



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.5.2005
COM(2005) 214 final

2005/100 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

correcting Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

(presented by the Commission)

EXPLANATORY MEMORANDUM

When the Public Works Directives were amended by the adoption of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts¹, (hereinafter referred to as “the Directive”), the Commission intended to maintain the threshold applying to public service contracts subsidised by over 50%².

As indicated in Article 8 of the Directive, this intention was confirmed by the Community legislature. Indeed, the threshold for these subsidised service contracts, established in point (b) of the first subparagraph of Article 8 of the Directive, was EUR 249 000. It was thus identical to the threshold applying to service contracts awarded by contracting authorities other than those referred to in Annex IV³ (in other words by contracting authorities that are not central governmental authorities).

The thresholds of the Directive are expressed in euro whereas those establishing the international obligations of the EU under the WTO Agreement on Government Procurement are expressed in Special Drawing Rights (SDR). In Article 78, the Directive provides for a mechanism allowing the Commission to check and revise the thresholds if necessary due to changes in the SDR/Euro exchange rate. In the event of a revision, the thresholds should essentially remain identical. The legislature did not wish to authorise the Commission to make any changes in substance⁴.

However, due to a clerical error, Article 78(2)(b) states among other things that the threshold for service contracts subsidised by more than 50% shall be precisely aligned on “the revised threshold applying to public service contracts concluded by the contracting authorities referred to in Annex IV”, which significantly lowers the threshold. This error was discovered so late in the legislative process that it was no longer possible to correct it by tabling an amendment. A legislative correction must therefore be made in good time before the next revision of the thresholds which, pursuant to Article 78(4), shall be published at the beginning of November 2005.

¹ OJ L 134, 30.4.2004, p.114.

² See Article 8 of the explanatory memorandum of the initial proposal, COM(2000)275 final of 10 May 2000. (“As regards service contracts subsidised by more than 50% by contracting authorities...the threshold remains unchanged.”)

³ See the first indent of Article 7(b) of the Directive.

⁴ Note the absence of any indication to the contrary in recital 17 of the Directive.

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correcting Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) and Articles 55 and 95 thereof,

Having regard to the proposal from the Commission⁵,

Having regard to the opinion of the European Economic and Social Committee⁶,

Having regard to the opinion of the Committee of the Regions⁷,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁸,

Whereas:

- (1) The threshold applying to contracts for certain services subsidised by more than 50% should remain aligned on the threshold applying to service contracts awarded by contracting authorities other than the central governmental authorities, as the legislature had provided for with the adoption of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts⁹.
- (2) This alignment should also be guaranteed within the framework of the revision of the thresholds provided for in Article 78 of Directive 2004/18/EC.
- (3) Owing to a clerical error, Article 78 of Directive 2004/18/EC does not currently guarantee the desired alignment. Points (b) and (c) of Article 78(2) must therefore be

⁵ OJ C [...], [...], p. [...].

⁶ OJ C [...], [...], p. [...].

⁷ OJ C [...], [...], p. [...].

⁸ OJ C [...], [...], p. [...].

⁹ OJ L 134, 30.04.2004, p. 114. Directive as last amended by Commission Regulation (EC) No 1874/2004 of 28 October 2004 amending Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council in respect of their application thresholds for the procedures for the award of contracts (OJ L 326 of 29.10.2004, p.17.)

corrected by moving the reference to (b) of the first subparagraph of Article 8 from (b) to (c),

HAVE ADOPTED THIS DIRECTIVE:

Article 1

In Article 78(2) of Directive 2004/18/EC, points (b) and (c) are replaced with the following text:

- “b) the threshold established in Article 67(1)(a) on the revised threshold applying to public service contracts awarded by the contracting authorities referred to in Annex IV;
- c) the thresholds established in (b) of the first subparagraph of Article 8 and Article 67(1) (b) and (c) on the revised threshold applying to public service contracts awarded by the contracting authorities not referred to in Annex IV.”

Article 2

The Member States shall implement the laws, regulations and administrative provisions needed in order to comply with this Directive by 31 January 2006 at the latest.

When the Member States adopt these provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The Member States shall determine how such reference is to be made.

Article 1 shall apply from [date of publication].

Article 3

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President