

**DECISION OF THE EEA JOINT COMMITTEE****No 97/2016****of 29 April 2016****amending Annex XVI (Procurement) to the EEA Agreement [2017/2047]**

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Article 98 thereof,

Whereas:

- (1) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts <sup>(1)</sup>, as corrected by OJ L 114, 5.5.2015, p. 24, is to be incorporated into the EEA Agreement.
- (2) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC <sup>(2)</sup> is to be incorporated into the EEA Agreement.
- (3) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC <sup>(3)</sup> is to be incorporated into the EEA Agreement.
- (4) Directive 2014/24/EU repeals Directive 2004/18/EC of the European Parliament and of the Council <sup>(4)</sup>, which is incorporated into the EEA Agreement and which is consequently to be repealed under the EEA Agreement.
- (5) Directive 2014/25/EU repeals Directive 2004/17/EC of the European Parliament and of the Council <sup>(5)</sup>, which is incorporated into the EEA Agreement and which is consequently to be repealed under the EEA Agreement.
- (6) Annex XVI to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1*

Annex XVI to the Agreement, including Appendices 1 to 14 to that Annex, shall be amended as specified in the Annex to this Decision.

*Article 2*

The texts of Directives 2014/23/EU, as corrected by OJ L 114, 5.5.2015, p. 24, 2014/24/EU and 2014/25/EU in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

*Article 3*

This Decision shall enter into force on 30 April 2016, provided that all the notifications under Article 103(1) of the EEA Agreement have been made (\*).

<sup>(1)</sup> OJ L 94, 28.3.2014, p. 1.

<sup>(2)</sup> OJ L 94, 28.3.2014, p. 65.

<sup>(3)</sup> OJ L 94, 28.3.2014, p. 243.

<sup>(4)</sup> OJ L 134, 30.4.2004, p. 114.

<sup>(5)</sup> OJ L 134, 30.4.2004, p. 1.

(\*) Constitutional requirements indicated.

*Article 4*

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 29 April 2016.

*For the EEA Joint Committee*  
*The President*  
Claude MAERTEN

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## ANNEX

Annex XVI (Procurement) to the EEA Agreement, including Appendices 1 to 14 to that Annex, shall be amended as specified in the following Articles.

*Article 1*

The words '2004/17/EC and 2004/18/EC' of paragraph 1 of the Sectoral Adaptations shall be replaced by the words '2014/23/EU, 2014/24/EU and 2014/25/EU'.

*Article 2*

Point 2 (Directive 2004/18/EC of the European Parliament and of the Council) shall be replaced by the following:

2. **32014 L 0024:** Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

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

- (a) References to Article 107 TFEU shall be read as references to Article 61 of the EEA Agreement.
- (b) References to Article 346 TFEU shall be read as references to Article 123 of the EEA Agreement.
- (c) Annexes I, III and XI are supplemented by Appendices 1 to 3 to this Annex.
- (d) In Article 73 the words "the Treaties and this Directive that has been declared by the Court of Justice of the European Union in a procedure pursuant to Article 258 TFEU" shall read "the EEA Agreement and this Directive that has been declared by the EFTA Court in a procedure pursuant to Article 31 of the Agreement Between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice".
- (e) Article 25 shall not apply.
- (f) In Annex X the references to the ILO Conventions shall not apply to Liechtenstein. However, Liechtenstein will ensure the compliance with standards equivalent to those laid down in the ILO Conventions listed in Annex X.'

*Article 3*

Point 4 (Directive 2004/17/EC of the European Parliament and of the Council) shall be replaced by the following:

4. **32014 L 0025:** Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

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

- (a) References to Article 107 TFEU shall be read as references to Article 61 of the EEA Agreement.
- (b) Articles 43, 85 and 86 shall not apply.
- (c) References to Article 346 TFEU shall be read as references to Article 123 of the EEA Agreement.
- (d) In Article 90 the words "the Treaties and this Directive that has been declared by the Court of Justice of the European Union in a procedure pursuant to Article 258 TFEU" shall read "the EEA Agreement and this Directive that has been declared under the EFTA Court in a procedure pursuant to Article 31 of the Agreement Between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice".
- (e) In Annex XIV the references to the ILO Conventions shall not apply to Liechtenstein. However, Liechtenstein will ensure the compliance with standards equivalent to those laid down in the ILO Conventions listed in Annex XIV.'

## Article 4

The following indent is added in points 5 (Council Directive 89/665/EEC) and 5a (Council Directive 92/13/EEC):

‘— **32014 L 0023**: Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 (OJ L 94, 28.3.2014, p. 1), as corrected by OJ L 114, 5.5.2015, p. 24.’

