

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2000/0115(COD) Procedure completed
Public procurement, service and works contracts: coordination of procedures for the award, classical directive	
Amended by <a href="#">2007/0280(COD)</a> Repealed by <a href="#">2011/0438(COD)</a> See also <a href="#">2012/0060(COD)</a>	
Subject 2.10.02 Public procurement	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>DELE</b> EP Delegation to Conciliation Committee		11/07/2003
		PPE-DE <a href="#">ZAPPALA' Stefano</a>	
	Former committee responsible		
	<b>JURI</b> Legal Affairs and Internal Market		25/05/2000
		PPE-DE <a href="#">ZAPPALA' Stefano</a>	
	<b>JURI</b> Legal Affairs and Internal Market		25/05/2000
		PPE-DE <a href="#">ZAPPALA' Stefano</a>	
	Former committee for opinion		
	<b>ECON</b> Economic and Monetary Affairs		02/10/2000
	PSE <a href="#">RAPKAY Bernhard</a>		
<b>ITRE</b> Industry, External Trade, Research, Energy		13/09/2000	
	PSE <a href="#">KUHNE Helmut</a>		
<b>EMPL</b> Employment and Social Affairs		05/10/2000	
	PSE <a href="#">HUGHES Stephen</a>		
<b>ENVI</b> Environment, Public Health, Consumer Policy		24/01/2001	
	V/ALE <a href="#">SCHÖRLING Inger</a>		
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Agriculture and Fisheries</a>	<a href="#">2528</a>	29/09/2003
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2426</a>	21/05/2002
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2412</a>	01/03/2002
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2389</a>	26/11/2001
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2371</a>	27/09/2001
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2351</a>	30/05/2001
European Commission	Commission DG	Commissioner	

## Key events

10/05/2000	Legislative proposal published	COM(2000)0275	Summary
04/09/2000	Committee referral announced in Parliament, 1st reading/single reading		
30/11/2000	Debate in Council		
30/05/2001	Debate in Council	<a href="#">2351</a>	Summary
27/09/2001	Debate in Council	<a href="#">2371</a>	
16/10/2001	Vote in committee, 1st reading/single reading		Summary
16/10/2001	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A5-0378/2001</a>	
26/11/2001	Debate in Council	<a href="#">2389</a>	
17/01/2002	Decision by Parliament, 1st reading/single reading	<a href="#">T5-0010/2002</a>	Summary
01/03/2002	Debate in Council	<a href="#">2412</a>	
06/05/2002	Modified legislative proposal published	<a href="#">COM(2002)0236</a>	Summary
20/03/2003	Council position published	<a href="#">11029/3/2002</a>	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	<a href="#">A5-0242/2003</a>	
30/06/2003	Debate in Parliament		
02/07/2003	Decision by Parliament, 2nd reading	<a href="#">T5-0312/2003</a>	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	<a href="#">A5-0007/2004</a>	
09/12/2003	Joint text approved by Conciliation Committee co-chairs	<a href="#">3696/2003</a>	
28/01/2004	Debate in Parliament		
29/01/2004	Decision by Parliament, 3rd reading	<a href="#">T5-0045/2004</a>	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		

Technical information	
Procedure reference	2000/0115(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amended by <a href="#">2007/0280(COD)</a> Repealed by <a href="#">2011/0438(COD)</a> See also <a href="#">2012/0060(COD)</a>
Legal basis	EC Treaty (after Amsterdam) EC 095; EC Treaty (after Amsterdam) EC 047-p2; EC Treaty (after Amsterdam) EC 055
Stage reached in procedure	Procedure completed
Committee dossier	CODE/5/19801

