

COUNCIL OF THE EUROPEAN COMMUNITIES
GENERAL SECRETARIAT

PRESS RELEASE

4827/90 (Presse 19)

1387th Council meeting

- INTERNAL MARKET -

Brussels, 22 February 1990

President: Mr Desmond J. O'MALLEY
Minister for Industry and
Commerce, Ireland

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The Governments of the Member States and the Commission of the European Communities were represented as follows:

Belgium:

Mr Paul DE KEERSMAEKER State Secretary for European
Affairs and Agriculture

Denmark:

Mrs Anne-Birgitte LUNDHOLT Minister for Industry

Germany:

Mr Otto SCHLECHT State Secretary, Federal Ministry
of Economic Affairs

Greece:

Mr G. THEOPHANOUS Secretary-General, Ministry of
Trade

Spain:

Mr Pedro SOLBES State Secretary for Relations with
the European Communities

France:

Mrs Edith CRESSON Minister for European Affairs

Ireland:

Mr Desmond J. O'MALLEY Minister for Industry and Commerce

Mr Terry LEYDEN Minister of State at the Department
of Industry and Commerce with
special responsibility for Trade
and Marketing

PUBLIC CONTRACTS

1. Procurement procedures of entities operating in the water, energy, transport and telecommunications sectors

The Council reached agreement in principle on a common position on the proposal for a Directive on public contracts - excluded sectors. The purpose of the Directive is to open up genuine competition at Community level for contracts in the water, energy, transport and telecommunication sectors which were previously exempt from Community rules. Two general Directives on public supply contracts and public works contracts were also adopted recently.

The main points in the common position are as follows:

- The Directive will apply not only to public entities but also to private entities which operate in the areas listed on the basis of special or exclusive rights granted by a competent authority of a Member State.
- In the water sector only drinking water is covered. In the energy sector certain purchases of energy will not be subject to the Directive pending progress in Community energy policy. In the field of transport, air and sea transport are excluded from the scope of the Directive in view of the level of competition which already exists in these areas.

- Only contracts below certain thresholds will be covered. The thresholds are as follows:
 - = ECU 500 000 for works contracts;
 - = ECU 400 000 for general supplies;
 - = ECU 600 000 for telecommunications supplies.
- The agreed procurement procedures are very flexible and transparent and are designed to eliminate excess bureaucracy.
- Special provisions govern the award of supply contracts where the tender involves products originating in third countries with which the Community has not concluded, multilaterally or bilaterally, an agreement ensuring comparable and effective access for Community undertakings to the markets of those third countries.

These provisions allow, inter alia, for the possibility of rejecting a tender where the proportion of the products manufactured outside the Community in the total value of the manufactured products constituting the tender exceeds 50%. Preference will also be given to the Community tender if the conditions are equivalent and the price difference does not exceed 3%.

The Council and the Commission took this opportunity to reaffirm the European Community's commitment to a general and reciprocal opening-up of contracts at international level in the water, energy, telecommunications and transport sectors.

They also underlined the importance of the negotiations which will shortly be taking place to this end, within GATT or elsewhere, and the Community's willingness to contribute actively to their success.

The common position will be formally adopted at a forthcoming Council meeting and will then be submitted to the European Parliament for a second reading under the co-operation procedure.

2. Public service contracts

The Council heard a report from Vice-President BANGEMANN on progress in the Commission on a new proposal for a Directive on public service contracts.

So far Directives on public contracts (including the Directive for previously excluded sectors) cover only supplies and works and not services.

3. Monitoring and appeals procedures for "excluded" sector contracts

The Council took note of Vice-President BANGEMANN's announcement that the proposal for a Directive on the monitoring and appeals procedures applicable to public contracts in the water, energy, transport and telecommunications sectors would be submitted by 31 March 1990.

INSURANCE

The Council took note of a statement from Vice-President BRITTAN on the progress of proceedings on the achievement of the internal market in insurance.

The Vice-President stressed the need to expedite proceedings in order to meet the deadlines laid down in the White Paper and to bring progress on the internal market in insurance up to the level of progress on other financial services.

