

## CHAPTER 8

### PUBLIC PROCUREMENT

#### ARTICLE 141

##### Objectives

1. The Parties recognise the contribution of transparent, non-discriminatory, competitive and open tendering to sustainable economic development and set as their objective the effective, reciprocal and gradual opening of their respective procurement markets.
2. This Chapter envisages mutual access to public procurement markets on the basis of the principle of national treatment at national, regional and local level for public contracts and concessions in the traditional sector as well as in the utilities sector. It provides for a gradual approximation of the public procurement legislation in Georgia with the Union public procurement acquis based on the principles governing public procurement in the Union and the terms and definitions set out in 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 (Directive 2004/18/EC) and Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (Directive 2004/17/EC).

## ARTICLE 142

### Scope

1. This Chapter applies to works, supplies and services public contracts, as well as works, supplies and services contracts in the utilities sectors and, if and where such contracts are used, to works and services concessions.
2. This Chapter applies to any contracting authority and any contracting entity which meets the definitions of the Union public procurement acquis (hereinafter referred to as "the contracting entities"). It covers also bodies governed by public law and public undertakings in the field of utilities such as state-owned enterprises carrying out the relevant activities and private undertakings operating on the basis of special and exclusive rights in the field of utilities.<sup>1</sup>
3. This Chapter applies to contracts above the value thresholds set out in Annex XVI-A to this Agreement.
4. The calculation of the estimated value of a public contract shall be based on the total amount payable, net of taxes on value added. When applying these thresholds, Georgia shall calculate and convert contract values into its national currency, using the conversion rate of its national bank.

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<sup>1</sup> The expression "private undertakings operating on the basis of special and exclusive rights" shall be interpreted in accordance with the European Commission's Explanatory Note CC/2004/33 of 18 June 2004.

5. Value thresholds shall be revised regularly every two years, beginning in the year of entry into force of this Agreement, based on the average daily value of the euro, expressed in Special Drawing Rights, over the 24 months terminating on the last day of August preceding the revision with effect from January 1. The value of the thresholds thus revised shall, where necessary, be rounded down to nearest thousand euro. The revision of the thresholds shall be adopted by the decision of the Association Committee in Trade configuration, as set out in Article 408(4) of this Agreement.

## ARTICLE 143

### Institutional background

1. Each Party shall establish or maintain an appropriate institutional framework and mechanisms necessary for the proper functioning of the public procurement system and the implementation of the principles in this Chapter.
2. Georgia shall designate in particular:
  - (a) an executive body at central government level tasked with guaranteeing a coherent policy and its implementation in all areas related to public procurement. That body shall facilitate and coordinate the implementation of this Chapter and guide the process of gradual approximation to the Union acquis, as set out in Annex XVI-B to this Agreement;
  - (b) an impartial and independent body tasked with the review of decisions taken by contracting authorities or entities during the award of contracts. In this context, "independent" means that that body shall be a public authority which is separate from all contracting entities and economic operators. There shall be a possibility to subject the decisions taken by this body to judicial review.
3. Each Party shall ensure that decisions taken by the authorities responsible for the review

of complaints by economic operators concerning infringements of domestic law shall be effectively enforced.

## ARTICLE 144

### Basic standards regulating the award of contracts

1. No later than three years from the entry into force of this Agreement, the Parties shall comply with a set of basic standards for the award of all contracts as stipulated in paragraphs 2 to 15 of this Article. These basic standards derive directly from the rules and principles of public procurement, as regulated in the Union public procurement acquis, including the principles of non-discrimination, equal treatment, transparency and proportionality.

### Publication

2. Each Party shall ensure that all intended procurements are published in an appropriate media<sup>2</sup> in a manner that is sufficient:

- (a) to enable the market to be opened up to competition; and
- (b) to allow any interested economic operator to have appropriate access to information regarding the intended procurement prior to the award of the contract and to express its interest in obtaining the contract.

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<sup>2</sup> Wherever Union legislation that is subject to the process of approximation under this Chapter makes reference to publication in the Official Journal of the European Union, it is understood that in Georgia such publication shall be in the official means of publication of Georgia.

3. The publication shall be appropriate to the economic interest of the contract to economic operators.

4. The publication shall contain at least the essential details of the contract to be awarded, the criteria for qualitative selection, the award method, the contract award criteria and any other additional information that the economic operators reasonably need to decide whether to express their interest in obtaining the contract.

#### Award of contracts

5. All contracts shall be awarded through transparent and impartial award procedures that prevent corruptive practices. This impartiality shall be ensured in particular through the non-discriminatory description of the subject matter of the contract, equal access for all economic operators, appropriate time-limits and a transparent and objective approach.

6. When describing the characteristics of the required work, supply or service, the contracting entities shall use general descriptions of performance and functions and international, European or national standards.

