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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a Directive of the European Parliament and of the Council on the award of concession contracts **(first reading)** - Adoption of the legislative act **(LA + S)** = Statements

Statement by the Commission on Article 18(2) of the Directive on public procurement, on Article 36(2) of the Directive on procurement by entities operating in the water, energy, transport and postal services sectors and on Article 30 (3) of the Directive on the award of concession contracts

Article 18(2) of the Directive on public procurement, Article 36(2) of the Directive on procurement by entities operating in the water, energy, transport and postal services sectors and Article 30(3) of the Directive on the award of concession contacts are enshrined in the existing applicable Union legislation. They have to be applied in compliance with Union law and in the light of its basic principles, notably, the principles of equal treatment and non-discrimination of economic operators, including economic operators from other Member States.

The Commission will closely monitor the application of these provisions by Member States and contracting authorities/entities.

Statement by the Commission on Article 16 of the Concessions Directive

1. Pursuant to Article 16 and recital 19a of this Directive, for concessions lasting more than 5 years, the maximum duration of the concession shall not exceed the time that a concessionaire could reasonably be expected to take to recoup the investments made for operating the works or services together with a return on invested capital taking into account the investments required to achieve the specific contractual objectives.

2. To ensure the uniform enforcement of this Directive, the Commission considers that national execution measures of Article 16, as interpreted by Recital 19a, shall provide that the duration of the concession shall be estimated including initial and further investments deemed necessary for the operating of the concession, in particular expenditure on infrastructure, copyrights, patents, equipment, logistics, hiring, training of personnel and initial expenses.

Statement by Austria

This package of directives revises and updates the entire legal framework in respect of public procurement. Given the central role played by public procurement in the European Union's overall economic performance, great importance attaches to the legal and linguistic quality and comprehensibility of the new legal framework.

However, Austria would point out that the deadlines for producing the different language versions of the three procurement directives were so tight that it was impossible to ensure a thoroughly accurate and high-quality translation, at least where the German-language version was concerned. Austria regrets the fact that there was such unreasonable time pressure, particularly since no compelling reasons for such great urgency were apparent, and since the ambiguities which thus arose when producing the different language versions could jeopardise the objective of simplifying the legal framework for contractors and economic operators.