The Presidency stated its programme for the first half of 1990 which is to achieve rapid progress on the insurance proposals currently under discussion.

ACCOUNTS DIRECTIVES

The Council held a policy discussion on the two proposals for Directives:

- one to extend the scope of Directives 78/660/EEC (4th Directive) on annual accounts and 83/349/EEC (7th Directive) on consolidated accounts;
- and one amending Directive 78/660/EEC (4th Directive) on annual accounts and Directive 83/349/EEC (7th Directive) on consolidated accounts with respect to exemptions for small and medium-sized companies and the drawing up and publication of accounts in Ecus.

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The discussion identified points of convergence between delegations which should make it possible to discuss both proposals in parallel with a view to working out the overall compromise which the Presidency would like to reach before the end of its period of office.

The purpose of the proposal on scope is to apply the same accounting requirements which already exist for companies with share capital to a category of companies with unlimited liability all the members of which are limited companies. This means that such partnerships would have to draw up annual accounts in accordance with the 4th Directive. They would also be obliged to draw up consolidated accounts where the partnership is a parent undertaking.

The second proposal is intended, in the first part, to reduce the accounting obligations on small and medium-sized undertakings and, in the second part, to require accounts to be drawn up and published in Ecus.

MISCELLANEOUS DECISIONS

Nutrition labelling

The Council adopted its common position on a proposal for a Directive on nutrition labelling for foodstuffs for the ultimate consumer.

This proposal follows the Commission "Communication on the completion of the Internal Market: Community legislation on foodstuffs" and is intended to improve consumer information and prevent barriers to trade caused by differences in nutrition labelling in the different Member States.

It introduces specific rules that must be applied by manufacturers when they employ nutrition labelling and which would have the effect of:

- providing a uniform and stable framework for national education and information programmes, following the line of the European Programme against Cancer which has been adopted by the Council;
- contributing, through general compatibility with the Codex, to a reduction in the costs borne by manufacturers exporting to non-member countries.

Consumer credit

The Council adopted the Directive making an addition to Directive 87/102 for the approximation of the laws, regulations and administrative provisions concerning consumer credit.

The addition involves introducing a Community method of calculating the annual percentage rate of charge in order to provide better information for the consumer. The annual percentage rate of charge is the rate which, over the year, equalises the present values of the prospective or actual commitments (loans, reimbursement and charges) of the lender and borrower. The rate will be calculated on the basis of a mathematical formula which appears in the Annex to the Directive.

As a transitional measure, Member States which, before notification of the Directive, use a formula other than the one in the Annex to the Directive may continue to do so until 31 December 1995. Six months before that date, the Council, acting on a report and a proposal from the Commission, will take a decision on the introduction of a single Community mathematical formula.

The Directive also establishes the principle whereby the items in the cost of the credit are included in the calculation of the annual percentage rate of charge. Only certain items specifically provided for in the Directive may be excluded.

The basic Directive and this amendment both apply to credits of between ECU 200 and ECU 2 000.

The Directive is justified both by the need to protect consumers and by the need to ensure transparency of offers with the achievement of the internal market in 1992.

Package travel

The Council adopted its common position on the amended proposal for a Directive on package travel, including package holidays and package tours.

This proposal harmonizes national provisions on essential points in order to encourage free movement of travel packages and avoid distortions of competition between operators in different countries and thereby improve consumer protection; the main provisions are that:

- the descriptive matter in the brochure provided by the organizer or the retailer understandably and accurately specify the price and other key information. Such information is binding on the organizer or the retailer.
- the contract must contain all the essential terms appropriate to the particular package; the Annex to the Directive contains a list of such terms which are to be communicated to the consumer before the contract is entered into. The prices laid down in the contract may not be revised except under conditions set out in the Directive and, in any event, no change may take place within less than 20 days of departure.
- the organizer and/or retailer party to the contract are responsible to the consumer for proper fulfilment of the obligations arising out of the contract, either by themselves or by third parties.

- the organizer and/or retailer party to the contract must provide proof of sufficient guarantees to ensure that, in the event of insolvency, payments made are reimbursed and consumers are repatriated.

The Member States are required to comply with the provisions of the Directive by 31 December 1992 at the latest.

