Basic information

2000/0115(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Public procurement, service and works contracts: coordination of procedures for the award, classical directive Repealed by 2011/0438(COD) Amended by 2007/0280(COD) See also 2012/0060(COD) **Subject** 2.10.02 Public procurement	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	RAPKAY Bernhard (PSE)	02/10/2000
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)	2371	2001-09-27
	Competitiveness (Internal Market, Industry, Research and Space)	2389	2001-11-26
	Competitiveness (Internal Market, Industry, Research and Space)	2412	2002-03-01
	Competitiveness (Internal Market, Industry, Research and Space)	2426	2002-05-21
	Competitiveness (Internal Market, Industry, Research and Space)	2351	2001-05-30
	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)0275	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	A5-0378/2001	
26/11/2001	Debate in Council		
17/01/2002	Decision by Parliament, 1st reading	T5-0010/2002	Summary
01/03/2002	Debate in Council		
06/05/2002	Modified legislative proposal published	COM(2002)0236	Summary
20/03/2003	Council position published	11029/3/2002	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	A5-0242/2003	
30/06/2003	Debate in Parliament		
02/07/2003	Decision by Parliament, 2nd reading	T5-0312/2003	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	A5-0007/2004	
09/12/2003	Joint text approved by Conciliation Committee co-chairs	3696/2003	
28/01/2004	Debate in Parliament		

29/01/2004	Decision by Parliament, 3rd reading	T5-0045/2004	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	2000/0115(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Repealed by 2011/0438(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/5/19801

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0378/2001	16/10/2001	
Text adopted by Parliament, 1st reading/single reading		T5-0010/2002 OJ C 271 07.11.2002, p. 0062-0176 E	17/01/2002	Summary
Committee recommendation tabled for plenary, 2nd reading		A5-0242/2003	17/06/2003	
Text adopted by Parliament, 2nd reading		T5-0312/2003 OJ C 074 24.03.2004, p. 0098-0285 E	02/07/2003	Summary
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading		A5-0007/2004	02/12/2003	
Text adopted by Parliament, 3rd reading		T5-0045/2004 OJ C 096 21.04.2004, p. 0020-0104 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	11029/3/2002 OJ C 147 24.06.2003, p. 0001-0136 E	20/03/2003	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2000)0275 OJ C 029 30.01.2001, p. 0011 E	10/05/2000	Summary
Document attached to the procedure	COM(2001)0274	04/07/2001	Summary
Modified legislative proposal	COM(2002)0236 OJ C 203 27.08.2002, p. 0210 E	06/05/2002	Summary
Commission communication on Council's position	SEC(2003)0366	25/03/2003	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2003)0503	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	CES0515/2001 OJ C 193 10.07.2001, p. 0007	26/04/2001	
CSL/EP	Joint text approved by Conciliation Committee co-chairs	3696/2003	09/12/2003	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Directive 2004/0018
OJ L 134 30.04.2004, p. 0114-0240 Summary

Public procurement, service and works contracts: coordination of procedures for the award, classical directive

2000/0115(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: - a contract is deemed a public works contract only if its subject-matter specifically covers the execution of activities listed in Annex I, even if the contract covers the provision of other services necessary for the execution of such activities. Specific reference is made to public service contracts in the sphere of property management services which may include works; - 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; - there is a definition of "particularly complex" contracts; - the confidential nature of information furnished by economic operators must be respected; - the Directive will not apply to public supply contracts involving the purchase of school books in respect of which a fixed final retail price has been laid down in the Member State in which the purchase is made; - there are specific provisions on contracts awarded to entities formed by contracting authorities; - 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 authorities may operate a system for qualification of economic operators; - there are provisions for Member States to establish monitoring mechanisms.

Public procurement, service and works contracts: coordination of procedures for the award, classical directive

2000/0115(COD) - 17/01/2002 - Text adopted by Parliament, 1st reading/single reading

The European Parliament approved the report by Mr Stefano ZAPPALA (EPP-ED, I) by 370 to 82 with 26 abstentions. (Please refer to the decision of the committee responsible 16/10/01).

