



**PUBLIC PROCUREMENT
FREQUENTLY ASKED QUESTIONS**

**EIC Public procurement Working group
1999**

PUBLIC PROCUREMENT / FREQUENTLY ASKED QUESTIONS

INTRODUCTORY MESSAGE

The Frequently Asked Questions (FAQs) Guide below aims at providing EICs, interested in public procurement, with a quick reference document on questions that may be asked by SMEs. It was drafted by the [EIC public procurement working group](#) in the framework of its mission which consists in raising the quality of services provided by the EIC Network. The Guide is divided in 3 parts which correspond to the different steps involving a public procurement procedure (before, during and after the submission of a bid). The user may browse or download the whole document or choose directly the question(s) of interest to him/her in order to obtain the required answer(s). A separate section with references is provided at the end of the document. Every possible effort was made to provide the user with the most appropriate and up to date information. For your suggestions and/or comments, please use the [public procurement First Class conference](#).

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I. BEFORE SUBMITTING A BID

1. WHAT IS PUBLIC PROCUREMENT?

Public Procurement refers to the contracts awarded (for pecuniary interest) by a public purchaser ("contracting authority") or a "utility" (entities operating in the water, energy, transport and telecommunications sectors) to a supplier, contractor or service provider.

Public procurement represents more than EURO 750 billions annually, which amounts to about 11% of the Union's GDP. The sectors concerned are diverse: construction, product supplies, various services, etc.

2. IS THERE A MARKET FOR MY PRODUCTS IN THE PUBLIC PURCHASE SECTOR?

It is very possible.

Your Euro Info Centre (EIC) will help you search for the calls for tender that have been published which could have an interest for your company. The EIC could also carry out for you a follow up of all calls for tender that concern your business activity. Every EIC receives the TED CD ROM. EICs have access to the World Wide Web. Every Member State has at least two EICs which are specialists in the area of public procurement.

3. WHAT IS THE EUROPEAN PUBLIC PROCUREMENT POLICY?

European Public Procurement Policy aims to create competitive, non-discriminatory public procurement markets in the European Union so as to enable the procurement of goods and services to move freely, thus ensuring value for money for taxpayers and consumers of public services and fostering the competitiveness of European suppliers in domestic and world markets.

The public procurement regime in the EU establishes specific procedures to guarantee that procurement contracts above a certain value are awarded in a competitive, transparent and non-discriminatory manner.

However, procurement policy is not only about imposing constraints on awarding authorities. It is also about providing the necessary incentives for suppliers to actively pursue contract opportunities in markets outside their national boundaries. Transparency is key in this respect.

4. WHAT ARE THE EUROPEAN LEGISLATIVE PROVISIONS?

Three directives have consolidated the provisions applicable to works contracts (Directive 93/37/EEC (OJ L 199, 9.8.1993, p.54-83)), supply contracts (Directive 93/36/EEC (OJ L 199, 9.8.1993, p. 1-53)), and service contracts (Directive 92/50/EEC (OJ L 209, 24.7.1992, p. 1-24)). These directives were last amended by Council Directive 97/52/EC of 13 October 1997 (OJ L 328, 28.11.1997, p.1-59).

In addition, contracts awarded by "utilities", that is to say enterprises operating in the water, energy, transport and telecommunications sectors, are covered by Directive 93/38/ECC (OJ L 199, 9.8.1993, p. 84-138), amended by European Parliament and Council Directive 98/4/EC of 16 February 1998 (OJ L 101, 1.4.1998, p. 1-16). The "utilities" directive foresees that the Commission can exempt those services from the application of the public procurement rules where a real competitive market situation has developed, for example through the introduction of effective liberalisation. The list has been published, for information, in the EU's Official Journal of the EC (OJ C 129, 8.5.1999, p.5) and is also available on SIMAP's Web pages (<http://simap.eu.int/>), under the news heading. It will be updated in accordance with changes in the competitive situation in the market place. The current list is given below.

<u>Categories of services exempted</u>	<u>Member States concerned</u>
◆ Public fixed telephony	Belgium, Denmark, Germany, Spain, France, Ireland, Italy, Netherlands, Austria, Finland, Sweden, United Kingdom.
◆ Public mobile telephony:	Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Netherlands, Austria, Portugal, Finland, Sweden, United Kingdom.
◆ Satellite services	Belgium, Denmark, Germany, Spain, France, Ireland, Italy, Netherlands, Austria, Portugal, Finland, Sweden, United Kingdom.
◆ Transmission of data/value-added Services (telephone cards, Internet, Call-back connection)	Belgium, Denmark, Germany, Spain, France, Ireland, Italy, Luxembourg, Netherlands, Austria, Finland, Sweden, United Kingdom.

