible issues in the present document.

The two key issues relate to:

1. The removal of the simplified procedure for public procurement of legal services;
2. The introduction of new Article 87 providing for a State support scheme in the field of legal services.

## I. Removal of the simplified procedure for public procurement of legal services

### A. The necessity for preserving the specific status of legal services

Under the existing regime the procurement of legal services by public bodies falls into a category referred to in Directive 2004/18/EC as “Annex II B services”, which are not subject to the full procurement regime. The proposal suggests the removal of Annex II B. The CCBE urges the EU institutions to keep the existing regime, or replace it with a system having similar effect.

The current framework, through the combined effect of Articles 21, 23, 35 §4 and Annex II B of Directive 2004/18/EC, imposes on the procuring body the legal obligation to refer to technical specifications, if they exist, and to publish an award notice for public procurement of legal services. Beyond that however, it gives an appropriate margin of discretion to the contracting authorities and thus to public purchasers to determine the procedure for public procurement of legal services. Therefore, they are not obligated to set up overly burdensome or formal publication and transparency procedures for such contracts.

The CCBE is not aware of any evidence to suggest that the existing system for public procurement of legal services is not working well in the Member States. Indeed, we note from relevant published responses to the Commission’s 2011 Green Paper consultation that public authority purchasers of legal services in the Member States supported the maintenance of the lightly-regulated part B services category, with legal services remaining therein<sup>1</sup>.

The proposal suggests that in the future, the full procurement regime will be applied to legal services (as shown – implicitly or explicitly – by Articles 2, 4, 10, 74 and Annex 16, by the removal of the application of the simplified procedure).

The CCBE takes the view that this change is unnecessary, and takes no account of the specific nature of the profession of lawyer<sup>2</sup>, which provides sufficient safeguards to obviate the need for the higher levels of procurement regulation that may be necessary in other less heavily regulated sectors. Admission to the profession and maintenance of the title of lawyer is dependent upon attaining high and continuing educational and professional standards. There is a strong element of personal choice (*intuitu personae*) for a contracting party when choosing a lawyer. Lawyers are subject to strict deontological rules imposing constraints in terms of professional secrecy and confidentiality, duties to the court and to the client, that offer specific guarantees for contracting parties. They are subject to codes of conduct, which are strictly applied and interpreted by independent regulators, who are empowered to impose sanctions, including criminal ones, in the event of a serious breach. The Court of Justice of the European Union has stated that: *“the application of professional rules to lawyers, in particular those relating to organization, qualifications, professional ethics, supervision and liability, ensures that the ultimate consumers of legal services and the sound administration of justice are provided with the necessary guarantees in relation to integrity and experience”*<sup>3</sup>.

The CCBE is particularly concerned that the changes might have the effect of making the cost or price of legal services one of the most, or even the most, important criteria in the tendering process. This risk is all the greater for a profession where a simple “success rate” comparison is often unrepresentative of the true standard and quality of the service provided. Whilst price is inevitably a factor already, if this new regime were to encourage largely price-driven competition for legal services, that would carry with it the very real risk of a reduction in the quality of legal services provided, and eventually even of the very quality of the service providers available to provide it. Since the public procurer represents the public interest, any material deterioration of the quality of the legal services so obtained will have a material negative impact on the public interest, ultimately resulting in externalities (i.e., higher costs) for society.

---

1 See for instance: [https://circabc.europa.eu/d/d/workspace/SpacesStore/39162cb4-fd7c-4448-aeef-727edba63ece/legal-services\\_en.pdf](https://circabc.europa.eu/d/d/workspace/SpacesStore/39162cb4-fd7c-4448-aeef-727edba63ece/legal-services_en.pdf)

2 When referring to “lawyers”, we mean lawyers who are registered members of their relevant independent Bar or Law Society.

3 Judgment of the European Court of Justice, Reisebüro Broede / Gerd Sandker, 12 December 1996, Case C-3/95, European Court reports 1996 p. I-06511.

In addition, the removal of simplified procedure may jeopardize the public interest. Only maintaining Annex II B would preserve the confidentiality and secrecy of the subject matter of the legal services requested by public authorities from lawyers.

The CCBE believes that it is therefore essential that legal services remain in a specific category of services subject to the current levels of public procurement regulation, in recognition of the specificity of this type of service, whilst ensuring appropriate levels of publicity and transparency.