## Article 5

The following point is inserted after point 6e (Directive 2014/55/EU of the European Parliament and of the Council):

‘6f. **32014 L 0023**: Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1), as corrected by OJ L 114, 5.5.2015, p. 24.

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

- (a) References to Article 346 TFEU shall be read as references to Article 123 of the EEA Agreement.
- (b) Article 44(c) shall be replaced by the following:

“the EFTA Court finds, in a procedure pursuant to Article 31 of the Agreement Between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, that an EFTA State has failed to fulfil its obligations under the EEA Agreement by the fact that a contracting authority or contracting entity belonging to that EFTA State has awarded the concession in question without complying with its obligations under the EEA Agreement and this Directive.”

- (c) In Annex X the references to the ILO Conventions shall not apply to Liechtenstein. However, Liechtenstein will ensure the compliance with standards equivalent to those laid down in the ILO Conventions listed in Annex X.’

## Article 6

Appendices 1 to 14 shall be replaced by the following:

## ‘APPENDIX 1

**LISTS OF CENTRAL GOVERNMENT AUTHORITIES REFERRED TO IN THE SECOND SUBPARAGRAPH OF ARTICLE 2(1) OF DIRECTIVE 2014/24/EU**

## I. In ICELAND:

Forsætisráðuneytið	Prime Minister’s Office
Atvinnuvega- og nýsköpunarráðuneytið	Ministry of Industries and Innovation
Fjármála- og efnahagsráðuneytið	Ministry of Finance and Economic Affairs
Innanríkisráðuneytið	Ministry of the Interior
Mennta- og menningarmálaráðuneytið	Ministry of Education, Science and Culture
Umhverfis- og auðlindaráðuneytið	Ministry for the Environment and Natural Resources
Utanríkisráðuneytið	Ministry for Foreign Affairs
Velferðarráðuneytið	Ministry of Welfare

## II. In LIECHTENSTEIN:

Regierung des Fürstentums Liechtenstein	Government of the Principality of Liechtenstein
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## III. In NORWAY:

Statsministerens kontor	Office of the Prime Minister
Arbeids- og sosialdepartementet	Ministry of Labour and Social Affairs
Barne-, likestillings- og inkluderingsdepartementet	Ministry of Children, Equality and Social Inclusion
Finansdepartementet	Ministry of Finance
Forsvarsdepartementet	Ministry of Defence
Helse- og omsorgsdepartementet	Ministry of Health and Care Services

Justis- og beredskapsdepartementet	Ministry of Justice and Public Security
Klima- og miljødepartementet	Ministry of Climate and Environment
Kommunal- og moderniseringsdepartementet	Ministry of Local Government and Modernisation
Kulturdepartementet	Ministry of Culture
Kunnskapsdepartementet	Ministry of Education and Research
Landbruks- og matdepartementet	Ministry of Agriculture and Food
Nærings- og fiskeridepartementet	Ministry of Trade, Industry and Fisheries
Olje- og energidepartementet	Ministry of Petroleum and Energy
Samferdselsdepartementet	Ministry of Transport and Communication
Utenriksdepartementet	Ministry of Foreign Affairs

Agencies and Institutions subordinate to these Ministries.

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APPENDIX 2

**LISTS OF PRODUCTS REFERRED TO IN ARTICLE 4(b) OF DIRECTIVE 2014/24/EU WITH REGARD TO CONTRACTS AWARDED BY CONTRACTING AUTHORITIES IN THE FIELD OF DEFENCE**

ICELAND

LIECHTENSTEIN

NORWAY:

The only text applicable for the purposes of this Agreement is that in Annex 4 point 2 of the GPA 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: 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
- Chapter 30: Pharmaceutical products
- Chapter 31: Fertilisers
- Chapter 32: Tanning and dyeing extracts; tannins and their derivatives; dyes, colours, paints and varnishes, putty, fillers and stoppings, inks
- Chapter 33: Essential oils and resinoids; perfumery, cosmetics and 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, cellulose 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 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 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, 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 87.01 tractors
  - ex 87.02 military vehicles
  - ex 87.03 breakdown lorries
  - ex 87.08 tanks and other armoured vehicles
  - ex 87.09 motorcycles
  - ex 87.14 trailers
- Chapter 89: Ships, boats and floating structures, except:
- ex 89.01 A 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 94.01 A 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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APPENDIX 3

**REGISTERS REFERRED TO IN ARTICLE 58(2) OF DIRECTIVE 2014/24/EU**

- in Iceland, the “Ríkisskattstjóri”
  - in Liechtenstein, the “Gewerberegister” and the “Handelsregister”
  - in Norway, the “Foretaksregisteret”
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