

EC Infringement Proceedings - Public Procurement Part 1

Introduction

Under the Treaties the European Commission is responsible for ensuring that Community Public Procurement law is correctly applied. As the guardian of the EC Treaty, the Commission has the option of commencing infringement proceedings under Article 226 EC against a Member State, which in the eyes of the Commission infringes Community law, in particular the principle of free movement of goods. The Commission can try to bring the infringement to an end, and, if necessary, may refer the case to the Court of Justice.

Anyone may lodge a complaint with the Commission against a Member state about any state measure (law, regulation or administrative action) or administrative practice which he/she considers incompatible with Community law. However, the Commission's services may decide whether or not further action should be taken on a complaint in the light of the rules and priorities laid down by the Commission for opening and pursuing procedures.

When the Commission decides to pursue a complaint the Commission allows the Member State to present its views regarding the facts stated in the complaint and the Commission's initial legal assessment of them, through the letter of formal notice.

The reasoned opinion expresses the Commission's view that an infringement exists and asks the Member state to remove it within the stated time limit. It is based on the letter of formal notice and is required if no reply to the letter of formal notice is received, or if the observations presented by the Member State in reply to that notice cannot be considered satisfactory. However, nothing prevents the Commission services from negotiating with the Member State throughout the entire infringement procedure.

If no reply to the reasoned opinion is received from the Member State or if the reply is unsatisfactory, the Commission has the possibility to refer the case to the Court of Justice. The Commission is not obliged to do so, but in practice the Commission has always considered that a Member State, which does not follow a reasoned opinion and bring its legislation into conformity with Community law, should be brought in front of the Court of Justice.

Finally, it should be underlined that any finding by the Court of Justice has no impact on the rights of the complainant, since it does not serve to resolve individual cases. It merely obliges the Member state to comply with Community law. It is, therefore, in the complainant's interest to make use of any redress available at national level, which as a rule enables him/her to assert his/her rights more directly and more personally. When damage has been suffered, only national courts can award reparation from the Member States concerned. This means that individual claims for damages would have to be brought before the national courts, see judgement of 5 March 1996 "Brasserie du pecheur SA" (Cases C-46/93 and C-48/93).

Public procurement

The following are incidents where the Commission has felt that there may have been an infringement of the community's Public Procurement Law. This information is provided as a guide to how the law is interpreted and operated in order to assist both buyers' and suppliers' understanding of the rules and regulations.

Italy - Public health services - Value of Contract 4 October 2001

The case against Italy concerns the procedures followed for the procurement of public service contracts to set up and manage a computerised accounting system for Azienda Sanitaria Locale, an administrative body charged with the management of the public health service in Frosinone. Although the total value of the project exceeded the threshold value of the Directive (€200,000), the authority did not publish any call for

tender in the Official Journal of the European Communities. While individual parts of the contract were lower than the threshold value, the Commission considers that it was against the rules of the Directive to split the project in this way.

Greece - Improvement programme - R & D

4 October 2001

The case in Greece concerns the award by the Municipality of Serres, without a prior call for tenders, of a contract for the "Urban Improvement" of the city. Normally a contract for urban development has to be tendered out in accordance with the rules of the services procurement Directive. However, the detailed rules of the Directive do not apply to the award of contracts that qualify as "Research and Development" contracts. Greece maintains that the contract was indeed for R&D. The Commission considers that the contract constitutes a specialised and innovative urbanistic study that should have been awarded through an appropriate call for tenders.

Spain – Award procedures for public supply contracts - Incorrect Interpretation

31 July 2001

The Commission has decided to refer Spain to the Court of Justice concerning the incorrect implementation into Spanish law of Directives 93/36/EEC and 93/37/EEC, concerning the award of supply and works contracts. Spanish law 13/1995 (Contratos de las Administraciones Públicas) implements into Spanish law the public procurement Directives on supply contracts (93/36/EEC), works contracts (93/37/EEC) and service contracts (92/50/EEC). However, the Commission considers that this law, which has since been modified and recast (12 May 2000), includes some aspects which are incompatible with European Union law, in particular with regard to the notion of a "body governed by public law", as used in the EU's public procurement Directives.

