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*****III REPORT**

on the joint text approved by the Conciliation Committee for a European Parliament and Council directive coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (PE-CONS 3695/2003 – C5-0608/2003 – 2000/0117(COD))

European Parliament delegation to the Conciliation Committee

Rapporteur: Stefano Zappalà

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

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PROCEDURAL PAGE

At its sitting of 17 January 2002 Parliament adopted its position at first reading on the proposal for a European Parliament and Council directive coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (COM(2000) 276 – 2000/0117(COD)).

At the sitting of 27 March 2003 the President of Parliament announced that the common position had been received and referred to the Committee on Legal Affairs and the Internal Market (12634/3/2002 – C5-0142/2003).

At the sitting of 2 July 2003 Parliament adopted amendments to the common position.

By letter of 29 September 2003 the Council stated that it was unable to approve all Parliament's amendments.

The President of the Council, in agreement with the President of Parliament, convened a meeting of the Conciliation Committee on 14 September 2003.

By letter of 13 November 2003 the President of Parliament informed the Council that it was necessary to extend the period for the work in committee and the deadline for adopting the act, as laid down in Article 251(7) of the EC Treaty.

At its meetings of 4 November and 2 December 2003 the Conciliation Committee considered the common position on the basis of the amendments proposed by Parliament.

At the last meeting, it reached agreement on a joint text.

At its meeting of 2 December 2003 the Parliament delegation approved the results of the conciliation by 12 votes to 2.

The following took part in the vote: Charlotte Cederschiöld (Vice-President and chair of the delegation), Stefano Zappalà (rapporteur), Uma Maija Aaltonen (for Sir Neil MacCormick), Maria Berger, Brian Crowley, Bert Doorn (for Giorgos Dimitrakopoulos), Evelyne Gebhardt, Malcolm Harbour (for Giuseppe Gargani), Stephen Hughes (for Renzo Imbeni), Manuel Medina Ortega, Bill Miller, Marcelino Oreja Arburúa (for Françoise Grossetête), Giacomo Santini (for Klaus-Heiner Lehne) and Astrid Thors.

On 9 December 2003 the co-chairmen of the Conciliation Committee established that the joint text had been approved, pursuant to paragraph III.8 of the Joint declaration on practical arrangements for the new co-decision procedure¹, and forwarded it to Parliament and the Council in all the official languages.

The report was tabled on 21 January 2004.

¹ OJ C 148, 28.5.1999, p. 1.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the joint text approved by the Conciliation Committee for a European Parliament and Council directive coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors
(PE-CONS 3695/2003 – C5-0608/2003 – 2000/0117(COD))**

(Codecision procedure: third reading)

The European Parliament,

- having regard to the joint text approved by the Conciliation Committee (PE-CONS 3695/2003 – C5-0608/2003),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2000) 276)²,
 - having regard to the amended proposal (COM(2002) 235)³,
 - having regard to its position at second reading⁴ on the Council common position⁵,
 - having regard to the Commission's opinion on Parliament's amendments to the common position (COM(2003) 501 - C5-0398/2003)⁶,
 - having regard to Article 251(5) of the EC Treaty,
 - having regard to Rule 83 of its Rules of Procedure,
 - having regard to the report of its delegation to the Conciliation Committee (A5-0008/2004),
1. Approves the joint text;
 2. Instructs its President to sign the act with the President of the Council pursuant to Article 254(1) of the EC Treaty;
 3. Instructs its Secretary-General duly to sign the act and, in agreement with the Secretary-General of the Council, to have it published in the Official Journal of the European Union;
 4. Instructs its President to forward this legislative resolution to the Council and Commission.

¹ OJ C 271 (E), 7.11.2002, p. 64.

² OJ C 29 (E), 30.1.2001, p. 112.

³ OJ C 203 (E), 27.8.2002, p. 183.

⁴ Texts Adopted, 2.7.2003 P5_TA(2003)0313.

⁵ OJ C 147 (E), 24.6.2003, p. 137.

⁶ Not yet published in OJ.

EXPLANATORY STATEMENT

Background

The proposal for a directive submitted by the Commission on 11 July 2000 seeks to coordinate the procurement procedures of entities operating in the water, energy and transport sectors, with the aim of updating and simplifying the existing legislation in these sectors, as well as making it more flexible.

