

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

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The Conciliation Committee reached agreement on a joint text for the directive. The main elements of the compromise can be summarised as follows: - the directive is based on the principle of awarding the contracts to the most economically advantageous tender. However, the contracting authorities may apply environmental and social criteria in a transparent manner in line with the case-law of the Court of Justice. The criteria have to be linked to the subject-matter of the contract in question; - Member States shall ensure the implementation of the directive by effective and transparent mechanisms. For this purpose they may appoint or establish an independent body; - the text stipulates that the award of contracts on behalf of the state, regional or local authorities and other bodies governed by public law is subject to observance of the principles laid down in the Treaty, both below and above the thresholds specified in the directive; - electronic auctions may not be used for some service or works contracts covering the provision of intellectual services, such as the design of works; - the directive promotes the use of electronic signature, in particular advanced electronic signature, in order to ensure confidentiality in case of electronic tendering. The text states that Member States may, in accordance with legislation in force, stipulate that tenders may be submitted by electronic means only if an advanced electronic signature is used; - the contracting authorities are urged to take into account the accessibility criteria for people with disabilities or design for all users in the technical specifications. Member States may reserve the right to participate in public contract award procedures to sheltered workshops or provide for such contracts to be executed in the context of sheltered employment programmes; - to combat "social dumping" in third countries, Member States are required to inform the Commission of any difficulties, in law or in fact, encountered and reported by their undertakings in securing the award of service contracts in third countries and of any difficulties which are due to the non-observance of international labour law provisions; - contracting entities which establish and operate a system of qualification must inform applicants of their decision as to qualification within a period of no more than six months.