Basic information

2000/0117(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Procurement water, energy, transport and postal sectors: coordination of procedures for award, utilities directive Repealed by 2011/0439(COD) Amended by 2007/0280(COD) See also 2012/0060(COD) **Subject** 2.10.02 Public procurement	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
DELE EP Delegation to Conciliation Committee	ZAPPALA' Stefano (PPE-DE)	11/07/2003

Former committee responsible	Former rapporteur	Appointed
JURI Legal Affairs and Internal Market	ZAPPALA' Stefano (PPE-DE)	25/05/2000
JURI Legal Affairs and Internal Market	ZAPPALA' Stefano (PPE-DE)	25/05/2000

Former committee for opinion	Former rapporteur for opinion	Appointed
ECON Economic and Monetary Affairs	JONCKHEER Pierre (V/ALE)	12/06/2001
ITRE Industry, External Trade, Research, Energy	KUHNE Helmut (PSE)	13/09/2000
EMPL Employment and Social Affairs	HUGHES Stephen (PSE)	05/10/2000
ENVI Environment, Public Health, Consumer Policy	SCHÖRLING Inger (V/ALE)	24/01/2001

Council of the European

Council configuration	Meetings	Date

Union	Competitiveness (Internal Market, Industry, Research and Space)	2426	2002-05-21
	Competitiveness (Internal Market, Industry, Research and Space)	2389	2001-11-26
	Competitiveness (Internal Market, Industry, Research and Space)	2351	2001-05-30
	Competitiveness (Internal Market, Industry, Research and Space)	2451	2002-09-30
	Competitiveness (Internal Market, Industry, Research and Space)	2371	2001-09-27
	Competitiveness (Internal Market, Industry, Research and Space)	2412	2002-03-01
	Agriculture and Fisheries	2528	2003-09-29

European Commission	Commission DG	Commissioner
	Financial Stability, Financial Services and Capital Markets Union	

Key events

Date	Event	Reference	Summary
10/05/2000	Legislative proposal published	COM(2000)0276	Summary
04/09/2000	Committee referral announced in Parliament, 1st reading		
30/11/2000	Debate in Council		
30/05/2001	Debate in Council		Summary
27/09/2001	Debate in Council		
16/10/2001	Vote in committee, 1st reading		Summary
16/10/2001	Committee report tabled for plenary, 1st reading	A5-0379/2001	
26/11/2001	Debate in Council		
17/01/2002	Decision by Parliament, 1st reading	T5-0011/2002	Summary
01/03/2002	Debate in Council		
06/05/2002	Modified legislative proposal published	COM(2002)0235	Summary
21/05/2002	Debate in Council		
20/03/2003	Council position published	12634/3/2002	Summary
27/03/2003	Committee referral announced in Parliament, 2nd reading		
17/06/2003	Vote in committee, 2nd reading		Summary
17/06/2003	Committee recommendation tabled for plenary, 2nd reading	A5-0245/2003	
30/06/2003	Debate in Parliament		
02/07/2003	Decision by Parliament, 2nd reading	T5-0313/2003	Summary
29/09/2003	Parliament's amendments rejected by Council		
14/10/2003	Formal meeting of Conciliation Committee		
02/12/2003	Report tabled for plenary, 3rd reading	A5-0008/2004	
09/12/2003	Joint text approved by Conciliation Committee co-chairs	3695/2003	

28/01/2004	Debate in Parliament		
29/01/2004	Decision by Parliament, 3rd reading	T5-0046/2004	Summary
02/02/2004	Decision by Council, 3rd reading		
31/03/2004	Final act signed		
31/03/2004	End of procedure in Parliament		
30/04/2004	Final act published in Official Journal		
02/12/2004	Final decision by Conciliation Committee		Summary

Technical information

Procedure reference	2000/0117(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Repealed by 2011/0439(COD) Amended by 2007/0280(COD) See also 2012/0060(COD)
Legal basis	EC Treaty (after Amsterdam) EC 055 EC Treaty (after Amsterdam) EC 047-p2 EC Treaty (after Amsterdam) EC 095
Stage reached in procedure	Procedure completed
Committee dossier	CODE/5/19805