Public procurement, service and works contracts: coordination of procedures for the award, classical directive

2000/0115(COD) - 25/03/2003 - Commission communication on Council's position

The Commission considers that the text of the common position takes on board the key elements contained in the initial proposal and in the amendments of the European Parliament, as taken on board in the amended proposal. Where the Commission has not accepted the common position unanimously by the Council, it is because of the situation of financial services. The Commission has made 2 statements on this issue : 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 the new measures cannot be interpreted as excluding, among other things, public contracts concerning loans of contracting authorities, 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 threshold, 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. The Commission also made a statement on the questions concerning services concessions and public /private partnerships : it states that these should be further examined to assess the need for a specific legislative instrument so as to allow economic operators better access to concessions and to the various forms of public/private partnerships and so guarantee that these operators can take full advantage of their rights enshrined in the Treaty.

Public procurement, service and works contracts: coordination of procedures for the award, classical directive

2000/0115(COD) - 27/06/2011

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.

Public procurement, service and works contracts: coordination of procedures for the award, classical directive

2000/0115(COD) - 31/03/2004 - Final act

PURPOSE : to amend the Directive on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts. LEGISLATIVE ACT : Directive 2004/18/EC of the European Parliament and of the Council on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. CONTENT : This Directive is aimed at recasting Community legislation on public procurement, the objective being to create a genuine internal European market in this area. This legislation is intended not to replace national law but to ensure compliance with the principles of equality of treatment, non-discrimination and transparency in the award of public contracts in all Member States. It pursues the three objectives of modernising, simplifying and increasing the flexibility of the existing legal framework in this field: - modernisation in order to take account of new technologies and changes in the economic environment; - simplification to make the current texts more easily comprehensible for users, so that contracts are awarded in complete conformity with the standards and principles governing this area and the companies involved are in a better position to know their rights; - and greater flexibility in procedures in order to meet the needs of public procurement bodies and economic operators. The Directive simplifies the existing legal framework by amending and recasting the directives on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts (Directive 92/50/EEC, Directive 93/36/EEC and Directive 93/38/EEC) and by merging the directives into a single text. The main points are as follows: - new procedural requirements and safeguards are added in order to modernise, simplify and clarify the existing legal framework; - the directive introduces electronic purchasing mechanisms; - there is a new procedure which permits a "dialogue" between the contracting authority and the candidates in the case of complex contracts; - there is the possibility for public purchasers of concluding "framework agreements", on the basis of which contracts can be awarded without applying all the obligations of the Directive; - the Directive clarifies provisions relating to technical specifications and several modifications to the provisions on award and selection criteria; - the directive reduces the number of different threshold values; - this directive is aligned with the Directive on a common procurement vocabulary and Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors. DATE OF TRANSPOSITION : 31/01/06. ENTRY INTO FORCE : 30/04/04.

Public procurement, service and works contracts: coordination of procedures for the award, classical directive

2000/0115(COD) - 14/08/2003 - Commission opinion on Parliament's position at 2nd reading

As regards the amendments accepted by the Commission, these aim to : - amend a recital on the exclusion of certain audiovisual service contracts in order to clarify that "broadcast" should be taken to include also transmission and distribution using any form of electronic network. This is a useful clarification; - amend point VIII of Annex III to add ANAS S.p.a. to the list of Italian public-law bodies. The company meets the criteria laid down in the Directive for identifying such bodies. Concerning the amendments accepted subject to reformulation, these concern in particular the statement that this Directive shall not apply to public service contracts for: the acquisition, development, production or co-production of programmes by broadcasters and contracts for broadcasting time. The Commission has rejected 20 amendments which aim to : - point out that contracting authorities are obliged to observe the principles in the Treaty even for contracts which fall below the thresholds for application of the Directive;. - insert the obligation on contracting authorities to respect the fundamental principles of Community law in connection with all contracts, including those falling below the thresholds for application of the Directive; - changes a recital regarding the technical specifications to state that whenever possible contracting authorities must systematically lay down and refer to specifications that take in to account accessibility for people with disabilities; - oblige contracting authorities whenever possible to define their technical specifications in terms of accessibility for people with disabilities and adds that these specifications must be clearly indicated in the contract documents; - change the definition of an "electronic auction"; - add to the list of contracting authorities purchasing groups set up by such authorities; - amend the text concerning competitive dialogue; - allow adjustments to final bids after the dialogue phase has been concluded, provided the basic features of the tender are not "fundamentally" changed; - strengthen the obligations of the contracting authority with regard to respecting the confidential nature of the information supplied by economic operators, by imposing these obligations throughout and after the award procedure; - introduce an exemption from the application of the Directive for the purchase of schoolbooks where the price of these books in the contracting authority's country is laid down by law; - exclude from the scope of the Directive contracts concluded by a contracting authority with an entity over which it has complete control or with a joint venture formed by that contracting authority with other contracting authorities; - require a contracting authority that decides a tender has not satisfied its requirements in an equivalent manner to inform the tenderer, on request, of the grounds for the non-equivalence; - introduce into the Directive qualification systems similar to those allowed by the special-sectors Directive; - introduce the possibility of launching the competition procedure by means of a notice, the content of which is not regulated, stating that a qualification system exists; - require contracting authorities to use an accredited thirdparty to guarantee the confidentiality of the information transmitted by tenderers; - require the use of advanced electronic signatures within the meaning of Directive 1999/93/EC and of reliable security if tenders submitted by electronic means are to be accepted; - introduce a new article in order to force the Member States to set up effective, open and transparent mechanisms to ensure implementation of the Directive; - change point 1 of Annexe VII, Part A, Prior information notice, to make it compulsory to: give the contracting authority's telephone number and, in the case of service and works contracts, give details of the departments from which information can be obtained concerning the rules and regulations on taxes, environmental protection, employment protection and working conditions applicable in the place where the contract is to be performed.