7. The description of the characteristics required of a work, supply or service shall not refer to a specific make or source, or a particular process, or to trademarks, patents, types or a specific origin or production unless such a reference is justified by the subject matter of the contract and accompanied by the words "or equivalent". Preference shall be given to the use of general descriptions of performance or functions.

8. Contracting entities shall not impose conditions resulting in direct or indirect discrimination against the economic operators of the other Party, such as the requirement that economic operators interested in the contract must be established in the same country, region or territory as the contracting entity.

Notwithstanding the above, in cases where it is justified by the specific circumstances of the

contract, the successful applicant may be required to establish certain business infrastructure at the place of performance.

9. The time-limits for expression of interest and for submission of offers shall be sufficiently long to allow economic operators from the other Party to make a meaningful assessment of the tender and prepare their offer.

10. All participants must be able to know the applicable rules, selection criteria and award criteria in advance. Those rules must apply equally to all participants.

11. Contracting entities may invite a limited number of applicants to submit an offer, provided that:

- (a) this is done in a transparent and non-discriminatory manner; and
- (b) the selection is based only on objective factors such as the experience of the applicants in the sector concerned, the size and infrastructure of their businesses or their technical and professional abilities.

In inviting a limited number of applicants to submit an offer, account shall be taken of the need to ensure adequate competition.

12. Contracting entities may use negotiated procedures only in exceptional and defined cases when the use of such a procedure effectively does not distort competition.

13. Contracting entities may use qualification systems only under the condition that the list of qualified operators is compiled by means of a sufficiently advertised, transparent and open procedure. Contracts falling within the scope of such a system shall be awarded also on a non-discriminatory basis.

14. Each Party shall ensure that contracts are awarded in a transparent manner to the applicant who has submitted the economically most advantageous offer or the offer with the lowest price, based on the tender criteria and the procedural rules established and communicated in advance. The final decisions shall be communicated to all applicants without undue delay. Upon request of an unsuccessful applicant, reasons must be provided in sufficient detail to allow the review of such a decision.

#### Judicial protection

15. Each Party shall ensure that any person having or having had an interest in obtaining a particular contract and who has been, or risks, being harmed by an alleged infringement is entitled to effective, impartial judicial protection against any decision of the contracting entity related to the award of that contract. The decisions taken in the course and at the end of such review procedure shall be made public in a manner that is sufficient to inform all interested economic operators.

### ARTICLE 145

#### Planning of gradual approximation

1. Prior to the commencement of gradual approximation, Georgia shall submit to the Association Committee in Trade configuration, as set out in Article 408(4) of this Agreement, a comprehensive roadmap for the implementation of this Chapter with time schedules and milestones which shall include all reforms in terms of approximation to the Union acquis and institutional capacity building. This roadmap shall comply with the phases and time schedules set out in Annex XVI-B to this Agreement.

2. Following a favourable opinion by the Association Committee in Trade configuration, the roadmap shall be considered as the reference document for the implementation of this Chapter. The Union shall make its best efforts in assisting Georgia in the implementation of the roadmap.

## ARTICLE 146

### Gradual approximation

1. Georgia shall ensure that its legislation on public procurement will be gradually approximated to the Union's public procurement acquis.
2. Approximation to the Union acquis shall be carried out in consecutive phases as set out in the schedule in Annex XVI-B to this Agreement and further specified in Annexes XVI-C to XVI-F, XVI-H, XVI-I, and XVI-K thereto. Annexes XVI-G and XVI-J to this Agreement identify non-mandatory elements that need not be approximated, whereas Annexes XVI-L to XVI-O to this Agreement identify elements of the Union acquis that remain outside the scope of approximation. In this process, due account shall be taken of the corresponding case law of the Court of Justice of the European Union and the implementing measures adopted by the European Commission as well as, should it become necessary, of any modifications of the Union acquis occurring in the meantime. The implementation of each phase shall be evaluated by the Association Committee in Trade configuration, as set out in Article 408(4) of this Agreement, and, following a positive assessment by that Committee, be linked to the reciprocal granting of market access as set out in Annex XVI-B to this Agreement. The European Commission shall notify Georgia without undue delay of any modifications of the Union acquis. It shall, upon request, provide appropriate advice and technical assistance for the purpose of implementing such modifications.

3. The Association Committee in Trade configuration shall only proceed to the evaluation of a next phase once the measures to implement the previous phase have been carried out and approved in accordance with the modalities set out in paragraph 2.

4. Each Party shall ensure that those aspects and areas of public procurement which are not covered by this Article comply with the principles of transparency, non-discrimination and equal treatment as set out under Article 144 of this Agreement.

