



EUROPEAN COMMISSION

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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**AMENDING THE EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVES
2004/18/EC AND 2004/17/EC WITH RESPECT TO THE AWARD OF CONCESSION
CONTRACTS**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The award of works concessions is presently subject only to a limited number of secondary law provisions, while service concessions are covered only by the general principles of the TFEU. This loophole gives rise to serious distortions of the Internal Market, notably the limited access of European undertakings, especially Small and Medium Enterprises, to the economic opportunities related to concession contracts. This is particularly the case where concession contracts are awarded without any transparency.¹ It is also at the origin of inefficiencies related to the lack of legal certainty.

The present initiative aims to ensure effective access to the market to all EU economic operators and to favour public investments in infrastructures and strategic services by creating an adequate legal framework for the award of concession contracts (thus also Public Private Partnerships).

In the context of severe budgetary constraints and economic difficulties in many EU Member States, the efficient allocation of public funds is subject to special concern. The potential of a legislative initiative on concession contracts for creating a supportive EU framework for PPPs was singled out in the Commission's 2009 Communication on «Mobilising private and public investment for recovery and long term structural change: developing Public Private Partnerships»

Moreover, the Commission announced the intention to adopt a legislative initiative on concessions in its Communication Single Market Act Twelve levers to boost growth and strengthen confidence "Working together to create new growth" of 13 April 2011.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

On 30 April 2004 the Commission issued a Green Paper on PPPs and Community Law on Public Contracts and Concessions. On 3 May 2005 the Commission services published a working report on the public consultation on the Green Paper on PPPs and Community law on public contracts and concessions² which was followed by the Commission's Communication on PPP's of November 2005.

Between 12 May and 9 July 2010, the Commission launched a public online consultation addressed to the general public.

Between 5 August and 30 September 2010 the Commission services ran a targeted public consultation addressed to the business community, social partners and contracting entities. The results of the above mentioned consultations highlighted

¹ As many as 37,3% of the respondents to the Commission 2010 online consultation on concessions declared to be aware of concession awarded without any publication or transparency, in particular in the water distribution and waste water, waste treatment and energy sectors.

² SEC(2005) 629 of 3.5.2005.

contrasting views of stakeholders with regard to the award of concessions. They have also confirmed the existence of problems related to the uncertainty of the present rules and access to the market as well as the desirability of a targeted EU intervention.

The abovementioned conclusions have also been corroborated by a number of bilateral meetings with the representatives of Member States, municipalities and their associations, as well as undertakings active in the sectors concerned and industry associations.

The results can be found at http://ec.europa.eu/internal_market/consultations/2010/concessions_en.htm

The information gathered during the aforementioned consultation fed into the Impact Assessment Report. This report has been accepted by the Commission's Impact Assessment Board on 21 March 2011.

The conclusions of the report confirmed the need for an urgent legislative initiative. Indeed, according to its findings, economic operators are faced with unlevel playing field, often translating into missed business opportunities. This situation gives rise to costs and proves prejudicial for competitors located in other Member States, contracting entities and consumers. Moreover, as the definition of concessions, as well as the precise content of the obligations of transparency and non-discrimination arising from the Treaty remain unclear, the resulting lack of legal certainty increases the risk of cancellation or early termination of illegally awarded contracts and ultimately discourages the authorities from using concessions where this type of contract can be a good solution.

Even if Member States took legislative action to establish a legal framework based on the Treaty principles, still at least two problems remain unresolved: risk of the legal uncertainty related to interpretations of those principles by national lawmakers and large disparities between the legislations in different Member States.

The optimal solution identified was legislation based on the provisions currently applicable to public works concessions, complemented with a number of additional provisions. A more restrictive approach, consisting in the extension of provisions applicable to public contracts, was considered counter-productive, as it would discourage contracting authorities from using concessions.

The selected option was expected to have beneficial impact on transparency, fairness and legal certainty, therefore contributing to a better realisation of a number of objectives of the present initiative, notably a better access to the market, improved investments opportunities and hence more and better quality services. It was equally supported by an important number of stakeholders.

3. LEGAL ELEMENTS OF THE PROPOSAL

The present Directive provides with a more precise definition of concession contracts, clearly making reference to the notion of operational risk, explaining what types of risk are considered as operational risk and how to define the significant risk.

It submits services concessions to all those obligations which currently apply to the award of works concessions. Moreover, it extends their application to concession contracts in the utilities sector (the award of which is currently exempt from any secondary legislation).

Notably, in order to ensure transparency and equal treatment of all economic operators, the present Directive provides for compulsory publication of concession contracts above certain thresholds (applicable to the value of such contracts calculated following a methodology specified therein), and defines a minimum scope of information to be communicated to the users. For the same reason, it establishes a minimum deadline for the submission of interest in any concession contract covered by its rules, amounting to 52 days, as this is currently the case for the public works concessions.

In order to preserve genuine competition on the downstream markets, also certain obligations for the concession holders concerning the competitive tendering of contracts awarded to sub-contractors will be extended to services concessions and to concessions in the utilities sector. This is equally the case of the rules on subcontracting currently included in Title III of Directive 2004/18/EC (concerning public works concessions) and providing for a possibility for a contracting authority to either establish a minimal percentage of works or services to be sub-contracted (up to 30%) or to invite tenderers to determine, in their bids, such a percentage.

Last but not least, the present Directive provides also for an extension of the scope of application of the Remedies Directives (Directives 89/665/EEC and 92/13/EC, as amended by Directive 2007/66/EC) to all concession contracts above the threshold. This text not only guarantees to all interested party an effective possibility to challenge the award decision before a court, but also provides for some minimal judicial standards which have to be observed, notably compulsory standstill period between communication of a decision to award a contract to the bidders and the effective conclusion of a contract, a minimal foreclosure period, a possibility for a judge to declare the contract ineffective etc.