Under the aforementioned Spanish law, private law companies would, under no circumstances, be subject to the public procurement rules (except for the principles of publicity and competition), even if they satisfied the definition of a "body governed by public law" contained in the Directives (in particular the requirement to have been created to pursue activities in the public interest other than those of an industrial or commercial nature). The Commission also objects to the intended scope of application of the law (collaboration agreements are excluded), two of the conditions which must be met before a negotiated procedure without prior publication and prior information notices can be used.

Germany – Waste treatment - No Call for Tender

31 July 2001

In February 1998 the City of Munich won a public contract for the treatment of waste in the Donau Wald area of Bavaria, following submission of a successful bid to a public call for tender. In carrying out this contract, however, the City of Munich decided not to transport the waste itself but to award a contract for this service to a private company for a period of 25 years without a public call for tender. As a contracting authority in terms of EC public procurement law, the City of Munich was obliged to put this service out to tender. Since the City of Munich failed to publish this contract, there was no open

European-wide competition for this public service contract. The Federal Government has acknowledged the infringement but, despite this, the City of Munich continues to operate the contract and exclude further competition.

France - Le Mans sewage plant - Number of Candidates

31 July 2001

Following irregularities in the preparation of several calls for tender launched by the local authority of Le Mans, the total value of which is close to e2 million, the Commission will send a reasoned opinion to the French Authorities. These

calls for tender concerned the provision of certain services at the Chauvinière sewage treatment plant.

During the first call for tender the contracting authority did not respect the obligation, under the services procurement Directive (92/50/EEC, Article 27(2)), to ensure real competition in the tendering procedure. It accepted only three candidates for consideration, whilst the Directive and relevant Court case law require that the number of candidates cannot be less than five. Moreover, a second contract was awarded to the holder of the first above-mentioned contract, without application of a competitive procedure or prior

publication, thereby violating the rules of the same Directive. Lastly, a contract notice concerning a third call for tenders indicates confusion on the part of the contracting authority between the selection criteria and criteria for awarding the contract. This contract was also awarded to the existing tender holder.

Italy - School buildings - Subdivision

31 July 2001

The municipality of Genoa failed to publish at EU level an invitation to tender for the preliminary, definitive and executive planning of works to be carried out to school buildings. Under the Directive on public procurement of services (92/50/EEC), tenders for public services worth more than e200,000 must be published in the EU's Official Journal.

The Italian authorities argue that, in this particular case, the Directive is not applicable because the tender concerns various tasks which are independent of one another and do not exceed the threshold of e200,000 on an individual basis.

The Commission does not accept this argument because the Directive specifically foresees that services cannot be divided with the intention of avoiding application of the threshold and lays down that, in case of contracts divided into lots, the values of the lots have to be cumulated when calculating this value. Consequently, and considering the homogeneity of the services to be provided and the unity of the tendering procedure, the Commission considers that the invitation to tender should nevertheless have been published at EU level.

Italy – Operating tables for Ivrea Hospital - Negotiation

31 July 2001

This case concerns a decision to award a contract for the supply of operating tables to the hospital of Ivrea under a negotiated procedure without first publishing an invitation to tender. The Commission believes that the negotiated procedure used, whereby the contracting authorities consulted contractors of their choice and negotiated the terms of the contract with one or more of them, was not justified in this case according to the rules on the public procurement of supplies under Directive 93/36/EEC. The Directive establishes strict rules to ensure that public contracts are awarded only after an open and transparent tender process. The Directive does provide for negotiated procedures without prior publication of a notice, but only in very specific circumstances and in this case the Commission does not believe that such a procedure was justified.

Austria – Incorrect implementation of Remedies Directives - Redress

31 July 2001

The Commission believes that Austria has incorrectly implemented the so-called Remedies Directives, 89/665/EEC and 92/13/EEC, particularly with regard to the decision of the EU's Court of Justice in the Alcatel case (28 October 1999, ECR 1999, I-7671). These Directives require Member States to put in place the means to ensure rapid and effective redress for suppliers to prevent and correct possible violations of European Union rules on public procurement.

