



# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Public procurement: services, supply and public work contracts (amend. Directives 92/50/EEC, 93/36/EEC, 93/37/EEC)	
Subject 2.10.02 Public procurement	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>ECON</b> Economic and Monetary Affairs, Industrial Policy	PPE <a href="#">LANGEN Werner</a>	15/06/1995
	Former committee responsible		
	<b>ECON</b> Economic and Monetary Affairs, Industrial Policy	PPE <a href="#">LANGEN Werner</a>	15/06/1995
	Former committee for opinion		
	<b>BUDG</b> Budgets		
Council of the European Union	<b>RELA</b> External Economic Relations	PSE <a href="#">MIRANDA DE LAGE Ana</a>	22/11/1995
	<b>JURI</b> Legal Affairs, Citizens' Rights		
	Council configuration	Meeting	Date
	Budget	<a href="#">2026</a>	24/07/1997
	Fisheries	<a href="#">1983</a>	20/12/1996
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">1970</a>	26/11/1996
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">1886</a>	23/11/1995

Key events			
29/03/1995	Legislative proposal published	COM(1995)0107	Summary
16/05/1995	Committee referral announced in Parliament, 1st reading		
23/11/1995	Debate in Council	<a href="#">1886</a>	
24/01/1996	Vote in committee, 1st reading		Summary
24/01/1996	Committee report tabled for plenary, 1st	<a href="#">A4-0014/1996</a>	

	reading		
28/02/1996	Debate in Parliament		Summary
29/02/1996	Decision by Parliament, 1st reading	T4-0100/1996	Summary
13/12/1996	Modified legislative proposal published	COM(1996)0623	Summary
20/12/1996	Council position published	<a href="#">11542/2/1996</a>	Summary
18/02/1997	Committee referral announced in Parliament, 2nd reading		
22/04/1997	Vote in committee, 2nd reading		Summary
22/04/1997	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A4-0158/1997</a>	
13/05/1997	Debate in Parliament		Summary
14/05/1997	Decision by Parliament, 2nd reading	T4-0226/1997	Summary
24/07/1997	Act approved by Council, 2nd reading		
13/10/1997	Final act signed		
13/10/1997	End of procedure in Parliament		
28/11/1997	Final act published in Official Journal		

### Technical information

Procedure reference	1995/0079(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	EC before Amsterdam E 100A; EC before Amsterdam E 057-p2; EC before Amsterdam E 066
Stage reached in procedure	Procedure completed
Committee dossier	ECON/4/08541

### Documentation gateway

Legislative proposal		COM(1995)0107	29/03/1995	EC	Summary
Economic and Social Committee: opinion, report		<a href="#">CES0796/1995</a> <a href="#">OJ C 256 02.10.1995, p. 0004</a>	05/07/1995	ESC	Summary
Committee of the Regions: opinion		<a href="#">CDR0370/1995</a> <a href="#">OJ C 126 29.04.1996, p. 0008</a>	15/11/1995	CofR	Summary
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A4-0014/1996</a> <a href="#">OJ C 047 19.02.1996, p. 0005</a>	24/01/1996	EP	
Text adopted by Parliament, 1st reading/single reading		T4-0100/1996 <a href="#">OJ C 078 18.03.1996, p. 0011-0018</a>	29/02/1996	EP	Summary
Modified legislative proposal		COM(1996)0623	13/12/1996	EC	Summary
Council position		<a href="#">11542/2/1996</a> <a href="#">OJ C 111 09.04.1997, p. 0001</a>	20/12/1996	CSL	Summary

Commission communication on Council's position		SEC(1997)0037	17/01/1997	EC	Summary
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A4-0158/1997</a> <a href="#">OJ C 167 02.06.1997, p. 0003</a>	22/04/1997	EP	
Text adopted by Parliament, 2nd reading		T4-0226/1997 <a href="#">OJ C 167 02.06.1997, p. 0044-0052</a>	14/05/1997	EP	Summary
Commission opinion on Parliament's position at 2nd reading		COM(1997)0289	30/06/1997	EC	

#### Additional information

European Commission

[EUR-Lex](#)