In addition to the extension of the aforementioned rules, the present Directive also provides for obligations in the field of award criteria and selection criteria to be applied by the contracting entities while awarding concessions. These rules are less restrictive than similar provisions currently applicable to public contracts. Their purpose is mostly to ensure that such criteria be published in advance, that they are objective and not discriminatory. The present Directive will also establish some basic rules regarding the transparency and fairness of the negotiation process between the parties, reiterating the case law of the European Court of Justice.

In order to ensure consistency between the legal frameworks applicable to concessions and public contracts, as well as in order to avoid controversies concerning the application of the existing case law in the field of public contracts to concessions, the adoption of a proposal for an amending directive seems to be a better option, as compared to a standalone directive. Therefore, the present directive should have the same legal basis that the Directives 2004/18/EC and 2004/17/EC.

The implementation of the present Directive will not affect existing concession contracts, in line with the Court of Justice of the EU case law on modification of contracts.

4. BUDGETARY IMPLICATION [WHERE NECESSARY]

[...]

5. OPTIONAL ELEMENTS [WHERE NECESSARY]

[...]

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53, Article 62 and Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The award of services concession contracts concluded in the Member States by contracting authorities and entities is subject to the respect of the principles of the Treaty and in particular the principle of freedom of movement of goods, the principle of establishment and the principle of freedom to provide services and to the principles deriving therefrom such as the principle of equal treatment, the principle of transparency and the principle of proportionality. However, for services concession contracts above a certain value, it is appropriate to draw up provisions of minimal coordination of national procedures for the award of such contracts which are based on these principles so as to ensure their effects, guarantee the opening-up of public procurement to competition, as well as to ensure adequate legal certainty. These coordinating provisions should therefore be interpreted in accordance with both the aforementioned rules and principles and other rules of the Treaty.
- (2) Minimal coordination provisions should also be introduced for the award of works and services concession contracts awarded in the water, energy, transport and postal services sectors given the existence of a variety of ways in which national authorities can influence the behaviour of entities operating in these sectors and taking into account of the closed nature of the markets in which they operate, due to the existence

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OJ C , , p. . .

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OJ C , , p. . .

of special or exclusive rights granted by the Member States concerning the supply to, provision or operation of networks for providing the services concerned.

- (3) The provisions of the present Directive should not apply to the award of concession contracts subject to different EU rules having the status of *lex specialis*, governing notably concessions in the sector of passenger transport services by rail and road⁵ and air transport services⁶.
- (4) Difficulties related to the interpretation of the concepts of concession contract and public contract have been source of continued legal uncertainty among stakeholders and have given rise to numerous judgments of the Court of Justice of the European Union on this subject. Therefore, the definition of concession contract should be clarified, notably by reference to the concept of substantial operating risk. The main feature of a concession, the right to exploit the works or services, always implies the transfer to the concessionaire of an economic risk involving the possibility that it will not recoup on the investments and costs incurred for operating the work or service awarded. The application of specific procurement rules governing the award of concessions could not be justified if the awarding entity relieves the contractor from any possibility of loss, by guaranteeing a minimal revenue, equal or higher to the costs that the contractor has to incur in relation with the execution of the contract.
- (5) As regards service concessions, the partial exclusion, for a transitional period, of contracts for certain services, such as social and health services, is based on the assumption that they do not present a significant potential for cross-border trade. Suppressing this exclusion by extending other procurement rules to these services should therefore be based on a prior re-assessment of their impact on cross-border trade. Such re-assessment should be carried out with regard to the nature of the services themselves and irrespective of the specific arrangements for their delivery (public contracts or concessions).
- (6) In order to ensure adequate advertisement of works and services concession contracts above a certain value awarded by the contracting authorities as defined in Directive 2004/18/EC and by contracting entities as defined in Directive 2004/17/EC, the award of such contracts should be preceded by compulsory publication of a contract notice in the Official Journal of the European Union. The proposed threshold reflects the manifest cross border interest of concession contracts. To calculate the value of a services concession contract, account must be taken of the estimated value of all services to be provided by the concession holder from the point of view of a potential tenderer with exclusion of the value of any works to be carried out.
- (7) In order to make it possible for all interested operators to submit the requests to participate, contracting authorities and contracting entities should be obliged to respect a minimal time limit for the receipt of such requests.
- (8) The choice and application of proportional, non-discriminatory and fair selection criteria to economic operators is crucial for their effective access to economic opportunities related to concessions. In particular, the possibility for a candidate to rely on the capacities of other entities can be determinant in enabling the participation

⁵ Regulation (EC) 1370/2007.

⁶ Regulation (EC) 1008/2008.

of small and medium enterprises. Therefore, it is appropriate to include provisions aimed at guaranteeing that selection criteria relate exclusively to the technical, financial and economic capacity of operators, that they should be announced in the concession contract notice and that they cannot preclude an economic operator from relying on the capacities of other entities, regardless of the legal nature of the links which it has with them.

- (9) The extended relationship between a contracting authority or a contracting entity and a concession holder, as well as the exercise of public prerogatives which the concession contracts often involve, may justify the reference to the specific qualities of a tenderer in the award criteria. Nevertheless, contracting authorities and contracting entities should avoid arbitrariness while choosing and applying the award criteria. They should also ensure that these criteria and the method of their application are known in advance to all potential tenderers. It is therefore appropriate to require that such criteria should not offer to the contracting authority an unrestricted freedom of choice, should be related to the subject matter of the contract, and should be announced in the concession contract notice or in the contract documents.
- (10) Concessions are usually long term, complex arrangements where the contractor assumes responsibilities and risks traditionally born by the contracting authorities and contracting entities. For this reason, the latter should maintain a margin of flexibility in organising the awarding process, involving also a possibility to negotiate the content of the contract with the candidates. However, in order to ensure equal treatment and transparency throughout the negotiations, it is appropriate to provide for safeguards in the organisation thereof. Hence, the present Directive provides for certain requirements as to the structure of this process, dissemination of information and availability of the written records. It is also necessary to provide for the obligation to preserve the initial terms of the contract notice, in order to prevent unfair treatment of any potential candidate.
- (11) The technical specifications drawn up by public purchasers should allow public procurement to be opened up to competition. This objective should be pursued independently of the nature of the contract awarded. It is therefore appropriate to extend the application of the relevant provisions provided for public contracts and contracts awarded by contracting entities to concession contracts.
- (12) Given that concession contracts are usually long duration contracts often resulting in temporary foreclosure of the market, provisions of this Directive should ensure competition in relation to the award of contracts concluded by concession holders. This consideration also justifies, the competitive award of such contracts even where a concession holder is not subject to procurement rules.
- (13) The contracting authorities and the contracting entities should be able to require a minimum percentage of the value of a contract to be sub-contracted to third parties.
- (14) In order to ensure adequate judicial protection of candidates and tenderers in the concession award procedures, as well as to make effective the enforcement of the rules of the present Directive and of the Treaty principles, the application of the rules of the provisions of Directive 89/665/EEC as amended by Directive 2007/66/EC should also apply to services concession contracts and to works concession contracts awarded in the water, energy, transport and postal services sectors.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2004/17/EC is amended as follows:

