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****I**

R E P O R T

of the Committee on Economic and Monetary Affairs and Industrial Policy

on the Commission proposal for a Council directive relating to the coordination of procedures on the award of public service contracts

(COM(90) 372 final - C3-1/91 - SYN 293)

Rapporteur: Mr de DONNEA

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A Series: Reports - B Series: Motions for Resolutions, Oral Questions - C Series: Documents received from other Institutions (e.g. Consultations)

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| <div style="border: 1px solid black; padding: 2px; display: inline-block;">*</div> = Consultation procedure requiring a single reading | <div style="border: 1px solid black; padding: 2px; display: inline-block;">**II</div> = Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment |
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By letter of 7 January 1991 the Council consulted the European Parliament, pursuant to Article 100a of the EEC Treaty, on the Commission proposal for a Council directive relating to the coordination of procedures on the award of public service contracts.

At the sitting of 21 January 1991 the President of Parliament announced that he had referred this proposal to the Committee on Economic and Monetary Affairs and Industrial Policy as the committee responsible and the Committee on Legal Affairs and Citizens' Rights for its opinion.

At its meeting of 27 September 1990, the Committee on Economic and Monetary Affairs and Industrial Policy had appointed Mr de Donnea rapporteur.

At its meetings of 18,19 and 20 December 1990, 5,6 and 7 February 1991, 18,19 and 20 March 1991 and 24 and 25 April 1991 it considered the Commission proposal and the draft report.

At the latter meeting it adopted the draft legislative resolution on 24 April 1991 by 18 votes to one with 8 abstentions.

The following took part in the vote: Beumer, chairman; de Donnea, rapporteur; Barton, Beazley, Bernard-Reymond, Cassidy, De Piccoli, Ernst de la Graete, Herman, Hoff, Hoppenstedt, Lulling, Metten, Patterson, Sboarina, Siso Cruellas, Speciale, Tongue, von Wogau, Wettig, Fitzgerald (for Lataillade), Martinez (for Negret), Nielsen (for Visenti), van Hemeldonck (for Seal), Bertens, Funk, Rothley (pursuant to Rule 111(2)).

The opinion of the Committee on Legal Affairs and Citizens' Rights will be published separately.

The report was tabled on 30 April 1991.

The deadline for tabling amendments will appear on the draft agenda for the May part-session.

A
Commission proposal for a Council directive
relating to the coordination of procedures on the award
of public service contracts

Commission text¹

Amendments

(Amendment No. 1)

Throughout the directive replace the word 'supplier' by 'provider of services' and the words 'services supplied' by 'services provided'.

Citations and Recitals 1 to 5 unchanged

(Amendment No. 2)

Sixth recital

Whereas suppliers may be natural persons; whereas without prejudice to national rules compatible with the Treaty suppliers may also be legal persons;

Whereas providers of services may be natural or legal persons, without prejudice to the national rules of their country of establishment that are compatible with the Treaty;

Recitals 7 to 9 unchanged

(Amendment No. 3)

(Tenth recital)

Whereas in order to ensure coherent award procedures, public service concessions should be covered by this Directive in the same way as Directive 71/305/EEC applies to public works concessions;

Whereas in order to ensure coherent award procedures, public service concessions should be covered by this Directive;

(Amendment No. 4)

Eleventh recital

Whereas contracts relating to ownership or rights on immovable property have particular characteristics, which make the application of procurement rules inappropriate;

Whereas contracts relating to the acquisition or rental of immovable property have particular characteristics, which make the application of procurement rules inappropriate;

¹ For full text see COM (90)372 final, OJ No C 23, 31.1.1991, page 1

Recitals 12 to 20 unchanged

(Amendment No. 5)
Twenty-first recital

Whereas full application of the Directive must be limited, for a transitional period, to contracts for those services where the market is genuinely open or will be so by the time this Directive comes into effect, and where the provisions of the Directive will enable the full potential for increased cross-frontier trade to be realized; whereas contracts for other services need to be monitored for a certain period before taking a decision on the full application of the Directive; whereas the mechanism for such monitoring needs to be set up by the Directive; whereas it should at the same time enable those interested to share the relevant information;

Whereas full application of the Directive must be limited, for a transitional period, to contracts for those services where its provisions will enable the full potential for increased cross-frontier trade to be realized; whereas contracts for other services need to be monitored for a certain period before taking a decision on the full application of the Directive; whereas the mechanism for such monitoring needs to be set up by the Directive; whereas it should at the same time enable those interested to share the relevant information;

(Amendment No. 6)
Twenty-second recital

Whereas the rules for the award of public service contracts should be as close as possible to those concerning public supply contracts and public works contracts;

Whereas the rules for the award of public service contracts, while taking into account the fact that self-employed persons, who do not operate as companies, must also be able to provide these services, should be as close as possible to those concerning public supply contracts and public works contracts; whereas service contracts must be regarded as equivalent to supply contracts only where the service concerned can be costed in that a price can be determined; whereas the full cost of service contracts involving intellectual and creative services cannot be determined in advance if the principal purpose thereof is to identify solutions to problems;

(Amendment No 7)
Twenty-third recital

Whereas the procurement rules contained in Directives 71/305/EEC and 77/62/EEC can be applied, with necessary adaptations so as to take into account special aspects of procurement of services such as the choice of the negotiated procedure, design contests, variants, the legal form of suppliers, the reservation of certain activities to certain professions, registration and quality assurance matters;

Whereas the procurement rules contained in Directives 71/305/EEC and 77/62/EEC can be applied, with necessary adaptations so as to take into account special aspects of procurement of services such as the choice of the negotiated procedure, design contests, variants, the legal form under which the suppliers operate, the reservation of certain activities to certain professions, registration and quality assurance matters;

(Amendment No 8)
Twenty-fourth recital

Whereas the particular conditions for use of the negotiated procedure with prior publication of a notice when the service to be performed cannot be specified with sufficient precision should be fulfilled in particular in the field of intellectual, creative services;

Whereas use may be made of the negotiated procedure with prior publication of a notice when the service to be provided cannot be specified with sufficient precision, particularly in the field of intellectual services, with the result that the contract cannot be awarded by selection of the best tender in accordance with the rules governing the open and restricted procedures;

Recitals 25 to 27 unchanged

(Amendment No. 9)
Twenty-eighth recital, second phrase

Whereas Community undertakings should be granted access to the award of public service contracts and concessions in non-Community countries; whereas negotiations may be initiated to that effect when such access, in law or in fact, is found to be restricted; whereas the possibility should exist under certain conditions to take measures as regards access to public service contracts or concessions in the Community, of undertakings or of tenders originating in the non-Community country concerned;

unchanged

whereas the possibility should exist under certain conditions to take measures as regards access, by undertakings originating in the non-Community country concerned, to public service contracts and concessions awarded by the contracting authorities who are subject to this Directive;

Recital 29 unchanged

(Amendment No. 10)
Article 1(a)(i)

For the purpose of this Directive:

(a) 'public service contracts' are contracts for pecuniary interest concluded in writing between a supplier and a contracting authority, to the exclusion of

(i) public supply contracts within the meaning of Article 1(a) of Directive 77/62/EEC and public works contracts within the meaning of Article 1(a) of Directive 71/305/EEC,

For the purpose of this Directive:

(a) 'public service contracts' are contracts for pecuniary interest concluded in writing between a supplier and a contracting authority, to the exclusion of

(i) public supply contracts within the meaning of Article 1(a) of Directive 77/62/EEC and Article 1(3) of Directive 90/531/EEC, and public works contracts within the meaning of Article 1(a) of Directive 71/305/EEC and Article 1(3) of Directive 90/531/EEC,

(Amendment No. 11)
Article 1(a)(ia) (new)

other public contracts awarded by contracting authorities within the meaning of Article 2(1) of Directive 90/531/EEC;

(Amendment No. 12)
Article 1(a)(ii)

contracts for the purchase, lease or rental of, or concerning rights on land, existing buildings or other immovable property,

contracts for the acquisition or rental, by whatever financial means, of land, existing buildings, or other immovable property or concerning rights thereon; nevertheless, financial service contracts (leasing, loans, leasing contracts with or without option to buy) concluded at the same time as, before or after, the contract of acquisition or rental, in whatever form, are subject to this Directive;

(Amendment No. 13)
Article 1(a)(iii)

contracts for the acquisition of programme material by broadcasters within the meaning of Council Directive 89/552/EEC, and contracts for broadcasting time pursuing public interest objectives such as information to the population in case of civil disasters;

contracts for the acquisition of programme material by broadcasters within the meaning of Council Directive 89/552/EEC, and contracts for broadcasting time;

(Amendment No. 14)
Article 1(b)

'contracting authorities' (hereafter 'authorities') shall be the bodies described in Article 1(b) of Directive 71/305/EEC, and any other bodies listed in Annex I to Directive 80/767/EEC;

'contracting authorities' (hereafter 'authorities') shall be the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or bodies governed by public law and all other bodies listed in Annex I to Directive 80/767/EEC.

A body governed by public law means any body:

- established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and
- having legal personality, and
- financed, for the most part, by the State, or regional or local authorities, or other bodies governed by the public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law.

The lists of bodies or of categories of such bodies governed by public law which fulfil the criteria referred to in the second subparagraph are set out in Annex I to Directive 71/305/EEC. These lists shall be as exhaustive as possible and may be reviewed in accordance with the procedure laid down in Article 30b of Directive 71/305/EEC;

(c) to (g) unchanged

(Amendment No. 15)
Article 1(h)

a 'public service concession' is a contract other than a public works concession within the meaning of Article 1(d) of Directive 71/305/EEC, concluded between an authority and another entity of its choice whereby the former transfers the execution of a service to the public lying within its responsibility to the latter and the latter accepts to execute the activity in return for the right to exploit the service or this right together with payment. Contracts for the award of rights to perform broadcasting activities are excluded from this definition.

a 'public service concession' is a contract other than a public works concession within the meaning of Article 1(d) of Directive 71/305/EEC, concluded between an authority and another entity of its choice whereby the former transfers the execution of a service to the public lying within its responsibility to the latter and the latter accepts to execute the activity in return for the right to exploit the service or this right together with payment. If the concession contract covers even partially either the implementation or the joint implementation and design of works in connection with one of the activities referred to in Annex II of Directive 71/305/EEC or the type of work defined in Article 1(c) of Directive 71/305/EEC or the carrying out, by whatever means, of work in accordance with precise specifications laid down by the contracting authority, only Directive 71/305/EEC shall apply, even if the contract falls partly within the definition of a public service concession. Contracts for the award of rights to perform broadcasting activities are excluded from this definition.

(Amendment No. 16)
Article 1a (new)

If a public supply contract is intended to cover products within the meaning of Directive 77/62/EEC and services within the meaning of Annexes IA and 1B of this Directive, it shall fall within the scope of this Directive if the value of the services in question does not exceed that of the products covered by the contract.

(Amendment No. 17)
Article 2(3)

Paragraphs 1 and 2 unchanged

3. Member States shall take the necessary measures to ensure that the authorities comply or ensure compliance with this Directive where they subsidize directly by more than 50% service contracts awarded by an entity other than themselves in connection with projects to which Article 1a(2) of Directive 71/305/EEC relates.

3. Member States shall take the necessary measures to ensure that the authorities comply or ensure compliance with this Directive where they subsidize directly by more than 50% service contracts awarded by an entity other than themselves in connection with works contracts to which Article 1a(2) of Directive 71/305/EEC relates.

(Amendment No. 18)
Article 3(1)

1. When a concessionaire is himself an authority within the meaning of Article 1(b), he shall comply with the provisions of this Directive in the case of services to be carried out by third parties.

1. When a concessionaire is himself an authority within the meaning of Article 1(b), he shall comply with the provisions of this Directive in the case of services to be carried out by third parties and comply with the provisions of Directive 77/62/EEC in the case of supply contracts to be awarded to third parties.

(Amendment No. 19)
Article 3(2)

2. Member States shall take the necessary steps to ensure that a concessionaire which is not itself an authority shall apply the advertising rules as set out in Articles 17, 18 and 19 to contracts for services listed in Annex 1A which it intends to award to third parties when the value of the contract is above the thresholds fixed in Article 8(1).

2. Member States shall take the necessary steps to ensure that a concessionaire which is not itself an authority within the meaning of Article 1 (b) of this directive and contracting entities within the meaning of Article 2 of Directive 90/531/EEC, shall apply

- the advertising rules as set out in Articles 17, 18 and 19 of this directive to contracts for services listed in Annex 1A which it intends to award to third parties when the value of the contract is above the thresholds fixed in Article 8(1) of this directive;
- the advertising rules as set out in Articles 9 to 16 of Directive 77/62/EEC to the supply contracts that they intend to award to third parties, when the value of the contract exceeds the threshold laid down in Article 5 (1)(a) of Directive 77/62/EEC;

Advertising rules need not be applied when the contract meets the conditions laid down in Article 13(3).

Advertising rules need not be applied when the service contract meets the conditions laid down in Article 13(3) of this Directive and when the supply contract fulfils the conditions set out in Article 6(4) of Directive 77/62/EEC.

Paragraph 3 unchanged

(Amendment No. 20)
Article 3(4) (new)

4. If after award of a public service concession, the concessionaire awards, for whatever reason, a works contract to a third party, the provisions of Directive 71/305/EEC shall apply if the concessionaire is a contracting authority within the meaning of Article 1(b) of this Directive.

The Member States shall take the necessary measures to ensure that concessionaires other than contracting authorities within the meaning of Article 1(b) of this Directive and contracting entities within the meaning of Article 2 of Directive 90/531/EEC shall apply the advertising rules defined in Articles 12 to 19 of Directive 71/305/EEC to the works contracts that they intend to award to third parties.

(Amendment No. 21)
Article 3(5) (new)

5. In cases where the authorities intend to conclude a public service concession contract, the advertising rules defined in Article 17(3), Article 18(1) and (2) and Article 19 shall apply to such a contract when its value equals or exceeds ECU 200 000 a year, excluding VAT.

The value of a public service concession contract shall be defined as the concessionaire's turnover in carrying out the contract.

Articles 4 and 5 unchanged

(Amendment No. 22)
Article 6

This Directive shall not apply to the award of public service contracts or concessions or the execution of design contests by contracting entities within the meaning of Article 2 of Directive 90/531/EEC.