The Commission's services carried out an extensive analysis of the review procedures and the instruments that were set up to guarantee an effective, efficient and independent review system of the national procurement decisions. It concluded that a number of provisions of the Remedies Directives 89/665/EEC and 92/13/EEC were wrongly implemented or not implemented into the nine procurement laws of the Austrian Länder. For example, the procurement law of the Tirol and Burgenland Land fails to provide, in the case of a review procedure, that the contracting authority is not authorised to award the contract during a certain period. If, on the other hand, the authority awards a contract before the review procedure has been completed, the contract becomes null and void.

The Commission criticises Austria for the fact that the decision of the Court of Justice in the Alcatel case has not been implemented by all Austrian Länder. Salzburg, Steiermark, Kärnten, Niederösterreich and Tirol have not yet adopted a provision that guarantees that the award decision can be the subject of a review procedure before the competent review bodies.

France - Management contracts for public works - Nature of Contract

31 July 2001

The Commission is concerned that France may have failed to ensure that competitive tendering procedures are applied to management contracts for public works. The French law of 12 July 1985, concerning the management and supervision of public works and its relations to legislation on the management and

supervision of private construction work, is frequently applied to the construction of large-scale works. The law stipulates that the assignment of management and construction supervision is exclusively restricted to legal entities under French law.

The Commission disagrees and considers that these tasks constitute services contracts within the meaning of Directive 92/50/EEC and therefore have to be assigned in accordance with the publicity and competition obligations set out in this Directive. The Commission has therefore sent the French authorities a formal request for information on this issue.

France – Town planning rules - Classification

31 July 2001

In response to a formal complaint, the Commission has decided to send a formal request for information to the French authorities concerning the terms and conditions for concluding local development agreements (conventions d'aménagement), as set out in article L300-4 of the French Town Planning Code. France uses these agreements for all major local development projects such as implementing urban development projects, the definition of local housing policy, or for the organisation and stimulation of local economic development. But the local development agreement, as it currently exists in French law, provides no framework for the procedure of granting these agreements and exempts this type of agreement from any publicity or competition requirements, both at the national level and at the European Union level.

The Commission considers that these agreements may fall within the European Union definition of a "concession" in which case they should be subject either to the relevant provisions of the works procurement Directive (93/37/EEC) or, when they are concerned with provision of services, to the relevant provisions of the EC Treaty (in particular Article 49). Moreover, when a local authority decides to apply a local development agreement to an urban planning or land development project and decides to assume the economic risks associated with the project by guaranteeing to cover any losses, the Commission considers that the agreement may have to be classified under European Union law as a public works contract and therefore subject to the relevant provisions of Directive 93/37/EEC.

Limiting the work on preparatory studies (provision of services), prior to drawing up a local development agreement, to a restricted category of public or semi-public bodies under French law, without ensuring competition, appears to be contrary to the rules of the services procurement Directive (92/50/EEC), as well as the principle of freedom to provide services as described in Article 49 of the EC Treaty.

The Commission clarified how European Union law should be applied to concessions in an interpretative Communication of 14 April 2000 (see IP/00/436).

France - Redress

30 July 2001

Directive 92/13/EEC requires Member States to put in place the means to ensure rapid and effective redress for suppliers to prevent and correct possible violations of Community rules on public procurement in the water, energy, transport and telecommunications sectors. It was due to be implemented no later than 1 January 1993.

Italy - Public procurement of architectural services - Award Criteria

5 April 2001

The Commission has decided to refer Italy to the Court of Justice for its incorrect implementation of Directive 92/50/EEC on public procurement of services. The Commission has raised three objections in relation to a decree of 27 February

1997 (the "Karrer decree") establishing provisions for determining the economically most advantageous tender for the award of architectural and engineering services and other technical services.