## ARTICLE 147

### Market access

1. The Parties agree that the effective and reciprocal opening of their respective markets shall be attained gradually and simultaneously. During the process of approximation, the extent of the market access mutually granted shall be linked to the progress made in this process as stipulated in Annex XVI-B to this Agreement.

2. The decision to proceed to a further phase of market opening shall be made on the basis of an assessment of the compliance of the legislation adopted with the Union *acquis* as well as its practical implementation. Such assessment shall be carried out regularly by the Association Committee in Trade configuration, as set out in Article 408(4) of this Agreement.

3. In so far as a Party has, in accordance with Annex XVI-B to this Agreement, opened its procurement market to the other Party:

- (a) the Union shall grant access to contract award procedures to Georgian companies, whether established or not in the Union, pursuant to the Union public procurement rules under treatment no less favourable than that accorded to Union companies;
- (b) Georgia shall grant access to contract award procedures for Union companies, whether

established or not in Georgia, pursuant to national procurement rules under treatment no less favourable than that accorded to Georgian companies.

4. After the implementation of the last phase in the process of approximation, the Parties will examine the possibility to mutually grant market access with regard to procurement below the value thresholds set out in Annex XVI-A to this Agreement.

5. Finland reserves its position with regard to the Åland Islands.

## ARTICLE 148

### Information

1. Each Party shall ensure that contracting entities and economic operators are appropriately informed about public procurement procedures, including through the publication of all relevant legislation and administrative rulings.

2. Each Party shall ensure the effective dissemination of information on tendering opportunities.

## ARTICLE 149

### Cooperation

1. The Parties shall enhance their cooperation through exchanges of experience and information relating to their best practices and regulatory frameworks.

2. The Union shall facilitate the implementation of this Chapter, including through technical assistance where appropriate. In line with the provisions on financial cooperation in Title VII (Financial Assistance, and Anti-fraud and Control Provisions) of this Agreement, specific decisions on financial assistance shall be taken through the relevant Union funding mechanisms and instruments.

3. An indicative list of issues for cooperation is included in Annex XVI-P to this Agreement.

ANNEX XVI  
PUBLIC PROCUREMENT

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## ANNEX XVI-A

### THRESHOLDS

1. The value thresholds mentioned in Article 142(3) of this Agreement shall be for both Parties:
  - (a) EUR 130 000 for public supply and service contracts awarded by central government authorities, except for public service contracts defined in the third indent of point (b) of Article 7 of 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;
  - (b) EUR 200 000 in the case of public supply and public service contracts not covered by point a);
  - (c) EUR 5 000 000 in the case of public works contracts and concessions;
  - (d) EUR 5 000 000 in the case of works contracts in the utilities sector;
  - (e) EUR 400 000 in the case of supply and service contracts in the utilities sector.
2. The thresholds quoted in paragraph 1 shall be adapted to reflect the thresholds applicable under Commission Regulation (EU) No 1336/2013 of 13 December 2013 amending Directives 2004/17/EC, 2004/18/EC and 2009/81/EC of the European Parliament and of the Council in respect of the application thresholds for the procedures for the awards of contract at the moment of the entry into force of this Agreement.

Annex XVI-B

INDICATIVE TIME SCHEDULE FOR INSTITUTIONAL REFORM,  
APPROXIMATION AND MARKET ACCESS

Phase		Indicative time schedule	Market access granted to the EU by Georgia	Market access granted to Georgia by the EU	
1	Implementation of Article 143(2) and Article 144 of this Agreement of the Reform Strategy set out in Article 145 of this Agreement	Three years after the entry into force of this Agreement	Supplies for central government authorities	Supplies for central government authorities	
2	Approximation and implementation of basic elements of Directive 2004/18/EC of the European Parliament and of the Council and of Council Directive 89/665/EEC	Five years after the entry into force of this Agreement	Supplies for state, regional and local authorities and bodies governed by public law	Supplies for state, regional and local authorities and bodies governed by public law	Annexes XVI-C and XVI-D to this Agreement

Phase		Indicative time schedule	Market access granted to the EU by Georgia	Market access granted to Georgia by the EU	
3	Approximation and implementation of basic elements of Directive 2004/17/EC of the European Parliament and of the Council and of Council Directive 92/13/EEC	Six years after the entry into force of this Agreement	Supplies for all contracting entities in the utilities sector	Supplies for all contracting entities	Annexes XVI-E and XVI-F to this Agreement
4	Approximation and implementation of other elements of Directive 2004/18/EC	Seven years after the entry into force of this Agreement	Service and works contracts and concessions for all contracting authorities	Service and works contracts and concessions for all contracting authorities	Annexes XVI-G, XVI-H and XVI-I to this Agreement
5	Approximation and implementation of other elements of Directive 2004/17/EC	Eight years after the entry into force of this Agreement	Service and works contracts for all contracting entities in the utilities sector	Service and works contracts for all contracting entities in the utilities sector	Annexes XVI-J and XVI-K to this Agreement

