

# 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 In particular, detailed provisions have been replaced by more general clauses.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 by postal 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.