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VEDLEGG 19

Annex R. Public Procurement (Art. 37)

Article 1

Scope

The access of the Member States' suppliers and service providers to purchases of products and services, including construction services, by railway operators, entities active in the field of energy other than electricity and private utilities active in the fields of drinking water, electricity, urban transport, ports and airports by Member States shall take place according to the provisions of this Annex.

Article 2

Definitions

For the purposes of this Annex:

«railway operators» (hereinafter referred to as «ROs») shall mean contracting entities which either are public authorities or public undertakings or operate on the basis of special or exclusive rights granted by a competent authority of one of the Member States and which have as one of their activities the operation of networks providing a service to the public in the field of transport by railway;

«entities active in the field of energy other than electricity» shall mean contracting entities which either are public authorities or public undertakings or operate on the basis of special or exclusive rights granted by a competent authority of one of the Member States and which have as one of their activities any of those referred to in subparagraphs (i) and (ii) below or any combination thereof:

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 the supply of gas or heat to such networks; or

the exploitation of a geographical area for the purpose of exploring for or extracting oil, gas, coal or other solid fuels¹;

«private utilities» shall mean contracting entities which are not covered by the GPA² but operate on the basis of special or exclusive rights granted by a competent authority of one

of the Member States and which have as one of their activities any of those referred to in subparagraphs (i) to (v) below or any combination thereof:

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 the supply of drinking water to such networks;

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 the supply of electricity to such networks;

the provision of airport or other terminal facilities to carriers by air;

the provision of maritime or inland port or other terminal facilities to carriers by sea or inland waterway;

the operation of networks providing a service to the public in the field of transport by urban railway, automated systems, tramway, trolley bus, bus or cable;

this Annex applies to any law, regulation or practice regarding procurement by the Member States' ROs, entities active in the field of energy other than electricity, and private utilities (hereinafter referred to as «Covered Entities») as defined in this Article and specified in Appendices 1 to 9 to this Annex and to the award of all procurement contracts by such Covered Entities.

Article 3

Competition

This Annex shall not apply to contracts, awarded by ROs, entities active in the field of energy other than electricity and private utilities, as soon as these sectors have been liberalised, for purchases intended exclusively to enable them to provide one or more services where other entities are free to offer the same services in the same geographical area and under substantially the same conditions. Each Member State shall promptly inform the other Member States about such contracts.

Article 4

Services

With regard to services, including construction services, this Annex shall apply to those listed in Appendices 10 and 11 to this Annex.

Article 5

Thresholds

This Annex shall apply to contracts, or series of contracts, the estimated value of which, excluding VAT, is not less than:

when awarded by ROs and entities active in the field of energy other than electricity: EUR 400 000 as regards supplies and services; EUR 5 000 000 as regards works;

when awarded by private utilities: SDR 400 000 as regards supplies and services; SDR 5 000 000 as regards works.

Article 6

National treatment and non-discrimination

With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Annex, each Member State shall provide the treatment provided for in Article III of the GPA.

Article 7

Coverage below thresholds

In their procedures and practices for the award of procurement contracts below the value thresholds laid down in Article 5, the Member States undertake to encourage their Covered Entities to treat the suppliers and service providers of the other Member States in accordance with paragraph 2 of Article 37 of this Convention. This shall be without prejudice to measures made necessary by the development of the Swiss domestic market³ or other measures notified by the Member States and listed in Appendix 12 to this Annex.

Article 8

Exceptions

This Annex shall not apply to Covered Entities where they fulfil the conditions laid down in Appendices 10 and 13 to this Annex.

Article 9

Procurement and challenge procedures

The Member States ensure that the procurement and challenge procedures are non-discriminatory and transparent. For entities covered by this Annex the procurement and challenge procedures in the GPA are applicable, as specified in Appendix 14 to this Annex.

Article 10

Information exchange

The Member States shall communicate to each other the names and addresses of «contact points» responsible for providing information on the rules and regulations in the field of public procurement.

Article 11

Committee

The Council shall establish a Committee on public procurement (hereinafter referred to as the «Committee») which shall ensure the effective implementation and operation of this Annex.

The Committee may in particular propose to the Council amendments to this Annex and its Appendices.

The Council may amend Article 5 of this Annex and the Appendices thereto.

Appendix 1 Production, transport or distribution of drinking water

ICELAND

Entities producing or distributing water pursuant to *lög nr. 81/1991, um vatnsveitur sveitarfélaga*.LIECHTENSTEIN

Gruppenwasserversorgung Liechtensteiner Oberland.

Wasserversorgung Liechtensteiner Unterland.

NORWAY

Entities producing or distributing water pursuant to *Forskrift om drikkevann og vannforsyning (FOR 1995-01-01 Nr 68)*.

SWITZERLAND

Entities producing, transporting and distributing drinking water and operating pursuant to cantonal or local legislation or under individual agreements complying with such legislation.