## ANNEX XVI-C

### BASIC ELEMENTS OF DIRECTIVE 2004/18/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL<sup>1</sup>

#### (PHASE 2)

#### TITLE I

##### Definitions and general principles

Article 1 Definitions (paragraphs 1, 2, 8, 9, 11(a), 11(b) and 11(d), 12, 13, 14 and 15)

Article 2 Principles of awarding contracts

Article 3 Granting of special or exclusive rights: non-discrimination clause

#### TITLE II

##### Rules on public contracts

#### CHAPTER I

##### General provisions

Article 4 Economic operators

Article 6 Confidentiality

#### CHAPTER II

##### Scope

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<sup>1</sup> 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.

## Section 1 — Thresholds

Article 8 Contracts subsidised by more than 50 % by contracting authorities

Article 9 Methods for calculating the estimated value of public contracts, framework agreements and dynamic purchasing systems

## Section 2 — Specific situations

Article 10 Defence procurement

## Section 3 — Excluded contracts

Article 12 Contracts in the water, energy, transport and postal services sectors (only when basic rules of Directive 2004/17/EC have been approximated)

Article 13 Specific exclusions in the field of telecommunications

Article 14 Secret contracts and contracts requiring special security measures

Article 15 Contracts awarded pursuant to international rules

Article 16 Specific exclusions

Article 18 Service contracts awarded on the basis of an exclusive right

## Section 4 — Special arrangement

Article 19 Reserved contracts

## CHAPTER III

### Arrangements for public service contracts

Article 20 Service contracts listed in Annex II A

Article 21 Service contracts listed in Annex II B

Article 22 Mixed contracts including services listed in Annex II A and services listed in Annex II B

## CHAPTER IV

### Specific rules governing specifications and contract documents

Article 23 Technical specifications

Article 24 Variants

Article 25 Subcontracting

Article 26 Conditions for performance of contracts

Article 27 Obligations relating to taxes, environmental protection, employment protection provisions and working conditions

## CHAPTER V

### Procedures

Article 28 Use of open, restricted and negotiated procedures and of competitive dialogue

Article 30 Cases justifying use of the negotiated procedure with prior publication of a contract notice

Article 31 Cases justifying use of the negotiated procedure without publication of a contract notice

## CHAPTER VI

### Rules on advertising and transparency

#### Section 1 — Publication of notices

Article 35 Notices: paragraph 1 *mutatis mutandis*; paragraph 2; first, third and fourth subparagraph of paragraph 4

Article 36 Form and manner of publication of notices: paragraph 1; paragraph 7

## Section 2 — Time-limits

Article 38 Time-limits for receipt of requests to participate and for receipt of tenders

Article 39 Open procedures: specifications, additional documents and information

## Section 3 — Information content and means of transmission

Article 40 Invitations to submit a tender, participate in the dialogue or negotiate

Article 41 Informing candidates and tenderers

## Section 4 — Communication

Article 42 Rules applicable to communication

## CHAPTER VII

### Conduct of the procedure

## Section 1 — General provisions

Article 44 Verification of the suitability and choice of participants and award of contracts

## Section 2 — Criteria for qualitative selection

Article 45	Personal situation of the candidate or tenderer
Article 46	Suitability to pursue the professional activity
Article 47	Economic and financial standing
Article 48	Technical and/or professional ability
Article 49	Quality assurance standards
Article 50	Environmental management standards
Article 51	Additional documentation and information

## Section 3 — Award of the contract

Article 53	Contract award criteria
Article 55	Abnormally low tenders

## ANNEXES to Directive 2004/18/EC

Annex I List of the activities referred to in Article 1(2)(b)

Annex II Services referred to in Article 1(2)(d)

Annex II A

Annex II B

- Annex V List of products referred to in Article 7 with regard to contracts awarded by contracting authorities in the field of defence
- Annex VI Definition of certain technical specifications
- Annex VII Information to be included in notices
- Annex VII A Information to be included in public contract notices
- Annex X Requirements relating to equipment for the electronic receipt of tenders, requests to participate and plans and projects in design contests
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Annex XVI-D

BASIC ELEMENTS OF COUNCIL DIRECTIVE 89/665/EEC<sup>1</sup>  
AS AMENDED BY DIRECTIVE 2007/66/EC  
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL<sup>2</sup>  
(PHASE 2)

Article 1	Scope and availability of review procedures
Article 2	Requirements for review procedures
Article 2a	Standstill period
Article 2b	Derogations from the standstill period Point (b) of the first paragraph of Article 2b
Article 2c	Time-limits for applying for review
Article 2d	Ineffectiveness Paragraph 1(b) Paragraph 2 and 3
Article 2e	Infringements of this Directive and alternative penalties
Article 2f	Time-limits

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<sup>1</sup> Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts.