Firstly, and contrary to the requirement of the Directive, the Commission was not notified about the decree. Secondly, the criteria for awarding a contract indicated in the decree include criteria that should be considered at the previous stage in the procedure, i.e. the selection of service providers. This is contrary to the provisions of the Directive. Thirdly, the decree allows the committee responsible for assessing tenders to define subsidiary award criteria after the specifications have been prepared; this infringes not only the provisions of the Directive but also the principle of transparency that must be observed throughout the procedure.

Italy - Printing of documents for the Municipality of Rome - Open Competition

5 April 2001

The Commission has decided to send Italy a reasoned opinion for infringing the freedom to provide services in the European Union and Directive 92/50/EEC on public procurement services. The matter refers to a contract awarded by the Municipality of Rome for the printing of publications.

The Commission considers that the procedure followed by the Municipality of Rome is tainted by several infringements of Community law. On the one hand, the notice published in the Official Journal of the European Communities contained inadequate information and referred to a notice previously published in the Italian Official Journal, which is contrary to the Directive in question.

In addition, the notice published in the Italian Official Journal required documents issued by a foreign authority and submitted for admittance to the procedure to be legalised by the Italian authorities; this is an infringement of the principle of mutual recognition. Lastly, the invitation to tender and the specifications required the successful tenderer to establish an operational structure in the Lazio Region, which is an infringement of the freedom to provide services.

Greece - Repair and cleaning of electricity generating stations - Discrimination

5 April 2001

The Commission has decided to send Greece a reasoned opinion concerning the signing by the DEH public power corporation of framework contracts for the repair, renovation and cleaning of steam-powered electricity generating stations in the north of Greece. The Commission considers that the conditions of the invitation that the DEH sent to firms that might be interested in the framework contracts were such that they restricted the contract to local firms and were also discriminatory and contrary to the freedom to provide services.

Germany - Collection of household refuse - Open Competition

5 April 2001

This case, which was brought to the Commission's attention by a complaint, concerns the contracts for the collection of household refuse in several municipalities in the district of Coesfeld (North Rhine-Westphalia). These contracts were awarded to local firms without an invitation to tender at Community level by means of a notice in the Official Journal of the European Communities, as required by Directive 92/50/EEC on public procurement of services. In spite of an earlier letter of formal notice that the Commission sent to the German authorities, these municipalities are still applying the contracts that were signed after being awarded in infringement of Community law on public procurement.

Germany - Rubber protection pads for military vehicles - Defence

5 April 2001

The German Federal Office for military technology and public contracts regularly awards supply contracts for the purchase of rubber protection pads designed to reduce the noise produced by tracked military vehicles (e.g. tanks) and to prevent damage to roads to a group of suppliers without an invitation to tender at Community level by means of publication of a notice in the Official Journal of the European Communities. The Federal Office, which obtains in this way about a million pads a year, refers to Article 296 of the EC Treaty, which states that the provisions of the Treaty do not apply to the production of or trade in arms, munitions and war material. The Office concludes from this that these contracts are not subject to the Community Directives on public procurement. The Commission's view is that since these pads are used in peacetime for non-military purposes they cannot be regarded as war material. These contracts are thus subject to the Community rules on public procurement.

United Kingdom - Non-implementation of the Utilities Directive

2 March 2001

The European Commission has decided to refer the United Kingdom to the European Court of Justice for failure to implement the provisions of Directive 98/4/EC. Directive 98/4/EC of 16 February 1998 amends Directive 93/38/EEC co-ordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors ("the Utilities Directive") so as to take account of the Government Procurement Agreement concluded during the multilateral Uruguay Round Negotiations

(1986-1994). The Directive requires Member States to implement its provisions into national law no later than 16 February 1999.

United Kingdom - Non-implementation of the Utilities Remedies Directive 2 March 2001

The Commission has decided to refer the United Kingdom to the Court for failure to implement correctly into national law certain provisions of Directive 92/13/EEC, which requires Member States to ensure that companies can obtain redress if they consider that they have been illegally excluded from a public procurement contract in the so-called utilities sectors (i.e. water, energy, transport and telecommunications). In particular, the Commission considers that the UK has failed to ensure that a so-called "attestation system" is available to entities awarding procurement contracts in the utilities sectors. The purpose of this system is to allow utilities covered by the Directive to receive an attestation confirming, where appropriate, that their procedures and practices are in conformity with Community law covering the award of contracts by companies operating in the utilities sectors.