Delete (text moved to Article 1 in Amendment No. 11).

(Amendment No. 23)
Article 7

Without prejudice to Article 17(1), the provisions of this Directive shall not apply to the award of public service contracts which authorities have to award to an entity which is itself a contracting authority within the meaning of Article 1(b) pursuant to an exclusive right established by a published law, regulation or administrative provision which is compatible with the Treaty.

The provisions of this Directive shall not apply to the award of public service contracts which authorities have to award to an entity which is itself a contracting authority within the meaning of Article 1(b) pursuant to an exclusive right established by a published law, regulation or administrative provision which is compatible with the Treaty.

(Amendment No. 24)
Article 8

1. The provisions of this Directive shall apply to contracts for services falling within category 6 of Annex IA which

(a) as regards insurance services, provide for annual premiums of not less than ECU 100 000;

(b) as regards banking and other financial services, provide for fees, commissions or other types of remuneration of not less than ECU 200 000.

2. The provisions of this Directive shall apply to contracts for services falling within category 12 of Annex IA which have as their object the complete design of a work within the meaning of Article 1(c) of Directive 71/305/EEC, when the estimated cost net of VAT of the execution of the work is not less than ECU 5 000 000.

1. The provisions of this Directive shall apply to service contracts whose estimated value net of VAT is not less than ECU 200 000 or, in the case of the contracting authorities included in Annex II to Council Directive 88/295/EEC, ECU 130 000.

2. For the purposes of calculating the estimated value of the contract, the contracting authority shall include the total remuneration of the supplier as estimated at the time of publication of the notice in accordance with Article 17, taking account of the provisions of paragraphs 3 to 8.

Where the design of a work is subdivided into several lots, each one the subject of a contract, the value of execution of each lot must be taken into account for the purpose of calculating the amount referred to above. Where the aggregate value of the execution of the lots is not less than the amount referred to above, the provisions of this Directive shall apply to all lots. Authorities shall be permitted to depart from this provision for lots the execution of which has an estimated value net of VAT of less than ECU 1 000 000, provided that the total estimated value of the execution of all the lots exempted does not, in consequence, exceed 20% of the total estimated value of all lots.

3. The provisions of this Directive shall apply to contracts for services falling within category 21 of Annex 1B which provide for expected annual benefits from interest of not less than ECU 200 000.
4. The provisions of this Directive shall apply to all other service contracts whose estimated value net of VAT is not less than ECU 200 000.
5. The value of a contract within the meaning of paragraphs 1, 2 and 4 includes the total remuneration of the supplier as estimated at the time of publication of the notice in accordance with Article 17, along with the elements specified in paragraphs 6 to 10.
9. No procurement requirement for a given amount of services may be split up with the intention of avoiding the application of this Article.

3. The selection of the valuation method shall not be used with the intention of avoiding the application of this Directive, nor shall any procurement requirement for a given amount of services be split up with the intention of avoiding the application of this Article.
4. In assessing the estimated contract value for different types of services, the following amounts shall be taken into account where appropriate:
 - as regards insurance services, the premium payable;
 - as regards banking and other financial services, fees, commissions and interest as well as other types of remuneration;
 - as regards contracts which involve the complete design of work within the meaning of Article 1(c) of Directive 71/305/EEC, the fee or commission payable;

Where the services are subdivided into several lots, each one the subject of a contract, the value of each lot must be taken into account for the purpose of calculating the amount referred to above. Where the value of the lots is not less than the amount referred to above, the provisions of this Directive shall apply to all lots. Authorities shall be permitted to depart from this provision for lots which have an estimated value net of VAT of less than ECU 80 000, provided that the total estimated value of the execution of all the lots exempted does not, in consequence, exceed 20% of the total estimated value of all lots.

Paragraphs 5 and 6 unchanged

(Amendment No. 25)

Article 8(7)

7. In the case of regular contracts or of contracts which are to be renewed within a given time, the contract value may be established on the basis of:

- either the aggregate cost of similar contracts for the same category of services concluded over the previous fiscal year or 12 months, adjusted, where possible, for anticipated changes in quantity or value over the subsequent 12 months;
- or the estimated aggregate cost during the 12 months following first performance or during the term of the contract, where this is greater than 12 months.

7. In the case of regular contracts or of contracts which are to be renewed within a given time, the contract value may be established on the basis of:

- either the aggregate cost of contracts covering similar categories of services, awarded over the previous fiscal year or 12 months, adjusted, where possible, for anticipated changes in quantity or value over the subsequent 12 months;
- or the estimated cost of successive contracts awarded over the accounting period, where this is greater than 12 months.

Paragraphs 8 and 9 unchanged

(Amendment No. 26)
Article 8(10)

When calculating the amounts referred to in paragraphs 1 to 4, account shall be taken not only of the value of the services but also of the estimated value of the supplies needed to carry out the services which are made available to the supplier by the authorities.

Delete

(Amendment No. 27)
Article 8(11)

11. Article 5(1)(c) and (1)(d) of Directive 77/62/EEC are applicable as regards the value in national currency of the thresholds laid down in paragraphs 1 to 4 of this Article, the calculation of these values, and the revision of the method of calculation.

(a) The value of the thresholds in national currencies shall be revised every two years with effect from 1 January 1988. The calculation of these values shall be based on the average daily values of these currencies in terms of the ecu over the 24 months terminating on the last day of October immediately preceding the 1 January revision. The values shall be published in the *Official Journal of the European Communities* at the beginning of November.

(b) The method of calculation referred to in subparagraph (a) above shall be examined, on the Commission's initiative, within the Advisory Committee for Public Contracts two years after its initial application.

Articles 9 to 11 unchanged

(Amendment No. 28)
Article 12

Where authorities conclude a public service concession contract within the meaning of Article 1(h), the advertising rules as described in Articles 17, 18 and 19 shall apply irrespective of whether the object of the concession is a service within the meaning of Annex 1A or Annex 1B, when its value is not less than ECU 5 000 000.

Delete

(Amendment No. 29)
Article 13(1)

1. In awarding public service contracts the authorities shall apply the procedures defined in Article 1, adapted to this Directive.

1. In awarding public service contracts the authorities shall apply the procedures defined in Article 1(d), (e) and (f), adapted to this Directive.

Paragraph 2 unchanged.

(Amendment No. 30)
Article 13(3c)

3. The authorities may award public service contracts by negotiated procedure without prior publication of a tender notice, in the following cases:

3. The authorities may award public service contracts by negotiated procedure without prior publication of a tender notice, in the following cases:

Paragraphs (a) and (b) unchanged.

(c) when the contract concerned is part of the follow-up to a design contest and must, according to the relevant rules, be awarded to one of the winners of that contest;

(c) when the contract concerned is part of the follow-up to a design contest and must, according to the relevant rules, be awarded to one of the winners of that contest provided that all the winners are included in the procedure;

(d) unchanged.

(Amendment No. 31)
Article 13(3)(e)

(e) for additional services not included in the project initially considered or in the contract first concluded but which have, through unforeseen circumstances, become necessary for the carrying out of the service described therein, on condition that the award is made to the supplier carrying out such service:

- when such services cannot be technically or economically separated from the main contract without great inconvenience to the contracting authorities,
- or
- when such services, although separable from the execution of the original contract, are strictly necessary to the later stages.