<sup>2</sup> Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts.

## Annex XVI-E

### BASIC ELEMENTS OF DIRECTIVE 2004/17/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL<sup>1</sup>

#### (PHASE 3)

#### TITLE I

General provisions applicable to contracts and design contests

#### CHAPTER I

Basic terms

Article 1 Definitions (paragraphs 2, 7, 9, 11, 12 and 13)

#### CHAPTER II

Definition of the activities and entities covered

##### Section 1 - Entities

Article 2 Contracting entities

##### Section 2 - Activities

Article 3 Gas, heat and electricity

Article 4 Water

Article 5 Transport services

Article 6 Postal services

Article 7 Exploration for, or extraction of, oil, gas, coal or other solid fuels, as well as ports and airports

Article 9 Contracts covering several activities

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<sup>1</sup> Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.

CHAPTER III  
General principles

Article 10 Principles of awarding contracts

TITLE II  
Rules applicable to contracts

CHAPTER I  
General provisions

Article 11 Economic operators

Article 13 Confidentiality

CHAPTER II  
Thresholds and exclusion provisions

Section 1 - Thresholds

Article 16 Contract thresholds

Article 17 Methods of calculating the estimated value of contracts, framework agreements and dynamic purchasing systems

Section 2 - Contracts and concessions and contracts subject to special arrangements

Subsection 2 - Exclusions applicable to all contracting entities and to all types of contract

- Article 19 Contracts awarded for purposes of resale or lease to third parties
- Article 20 Contracts awarded for purposes other than the pursuit of an activity covered or for the pursuit of such an activity in a third country: paragraph 1
- Article 21 Contracts which are secret or require special security measures
- Article 22 Contracts awarded pursuant to international rules
- Article 23 Contracts awarded to an affiliated undertaking, to a joint venture or to a contracting entity forming part of a joint venture

Subsection 3 - Exclusions applicable to all contracting entities, but to service contracts only

- Article 24 Contracts relating to certain services excluded from the scope of this Directive
- Article 25 Service contracts awarded on the basis of an exclusive right

Subsection 4 - Exclusions applicable to certain contracting entities only

- Article 26 Contracts awarded by certain contracting entities for the purchase of water and for the supply of energy or of fuels for the production of energy

CHAPTER III

Rules applicable to service contracts

- Article 31 Service contracts listed in Annex XVII A
- Article 32 Service contracts listed in Annex XVII B
- Article 33 Mixed service contracts including services listed in Annex XVII A and services listed in Annex XVII B

## CHAPTER IV

### Specific rules governing specifications and contract documents

- Article 34 Technical specifications
- Article 35 Communication of technical specifications
- Article 36 Variants
- Article 37 Subcontracting
- Article 39 Obligations relating to taxes, environmental protection, employment protection provisions and working conditions

## CHAPTER V

### Procedures

- Article 40 Use of open, restricted and negotiated procedures (except points (i) and (l) of paragraph 3)

## CHAPTER VI

### Rules on publication and transparency

#### Section 1 - Publication of notices

- Article 41 Periodic indicative notices and notices on the existence of a system of qualification
- Article 42 Notices used as a means of calling for competition paragraphs 1 and 3
- Article 43 Contract award notices (except for second and third subparagraphs of paragraph 1)
- Article 44 Form and manner of publication of notices (except for the first subparagraph of paragraph 2 and paragraphs 4, 5 and 7)

## Section 2 - Time limits

- Article 45 Time-limits for the receipt of requests to participate and for the receipt of tenders
- Article 46 Open procedures: specifications, additional documents and information
- Article 47 Invitations to submit a tender or to negotiate

## Section 3 - Communication and information

- Article 48 Rules applicable to communication
- Article 49 Information to applicants for qualification, candidates and tenderers

## CHAPTER VII

### Conduct of the procedure

- Article 51 General provisions

## Section 1 - Qualification and qualitative selection

- Article 52 Mutual recognition concerning administrative, technical or financial conditions, and certificates, tests and evidence
- Article 54 Criteria for qualitative selection

## Section 2 - Award of the contract

- Article 55 Contract award criteria
- Article 57 Abnormally low tenders

ANNEXES to Directive 2004/17/EC

Annex XIII Information to be included in contract notices:

- A. Open procedures
- B. Restricted procedures
- C. Negotiated procedures

Annex XIV Information to be included in the notice on the existence of a system of qualification

Annex XV A Information to be included in the periodic indicative notice

Annex XV B Information to be included in notices of publication of a periodic notice on a buyer profile not used as a means of calling for competition