- (1) Title I is renamed as follows:

Title I

General provisions applicable to contracts, design and concession contracts

- (2) Article 1(3) is amended as follows:

3. Concession is a contract of the same type as a works or services contract except for the fact that the consideration for the works to be carried out or the services to be provided consists either solely in the right to exploit the work or services that are subject of the contract or in this right together with payment.

The right to exploit the works or services implies the transfer to the concessionaire of the substantial operating risk. The concessionaire shall be deemed to assume the substantial operating risk where it is not guaranteed to recoup the investment or costs undertaken for operating the works or the services subject of the concession contract. This risk shall include the economic risk related to the use of the works or the provisions of the service or the economic risk related to the availability of the infrastructure provided by the concessionaire or used on the provision of services to users.

The concession contract shall be limited in time and its duration shall be justified with regard to the need for the concessionaire to recoup the investments and costs carried out for the operating of the works or services together with a reasonable return on invested capital.

A concession contract having as its subject-matter services within the meaning of Annex XVII and including activities within the meaning of Annex XII that are only incidental to the principal object of the concession contract shall be considered to be a service concession contract.

- (3) The following paragraph 4 is inserted in Article 9:

"4. Paragraphs 1-3 shall apply also to concession contracts intended to cover several activities"

- (4) Article 18 is deleted.

- (5) Article 43 (1), (2), (4) and (5) are replaced as follows:

1. Contracting entities which have awarded a contract, a concession contract according to the provisions of Title II *bis* or a framework agreement shall, within two months of the award of the contract or framework agreement, send a contract award notice as referred to in Annex XVI under conditions to be laid down by the Commission in accordance with the procedure referred to in Article 68(2).

2. The information provided in accordance with Annex XVI and Annex XVI A and intended for publication shall be published in accordance with Annex XX. In this connection, the Commission shall respect any sensitive commercial aspects which the contracting entities may point out when forwarding this information, concerning the number of tenders received, the identity of economic operators, or prices.

4. In the case of contracts and concession contracts awarded for services listed in Annex XVII B, the contracting entities shall indicate in the notice whether they agree to publication.

5. Information provided in accordance with Annex XVI and XVI A and marked as not being intended for publication shall be published only in simplified form and in accordance with Annex XX for statistical purposes.

(6) The following Title II bis is inserted:

TITLE II *bis*

RULES ON WORKS CONCESSIONS AND SERVICES CONCESSIONS

CHAPTER I

Rules governing works concessions and services concessions

Article 59-A

Scope

1. This Chapter shall apply to works and services concession contracts awarded by a contracting authority for the pursuit of one of the activities defined in Art. 3-7, concluded by the contracting entities, where the value of the contracts is equal to or greater than EUR.4 845 000

2. The value of works concessions shall be calculated in accordance with the rules applicable to works contracts defined in Article 17.

3. With regard to services concession contracts, the contract value shall be the estimated total value of services to be provided by the concessionaire during the whole duration of the concession. The provisions of Article 17 (1), (2), (4), (6a), (8) and (10) of the present Directive shall apply accordingly.

4. For the purposes of the present article, the value of concessions shall include both the revenue to be received from third parties and the amounts to be paid by the contracting authority.

Article 59-B

Services listed in Annex XVII B

Concession contracts which have as their object services listed in Annex XVII B shall be subject to the obligations of the present title provided for in Article 32.

Article 59-C

Mixed service contracts including services listed in Annexes XVII A

and services listed in Annex XVII B

Contracts which have as their subject-matter services listed both in Annex XVII A and in Annex XVII B shall be awarded in accordance with the rules set in Articles 32 to 59 where the value of the services listed in Annex XVII A is greater than the value of the services listed in Annex XVII B. In other cases, contracts shall be awarded in accordance with Articles 34 and 43.

Article 59-D

Exclusions from the scope

1. This Title shall not apply to concession contracts which are awarded in the cases referred to in Articles 20, 21, 23, 25.
2. Concession contracts awarded for the pursuit, in the Member State concerned, of an activity to which the applicability of paragraph 1 of Article 30 has been established by a Commission decision or has been deemed applicable pursuant to paragraph 4, second or third subparagraph, or to paragraph 5, fourth subparagraph, of that Article.

Article 59-E

Economic operators

Article 11 on economic operators shall also apply to concession contracts.

"Article 59-F

Confidentiality

Article 13 on confidentiality of information forwarded to the contracting authority by economic operators which they have designated as confidential shall also apply to public works and services concession contracts accordingly."

Article 59-G

Technical Specifications

Article 34 on technical specifications shall also apply to concession contracts.

Article 59-H

Publication of the notice concerning concession contracts

1. Contracting entities wishing to award a works concession or a services concession contract shall make known their intention by means of a notice.
2. Notices of works and services concessions shall contain the information referred to in Annex XIII E and, where appropriate, any other information deemed useful by the

contracting entity, in accordance with the standard forms adopted by the Commission in accordance with the procedure referred to in Article 68(2)..