(f) unchanged

Paragraph 4 unchanged.

(e) for additional services not included in the project initially considered or in the contract first concluded but which have, through unforeseen circumstances, become necessary for the carrying out of the service described therein, on condition that the award is made to the supplier carrying out such service:

- when such services cannot be technically or economically separated from the main contract without great inconvenience to the contracting authorities,
- or
- when such services, although separable from the execution of the original contract, are strictly necessary for its later stages.

(Amendment No. 32)
Article 14(2)

1. unchanged.

2. The authority shall inform candidates or tenderers who so request of the grounds on which it decided not to award a contract in respect of which a prior call for completion was made, or to recommence the procedure. It shall also inform the Office for Official Publications of the European Communities of that decision.

2. The authority shall inform candidates or tenderers who so request in writing of the grounds on which it decided not to award a contract in respect of which a prior call for completion was made, or to recommence the procedure. It shall also inform the Office for Official Publications of the European Communities of that decision.

(Amendment No. 32)
Article 14(3), fourth indent

Does not apply to the English text

(Amendment No. 34)
Article 15

1. Design contests shall be subject to the rules set out below. When design contests are held as a separate procedure, these rules are applicable only when the total amount of prizes and payments to participants is not less than ECU 200 000.

1. Design contests shall be subject to the rules set out below. When design contests are held as a separate procedure, these rules are applicable only when the total amount of contest prizes and payments to participants is not less than ECU 200 000.

(Amendment No. 35)
Article 15(4)

4. The jury shall be composed only of persons who have no financial connections or special relationships with participants in the contest. Whenever a particular professional qualification is required from participants in a contest, the majority of the jury members shall have the same qualifications.

4. The jury shall be composed only of persons who have no direct or indirect connections with participants in the contest. Whenever a professional or special qualification is required from participants in a contest, the majority of the jury members shall have the same qualifications.

The jury shall be autonomous in its decisions. It shall take its decisions based on projects presented in an anonymous way, and solely on the grounds of the criteria indicated in the invitation for projects in the sense of Annex IV.

The jury shall be autonomous in its decisions. It shall take its decisions based on projects presented in an anonymous way, and solely on the grounds of the criteria indicated in the invitation for projects in the sense of Annex IV.

Paragraph 5 unchanged.

Article 16 unchanged

(Amendment No. 36)
Article 17(1)

1. Authorities shall make known, by means of an indicative notice to be published as soon as possible after the beginning of their budgetary year, the intended total procurement in each of the service categories listed in Annex 1A which they envisage awarding during the coming 12 months where the total estimated value, taking account of the provisions of Article 8, is equal to or greater than ECU 750 000. Intended contracts for the design of a work within the meaning of Article 1(c) of Directive 71/305/EEC and of which the estimated value is not less than the threshold laid down in Article 8(2) shall be indicated separately in the notice.

1. Authorities shall make known, by means of an indicative notice to be published as soon as possible after the beginning of their budgetary year, the full list of descriptive headings of the service contracts subject to the provisions of this directive, taking account of the provisions of Article 8 and the intended total procurement in each of the service categories listed in Annex 1A which they envisage awarding during the coming 12 months where the total estimated value per category, taking account of the provisions of Article 8, is equal to or greater than ECU 750 000.

Paragraphs 2 and 3 unchanged.

(Amendment No. 37)
Article 18(4)

Paragraphs 1 to 3 unchanged.

4. The Commission shall draw up the rules for establishing regular reports on the basis of such notices, and for the publication of such reports in accordance with the procedure laid down in Article 39(3).

4. The Commission shall draw up the rules for establishing regular reports on the basis of the notices referred to in paragraph 3, and for the publication of such reports in accordance with the procedure laid down in Article 39(3).

(Amendment No. 38)
Article 19(2)(iii)

Does not apply to the English text

Article 20 unchanged.

(Amendment No. 39)

Article 21

1. Authorities may take account of variants where the criterion for the award of the contract is that of the economically most advantageous tender. They shall indicate in the tender notice whether or not variants will be considered. Where applicable, any specific requirements for the presentation of variants shall be stated in the tender notice or in the contract documents.

Variants must not deviate from minimum specifications which the authority may have established. Minimum specifications shall be stated in the tender notices or in the contract documents.

1. Where the criterion for the award of the contract is that of the economically most advantageous tender, authorities may take account of variants that are submitted by a tenderer and meet the minimum specifications required by the authorities. They shall indicate in the tender notice whether or not variants will be considered. The authorities shall state in the contract documents the minimum specifications to be respected by the variants and any specific requirements for their presentation. They shall indicate in the tender notice whether variants are authorized.

Authorities may not reject the submission of a variant on the sole grounds that it has been drawn up with technical specifications defined by reference to national standards transposing European standards, to European technical approvals or to common technical specifications referred to in Article 16(2) or again by reference to national technical specifications referred to in Article 16(5)(a) and (b).

Paragraph 2 unchanged.

Article 22 unchanged.

(Amendment No. 40)
Article 23

Paragraph 1 unchanged.

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| <p>2. Candidates or tenderers may not be rejected on the grounds that they are either natural or legal persons. Legal persons, however, may be required to indicate in the tender or the request for participation the names and relevant professional qualification of the staff to be responsible for the performance of the service.</p> | <p>2. <u>Candidates or tenderers, who under the law of the Member State in which they are established, are entitled to carry out the relevant service activity, shall not be rejected on the sole grounds that, under the law of the Member State in which the contract is awarded, they would have been required to be either a natural or a legal person.</u></p> |
| <p>3. Paragraph 2 is without prejudice to national rules which establish conditions for the setting up of, or the carrying out of particular activities by, legal persons governed by the law of the Member States concerned.</p> | <p>3. <u>Legal persons may be required to indicate in the tender or the request for participation the names and relevant professional qualifications of the staff to be responsible for the performance of the service.</u></p> |

Article 24 unchanged.

(Amendment No. 41)
Article 25(1)

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| <p>1. The authority may state in the contract documents, or be obliged by a Member State to do so, the authority or authorities from which a candidate may obtain the appropriate information on the obligations relating to the employment protection provisions and the working conditions which are in force in the Member State, region or locality in which the services are to be <u>performed</u> and which shall be applicable to the services provided on site during the performance of the contract.</p> | <p>1. The authority may state in the contract documents, or be obliged by a Member State to do so, the authority or authorities from which a candidate may obtain the appropriate <u>relevant</u> information on the obligations relating to the employment protection provisions and the working conditions which are in force in the Member State, region or locality in which the services are to be <u>provided</u> and which shall be applicable to the services provided on site during the performance of the contract.</p> |
|---|--|

(Amendment No. 42)
Article 25(2)

2. The authority which supplies the information referred to in paragraph 1 shall request the tenderers or those participating in the contract procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to employment protection provisions and the working conditions which are in force in the place where the service is to be carried out. This shall be without prejudice to the application of the provisions of Article 34 concerning the examination of abnormally low tenders.

2. The authority which supplies the information referred to in paragraph 1 shall request the tenderers or those participating in the contract procedure to indicate that they have taken account, when preparing their tender, of the obligations relating to employment protection provisions and the working conditions which are in force in the place where the service is to be carried out. This shall be without prejudice to the application of the provisions of Article 34 concerning the examination of abnormally low tenders.

