



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.06.1997
COM(97) 289 final

95/0079 (COD)

OPINION OF THE COMMISSION

pursuant to Article 189 b (2) (d) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the

proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

amending Council Directive 92/50/EEC relating to the coordination of procedures for the award of public service contracts, Council Directive 93/36/EEC coordinating procedures for the award of public supply contracts and Council Directive 93/37/EEC concerning the coordination of procedures for the award of public works contracts

AMENDING THE PROPOSAL OF THE COMMISSION

pursuant to Article 189 a (2) of the EC Treaty

Opinion of the Commission

pursuant to Article 189 b (2) (d) of the EC-Treaty on
the European Parliament's amendments

to the Council's Common Position on the proposal for a European Parliament and Council directive amending Council Directive 92/50/EEC relating to the coordination of procedures for the award of public service contracts, Council Directive 93/36/EEC coordinating procedures for the award of public supply contracts and Council Directive 93/37/EEC concerning the coordination of procedures for the award of public works contracts.

I State of the file

The proposal was forwarded to the European Parliament and the Council on 30.3.1995.

The Economic and Social Committee adopted its opinion on 5.7.1995.

The European Parliament adopted its opinion in first reading on 28.2.1996.

The amended proposal was transmitted to the Council on 16.12.1996.

The Common position was adopted by the Council on 19 December 1996.

The European Parliament adopted its opinion in second reading on 14.5.1997.

II Purpose of the Directive

The Government Procurement Agreement (GPA or, in French, AMP), entered into force in the Community on 1 January 1996, as stipulated in its Article XXIV, forms an integral part of the legal order of the Community through Council Decision 94/800/EC of 22 December 1994, which approves the agreements reached in the Uruguay Round multilateral negotiations. This does not, however, entail that its provisions can be directly invoked before the jurisdictions of the Community and the Member States (last recital of Decision 94/800/EC).

The Commission has proposed a series of amendments to the Directives, aimed at inserting some provisions of the GPA 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 coherence*** between the two legal regimes. This way contracting authorities, which are subject to both the Directives and the GPA, will be able to conform to the GPA by applying the provisions of the amended Directives. They would otherwise be obliged to know both legal regimes perfectly, to highlight the differences between them and to draw the correct consequences of these differences. That would seem to be a difficult process, which could lead to significant differences in the application of Community law in the different Member States.

III The Commission's position on the amendments adopted by the European Parliament

A Amendments accepted by the Commission

Recital 10 (technical dialogue - amendment n. 4)

The part of amendment 4, which was adopted by the European Parliament, is acceptable to the Commission given that it is simply a positive formulation of Article VI (4) of the GPA. In fact, whereas the GPA provision states that "entities **shall not** seek or accept, in a manner which **would have** the effect of precluding competition, advice which may be used in the preparation of specifications for a specific procurement from a firm that may have a commercial interest in the procurement", the text of the European Parliament provides that "contracting authorities **may** seek or accept advice which may be used in the preparation of specifications for a specific procurement, provided that such advice **does not have** the effect of precluding competition".

Recital 10 a (new) (training and information in favour of SMEs - amendment n. 2)

Although a recital to the public procurement directives, which is not mirrored in the Directive itself, is not the most appropriate and efficient means of reaching the legitimate goal pursued, the Commission can also accept this amendment, through which the European Parliament aims at favouring the access of SMEs to public procurement by placing appropriate training and information facilities at their disposal.

Annex I

Amendment n. 3, whereby the German Federal Ministry of Transport would be added to the list of central State purchasing authorities is acceptable to the Commission.

B Amendments rejected by the Commission

None.

**AMENDED PROPOSAL FOR A
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE**

amending

Council Directive 92/50/EEC relating to the coordination of procedures for the award of public service contracts, Council Directive 93/36/EEC coordinating procedures for the award of public supply contracts, and Council Directive 93/37/EEC concerning the coordination of procedures for the award of public works contracts

(presented by the Commission pursuant to Article 189 a (2) of the EC-Treaty)

1. Recital 10 is amended as follows:
"Whereas contracting authorities may seek or accept advice which may be used in the preparation of specifications for a specific procurement, provided that such advice does not have the effect of precluding competition;"
2. Recital 10 a is inserted:
"Whereas the Commission shall make available to small and medium-sized undertakings the training and information materials they need to enable them to participate fully in the changed procurement market;"
3. The following authority is inserted in Annex I under the heading Federal Republic of Germany as point 17a :
"Federal Ministry of Transport"

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DOCUMENTS

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