

**Annex 14
to Decision No 7/94
of the EEA Joint Committee**

ANNEX XVI (PROCUREMENT) to the EEA Agreement shall be amended as specified below.

(a) **SECTORAL ADAPTATIONS**

In paragraph 1 the references to Directives 71/305/EEC, 89/440/EEC and 90/531/EEC shall be replaced by references to Directives 93/36/EEC, 93/37/EEC and 93/38/EEC.

(b) **ACTS REFERRED TO**

1. Point 2 (Council Directive 71/305/EEC) shall be replaced by:

"2. 393 L 0037: Council Directive 93/37/EEC of 14 June 1993 concerning the co-ordination of procedures for the award of public works contracts (OJ No L 199, 9.8.1993, p. 54)

The provisions of the Directive shall, for the purposes of the present Agreement, be read with the following adaptations:

(a) in Article 5(a) the phrase "in conformity with the Treaty" shall read "in conformity with the EEA Agreement";

(b) in Article 6(1) and 6(3), in so far as it is not introduced in Finland, VAT shall mean:

– "Liikevaihtovero/omsättningsskatt" in Finland;

(c) in Article 6(2)(a) the value of the thresholds in national currencies of the EFTA States shall be calculated so as to come into effect on the date of entry into force of the EEA Agreement and shall in principle be revised every two years with effect from 1 January 1994 and published in the *Official Journal of the European Communities*;

(d) Article 25 shall be supplemented as follows:

"–in Austria, Firmenbuch, Gewerberegister, Mitgliederverzeichnisse der Landeskammern;

–in Finland, Kaupparekisteri, Handelsregistret;

–in Iceland, Firmaskrá;

–in Norway, Foretaksregisteret;

–in Sweden, Aktiebolagsregistret, Handelsregistret, Föreningsregistret";

(e) in Article 34(1), the date 31 October 1993 shall be replaced by 31 October 1995;

- (f) Annex I is supplemented by Appendix 1 to this Annex."
2. Point 3 (Council Directive 77/62/EEC) shall, with effect from 14 June 1994, at the earliest, be replaced by:
- "3. 393 L 0036: Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ No L 199, 9.8.1993 p. 1)
- The provisions of the Directive shall, for the purposes of the present Agreement, be read with the following adaptations:
- (a) in Article 3 the reference to "Article 223(1)(b) of the EEC Treaty" shall be replaced by reference to "Article 123 of the EEA Agreement";
- (b) In Article 5(1)(a), insofar it is not introduced in Finland, VAT shall mean:
- "Liikevaihtovero/omsättningsskatt" in Finland;
- (c) on the understanding that the threshold expressed in ecus shall apply only within the EEA, the following words shall be deleted in Article 5(1)(c):
- in the first sentence, the words "and the threshold of the GATT Agreement expressed in ecus";
 - in the second sentence, the words "and of the ecu expressed in SDRs";
- (d) in Article 5(1)(c), the value of the thresholds in the national currencies of the EFTA States shall be calculated so as to come into effect on the date of the entry into force of the EEA Agreement;
- (e) Article 21(2) shall be supplemented as follows:
- in Austria, Firmenbuch, Gewerberegister, Mitgliederverzeichnisse der Landeskammern,
 - in Finland, Kaupparekisteri, Handelsregistret,
 - in Iceland, Firmaskrá,
 - in Norway, Foretaksregisteret,
 - in Sweden, Aktiebolagsregistret, Handelsregistret, Föreningsregistret";
- (f) in Article 31(1)(b) the date of 31 October 1991 shall be replaced by 31 October 1994;
- (g) Annex I to this Directive shall be supplemented by Appendix 2 to this Annex. The Annex referred to in Article 1(b) of this Directive shall be supplemented by Appendix 1 to this Annex."
3. Point 4 (Council Directive 90/531/EEC) shall, with effect from 1 July 1994, at the earliest, be replaced by:

- "4. 393 L 0038: Council Directive 93/38/EEC of 14 June 1993 co-ordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ No L 199, 9.8.1993, p. 84).

The provisions of the Directive shall, for the purposes of the present Agreement, be read with the following adaptations:

- (a) with regard to Norway, the measures necessary to comply with this Directive shall enter into force on 1 January 1995 or before upon notification by Norway of having complied with this Directive.
During this transitional period the application of the Directive shall be reciprocally suspended between Norway and the other Contracting Parties;
- (b) in Article 3(1)(e) the reference to "Article 36 of the EEC Treaty" shall be read as a reference to "Article 13 of the EEA Agreement";
- (c) in Article 11 the phrase "is compatible with the EEC Treaty" shall read "is compatible with the EEA Agreement";
- (d) in Article 12(1) the phrase "in conformity with the Treaty" shall read "in conformity with the EEA Agreement";
- (e) in Article 14(1) and 14(10), insofar as it is not introduced in Finland, VAT shall mean:
 - "Liikevaihtovero/omsättningsskatt" in Finland;
- (f) in Article 34(5) the reference to "Article 93(3) of the EEC Treaty" shall be replaced by a reference to "Article 62 of the EEA Agreement";
- (g) in Article 36 the term "third countries" shall be understood as "countries other than the Contracting Parties to the EEA Agreement";
- (h) in Article 36(1) the term "Community" shall read "Community, as regards Community entities, or the EFTA States, as regards their entities";
- (i) in Article 36(1) the term "Community undertakings" shall read "Community undertakings, as regard Community agreements, or EFTA States' undertakings, as regards EFTA States' agreements";
- (j) in Article 36(1) the words "the Community or its Member States in respect of third countries" shall read "either the Community or its Member States in respect of third countries or the EFTA States in respect of third countries";
- (k) in Article 36(5) the words "by a Council Decision" shall read "by a decision in the context of the general decision-making procedure of the EEA Agreement";
- (l) Article 36(6) shall read as follows:

"6. In the context of the general institutional provisions of the EEA Agreement, annual reports shall be submitted on the progress made in multilateral or bilateral negotiations regarding access for Community and EFTA 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.