(Amendment No. 43)
Article 26(g)

Paragraphs (a) to (f) unchanged.

Any supplier may be excluded from participation in the contract who:

(g) is guilty of serious misrepresentation in supplying the information required under this chapter.

Any supplier may be excluded from participation in the contract who:

(g) is guilty of serious misrepresentation in supplying or failing to supply the information that may be required under this chapter.

(Amendment No. 44)
Article 26, final paragraph

Member States shall, within the time-limit referred to in Article 19, designate the authorities and bodies competent to issue these documents and shall forthwith inform the other Member States and the Commission thereof.

Member States shall, within the time-limit referred to in Article 43, designate the authorities and bodies competent to issue these documents and shall forthwith inform the other Member States and the Commission thereof.

(Amendment No. 45)
Article 27

Paragraphs 1 and 2 unchanged.

3. The relevant professional or
trade registers or declarations or
certificates are:

3. The relevant trade registers or
declarations or certificates are:

First and second indents unchanged.

Third indent.

- in Germany, the 'Handelsregister'
and the 'Handwerksrolle,'

- in Germany, the 'Handelsregister',
the 'Handwerksrolle', and
information on membership from the
relevant professional body,

Fourth to tenth indents unchanged.

Eleventh indent

- in the United Kingdom and Ireland,
the supplier may be requested to
provide a certificate from the
'Registrar of Companies' or the
'Registrar of Friendly Societies'
or, if he is not so certified, a
certificate stating that the person
concerned has declared on oath that
he is engaged in the profession in
question in the country in which he
is established in a specific place
under a given business name.

- in the United Kingdom and
Ireland, the supplier may be
requested to provide evidence of
membership of the relevant trade
association or other regulation body
for the industry concerned or
a certificate from the 'Registrar of
Companies' or the 'Registrar of
Friendly Societies' or, if he is not
so certified, a certificate stating
that the person concerned has
declared on oath that he is engaged
in the profession in question in the
country in which he is established
in a specific place under a given
business name.

Article 28 unchanged.

(Amendment No. 46)
Article 29(2)(b)

1. unchanged

2. Evidence of the suppliers' technical capability may be furnished by one or more of the following means according to the nature, quantity and purpose of the services to be supplied:

(b) a list of the principal services supplied in the past three years, with the sums, dates and recipients, public or private, involved;

2. Evidence of the suppliers' technical capability may be furnished by one or more of the following means according to the nature, quantity and purpose of the services to be supplied:

(b) a list of the principal services provided in the past three years, with the sums, dates and recipients, public or private, of the services performed;

Paragraphs 3 and 4 unchanged.

(Amendment No. 47)
Article 30

Should authorities require the production of certificates drawn up by independent bodies for attesting conformity of the supplier to certain quality assurance standards, reference should be made to quality assurance standard systems based on the relevant EN 29000 European standards series certified by bodies conforming to the EN 45000 European standards series. (rest unchanged)

Should authorities require the production of certificates drawn up by independent bodies for attesting conformity of the supplier to certain quality assurance standards, they shall refer to quality assurance standard systems based on the relevant EN 29000 European standards series certified by bodies conforming to the EN 45000 European standards series. (rest unchanged)

Article 31 unchanged.

(Amendment No. 48)
Article 32

Paragraphs 1 to 3 unchanged.

Paragraph 4 new.

4. When registering providers of services from other Member States on such a list, no proof or statement can be required in addition to those required of national providers of services and, in any case, none in addition to those required in Articles 26 to 30.

Paragraph 5 new.

5. Those Member States that have official lists shall be obliged to inform the other Member States of the address of the body to which applications for registration should be sent.

(Amendment No. 49)

Article 33(1)(a)

1. Without prejudice to national law, regulation or administrative provision on the remuneration of certain services, the criteria on which the authority shall base the award of contracts may be:

(a) when the award is made to the economically most advantageous tender, various criteria relating to the contract: for example, quality, technical merit, aesthetic and functional characteristics, technical assistance and service, delivery date and period of completion, price, or

(b) unchanged

1. Without prejudice to national law, regulation or administrative provision on the remuneration of certain services, the criteria on which the authority shall base the award of contracts may be:

(a) when the award is made to the economically most advantageous tender, various criteria relating to the contract: for example, quality, technical merit, aesthetic and functional characteristics, technical assistance and service, delivery period or period of completion, price, or

(Amendment No. 50)

Article 33(2)

1. unchanged.

2. Where the contract is to be awarded to the economically most advantageous offer, authorities shall state in the contract documents or in the tender notice the award criteria which they intend to apply and the intended ranking or weighting which they intend to use.

2. Where the contract is to be awarded to the economically most advantageous offer, authorities shall state in the contract documents or in the tender notice the award criteria which they intend to apply and, if possible, the intended ranking or weighting which they intend to use.

(Amendment No. 51)
Article 33(3)

3. Paragraph 1 shall not apply when a Member State bases the award of contracts on other criteria, within the framework of rules in force at the time of the adoption of this Directive whose aim it is to give preference to certain tenderers, on condition that the rules invoked are compatible with the Treaty.

Delete.

(Amendment No. 52)
Article 34

1. If, for a given contract, tenders appear to be abnormally low in relation to the transaction, the authority shall request, in writing, details of the constituent elements of the tender concerned. It shall, in particular, inquire whether the tenderer is an authority within the meaning of Article 1(b), whether the tenderer is in receipt of any form of State aid and whether the aid has been notified to and received the approval from the Commission pursuant to Article 93(3) of the Treaty.

1. If, for a given contract, tenders appear to be abnormally low in relation to the transaction, the authority shall, before it may reject those tenders, request, in writing, details of the constituent elements of the tender which it considers relevant, and shall verify those constituent elements taking account of any explanations received. It may set a reasonable period within which to reply.

Authorities shall verify the constituent elements of the tenders concerned, taking account of any explanations received, before deciding on the award of the contract or on the rejection of a tender.

Authorities shall verify the constituent elements of the tenders concerned, taking account of any explanations received, before deciding on the award of the contract or on the rejection of a tender.

(Amendment No. 53)
Article 34(2)

2. In the case of a tender submitted by a public authority or a public enterprise, the authority shall in particular enquire whether the tender is influenced by public funds allocated for
(rest unchanged)

2. In the case of a tender submitted by a tenderer who is a contracting authority within the meaning of Article 1(b) or any other public authority or a public enterprise, the authority concerned shall in particular enquire whether the tender is influenced by public funds allocated for
(rest unchanged)

Paragraph 3 unchanged.

(Amendment No. 54)
Article 35

Until 31 December 1992, this Directive shall not prevent the application of existing national provisions on the award of public service contracts which have as their objective the reduction of regional disparities and the promotion of job creation in regions whose development is lagging behind and in declining industrial regions, on condition that the provisions concerned are compatible with the Treaty, in particular with the principles of non-discrimination on ground of nationality, freedom of establishment and freedom to provide services, and with the Community's international obligations. Delete

(Amendment No. 55)
Article 36

1. Member States shall inform the Commission of national provisions covered by Articles 33(3) and 35 and of the rules for applying them. Delete
2. Member States concerned shall forward to the Commission, every year, a report describing the implementation of these provisions. The reports shall be submitted to the Advisory Committee for Public Contracts.