3. Notices shall be published in accordance with Article 44(2) to (8).

Article 59-I

Time limit

When contracting entities resort to a works concession or a services concession, the time limit for the presentation of applications for the concession shall be not less than 52 days from the date of dispatch of the notice, except where Article 45 (5) applies. Article 45(1) and (9) shall apply.

Article 59-J

Subcontracting

The contracting entity may either:.

(a) require the concessionaire to award, to third parties, contracts representing, up to a minimum of 30 % of the total value of the work or services for which the concession contract is to be awarded, or

(b) request the candidates for concession contracts to specify in their tenders, in case of works concessions, the percentage, if any, of the total value of the work and in case of a services concession, the percentage, if any, of the total value of the services for which the concession contract is to be awarded which they intend to assign to third parties.

Article 59-K

Awarding of additional works or services to the concessionaire

This Directive shall not apply to additional works or services not included in the concession project initially considered or in the initial contract but which have, through unforeseen circumstances, become necessary for the performance of the work or service described therein, which the contracting entity has awarded to the concessionaire, on condition that the award is made to the economic operator performing such work or service:

— when such additional works or services cannot be technically or economically separated from the initial contract without major inconvenience to the contracting entities or

— when such works or services, although separable from the performance of the initial contract, are strictly necessary to its later stages

Article 59-L

Verification of suitability of tenderers

1. Verification of the suitability of tenderers or of candidates and, if appropriate, the selection of candidates in procedures for the award of concessions, should be carried out in transparent conditions. For this purpose, non-discriminatory and proportional selection criteria should refer exclusively to technical, financial and economic capacity of operators. The contracting entity shall specify, in the contract notice the selection criteria it will use, the required level of specific competence of the economic operators. Contracting entities shall also indicate in the contract notice the reference or references to be submitted as proof of the economic operator's capacities which shall be non-discriminatory and proportional to the subject-matter of the contract.

2. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal, throughout the period of the concession, the resources necessary, for example, by producing an undertaking by those entities to that effect.

3. Under the same conditions, a group of economic operators as referred to in Article 11 (2) may rely on the capacities of participants in the group or of other entities.

Article 59-M

Award criteria

1. Concession contracts shall be awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non-discrimination and equal treatment and which guarantee that tenders are assessed in conditions of effective competition.

2. The criteria must be linked to the subject matter of the contract and can not confer an unrestricted freedom of choice on the contracting entity.

3. The contracting entity shall indicate in the contract notice or contract documents the criteria in descending order of importance."

Article 59-N

Guarantees in case of negotiation

1. During negotiations, contracting authorities shall ensure the equal treatment of all tenderers. In particular, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.

2. Whenever the contracting entity limits the number of applicants to an appropriate level, this shall be done in a transparent manner and on the basis of pre-defined non discriminatory criteria according to Art. 61-A

3. The method or plan of the negotiation shall be established in advance in a clear manner and communicated to all participants, including the aspects of the offer to be negotiated and the expected date of the award, which can be delayed only following justification and communication to other participants.

4. Adjustments or modifications of the offer during the negotiating stage shall be limited in scope and not undermine the initial terms of the award procedure.
5. The contracting authority shall ensure, by all appropriate means, the traceability of the negotiations."

CHAPTER II

Rules on contracts awarded by concessionaires which are
contracting entities

Article 59-O

Applicable rules

Where the concessionaire is a contracting authority as referred to in Article 2, it shall comply with the provisions laid down by this Directive while awarding contracts to the third parties.

CHAPTER III

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

Article 59-P

Advertising rules: threshold and exceptions

1. The Member States shall take the necessary measures to ensure that works or services concessionaires which are not contracting authorities apply the advertising rules defined in Article 64 when, respectively, awarding, in case of works concessionaires, works contracts or, in case of service concessionaires, services contracts to third parties where the value of such contracts is equal to or greater than EUR 4 845 000 for works and EUR 387 000 for services. Advertising shall not, however, be required where a works or services contract satisfies the conditions listed in Article 40. The values of contracts shall be calculated in accordance with the rules applicable to public works or public services contracts laid down in Article 17.

This obligation should only apply whenever the identity of the third party has not been disclosed by the tenderers during the initial award procedure or included in their offer.

2. Groups of undertakings which have been formed to obtain the concession or undertakings affiliated to them in the meaning of Article 23, shall not be considered third parties.

Article 59-Q

Publication of the notice

1. Works or services concessionaires which are not contracting authorities and which wish to award works or services contracts to a third party shall make known their intention by way of a notice.
2. Notices shall contain the information referred to in Annex XIII F and, where appropriate, any other information deemed useful by the works or services concessionaire, in accordance with the standard form adopted by the Commission in accordance with the procedure in Article 68(2).
3. The notice shall be published in accordance with Article 44(2) to (8).
4. Article 44(8) on the voluntary publication of notices shall also apply.

Article 59-R

Time limit for the receipt of requests to participate and receipt of tenders

In works contracts or services contracts awarded respectively by a works or a service concessionaire which is not a contracting entity, the time limit for the receipt of requests to participate, fixed by the concessionaire, shall be not less than 37 days from the date on which the contract notice was dispatched and the time limit for the receipt of tenders not less than 40 days from the date on which the contract notice or the invitation to tender was dispatched.

Article 45(1), (5), (6) and (9) shall apply.

- (7) Annex XIII is amended in accordance with Annex I to this Directive.
- (8) A new Annex XVI A is inserted in accordance with Annex II to this Directive.

Article 2

Directive 2004/18/EC is amended as follows:

- (9) The title of Directive 2004/18/EC is amended as follows: 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, public service contracts and public works and services concession contracts
- (10) Article 1(3) is amended as follows:

"3. Concession is a contract of the same type as a public works or public services contract except for the fact that the consideration for the works to be carried out or the services to be provided consists either solely in the right to exploit the work or services that are subject of the contract or in this right together with payment. The right to exploit the works or services implies the transfer to the concessionaire of the substantial operating risk. The concessionaire shall be deemed to assume the substantial operating risk where it is not guaranteed to recoup the investments or costs undertaken for operating the works or the services subject of the concession contract. This risk shall include the economic risk related to the use of the works or

the provision of the service or the economic risk related to the availability of the infrastructure provided by the concessionaire or used on the provision of services to users.