Approximation of the laws of the Member States relating to active implantable electromedical devices

The Council adopted its common position on a first proposal in the field of medical devices which is designed to ensure free movement of such devices within the Community.

The proposal relates to medical devices introduced into the human body which depend for their functioning on a source of power, the best-known example being a pacemaker.

Community transit - abolishing lodgement of the transit advice note

The Council adopted the Regulation amending, with a view to abolishing lodgement of the transit advice note on crossing an internal frontier of the Community, Regulation No. 222/77 on Community transit.

This Regulation is in line with the approach outlined in the Commission communication of June 1989 to the Council and the European Parliament on the completion of the internal market, the object being to set up a transitional phase accompanied by measures to simplify controls in preparation for the elimination of all formalities relating to intra-Community trade and particularly the abolition of fiscal frontiers.

The Regulation is to enter into force on 1 July 1990.

Aid to Romania and Poland

The Council has adopted Regulations:

- on a second emergency measure for the supply of certain agricultural products to Romania.

The products are: = 62 500 tonnes of maize
= 62 500 tonnes of rye
= 2 500 tonnes of butter
= 2 500 tonnes of olive oil
= 10 000 tonnes of beef and veal,
the value being ECU 20,5 million.

- an emergency action for the supply of certain agricultural products to Poland, viz. 300 000 tonnes of common wheat of bread-making quality of a total value of ECU 30 million.

Medium-term financial assistance for Hungary

Following the conclusions of the ECO/FIN Council on 12 February, the Council formally adopted the Decision providing medium-term financial assistance for Hungary (for the content, see the ECO/FIN Council's conclusions in press release 4605/90 (Presse 12)).

Relations with the ACP States - transitional measures up to the entry into force of the 4th ACP-EEC Convention

The Council agreed to the texts to be proposed to the ACP States regarding the transitional measures to be applied between the expiry of the third ACP-EEC Convention (28 February 1990) and the entry into force of the 4th Convention.

The ACP-EEC Committee of Ambassadors, powers having been delegated to it by the ACP-EEC Council of Ministers, will take a decision on the above transitional measures at its next meeting on 27 February 1990.

The transitional measures will involve either continuing to apply certain provisions of the 3rd Convention (mainly those on financial and technical co-operation, Stabex, Sysmin, etc.) or applying the provisions of the 4th Convention in advance (those on the accession of Namibia, trade and rules of origin, sectoral protocols, etc.).

It is also intended that, during the transitional period, the ACP States, the Community and its Member States will, as a mark of their determination to move rapidly from one stage of co-operation to another, take all the practical and legal measures necessary to ensure that the provisions of the new Convention will be implemented as soon as it enters into force.

Appointments

The Council replaced:

- three full members of the Advisory Committee on Freedom of Movement for Workers;
 - one full member and one alternate member of the Advisory Committee on Vocational Training;
 - one full member of the European Social Fund Committee;
 - one alternate member of the Advisory Committee on Education and Training in the field of Architecture.
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Bruxelles, le 22 février 1990

NOTE BIO(90) 54 AUX BUREAUX NATIONAUX
CC. AUX MEMBRES DU SERVICE DU PORTE-PAROLE

**CONSEIL MARCHE INTERIEUR : MARCHES PUBLICS (SECTEURS EXCLUS) ET
COMPTABILITE DES ENTREPRISES (DEBAT D'ORIENTATION) I. LE MOAL-OLLIVE**

MARCHES PUBLICS, SECTEURS EXCLUS

Une position commune a été adoptée par le Conseil dans le cadre de la proposition de directive (COM. 89/380 final) relative aux procédures de passation des marchés dans les secteurs de l'eau, l'énergie, des transports et des télécommunications.

A l'instar de MM. O'Malley et Bangemann, toutes les délégations ont manifesté une réelle volonté politique d'aboutir à un accord ce jour de façon à respecter le calendrier du Livre Blanc et à placer la Communauté dans une bonne position pour les négociations du GATT qui devront s'ouvrir cette année dans le secteur des marchés publics.