#### Final act

[Directive 1997/52](#)  
[OJ L 328 28.11.1997, p. 0001](#) Summary

## Public procurement: services, supply and public work contracts (amend. Directives 92/50/EEC, 93/36/EEC, 93/37/EEC)

CONTENT: to amend the "Services", "Supplies" and "Works " directives in order to bring them into line with the new GATT agreement extending the current framework of balanced rights and obligations with regard to public procurement. CONTENT: the proposed amendments, which are identical for all three directives, are as follows: - Scope: the thresholds applicable have been revised slightly downwards: . SDR 200,000 (ECU 198,109 on 1 January 1994) in lieu of ECU 200,000 for supply and service contracts with regional and local authorities; . SDR 5,000,000 (ECU 4,952,730 on 1 January 1994) in lieu of ECU 5,000,000 for works contracts; . SDR 130,000 (ECU 128,771 on 1 January 1994) in lieu of ECU 200,000 for government service contracts. - Possible assistance in preparing technical specifications: a new provision prohibits the public authorities from asking for or accepting assistance in drawing up specifications from a company with a commercial interest in the contract or where this might obstruct the competition. - Information for candidates rejected: the contracting authority will continue, as at present, to state the reasons why an applicant or tender was rejected. It must also provide information on the advantages of the tender selected, unless there is legitimate cause not to divulge this information. - Statistics: the Member States are called on to send the Commission more detailed statistics on contracts every year (rather than every two years). - Finally, a new article guarantees that access for the enterprises, products and services of the Member States to public procurement within the EU will be at least as favourable as the access for which provision is made in the GATT agreement for the enterprises, products and services of the third countries which have signed the agreement.?

## Public procurement: services, supply and public work contracts (amend. Directives 92/50/EEC, 93/36/EEC, 93/37/EEC)

The Opinion took account of the experience of local and regional authorities, proposing examination of the effects of the directive. It suggested simplifying rules, reducing the number of regulations where possible, and providing information and advice on the implementation of these provisions for the authorities and service providers. The Committee of the Regions should be involved in assessing the directive's impact in the individual Member States in order to ensure that the consequences at local and regional level were also taken into account. It was important to investigate specifically both the conditions under which and the manner in which public/private sector cooperation could take place under the directive and the increase in threshold values with a view to balancing out costs and benefits for both firms and public authorities. The Opinion concluded that the extent to which the unrestricted application of the directive might conflict with investment designed to generate employment should be examined. The scope for introducing back-up, supportive and stimulative measures to promote employment should be carefully considered.

## Public procurement: services, supply and public work contracts (amend. Directives 92/50/EEC, 93/36/EEC, 93/37/EEC)

The committee adopted the report by Mr Werner LANGEN (PPE, D) on the Commission's proposal concerning the coordination of procedures for the award of public service contracts, public supply contracts and public works contracts. Three significant amendments were adopted in relation to the Commission's proposal: a) Since the Commission's proposal greatly limited technical dialogue, the committee proposed that contracting authorities should be permitted to seek or accept advice in order to establish the specifications relating to a specific market. However, this advice should in now way preclude competition nor come from a person with a commercial interest in the market; b) As a general principle, the Commission stipulated that the contracting authority was required to inform any eliminated candidate of the characteristics and relative advantages of the tender selected unless the release of such information prejudiced, for example, the commercial interests of undertakings. The committee did not retain this general principle and proposed, firstly, that Community undertakings and those

from third countries should receive equal treatment, and secondly, that the information on the tender selected should only be made available if this were not contrary to the public interest or did not prejudice commercial interests, competition, and so on. c) The committee felt that it was not appropriate to go beyond the terms of the GATT agreement and that the Commission should not be given "carte blanche" to make subsequent amendments to the requirements for the provision of statistics. ?

## Public procurement: services, supply and public work contracts (amend. Directives 92/50/EEC, 93/36/EEC, 93/37/EEC)

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The rapporteur, Mr Langen (EPP, A), said that the 11 amendments tabled by the Committee on Economic and Monetary Affairs were aimed at preventing distortion of competition. Commissioner Monti declared that the Commission could accept Amendments Nos 2, 7, 10 and 11 to 13. However, the Commission would reject Amendments Nos 1, 3, 5 and 8, mainly because these concerned the field of application of the GATT in respect of public tendering procedures, while the amended Community directives only involved intra-Community relationships. Mr Monti also declared that he was opposed to Amendments Nos 4, 6, 9, 16, 17 and 18, which related to technical dialogue, since the latter could only be admitted under the strictest of conditions, in order to avoid any restriction to competition. Finally, as regards Amendments Nos 14 and 15 relating to deadlines for payment, these went beyond the intended purpose of the Directives in that they concerned the terms and conditions for implementing the public tendering procedures.

