

Proposed New Combined Procurement Directive for the award of public supply contracts, public service contracts and public works contracts : Guidance 19

In 1996, the European Commission published a Green Paper entitled "Public Procurement in the European Union: Exploring the Way Forward", which drew almost 300 responses from various economic sectors, the Member States and institutions.

The main theme to emerge from the Green Paper debate is the need to simplify the legal framework and adapt it to the new electronic age while maintaining the stability of its basic structure. The Commission recognised the need to simplify the existing legal framework by clarifying provisions which were obscure or complex and by amending legislation where the problems to be addressed could not be solved through interpretation of the provisions. In addition, it announced the consolidation of the three "classic Directives" and then their merger into a single text.

This proposal meets these objectives.

It was announced by the Commission in its Work Programme for 2000. It falls within the exclusive competence of the Community regarding the recasting of legislation for completion of the internal market based on Article 95 of the EC Treaty. What is more, it is in line with the conclusions of the Lisbon European Council calling for economic reforms as a means of completing the internal market and making it fully operational.

To facilitate the presentation of the proposal, the amendments are grouped into two parts:

- simplification of the Directive; and
- amendments to the legal framework.

The Explanatory Memorandum is followed by analysis of the recitals and of the Articles.

Simplification - Restructuring and Clarification of the Directive

Following the debate on the Green Paper entitled "Public Procurement in the European Union: Exploring the Way Forward", and in the exercise of its responsibilities as "guardian of the Treaty", the Commission found some inconsistencies between the three public sector Directives, namely Directive 92/50/EEC relating to the coordination of procedures on the award of public service contracts, Directive 93/36/EEC coordinating procedures for the award of public supply contracts and Directive 93/37/EEC concerning the coordination of procedures for the award of public works contracts. These inconsistencies are not justified by the specific features of the respective Directives and must be removed. This is prompted by the same concern about clarification expressed by the Commission in its Communication on Concessions in Community law, which does not prejudice any legislative proposal specifically on concessions.

By way of making the texts consistent, the proposal also has the effect of sometimes rendering applicable to all contracts provisions which, without any particular justification, are currently applicable to some contracts only (see, for example, Article 3). What is more, the Directives will be understood and applied more easily if the current Directives are restructured, though without altering the legal obligations which they impose.

The proposed simplification therefore consists in eliminating inconsistencies and restructuring the existing texts.

This proposal is presented in the form of a single text for supply, works and service contracts. At the same time, it provides a means of proposing that the public sector Directives be amended, simplified and combined in a single text. This approach will make it easier to maintain consistency during the legislative process, and also offers real advantages for users. While it is true that Directives have to be transposed into national legislation, economic operators and contracting authorities often refer to the texts of Directives, especially for the interpretation of national texts. There will thus no longer be any need to refer to different texts largely dealing with the same questions and comprising, respectively, 35 (supplies), 37 (works) and 45 (services) Articles, as a single text will be available which is more clearly structured and comprises 82 Articles. This reduction in the number of Articles reflects in particular the presence of identical provisions in the three Directives.

Substantive Amendments

The emergence of the information society, the gradual withdrawal of the State from certain economic activities, and increased budgetary austerity are leading the Commission to propose amendments to the existing legal framework. These have a threefold objective: modernisation, simplification and flexibility; modernisation to take account of new technologies and changes in the economic environment, simplification to lighten rules which are sometimes too detailed and complex, and flexibility to respond better to the criticism of procedures which are excessively rigid and do not meet the needs of public purchasers.

The Commission has identified seven areas in which this threefold objective has prompted it to propose substantive amendments.

These are:

- the introduction of electronic purchasing mechanisms, and their consequences in terms of reducing the length of an award procedure;
- the introduction of a new case for the use of the negotiated procedure, which - for particularly complex contracts - permits a "dialogue" between the contracting authority and the different candidates, while ensuring that there is competition and compliance with the principle of equality of treatment;
- the possibility for public purchasers of concluding so-called "framework agreements", not all of whose conditions are fixed, and on the basis of which

contracts can be awarded without applying all the obligations of the Directive to each one;

- clarification of provisions relating to technical specifications: this will encourage effective competition through the participation of the greatest possible number of tenderers and, in particular, innovative businesses;
- a strengthening of the provisions relating to award and selection criteria;
- a simplification of thresholds; and
- the introduction of a common procurement vocabulary.