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0379/2001	16/10/2001	
Text adopted by Parliament, 1st reading/single reading		T5-0011/2002 OJ C 271 07.11.2002, p. 0064-0293 E	17/01/2002	Summary
Committee recommendation tabled for plenary, 2nd reading		A5-0245/2003	17/06/2003	
Text adopted by Parliament, 2nd reading		T5-0313/2003 OJ C 074 24.03.2004, p. 0099-0445 E	02/07/2003	Summary
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading		A5-0008/2004	02/12/2003	
Text adopted by Parliament, 3rd reading		T5-0046/2004 OJ C 096 21.04.2004, p. 0020-0105 E	29/01/2004	Summary

Council of the EU

Document type	Reference	Date	Summary
Council statement on its position	05807/2003	05/03/2003	
Council position	12634/3/2002 OJ C 147 24.06.2003, p. 0137-0258 E	20/03/2003	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2000)0276 OJ C 029 30.01.2001, p. 0112 E	10/05/2000	Summary
Document attached to the procedure	COM(2001)0274	04/07/2001	Summary
Modified legislative proposal	COM(2002)0235 OJ C 203 27.08.2002, p. 0183 E	06/05/2002	Summary
Commission communication on Council's position	SEC(2003)0365	25/03/2003	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2003)0501	14/08/2003	Summary
Follow-up document	COM(2004)0841	29/12/2004	Summary
Follow-up document	SEC(2004)1639	29/12/2004	
Follow-up document	SEC(2011)0853	27/06/2011	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CofR	Committee of the Regions: opinion	CDR0312/2000 OJ C 144 16.05.2001, p. 0023	13/12/2000	
EESC	Economic and Social Committee: opinion, report	CES0514/2001 OJ C 193 10.07.2001, p. 0001	26/04/2001	
CSL/EP	Joint text approved by Conciliation Committee co-chairs	3695/2003	09/12/2003	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Directive 2004/0017
OJ L 134 30.04.2004, p. 0001-0113 Summary

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

2000/0117(COD) - 17/01/2002 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted the report by Mr Stefano ZAPPALA (EPP-ED, I) by 392 to 64 with 16 abstentions. (Please refer to the decision of the committee responsible 16/10/01).

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

2000/0117(COD) - 30/05/2001

The Council took note of a progress report on this dossier. It welcomed the progress which had been achieved so far and confirmed its intention to continue to give high priority to this file with a view to reaching an agreement within the timeframe set by the European Council. During its discussions so far, the Council has focused more on the proposal on the co-ordination of procedures for the award of public supply contracts, public service contracts and public works contracts (see COD/2000/0115) but the results of those discussions have helped to achieve progress with the proposal for a Utilities Directive. The discussions during the Swedish Presidency have touched upon most questions, but particular attention has been paid to the rules on electronic procurement and the so-called competitive dialogue that would be used in connection with particularly complex contracts.

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

2000/0117(COD) - 25/03/2003 - Commission communication on Council's position

The Commission considers that the text of the common position takes over the key elements contained in its initial proposal and in the amendment of the European Parliament, as taken over in the amended proposal. Where the Commission has not accepted the common position adopted unanimously by the Council, it is because of the situation of the financial services. On the other aspects, the common position meets the objectives of clarification, simplification and modernisation set out in the initial proposal of the Commission. The following statement by the Commission on financial issues has been included in the Council minutes : the Commission considers that the public procurement Directives are subject to Community obligations arising from the Government Procurement Agreement, and will therefore interpret these Directives in a manner compatible with this Agreement. Therefore the Commission considers that the new provisions concerning the financial services cannot be interpreted as excluding, among other things, public contracts concerning loans by contracting entities, in particular local authorities, with the exception of loans for "the issue, sale, purchase or transfer of securities or other financial instruments". In addition, the Commission would reiterate that, in any event, where the Directives are not applicable, for example, below the thresholds, the rules and principles of the Treaty must be observed. In accordance with the case law of the Court, this implies in particular the obligation of transparency consisting in ensuring sufficient publicity to allow contracts to be opened up to competition.