Cette position commune a été adoptée à la quasi-unanimité sur la base d'un compromis global proposé par la présidence irlandaise et modifié en quelques points pour rencontrer l'accord de la majorité des délégations sauf celle de la France qui a voté contre.

Quatre obstacles essentiels restaient en effet à lever : les seuils de mise en oeuvre des dispositions communautaires, les date d'entrée en vigueur de la directive, la question de l'achat d'énergie et de combustibles, et enfin le volet externe, l'accès des entreprises de pays tiers aux marchés communautaires.

- Seuils :

La Commission dans sa proposition avait fixé deux seuils, 200.000 ECU pour les contrats de fourniture et 5 Mio d'ECU pour les contrats de travaux. La présidence irlandaise proposait trois seuils différents pour les marchés de fourniture : 300.000 ECU pour les équipements des distributeurs d'électricité, 600.000 ECU pour le secteur télécommunication et 400.000 ECU pour les autres secteur, eau, combustibles, transport. Pour éviter une multiplication des seuils et une opacification des procédures, la position commune exclut le seuil spécial au secteur de la distribution d'électricité. C'est ce qui a motivé le vote négatif de la délégation française.

- Entrée en vigueur :

Tous les Etats membres devront transposer la directive dans leur législation nationale pour le 01.07.1992 et la mettre en oeuvre pour 9 d'entre eux au 01.01.1993. L'Espagne quant à elle l'appliquera à partir du 01.01.1993, le Portugal et la Grèce à partir du 31.12.1997, gagnant ainsi 6 mois de sursis par rapport au compromis de la présidence (01.07.97).

- L'achat d'énergie :

La fourniture d'énergie (achat d'électricité et de combustibles) est exclue du champ d'application de cette directive qui concerne les équipements des distributeurs d'énergie. Cependant par une déclaration unilatérale, la Commission s'est engagée à faire des propositions de façon à rendre effective l'ouverture du marché de l'énergie en 1995.

- Volet externe :

En l'absence d'accord de réciprocité d'ouverture de marchés publics une clause de préférence communautaire a été instaurée. Pour les cas où deux offres, l'une émanant d'un soumissionnaire d'un pays tiers, l'autre d'une entreprise de la Communauté, présentent des caractéristiques équivalentes avec un écart de prix entre elles inférieur ou égal à 3%, les pouvoirs adjudicateurs devront préférer l'offre communautaire à moins qu'il n'existe une incompatibilité technique. Cependant, dans une déclaration commune, le Conseil et la Commission ont réaffirmé "l'engagement de la Communauté Européenne en faveur d'une ouverture générale et mutuelle sur le plan international des marchés dans les secteurs de l'eau, de l'énergie, des télécommunications et des transports". Cette clause sera reconsidérée en fonction des progrès des négociations internationales.

Rappelons enfin que cette directive vise aussi bien les pouvoirs adjudicateurs de droit public que de droit privé, et que les concessions d'exploration et de production de pétrole, gaz, charbon, seront soumis à un régime particulier obéissant à des règles générales de concurrence et de transparence sans pour autant devoir respecter les règles détaillées des procédures définies dans la directive.

L'adoption de cette position commune constitue un grand progrès dans le processus d'achèvement du marché intérieur.

Par ailleurs, le Vice-Président Bangemann a annoncé la transmission au Conseil au cours du mois de mars de deux nouvelles propositions de directives dans le secteur des marchés publics. La première concerne les recours accessibles en cas de passation de marchés discriminatoires dans les secteurs de l'eau, de l'énergie, des transports et des télécommunications. Elle vise à garantir concrètement le respect des procédures communautaires de marchés publics, elle suivra dans les grandes lignes la directive 89/665/CEE du 22.12.1989 relative aux marchés publics de travaux et de fournitures.

La deuxième proposition concernera les passations de marchés publics de service qui ne sont pas encore couverts par le dispositif communautaire actuel.

COMPTABILITE DES ENTREPRISES

Un simple débat d'orientation a eu lieu au sujet de deux propositions de modification des quatrième et septième directives relatives respectivement aux comptes annuels (78/660/CEE) et aux comptes consolidés (83/349/CEE). La première proposition vise à élargir leur champ d'application à des sociétés jusqu'à présent exclues (sociétés de personnes). La deuxième proposition concerne l'allègement des charges comptables des PME ainsi que la possibilité d'établir les comptes annuels ou consolidés de toutes les entreprises en ECU.