Moreover, following the amendments proposed by the Commission concerning the "Utilities Directive" 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, in particular the amendments to its scope in the light of the gradual liberalisation in those sectors, it is also necessary to amend some provisions contained in the public sector Directives.

What is more, the provisions of this Directive are intended to facilitate the implementation of the rules and principles of the Treaty. Failure to comply with Directives may in some cases constitute a breach of these rules and principles of the Treaty.

The Introduction of Electronic Purchasing Mechanisms

The emergence of the new Information and Communication Technologies (ICTs) offers promising opportunities as regards the efficiency, transparency and opening-up of public procurement. In its "Communication on Public Procurement in the European Union" of 11 March 1998, the Commission set itself a very ambitious target: 25% of all procurement transactions should take place using electronic means by the year 2003. Against this background, it called on all the players involved to develop such a system.

BiP GUIDANCE 19/2000

This approach was endorsed by a large number of contributions and responses, particularly from the European Parliament and the Committee of the Regions.

It also featured in the Presidency conclusions from the Lisbon European Council of 23 and 24 March 2000, in which the Commission, the Council and the Member States were requested "to take the necessary steps to ensure that it is possible by 2003 for Community and government procurement to take place online".

Under current legislation on public procurement it is possible, under certain conditions, to use electronic means for the submission of tenders. However, there are procedures for which the use of electronic means has not been mentioned (i.e. transmission of notices) or is not authorised (i.e. accelerated procedure).

As things stand, moreover, this possibility is left to Member States, which are able to authorise the use of means other than direct or postal delivery. The proposal is aimed at enabling each entity to decide in future to use electronic means to the exclusion of all others.

While some fear that businesses lagging behind in terms of computer equipment could thus be precluded from public contracts which are awarded by electronic means, this situation is set to change rapidly. It would therefore not appear necessary to provide a transitional period during which the parallel use of traditional means would be compulsory, especially as business will benefit de facto from a transitional period by virtue of the time-limits for adoption and transposition put forward in this proposal.

Permitting the use of electronic means in the area of public procurement requires inter alia that their use for communication and information exchange be put on an equal footing with other, more traditional means with the aim of encouraging greater recourse to electronic means in the future.

Finally, electronic contract award systems should yield a significant time saving in the course of a procedure. Electronic transmission will make it possible to reduce the time limit of 12 days which is necessary at present, except in the case of accelerated procedures, for transmission to the Publication Office and publication in the Official Journal.

It will thus be possible to reduce the maximum time limit for publication from 12 days to 5.

The introduction of electronic means has also highlighted the difficulty which may result from laws freezing the use of certain technical facilities, such as the TED database.

Given the rapid development of the technologies used, this explicit reference in the legislation means that regular updating will be required. To lessen these difficulties involved in the adaptation of the legislation, this proposal no longer mentions specific means of publication in the operative provisions of the Directive. The provisions relating to more detailed technical specifications concerning publication are grouped together in a new Annex (Annex VIII).

In order to bring these provisions more quickly into line with technological developments, it is proposed to delegate to the Commission, assisted by the Committee provided for in Article 76, powers to amend this Annex so as to adapt it in step with technical progress.

The Introduction of a New Flexibility Allowing a "Dialogue" Between the Contracting Authority and Candidates

In its aforementioned Communication, the Commission records that "in the case of particularly complex contracts in areas that are constantly changing, such as high technology, purchasers are well aware of their needs but do not know in advance what is the best technical solution for satisfying those needs. Discussion of the contract and

dialogue between purchasers and suppliers is therefore necessary in such cases. But the standard procedures laid down by the public sector Directives (Directives 93/36/EEC (supplies), 93/37/EEC (works), and 92/50/EEC (services)) leave very little scope for discussion during the award of contracts and are therefore regarded as lacking in flexibility in situations of this type".

