

Procedure file

Basic information		
CNS - Consultation procedure Decision	2000/0812(CNS)	Procedure lapsed or withdrawn
Public procurement: award, criminal law protection against fraudulent or unfair conduct		
Subject 2.10.02 Public procurement		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	LIBE Citizens' Freedoms and Rights, Justice and Home Affairs		14/05/2002
		PPE-DE SCHMITT Ingo	
	Committee for opinion	Rapporteur for opinion	Appointed
	ECON Economic and Monetary Affairs		
Council of the European Union European Commission	JURI Legal Affairs and Internal Market		17/10/2000
		ELDR WALLIS Diana	
	JURI Legal Affairs and Internal Market		17/10/2000
		PSE BERENGUER FUSTER Luis	
	Commission DG Justice and Consumers	Commissioner FRATTINI Franco	

Key events			
28/06/2000	Legislative proposal published	09230/2000	Summary
04/09/2000	Committee referral announced in Parliament		
23/05/2002	Vote in committee		Summary
23/05/2002	Committee report tabled for plenary, 1st reading/single reading	A5-0184/2002	
11/06/2002	Decision by Parliament	T5-0286/2002	Summary

Technical information	
Procedure reference	2000/0812(CNS)
Procedure type	CNS - Consultation procedure

Procedure subtype	Legislation
Legislative instrument	Decision
Legal basis	Treaty on the European Union (after Amsterdam) M 031-; Treaty on the European Union (after Amsterdam) M 034-p2b
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	LIBE/5/13483

Documentation gateway

Legislative proposal		09230/2000 OJ C 253 04.09.2000, p. 0003	28/06/2000	CSL	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0184/2002	23/05/2002	EP	
Text adopted by Parliament, 1st reading/single reading		T5-0286/2002 OJ C 261 30.10.2003, p. 0028-0095 E	11/06/2002	EP	Summary

Additional information

European Commission	EUR-Lex
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Public procurement: award, criminal law protection against fraudulent or unfair conduct

PURPOSE: to propose a framework on criminal law protection against fraudulent or other unfair anti-competitive conduct in relation to the award of public contracts. CONTENT: The draft Council Framework Decision, proposed on the initiative of Germany, seeks to strengthen the protection of both the financial interest of contracting entities and of fair competition in relation to the award of public contracts. For the purposes of this Framework Decision, the offence of fraudulent or other unfair anti-competitive conduct in relation to the award of public contracts shall have been committed if a person acting for an undertaking intentionally makes an offer based on an unlawful agreement or concerted practice between undertakings aimed at causing the contracting entity, as a result of a direct or indirect promise, offer or grant of an advantage to a person, for that person himself or for a third person, in return for the award of a public contract in breach of duty, or as a result of other collusive combination with the person responsible for the award of the contract, or by concealing such an agreement to accept a particular offer. Every Member State is required to take the necessary measures to ensure that such conduct shall be a criminal offence, and the acting as an accessory to, or instigator of, such an offence, are punishable by effective, proportionate and dissuasive criminal penalties including, at least in serious cases, penalties involving deprivation of liberty which can give rise to extradition. Each Member State must take the necessary measures to ensure that legal persons can be held liable for a criminal offence committed for their benefit by any person acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on: - a power of representation of the legal person, or - an authority to take decisions on behalf of the legal person, or - an authority to exercise control within the legal person, as well as for involvement as accessories to, or instigators of, the commission of such a criminal offence. There are also provisions requiring each Member State to take all necessary measures to establish its jurisdiction with regard to such a criminal offence where the criminal offence has been committed in whole or in part within its territory, or by one of its national, provided that the law of that Member State may require the offence to be punishable also in the country where it occurred, or for the benefit of a legal person that has its head office in the territory of that Member State. Derogations are provided for whereby any Member State which decides not to apply these measures shall inform the General Secretariat of the Council with an indication of the specific cases or circumstances in which that decision applies. It should be noted that, in 1999, a proposal for a Joint Action with the same objectives as this draft Framework Decision was already made (see CNS/1999/0915).?

Public procurement: award, criminal law protection against fraudulent or unfair conduct

The committee adopted the report by Ingo SCHMITT (EPP-ED, D) rejecting the framework decision proposed by the German government, on the grounds that the legal basis (Article 31(e) of the EU Treaty) was incorrect. The Treaty article in question refers to organised crime, terrorism and illicit drug trafficking, crimes which are not usually connected to fraud in the award of public contracts. However, the committee welcomed the content of the German proposal, saying that uniform, far-reaching and effective means of combating fraud in the award of public contracts were genuinely desirable as many of these contracts were awarded by way of a European invitation to tender. It therefore urged the Commission to submit a new proposal, reflecting the substance of the German proposal with some additional measures. ?

Public procurement: award, criminal law protection against fraudulent or unfair conduct

Using its procedure without debate, the European Parliament adopted its resolution based on the report of Ingo SCHMITT (EPP-ED, Germany) and rejected the German initiative. (Please refer to the document dated 23/05/02.) It asked the Commission to examine the need for, and if appropriate, to present a proposal for a complementary legislative measure. ?