Public procurement, service and works contracts: coordination of procedures for the award, classical directive

2000/0115(COD) - 29/12/2004

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.

Public procurement, service and works contracts: coordination of procedures for the award, classical directive

2000/0115(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".

Public procurement, service and works contracts: coordination of procedures for the award, classical directive

2000/0115(COD) - 20/03/2003 - Council position

The Council's common position maintains the Commission's basic approach, while integrating several of the amendments adopted by the European Parliament. Some of these amendments have also been accepted by the Commission in its modified proposal. This has been done in order to accommodate several of EP's main concerns, to facilitate the practical implementation of the provisions and to introduce options for Member States. In particular, detailed provisions have been replaced by more general clauses. Links to parallel policy fields with important implications for public procurement have been strengthened or introduced, especially through a number of new or modified recitals, and some definitions and provisions have been clarified in order to avoid misunderstandings or inconsistencies. Moreover, the Council has introduced more detailed provisions on electronic auctions and dynamic acquisition systems, which are now available as methods within the existing procedures. The Council has also sought to clarify the relationship between the classical and the utilities directives by including postal services into the utilities field and adapting the provisions of this proposal accordingly. The Council has accepted several of the EP amendment and incorporated them in to the current text. Some of them have been accepted in substance, but not in exact wording. Some other amendments have rejected by the Council. The amendments introduced by the common position concern the following in particular: - greater account to be taken of the new information technologies in awarding contracts, in line with the modernisation objective set out in the Commission's proposals. In this respect, it is worth drawing attention in particular to the introduction, for purchases of commonly used items, of accelerated procurement systems intended both to provide the contracting authorities with fully-computerised systems which make it possible to simplify and automate the procurement procedures and to ensure that any interested economic operator can take part, where appropriate, by using his electronic catalogue. Moreover, as regards the general framework for purchases using electronic means, the common position clarifies the position on electronic auctions and strengthens the obligations with regard to confidentiality in the text referring to Annex X; - 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, clarifies how environmental and social concerns can be taken into consideration when assessing the tenders at the contract award stage; - the implementation of the exclusions deriving from the personal situation of economic operators is clarified by laying down the powers of the Member States to adopt the conditions under which the exclusions apply. In the case of mandatory exclusion, its implementation is improved through cooperation between the Member States. Account is also taken of situations in which imperative requirements in the general interest could not be satisfied if the exclusion obligation were maintained; - in view of the process of opening up postal services to competition currently under way at Community level, a mechanism has been introduced for transferring the contracts awarded bypostal operators for the exercise of certain of their activities from the scope of the "classic" Directive to that of the "utilities" Directive. On the other hand, the common position has introduced changes concerning financial services, cases in which a negotiated procedure is used, and the weighting of the award criteria: - the common position gives a definition of "service concessions" with a view to the exclusion explicitly set out in the new Article 17. This definition is modelled on that for public works concessions and is intended to clarify the exclusion of service concessions; - concerning 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 the instruments of other policies which involve operations on securities or other financial instruments, and in particular operations to provide the contracting authorities with money or capital; - the common position introduces new cases of negotiated procedures without prior publication of a notice. This involves supplies of raw materials quoted and purchased on a commodity market, as already provided for by Directive 77/62/EEC, and supplies on particularly advantageous terms resulting from situations clearly regulated in the Member States; - 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 authority can justify its having been unable to specify the weighting - in particular in the case of especially complex contracts - and to allow it in such cases simply to indicate the descending order of importance of such criteria. Several statements were included in the Council's minutes. They come from the Commission as well as the Belgian, French, Austrian, Portuguese, Greek and Danish delegations.

