



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from:	General Secretariat
to:	Working Party on Public Procurement
on:	21 March 2012
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No Cion prop.:	18966/11 MAP 10 MI 686 + ADD 1 + ADD 2
Subject:	Proposal for a Directive of the European Parliament and of the Council on public procurement - Articles 4, 74, 75, 76 and Annex XVI: Social services (part of Cluster 2)

Delegations will find attached a Presidency compromise text on the above articles.

Exclusion for those legal services which have little cross-border interest, such as for legal representation and services linked to exercise of public authority such as appointed guardians is proposed as an additional paragraph (c a) in Article 10 dealt with under cluster 10.

Modifications of concerned articles in respect to the original proposal are in **bold and underlined**.

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Title III

Particular procurement regimes

Article 10

Specific exclusions for service contracts

This Directive shall not apply to public service contracts for:

...
...

(c) arbitration and conciliation services;

(c a) any of the following legal services:

(i) legal representation of a client in judicial proceedings before the national courts, tribunals or public authorities of a Member State by a lawyer within the meaning of Article 1 of Directive 77/249/EEC;

(ii) document certification services which must be provided by notaries;

(iii) legal services provided by trustees, appointed guardians or other legal services the providers of which are designated by a court or tribunal in the Member State concerned;

(iv) other legal services which in the Member State concerned are connected, even occasionally, with the exercise of official authority;

(d) ...
...
...

CHAPTER I
Social and other specific services

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:

...

- (d) EUR 500 000 for public contracts for social and other specific services listed in Annex XVI.

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 **national rules** for the award of contracts subject to this Chapter **in order to ensure contracting authorities comply** with the principles of transparency and equal treatment of economic operators. **Member States are free to determine the procedural rules applicable as long as such rules allow** 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.

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