Procurement procedures water, energy, transport and telecommunications sectors (amend. Directive 93/38/EEC)

1995/0080(COD) - 20/12/1996 - Council position

The Council common position endeavoured to limit its amendments to Directive 93/38/EEC to what was strictly necessary in order to comply with the Agreement on Government Procurement (GPA), while taking care to ensure that this amendment did not endanger equal treatment for contracting bodies from the public and private sectors. The Council introduced new provisions in the common position which: - stipulate that the GPA has no direct effect in the Community; - stress that contracting authorities which comply with the basic directive (Directive 93/38/EEC), as amended by the present directive, are in compliance with the GPA; - add information about what does not fall within the scope of the GPA but is included in the field of application of Directive 93/38/EEC; - recall the fact implicit in the principles of Community law on public procurement, of Article IV(4) of the GPA, whereby contracting bodies cannot accept technical assistance when this would have the effect of preventing competition; - delete the reference to Spain, since it has abandoned the idea of an extended deadline for the implementation of the directive on its territory. The other changes made by the Council concern the following points, inter alia: - the scope of the directive: differentiated thresholds have been established for contracts covered by the GPA (expressed in SDRs) and for those not covered by the GPA (expressed in ECU); - the information to be supplied when periodic indicative notices are used as a means of competitive bidding: the provisions of the common position are in line with Article IX, paragraphs 4 and 6 of the GPA, which gives a list of the detailed information relating to the contract in question to be supplied in the periodic opinions; - the confidentiality of certain information on the awarding of contracts: the subject of prices is added to the information whose sensitive commercial nature the Commission must respect; - the deadlines for receipt of tenders: the deadlines for receipt of tenders have been made more flexible in cases where a periodic indicative notice has been published in advance; in addition, the deadlines have been changed slightly so that they are calculated from the date of the notice being sent, and not from the date of its publication; - information to be sent to unsuccessful applicants and tenderers: the obligation to provide information for unsuccessful candidates is limited to contracting bodies operating in the sectors covered by the GPA; - statistical obligations: the common position does not give details of all the information which must be included in annual statistics, but leaves it to the Commission, in consultation with the Advisory Committee for Public Contracts, to decide on the content of the statistics. Service contracts not covered by the GPA are exempted from the statistical obligations and are comprehensively listed; - entry into force: the date of entry into force is twelve months after adoption of the directive. Regarding transmission of tenders, the common position allows Member States to decide whether written confirmation of requests made electronically is necessary. It also allows the Member States to authorize submission of tenders by more appropriate means, bearing in mind 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.