It should be noted that, in the light of the case law of the Court of Justice, such a dialogue is not allowed under the current open and restricted procedures. Furthermore, the current provisions on the use of a negotiated procedure with prior publication are limited to exceptional situations and must, in accordance with the Court's established case law, be interpreted restrictively. The present rules do not therefore provide for this possibility.

However, certain purchases may be particularly complex: the contracting authorities may be objectively unable to define which technical, legal or financial means would best meet their needs. The contracting authorities may also want to allow innovative solutions or may be unable, objectively, to assess what the market has on offer in terms of technical or financial solutions. A case in point is when a contracting authority is unable, objectively, to assess in advance whether the most economically advantageous solution would involve public funding, a risk-sharing model or a purely private sector solution.

The Committee of the Regions, in its opinion, also cited the example of health sector contracts (surgical equipment and medical imaging devices).

The contracting authorities do of course have certain means at their disposal to deal with such situations: under the current Directives, they are free to conduct a "technical dialogue" followed by a "normal" award procedure, or to award a service contract followed by a contract for supplies, or to hold a design competition followed by the award of a contract for services, supplies or works. However, as pointed out during the debate launched by the Green Paper and underlined by the European Parliament during the adoption of Directives 97/52/EC and 98/4/EC, these possibilities are not always sufficient. In the case of a technical dialogue, a company helping a contracting authority to define its specifications by way of that dialogue cannot participate in the subsequent award procedure based on such specifications to the extent that this would be to the detriment of fair competition, as expressed in the 10th recital of Directive 97/52/EC. Nor is it permissible in the case of split contracts (research contract or design contest) for one and the same company to produce the design and carry out the project.

Without calling the existing possibilities into question, it would appear appropriate to introduce provisions enabling a dialogue to take place in a single award procedure which will result in the contract being carried out; this should incorporate a phase during which the specifications would be established on the basis of negotiations with the selected participants, followed by the submission of tenders by the participants in the negotiations and then by the award of the contract to the best tender.

As regards the choice of arrangements, the proposal departs from the conclusions drawn by the Commission in its Communication. The Commission had undertaken to

amend the current texts of the Directives "with a view to making procedures more flexible and allowing dialogue in the course of such procedures, and not just in exceptional circumstances. It will propose a new standard procedure, the 'competitive dialogue', which would operate alongside open and restricted procedures and would replace the existing negotiated procedure with prior publication of a notice. The conditions and the rules under which contracting authorities would be allowed to use this new procedure and the details of the procedure itself will have to be spelt out and will be based inter alia on the principles of transparency and equal treatment".

Following consultations, it was felt that it would be more appropriate not to introduce an entirely new procedure: the choice made was to extend the applicability of the negotiated procedure with prior publication to include these cases. This will avoid having a multiplicity of procedures.

Given the risks of a particular candidate being favoured, the general principles of equality of treatment and transparency can be safeguarded only by way of appropriately supervising the dialogue process through to the award of the contract.

In this new case, the negotiated procedure will operate as follows in practice:

The contracting authority publishes a notice inviting interested parties to participate. In the notice, the contracting authority defines the objectives it wishes to obtain. It also states the qualitative selection criteria and award criteria. These criteria remain unchanged throughout the procedure.

The contracting authority thereafter has two options. It may:

(a) decide that it wishes to receive only the normal documentation concerning the candidate's personal position and their technical, economic and financial capacity. The qualitative selection criteria must be appropriate and based on the object of the contract concerned; or

(b) decide that this documentation must be accompanied by an "outline solution", i.e. a preliminary indication of the solution which the candidate in question intends to propose to meet the contracting authority's needs and requirements. Candidates may also have to give an estimate of the cost of preparing the outline solution.

The contracting authority has to announce its choice between (a) and (b) in the notice.