The concession contract shall be limited in time and its duration shall be justified with regard to the need for the concessionaire to recoup the investments and costs carried out for the operating of the works or services together with a reasonable return on invested capital.

A concession contract having as its subject-matter services within the meaning of Annex II and including activities within the meaning of Annex I that are only incidental to the principal subject-matter of the concession contract shall be considered to be a service concession contract.

(11) Article 1(4) is deleted.

(12) Article 17 is deleted.

(13) Article 35 paragraph 4 is amended as follows:

4. Contracting authorities which have awarded a public contract, a concession contract in accordance with the provisions of Title III or concluded a framework agreement shall send a notice of the results of the award procedure no later than 48 days after the award of the contract or the conclusion of the framework agreement.

(14) Title III and its Chapter I are renamed as follows:

Title III

Rules on Public works concessions and services concessions

Chapter I

Rules governing public works concessions and services concessions

(15) Article 56 is amended as follows:

(a) The first paragraph is amended as follows:

"1. This Chapter shall apply to public works concession contracts and services concession contracts concluded by the contracting authorities where the value of the contracts is equal to or greater than EUR.4 845 000

(b) The following paragraphs 2, 3 and 4 are inserted:

"2. The value of public works concession contracts shall be calculated in accordance with the rules applicable to public works contracts defined in Article 9.

3. With regard to services concession contracts, the contract value shall be the estimated total value of the services to be provided by the concessionaire, during the whole duration of the concession. The provisions of Article 9 (1), (2), (3) and (8) (a) of the present Directive shall apply accordingly.

4. For the purposes of the present article, the value of concession contracts shall include both the revenue to be received from third parties and the amounts to be paid by the contracting authority."

(16) The following Article 56 A is inserted:

Article 56-A

Services listed in Annex II B

Services concession contracts which have as their subject-matter services listed in Annex II B shall be subject solely to obligations of the present title provided for in Art 21.

(17) The following Article 56-B is inserted:

"Article 56-B

Mixed service contracts including services listed in Annexes II A

and services listed in Annex II B

Contracts which have as their subject-matter services listed both in Annex II A and in Annex II B shall be awarded in accordance with the rules set in Article 22.

(18) Article 57 is amended as follows:

"This Title shall not apply to concession contracts which are awarded:

(a) in the cases referred to in Articles 13, 14 and 15 of this Directive in respect of public works contracts and public services contracts, as well as in the cases referred to in Articles 16 and 18;

(b) by contracting authorities exercising one or more of the activities referred to in Articles 3 to 7 of Directive 2004/17/EC where those concession contracts are awarded for carrying out those activities.

(19) The following Article 57-A is inserted:

"Article 57-A

Economic operators

Article 4 (1) first indent and (2) on economic operators shall also apply to public works and services concession contracts."

(20) The following Article 57-B is inserted:

"Article 57-B

Confidentiality

Article 6 on confidentiality of information forwarded to the contracting authority by economic operators which they have designated as confidential shall also apply to public works and services concession contracts accordingly."

(21) The following Article 57-C is inserted:

"Article 57-C

Technical Specifications

Article 23 on technical specifications shall also apply to public works and services concession contracts."

(22) Article 58 is amended as follows:

Article 58

Publication of the notice concerning public works concession and services concession contracts

"1. Contracting authorities which wish to award a public works concession contract or a services concession contract shall make known their intention by means of a notice.

2. Notices of public works and services concession contracts shall contain the information referred to in Annex VII B and, where appropriate, any other information deemed useful by the contracting authority, in accordance with the standard forms adopted by the Commission pursuant to the procedure in Article 77(2).

3. Notices shall be published in accordance with Article 36(2) to (8).

4. Article 37 on the publication of notices shall also apply to public works and services concession contracts.

(23) Article 59 is amended as follows:

"When contracting authorities resort to a public works concession contract or a services concession contract, the time limit for the presentation of applications for the concession contract shall be not less than 52 days from the date of dispatch of the notice, except where Article 38(5) applies. Article 38(1) and (7) shall apply."

(24) Article 60 is amended as follows:

"The contracting authority may either:

(a) require the concessionaire to award, to third parties, contracts representing, up to a minimum of 30 % of the total value of the work or services for which the concession contract is to be awarded, or

(b) request the candidates for concession contracts to specify in their tenders, the percentage, if any, of the total value of the work or services for which the concession contract is to be awarded which they intend to assign to third parties."

(25) The following Article 60 A is inserted:

"Article 60-A

Guarantees in case of negotiation

1. During negotiations, contracting authorities shall ensure the equal treatment of all tenderers. In particular, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.
2. Whenever the contracting entity limits the number of applicants to an appropriate level, this shall be done in a transparent manner and on the basis of pre-defined non discriminatory criteria according to Art. 61-A
3. The method or plan of the negotiation shall be established in advance in a clear manner and communicated to all participants, including the aspects of the offer to be negotiated and the expected date of the award, which can be delayed only following justification and communication to other participants.
4. Adjustments or modifications of the offer during the negotiating stage shall be limited in scope and not undermine the initial terms of the award procedure.
5. The contracting authority shall ensure, by all appropriate means, the traceability of the negotiations."

(26) Article 61 is amended as follows:

"Article 61

Awarding of additional works or services to the concessionaire

This Directive shall not apply to additional works or services not included in the concession project initially considered or in the initial contract but which have, through unforeseen circumstances, become necessary for the performance of the work or services described therein, which the contracting authority has awarded to the concessionaire, on condition that the award is made to the economic operator performing such work or service:

— when such additional works or services cannot be technically or economically separated from the initial contract without major inconvenience to the contracting authorities, or

— when such works or services, although separable from the performance of the initial contract, are strictly necessary for its completion.