For example: Wasserversorgung Zug AG, Wasserversorgung Düringen.

Appendix 2 Production, transport or distribution of electricity

ICELAND

Landsvirkjun (the National Power Company), *lög nr. 42/1983*;

Rafmagnsveitur ríkisins (the State Electric Power Works), *orkulög nr. 58/1967*;

Orkuveita Reykjavíkur (Reykjavík Energy), *lög nr. 38/1940*;

Hitaveita Suðurnesja (Suðurnes Regional Heating), *lög nr. 100/1974*;

Orkubú Vestfjarða (Vestfjord Power Company), *lög nr. 66/1976*; Other entities producing, transporting or distributing electricity pursuant to *orkulög nr. 58/1967*.

LIECHTENSTEIN

Liechtensteinische Kraftwerke.

NORWAY

Entities producing, transporting or distributing electricity pursuant to *Lov om erverv av vannfall, bergverk og annen fast eiendom m.v., kap. I, jf. kap.V (LOV 1917-12-14 16, kap. I)*, or

Vassdragsreguleringsloven (LOV 1917-12-14 17) or Energiloven (LOV 1990-06-29 50).

SWITZERLAND

Entities transporting and distributing electricity which may be granted a right to expropriate pursuant to the *Loi fédérale concernant les installations électriques à faible et à fort courant of 24 June 1902*.

Entities producing electricity pursuant to the *Loi fédérale sur l'utilisation des forces hydrauliques* of 22 December 1916 and the *Loi fédérale sur l'utilisation pacifique de l'énergie atomique* of 23 December 1959. For example: CKW, ATEL, EGL.

Appendix 3 Transport or distribution of gas or heat

ICELAND

Orkuveita Reykjavíkur (Reykjavík Energy), *lög nr. 38/1940*.

Hitaveita Suðurnesja (Suðurnes Regional Heating), *lög nr. 100/1974*.

Other entities transporting or distributing heat pursuant to *orkulög nr. 58/1967*.

LIECHTENSTEIN

Liechtensteinische Gasversorgung.

NORWAY

Entities transporting or distributing heat pursuant to *Lov om produksjon, omforming, overføring, omsetning og fordeling av energi m.m (LOV 1990-06-29 50) (Energiloven)*.

SWITZERLAND

Entities transporting or distributing gas pursuant to Article 2 of the *Loi fédérale sur les installations de transport par conduits de combustibles ou carburants liquides ou gazeux* of 4 October 1963.

Entities transporting or distributing heat on the basis of a cantonal concession.

For example: SWISSGAS AG, Gaznat SA, Gasverbund Ostschweiz AG, REFUNA AG, Cadbar SA.

Appendix 4 Exploration for and extraction of oil and gas

ICELAND

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LIECHTENSTEIN

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NORWAY Contracting entities covered by *Lov om petroleumsvirksomhet (LOV 1996-11-29 72) (Petroleum Act) and regulations pursuant to the Petroleum Act or by Lov om undersøkelse etter og utvinning av petroleum i grunnen under norsk landområde (LOV 1973-05-04 21)*.

SWITZERLAND

Entities exploring for and extracting oil or gas in accordance with the *Concordat intercantonal concernant la prospection et l'exploitation du pétrole entre les cantons de Zurich, Schwyz, Glaris, Zoug, Schaffhouse, Appenzell Rh.-Ext., Appenzell Rh.-Int., Saint-Gall, Argovie et Thurgovie* of 24 September 1955. For example: Seag AG.

Appendix 5 Exploration for and extraction of coal or other solid fuels

ICELAND

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LIECHTENSTEIN

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NORWAY

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SWITZERLAND

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Appendix 6 Contracting entities in the field of railway services

ICELAND

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LIECHTENSTEIN

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NORWAY

Norges Statsbaner (NSB) and entities operating pursuant to Lov om anlegg og drift av jernbane, herunder sporvei, tunnelbane og forstadsbane m.m (LOV 1993-06-11 100) (Jernbaneloven).

SWITZERLAND

Chemins de fer fédéraux (CFF). Entities within the meaning of Articles 1(2) and 2(1) of the Loi fédérale sur les chemins de fer of 20 December 1957, where they operate public transport services by standard- or narrow-gauge railway.^[4] For example: BLS, MthB, Chemin de fer du Jura, RhB, FO, TPF.

Appendix 7 Contracting entities in the field of urban railway, tramway, trolley, bus or bus services

ICELAND

Strætisvagnar Reykjavíkur (the Reykjavík Municipal Bus Service).

Almenningsvagnar bs.

Other municipal bus services

Land transporting entities operating pursuant to Article 3 of lög nr. 13/1999 skipulag á fólksflutningum með hópferðabifreiðum.