#### **B. The removal of Annex II B based on questionable results and an opaque analysis of these results**

The Commission's proposal to remove legal services from the category of services subject to light-touch regulation is based on an evaluation report on the impact and effectiveness of EU public procurement legislation<sup>4</sup>. This report shows that Annex II A services account for 2.8% of direct cross-border procurement, which amounts to 16.2% in value. Annex II B services account for 1.2 % of direct cross-border procurement, which in value terms amounts to 12.1%. For legal services (included in Annex II B) these figures are respectively 2.6% and 21.2%.

We are surprised by these figures and we wonder what criteria were used (period considered, exact nature of procurement with regards to the concept of legal services eligible for such qualification, allocation method especially for legal forms of European or international dimensions, etc.), as these criteria are not specified in the report.

#### **II. Introducing a new Article 87 providing for a State support scheme in the field of legal services**

The CCBE's second key objection relates to proposed new Article 87, concerning support to contracting authorities and economic operators, which provides that Member states must make available technical support structures in order to provide, *inter alia*, legal and economic services, guidance and assistance in the preparation and execution of public procurement procedures.

The CCBE takes the view that Article 87's wording is not sufficiently clear as to enable an understanding of its scope and intention. In particular, we are concerned that the article may be read in such a way as to enable Member States to provide legal services, without setting out any conditions or restrictions on the provision on the market of such legal services. Such a proposal could raise concerns about a possible distortion of competition or conflict of interest which could arise by operation of this provision.

It should be noted in this regard that not every legal profession is as tightly regulated as that of lawyer. One of the essential principles to which lawyers are subject is the principle of independence, which allows the performance of the lawyer's mission while remaining free of any influence. Furthermore, and as stated above, lawyers are bound by the obligation of professional secrecy and the obligation to avoid conflicts of interests; and are required to hold professional liability insurance. Finally, lawyers are in the best position to advise economic operators: their competence is guaranteed by a demanding programme of education and training, and by the obligation to undertake continuing professional training. Moreover, lawyers have the requisite knowledge to carry out their tasks.

---

4 SEC (2011) 853, 27th June 2011.

In summary:

- The CCBE calls on the EU legislator to reinstate or replace Annex II B in order to allow the procurement of legal services to continue to benefit from the simplified publicity and transparency procedure and to preserve the quality and independence of such services.
- Article 87 should be clarified so as to enable an understanding of the scope and intention of that article. Article 87 should not be understood as providing for Member States to offer legal services on the market, as this would distort competition.

Annexes :

- 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 quoted dispositions's quoted dispositions
- Proposal for a Directive of the European Parliament and of the Council on public procurement's quoted dispositions (COM (2011) 896 final), 20 December 2011

**Annex I :**

**2004/18/EC Directive 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 quoted disposition**

*Quoted dispositions*

CHAPTER III

***Arrangements for public service contracts***

*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).

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 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'.

## 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

▼ **B**ANNEX II A <sup>(1)</sup>▼ **M7**

Category No	Subject	CPC reference No <sup>(1)</sup>	CPV reference No
1	Maintenance and repair services	6112, 6122, 633, 886	From 50100000-6 to 50884000-5 (except for 50310000-1 to 50324200-4 and 50116510-9, 50190000-3, 50229000-6, 50243000-0), and from 51000000-9 to 51900000-1
2	Land transport services <sup>(2)</sup> , including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304	From 60100000-9 to 60183000-4 (except 60160000-7, 60161000-4, 60220000-6), and from 64120000-3 to 64121200-2
3	Air transport services of passengers and freight, except transport of mail	73 (except 7321)	From 60410000-5 to 60424120-3 (except 60411000-2, 60421000-5), and 60500000-3, and from 60440000-4 to 60445000-9
4	Transport of mail by land <sup>(2)</sup> and by air	71235, 7321	60160000-7, 60161000-4 60411000-2, 60421000-5
5	Telecommunications services	752	From 64200000-8 to 64228200-2 72318000-7, and from 72700000-7 to 72720000-3
6	Financial services: (a) Insurance services (b) Banking and investment services <sup>(3)</sup>	ex 81, 812, 814	From 66100000-1 to 66720000-3 <sup>(3)</sup>
7	Computer and related services	84	From 50310000-1 to 50324200-4 from 72000000-5 to 72920000-5 (except 72318000-7 and from 72700000-7 to 72720000-3), 79342410-4
8	Research and development services <sup>(4)</sup>	85	From 73000000-2 to 73436000-7 (except 73200000-4, 73210000-7, 73220000-0)
9	Accounting, auditing and bookkeeping services	862	From 79210000-9 to 79223000-3
10	Market research and public opinion polling services	864	From 79300000-7 to 79330000-6, and 79342310-9, 79342311-6
11	Management consulting services <sup>(5)</sup> and related services	865, 866	From 73200000-4 to 73220000-0 from 79400000-8 to 79421200-3 and 79342000-3, 79342100-4 79342300-6, 79342320-2 79342321-9, 79910000-6, 79991000-7 98362000-8