After receiving the applications, the contracting authority chooses the participants in the negotiations. Selection is based on the previously established qualitative selection criteria (economic, financial and technical capacity, following the usual verification of the information relating to the candidate's personal position).

A further, optional stage is possible, i.e. the contracting authority, after having selected candidates in the qualitative selection procedure on the basis of the information referred to above at (a), may then request these candidates to submit an "outline solution" to form the basis for further negotiations.

In all cases, the contracting authority then consults the selected participants to examine how its needs can best be satisfied. In order to take into account the legitimate concerns expressed by industry regarding the appropriation of other people's ideas, it has been laid down that, during such consultations, the contracting authority shall not divulge to any candidate the solutions proposed by, or any confidential information relating to, other candidates.

At the end of the negotiations, the contracting authority defines the final technical specifications, either by retaining one of the solutions presented by one of the participants or by combining more than one of the solutions presented. Moreover, it goes without saying that, in doing so, the contracting authority must observe the law on the protection of intellectual property.

Once this stage is completed, the contracting authority invites the participants to submit a formal tender. When the contracting authority invites the participants in the negotiations to submit their tenders, it cannot invite fewer than three to do so - provided a sufficient number of candidates satisfy the qualitative selection criteria. A possible limitation on this number is set on the basis of the qualitative selection criteria.

The tenders will then be evaluated on the basis of the award criteria, and the contract will be awarded, there being no further scope for negotiation.

The Introduction of More Flexible Purchasing Techniques Using Framework Agreements

In its aforementioned Communication (point 2.1.2.3), the Commission highlighted the need to revamp the Directives with a view to permitting the use of flexible purchasing techniques enabling purchasers to benefit from product developments and price changes. It pointed out that, on markets which are constantly changing, such as the markets for information technology products and services, it is not economically justifiable for public purchasers to be tied to fixed prices and conditions. Public purchasers therefore increasingly feel the need to manage their procurement on a long-term basis. The essential features of purchases of this nature should consequently offer the necessary flexibility. Framework agreements meet this requirement.

Framework agreements are not public contracts within the meaning of the Directives; they are not contracts to the extent that they do not lay down specific terms and thus cannot give rise to performance as a contract does.

By contrast, it is pointed out that contracts with several economic operators (such as widely used purchase order contracts) are public contracts within the meaning of the Directives (see Article 1(2)). They must be awarded in accordance with those provisions if the thresholds are exceeded.

Framework agreements are used, in the case of repetitive purchases, to choose certain economic operators who, when the time comes, will be able to meet the purchaser's needs.

This form of "agreement" between the contracting authority and economic operators cannot, at present, exempt the contracting authority from the obligation to comply with the procedures as per the Directive for each contract awarded - following an order - if these contracts exceed the thresholds. However, in view of the increasing use being made of this arrangement, it appeared necessary to the Commission, in its aforementioned Communication on public contracts, to allow contracts based on such agreements to be exempted, under certain conditions, from the obligation to apply the normal procedures under the Directive. Such agreements not only enable purchases to be made under better conditions, in keeping with the constant development of the market for certain products and services, but also avoid repetition of procedures each time in the case of repetitive purchases.

In this way, contracting authorities would no longer be obliged to apply the normal procedures under the Directive for each contract based on such an agreement.

However, this possibility is subject to a double condition.

- The framework agreement must itself be awarded in conformity with the Directive. In other words, the contracting authority, if it wishes to avail itself of this possibility, must publish a notice, apply qualitative selection criteria in accordance with the Directive and award the framework agreement - to several service providers - applying objective criteria announced in advance.
- Contracts based on a framework agreement must be awarded in accordance with provisions aimed at ensuring compliance with the principle of equality of treatment when choosing the tenderer. These provisions are the subject of a new Article (Article 32). The choice shall be made after the reopening of competition among the economic operators who are party to the framework contract.

When a contracting authority has to make a purchase, it consults those economic operators party to the agreement who are likely to be able to meet its requirements. The economic operators submit specific tenders, offering scope to adjust the initial tender in line with market developments, such as technical obsolescence or significant price changes.

