Public procurement: services, supply and public work contracts (amend. Directives 92/50/EEC, 93/36/EEC, 93/37/EEC)

1995/0079(COD) - 20/12/1996 - Council position

The common Council position incorporates a number of Parliament's amendments included in the amended Commission proposal, including those aimed at: - introducing differentiated thresholds for service contracts depending on whether or not the services in question are covered by the Agreement on Government Procurement (GPA), which came into force on 1 January 1996; - including the central government bodies in Austria, Finland and Sweden in Annex I (list of contracting authorities subject to the GPA). In addition, the Council introduced new provisions in the common position: - stipulating that the GPA has no direct effect in the Community; - stressing that contracting authorities which comply with the basic directives (92/50/EEC, 93/36/EEC and 93/37/EEC), as amended by the present directive, are in compliance with the GPA; - recalling explicitly the general principles of Community law relating to equal treatment and non-discrimination. The other changes made by the Council concern the following: - the scope of the directive: the changes made to Directive 92/50/EEC place emphasis on the service contract which do not fall within the scope of the GPA; the common position establishes, with regard to the 'Services' and 'Works' directives, different thresholds for contracts covered by the GPA (expressed in SDRs) and for those not covered by it (expressed in ECU); - information to be supplied to rejected applicants and tenderers: information relating to the relevant characteristics and advantages of the successful tender is an essential element in increasing the transparency of public contracts. The Council has therefore brought the text of the directives into line with the GPA; - the deadline for receiving tenders: the deadlines for receipt of tenders have been slightly amended so that they are calculated from the date of dispatch of the notice and not from that of publication; - statistical obligations: a substantive change has been made to paragraph 2(b) of Directive 92/50/EEC to the effect that the statistical statements required under this paragraph do not apply to R&D services in category 8, certain telecommunications services in category 5 or to services covered by the GPA; - entry into force: the date of entry into force is twelve months after the adoption of the directive. With regard to the sending of tenders, the common position allows the Member States to authorize sending of tenders by means more in keeping with technological progress in document transmission. However, guarantees relating to content, confidentiality, proof and the opening of tenders are required. A joint Council and Commission declaration accompanies this provision: it stresses that tenders must remain secret until the date set for opening them. Finally, it should be noted that the common position did not incorporate two amendments proposed by Parliament and accepted by the Commission in its amended proposal, namely: - a new recital relating to the importance of prompt payment by public bodies in transactions to which they are parties, and to setting the date of payment in public service contracts. However, the Council and Commission adopted a declaration referring to the Commission recommendation of 12 May 1995 on payment deadlines in commercial transactions, which calls on the Member States to take the legal and practical steps necessary to ensure that contractual payment deadlines are met and that better payment deadlines are introduced in the field of public procurement; - an amendment to the provision regarding statistical obligations in Directive 93/37/EEC concerning public works contracts: the Council has brought this provision into line with the corresponding provisions in the two other directives (Directives 92/50/EEC and 93/36/EEC) in order to keep the same wording in all three directives.