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

2000/0117(COD) - 02/07/2003 - Text adopted by Parliament, 2nd reading

The European Parliament adopted some of the amendments in the report by Stefano ZAPPALA (EPP-ED, Italy) but rejected the majority. Those amendments adopted include the following: - the coordination of procedures for the award of contracts should be based on the aim of "guaranteeing a high standard of reliable services of general interest at affordable prices"; - accessibility criteria for people with disabilities must be taken into account by the contracting authority; - the electronic auction procedure is not suited to the award of works contracts or contracts for intellectual-creative and other, more complex services; - the confidential nature of information furnished by economic operators must be respected; - there is clarification on the definition of "special or exclusive rights"; - the distinction between "other postal services" and "ancillary postal services" should be abolished; - a tender may be submitted by electronic means only if an advanced electronic signature within them meaning of Directive 1999/93/EC and a reliable means of encrypting the contents are used; - contracting entities operating a system for qualification must inform applicants within two months instead of a "reasonable period"; - among the list of matters, which the Commission should try to remedy with third countries, is added the non-compliance with third countries of international labour law provisions listed in an annex to the Directive.

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

2000/0117(COD) - 04/07/2001 - Document attached to the procedure

PURPOSE : to analyse and to set out the possibilities of the existing Community legal framework with regard to the integration of environmental considerations in public procurement, offering thus to public purchasers the possibility to contribute to sustainable development. CONTENT : achieving sustainable development in practice requires that economic growth supports social progress and respects the environment, that social policy underpins economic performance, and that environmental policy is cost-effective. As stated in the Commission Communication of May 2001 on "A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Develoment" to be presented to the meeting of the European Council in Gothenburg in June 2001, Member States should consider how to make better use of public procurement to favor environmentally-friendly products and services. The present Communication is a contribution to that end. The objective of this document is to analyse and to set out the possibilities of the existing Community legal framework with regard to the integration of environmental considerations into public procurement. The introduction of further possibilities that go beyond the ones offered by the existing legal framework requires intervention from the Community legislator. Existing environmental and other legislation, either Community legislation or national legislation compatible with Community law, is binding upon contracting authorities and may have an influence on the choices to be made and the specifications and criteria to be drawn up by contracting authorities. The main possibilities for "green purchasing" are to be found at the start of a public purchase process, namely when making the decision on the subject matter of a contract. These decisions are not covered by the rules of the public procurement directives, but are covered by the Treaty rules and principles on the freedom of goods and services, notably the principles of non-discrimination and proportionality. The public procurement directives themselves offer different possibilities to integrate environmental considerations into public purchases, notably when defining the technical specifications, the selection criteria and the award criteria of a contract. In addition, contracting authorities may impose specific additional conditions that are compatible with the Treaty rules. Public contracts not covered by the public procurement directives are subject to the rules and principles of the Treaty. Here, it depends on national law whether contracting authorities have further possibilities for "green purchasing".

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

2000/0117(COD) - 14/08/2003 - Commission opinion on Parliament's position at 2nd reading