After Parliament had delivered its opinion at first reading on 17 January 2002 and the Commission had submitted an amended proposal on 6 May 2002, the Council adopted its common position on 20 March 2003.

At second reading on 2 July 2003 Parliament adopted 19 amendments to the common position, covering in particular: observance of general principles in procurement matters; restricting the use of electronic auctions; use of electronic signatures; accessibility for people with disabilities; contract award criteria; postal services; and measures to combat social dumping in third countries.

Conciliation procedure

Parliament's delegation, which held its constituent meeting on 2 September 2003, instructed its chairman, Charlotte Cederschiöld, together with Giuseppe Gargani, chairman of the Committee on Legal Affairs and the Internal Market, Stefano Zappalà, rapporteur, and Maria Berger, to begin the negotiations with the Council.

The Council formally concluded its second reading on 29 September. During the first trialogue meeting, held on 2 October, the Council set out its initial negotiating position. The conciliation procedure was officially opened on 15 October as an agenda item without discussion, in order to comply with the formal provisions of the Treaty. A second trialogue meeting was held on 23 October to make preparations for the Conciliation Committee meeting held on 4 November. Following a third trialogue meeting on 18 November, the committee met on 2 December.

The main points of the agreement reached within the Conciliation Committee are outlined below.

✓ Contract award criteria

The agreement reached within the Conciliation Committee is based on the case law of the Court of Justice and provides that contracting authorities may lay down award criteria to be applied in order to identify the economically most advantageous tender and meet the needs of the public concerned, including in the environmental and/or social area. The criteria must be linked to the object of the contract, may not give the contracting authority unrestricted freedom of choice, must be expressly mentioned in the tender documents or the contract notice and must adhere to the fundamental principles of Community law, particularly that of non-discrimination. Furthermore, production methods are specifically referred to among the

permissible technical specifications.

✓ Monitoring mechanisms

In accordance with the agreement reached within the committee, a new article has been added, requiring Member States to establish effective, available and transparent mechanisms to ensure implementation of the directive. The text provides for the possibility of appointing or establishing an independent body.

✓ Observance of general principles in procurement matters

The text makes the general stipulation that the award of contracts in the Member States on behalf of the State, regional or local authorities and other bodies governed by public law is subject to observance of the principles laid down in the Treaty, both below and above the thresholds specified in the directive.

✓ Restrictions on the use of electronic auctions

Under the agreement reached, electronic auctions may not be used for some service or works contracts covering the provision of intellectual services, such as the design of works.

✓ Use of electronic signatures

Given that the use of advanced electronic signatures currently varies significantly from one Member State to another, the agreement reached in conciliation represents a balanced compromise. The directive promotes the use of advanced electronic signatures and states that Member States may, in accordance with the legislation in force, stipulate that tenders may be submitted by electronic means only if an advanced electronic signature is used.

✓ Accessibility for people with disabilities

The directive encourages contracting entities to take into account accessibility criteria for people with disabilities or design for all users when laying down technical specifications. Member States may reserve the right to participate in contract award procedures to sheltered workshops or provide for such contracts to be executed in the context of sheltered employment programmes.

✓ Measure to combat social dumping in third countries

Member States are required to inform the Commission of any difficulties, in law or in fact, encountered and reported by their undertakings in securing the award of service contracts in third countries and of any difficulties which are due to the non-observance of international labour law provisions.

✓ Time limit for informing applicants of qualification decisions

Contracting entities which establish and operate a system of qualification must inform applicants of their decision as to qualification within a period of no more than six months.

Conclusion

The revision of the legislation governing public procurement in the water, energy, transport and postal services sectors is a matter of crucial importance in this parliamentary term and constitutes a major step forward in the process of opening up markets and completing the European internal market. The balanced agreement reached within the Conciliation Committee reflects the interests and objectives of all the institutions involved. This major revision simplifies the existing legislation and makes it more transparent and easier to understand, while adjusting it to take account of technological, social and political developments.

The delegation wishes to thank the Italian Presidency and the Commission for their constructive cooperation and recommends that Parliament adopt the text at third reading.