Annex XVI Information to be included in the contract award notice

Annex XVII A Services within the meaning of Article 31

Annex XVII B Services within the meaning of Article 32

Annex XX Features concerning publication

Annex XXI Definition of certain technical specifications

Annex XXIII International labour law provisions within the meaning of Article 59(4)

Annex XXIV Requirements relating to equipment for the electronic receipt of tenders, requests to participate, applications for qualification as well as plans and projects

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## ANNEX XVI-F

### BASIC ELEMENTS OF COUNCIL DIRECTIVE 92/13/EEC<sup>1</sup> AS AMENDED BY DIRECTIVE 2007/66/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL<sup>2</sup> (PHASE 3)

Article 1	Scope and availability of review procedures
Article 2	Requirements for review procedures
Article 2a	Standstill period
Article 2b	Derogations from the standstill period Point (b) of the first paragraph of Article 2b
Article 2c	Time-limits for applying for review
Article 2d	Ineffectiveness Paragraph 1 (b) Paragraphs 2 and 3
Article 2e	Infringements of this Directive and alternative penalties
Article 2f	Time-limits

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<sup>1</sup> 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.

<sup>2</sup> Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts.

## ANNEX XVI-G

### OTHER NON-MANDATORY ELEMENTS OF DIRECTIVE 2004/18/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL<sup>1</sup>

#### (PHASE 4)

The elements of Directive 2004/18/EC set out in this Annex are not mandatory but recommended for approximation. Georgia may approximate those elements within the time-frame set in Annex XVI-B.

#### TITLE I

##### Definitions and general principles

Article 1 Definitions (paragraphs: 5, 6, 7, 10 and 11(c))

#### TITLE II

##### Rules on public contracts

#### CHAPTER II

##### Scope

Section 2 — Specific situations

Article 11 Public contracts and framework agreements awarded by central purchasing bodies

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<sup>1</sup> 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.

Section 4 — Special arrangement

Article 19 Reserved contracts

CHAPTER V

Procedures

Article 29 Competitive dialogue

Article 32 Framework agreements

Article 33 Dynamic purchasing systems

Article 34 Public works contracts: particular rules on subsidised housing schemes

CHAPTER VI

Rules on advertising and transparency

Section 1 — Publication of notices

Article 35 Notices: paragraph 3, and subparagraphs 2 and 3 of paragraph 4

## CHAPTER VII

### Conduct of the procedure

#### Section 2 — Criteria for qualitative selection

Article 52 Official lists of approved economic operators and certification by bodies established under public or private law

#### Section 3 — Award of the contract

Article 54 Use of electronic auctions

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## ANNEX XVI-H

### OTHER MANDATORY ELEMENTS OF DIRECTIVE 2004/18/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL<sup>1</sup>

(PHASE 4)

#### TITLE I

Definitions and general principles

Article 1 Definitions (paragraphs: 3, 4 and 11(e))

#### TITLE II

Rules on public contracts

#### CHAPTER II

Scope

Section 3 - Excluded contracts

Article 17 Service concessions

#### TITLE III

Rules on public works concessions

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<sup>1</sup> 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.

## CHAPTER I

### Rules governing public works concessions

- Article 56 Scope
- Article 57 Exclusions from the scope (except the last paragraph)
- Article 58 Publication of the notice concerning public works concessions
- Article 59 Time limit
- Article 60 Subcontracting
- Article 61 Awarding of additional works to the concessionaire

## CHAPTER II

### Rules on contracts awarded by concessionaires which are contracting authorities

- Article 62 Applicable rules

## CHAPTER III

### Rules applicable to contracts awarded by concessionaires which are not contracting authorities

- Article 63 Advertising rules: threshold and exceptions
- Article 64 Publication of the notice
- Article 65 Time limit for the receipt of requests to participate and receipt of tenders

## TITLE IV

### Rules governing design contests

Article 66	General provisions
Article 67	Scope
Article 68	Exclusions from the scope
Article 69	Notices
Article 70	Form and manner of publication of notices of contests
Article 71	Means of communication
Article 72	Selection of competitors
Article 73	Composition of the jury
Article 74	Decisions of the jury

### ANNEXES to Directive 2004/18/EC

Annex VII B Information which must appear in public works concession notices

Annex VII C Information which must appear in works contracts notices of concessionaires who are not contracting authorities

Annex VII D Information which must appear in design contest notices

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ANNEX XVI-I

OTHER ELEMENTS OF COUNCIL DIRECTIVE 89/665/EEC<sup>1</sup>  
AS AMENDED BY DIRECTIVE 2007/66/EC  
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL<sup>2</sup>  
(PHASE 4)

- Article 2b Derogations from the standstill period  
Point (c) of the first paragraph of Article 2b
- Article 2d Ineffectiveness  
Point (c) of paragraph 1 of Article 2d  
Paragraph 5
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<sup>1</sup> Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts.