The European Commission can accept Parliament's amendment that concerns aligning the terminology with that used in the Postal Directive. It rejected 19 amendments to the common position. It should be noted that these aim to: - include a guarantee of "a high standard of reliable services of general interest at affordable prices"; - introduce an obligation - whenever possible - for public authorities to define their technical specifications in terms of accessibility for people with disabilities and design for all requirements; - restrict the field of application of electronic auctions by prohibiting their use for contracts for works or certain kinds of services (described as "intellectual", "creative" or "complex"); - give purchasing groups set up by the State, local authorities or bodies governed by public law the status of contracting authorities; - amend the definition of "special or exclusive rights"; - introduce a difference in treatment between "reserved postal services" and "other postal services" by eliminating the difference introduced in the common position between these and "ancillary postal services"; - introduce an obligation on the part of contracting entities to respect the fundamental principles of Community law in connection with all contracts, including those falling below the thresholds for the application of the Directive; - increase the obligations of contracting entities as regards respect of the confidentiality of data provided by the economic operators, particularly by giving a list of the information or documents concerned and specifying that these obligations must be respected both during and after the award procedures; - add references to a specific producer or supplier to a provision that prohibits references to a "specific production" other than on an exceptional basis; - increase the scope for awarding contracts for the purpose of research, experiment, study or development without competition by eliminating the conditions provided for in the law as it stands, according to which such contract may not be awarded "for the purpose of securing a profit or of recovering research and development costs, and in so far as the award of such contracts does not prejudice the competitive award of subsequent contracts which do seek, in particular, those ends"; - call for the use of an advanced electronic signature within the meaning of Directive 1999/93/EC and of reliable security if tenders submitted by electronic means are to be accepted; - aim at requiring the use of an accredited third party to safeguard the confidentiality of data sent by tenderers; - stipulate that contracting entities must inform economic operators of their decisions as to qualification within two months. It also adds an obligation for contracting entities to inform applicants in the month following the submission of the application if the decision will take more than two months; extend the existing provisions to three types of contract, and also introduce an obligation to approach third countries if they fail to respect certain ILO Conventions; - introduce a legal presumption of free access to the railwaysector in the event of implementation and correct application of Directives 91/440/EEC on the development of the Community' s railways, Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC of the European Parliament and of the Council on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification; - introduce a legal presumption of freedom of access to activities comprising exploration for and extraction of coal or other solid fuels in the event of a Member State voluntarily making a Directive (94/22/EC) relating to hydrocarbons licences applicable to the coal sector.

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

2000/0117(COD) - 10/05/2000 - Legislative proposal

PURPOSE: to amend the Directive coordinating the procurement procedures of entities operating in the water, energy and transport sectors. CONTENT: In 1998, the Commission published a Communication entitled 'Public Procurement in the European Union'. The main theme to emerge

from the Green Paper debate is the need to simplify the legal framework and adapt it to the new electronic age while maintaining the stability of its basic structure. The Commission recognised the need to simplify the existing legal framework by clarifying provisions which were obscure or complex and by amending legislation where the problems to be addressed could not be solved through interpretation of its provisions. This is prompted by the same concern about clarification expressed by the Commission in its Communication on Concessions in Community law, which does not prejuge any specific legislative proposal on concessions. Moreover, specifically regarding Directive 93/38/EEC, the Commission also undertook to reexamine the scope in order to verify whether it was still appropriate in the light of the gradual liberalisation in those sectors. Against this background, this proposal for a Directive meets these objectives. The amendments to the proposed Directive are organised as follows: 1) Simplification of the Directive : As regards restructuring and clarifying the Directive without changing its substance, the proposed amendments do not include any fundamental changes compared with Directive 93/38/EEC, as last amended by Article 12 of Directive 94/22/EC and Directive 98/4/EEC. In general, the provisions of the Directive have been set out in a clearer way so as to increase comprehension. As regards simplification and clarification of the Directive involving some changes in its substance, these changes refer to the giving of information about the outcome of an award procedure to all contracting entities, the selection of participants in a restricted or negotiated procedure and finally, the obligation to refer to European standards concerning quality assurance or certification and to recognise other menas of proof, has been extended. 2) Amendments to the legal framework : The Commission has identified six areas for proposing amendments to Directive 93/38/EEC as follows: - the scope of Directive 93/38/EEC on contracts concluded in the water, energy, transport and telecommunications sectors, which has to be reviewed in the light of the gradual liberalisation of those sectors; - the introduction of electronic purchasing mechanisms and the consequences of these in terms of reducing the length of an award procedure; - clarification of provisions relating to technical specifications; this will encourage effective competition through the participation of the greatest possible number of tenderers and, in particular, innovative businesses; - a strenghtening of the provisions relating to award criteria; - a simplification of thresholds; the previously large number of thresholds - differing slightly among themselves - has been reduced; - the introduction of a common procurement vocabulary. Finally, the scope of Directive 93/38/EEC on public procurement in the water, energy, transport and telecommunications sectors has been changed.

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 ofactivities 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.

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

2000/0117(COD) - 29/01/2004 - Text adopted by Parliament, 3rd reading

The European Parliament voted to approve the joint text agreed by the Conciliation Committee. (Please see the summary of 02/12/03.)

