Basic information

1995/0080(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Procurement procedures water, energy, transport and telecommunications sectors (amend. Directive 93/38/EEC) **Subject** 2.10.02 Public procurement	

Key players

European Parliament

Former committee responsible	Former rapporteur	Appointed
ECON Economic and Monetary Affairs, Industrial Policy	LANGEN Werner (PPE)	15/06/1995
ECON Economic and Monetary Affairs, Industrial Policy	LANGEN Werner (PPE)	15/06/1995

Former committee for opinion	Former rapporteur for opinion	Appointed
ENER Research, Technological Development and Energy	The committee decided not to give an opinion.	
RELA External Economic Relations	PORTO Manuel (ELDR)	20/07/1995
JURI Legal Affairs, Citizens' Rights		
TRAN Transport and Tourism		

Council of the European Union

Council configuration	Meetings	Date
Competitiveness (Internal Market, Industry, Research and Space)	1970	1996-11-26
Competitiveness (Internal Market, Industry, Research and Space)	1886	1995-11-23
Agriculture and Fisheries	2061	1997-12-15
Agriculture and Fisheries	2025	1997-07-22
Fisheries	1983	1996-12-20

Key events

Date	Event	Reference	Summary
29/03/1995	Legislative proposal published	COM(1995)0107	Summary
16/05/1995	Committee referral announced in Parliament, 1st reading		
23/11/1995	Debate in Council		Summary
24/01/1996	Vote in committee, 1st reading		Summary
24/01/1996	Committee report tabled for plenary, 1st reading	A4-0022/1996	
15/07/1996	Debate in Parliament		Summary
20/11/1996	Modified legislative proposal published	COM(1996)0598	Summary
20/12/1996	Council position published	11543/2/1996	Summary
18/02/1997	Committee referral announced in Parliament, 2nd reading		
22/04/1997	Vote in committee, 2nd reading		Summary
22/04/1997	Committee recommendation tabled for plenary, 2nd reading	A4-0159/1997	
13/05/1997	Debate in Parliament		Summary
22/07/1997	Parliament's amendments rejected by Council		Summary
06/11/1997	Formal meeting of Conciliation Committee		Summary
06/11/1997	Final decision by Conciliation Committee		
26/11/1997	Joint text approved by Conciliation Committee co-chairs	3628/1997	
04/12/1997	Report tabled for plenary, 3rd reading	A4-0398/1997	
15/12/1997	Debate in Parliament		
15/12/1997	Decision by Council, 3rd reading		
16/02/1998	Final act signed		
16/02/1998	End of procedure in Parliament		
01/04/1998	Final act published in Official Journal		

Technical information

Procedure reference	1995/0080(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	EC Treaty (before Amsterdam) E 066 EC Treaty (before Amsterdam) E 057-p2 EC Treaty (before Amsterdam) E 100A
Stage reached in procedure	Procedure completed
Committee dossier	CODE/4/09214

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A4-0022/1996 OJ C 065 04.03.1996, p. 0003	24/01/1996	
Text adopted by Parliament, partial vote at 1st reading /single reading		T4-0393/1996 OJ C 261 09.09.1996, p. 0018-0033	16/07/1996	Summary
Text adopted by Parliament, 1st reading/single reading		T4-0505/1996 OJ C 347 18.11.1996, p. 0019-0025	22/10/1996	Summary
Committee recommendation tabled for plenary, 2nd reading		A4-0159/1997 OJ C 167 02.06.1997, p. 0003	22/04/1997	
Text adopted by Parliament, 2nd reading		T4-0227/1997 OJ C 167 02.06.2097, p. 0044-0053	14/05/1997	Summary
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading		A4-0398/1997 OJ C 014 19.01.1998, p. 0006	04/12/1997	
Text adopted by Parliament, 3rd reading		T4-0603/1997 OJ C 014 19.01.1998, p. 0018-0027	16/12/1997	Summary

Council of the EU

Document type	Reference	Date	Summary
Council position	11543/2/1996 OJ C 111 09.04.1997, p. 0065	20/12/1996	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(1995)0107	29/03/1995	Summary
Modified legislative proposal	COM(1996)0598 OJ C 028 29.01.1997, p. 0004	20/11/1996	Summary
Commission communication on Council's position	SEC(1997)0040	17/01/1997	Summary
Commission opinion on Parliament's position at 2nd reading	COM(1997)0290	30/06/1997	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0796/1995 OJ C 256 02.10.1995, p. 0004	05/07/1995	Summary
CSL/EP	Joint text approved by Conciliation Committee co-chairs	3628/1997	26/11/1997	

