

ANNEX II

ACTIVITIES EXERCISED BY CONTRACTING ENTITIES AS REFERRED TO IN ARTICLE 7

The provisions of this Directive governing concessions awarded by contracting entities shall apply to the following activities:

1. As far as gas and heat are concerned:
 - (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat;
 - (b) the supply of gas or heat to such fixed networks.

[^{XI}The supply by a contracting entity referred to in points (b) and (c) of Article 7(1) of gas or heat to fixed networks which provide a service to the public shall not be considered to be a relevant activity within the meaning of the first subparagraph of this paragraph where all of the following conditions are met:]

- (i) the production of gas or heat by that contracting entity is the unavoidable consequence of carrying out an activity other than those referred to in this paragraph or in paragraphs 2 and 3 of this Annex;
- (ii) the supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of that contracting entity's turnover on the basis of the average for the preceding three years, including the current year.

For the purposes of this Directive, 'supply' includes the generation/production, wholesale and retail sale of gas. However, production of gas in the form of extraction falls within the scope of paragraph 4 of this Annex.

2. As far as electricity is concerned:
 - (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity;
 - (b) the supply of electricity to such fixed networks.

For the purposes of this Directive, supply of electricity includes generation/production, wholesale and retail sale of electricity.

[^{XI}The supply by a contracting entity referred to in points (b) and (c) of Article 7(1) of electricity to networks which provide a service to the public shall not be considered to be a relevant activity within the meaning of the first subparagraph of this paragraph where all of the following conditions are met:]

- (a) the production of electricity by that contracting entity takes place because its consumption is necessary for carrying out an activity other than those referred to in this paragraph or in paragraphs 1 and 3 of this Annex;
- (b) supply to the public network depends only on that contracting entity's own consumption and has not exceeded 30 % of that contracting entity's total production of energy, on the basis of the average for the preceding three years, including the current year.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

3. Activities relating to the provision or operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of a Member State, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.

4. Activities relating to the exploitation of a geographical area for the purpose of the provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.

5. Activities relating to the provision of:

- (a) postal services;
- (b) other services than postal services, on condition that such services are provided by an entity which also provides postal services within the meaning of point (ii) of the second subparagraph of this paragraph and provided that the conditions set out in Article 34(1) of Directive 2014/25/EU are not satisfied in respect of the services falling within point (ii) of the second subparagraph.

For the purpose of this Directive and without prejudice to Directive 97/67/EC:

- (i) ‘postal item’ means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight;
- (ii) ‘postal services’: means services consisting of the clearance, sorting, routing and delivery of postal items. This shall include both services falling within as well as services falling outside the scope of the universal service set up in conformity with Directive 97/67/EC;
- (iii) ‘other services than postal services’: means services provided in the following areas:
 - mail service management services (services both preceding and subsequent to despatch, including ‘mailroom management services’),
 - services concerning postal items not included in point (a), such as direct mail bearing no address.

6. Activities relating to the exploitation of a geographical area for the purpose of:

- (a) extracting oil or gas;
- (b) exploring for, or extracting, coal or other solid fuels.

Editorial Information

X1 Substituted by [Corrigendum to Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts \(Official Journal of the European Union L 94 of 28 March 2014\)](#).