<sup>2</sup> Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts.

## ANNEX XVI-J

### OTHER NON-MANDATORY ELEMENTS OF DIRECTIVE 2004/17/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL<sup>1</sup> (PHASE 5)

The elements of Directive 2004/17/EC set out in this Annex are not mandatory but recommended for approximation. Georgia may approximate these elements within the time-frame set in Annex XVI-B.

#### TITLE I

General provisions applicable to contracts and design contests

#### CHAPTER I

Basic terms

Article 1      Definitions (paragraphs 4, 5, 6 and 8)

#### TITLE II

Rules applicable to contracts

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<sup>1</sup> Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.

## CHAPTER I

### General provisions

Article 14 Framework agreements

Article 15 Dynamic purchasing systems

### Section 2 - Contracts and concessions and contracts subject to special arrangements

Subsection 5 - Contracts subject to special arrangements, provisions concerning central purchasing bodies and the general procedure in case of direct exposure to competition

Article 28 Reserved contracts

Article 29 Contracts and framework agreements awarded by central purchasing bodies

## CHAPTER V

### Procedures

Article 40 (3) (i) and (l)

## CHAPTER VI

### Rules on publication and transparency

### Section 1 - Publication of notices

Article 42 Notices used as a means of calling for competition: paragraph 2

Article 43 Contract award notices (only for the second and the third subparagraphs of paragraph 1)

CHAPTER VII  
Conduct of the procedure

Section 2 - Award of the contract

Article 56 Use of electronic auctions

ANNEX to Directive 2004/17/EC

Annex XIII Information to be included in contract notices:

D. Simplified contract notice for use in a dynamic purchasing system

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ANNEX XVI-K

OTHER ELEMENTS OF COUNCIL DIRECTIVE 92/13/EEC<sup>1</sup>  
AS AMENDED BY DIRECTIVE 2007/66/EC  
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL<sup>2</sup>  
(PHASE 5)

- Article 2b Derogations from the standstill period  
Point (c) of the first paragraph of Article 2b
- Article 2d Ineffectiveness  
Point (c) of paragraph 1 of Article 2d  
Paragraph 5
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<sup>1</sup> 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.

<sup>2</sup> Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts.

## ANNEX XVI-L

### PROVISIONS OF DIRECTIVE 2004/18/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL<sup>1</sup> OUTSIDE THE SCOPE OF APPROXIMATION

The elements listed in this Annex are not subject to the process of approximation.

#### TITLE II

#### Rules on public contracts

#### CHAPTER I

#### General provisions

Article 5      Conditions relating to agreements concluded within the World Trade Organisation

#### CHAPTER VI

#### Rules on advertising and transparency

#### Section 1 — Publication of notices

Article 36      Form and manner of publication of notices: paragraphs 2, 3, 4, 5, 6 and 8

Article 37      Non-mandatory publication

#### Section 5 — Reports

Article 43      Content of reports

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<sup>1</sup> 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.

## TITLE V

### Statistical obligations, executory powers and final provisions

Article 75	Statistical obligations
Article 76	Content of statistical report
Article 77	Advisory Committee
Article 78	Revision of the thresholds
Article 79	Amendments
Article 80	Implementation
Article 81	Monitoring mechanisms
Article 82	Repeals
Article 83	Entry into force
Article 84	Addressees

ANNEXES to Directive 2004/18/EC

Annex III	List of bodies and categories of bodies governed by public law referred to in the second subparagraph of Article 1(9)
Annex IV	Central Government authorities
Annex VIII	Features concerning publication
Annex IX	Registers
Annex IX A	Public works contracts
Annex IX B	Public supply contracts
Annex IX C	Public service contracts
Annex XI	Deadlines for transposition and application (Article 80)
Annex XII	Correlation table

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## ANNEX XVI-M

### PROVISIONS OF DIRECTIVE 2004/17/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL<sup>1</sup> OUTSIDE THE SCOPE OF APPROXIMATION

The elements listed in this Annex are not subject to the process of approximation.

#### TITLE I

General provisions applicable to contracts and design contests

#### CHAPTER II

Definition of the activities and entities covered

Section 2 - Activities

Article 8 Lists of contracting entities

#### TITLE II

Rules applicable to contracts

#### CHAPTER I

General provisions

Article 12 Conditions relating to Agreements concluded within the World Trade Organisation

Section 2 - Contracts and concessions and contracts subject to special arrangements

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<sup>1</sup> Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.