Additional information		
Source	**Document**	**Date**
European Commission	EUR-Lex	

Final act	
Directive 1998/0004 OJ L 101 01.04.1998, p. 0001	Summary

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

1995/0080(COD) - 30/06/1997 - Commission opinion on Parliament's position at 2nd reading

The Commission accepts two amendments from the European Parliament relating to the recitals of the Directive and as a result amends its proposal. These amendments stipulate: - that the tendering authorities may seek or accept an opinion which can be used for the introduction of specifications relating to a given contract, on condition that this opinion does not lead to a restriction of competition; - that the Commission will make available to SMEs the training and information material likely to promote their access to public contracts. However, the Commission rejects those amendments relating to: - the obligation to inform candidates of decisions taken on the awarding of contracts; - the obligation to inform rejected candidates of the reasons for the rejection and the characteristics and advantages of the bid which has been accepted; - the obligation to submit a statistical statement.

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

1995/0080(COD) - 16/07/1996 - Text adopted by Parliament, partial vote at 1st reading/single reading

In adopting the report by Mr Werner LANGEN (PPE, D), Parliament rejected the proposal to amend Directive 93/38/EEC and, under Rule 59(3) of its Rules of Procedure, referred the report back to committee.

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

1995/0080(COD) - 22/10/1996 - Text adopted by Parliament, 1st reading/single reading

In adopting the report by Mr Werner LANGEN (PPE, D), Parliament confirmed the rejection of the proposal for a Directive. It called on the Commission to withdraw its proposal and to replace it with a new one aimed at the transposition of the Agreement on Government Procurement by means of a specific (supplementary) directive.

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

1995/0080(COD) - 29/03/1995 - Legislative proposal

OBJECTIVE: to amend the directive on the water, energy, transport and telecommunications sectors in order to bring them into line with the new GATT agreement extending the current framework of balanced rights and obligations with regard to public procurement. CONTENT: the proposal for a directive makes provision for the following amendments: - Scope: the distinction between telecommunications and the other sectors covered has been maintained. In addition, the thresholds which currently apply to the telecommunications sector (ECU 5,000,000 for works contracts and ECU 600,000 for supply and service contracts) have been left unchanged. As far as the other sectors are concerned, (water, energy, transport), it is proposed to replace: . for works contracts: the threshold of ECU 5,000,000 by the equivalent in ECU of SDR 5,000,000 (ECU 4,952,730 on 1 January 1994) and . for supply and service contracts: the threshold of ECU 400,000 by the equivalent in ECU of SDR 400,000 (ECU 396,218 on 1 January 1994). - Possible assistance in preparing technical specifications: a new provision prohibits the public authorities from asking for or accepting assistance in

drawing up specifications from a company with a commercial interest in the contract or where this might obstruct the competition. - Information for candidates rejected: if an enterprise so requests, the contracting authority must tell it why it was rejected and what advantages the tender selected presents, unless there is legitimate cause not to divulge this information. - A provision has been introduced in order to guarantee permanent access to the system of qualifications. - Negotiated procedures without prior competition for additional works or services may only be used up to 50% of the value of the initial contract; - Deadlines for the receipt of tenders in restricted or negotiated procedures: a deadline of at least 40 days from the date of the invitation to tender has been introduced. - The obligations of the Member States as regards the provision of statistics have been changed. Statistics must be provided on contracts which exceed the stated thresholds. It is proposed to limit the obligation for statistics to sectors covered by the GATT agreement and to exclude the RDT or "residual service" contracts listed in Anne XVI B to the directive. However, it is proposed that information should be provided on all categories of contracting entities operating in the sectors in question. - Finally, a new article guarantees that access for the Member States' enterprises, products and services to public procurement within the EU will be at least as favourable as the access for which provision is made in the GATT agreement for the enterprises, products and services of the third countries which have signed the agreement.

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

1995/0080(COD) - 14/05/1997 - Text adopted by Parliament, 2nd reading

The European Parliament adopted the recommendation for second reading by Mr Werner LANGEN (PPE, D). Since Parliament's concerns had been taken into account by the Commission in its amended proposal of 20 November 1996, Parliament approved the common position. It presented only five amendments aimed at specifically exempting private businesses from certain obligations with regard to providing information and statistics. It took the view that additional obligations for the private sector should be rejected since the GATT agreement on government procurement is only binding on public contracting bodies.

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.