Article 37 unchanged.

(Amendment No. 56)
Article 38(1)

1. In order to complete the information obtained on the basis of the award notices under Article 18, Member States shall each year, at the latest by 31 October, forward to the Commission a statistical report for the preceding year concerning *inter alia* the total value of contracts awarded which are below the thresholds laid down in Article 8 and which would otherwise have been covered by this Directive. Details shall be fixed according to the procedure laid down in Article 39(3).

2. unchanged.

1. In order to complete the information obtained on the basis of the award notices under Article 18, Member States shall each year, at the latest by 31 October, forward to the Commission a statistical report concerning the contracts awarded for the preceding year. The report shall detail at least the number and value of contracts awarded by each contracting authority or category of contracting authority above the thresholds laid down in Articles 3 and 8, by procedure, type of service and the nationality of the provider of services to whom the contract has been awarded and, in the case of negotiated procedures, subdivided in accordance with Article 13, listing the number and value of the contracts awarded to each Member State and to third countries. Details shall be fixed according to the procedure laid down in Article 39(3).

(Amendment No. 57)
Article 39(2)

1. unchanged.

2. As regards procurement of telecommunications services falling within category 5 of Annex 1A, the Commission shall be assisted by the Advisory Committee on Telecommunications Procurement set up by Directive 90/531/EEC.

Paragraphs 3 and 4 unchanged.

2. As regards procurement of telecommunications services falling within category 5 of Annex 1A, the Commission shall also be assisted by the Advisory Committee on Telecommunications Procurement set up by Directive 90/531/EEC.

(Amendment No. 58)
Article 40(2)

1. unchanged.

2. The Commission shall report to the Council, before 31 December 1991 and then periodically, on the opening up of public service contracts and concessions in third countries and on the state of negotiations with these countries on this subject in the GATT framework or elsewhere.

2. The Commission shall report to the Council, before 31 December 1992 and then periodically, on the opening up of public service contracts and concessions in third countries and on the state of negotiations with these countries on this subject, particularly in the GATT framework.

Paragraph 3 unchanged.

(Amendment No. 59)
Article 40(4)(a)

4. Under the conditions referred to in paragraph 3 (b) and (c), the Commission may decide, in addition to action taken pursuant to that paragraph, that the award of public service contracts or concessions to:

- (a) undertakings governed by the law of the country in question;
- (b) undertakings affiliated to the undertakings specified in (a) and having their registered office in the Community but having no effective and continuous link with the economy of a Member State;

4. Under the conditions referred to in paragraph 3, the Commission may decide, in addition to action taken pursuant to that paragraph, that the award of public service contracts or concessions to:

- (a) undertakings governed by the law of the third country in question;
- (b) unchanged.

(Amendment No. 60)
Article 40(4)(c)

(c) tenders which have as their object services originating in the country in question.

(c) undertakings submitting tenders concerning services originating in the country in question.

Paragraph 5 unchanged.

Article 41 unchanged.

(Amendment No. 61)
Article 42

Not later than three years after the time limit for compliance with this Directive the Commission, acting in close cooperation with the Committee referred to in Article 39, shall review the manner in which this Directive has operated including, in particular, the effects of the application of the Directive to procurement of services listed in Annex I A and the provisions concerning technical standards. It shall evaluate, in particular, the prospects for the full application of the Directive to procurement of other services listed in Annex I B, and the effects of in-house performance of services on the effective opening-up of the market in this area. It shall make the necessary proposals to adapt the Directive accordingly.

Not later than three years after the time limit for compliance with this Directive the Commission, acting in close cooperation with the Committee referred to in Article 39, shall review the manner in which this Directive has operated including, in particular, the effects of the application of the Directive to procurement of services listed in Annex I A and the provisions concerning technical standards. It shall evaluate, in particular, the prospects for the full application of the Directive to procurement of other services listed in Annex I B, and the effects of in-house performance of services on the effective opening-up of the market in this area. It shall, after consultation with the social partners, make the necessary proposals to adapt the Directive accordingly.

Articles 43 to 45 unchanged

Annex I.A

Points 1 to 5 unchanged.

(Amendment No. 62)

6. Financial services
ex 81,812,814

(a) Insurance services

(b) Banking and investment services
remunerated by fees,
commissions, or comparable types
of remuneration

6. Financial services
ex 81,812,814

(a) Insurance services

(b) Banking and investment services

Points 7 to 16 unchanged.

Annex I.B

Points 17 to 20 unchanged.

(Amendment No. 63)
Annex 1(B)(21)

<u>Financial services</u>	<u>Delete</u>
<u>Banking and investment services not remunerated by fees, commissions, or comparable types of remuneration</u>	

Points 22 to 28 unchanged.

Annex II unchanged.

Annex III

A. Prior information

(Amendment No. 64)

1. The name, address, telegraphic address, telephone, telex and facsimile numbers of the authority and, if different, of the service from which additional information may be obtained:

1. The name, address, telegraphic address, telephone, telex and facsimile numbers of the authority and, if different, of the service from which additional information may be obtained:

1a. The full list of descriptive headings of service contracts subject to the provisions of this directive, taking account of the provisions of Article 8, by category of service listed in Annex IA.

Points 2 to 6 unchanged.

B. Open procedure

Points 1 to 5 unchanged.

(Amendment No. 65)

6. Variants

6. Variants

(a) minimum specifications

(a) delete

(b) desirable elements

(b) delete

(c) where applicable, prohibition on variants;

(c) where applicable, prohibition on variants;

Points 7 to 18 unchanged

C. Restricted procedure

Points 1 to 6 unchanged.

(Amendment No. 66)

7. Variants

7. Variants

(a) minimum specifications

(a) delete

(b) desirable elements

(b) delete

(c) where applicable, prohibition on variants;

(c) where applicable, prohibition on variants;

Points 8 to 17 unchanged

(Amendment No. 67)

Point 17a (new)

Where applicable, any deposits and guarantees required.

D. Negotiated procedure

Points 1 to 6 unchanged.

(Amendment No. 68)

7. Variants

7. Variants

(a) minimum specifications

(a) delete

(b) desirable elements

(b) delete

(c) where applicable, prohibition on variants;

(c) where applicable, prohibition on variants;

Points 8 to 17 unchanged.

(Amendment No. 69)

Point 17a (new)

Where applicable, any deposits and guarantees required.

E. unchanged.

DRAFT LEGISLATIVE RESOLUTION
(Cooperation procedure: first reading)

embodying the opinion of the European Parliament
on the Commission proposal for a Council directive
relating to the coordination of procedures on the award
of public service contracts

The European Parliament,

- having regard to the Commission proposal to the Council (COM(90) 372 final - SYN 293)¹,
 - having been consulted by the Council pursuant to Article 100a of the EEC Treaty (C3-1/91),
 - having regard to the report of the Committee on Economic and Monetary Affairs and Industrial Policy and the opinion of the Committee on Legal Affairs and Citizens' Rights (A3-0111/91),
 - having regard to the Commission position on the amendments adopted by Parliament,
1. Approves the Commission proposal subject to Parliament's amendments and in accordance with the vote thereon;
 2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 149(3) of the EEC Treaty;
 3. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 4. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 149(2)(a) of the EEC Treaty;
 5. Instructs its President to forward this opinion to the Council and Commission.