Documentation gateway					
Legislative proposal		COM(2000)0275 OJ C 029 30.01.2001, p. 0011 E	10/05/2000	EC	Summary
Committee of the Regions: opinion		<a href="#">CDR0312/2000</a> <a href="#">OJ C 144 16.05.2001, p. 0023</a>	13/12/2000	CofR	
Committee draft report		PE298.409	02/03/2001	EP	
Committee draft report		PE298.409/REV	02/04/2001	EP	
Economic and Social Committee: opinion, report		<a href="#">CES0515/2001</a> <a href="#">OJ C 193 10.07.2001, p. 0007</a>	26/04/2001	ESC	
Committee opinion	<b>ENVI</b>	PE301.059/DEF	12/06/2001	EP	
Committee opinion	<b>ECON</b>	PE295.953/DEF	13/06/2001	EP	
Committee draft report		PE298.409/RV2	21/06/2001	EP	
Committee opinion	<b>EMPL</b>	PE286.256/DEF	03/07/2001	EP	
Document attached to the procedure		COM(2001)0274	04/07/2001	EC	Summary
Committee opinion	<b>ITRE</b>	PE286.144/DEF	13/07/2001	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A5-0378/2001</a>	16/10/2001	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T5-0010/2002</a> <a href="#">OJ C 271 07.11.2002, p. 0062-0176 E</a>	17/01/2002	EP	Summary
Modified legislative proposal		<a href="#">COM(2002)0236</a> <a href="#">OJ C 203 27.08.2002, p. 0210 E</a>	06/05/2002	EC	Summary
Council statement on its position		<a href="#">05807/2003</a>	05/03/2003	CSL	
Council position		<a href="#">11029/3/2002</a> <a href="#">OJ C 147 24.06.2003, p. 0001-0136 E</a>	20/03/2003	CSL	Summary
Commission communication on Council's position		<a href="#">SEC(2003)0366</a>	25/03/2003	EC	Summary

Committee draft report		<a href="#">PE332.524</a>	15/05/2003	EP	
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A5-0242/2003</a>	17/06/2003	EP	
Text adopted by Parliament, 2nd reading		<a href="#">T5-0312/2003</a> OJ C 074 24.03.2004, p. 0098-0285 E	02/07/2003	EP	Summary
Commission opinion on Parliament's position at 2nd reading		<a href="#">COM(2003)0503</a>	14/08/2003	EC	Summary
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading		<a href="#">A5-0007/2004</a>	02/12/2003	EP	
Joint text approved by Conciliation Committee co-chairs		<a href="#">3696/2003</a>	09/12/2003	CSL/EP	
Text adopted by Parliament, 3rd reading		<a href="#">T5-0045/2004</a> OJ C 096 21.04.2004, p. 0020-0104 E	29/01/2004	EP	Summary
Follow-up document		<a href="#">COM(2004)0841</a>	29/12/2004	EC	Summary
Follow-up document		<a href="#">SEC(2004)1639</a>	29/12/2004	EC	
Follow-up document		<a href="#">SEC(2011)0853</a>	27/06/2011	EC	Summary

#### Additional information

European Commission

[EUR-Lex](#)

#### Final act

[Directive 2004/18](#)  
[OJ L 134 30.04.2004, p. 0114-0240](#) Summary

## 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 identified 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 contracting 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 of tenderers 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).?

## 2000/0115(COD) - 30/05/2001 Debate in Council

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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. ?

## 2000/0115(COD) - 04/07/2001 Document attached to the procedure

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**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 Development" 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".?

## 2000/0115(COD) - 16/10/2001 Vote in committee, 1st reading/single reading

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The committee adopted the report by Stefano ZAPPALA (EPP-ED, I) broadly approving the proposal under the codecision procedure (1st reading), subject to a number of amendments. On the controversial issue of thresholds (i.e. the amount above which a public contract will be subject to Community rules), the committee called for a 32%-53% increase in the various thresholds compared to the amounts proposed by the Commission, arguing that with the existing thresholds there had been no growth in cross-border trade in public procurement contracts, while the administrative costs incurred by local authorities putting work out to tender were disproportionately high. Several amendments called for environmental and social criteria to be better reflected in public procurement procedures - for example to boost employment for disadvantaged people or to promote equality in the workplace - provided these criteria were compatible with Community law and complied with the principles of equal treatment and non-discrimination. Other amendments sought to tidy up the Commission's proposal on issues such as the personal, economic or financial standing or the professional capability of tenderers. The committee said that anyone with recent convictions for crimes such as racketeering, money-laundering or fraud should be excluded from tendering, as should those who were bankrupt. Finally, the committee adopted a large number of technical amendments aimed at clarifying and strengthening the proposal on issues such as the definition of public works contracts, the central purchasing groups, the framework agreements, the need for confidentiality etc.

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

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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).?

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

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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 contract'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 amendments by 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. ?

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

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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 been 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.?

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

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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.?