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

1995/0080(COD) - 05/07/1995 - Economic and Social Committee: opinion, report

The ESC commented only on the proposed changes to the existing Directives, deliberately avoiding any analysis of the Directives themselves. It was aware that the Directives were shortly to be the subject of a four-year review and it would give its Opinion then in the light of lessons learned from the

application of the Directives and on the basis of prior consultation. The reviews should take into due consideration the social aspects involved in the application of these Directives. The ESC wanted to take this opportunity to stress the importance to the functioning of the single market of the urgent transposition into national law in all Member States of the Public Procurement Directives.

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

1995/0080(COD) - 16/02/1998 - Final act

OBJECTIVE: to amend the Directive on public contracts in the 'excluded' sectors, namely water, energy, transport and telecommunications, to render its provisions compatible with the Agreement on Government Procurement reached in the Uruguay Round. COMMUNITY MEASURE: European Parliament and Council Directive 98/4/EC amending Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors. SUBSTANCE: the proposed amendments bring the procedures laid down in Directive 93/38/EEC into line with those provided for by the above Agreement in order to prevent different rules from coexisting at Community and international level and to prevent any reverse discrimination against Community undertakings, i.e. more favourable treatment for third-country bidders. The thresholds currently applicable in telecommunications, namely ECU 5 m for works contracts and ECU 0.6 m for supply and service contracts, are unaltered. As regards the other sectors (water, energy and transport), the thresholds applicable are as follows: -SDR (special drawing rights) 5 m for works contracts; -SDR 0.4 m for supply and service contracts. The Directive lays down that contracting entities operating in the sectors covered by the Agreement (Annexes I, II, VII, VIII and IX) shall, as soon as possible after the reception of a written request, inform all rejected bidders of the reasons for the rejection of their bid, and inform all bidders who have submitted eligible bids of the characteristics and advantages of the bid accepted and the name of the successful bidder. However, this obligation must not damage the legitimate commercial interests of public or private undertakings or prejudice fair competition between suppliers, entrepreneurs or service providers. DEADLINE FOR TRANSPOSITION: 16/02/1999 (16/02/2000 for Greece and Portugal).

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

1995/0080(COD) - 26/11/1996

The Council reached unanimous political agreement on the amendment of Community directives on public contracts in the light of the Agreement on Government Procurement (GPA) resulting from the Uruguay Round.

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

1995/0080(COD) - 23/11/1995

The Council reached a preliminary position on certain key questions relating to the amendment of Community Directives on public contracts in the light of the Agreement on Government Procurement (GPA) resulting from the Uruguay Round. The Council’s common position will be adopted after examination of any amendments proposed by the European Parliament. The GPA will apply in the Community as from 1 January 1996 without the need for any transposing act. In order to avoid the coexistence of differing Community and international rules, adoption by the Council of the Directives in question is a matter of urgency.

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

1995/0080(COD) - 22/07/1997

The Council was unable to accept all the European Parliament's second reading amendments to its common position concerning the proposal for a Directive amending Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors. The Conciliation Committee will therefore be convened.

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

1995/0080(COD) - 20/11/1996 - Modified legislative proposal

Though the Commission did not accept the idea of a separate Directive transposing the Government Procurement Agreement (GPA) it nevertheless examined with Parliament the possibility of improving its proposal. The principal changes introduced in the modified proposals are as follows: - a clarification of the fields of application of the GPA and the Directives as well as a clear statement as to the legal regime applicable to third country

companies; - the changes to the thresholds have been limited to the contracts and sectors which are subject to the GPA; - the obligation to inform eliminated candidates or tenderers of the reasons for their rejection and eliminated tenderers of the characteristics and advantages of the tender selected has been limited to the sectors covered by the GPA; - the amendments to the model notices, and in particular the notice on the existence of a qualification system and the periodic information notice, have been limited to what is explicitly required by the GPA as is the case regarding the information to be provided by contracting entities when they invite candidates to confirm their interest following publication of a periodic indicative notice used as a means of calling for competition; - the introduction of an obligation on the Commission to respect the commercially sensitive nature of information communicated by contracting entities in notices on contracts awarded and concerning prices.

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

1995/0080(COD) - 17/01/1997 - Commission communication on Council's position

The Commission was able to approve the common position, since it did not substantially alter its amended proposal. In addition, the common position took account of the position of the European Parliament, especially with regard to the precise definition of the respective fields of application of the directive and the government procurement agreement (GPA).

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

1995/0080(COD) - 16/12/1997 - Text adopted by Parliament, 3rd reading

In adopting the report by Mr Werner LANGEN (EPP, D), Parliament approved the joint text of the Directive, approved by the Conciliation Committee, amending the 1993 Directive coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.