In its ruling of 19 May 1999 (C-225/97, *Commission v France*), the Court of Justice confirmed that implementation by the Member States of the Directive's provisions on attestation is mandatory. There is therefore an obligation on all Member States to take appropriate measures to implement the Directive's provisions on attestation into national law. Under Article 13 of the Directive, Member States should have transposed the Directive's provisions on attestation into national law by 1 January 1993.

Spain - Implementation of the public works and supplies Directives 2 March 2001

The European Commission has requested Spain to implement correctly into Spanish law the provisions of the Directives on the public procurement of supplies and public works (93/36/EEC and 93/37/EEC respectively). Although Spain amended its legislation implementing the two Directives (Law 13/95) with Law 53/99, the Commission still considers that the definition of bodies governed by public law is incompatible with the Directives so that a number of entities that should be subject to the Directives' requirements are not under Spanish law.

Germany - Engineering Design - Specification 2 March 2001

The problem concerns a procurement procedure for engineering design services for the renovation of a sewage plant in the City of Mainburg (Hallertau). Under the public procurement of services Directive (92/50/EEC), a contracting authority may, exceptionally, award a public service contract by the so-called negotiated procedure with prior publication when the nature of the service required is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selecting the most economically advantageous tender, as is the case for open or restricted tenders. The burden of proof to justify the award of a contract under a negotiated procedure lies with the contracting party and in this case the Commission does not believe the German authorities have proved the existence of exceptional circumstances. The use of negotiated procedures for the award of engineering services in Germany is widespread so that this case has broader implications.

Belgium - Recognition of public works contractors 2 March 2001

There is a horizontal problem in Belgium concerning the recognition of public works contractors certified in other Member States. The Directive on public procurement of works (93/37/EEC) provides that a contractor who is registered in the official list of recognised contractors in one Member State should be presumed to be capable of carrying out that same work in another Member State. However, Belgian legislation (arrêté royal of 26.9.91 and arrêté ministeriel of 27.9.98) provides that a public works contract may only be awarded to a contractor not on a list of recognised contractors in Belgium once the competent Minister has decided, on the request of the contract awarded and on advice of a special commission, that all conditions for recognition or the requirements for equivalence of recognition in another Member State are fulfilled. Since the legislation does not provide for a standstill of the procedure pending the decision on the recognition of each candidate bidder not certified in Belgium and since this recognition procedure is lengthy, it can encourage a contracting authority to choose a candidate that is

already registered on the Belgian official list of recognised contractors and thus discriminate against non-recognised contractors or contractors who are registered on the official list of recognised contractors in other Member States. The Commission considers that this practice in Belgium not only violates the public works Directive but also EC Treaty rules on the freedom to provide services (Article 49). Previous Belgian legislation on certification of contractors was already condemned by the Court of Justice on 9 July 1987 (joined cases 27/86, 28/86 and 29/86).

Belgium - Architectural competition - Non-Compliance

2 March 2001

The problem concerns an international architectural competition for the design of the area of Brussels where many of the EU institutions are situated. The Commission considers the procedures laid down by the Directive on procurement of services (92/50/EEC) were not complied with. In particular, the Commission considers that the jury assessing the bids violated the Directive's rules concerning independence, the bidders' identities were revealed and the weighting of the criteria for evaluating the bids was not respected.

Belgium - Housing projects - Non-Compliance

2 March 2001

The case concerns a series of housing construction projects for the Société de développement régional de Bruxelles (SDRB) on the site of a former military hospital in the Ixelles commune. The Commission considers that the rules laid down in the EU Directive on public procurement of works were not respected. For example, the contract notice was misleading as regards the availability of subsidies.