Ces textes doivent faire l'objet d'un examen complémentaire des services de la Commission et des experts nationaux avant d'être discuté à nouveau au Conseil.

Amitiés,


Bruno DETHOMAS

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La directive relative aux procedures de passation des marches dans les secteurs de l'eau, l'energie, des transports et des telecommunications adoptee le 22.02.1990 en position commune par le Conseil prevoit des dispositions particulieres pour l'acces des entreprises de pays tiers aux marches communautaires qui meritent d'etre precisees.

En l'absence d'accord de reciprocite d'ouverture de marches publics et compte tenu de l'existence de traitements discriminatoires dans les pays tiers a l'egard des produits europeens, le Conseil a prevu deux mecanismes permettant a la Communaute de negocier dans de bonnes conditions l'ouverture de ses marches sur le plan international.

D'abord, les entites contractantes peuvent ne pas prendre en consideration des offres lorsque la part des produits manufactures en dehors de la Communaute dans la valeur totale des produits manufactures composant cette offre est superieure a 50 %.

En outre, lorsqu'une offre communautaire est equivalent au regard des criteres d'attribution du marche a une offre non-communautaire, elle doit obligatoirement etre preferee. Aux fins de cette comparaison, un avantage de prix en faveur de l'offre non-communautaire n'est pas pris en compte s'il n'excede pas 3 %.

En meme temps, dans une declaration commune, le Conseil et la Commission ont reaffirme "l'engagement de la Communaute Europeenne en faveur d'une ouverture generale et mutuelle sur le plan international des marches dans les secteurs de l'eau, de l'energie, des telecommunications et des transports". Cette clause sera reconsideree en fonction des progres des negociations internationales et permettra p.ex. d'etendre le benefice de la directive aux entreprises des pays tiers sur la base d'accords multilateraux.

END OF DOCUMENT REACHED

Bruxelles, le 23 février 1990

NOTE BIO(90) 54/2 AUX BUREAUX NATIONAUX
CC. AUX MEMBRES DU SERVICE DU PORTE-PAROLE

CONSEIL MARCHÉ INTERIEUR : MARCHES PUBLICS (SECTEURS EXCLUS) - SPECIAL
VOLEX EXTERNE
(1. 1e Moal-Ollive)

La directive relative aux procédures de passation des marchés dans les secteurs de l'eau, l'énergie, des transports et des télécommunications adoptée le 22.02.1990 en position commune par le Conseil prévoit des dispositions particulières pour l'accès des entreprises de pays tiers aux marchés communautaires qui méritent d'être précisées.


En l'absence d'accord de réciprocité d'ouverture de marchés publics et compte tenu de l'existence de traitements discriminatoires dans les pays tiers à l'égard des produits européens, le Conseil a prévu deux mécanismes permettant à la Communauté de négocier dans de bonnes conditions l'ouverture de ses marchés sur le plan international.

D'abord, les entités contractantes ne peuvent ne pas prendre en considération des offres lorsque la part des produits manufacturés en dehors de la Communauté dans la valeur totale des produits manufacturés composant cette offre est supérieure à 50 %.

En outre, lorsqu'une offre communautaire est équivalente au regard des critères d'attribution du marché à une offre non-communautaire, elle doit obligatoirement être préférée. Aux fins de cette comparaison, un avantage de prix en faveur de l'offre non-communautaire n'est pas pris en compte s'il n'excède pas 3 %.

En même temps, dans une déclaration commune, le Conseil et la Commission ont réaffirmé "l'engagement de la Communauté Européenne en faveur d'une ouverture générale et mutuelle sur le plan international des marchés dans les secteurs de l'eau, de l'énergie, des télécommunications et des transports". Cette clause sera reconsidérée en fonction des progrès des négociations internationales et permettra p.ex. d'étendre le bénéfice de la directive aux entreprises des pays tiers sur la base d'accords multilatéraux.

Amitiés,


C. STATHOPOULOS