## 2000/0115(COD) - 17/06/2003 Vote in committee, 2nd reading

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The committee adopted the report by Stefano ZAPPALA' (EPP-ED, I) amending the Council's common position under the 2nd reading of the codecision procedure. It retabled a large number of amendments adopted by Parliament at 1st reading: - there should be substantial increases in the level of the various thresholds laid down in the Council common position. In particular, the committee wanted to see a 23% increase in the threshold for public supply and service contracts awarded by central government authorities, a 20% increase for public supply and service contracts awarded by any other authority and by central defence authorities, and a 12% increase for public works contracts. MEPs argued that these increases would help to ease the tensions now faced by local and regional authorities in dealing with the disproportionately high economic and administrative costs relating to European tendering, while still allowing for a genuine single EU market in public procurement. Another amendment called for 12% and 20% increases respectively in the thresholds for contracts and connected service contracts directly subsidised by the contracting authorities by more than 50%, in the areas of civil engineering and building work for hospitals, sport, recreation and leisure facilities, school and university and administrative buildings; - there should be an exemption for public supply contracts for schoolbooks for which a fixed final retail price has been laid down by law in the Member State where they are purchased; - Member States should be able to stipulate that 10% of the public contract award budget should be reserved for SMEs; - the rules on the economic, financial and social standards to met by an economic operator should also apply in full to subcontracting firms; - intellectual services, with the exception of translation, interpretation and management related services, should not be subcontracted; - bids from firms whose tenders are abnormally low or who breach the rules on the financial and personal situation of tenderers should be rejected; - environmental and social criteria, especially employment, health and safety standards and improved access for disabled people, should be better reflected in all stages of public procurement procedures; - as regards electronic tendering, enhanced data security requirements, e.g. on electronic signatures, should be safeguarded when tenders are submitted electronically. Other amendments sought to tighten up the provisions on the personal, economic and financial situation or the professional capability of the tenderer. The awarding authorities should be obliged (rather than being given the option, as proposed by the Council) to exclude from tendering anyone who has been convicted of bankruptcy or whose business is being wound up, whose affairs are being administered by a court, who has entered into an arrangement with creditors or who has suspended business activities. There should also be a ban on tendering by operators convicted of fraud or other forms of dishonest anti-competitive behaviour connected with the award of public contracts in the common market, breaches of rules on collective agreements and drugs-related offences.?

## 2000/0115(COD) - 02/07/2003 Text adopted by Parliament, 2nd reading

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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 the 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.?

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

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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 Annex 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.?

## 2000/0115(COD) - 29/01/2004 Text adopted by Parliament, 3rd reading

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

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

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**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.?

## 2000/0115(COD) - 02/12/2004 Final decision by Conciliation Committee

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The Conciliation Committee reached agreement on a joint text for the directive. The main elements of the compromise can be summarised as follows: - the directive is based on the principle of awarding the contracts to the most economically advantageous tender. However, the



contracting authorities may apply environmental and social criteria in a transparent manner in line with the case-law of the Court of Justice. The criteria have to be linked to the subject-matter of the contract in question; - Member States shall ensure the implementation of the directive by effective and transparent mechanisms. For this purpose they may appoint or establish an independent body; - the text stipulates that the award of contracts on behalf of the state, regional or local authorities and other bodies governed by public law is subject to observance of the principles laid down in the Treaty, both below and above the thresholds specified in the directive; - electronic auctions may not be used for some service or works contracts covering the provision of intellectual services, such as the design of works; - the directive promotes the use of electronic signature, in particular advanced electronic signature, in order to ensure confidentiality in case of electronic tendering. The text states that Member States may, in accordance with legislation in force, stipulate that tenders may be submitted by electronic means only if an advanced electronic signature is used; - the contracting authorities are urged to take into account the accessibility criteria for people with disabilities or design for all users in the technical specifications. Member States may reserve the right to participate in public contract award procedures to sheltered workshops or provide for such contracts to be executed in the context of sheltered employment programmes; - school books will be within the scope of the directive but the Member States may keep a system of fixed pricing. If this is the case, the contracting authority will assess tenders on criteria other than price; - as regards the prior information notice for contracts, in the case of services and works contracts the contracting authority will be required to provide details of the services, e.g. the relevant governmental Internet site, from which information can be obtained concerning the general regulatory framework for taxes, environmental and employment questions.?