However, the aggregate value of contracts awarded for additional works or services may not exceed 50 % of the amount of the original works concession or services concession contract."

(27) The following new Articles 61 A and 61 B are inserted:

"Article 61-A

Verification of suitability of tenderers

1. Verification of the suitability of tenderers or of candidates and, if appropriate, the selection of candidates in procedures for the award of concession contracts, should be carried out in transparent conditions. For this purpose, non-discriminatory and proportional selection criteria should refer exclusively to the technical, financial and economic capacity of operators. The contracting authority shall specify, in the contract notice, the selection criteria it will use and the required level of specific competence of the economic operators. Contracting authorities shall also indicate in the contract notice the reference or references to be submitted as proof of the economic operator's capacities which shall be non-discriminatory and proportional to the subject-matter of the contract.
2. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal, throughout the period of the concession, the resources necessary, for example, by producing an undertaking by those entities to that effect.
3. Under the same conditions, a group of economic operators as referred to in Article 4 (2) may rely on the capacities of participants in the group or of other entities.

Article 61-B

Award criteria

1. Concession contracts shall be awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non-discrimination and equal treatment and which guarantee that tenders are assessed in conditions of effective competition.
2. The criteria must be linked to the subject matter of the contract and can not confer an unrestricted freedom of choice on the contracting authority.
3. The contracting authority shall indicate in the contract notice or contract documents the criteria in descending order of importance."

(28) Article 62 shall be amended as follows:

"Where the concessionaire is a contracting authority as referred to in Article 1(9), it shall comply with the provisions laid down by this Directive while awarding contracts to third parties.

(29) Article 63 shall be amended as follows:

"1. The Member States shall take the necessary measures to ensure that public works or services concessionaires which are not contracting authorities apply the advertising rules defined in Article 64 when respectively awarding works contracts or services contracts to third parties where the value of such contracts is equal to or greater than EUR 4 845 000. Advertising shall not, however, be required where a works or services contract satisfies the conditions listed in Article 31. The values of

contracts shall be calculated in accordance with the rules applicable to public works or public services contracts laid down in Article 9.

This obligation shall only apply whenever the identity of the third party has not been disclosed by the tenderers during the initial award procedure or included in their offer.

2. Groups of undertakings which have been formed to obtain the concession contract or undertakings related to them shall not be considered third parties.

‘Related undertaking’ shall mean any undertaking over which the concessionaire can exert a dominant influence, whether directly or indirectly, or any undertaking which can exert a dominant influence on the concessionaire or which, as the concessionaire, is subject to the dominant influence of another undertaking as a result of ownership, financial participation or the rules which govern it. A dominant influence on the part of an undertaking is presumed when, directly or indirectly in relation to another undertaking, it:

(a) holds a majority of the undertaking's subscribed capital;

(b) controls a majority of the votes attached to the shares issued by the undertaking;
or

(c) can appoint more than half of the undertaking's administrative, management or supervisory body.

The exhaustive list of such undertakings shall be included in the application for the concession contract. That list shall be brought up to date following any subsequent changes in the relationship between the undertakings."

(30) Article 64 shall be amended as follows:

"1. Works or services concessionaires which are not contracting authorities and which wish to award respectively works or services contracts to a third party where the value of the contracts is equal to or greater than the value set out in Article 56 shall make known their intention by way of a notice.

2. Notices shall contain the information referred to in Annex VII C and, where appropriate, any other information deemed useful by the works or services concessionaire, in accordance with the standard form adopted by the Commission in accordance with the procedure in Article 77(2).

3. The notice shall be published in accordance with Article 36(2) to (8).

4. Article 37 on the voluntary publication of notices shall also apply."

(31) Article 65 shall be amended as follows:

"1. In works contracts or services contracts awarded respectively by a works or a services concessionaire which is not a contracting authority, the time limit for the receipt of requests to participate, fixed by the concessionaire, shall be not less than 37 days from the date on which the contract notice was dispatched and the time limit

for the receipt of tenders not less than 40 days from the date on which the contract notice or the invitation to tender was dispatched.

Article 38(1), (5), (6) shall apply.

2. If, for whatever reason, the specifications and the supporting documents or additional information, although requested in good time, are not supplied within within six days of receipt of the request to participate or receipt of tenders, or where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time limits or the receipt of tenders shall be extended so that all economic operators concerned may be aware of all the information needed to produce tenders."

(32) Annex VII A is amended in accordance with Annex III to this Directive.

(33) Annex VIIB is amended in accordance with Annex IV to this Directive.

(34) Annex VII C is amended in accordance with Annex V to this Directive.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article [...]

This Directive shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

Article [...]

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX I

The following Parts E and F are added to Annex XIII to Directive 2004/17/EC:

"E. CONCESSION NOTICES

1. Name, address, fax number and email address of the contracting authority
2.
 - (a) Place of execution
 - (b) Subject of the concession;
3.
 - (a) Time limit for the submission of applications
 - (b) Address to which they must be sent
 - (c) Language(s) in which they must be written
4. Personal, technical and financial conditions to be met by the candidates
5. Criteria which will be applied in the award of the contract
6. If appropriate, the minimum proportion of the works which will be contracted out
7. Date of dispatch of the notice
8. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning the deadline for lodging appeals, or if need be the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

F. NOTICES OF CONCESSIONNAIRES WHO ARE NOT CONTRACTING ENTITIES

1.
 - (a) Place of execution
 - (b) Description of works and/or services
2. Any time limit for completion imposed
3. Name and address of the body from whom the specifications and the additional documents may be requested
4.
 - (a) Time limit for the receipt of applications to participate and/or the receipt of tenders
 - (b) Address to which they must be sent
 - (c) Language(s) in which they must be written
5. Any deposits or guarantees required
6. Economic and technical conditions to be met by the contractor