¹ OJ No. C 23, 31.1.1991, page 1

B

EXPLANATORY STATEMENT

Introduction

This proposal for a directive on public service contracts has a section devoted to it in the white paper on completing the internal market. It is intended to establish a Community framework for the purchasing of services by central, regional and local public authorities. Among these services a distinction has to be made between intellectual services (where the value added is basically intellectual, such as auditing, consultancy, technical engineering, architecture, etc.) and utilities (cleaning, transport, telecommunications, water, electricity, etc.). Purchases of services by public bodies are considerable, accounting for about 20% of total public purchasing. Liberalization of public service contracts in the Community will permit financial savings in sectors where prices can be set freely and which lend themselves to economies of scale. Above all it will lead to greater mobility and thus improved performance throughout the sectors concerned. The resultant financial and qualitative gains will strengthen the Community's position in the world services market.

1. A two-tier system

The proposal sets up a two-tier system. The full system will apply only to services identified as being of priority interest because of their potential in cross-frontier operations. For other categories the rules will be relaxed and will comprise only minimum retrospective transparency requirements.

(a) Services subject to the full system

Annex I.A lists services of priority interest that are subject to the full system: professional services in areas such as engineering, architecture, telecommunications, insurance, certain banking services, R & D, transport, publishing and printing and cleaning, maintenance and repair.

The priority given here responds to several criteria, in particular the level of know-how of the services in question and their turnover and potential for expanding cross-frontier operations. In defining different service categories, the proposal makes use of the United Nations Central Product Classification (CPC).

(b) Other services subject only to transparency requirements

Annex I.B lists services to which the full system does not apply: in general, the hotel trade, catering, rail and water transport, certain financial and banking services, and legal, social, recreational, cultural and sporting services.

(c) Derogations

Certain sectors are subject to derogations because of specific requirements. Some are standard derogations that have already featured in earlier public service contract directives, e.g. those concerning secrecy, State security and certain aspects of defence (limits laid down in Article 223 of the Treaty). The following are also excluded from the scope of the directive:

- real estate contracts, which essentially concern local markets, thus ruling out any prospect of cross-frontier competition;
- certain broadcasting activities;
- local telephone services;
- arbitration and conciliation services (jointly selected by the two parties, which rules out competition);
- financial services such as the primary issuing of government bonds and any other services related to the Member States' monetary policies.

(d) Thresholds

For most of the service categories concerned, the proposal requires (Article 8) the same minimum contract value as the supplies directive but with adaptations to certain service markets.

The proposal makes provision:

- for annual premiums of not less than 100 000 ECU for insurance services,
- for fees and commissions of not less than 200 000 ECU for banking and other financial services,
- for the directive to apply to contracts concerning the design of a work when the cost of the work involved is not less than 5 million ECU, by analogy with the public works directive, 71/305/EEC.

2. Procedures for the full system, which applies to priority areas (Annex I.A)

The directive's requirements are similar to those of existing directives. They do, however, make specific provision for certain types of service contracts.

(a) Choice of award procedures

Intellectual services are subject to the negotiated procedure with publication of an opinion, i.e. when the nature of the services to be procured is such that contract specifications cannot be established with sufficient precision to permit an open procedure (Article 13(2)(c)).

The directive rules that admission to contests preceding the award of contracts, where total prizes and payments exceed 200 000 ECU, should be open to all Community nationals (not just those of a particular region or part of the Community).

(b) Variants

When the criterion for the award of the contract is the most economically advantageous tender, the authorities may take account of variants. In this event they cannot reject a variant simply because it would lead to a supply contract rather than a public service contract. This provision of Article 21(2) is designed to cover the frequent cases where it is difficult to establish the dividing line between the provision of a service or the delivery of a product (e.g. bespoke software compared with standard software).

c. Ability and award criteria

The provisions concerning participation and selection of participants are very similar to those in the works and supplies directives. However, account is taken of the particular characteristics of the free professions, by making reference to their professional risk indemnity insurance (Article 28(1)(a)) and skills (Article 29(1)).

As regards awards, criteria other than the economically most advantageous tender may be considered, for example, quality, technical merit and aesthetic and functional characteristics, to take account of the fact that several Member States regulate fees in the free professions.

3. Other provisions

(a) Prevention of distortions of competition

Some activities, such as in-house performance and reserved activities, fall outside the directive's scope.

In-house performance means services provided within an organization constituting a single legal person, for instance local authorities in a particular state. The directive does not prohibit the public authorities from satisfying their needs with their own means. Nevertheless, this could lead to abuses, so the effects of in-house services will be considered during the review of the directive promised in Article 42.

On the other hand, the directive already gives consideration to services carried out by suppliers who have a special affiliation with the contracting authority (suppliers who are themselves part of the public sector or who have exclusive rights). This is covered in Article 32, subject to the exceptions set out in Articles 223 (secrecy), 55 and 56 of the EEC Treaty and Article 7 of the directive (formal and transparent exclusive right established by law or regulation, and compatible with the Treaty).

Finally, if public authorities or public enterprises exploit the competitive advantages of their public status, (the prices do not reflect economic costs), Article 34(2) states that the contracting authority shall obtain further information and inform the Commission.

(b) Relations with third countries

The implementation of the directive will enable non-Community firms to improve their access to the European market. This does not present any great risk because the service implies a substantial, stable implantation of equipment on the territory where the service is rendered. On the other hand the risk would be greater if the service could be rendered at a distance (telecommunications, data-processing) or through a temporary or very limited local agency (consultancy, software services).

Consequently, the Community has to ensure adequate protection if the third countries concerned do not grant the same facilities to Community firms, (e.g. the US 'Buy America' Act, which prohibits federal agencies from procuring services from firms from third countries). Article 40 of the directive offers a means of protection comparable to that in the second banking directive (limiting access to public service contracts in the EEC in the event of discriminatory treatment in third countries).

(c) Entry into force

The directive is due to come into effect on 1 March 1992. The Commission will review the application of the directive no later than three years after this date, in particular the prospects for full application to the services listed in Annex I.B.

4. Assessment of the proposal for a directive

The general arrangement of the proposal fulfils the requirements of a healthy liberalization of public service contracts and can thus be approved.

Nevertheless, certain modifications are called for, to deal with particular problems.

1. Making the text more comprehensible by clarifying the directive's scope and some of its more impenetrable clauses, which will not be easily comprehensible to the numerous providers of services (SMUs and the self-employed) who do not have legal services accustomed to reading EEC public contract directives.
2. Deleting or rectifying the sections that will facilitate evasion.
3. Setting thresholds for application of the directive that are unambiguous and will work in practice, particularly for design and public service concession contracts.
4. Avoiding the collection of certain kinds of statistics on public contracts, which would place an extra administrative burden on the public authorities and the Commission without serving any real purpose.

The next section sets out the reasons for the main amendments proposed to the articles. The amendments to the recitals are primarily intended to bring them into line with the amended articles.

5. Explanation of the main amendments

Article 1

This article defines the scope of the directive. It is thus very important that it should be quite unambiguous. Consequently, the following changes are proposed.