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

2000/0117(COD) - 27/06/2011 - Follow-up document

This Commission Staff Working Document presents an evaluation on the impact and effectiveness of EU public procurement legislation. The evaluation describes how the current legislative framework has evolved, its main characteristics, and how Member States have implemented the provisions. It analyses what contracting authorities and entities buy and how they buy it before moving on to the evolving policy environment and a detailed examination of the costs and benefits of the provisions and procedures. The evaluation also considers the extent of cross border trade and competition in public procurement markets and the extent of the impact on public expenditure in terms of savings, in order to assess to what extent the directives have achieved their objectives.

The findings of the evaluation will inform policy debate and help the Commission services in identifying possible improvements to existing legislation and policy. Along with responses to the Commission Green Paper on modernisation of public procurement legislation(COM/2011/0015), the evaluation constitutes an important input for the preparation of the Commission proposals for review of the Directives.

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

2000/0117(COD) - 29/12/2004 - Follow-up document

This Communication proposes an Action Plan for the implementation of the new legal framework for electronic public procurement adopted in April 2004 as part of the legislative package of Procurement Directives, 2004/18/EC and 2004/17/EC. These provide a coherent framework for conducting procurement electronically in an open, transparent and non-discriminatory way, establish rules for tendering electronically and fix the conditions for modern purchasing techniques based on electronic means of communication. If online procurement is generalised, it can save governments up to 5% on expenditure and up to 50-80% on transaction costs for both buyers and suppliers.

Building upon existing efforts to modernise European public procurement markets and to make these more open and competitive, the Commission proposes measures along three axes:

- Ensure a well functioning Internal Market when public procurement is conducted electronically :

Member States are required to implement the new legal framework by 31 January 2006, but slippages cannot be excluded. The Commission will monitor transposition closely and encourage appropriate exchanges with the Member States at the draft stage in order to facilitate understanding of the legal framework. It will issue an interpretative document on the legal requirements for e-procurement. At the same, time training demonstrators simulating the new electronic environment will be available to support initiation of administrations and businesses. The Commission will adopt in early 2005 a Regulation on standard forms adjusting the existing forms to the elements introduced by the new Directives, e.g. e-auctions, dynamic purchasing systems and buyer profiles. By the end of 2006, the Commission will propose a new generation of structured electronic standard forms to allow for the electronic collection, processing and dissemination of all procurement notices covered by the Directives. This new generation should facilitate the automatic production of summaries in all official EU languages, and should be easy to integrate into all operational e-procurement systems. The establishment of an electronic directory of EU public purchasers should also be considered.

The Commission will also aim to remove / prevent barriers in carrying public procurement procedures electronically;

- Achieve greater efficiency in procurement and improve governance: Moving public sector procurement online requires legal, institutional and organisational changes at many levels. Member States will have to decide on the type and scope of purchases to computerise, the policies to implement, the systems and tools to use and the level of administrations involved. The risks of failure are not negligible. It is therefore essential to plan and monitor these efforts.

Greater efficiency will depend on the degree of automation in the field of public procurement as a whole, although a phased development of e-procurement is most likely to maximise benefits for both the public and the private sector. The Commission invites all Member States to transpose into national law all aspects of the legislative package in a comprehensive manner. Governments should, however, be able to modulate and adjust implementation of the new electronic tools and techniques over time. In particular, they should pay attention to potential excessive or abusive centralisation of purchases, inappropriate use of electronic auctions and preferences for closed purchasing systems (e.g. framework agreements) over open systems. In the second half of 2005 the Commission is considering proposing services for the electronic supply of business information and certificates in public procurement for implementation under the IDABC programme. In 2005-2006, Member States and the Commission should agree on a common set of frequently required electronic certificates for use in e-procurement procedures. In 2005, the Commission proposes launching a study on e-catalogues in dynamic purchasing systems and electronic framework agreements using work by CEN/ISSS under the IDABC programme.

- Work towards an international framework for electronic public procurement : the Commission will monitor developments to ensure that implementation of the new EU procurement regime fully respects the international obligations of the Union, while accordingly taking initiatives to adapt international disciplines. It will also follow attentively current and future international standardisation initiatives.

The Commission shall be assisted by the Advisory Committee for Public Contracts who will monitor overall progress in implementing the Action Plan. By the end of 2007, the Commission will review the situation and report on the results achieved.