7. Criteria which will be applied in the award of the contract
8. Date of dispatch of the notice"

ANNEX II

INFORMATION TO BE INCLUDED IN THE CONCESSION AWARD NOTICES

1. Name and address of the contracting entity.
2. In case of works concessions: nature and extent of the contract, general characteristics of the work, in case of service concessions: category and description of the service; nomenclature reference number; quantity of services procured.
3. Date of award.
4. Award criteria.
5. Number of tenders received.
6. Name and address of the successful economic operators.
7. Main financial terms of the award, including fees and prices
8. Value of the tender (tenders) retained or the highest tender and lowest tender taken into consideration for the contract award.
9. Where appropriate, value and proportion of contract likely to be subcontracted to third parties.
10. Date of publication of the tender notice in accordance with the technical specifications for publication in Annex XIII.
11. Date of dispatch of the notice.
12. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning the deadline for lodging appeals, or if need be the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

ANNEX III

CONCESSION CONTRACT AWARD NOTICES

1. Name and address of the contracting authority.
2. In case of public works concessions: nature and extent of the contract, general characteristics of the work, in case of services concessions: category and description of the service; nomenclature reference number; quantity of services procured.
3. Date of award.
4. Award criteria.
5. Number of tenders received.
6. Name and address of the successful economic operators.
7. Main financial terms of the award, including fees and prices
8. Value of the tender (tenders) retained or the highest tender and lowest tender taken into consideration for the contract award.
9. Where appropriate, value and proportion of contracts likely to be subcontracted to third parties.
10. Date of publication of the tender notice in accordance with the technical specifications for publication in Annex VIII.
11. Date of dispatch of the notice.
12. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning the deadline for lodging appeals, or if need be the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

ANNEX IV

INFORMATION WHICH MUST APPEAR IN CONCESSION NOTICES

1. Name, address, fax number and email address of the contracting authority
2.
 - (a) Place of execution
 - (b) Subject of the concession; in case of works concessions: nature and extent of the contract, general characteristics of the work; in case of services concessions: category and description of the service; nomenclature reference number; quantity of services procured.
3.
 - (a) Time limit for the submission of applications
 - (b) Address to which they must be sent
 - (c) Language(s) in which they must be written
4. Personal, technical and financial conditions to be met by the candidates
5. Criteria which will be applied in the award of the contract
6. If appropriate, the minimum proportion of the works or services which will be contracted out
7. Date of dispatch of the notice
8. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning the deadline for lodging appeals, or if need be the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

ANNEX V

INFORMATION WHICH MUST APPEAR IN CONTRACT NOTICES OF CONCESSIONNAIRES WHO ARE NOT CONTRACTING AUTHORITIES

1.
 - (a) Place of execution
 - (b) Description of works and/or services, in case of works contract: nature and extent of the contract, general characteristics of the work; in case of service contract: category and description of the service; nomenclature reference number; quantity of services bought
2. Any time limit for completion imposed
3. Name and address of the body from whom the specifications and the additional documents may be requested
4.
 - (a) Time limit for the receipt of applications to participate and/or the receipt of tenders
 - (b) Address to which they must be sent
 - (c) Language(s) in which they must be written
5. Any deposits or guarantees required
6. Economic and technical conditions to be met by the contractor
7. Criteria which will be applied in the award of the contract
8. Date of dispatch of the notice

LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

- 1.1. Title of the proposal/initiative
- 1.2. Policy area(s) concerned in the ABM/ABB structure
- 1.3. Nature of the proposal/initiative
- 1.4. Objective(s)
- 1.5. Grounds for the proposal/initiative
- 1.6. Duration and financial impact
- 1.7. Management method(s) envisaged

2. MANAGEMENT MEASURES

- 2.1. Monitoring and reporting rules
- 2.2. Management and control system
- 2.3. Measures to prevent fraud and irregularities

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

- 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected
- 3.2. Estimated impact on expenditure
 - 3.2.1. *Summary of estimated impact on expenditure*
 - 3.2.2. *Estimated impact on operational appropriations*
 - 3.2.3. *Estimated impact on appropriations of an administrative nature*
 - 3.2.4. *Compatibility with the current multiannual financial framework*
 - 3.2.5. *Third-party participation in financing*
- 3.3. Estimated impact on revenue

LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

1.2. Policy area(s) concerned in the ABM/ABB structure⁷

1.3. Nature of the proposal/initiative

- The proposal/initiative relates to **a new action**
- The proposal/initiative relates to **a new action following a pilot project/preparatory action**⁸
- The proposal/initiative relates to **the extension of an existing action**
- The proposal/initiative relates to **an action redirected towards a new action**

1.4. Objectives

1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

1.4.2. *Specific objective(s) and ABM/ABB activity(ies) concerned*

Specific objective No..

ABM/ABB activity(ies) concerned

⁷ ABM: Activity-Based Management – ABB: Activity-Based Budgeting.

⁸ As referred to in Article 49(6)(a) or (b) of the Financial Regulation.

1.4.3. *Expected result(s) and impact*

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

1.4.4. *Indicators of results and impact*

Specify the indicators for monitoring implementation of the proposal/initiative.

1.5. Grounds for the proposal/initiative

1.5.1. *Requirement(s) to be met in the short or long term*

1.5.2. *Added value of EU involvement*

1.5.3. *Lessons learned from similar experiences in the past*

1.5.4. *Coherence and possible synergy with other relevant instruments*

1.6. Duration and financial impact

Proposal/initiative of **limited duration**

- Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
- Financial impact from YYYY to YYYY

Proposal/initiative of **unlimited duration**

- Implementation with a start-up period from YYYY to YYYY,
- followed by full-scale operation.

1.7. Management mode(s) envisaged⁹

Centralised direct management by the Commission

Centralised indirect management with the delegation of implementation tasks to:

- executive agencies
- bodies set up by the Communities¹⁰
- national public-sector bodies/bodies with public-service mission
- persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union and identified in the relevant basic act within the meaning of Article 49 of the Financial Regulation

Shared management with the Member States

Decentralised management with third countries

Joint management with international organisations (*to be specified*)

If more than one management mode is indicated, please provide details in the "Comments" section.

Comments

⁹ Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

¹⁰ As referred to in Article 185 of the Financial Regulation.