The arrangements are governed by provisions guaranteeing equality of treatment of tenderers.

Such agreements do not foreclose the market to competition and in particular to new entrants. Contracting authorities are always free to start a new procedure for a public contract if they wish to enjoy better conditions. Moreover, it is worth emphasising that as things currently stand, nothing prevents a contracting authority from entering into a contract with a single economic operator for several years.

Accordingly, it may be in the contracting authority's interest to use a framework agreement for intellectual services which it will need over a given period (for example technical assistance) for which it is not possible to know when the need will arise nor the size of any task to be performed. When the need arises, the authority will use a simplified procedure to consult all the parties to the framework agreement and will be able to award the contract to the best tenderer.

The proposal also contains a clause concerning anti-competitive abuses (notably the risk of cartels) and to ensure effective competition limits the duration of framework agreements to three years in principle.

It goes without saying that the Treaty rules on competition are not affected by this buying technique.

Technical Specifications

The current provisions on technical specifications are designed to require public purchasers to define technical specifications by reference to an exhaustively listed set of instruments so as to avoid conferring any advantage on a given economic operator or giving preference to national production. These instruments are not only well known, transparent and publicly available but also represent, as far as possible, harmonisation of specifications at European or international level. The most important of these instruments is the standard - preferably European, international or, failing that, national. Other instruments which are more sector-specific (European Technical Approval for building products, as provided for in Directive 89/106/EEC) have also been retained as possible references.

Application of the provisions of the Directives has led in certain cases to a situation where standards have been treated as de facto requirements; these provisions can be construed as limiting the buyer's choice to only those products which comply with the standard.

Such an interpretation does not fit with the notion of a "reference" according to which other solutions can be compared to the solution provided by the standard. In addition, it has also meant that technical solutions where a standard exists have been unduly preferred to the detriment of other solutions and of new technologies. The rapid technological obsolescence in certain sectors, coupled with the interpretation that standards are de facto requirements, is particularly harmful where, by the very nature of things, the adoption of a standard lags some way behind technological progress (as is the case in the information technology field).

Accordingly, there is a need to simplify these provisions (so as to clarify the extent of the "reference" obligation and limit referral to provisions specific to certain sectors, such as telecommunications and construction), which add to the complexity of the current texts. These changes will also encourage effective competition through the participation of the greatest possible number of tenderers and in particular innovative businesses.

The proposed changes apply to all purchases of goods, works and services under the public sector Directives as well as purchases under the utilities Directives. This means that the texts of the Directives will be brought more into line with one another, adding to the simplification process. These amendments will enable public purchasers to specify their requirements also in terms of performance levels, while at the same time safeguarding what has been achieved in terms of European standardisation, as reference to the standards will still be an option.

Strengthening of Provisions Relating to Award and Selection Criteria

The current provisions concerning award criteria (Article 36(2) of Directive 92/50/EEC, Article 26(2) of Directive 93/36/EEC and Article 30(2) of Directive 93/37/EEC) stipulate that these criteria must be listed in the contract notice or in the contract documents, "where possible" in descending order of the importance attached to them by the contracting authority.

As this provision is far from binding as regards the mention of a descending order of importance, it is necessary to clarify the scope of the obligation which flows from it.

What is more, the Commission has concluded from its investigations of complaints that, even though the contracting authorities have to establish and set out a descending order of importance attached to the award criteria, they still enjoy a considerable margin of discretion when awarding contracts. In merely stating a descending order of importance, the contracting authority retains the option of attaching to the criteria, at the time of evaluation, a specific weighting, and hence a relative value, of which the tenderers are not aware. A possible consequence of this lack of transparency may be that some contracting authorities attach an unexpected or unforeseeable importance to one or more criteria, even after the opening of the tenders, so as to favour one tenderer or another. Thus, if there are two criteria, the order of preference may equally result in 90% or 51% of the relative value being attached to the first criterion. Also, in the absence of a general rule making it compulsory to state the relative weighting of the criteria from the start of the procedure, it is difficult to keep a check on the final choice of the contracting authority. Therefore, it has to be recognised that, at the crucial stage in the award of a contract, such absence renders ineffective the rules governing the preceding stages of the award procedure. All these rules are aimed at the same objective of ensuring that the rights of the tenderers are respected, and in particular that the principles of equality of treatment and transparency are upheld.