Ireland - Civic centre - Non-Compliance

2 March 2001

The problem concerns the award of contracts for the construction of a civic centre in Blanchardstown in breach of the Directive on public procurement of works (93/37/EEC). In particular, the contracting authority (Fingal County Council) used a number of selection criteria which are not among the authorised criteria listed in the Directive (Article 27).

Austria - Implementation Directive 97/52/EEC

28 July 2000

Austria has failed to notify all necessary measures to implement Directive 97/52/EEC, which amends the Directives on public procurement of works, supplies and services to take account of the Government Procurement Agreement (GPA) reached in the framework of the World Trade Organisation. The implementation deadline for the Directive was 13 October 1998. Nor has Austria notified all necessary measures to implement Directive 98/4/EC, which amends the rules for public procurement in the water, energy, transport and telecommunications sectors, also to take account of the GPA. The implementation deadline for the Directive was

16 February 1999. The Austrian authorities notified the Commission in June 1999 that both Directives had been implemented at federal level. In August of the same year, further notifications followed concerning implementation of the two Directives in the Land Vienna, in January 2000 for the Tyrol and in June 2000 for Carinthia. However, despite assurances from the Austrian authorities of plans to implement both Directives in the remaining Austrian regions, no relevant legislation has been notified to the Commission.

Germany and France - Implementation Directive 98/4/EC

28 July 2000

In the case of Germany and France, the Commission has decided to refer both of them to the European Court of Justice for failure to notify measures to implement Directive 98/4/EC. This Directive amends the rules for public procurement in the water, energy, transport and telecommunications sectors to take account of the GPA.

United Kingdom – Provision of community facilities - Negotiated Procedure

27 July 2000

The Commission has decided to send a reasoned opinion to the United Kingdom concerning a decision to award a contract for the provision of infrastructure, community and other social facilities for a new

neighbourhood in the Borough of Ipswich, under a negotiated procedure. The Commission believes that a negotiated procedure, whereby the contracting authorities consult contractors of their choice and negotiate the terms of the contract with one or more of them, was not justified in this case according to the rules on the public procurement of construction works (Directive 93/37/EEC). The Directive establishes strict rules to ensure that public contracts are awarded only after an open and transparent tender process. The Directive does provide for negotiated procedures but only in very specific circumstances and in this case the Commission does not believe the procedure was justified.

United Kingdom – Redevelopment of Pimlico School - Negotiated Procedure

27 July 2000

The Commission has decided to send a reasoned opinion to the United Kingdom concerning the award of a contract to redevelop Pimlico School in Westminster, London. As in the case above, the contracting authorities used a negotiated procedure and the Commission, as in the case above, does not believe that this procedure was justified by the circumstances. The Commission therefore considers that the UK has infringed the terms of the procurement of construction works Directive.

Germany – Police station complex - Works Contract

27 July 2000

Following a complaint, the Commission has decided to send a reasoned opinion to Germany concerning the failure of the Land of Baden-Württemberg to publish at the EU level an invitation to tender for the construction of a police station complex in Singen. The works contract was awarded to a company that is 100% owned by the City of Singen. This company is to carry out the construction work on a site which the company owns itself, but according to precise instructions from the Land. The company will then sell the completed buildings to the Land.

The Directive on public procurement of construction works (93/37/EEC) does not apply to the simple acquisition by a public contracting authority of an existing building. However, since the building in question is being constructed in order to meet the requirements of the public contracting authority and given that the authority has already committed itself in writing to acquiring the building when it is completed, the Commission considers that this constitutes a works contract, and as such falls within the scope of the works procurement Directive and should have been put out to tender.

Belgium – Aerial surveys - National Security

27 July 2000

The Commission has decided to refer Belgium to the European Court of Justice for failure to apply the rules relating to the public procurement of services as laid down in Directive 92/50/CEE. Under this Directive, tenders for public services worth more than 200,000 euros must be published in the EU's Official Journal. But in this case, the contracting authority, the Flemish Regional Executive, did not publish a tender for a contract to conduct aerial surveys of the Belgian coast, although it was worth considerably more than the 200,000 euro threshold. Instead, the contract in question was directly negotiated with a Flemish company for a period of six years and subsequently extended to nine years.