- To increase the clarity of the text, mention should be made in subparagraph (ii) of the definitions of public supply and works contracts that appear in the directive on the excluded sectors (90/531/EEC). This is essential because Directive 90/531/EEC contains a wider definition of public supply contracts, including software services (Article 1(3)(a)), than the supplies covered by Directive 77/62/EEC. This is the purpose of Amendment No. 10.
- It seems more logical to mention the service contracts awarded by the four excluded sectors in Article 1, rather than Article 6 as in the Commission text. This is the purpose of Amendment No. 11.
- It is logical to exclude, as does Article 1(a)(ii) contracts for the acquisition of immovable property from the scope of the present directive, but, if the contract of acquisition between the old and new owners is coupled with a leasing contract between the new owner and a provider of services, the second contract is subject to the directive (cf. category 19 in Annex I(B)). This is the purpose of Amendment No. 12.
- In Article 1(a)(iii) the words 'pursuing public interest objectives such as information to the population in time of civil disasters' lend themselves to a variety of interpretations and would give rise to numerous disputes. It is thus preferable to delete them. This is the purpose of Amendment No. 13.
- Article 1(b) defining the contracting authorities deserves more than references to two other directives as this will mean nothing to a non-specialist. Consequently, it is proposed to incorporate the text of Directive 71/305/EEC as amended by 89/440/EEC verbatim; this is the purpose of Amendment No. 14.
- Article 1(h) defines public service concessions.

The proposal does not give a clear enough definition of what happens in the case of heterogeneous concessions, those in which the concessionaire provides both works (e.g the construction of a motorway) and service (e.g. the management of the motorway). It seems logical that works concessions and heterogeneous concessions should be covered by the works directives (89/440/EEC amending 71/305/EEC) and purely service concessions without any works should be covered by the current proposal. This is the purpose of Amendment No. 15.

- It would be appropriate to insert a new Article 1a, which sets out clearly the conditions in which the directive is applicable when a contract covers both services and supplies. It is better to clarify this point in the directive itself than in an explanatory text.

Article 2

Article 2(3) should apply to all types of service, not just those that concern works, as set out in the proposal. This is the purpose of Amendment No. 17.

Article 3

- Provision should also be made in paragraph 1 for cases where the concessionaire in public service contracts does not only provide services but supplies. This is the purpose of Amendment No. 18.
- In paragraph 2 the position of contracting authorities not covered by this paragraph has to be clarified. The system also has to be extended to any supply contracts awarded by the concessionaires. This is the purpose of Amendment No. 19.
- The new paragraph 4 in Amendment No. 20 is intended to cover cases where, after award of the service concession (which, according to the definition given should exclude any works contract), the concessionaire is obliged for whatever reason to award a works contract.
- The new paragraph 5 in Amendment No. 21 is intended to give a precise definition of the directive's application thresholds for service concession contracts.

The paragraph also describes how to determine the value of a public service concession.

Article 6

Amendment No. 11 moves the text of Article 6 to Article 1.

Article 8

- Implementation would be simpler if both thresholds referred to in paragraph 1 were set at the same amount. This is the purpose of Amendment Nos. 24.
- The system proposed in Article 8(2) seems unlikely to work in practice. In the great majority of cases it would be impossible to calculate the exact costs of a works contract at the time when the architecture contract is being got under way. The system proposed would undoubtedly lead to disputes and infringements. Amendment No. 24 is intended to remedy the deficiencies of paragraph 2.
- Amendment No. 25 is intended to clarify the text of Article 8(7).
- In practice it will not be possible to monitor the application of Article 8(10). It will also often be impossible from a practical point of view to estimate the value of the supplies referred to. Its removal would not make it any easier to contravene the directive and it would thus be better to delete it. This is the purpose of Amendment No. 26.
- It would be better to replace the obscure text of Article 8(11) by the provisions set out in the articles of the other directives to which the paragraph refers. This is the purpose of Amendment No. 27.

Article 12

Adoption of Amendment No. 19 (Article 3(5)(new)) would lead to the deletion of this article.

Article 15

When admission to a contest is dependent upon a professional or special qualification, it seems logical that the majority of the jury members should have the same qualification. This is the purpose of Amendment No. 35.

Article 17

Firms that read the notices mentioned in Article 17 will be much more interested in the contracts' descriptive headings than the total procurement in each of the service categories. The contracting authorities should therefore be required to publish the descriptive headings of the service contracts subject to the provisions of this directive and the total amount per category in the contracts under consideration. This is the purpose of Amendment No. 36.

Article 21

In order to make the directive more comprehensible it seems appropriate to reproduce verbatim Article 20a of the public works directive (71/305/EEC as amended by 89/440/EEC) rather than the somewhat different text proposed. This is the purpose of Amendment No. 39.

Article 32

Member States that have official lists of approved suppliers must not be allowed to impose more stringent registration conditions on providers of services from other Member States than those applicable to national providers of services. This is the purpose of Amendment No. 48.

The amendment also requires Member States that have official lists to inform the other Member States of the address of the registration agency.

Article 33

For practical reasons the contracting authorities will not always be able to state in the tender notice or contract documents the ranking or weighting they will apply in the award criteria. Thus indication of the ranking or weighting may be requested but cannot be imposed in all cases. There is no such obligation in the works and supplies directives. Amendment No. 50 is therefore designed to make this optional.

- Article 33(3) is likely to lead to derogations to the directive that would be contrary to the spirit of a single market. Consequently we propose it should be deleted.

Article 34

The wording of Article 34(2) is imprecise. The terms 'public authority' and 'public enterprise' are not defined in this directive. Amendment No. 53 is intended to make it more precise.

Article 35

This article deals with the award of public service contracts by giving preference to firms in certain regions, provided these procedures are compatible with the Treaty. This kind of system has been permitted in four countries since 1957. Nevertheless in 1989 the Commission decided to open infringement proceedings against them and has begun talks with a view to abolishing these procedures before 31 December 1992.

On 20 March 1990, for the first time, the Court of Justice declared a preference system (the Italian system) incompatible with Article 30 of the Treaty, following a reference for a preliminary ruling by an Italian administrative tribunal (Judgment C 21-88, Du Pont de Nemours).

It would therefore be advisable to delete Article 35, especially as it will only apply until 31 December 1992 and it is highly unlikely that the directive will come into force before then.

Article 36

Deletion of Articles 33(3) and 35 will automatically lead to the deletion of Article 36.

Article 38

The case for a statistical report on contracts below the thresholds in Article 8 is unconvincing. It would require an incredible amount of red tape as the Member States would have to draw up statistical reports on the basis of the smallest service contracts.

It would be more useful to ask for a statistical report on contracts above the thresholds in Article 8. This type of report would be all the more useful in that it would not be necessary to wait for the Member States to fully implement Article 18(1) (subsequent notification). Consequently Amendment No. 56 is intended to make the statistical requirement more realistic from the contracting authority's point of view. This amendment is directly inspired by similar provisions in the works and supplies directives.

Article 40

The date of 31 December 1991 in Article 40(2) seems unrealistic. It would be more sensible to choose 31 December 1992. This is the purpose of Amendment No. 58.

Correction of errors of substance and form

Amendments Nos. 29, 38 and 44 correct errors of substance. Amendments Nos. 30, 33, 37, 42, 43, 46, 49, 60 and 65 simply correct errors of form and do not change the spirit of the text.