The Directive must therefore be amended so as to make it compulsory to state the relative weighting of each criterion at the contract notice stage or in the contract documents. This weighting may take different forms (in particular, it may be expressed as a percentage or in terms of relative share compared with another criterion) and to ensure a certain flexibility, may be expressed as a range within which the value attributed to each criterion shall be stated.

However, it is not always possible to state the relative weighting of criteria as early as the contract notice stage. This is liable to be particularly difficult in the case of complex contracts.

The provisions must provide scope for waiving the aforementioned obligation.

On the other hand, it has to be ensured that the weighting is known to all tenderers when they draw up their tenders.

An exemption is therefore provided for whereby the relative weighting may be stated, at the latest, in the invitation to tender (for restricted and negotiated procedures) or in the invitation to participate in the dialogue (for negotiated procedures in the case of

complex contracts). In other cases - open procedures - failure to state the relative weighting right at the start of the procedure may render the procedure void.

As regards the selection of tenderers, the proposal strengthens the legal framework in two respects:

- firstly, it strengthens the instruments for combating organised crime, corruption and fraud by introducing an obligation on the part of contracting authorities to exclude tenderers who have been found guilty in a definitive judgment of organised crime, corruption offences or fraud against the financial interest of the Community. This proposal follows on from the conclusions of the Tampere summit, the action plans to combat organised crime and the 1997 Communication from the Commission on a Union Policy against Corruption; and
- secondly, it introduces an obligation, in restricted and negotiated procedures, to apply objective criteria announced in advance so as not to limit the number of candidates invited to tender; it thus fills a gap in the existing operative provisions.

Thresholds

The current Directives lay down different thresholds. Often, it is not easy to establish which threshold is applicable to a specific public contract.

As far as public contracts falling under Directive 92/50/EEC are concerned, the following thresholds apply:

- 200 000 for contracts awarded by central and non-central authorities and relating to the (research and development) services listed in Annex I A, category 8, and to certain telecommunications services such as listed in Annex I A, category 5, with the CPC reference numbers 7524, 7525 or 7526. In addition, this threshold is applicable to all contracts relating to the services in Annex I B. It also applies, finally, to all contracts covered by Article 3(3), namely contracts financed to more than 50%;
- the equivalent in euro of SDR 130 000 (currently 139 312) is applicable to all contracts awarded by the government authorities listed in Annex I of Directive 92/50/EEC, where the contract in question falls under categories in Annex I A other than those mentioned above (i.e. category 8 (research and development) and category 5 where the CPC reference numbers are 7524, 7525 or 7526); and
- the equivalent in euro of SDR 200 000 (currently 214 326) is applicable to service contracts awarded by contracting authorities which are not central authorities, if the contracts relate to services listed in Annex I A other than those listed above (i.e. excluding category 8 (R&D) and telecommunications services, with the CPC numbers 7524, 7525 or 7526).

Two different thresholds apply to works contracts subject to Directive 93/37/EEC. One is 5 000 000 ecu (now euro), applicable to works concessions contracts falling under the scope of Article 2(1), contracts subsidised by more than 50%. All other works contracts are subject to a threshold of the equivalent in euro of SDR 5 000 000 (currently 5 358 153).

As far as public contracts under Directive 93/36/EEC are concerned, thresholds are as follows:

- the equivalent in euro of SDR 130 000 (currently 139 312), applicable to supply contracts awarded by the central government authorities listed in Annex I of the Directive. In the field of defence, however, this applies only to contracts relating to the products listed in Annex II of the Directive; and
- the equivalent in euro of SDR 200 000 (currently 214 326), applicable to all supply contracts awarded by contracting authorities which are not central government authorities and to contracts awarded by central government authorities in the field of defence for products not listed in Annex II of the Directive.