FINANCIAL IMPLICATIONS :

- Budget lines concerned : the administrative and operational expenditure are covered by the budget lines and the existing programmes therefore do not need additional appropriations compared to the Commission's official financial programming : 12.0201: Implementation and development of the Internal Market; 260201: Procedures for awarding and advertising public supply, works and services contracts; 020403 : standardization; 02020401: pan-European eGovernment services to public administrations, businesses and citizens (IDABC); 02010405 : pan-European eGovernment services to public administrations, businesses and citizens (IDABC) - administrative expenses.

- Duration of the action and of the financial impact: 2005-2007.

- Impact on human resources : (commitment appropriations) : operational expenditure : EUR 3.205 million; technical assistance : EUR 0.240 million; human resources EUR 1.782 million; other administrative costs EUR 0.327.

- Total cost : EUR 5.554 million.

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

2000/0117(COD) - 06/05/2002 - Modified legislative proposal

The Commission has accepted, either in their entirety or in part, and with reformulations where appropriate, 47 of the 83 amendments adopted by the European Parliament. With regard to the amendments accepted by the Commission in their entirety or reformulated for purely formal reasons, these concern: -introducing a new recital stating that nothing in this Directive shall prevent any contracting entity from imposing or enforcing measures necessary to protect public morality, public policy, public security or human, animal or plant life or health; -modifying a recital in order to specify that tenders based on solutions other than those envisaged by the contracting entity must be taken into account if they are equivalent, and that contracting entities must give reasons for any decision concluding that there is no equivalence; -modifying a recital which adds engineers' services to the examples of services whose remuneration is governed by national laws and which must not be affected; -removing the very detailed provisions concerning the arrangements for indicating the weighting given to each of the criteria applied in determining the most economically advantageous tender. The deletion of the three paragraphs is acceptable in order to simplify the arrangements for indicating weighting. As far as amendments accepted by the Commission with reformulation, in part or in substance are concerned, these : -introduce a new recital designed to emphasise the integration of environmental policy into public procurement policy. - introduces a new recital specifying that contracting entities may require particular conditions concerning the performance of contracts, especially concerning the promotion of social objectives, provided that these clauses are compatible with Community law. In order to ensure consistency between the two public procurement Directives, it is appropriate to extend this possibility to conditions relating to environmental protection; -modifies an Article in order to specify that conditions concerning performance of the contract may include conditions linked to the promotion of social policy objectives; it is also intended to further reinforce compliance with the principles of equal treatment, non-discrimination and transparency, where contracting entities require particular conditions concerning performance of contracts; -introduces a new recital specifying that contracting authorities may reject tenders which are abnormally low owing to non-compliance with social legislation. As this possibility already exists under existing law, if suffices to clarify it in an appropriate way; -provide that technical specifications may be formulated in terms of requirements with regard to the environmental impact of the product throughout its lifetime; - introduces a new definition, namely the "equivalent standard", at a place where, on the contrary, a tender ensuring an equivalent solution is what is meant. Even if the amendment is understood to be concerned with equivalent solutions, the inclusion of costs in the definition of equivalent solutions is not acceptable, as the price element must come into play at the stage where tenders are evaluated on the basis of the award criteria, and not in order to enable tenders based on other solutions to be excluded for non-compliance with the technical specifications of the contracting entity; -modifying Annex XX, alters the definition of technical specifications by adding the taking into account of environmental impact, user-instructions and production processes or methods; - providing that a contracting entity requires the production of a certificate relating to tan environmental management system, it must accept EMAS certificates, certificates attesting to compliance with international standards, as well as any their equivalent means of proof; -are designed to enable economic operators tendering as a group to bring their collective capacities to bear for selection purposes, as regards: suitability to pursue the professional activity concerned, economic and financial capacity and technical and/or professional capability. However, the length of any professional experience required may not be cumulated. Moreover, the amendment provides that there may be a requirement for minimum criteria to be met by the head of the group. - introduce a list of exclusion criteria concerning the selection of participants in open, restricted or negotiated procedures with a prior call for competition; - increasing transparency regarding the information to be provided to economic operators on obligations under social legislation. However, such information cannot be limited solely to obligations deriving from social legislation, as other (environmental or tax) legislation must also be taken into account. There is, however, a risk of this information becoming so extensive that it could not be included in the notice where the call for competition is made by means of a periodic indicative notice or a notice on the existence of a qualification system, which may not only relate to a large number of individual contracts, but may also be published so far in advance of the launch of a particular contract (sometimes one or two years) that the information is at risk of becoming obsolete. It is preferable, therefore, to limit the obligation to provide this information to contracts for which the call for competition is made by means of a contract notice. Where this is not the case, the necessary transparency will nevertheless be assured, as the contract documents relating to individual contracts must contain the particulars needed to enable economic operators to obtain relevant and up-to-date information. -provides moreover that the Directive is not applicable to postal services which can be supplied by other agencies on an unrestricted basis or are simply subject to a licensing procedure; -modifies Article 19 regarding the methods for estimating the value of service contracts ; -reintroduces an exclusion, existing in the current Directive, for purchases of energy or fuels for the production of energy made by contracting entities operating in the energy sector in the broad sense of the term; -specifies that the obligation on the part of the purchaser to preserve the confidentiality and integrity of the data submitted to it covers the entire operational cycle of the procedure: storage, processing and holding; -introduces a maximum period of two months within which economic operators whose application for qualification under a qualification system has been refused; -modifies Article 50, describing the procedure, so as to introduce an obligation to check tender's' or candidates' compliance with obligations under environmental, social and tax legislation; -impose in the case of open, restricted and negotiated procedures for which the prior call for competition is issued by way of a contract notice an obligation on the part of contracting entities to state in the contract notice the name and address of the body responsible for appeals in