LIECHTENSTEIN

Liechtenstein Bus Anstalt (the Liechtenstein Bus Institution)

NORWAY

NSB BA and land transport entities operating pursuant to Lov om anlegg og drift av jernbane, herunder sporvei, tunnelbane og forstadsbane m.m (LOV 1993-06-11 100) (Jernbaneloven).

SWITZERLAND

Entities operating tramway services within the meaning of Article 2(1) of the *Loi fédérale sur les chemins de fer* of 20 December 1957.

Entities providing transport services to the public within the meaning of Article 4(1) of the *Loi fédérale sur les entreprises de trolleybus* of 29 March 1950.

Entities providing, as a business activity, regular scheduled passenger transport services on the basis of a concession granted pursuant to Article 4 of the *Loi fédérale sur le transport de voyageurs et les transports par route* of 18 June 1993, where their lines provide a service within the meaning of Article 5(3) of the *Ordonnance sur les indemnités, les prêts et les aides financières selon la loi sur les chemins de fer* of 18 December 1995.

Appendix 8 Contracting entities in the field of airport facilities

ICELAND

Flugmálastjórn (Directorate of Civil Aviation).

LIECHTENSTEIN

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NORWAY

Entities providing airport facilities pursuant to *Luftfartsloven (LOV 1993-06-11 101).*

SWITZERLAND

Entities operating airports on the basis of a concession granted pursuant to Article 37(1) of the *Loi fédérale sur la navigation aérienne* of 21 December 1948.

For example: Bern-Belp, Birrfeld, Grenchen, Samedan.

Appendix 9 Contracting entities in the field of maritime or inland port or other terminal facilities

ICELAND

Siglingastofnun, (Icelandic Maritime Administration).

Other entities operating pursuant to *Hafnalög nr. 23/1994.*

LIECHTENSTEIN

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NORWAY

Norges Statsbaner (NSB) (Railway terminals).

Entities operating pursuant to *Havneloven (LOV 1984-06-08 51)*.

SWITZERLAND

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Appendix 10 Services

Services

The following services, which are listed in the sectoral classification of services reproduced in the WTO document MTN.GNS/W/120, are covered by the Annex:

Subject CPC	(Central Product Classification)	reference No
Maintenance and repair services	6112, 6122, 633, 886	
Land transport services Excluding rail transport services. including armoured car services, and courier services, except carriage of mail	712 (except 71235) 7512, 87304	
Air transport services: carriage of passengers and freight, except carriage of mail	73 (except 7321)	
Carriage of mail by land (except transport services by rail) and by air	71235, 7321	
Telecommunications services	752 Excluding services of voice telephony, telex, radiotelephony, radiopaging and satellite telecommunications.	
Financial services:	ex 81	
a) insurance services	812, 814	
b) banking and investment services		

Excluding financial market services relating to the issue, purchase, sale and transfer of securities or other financial instruments, and central bank services.	
Computer and related services	84
Accounting, auditing and book-keeping services	862
Market research and public opinion polling services	864
Management consulting services and related services	865, 866 Excluding arbitration and conciliation services.
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
Advertising services	871
Building-cleaning services and property management services	874, 82201-82206
Publishing and printing services on a fee or contract basis	88442
Sewage and refuse disposal services; Sanitation and similar services	94

The commitments entered into by the Member States in the field of services under the Annex are limited to the initial commitments specified in the Schedules of Specific Commitments of 15 April 1994 submitted by the Member States under the General Agreement on Trade in Services (GATS).

The Annex does not apply to:

service contracts awarded to an entity which is itself a contracting authority within the meaning of this Annex and of Annex 1, 2 or 3 to the GPA on the basis of an exclusive right which it enjoys pursuant to a published law, regulation or administrative provision;

service contracts which a contracting entity awards to an affiliated undertaking or are awarded by a joint venture formed by a number of Contracting Entities for the purpose of carrying out a relevant activity within the meaning of Article 3 of the Annex to one of those contracting entities or to an undertaking which is affiliated with one of these contracting entities, provided that at least 80% of the average turnover of that undertaking with respect to services for the preceding three years derives from the provision of such services to undertakings with which it is affiliated. Where more than one undertaking affiliated with the contracting entity provides the same service or similar services, the total turnover deriving from the provision of services by those undertakings shall be taken into account;

service contracts for the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;

employment contracts;

contracts for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time.

Appendix 11 Construction services

Construction Services

Specification construction services covered:

Definition: A contract for construction services is a contract which has as its object the execution, by whatever means, of construction, civil engineering or building work within the meaning of Division 51 of the Central Product Classification (CPC).

List of services covered according to Division 51 of the CPC:

Site preparation work	511
Construction work	512
Civil engineering work	513
Assembly and construction of prefabricated structures	514
Specialised construction work	515
Installation work	516
Building completion work	517
Other services	518

The commitments entered into by the Member States in the field of construction services under the Annex are limited to the initial commitments specified in the Schedules of Specific Commitments of 15 April 1994 submitted by the Member States under the General Agreement on Trade in Services (GATS).

