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Proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

**amending**

**Directive 92/50/EEC relating to the coordination of procedures for 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 work contracts**

Proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

**amending**

**Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors**

(presented by the Commission)

**Annex: Detailed analysis of Articles**

The comments presented below relate to the amendments set out in Article 1 (Services Directive), Article 2 (Supplies Directive), and/or Article 3 (Works Directive) of this proposal.

(a) Threshold values

The relevant provisions of the Directives fixing threshold values with regard to procurement of services, supplies and works (Art. 7 Services, Art. 5 Supplies, Art. 6 Works) are amended taking account of the new thresholds set out by the Agreement.

As regards the procurement of services, the new threshold implies a substantial lowering of the existing threshold regarding procurement done by central government authorities (to the equivalent in ecus of SDR 130.000), whereas the differences following from the new threshold established for the procurement of services and supplies by all other contracting authorities (the equivalent in ecus of SDR 200.000) and the procurement of works by all contracting authorities (the equivalent in ecus of SDR 5.000.000) are relatively small, in particular in view of the current exchange rate between SDR and ecus.

As the threshold values of the Agreement expressed in ecus are subject to revision every two years, it was not possible to refer to the concrete threshold value in ecus in the relevant article itself. The chosen solution to remedy this situation provides for :

- a reference in the Article to the equivalent in ecus of the threshold fixed pursuant to the Agreement (Art. 7(1)(a) Services, Art. 5(1)(a) Supplies, Art. 6(1)(a) Works);

- an amendment in the text of the relevant provisions, referring to a periodical publication of the amount in ecus in the OJEC (Art. 7(1)(b) Services, Art. 5(1)(c) Supplies, 6(2)(a) Works).

# COMPETITIVENESS AND EMPLOYMENT IMPACT STATEMENT

## I. Title of the proposal

Proposal for a Parliament and Council Directive amending Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

## II. What is the main reason for introducing the measures?

The taking into account in the above-mentioned Directive of the international obligations deriving from the new GAT Agreement on Government Procurment.

## III. Features of the businesses concerned

1. In particular, are many SMEs involved?
   Public supply, public works and public service contracts are in many cases likely to interest SMEs, either directly or indirectly.

2. Are they concentrated in regions of the Community which are:
   - eligible for national regional aid schemes? No.
   - eligible for ERDF assistance? No.

## IV. What direct obligations do these measures impose on businesses?

All the obligations flowing from the proposed measures would be imposed on businesses **if** the undertaking in question is itself a contracting entity (i. e. a private undertaking having special or exclusive rights or a public undertaking).

If the undertaking in question is **not** itself a contracting entity, then these measures impose few direct obligations. **If** businesses decide to participate in an award procedure, which is subject to the Directives, then they will be obliged, for instance, to submit the documentation required by the contracting authority and to submit tenders in writing . Where an undertaking avails itself of the possibility of submitting tenders by telex, telegram or telefax, then it is obliged to confirm this by letter.

V. **What indirect obligations are local authorities likely to impose on businesses?**

Local authorities are likely to impose few indirect obligations on businesses. As certain deadlines have been rendered slightly longer, contracting authorities are likely to require that businesses prolong the period of validity of their tender correspondingly.

VI. **Do any special measures apply in respect of SMEs.**

This proposal does not contain any new measures applicable to SMEs.

VII. **What is the likely effect on:**

1. Business competitiveness?
The abovementioned Directives are aimed at boosting business competitiveness across the Community. The amendments pursue the same aim.

2. Employment?
The impact on employment can be regarded as limited.

VIII. **Have both sides of industry been consulted? Please indicate their opinions.**

Consultations are taking place through the Advisory Committee on the Opening-up of Public Procurement, on which industry and the European Trade Union Confederation are represented.

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