relation to the award of public contracts. On the other hand, the Commission cannot accept the amendments which aim to : -guarantee of "a high standard of reliable services of general interest at affordable prices". -justify the extension, to supply and works contracts, of the exemption provided for in Article 26 (affiliated undertakings), as amended. -change the concept of "framework agreement", which is part of established law, into that of "framework contract" - specifically designed to regulate framework contracts18 in the field of translation and interpretation. -make the awarding of prizes to participants in design contests compulsory and accordingly modifies the definition of "design contests" by limiting them exclusively to contests in which prizes are awarded -includes "purchasing groups" among public authorities in order to enhance legal certainty vis-α-vis such joint procurement bodies. -rejects the modifications to the definition of exclusive and special rights proposed by the Commission, and thus has the effect of reverting to existing law. -extends to supply and works contracts an exclusion which relates to service contracts only. -modifies the general exclusion mechanism provided for in Article 29 by reducing the substantive conditions for exclusion to the sole condition that access to the activity concerned is not restricted, and adds that access to an activity shall legally be deemed not to be restricted if Community legislation liberalising that activity has been transposed. -include, in particular, eco-labels and environmental management systems among the instruments which may be used as technical references for drawing up technical specifications. -ensure that contracting entities do not impose any "quantitative restrictions on the exercise, by the undertakings, of freedom of organisation of their own inputs"; oblige contracting entities to ask the tenderer to indicate in his tender the share of the contract he may intend to subcontract, and the names of the subcontractors; oblige contracting entities to prohibit any subcontracting to undertakings which are in the situation referred to in Article 46 of the classic Directive "and/or undertakings which do not meet the requirements laid down in Articles 47, 48 and 49"; prohibit the contracting out of "intellectual services, with the exception of translation and interpretation services and management and related services". -broaden the scope for awarding contracts for the purpose of research, experiment, study or development without a call for competition, -tenders submitted by electronic means are to be rejected unless an advanced electronic signature within the meaning of Directive 1999/93/EC and a reliable means of encrypting the contents are used. -imposes an obligation to involve an accredited third party in order to guarantee the confidentiality of data transmitted by tenderers. -specifies that contracting entities must inform economic operators of their decisions regarding applications for qualification within a maximum period of two months. -intended to extend the period for which the contracting entities must store information on the course of an award procedure from 4 to 6 years. -to introduce a system for appeals against the decisions made by the contracting entities and to provide for it to be open to workers and their representatives. -introduces a rule according to which the provisions which apply to a given sector overrule the rules for public contracts if there is a conflict; -as far as the award criterion of the most economically advantageous tender is concerned, to: remove the clarification that this means the most economically advantageous tender for the contracting entities; specify that environmental characteristics may include production methods"; add the criterion of "equal treatment policy.