Appendix 12 Measures notified by the member states

Measures notified by Switzerland:

Review procedures in accordance with Article 9 of the Annex introduced in the cantons and municipalities for contracts below the thresholds on the basis of the *Loi fédérale sur le marché intérieur* of 6 October 1995.

Appendix 13 Exceptions

Bus Transport Services:

The provision of bus transport services to the public shall not be considered to be a relevant activity within the meaning of Article 2 (c) of the Annex where other entities are free to provide those services, either in general or in a particular geographical area, under the same condition as the contracting entities.

Supply of drinking water, electricity, gas or heat to networks:

The supply of drinking water, electricity, gas or heat to networks which provide a service to the public by a contracting entity other than a public authority shall not be considered as a relevant activity within the meaning of Article 2 of the Annex where:

in the case of drinking water or electricity:

the production of drinking water or electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than that referred to in Article 2(c) (i) and (ii) of the Annex, and

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 or energy, having regard to the average for the preceding three years, including the current year;

in the case of gas or heat:

the production of gas or heat by the entity concerned is the unavoidable consequence of carrying on an activity other than that referred to in Article 2(b) (i) of the Annex, and

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.

Activities under conditions not involving the physical use of network or geographical area within a Member State:

The provisions of the Annex shall not apply to contracts or design contests which the contracting entities award or organize for purposes other than the pursuit of their activities as described in Article 2 of the Annex or for the pursuit of such activities outside each Member State, in conditions not involving the physical use of a network or geographical area within that Member State.

Resale or hire to third parties:

The provisions of the Annex shall not apply to contracts awarded for purposes of resale or hire to third parties, provided that the contracting entity enjoys no special or exclusive

right to sell or hire the subject of such contracts and other entities are free to sell or hire it under the same conditions as the contracting entity.

Supply contracts:

The provisions of the Annex shall not apply to:

contracts which contracting entities award for the purchase of water;

contracts which contracting entities award for the supply of energy or of fuels for the production of energy.

National Security:

The provisions of the Annex shall not apply to contracts when they are declared to be secret by Member States, when their execution 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 State so requires.

International Obligations:

The provisions of the Annex shall not apply to:

contracts awarded pursuant to an international agreement and covering the joint implementation or exploitation of a project by two or more Member States;

contracts awarded pursuant to the particular procedure of an international organisation;

to undertakings in Norway, Iceland and Liechtenstein or a third State in pursuance of an international agreement relating to the stationing of troops.

Special provision for ROs:

The provisions of the Annex shall not apply to contracts awarded by contracting entities carrying out an activity referred to in Article 2 (a) of the Annex, provided that the contracts have as their object the re-financing in the form of «sale and lease back» of a supply contract awarded in accordance with the provisions of this Annex.

Appendix 14 Procurement and challenge procedures

The following GPA provisions shall apply to the Annex:

Article II	Valuation of Contracts
Article III	National Treatment and Non-discrimination
Article IV	Rules of Origin
Article VI	Technical Specifications
Article VII	Tendering Procedures
Article VIII	Qualification of Suppliers
Article IX	Invitation to Participate Regarding Intended Procurement
Article X	Selective Procedures

Article XI	Time Limits for Tendering and Delivery General
Article XII	Tender Documentation
Article XIII	Submission, Receipt and Opening of Tenders and Awarding of Contracts
Article XIV	Negotiation
Article XV	Limited Tendering
Article XVII	Transparency
Article XVIII	Information and Review as Regards Obligations of Entities
Article XX	Challenge Procedures
Article XXIII	Exceptions to the Agreement
Article XXIV(6)(a & b)	Final Provisions (Rectifications or modifications)

[\[1\]](#)

¹ Following changes in the national rules on utilities procurement in Norway, by establishing alternative rules that ensure that the contracting authorities engaged in the exploitation of oil or gas award contracts on a non-discriminatory, transparent and competitive basis, Norway is exempted from applying all the procedural rules in the utilities directive (*Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors*) to entities engaged in the exploitation of geographical areas for the purpose of exploring for or extracting oil or gas. The exemption was granted upon a request from Norway and after the ESA had concluded that Norway had correctly transposed the *Council Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons*, which is a prerequisite for granting such an exemption.

[\[2\]](#)

As in force on 21 June 2001.

[\[3\]](#)

This exemption only covers bid challenge procedures required by the Federal Law of 6 October 1995 on the Internal Market for procurement procedures below the thresholds. The law deals with the development of the internal market of Switzerland, taking into account the federal structure of Switzerland.

[\[4\]](#)

Except for holdings and undertakings, which are not directly active in the transport sector.