Public procurement, service and works contracts: coordination of procedures for the award, classical directive

2000/0115(COD) - 06/05/2002 - Modified legislative proposal

Of the 103 amendments proposed by Parliament the European Commission is able to accept 63 in full or in part. The rest are rejected. The more substantive amendments accepted in full include inter alia, those: - laying down rules relating to the method used for calculating the price/real cost of a tender. - the addition of services provided by engineers. - requiring contracting authorities to use EMAS certificates, certificates attesting to compliance with international standards, as well as any other equivalent means of proof, when requesting environmental data. The more substantive amendments accepted in part or in spirit by the Commission include, in summary: - the integration of environmental policies in public procurement contracts. - the definition of a "purchasing group", to include works, supplies and/or services. - concerning a new "competitive dialogue" procedure, the Commission has incorporated Parliamentary changes with some modifications. New provisions include, for example, allowing contracting authorities the discretion to specify prices and payments to those who submit a proposal - and not 15% of the contact's estimated value, as originally proposed by Parliament. - contract performance conditions and compliance with social protection provisions have been incorporated into the revised text. - most changes to the text on "abnormally low tenders" have been incorporated since they add clarification to the legal text. - criminals found guilty of corruption and/or of fraud are to be excluded from participation in contracts. - reverse auctions for electronic tendering should not rely solely on the lowest price tendered as originally proposed by Parliament. Rather, the Commission has adopted the Council's approach, whereby the scope of the auctions has to be widened to include variables other than price. Further, Parliamentary proposals to award a contract by electronic auction through a separate procedure is rejected by the Commission since it runs against the underlying principles of the revised Directive, namely a simplification of legal procedures. - the definition of a framework contract is to be aligned to those set out in the "Utilities Directive". - the Commission has accepted stricter guidelines on the issue of confidentiality clauses whilst taking into account the need to balance provisions on transparency and competition. - on the question of "threshold limits", the Commission suggests that it would be wrong to limit this principle to "public service" contracts only, as Parliamentary amendments propose. Nor would it be appropriate to implement the obligation of transparency solely to the "relevant provisions of the Directive" again as Parliamentary amendments imply. This would create too much legal uncertainty and go beyond compliance with the rules of the Treaty. Hence the Commission has changed the recital by including that "These principles shall apply whatever the value of the contracts". - on the related matter of estimating the value of service contracts, the Commission incorporates Parliamentary amendmentsby means of a reformulation. The Commission aims to simplify the text by merging the four articles relating to calculation methods. Thus there would be new articles for "framework agreements", a new article for "supplies", a new article for "services" and a new article for "works". - a provision on the harmonisation of language versions has been added to the text in line with Parliamentary wishes. The Commission has, however, aligned this provision to conform with the principle of the free movement of goods. - the Commission has incorporated an amendment relating to service contracts awarded on the basis of an exclusive right. This it has done in order to bring it in line with current case law, namely the "Teckel" judgement. Reformulation is necessary so as to take up the elements covered by the judgment, adapt them to the situation of a group of contract authorities and accommodate them in the appropriate place in the Directive. - the Commission accepts an amendment to allow contracting authorities the right to negotiate a contract without prior publication in cases such as unforeseen circumstances or, for example, where additional works cannot be technically or economically separated from the main work without major inconvenience. - the Commission has taken on board changes which clarify requirements relating to the selection of participants in that they must be proportionate to the subject matter of the contract. - accepted, subject to some changes, are amendments proposing compulsory exclusions for money laundering. - the Commission has not accepted in full Parliamentary proposals to exclude economic operators found guilty of violating international core labour standards or infringements of "fundamental" European legislation. This is already covered in existing legislation and thus considered superfluous. - the Commission has clarified the provisions relating to various types of electronic submissions. Not accepted by the Commission are amendments which relate, in summary, to: - obliging contracting authorities, in the absence of European specification, to lay down precise national criteria in advance. - the regulation in framework agreement of translation and interpretation provisions. - modifications to the definition of "design contests". - provisions to increase the thresholds indicated in the Commission's proposal by around 50%. The thresholds in the Directives in force are such that Community Regulations cover only the biggest contracts in value terms. Raising the thresholds of the Directive would lead to an unjustified reduction in the guarantees concerning the opening-up of public contracts currently offered to economic operators in the European Union. Furthermore, a unilateral raising of the thresholds by the EU would be incompatible with its obligations under WTO agreements. - an exclusion concerning transactions enabling the contracting authority to contract borrowing intended for investments and cash flow requirements. - obliging contract authorities to ask the tenderer to indicate the share of the contract he may intend to subcontract to third parties and any designated subcontractors. - obliging contracting authorities to prohibit any subcontracting to undertakings. - prohibit the contracting out of "intellectual services". - prohibiting the use of framework agreements for works contracts. Since this include "standard" works such as road surfacing or repairs this amendment is deemed unacceptable. - an extension of procedures relating to "public housing" to include all "public works which, for reasons of size, complexity and duration and/or financing, require collaborative project planning". This amendment is considered wholly unacceptable in that it may allow for very vague contract negotiations. - the provision that tenders submitted by electronic means should be rejected unless an advanced electronic signature within the meaning of Directive 199/93/EC and reliable means of encrypting contents are used. - prohibiting any economic operators who are bankrupt from applying for contracts has been rejected on the grounds that certain companies would not be given any chance to apply. Such a policy could automatically condemn them to closure. Rather the Commission, finds it more appropriate to make the exclusion of operators in this situation an option for purchasers and not an obligation. - provisions for the setting up of an independent Public Procurement Agency vested with broad powers, including the power to set aside contract awards and to reopen contract award procedures. The Commission argues that the obligations introduced by this amendments is already the subject of Community legislation in force and need not be reiterated here.