In the context of the general decision-making procedure of the EEA Agreement, the provisions of this Article may be amended in the light of such developments.";

(m) in order to enable the contracting entities in the EEA to apply Article 36(2) and (3), the Contracting Parties shall ensure that the suppliers established in their respective territories determine the origin of the products in their tenders for supply contracts in conformity with Regulation (EEC) No 802/68 of the Council of 27 June 1968 on the common definition of the concept of the origin of goods (OJ No L 148, 28.6.1968, p.1);

(n) in order to obtain maximum convergence, Article 36 will be applied in the EEA context on the understanding that:

- the operation of paragraph (3) is without prejudice to the existing degree of liberalization towards third countries,
- the Contracting Parties consult closely in their negotiations with third countries.

The application of this regime will be jointly reviewed during 1996;

(o) Article 37 shall not apply;

(p) in Article 38 the values of the thresholds in national currencies of the EFTA States shall be calculated so as to come into effect on the date of the entry into force of the EEA. They shall in principle be revised every two years with effect from 1 January 1994;

(q) Annexes I to X are supplemented by Appendices 4 to 13 to this Annex, respectively."

4. The following new point shall be inserted after point 4 (Council Directive 90/531/EEC);

"4a. 393 D 0327: Commission Decision 93/327/EEC 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 Commission information relating to the contracts they award (OJ No L 129, 27.5.1993, p.25)."

5. The following new points shall be inserted after point 5 (Council Directive 89/665/EEC):

"5a. 392 L 0013: 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 No L 76, 23.3.1992, p. 14).

The provisions of the Directive shall, for the purposes of the present Agreement, be read with the following adaptations:

(a) With regard to Norway, the measures necessary to comply with this Directive shall enter into force at the same time as Council Directive 90/531/EEC, in accordance with Annex XVI to the EEA Agreement;

during these transitional periods, the application of the Directive will be reciprocally suspended between this State and other Contracting Parties;

- (b) In Article 2(9), the reference to "Article 177 of the Treaty" shall be read as a reference to the "criteria laid down by the Court of Justice in its interpretation of Article 177 of the EEC Treaty" ⁽¹⁾;
- (c) In Article 11(2)(a), the reference to "Articles 169 or 170 of the Treaty" shall read "Articles 169 or 170 of the EEC Treaty and the corresponding procedures set out in the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice";
- (d) The Annex to the Directive is supplemented by Appendix 14 to this Annex."

"5b. 392 L 0050: Council Directive 92/50/EEC of 18 June 1992 relating to the co-ordination of procedures for the award of public service contracts (OJ No L 209, 24.7.1992, p. 1).

The provisions of the Directive shall, for the purpose of the present Agreement, be read with the following adaptations:

- (a) In Article 4(1), the reference to "Article 223 of the Treaty" shall be replaced by a reference to "Article 123 of the EEA Agreement";
- (b) Article 30(3) shall be supplemented as follows:
 - "– in Austria, Firmenbuch, Gewerberegister, Mitgliederverzeichnisse der Landeskammern;
 - in Finland, Kaupparekisteri, Handelsregistret;
 - in Iceland, Firmaskrá, Hlutafélagaskrá
 - in Norway, Foretaksregisteret;
 - in Sweden, Aktiebolagsregistret, Handelsregistret, Föreningsregistret".

(c). ACTS OF WHICH THE CONTRACTING PARTIES SHALL TAKE NOTE

1. The following new points shall be inserted after point 8 (Commission Communication COM(89) 400):
 - "9. 391 X 0561: Commission Recommendation 91/561/EEC of 24 October 1991 on the standardization of notices of public contracts (OJ No L 305, 6.11.1991, p. 19).
 10. 592 DC 0722s: Communication of the Commission to the Council of 1 June 1992 on SME participation in public procurement in the Community (SEC(92) 722 final of 1 June 1992).
 11. Commission Communication of 30 December 1992 on the forms to be used by contracting entities concerned by the entry into force of Directive 90/531/EEC (OJ No S 252 A, 30.12.1992, p. 1)."

⁽²⁾ cf. EEA Agreement adaptation (b) to Council Directive 89/665/EEC under point 5, footnote 1.

(d). The following Appendix shall be added after Appendix 13:

"Appendix 14

NATIONAL AUTHORITIES TO WHICH REQUESTS FOR APPLICATION OF THE
CONCILIATION PROCEDURE REFERRED TO IN ARTICLE 9 OF COUNCIL
DIRECTIVE 92/13/EEC MAY BE ADDRESSED

AUSTRIA

Bundesministerium für wirtschaftliche Angelegenheiten (Federal Ministry of
Economic Affairs)

FINLAND

Kauppa- ja teollisuusministeriö, Handels- och industriministeriet (Ministry of Trade
and Industry)

ICELAND

Fjármálaráðuneytið (Ministry of Finance)

NORWAY

Nærings- og energidepartementet (Ministry of Industry and Energy)

SWEDEN

Nämnden för offentlig upphandling (The Swedish National Board for Public
Procurement)".