## Public procurement: services, supply and public work contracts (amend. Directives 92/50/EEC, 93/36/EEC, 93/37/EEC)

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In adopting the report by Mr Werner LANGEN (PPE, D), the European Parliament approved the Commission proposal concerning the coordination of procedures for the award of public service contracts, public supply contracts and public works contracts respectively, subject to the following substantial amendments: - in the case of 'research and development' services not covered by the public procurement agreement, the directive applies only to public contracts whose estimated worth excluding VAT is ECU 200 000 or more; - the contracting authorities are authorized to request or to accept from a business enterprise an opinion with a view to establishing the specifications relative to a contract, provided this opinion does not have the effect of preventing competition; - the European Parliament does not adopt the general principle of an obligation to inform unsuccessful candidates of the characteristics and advantages of the successful tender, but proposes that there should be no difference in the treatment of Community and third-country businesses and that information on the successful offer should only be allowed to be given if this is not damaging to the public interest, commercial interests or competition; - the EP proposes not to go beyond the terms of the GATT agreement and not to leave it to the Commission to decide on the nature of the statistical information required by the directive. ?

## Public procurement: services, supply and public work contracts (amend. Directives 92/50/EEC, 93/36/EEC, 93/37/EEC)

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The Commission proposes a series of amendments to the 'Services', 'Supply' and 'Works Contracts' Directives, aimed at inserting some provisions of the Government Procurement Agreement (GPA), which entered into force in the Community on 1 January 1996, in order to: a) avoid discrimination against Community companies and give them the same advantages that third country companies enjoy pursuant to the GPA; and b) ensure consistency between the two legal regimes. The principal changes introduced by the Commission to take account of Parliament's opinion consist in: - a new recital on payment periods; - the introduction of differentiated thresholds for service contracts depending on whether the types of services in question are covered by the GPA; - a restructuring of the provisions on statistics regarding public works contracts; - inclusion of the central government bodies of Austria, Finland and Sweden in Annex I. The following changes have also been introduced: - a clarification of the fields of application of the GPA and the Directives as well as a clear statement as to the legal regime applicable to third country companies; - the modification of the thresholds for design contests so as to reflect the limited scope of the GPA as compared to that of Directive 92/50/EEC; - the introduction of more flexibility in the deadlines following publication of a periodic indicative notice in the three Directives; - the insertion of a provision on non-discrimination in Directives 93/36/EEC and 93/37/EEC; - the introduction of a 5 000 000 ECU threshold for certain works contracts which do not come within the field of application of the GPA. ?

## Public procurement: services, supply and public work contracts (amend. Directives 92/50/EEC, 93/36/EEC, 93/37/EEC)

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The common Council position incorporates a number of Parliament's amendments included in the amended Commission proposal, including those aimed at: - introducing differentiated thresholds for service contracts depending on whether or not the services in question are covered by the Agreement on Government Procurement (GPA), which came into force on 1 January 1996; - including the central government bodies in Austria, Finland and Sweden in Annex I (list of contracting authorities subject to the GPA). In addition, the Council introduced new provisions in the common position: - stipulating that the GPA has no direct effect in the Community; - stressing that contracting authorities which comply with the basic directives (92/50/EEC, 93/36/EEC and 93/37/EEC), as amended by the present directive, are in compliance with the GPA; - recalling explicitly the general principles of Community law relating to equal treatment and non-discrimination. The other changes made by the Council concern the following: - the scope of the directive: the changes made to Directive 92/50/EEC place emphasis on the service contract which do not fall within the scope of the GPA; the common position establishes, with regard to the 'Services' and 'Works' directives, different thresholds for contracts covered by the GPA (expressed in SDRs) and for those not covered by it (expressed in ECU); - information to be supplied to rejected applicants and tenderers: information relating to the relevant characteristics and advantages of the successful tender is an essential element in increasing the transparency of public contracts. The Council has therefore brought the text of the directives into line with the GPA; - the deadline for receiving tenders: the deadlines for receipt of tenders have been slightly amended so that they are calculated from the date of dispatch of the notice and not from that of publication; - statistical obligations: a substantive change has been made to paragraph 2(b) of Directive 92/50/EEC to the effect that the statistical statements required under this paragraph do not apply to R&D services in category

8, certain telecommunications services in category 5 or to services covered by the GPA; - entry into force: the date of entry into force is twelve months after the adoption of the directive. With regard to the sending of tenders, the common position allows the Member States to authorize sending of tenders by means more in keeping with technological progress in document transmission. However, guarantees relating to content, confidentiality, proof and the opening of tenders are required. A joint Council and Commission declaration accompanies this provision: it stresses that tenders must remain secret until the date set for opening them. Finally, it should be noted that the common position did not incorporate two amendments proposed by Parliament and accepted by the Commission in its amended proposal, namely: - a new recital relating to the importance of prompt payment by public bodies in transactions to which they are parties, and to setting the date of payment in public service contracts. However, the Council and Commission adopted a declaration referring to the Commission recommendation of 12 May 1995 on payment deadlines in commercial transactions, which calls on the Member States to take the legal and practical steps necessary to ensure that contractual payment deadlines are met and that better payment deadlines are introduced in the field of public procurement; - an amendment to the provision regarding statistical obligations in Directive 93/37/EEC concerning public works contracts: the Council has brought this provision into line with the corresponding provisions in the two other directives (Directives 92/50/EEC and 93/36/EEC) in order to keep the same wording in all three directives. ?

