

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(77) 715 final.

Brussels, 13 January 1978.

Proposal for a

COUNCIL DIRECTIVE

amending the Directive of 26 July 1971 concerning the co-ordination of
procedures for the award of public works contracts

(submitted by the Commission to the Council)

COM(77) 715 final.

EXPLANATORY MEMORANDUM

According to Article 7 of Council Directive 71/305/EEC of 26 July 1971 public works contracts of an estimated value of less than 1 mio units of account (UA) shall not be subject to the co-ordination procedures for the award as described in that directive.

The value of this UA is equal to that of 0.88867088 grams of fine gold, but the conversion thereof into the national currencies of the Member States of the Community is fixed on the basis of their declared parity in gold on given dates. Because of the economic and monetary events in particular of the last years the application in the Member States of the threshold converted in accordance with the UA so defined now has widely differing effects.

A "European unit of account" is defined by Article 10 of the financial regulation of which applies to the general budget of the European Communities() as a given weighted average of the current values of the currencies of the Member States. The value of this unit of account in each of the currencies of the Member States is determined daily. The use of this unit of account for the definition of the threshold in the said directive would produce a similar effect in each Member State which is not the case with the threshold as at present defined. Annex 1 shows the difference between using the old "unit of account" and the new "European unit of account" in the definition of the threshold.

Article 5 of Council Directive 77/62/EEC of 21 December 1976 co-ordinating procedures for the award of public supply contracts contains a threshold analogous to that of Council Directive 71/305/EEC but specifies it in "European units of account". To continue to use thresholds specified in different units of account for such closely related procedures would be illogical and confusing.

In consequence, the Advisory Committee for Public Contracts has asked the Commission to elaborate the legal instruments necessary for the adoption of the "European unit of account" in both directives. This can only be achieved by amending the directive that uses the old "unit of account".

Adoption of the pending proposal for a Regulation applying the European Unit of Account (EUA) to the general budget of the European Communities and to the legal acts adopted by the institutions does not render the present proposal superfluous. The proposed regulation does not meet the need that the reference period for the calculation of the exchange value of the threshold in national currencies be the same for both directives co-ordinating procedures for the award of public contracts; moreover, the need to insure that the threshold in the directive concerning public works contracts produces a similar effect in each Member State is now urgent.

Article 1 paragraph 1 of the present proposed directive amends Article 7 of Council Directive 71/305/EEC so as to specify the threshold in wording identical to that of Article 5 of Council Directive 77/62/EEC for the purpose. This Directive not only used the words "European units of account" but also made it clear that "the estimated value of the contract" was to be "net of VAT".

Article 1 paragraph 2 of the present proposed directive amends Article 19 of Council Directive 71/305/EEC as a consequence of the change to "European units of account". And again it is made clear that the "value of the contract" is not to include value added tax.

The threshold of Directive 71/305/EEC (Article 7)

Exchange value in national currencies of 1 mio units of account (gold parity)		Exchange value in national currencies of 1 mio <u>European</u> units of account as at 1.7.1977	Pourcentage increase or decrease in the threshold's value using <u>European</u> units of account as at 1.7.1977	
(1)	(2)	(2)	(1)	(1)
FB	50,000,000	40,842,000	-	18.3
DKr	7,500,000	6,837,610	-	9.0
DM	3,660,000	2,650,360	-	27.6
H Fl	3,620,000	2,805,250	-	22.5
FF	5,554,190	5,575,650	+	0.04
Lit	625,000,000	1002,490,000	+	60.4
£	416,667	658,849	+	58.1
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Proposal for a
COUNCIL DIRECTIVE
of1978

amending Directive 71/305/EEC concerning the coordination of
procedures for the award of public works contracts
(78/...../EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic
Community, and in particular Articles 57(2), 66 and 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas Council Directive 71/305/EEC of 26 July 1971 concerning the
coordination of procedures for the award of a public works contract⁽¹⁾
lays down a threshold in "units of account" for determining the amount
of the estimated value of public works contracts with effect from which the
Directive applies;

Whereas, for the purpose of the said Directive, the rates used for
converting units of account into national currencies were defined by
reference to the gold parity units of account; whereas the conversion
of the said threshold into national currencies on the basis of this
definition does not reflect the present values of those currencies and,
therefore, has led to differing effects in different Member States;

Whereas Article 10 of the financial regulation of⁽²⁾ which
applies to the general budget of the European Communities (.....)
defines

..... a European unit
of account which represents the average variation in value of the currencies
of the

¹OJ No L 185, 16.8.1971, p.5.
²OJ No L

Member States ; whereas the value of this unit of account in each of the currencies of the Member States is determined daily; whereas its use for the purpose of the Directive requires that a reference date be fixed;

Whereas Council Directive of 21 December 1976 co-ordinating procedures for the award of public supply contracts¹ expresses the threshold from which that Directive shall apply in European units of account;

HAS ADOPTED THIS DIRECTIVE :

Article 1

Council Directive 71/305/EEC of 26 July 1971² is amended as follows :

1. The first paragraphe of Article 7 shall be deleted and the following substituted therefore :

"(a) The provisions of Titles II, III and IV and Article 9 shall apply, under the conditions laid down in Article 5, to public works contracts whose estimated value net of VAT is: not less than 1.000.000 European units of account.

(b) The European unit of account shall be that defined by Article 10 of the financial regulation of which applies to the general budget of the European Communities (.....).

(c) The exchange value in national currencies to be applied shall be the average of the daily value of these currencies over the preceding 12 months calculated on the last day of October every two years, with effect from the following 1 January. This exchange value, calculated by the Commission, shall be published in the Official Journal of the European Communities during the first days of November.

(d) The method of calculation laid down in subparagraph (c) shall be examined, on the Commission's initiative, within the Advisory Committee for Public Contracts two years after its initial application.

¹OJ No L 13, 15.1.1977 page 1

²OJ No L 185, 16.8.1971 page 5

(e) This method shall in any event be reviewed when the Council has acted on the proposal for a Regulation, submitted by the Commission, applying the European unit of account (EUA) to the general budget of the European Communities and to the legal acts adopted by the institutions."

2. In Article 19, the words "such contract is not less than 500.000 units of account" shall read "such contract net of VAT is not less than 500.000 European units of account".

Article 2

Member States shall adopt the measures necessary to comply with this Directive within six months of its notification and shall forthwith inform the Commission thereof.

Article 3

This Directive is addressed to the Member States.