<sup>(1)</sup> In the event of any difference of interpretation between the CPV and the CPC, the CPC nomenclature will apply.

▼ **M7**

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 71000000-8 to 71900000-7 (except 71550000-8) and 79994000-8
13	Advertising services	871	From 79341000-6 to 79342200-5 (except 79342000-3 and 79342100-4)
14	Building-cleaning services and property management services	874, 82201 to 82206	From 70300000-4 to 70340000-6, and from 90900000-6 to 90924000-0
15	Publishing and printing services on a fee or contract basis	88442	From 79800000-2 to 79824000-6, and from 79970000-6 to 79980000-7
16	Sewage and refuse disposal services; sanitation and similar services	94	From 90400000-1 to 90743200-9 (except 90712200-3), from 90910000-9 to 90920000-2 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 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>(4)</sup> Except research and development services other than those where the benefits accrue exclusively to the contracting authority and/or contracting entity for its use in the conduct of its own affairs on condition that the service provided is wholly remunerated by the contracting authority and/or contracting entity.

<sup>(5)</sup> Except arbitration and conciliation services.

▼ **B**ANNEX II B ► **M7** <sup>(1)</sup> ◀▼ **M7**

Category No	Subject	CPC reference No <sup>(1)</sup>	CPV reference No
17	Hotel and restaurant services	64	From 55100000-1 to 55524000-9, and from 98340000-8 to 98341100-6
18	Rail transport services	711	From 60200000-0 to 60220000-6
19	Water transport services	72	From 60600000-4 to 60653000-0, and from 63727000-1 to 63727200-3
20	Supporting and auxiliary transport services	74	From 63000000-9 to 63734000-3 (except 63711200-8, 63712700-0, 63712710-3, and from 63727000-1, to 63727200-3), and 98361000-1
21	Legal services	861	From 79100000-5 to 79140000-7
22	Personnel placement and supply services <sup>(2)</sup>	872	From 79600000-0 to 79635000-4 (except 79611000-0, 79632000-3, 79633000-0), and from 98500000-8 to 98514000-9
23	Investigation and security services, except armoured car services	873 (except 87304)	From 79700000-1 to 79723000-8
24	Education and vocational education services	92	From 80100000-5 to 80660000-8 (except 80533000-9, 80533100-0, 80533200-1)
25	Health and social services	93	79611000-0, and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2)
26	Recreational, cultural and sporting services <sup>(3)</sup>	96	From 79995000-5 to 79995200-7, and from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9, 92232000-6)
27	Other services		

<sup>(1)</sup> CPC Nomenclature (provisional version), used to define the scope of Directive 92/50/EEC.

<sup>(2)</sup> Except employment contracts.

<sup>(3)</sup> Except contracts for the acquisition, development, production or co-production of programmes by broadcasting organisations and contracts for broadcasting time.

<sup>(1)</sup> In the event of any difference of interpretation between the CPV and the CPC, the CPC nomenclature will apply.

**Annex II. Proposal for a Directive of the European Parliament and of the Council on public procurement's quoted dispositions (COM (2011) 896 final), 20<sup>th</sup> december 2011**

*Quoted dispositions*

**TITLE I  
SCOPE, DEFINITIONS AND GENERAL PRINCIPLES**

**CHAPTER I  
*Scope and definitions***

**SECTION 1  
SUBJECT-MATTER AND DEFINITIONS**

*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, 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;
- (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;

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.

(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 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 work 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.

## **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.

## **SECTION 3 EXCLUSIONS**

### *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.

**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).

**TITLE IV**  
**GOVERNANCE**

*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.

**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