

Procurement water, energy, transport and postal sectors: coordination of procedures for award, utilities directive

2000/0117(COD) - 31/03/2004 - Final act

PURPOSE : to coordinate the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors. **LEGISLATIVE ACT** : Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors. **CONTENT** : this Directive recasts Council Directive 93/38/EEC, and is based on the Court of Justice case-law, in particular case-law on award criteria, which clarifies the possibilities for the contracting entities to meet the needs of the public concerned, including in the environmental and/or social area. The main reasons for introducing rules coordinating procedures for the award of contracts in these sectors are as follows: - the variety of ways in which national authorities can influence the behaviour of contracting entities, including participation in their capital and representation in the entities' administrative, managerial or supervisory bodies; - the closed nature of the markets in which the contracting entities operate, due to the existence of special or exclusive rights granted by the Member States concerning the supply to, provision or operation of networks for providing the service concerned. It should be noted that whilst Directive 93/38/EEC excluded from its scope purchases of voice telephony, telex, mobile telephone, paging and satellite services, this Directive includes the procurement of such telecommunications services within its scope. The main points of this legislation are as follows: - in order to guarantee the opening up to competition of public procurement contracts awarded by entities operating in the water, energy, transport and postal services sectors, this Directive contains provisions for Community coordination of contracts above a certain value. Such coordination is based on the principle of equal treatment, of which the principle of non-discrimination is no more than a specific expression, the principle of mutual recognition, the principle of proportionality, as well as the principle of transparency; - the Directive ensures that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. Member States must ensure that the participation of a body governed by public law as a tenderer in a procedure for the award of a contract does not cause any distortion of competition in relation to private tenderers; - this Directive clarifies how the contracting entities may contribute to the protection of the environment, whilst ensuring the possibility of obtaining the best value for money for their contracts; - in view of the diversity of works contracts, contracting entities may make provision for contracts for the design and execution of work to be awarded either separately or jointly. The decision to award contracts separately or jointly will be determined by qualitative and economic criteria, which may be defined by national law; - works contracts and service contracts are both defined by the Directive. A contract may be considered to be a works contract only if its subject-matter specifically covers the execution of activities listed in Annex XII, even if the contract covers the provision of other services necessary for the execution of such activities. The method for calculating the estimated value of a works contract is prescribed. As regards service contracts, full application of the Directive is limited, for a transitional period, to contracts where its provisions will permit the full potential for increased cross-frontier trade to be realised. Contracts for other services will be monitored during this transitional period before a decision is taken on the full application of this Directive; - in order to take account of the different circumstances obtaining in Member States, Member States may choose whether contracting entities use central purchasing bodies, dynamic purchasing systems or electronic auctions, as defined and regulated by the Directive; - the Directive introduces a common procurement vocabulary. **DATE OF TRANSPOSITION** : 31 January 2006 **ENTRY INTO FORCE** : 30 April 2004.