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

2.2. Management and control system

2.2.1. Risk(s) identified

2.2.2. Control method(s) envisaged

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing expenditure budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Description.....]	DA/NDA ⁽¹⁾	from EFTA ¹² countries	from candidate countries ¹³	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
	[XX.YY.YY.YY]	DA/DN A	YES/N O	YES/N O	YES/N O	YES/NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading.....]	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
	[XX.YY.YY.YY]		YES/N O	YES/N O	YES/N O	YES/NO

¹¹ DA= Differentiated appropriations / DNA= Non-Differentiated Appropriations

¹² EFTA: European Free Trade Association.

¹³ Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to 3 decimal places)

Heading of multiannual financial framework:	Number	[Heading]
--	--------	--------------------

DG: <.....>			Year N ¹⁴	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
• Operational appropriations										
Number of budget line	Commitments	(1)								
	Payments	(2)								
Number of budget line	Commitments	(1a)								
	Payments	(2a)								
Appropriations of an administrative nature financed from the envelop of specific programs ¹⁵										
Number of budget line		(3)								
TOTAL appropriations for DG <.....>	Commitments	=1+1a +3								
	Payments	=2+2a +3								

¹⁴ Year N is the year in which implementation of the proposal/initiative starts.

¹⁵ Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelop of specific programs		(6)								
TOTAL appropriations under HEADING <....> of the multiannual financial framework	Commitments	=4+ 6								
	Payments	=5+ 6								

If more than one heading is affected by the proposal / initiative:

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelop of specific programs		(6)								
TOTAL appropriations under HEADINGS 1 to 4 of the multiannual financial framework (Reference amount)	Commitments	=4+ 6								
	Payments	=5+ 6								

Heading of multiannual financial framework:	5	" Administrative expenditure "
--	----------	--------------------------------

EUR million (to 3 decimal places)

		Year N	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
DG: <.....>									
• Human resources									
• Other administrative expenditure									
TOTAL DG <.....>		Appropriations							

TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)								
--	--------------------------------------	--	--	--	--	--	--	--	--

EUR million (to 3 decimal places)

		Year N ¹⁶	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework		Commitments							
		Payments							

¹⁶ Year N is the year in which implementation of the proposal/initiative starts.

3.2.2. *Estimated impact on operational appropriations*

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to 3 decimal places)

Indicate objectives and outputs ↓			Year N	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)										TOTAL			
	OUTPUTS																			
	Type of output ¹⁷	Average cost of the output	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Total number of outputs	Total cost
SPECIFIC OBJECTIVE No 1 ¹⁸ ...																				
- Output																				
- Output																				
- Output																				
Sub-total for specific objective N°1																				
SPECIFIC OBJECTIVE No 2...																				
- Output																				
Sub-total for specific objective N°2																				
TOTAL COST																				

¹⁷ Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).
¹⁸ As described in Section 1.4.2. "Specific objective(s)..."

3.2.3. Estimated impact on appropriations of an administrative nature

3.2.3.1. Summary

- The proposal/initiative does not require the use of administrative appropriations
- The proposal/initiative requires the use of administrative appropriations, as explained below:

EUR million (to 3 decimal places)

	Year N ¹⁹	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)	TOTAL
--	-------------------------	-------------	-------------	-------------	---	--------------

HEADING 5 of the multiannual financial framework								
Human resources								
Other administrative expenditure								
Subtotal HEADING 5 of the multiannual financial framework								

Outside HEADING 5²⁰ of the multiannual financial framework								
Human resources								
Other expenditure of an administrative nature								
Subtotal outside HEADING 5 of the multiannual financial framework								

TOTAL								
--------------	--	--	--	--	--	--	--	--

¹⁹ Year N is the year in which implementation of the proposal/initiative starts.

²⁰ Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

3.2.3.2. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources
- The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full amounts (or at most to one decimal place)

	Year N	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)		
• Establishment plan posts (officials and temporary agents)							
XX 01 01 01 (Headquarters and Commission's Representation Offices)							
XX 01 01 02 (Delegations)							
XX 01 05 01 (Indirect research)							
10 01 05 01 (Direct research)							
• External personnel (in Full Time Equivalent unit: FTE)²¹							
XX 01 02 01 (CA, INT, SNE from the "global envelope")							
XX 01 02 02 (CA, INT, JED, LA and SNE in the delegations)							
XX 01 04 yy²²	- at Headquarters ²³						
	- in delegations						
XX 01 05 02 (CA, INT, SNE - Indirect research)							
10 01 05 02 (CA, INT, SNE - Direct research)							
Other budget lines (specify)							
TOTAL							

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

²¹ CA= Contract Agent; INT= agency staff ("*Intérimaire*"); JED= "*Jeune Expert en Délégation*" (Young Experts in Delegations); LA= Local Agent; SNE= Secoded National Expert;
²² Under the ceiling for external personnel from operational appropriations (former "BA" lines).
²³ Essentially for Structural Funds, European Agricultural Fund for Rural Development (EAFRD) and European Fisheries Fund (EFF).

Description of tasks to be carried out:

Officials and temporary agents	
External personnel	

3.2.4. *Compatibility with the current multiannual financial framework*

- Proposal/initiative is compatible the current multiannual financial framework.
- Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

- Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework²⁴.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties
- The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to 3 decimal places)

	Year N	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
<i>Specify the co-financing body</i>								
TOTAL appropriations cofinanced								

²⁴ See points 19 and 24 of the Interinstitutional Agreement.

3.3. Estimated impact on revenue

- Proposal/initiative has no financial impact on revenue.
- Proposal/initiative has the following financial impact:
 - on own resources
 - on miscellaneous revenue

EUR million (to 3 decimal places)

Budget revenue line:	Appropriations available for the ongoing budget exercise	Impact of the proposal/initiative ²⁵							
		Year N	Year N+1	Year N+2	Year N+3	... insert as many columns as necessary in order to reflect the duration of the impact (see point 1.6)			
Article									

For miscellaneous assigned revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

²⁵ As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25% for collection costs.