The Belgian authorities argue that in this particular case, the Directive is not applicable because the task is highly specific and because national security is at stake, which means that there is only one company to which it can be awarded. They also maintain that the provision of aerial photography services are excluded from the obligation to publish a tender. The Commission does not accept these arguments because, as long as a contractor agrees to be bound by professional confidentiality, the military certificate necessary for aerial photographic observation of the coast may be awarded to a non-Belgian company.

The Belgian authorities have failed to convince the Commission that there is only one company capable of doing the job. Moreover, in the Commission's view, the aerial photographic services required fall under the category of "surface surveillance services and the provision of geographic maps" that, according to the Directive, should be subject to open and competitive tender procedures.

France/UK - Procurement in the water, energy, transport and telecommunications sectors

9 March 2000

The Commission has decided to take France to the European Court of Justice and to send a reasoned opinion to the UK because neither country has implemented Directive 98/4/CE. This legislation adapts existing Directives relating to public procurement in the water, energy, transport and communications sectors to bring them into line with international agreements on public procurement (the Government Procurement Agreement - GPA) concluded within the framework of the World Trade Organisation. The deadline for implementation of this Directive was 16 February 1999.

France/Luxembourg - Procurement of services, supplies and works

9 March 2000

The Commission has decided to take France to the European Court of Justice and to send a reasoned opinion to Luxembourg for failing to implement into national law Directive 97/52/EEC of 13 October 1997. This legislation amends Directives 92/50/EEC, 93/36/EEC, and 93/37/EEC, which concern respectively the procurement of services, supplies and works, so as to adapt them to the provisions of the Government Procurement Agreement - GPA) concluded within the framework of the World Trade Organisation. The deadline for implementation of the Directive was 13 October 1998.

Spain - Construction work at Segovia educational penitentiary centre

9 March 2000

The Commission has referred Spain case to the European Court of Justice concerning incorrect procedures followed during selection of a firm to carry out construction work at an experimental penitentiary centre in Segovia. In particular, the call for tenders was published in the national press but not in the EC Official Journal and violated the Directive on public works (93/37/EEC). The Spanish authorities maintain that the Directive does not apply to the "Sociedad Estatal de Infraestructuras y Equipamientos Penitenciarios" (S.E.I.E.P.S.A.) on the grounds that it is a public commercial company governed by private law. However, the Commission considers that S.E.I.E.P.S.A. is a contracting authority within the meaning of the Directive, in particular because the company has been established for the specific purpose of meeting public interest needs, and so is not a conventional industrial or commercial firm.

Spain - Tendering procedures for public works contracts

9 March 2000

The Commission has decided to send a reasoned opinion to Spain in relation to the tendering procedures used for public works contracts. The problem concerns the standard contract documents drawn up by the Spanish authorities for use by procurement bodies which in several key respects do not follow the rules (e.g. as regards selection criteria) that are laid down in the Directive on works procurement (93/37/EEC).

France - Construction of sewage treatment plant - Selection Process

9 March 2000

The Commission has decided to refer France to the European Court of Justice concerning the procedures followed by the greater Nancy area authorities to select a firm to construct a sewage treatment plant at Maxéville. The Commission considers that the French authorities have violated the Directive on procurement of public works (93/37/EEC) and EC Treaty rules on the freedom to provide services (Article 49, ex 59). The contract was attributed following a restricted procedure (i.e. a limited number of firms were invited to tender). However, contrary to the requirements of the Directive, the contracting entity did not publish beforehand an indicative notice of the contracts it was intending to award. Moreover, in the call for expressions of interest, the contracting authority specified that those submitting bids had to be registered with the French national order of architects, thereby discriminating against potential bids from suppliers established in other Member States. This discrimination violates not only the public works Directive, but also EC Treaty rules on the freedom to provide services. Another problem with the procedures followed was that only four firms were invited to tender, whereas the Directive requires a minimum number of five bidders so as to try to ensure genuine competition between bidders.