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

2000/0117(COD) - 20/03/2003 - Council position

The common position maintains the objective of the Commission's proposal, integrating a number of amendment which all contribute in a useful way to the further clarification of the objective. Some of those amendments have also been accepted by the Commission in its modified proposal. Like in the "classical" directive, certain new features have been introduced, such as electronic auctions and dynamic purchasing systems. The Council has sought to further underline the relationship between the two directive by including the postal services sector in the "utilities" directive and by adapting the provisions accordingly. The amendments introduced by the common position concern the following in particular: - greater account to be taken of the use of new information technologies in awarding contracts, in line with the objective of modernisation set out in the Commission's proposals. In this respect, it is worth drawing attention, in particular, to the introduction, for commonly used purchases, of dynamic purchasing systems intended both to provide the contracting entities with fully electronic systems which make it possible to simplify and automate the purchasing procedures and to ensure that any interested economic operator can take part, where appropriate by using an electronic catalogue. With the same objective in mind, provisions concerning the possibility of using electronic auctions under conditions that ensure transparency and equality of treatment have been added. Moreover, as regards the general framework for purchases using electronic means, the common position strengthens the obligations with regard to confidentiality in the text by referring to Annex XXIII; - with regard to taking account of environmental and social aspects, the Council accepted the Commission's amended proposals subsequent to Parliament's amendments and, in addition, clarified how environmental and social concerns can be taken into consideration when assessing the tenders at the contract award stage; - while preserving the flexibility needed in a Directive whose scope covers not only contracting authorities, but also public and private undertakings operating on the basis of special or exclusive rights, some of the provisions have been brought into line with those of the classic Directive, which helps to achieve the objective of simplifying and clarifying the rules. Unjustified differences between the rules on the same matter may cause difficulties in application and interpretation - not only for contracting authorities such as local authorities, where this Directive may apply to certain contracts while the classic Directive applies to others, but also for economic operators, who may have different rights even with regard to contracts for the same type of supplies with the same contracting authority. As a result, a number of Parliament amendments proposed or adopted for the classic Directive have been taken over in the same way in both Directives; - the discussions which took place after the amended proposal was adopted showed that certain contracting entities acted as or used central purchasing bodies and that there was a need for specific rules on the subject. Provisions have therefore been added to enable the contracting entities to use central purchasing bodies whether these operate in compliance with the provisions laid downin this Directive or with those of the classic Directive; - an additional implementation period for the provisions concerning the postal sector was added, as the current Utilities Directive does not apply to operators in that sector; - whatever their legal status. As a result, the contracting entities in this sector will need more time to adapt their contract award procedures to the rules of the Directive than those in other sectors, which are already familiar with the procedures provided for under the current Directive. Within this extension, which runs until 1 January 2009, it is up to the Member States to determine the exact date on which the Directive will be implemented for that sector. Note that postal operators, who are contracting authorities, will continue to be covered by the classic Directive until the switchover to the Utilities Directive. On the other hand, the common position has introduced changes concerning financial services, the scope of the "intra-group" exception1, and the weighting of the award criteria: - with regard to financial services, the common position specifies that in compliance with the Agreement on public procurement signed within the WTO, the financial services referred to in the Directive do not include contracts on the issue, purchase, sale and transfer of securities or other financial instruments "in particular, transactions by the contracting entities to raise money or capital; - the Council was able to achieve the unanimity required to extend to works and supply contracts the exception provided for in Article 23 for contracts awarded without a call for competition to affiliated undertakings, joint ventures or contracting entities forming part of a joint venture; - the obligation to

indicate the weighting of the award criteria is confirmed. However, the Commission has agreed on the need to take account of cases in which the contracting entity can justify its having been unable to specify the weighting and, in such cases, to allow it simply to indicate the descending order of importance of such criteria. Several declarations were included in the minutes. They came from the Commission, the Council as well as from the German and Austrian delegations.