Subsection 1

Article 18 Works and service concessions

Subsection 2 - Exclusions applicable to all contracting entities and to all types of contract

Article 20 Contracts awarded for purposes other than the pursuit of an activity covered or for the pursuit of such an activity in a third country: paragraph 2

Subsection 5 - Contracts subject to special arrangements, provisions concerning central purchasing bodies and the general procedure in case of direct exposure to competition

Article 27 Contracts subject to special arrangements

Article 30 Procedure for establishing whether a given activity is directly exposed to competition

CHAPTER IV

Specific rules governing specifications and contract documents

Article 38 Conditions for performance of contracts

## CHAPTER VI

### Rules on publication and transparency

#### Section 1 - Publication of notices

Article 44 Form and manner of publication of notices (only for the first subparagraph of paragraph 2, and for paragraphs 4, 5 and 7)

#### Section 3 - Communication and information

Article 50 Information to be stored concerning awards

## CHAPTER VII

### Conduct of the procedure

Section 3 - Tenders comprising products originating in third countries and relations with those countries

Article 58 Tenders comprising products originating in third countries

Article 59 Relations with third countries as regards service contracts

## TITLE IV

### Statistical obligations, executory powers and final provisions

Article 67	Statistical obligations
Article 68	Advisory Committee
Article 69	Revision of the thresholds
Article 70	Amendments
Article 71	Implementation of the Directive
Article 72	Monitoring mechanisms
Article 73	Repeal
Article 74	Entry into force
Article 75	Addressees

### ANNEXES to Directive 2004/17/EC

Annex I	Contracting entities in the sectors of transport or distribution of gas or heat
Annex II electricity	Contracting entities in the sectors of production, transport or distribution of
Annex III	Contracting entities in the sectors of production, transport or distribution of drinking water
Annex IV	Contracting entities in the field of rail services
Annex V	Contracting entities in the field of urban railway, tramway, trolleybus or bus services
Annex VI	Contracting entities in the postal services sector
Annex VII	Contracting entities in the sectors of exploration for and extraction of oil or gas

Annex VIII	Contracting entities in the sectors of exploration for and extraction of coal and other solid fuels
Annex IX	Contracting entities in the field of maritime or inland port or other terminal facilities
Annex X	Contracting entities in the field of airport installations
Annex XI	List of legislation referred to in Article 30(3)
Annex XII	List of professional activities as set out in point b of Article 1(2)
Annex XXII	Summary table of the time limits laid down in Article 45
Annex XXV	Time limits for transposition and implementation
Annex XXVI	Correlation table

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## ANNEX XVI-N

### PROVISIONS OF COUNCIL DIRECTIVE 89/665/EEC<sup>1</sup> AS AMENDED BY DIRECTIVE 2007/66/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL<sup>2</sup> OUTSIDE THE SCOPE OF APPROXIMATION

The elements listed in this Annex are not subject to the process of approximation.

- Article 2b Derogations from the standstill period
  - Point (a) of the first paragraph of Article 2b
- Article 2d Ineffectiveness
  - Point (a) of paragraph 1 of Article 2d
  - Paragraph 4
- Article 3 Corrective Mechanisms
- Article 3a Content of the notice for voluntary ex ante transparency
- Article 3b Committee Procedure
- Article 4 Implementation
- Article 4a Review

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<sup>1</sup> Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts.

<sup>2</sup> Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts.

## ANNEX XVI-O

### PROVISIONS OF COUNCIL DIRECTIVE 92/13/EEC<sup>1</sup> AS AMENDED BY DIRECTIVE 2007/66/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL<sup>2</sup> OUTSIDE THE SCOPE OF APPROXIMATION

The elements listed in this Annex are not subject to the process of approximation.

- Article 2b Derogations from the standstill period  
Point (a) of the first paragraph of Article 2b
- Article 2d Ineffectiveness  
Point (a) of paragraph 1 of Article 2d  
Paragraph 4
- Article 3a Content of the notice for voluntary ex ante transparency
- Article 3b Committee Procedure
- Article 8 Corrective Mechanisms
- Article 12 Implementation
- Article 12a Review

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<sup>1</sup> 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.

<sup>2</sup> Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts.

## ANNEX XVI-P

### GEORGIA: INDICATIVE LIST OF ISSUES FOR COOPERATION

1. Training, in EU countries and Georgia, of Georgian officials from government bodies engaged in public procurement;
2. Training of suppliers interested participating in public procurement;
3. Exchange of information and experience on best practice and regulatory rules in the sphere of public procurement;
4. Enhancement of the functionality of the public procurement website and establishment of a system of public procurement monitoring;
5. Consultations and methodological assistance from the Union in application of modern electronic technologies in the sphere of public procurement;
6. Strengthening the bodies charged with guaranteeing a coherent policy in all areas related to public procurement and the independent and impartial consideration (review) of contracting authorities' decisions. (Cf. Article 143(2) of this Agreement)

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