Public procurement, service and works contracts: coordination of procedures for the award, classical directive

2000/0115(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 present decision, 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.

Public procurement, service and works contracts: coordination of procedures for the award, classical directive

2000/0115(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.)

Public procurement, service and works contracts: coordination of procedures for the award, classical directive

2000/0115(COD) - 10/05/2000 - Legislative proposal

PURPOSE: to amend the Directive on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts. CONTENT: In 1996, the Commission presented a Communication entitled 'Public Procurement in the European Union (EU)'. The main theme to emerge from the Green Paper debate was 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 the provisions. In addition, it announced the consolidation of the three 'classic Directives' (Directive 92/50/EEC, Directive 93/36/EEC and Directive 93/38 /EEC) and then their merger into a single text. Against this background, the proposal for a Directive meets these objectives. Moreover, the proposed amendments to the Directive are grouped into two parts as follows: 1) Simplification of the Directive. This proposal is presented in the form of a single text for supply, works and service contracts. At the same time, it provides a means of proposing that the public sector Directives mentioned above, be amended, simplified and combined in a single text. This approach will make it easier to maintain consistency during the legislative process, and also offers real advantages for users. As far as the structure is concerned, the provisions in the proposed Directives have been set out in six Titles. In these Titles, and particularly in Title II with regard to the specific rules applicable to contracts, the provisions have been ordered in such a way as to follow logically the course of a contract award procedure, starting with the principles and the scope. Chapters and Sections have been introduced to make it easier for the reader. In addition, each Chapter, Section and Article has a heading for quicker identification of the provisions sought by the reader. 2) Substantive Amendments The Commission has identifed seven areas for substantive amendments as follows: - the introduction of electronic purchasing mechanisms, and their consequences in terms of reducing the length of an award procedure (point 2); - the introduction of a new case for the use of the negotiated procedure, which - for particularly complex contracts - permits a "dialogue" between the contractng authority and the different candidates, while ensuring that there is competition and compliance with the principle of equality of treatment (point 3); - the possibility for public purchasers of concluding so-called "framework agreements", not all of whose conditions are fixed, and on the basis of which contracts can be awarded without applying all the obligations of the Directive (point 4) to each one; - clarification of provisions relating to technical specifications; this will encourage effective competition through the participation of the greatest possible number oftenderers and, in particular, innovative businesses (point 5); - a strengthening of the provisions relating to award and selection criteria (point 6); - a simplification of the thresholds (point 7) - the introduction of a common procurement vocabulary (point 8). Moreover, following the amendments proposed by the Commission concerning the "Utilities Directive" 93/38 /EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, in particular the amendments to its scope in light of the gradual liberalisation in those sectors, it is also necessary to amend some provisions contained in the public sectors Directive (point 9).