It follows from the above that these thresholds are anything but straightforward and user-friendly. There is thus an urgent need to simplify these thresholds by reducing the number of different thresholds, removing all references to "the equivalent in euro of SDR" and stating all thresholds in euro, up to the full extent compatible with the Community's international obligations under the Government Procurement Agreement (GPA), concluded in the Uruguay Round multilateral negotiations. As the thresholds will henceforth be stated in euro, it is necessary to both:

- ensure compliance with our international obligations through compliance with the GPA thresholds; and
- establish round-figure thresholds, which will thus not be the straight equivalent of the SDR thresholds.

To this end, the thresholds in euro are rounded to the nearest one hundred or ten thousand euro below the thresholds set by the GPA.

The proposed amendments feature the following thresholds:

- 93/37/EEC: a single threshold of 5 300 000 applicable to all contracts and concessions falling under its scope; and
- 93/36/EEC and 92/50/EEC: two thresholds, of 130 000 or 200 000, depending on whether the contracting authority has the status of a central or of a non-central authority; applicable to all contracts and to design contests falling under the respective scope of the Directives.

Common Procurement Vocabulary

Use of the Common Procurement Vocabulary (CPV) was the subject of a Commission Recommendation in 1996. This nomenclature represents a further development of and an improvement to the CPC and NACE nomenclatures, in that it is better suited to the specific characteristics of the public procurement sector. Since 1996, the CPV has been used systematically in every notice published in the Supplement to the Official Journal of the European Communities pursuant to the Directives for identification of the subject matter of the contracts concerned, as well

as for translation into the 11 official languages; it has also become an indispensable research criterion in the selection and identification of contract opportunities. The use of the CPV alone will make it easier to disseminate and access information, thus contributing towards greater transparency and a greater openness of public procurement in Europe. In parallel with this revision of the Directives, the CPV will be the subject of a proposal by the Council and the Parliament. The latter will then formally adopt it as the Community nomenclature applicable to public contracts and will organise its maintenance (arrangements for revision).

Amendments Due to the Exclusion of the Telecommunications Sector From the Scope of Directive 93/38/EEC

Public authorities exercising an activity in the telecommunications sector are currently subject to the provisions of Directive 93/38/EEC; as a result, their purchases for the pursuit of that activity are excluded from the scope of the public sector Directives. In parallel with this proposal, the Commission is also proposing that Directive 93/38/EEC be recast, one of the aspects concerned being the exclusion of the telecommunications sector from its scope. If the public sector Directives were not amended, the proposal for a new Directive to replace Directive 93/38/EEC would mean that public authorities would once again be subject to the public sector Directives as regards purchases relating to their activity in the telecommunications sector. However, it would run counter to the logic of the public procurement Directives if the public authorities, who, as things stood (even in the absence of effective competition in the telecommunications sector), were subject to the more flexible provisions of Directive 93/38/EEC, were to become subject to the stricter rules of the public sector Directives, although they have - on account of liberalisation - the same profitability incentives as private sector enterprises, because effective competition has now been introduced in the sector. It is therefore proposed that the public sector Directives be amended to ensure that public authorities continue to be excluded from the scope of these Directives as regards purchases related to their activities in the telecommunications sector (see Article 15 of this proposal).

Analysis of the Articles

Where the amendments made consist in renumbering or in a renumbering of the Article to which reference is made, the provisions are regarded as remaining unchanged in terms of substance. The same applies to changes in wording which have no effect on the content and scope of a provision. Therefore, where the amendments made are of this type, it is pointed out that the provision is unchanged. As regards structure, this proposal also includes a table of contents providing an overview of the restructuring of the texts.

All information in this guidance is checked and believed to be correct, but cannot be so guaranteed and the publishers shall not be liable for any loss suffered directly or indirectly as a result of its use.