## Public procurement: services, supply and public work contracts (amend. Directives 92/50/EEC, 93/36/EEC, 93/37/EEC)

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The Commission considered that the common position represented a balanced and satisfactory compromise between the initial positions of the Commission, the European Parliament and the Council, despite the fact that certain amendments proposed by the European Parliament and included in the amended proposal were not incorporated in the common position. Consequently, the Commission was able to approve the common position.?

## Public procurement: services, supply and public work contracts (amend. Directives 92/50/EEC, 93/36/EEC, 93/37/EEC)

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The Committee adopted recommendation for second reading by Mr Langen endorsing a Commission proposal to implement the GPA by amending the EU directives concerning the award of public service contracts, public supply contracts and public works contracts respectively. At first reading, the Parliament adopted a large number of amendments to the proposal, which to a great extent were accepted by the Commission and the Council. Therefore, the Committee recommended that parliament adopts the common position with a few minor amendments.?

## Public procurement: services, supply and public work contracts (amend. Directives 92/50/EEC, 93/36/EEC, 93/37/EEC)

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Commissioner Monti explained why he could not agree with Parliament's position in all the cases where the amendments tabled diverged from the common position. This was because these amendments would either call into question the structure and logical basis of the Community arrangements or would be too mutually contradictory. However, he was prepared to accept Amendment No 3 relating to the inclusion of the German Ministry of Transport in the list of central procurement agencies. In principle he was also favourable to Amendment No 2 which, in the form of a recital, aimed to promote access by SMEs to public contracts by providing them with appropriate training and information materials. As regards the 'technical dialogue', the Commissioner rejected the two amendments (Nos 1 and 4) as these tackled this issue in an inconsistent manner. He considered that the common position adopted an intermediate solution in between the irreconcilable texts of the two proposed amendments and specifically allowed a certain amount of consistency to be maintained between the texts of the four directives on the sectors in question.

## Public procurement: services, supply and public work contracts (amend. Directives 92/50/EEC, 93/36/EEC, 93/37/EEC)

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The European Parliament adopted the recommendation for second reading by Mr Werner LANGEN (PPE, D). Since many of the amendments to the proposal were accepted by the Commission and Council, Parliament approved the common position subject to a few secondary amendments. It called, for example, for the Commission to make available to SMEs the training and information materials they needed to participate fully in the changed market. ?

## Public procurement: services, supply and public work contracts (amend. Directives 92/50/EEC, 93/36/EEC, 93/37/EEC)

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OBJECTIVE: to amend the Community directives on public contracts in the light of the Agreement on government procurement reached in the Uruguay Round. COMMUNITY MEASURE: European Parliament and Council Directive 97/52/EC amending Directives 92/50/EEC, 93/36/EEC and 93/37/EEC concerning the coordination of procedures for the award of public service contracts, public supply contracts and public works contracts respectively. SUBSTANCE: the amendments adopted align the procedures provided for in the above-mentioned Directives with those laid down in the GPA in order to ensure that Community and international rules do not differ and to avoid discrimination against Community enterprises, i.e. more favorable treatment of third-country tenderers. In order to increase the transparency of the award of public contracts, the Directive lays down, in particular, that the contracting authority shall, within 15 days of the date on which a written request is received, inform any eliminated candidate or tenderer of the reasons for rejection of his application or his tender, and inform any tenderer who

has made an admissible tender of the characteristics and relevant advantages of the tender selected as well as the name of the successful tenderer. The time limits for the reception of tenders are amended slightly so that they are calculated from the date of dispatch of the contract notice rather than that of publication. As regards the forwarding of tenders, the Directive allows Member States to authorize the submission of tenders by more appropriate means, taking account of technological advances in the communication of documents. However, guarantees are required regarding content, confidentiality, proof and the opening of tenders. The secrecy of tenders must be ensured until the date set for their opening. DEADLINE FOR TRANSPOSITION: 13/10/1998. ?