The **Review Procedures Directives** ensure that there is a proper remedy for any infringement committed during the contract-awards procedures in the works, supplies, and service sectors (Directive 89/665/EEC (OJ L 395, 30.12.1989, p.33-35), amended by Directive 92/50/EEC) and in utilities (Directive 92/13/EEC (OJ L 76, 23.3.1992, p. 14-20)).

5. WHICH COUNTRIES ARE COVERED?

The 15 Member States of the European Union, plus Iceland, and Norway and Liechtenstein (all members of the European Economic Area).

At the end of the Uruguay Round, in 1994, the EU reached an Agreement on government procurement (GPA). The GPA is built on the principles of national treatment, non-discrimination and transparency. The GPA entered into force in 1996 and the public procurement directives had to be amended accordingly by Directives 97/52/EC and 98/4/EC.

6. WHERE MAY I OBTAIN THE TEXT OF THE DIRECTIVES?

The EU public procurement directives have been published in the Official Journal of the European Communities, L series. They can be obtained in all EU languages from the CELEX database (<http://europa.eu.int/celex>). Alternatively, the directives are also available in the EUR-Lex database, section of Community legislation in force (<http://europa.eu.int/eur-lex/en/index.html>) and on the SIMAP web site (<http://simap.eu.int>).

7. WHICH CONTRACTS ARE COVERED BY THESE RULES?

The following:

Public works contracts to:

- execute, or both execute and design, works related to building and civil engineering (activities listed in Annex II of the Directive: professional activities included in Class 50 of the General Industrial Classification of Economic Activities within the European Communities (NACE));
- execute, by whatever means, a task corresponding to the requirements specified by the contracting authority.

Public supply contracts to deliver products, including purchase, lease, rental or hire purchase, with or without option to buy. The delivery of such products may, in addition, include siting and installation operations.

Public services contracts to execute services that are neither public supply nor public work contracts, and are not awarded in the water, energy, transport or telecommunications sector. E.g.: studies, consultants services, advertising services, transport services, maintenance and repair, engineering services, financial services, computer services, legal services, etc.

The supply of products, building and civil engineering works and the provision of services, as defined above, which are awarded by an entity carrying on an activity in the **water, energy, transport and telecommunications sectors ("utilities")**.

If their estimated value net of VAT is not less than:

Works	Supplies	Services
5 000 000 SDR	200 000 SDRs for contracts awarded by a contracting authority referred to in Article 1(b) of Directive 93/36, including those awarded, in the field of defence, by an authority listed in Annex I of Directive 97/52 in so far as the products are not covered by Annex II of Directive 93/36	EURO 200 000 for cases referred to in Article 7(1)(a), first subparagraph of Directive 92/50/EEC as amended by Directive 97/52/EC
EURO 5 000 000 for contracts referred to in Article 2(1) of Directive 93/37	130 000 SDRs for contracts awarded by a contracting authority listed in Annex I of Directive 97/52, including those in the field of defence when the contract involves products covered by Annex II of Directive 93/36	130 000 SDRs for cases referred to in Article 7(1)(a), second subparagraph, (i) of Directive 92/50/EEC, as amended by Directive 97/52/EC)
		200 000 SDRs for cases referred to in Article 7(1)(a), second subparagraph, (ii) of Directive 92/50/EEC, as amended by Directive 97/52/EC
Utilities		
	Supplies and services	Works
Telecommunications	EURO 600 000	EURO 5 000 000
Production, transport or distribution of drinking water and electricity; urban railway, tramway, trolleybus or bus services; airport facilities; maritime or inland port or other terminal facilities;	EURO 400 000 for supply and contract services (400 000 SDRs for service contracts listed in Annex XVI, except for certain telecommunications and R+D services: CPC codes: 7524, 7525 and 75626)	5 000 000 SDRs
Transport or distribution of gas or heat; exploration for and extraction of oil or gas, coal or other solid fuels; railway services	EURO 400 000 for supply and service contracts	EURO 5 000 000
<i>SDRs: special drawing rights</i>		

Tenders above these thresholds are published in the S series of the Official Journal.

8. HOW MUCH IS THAT IN MY NATIONAL CURRENCY?

The national currency equivalent, applicable from 1 January 2000, to the thresholds indicated in the directives, has been published in the Official Journal (OJ C 379, 31.12.99). These are reproduced at the end of this Frequently Asked Questions guide (see under section IV Miscellaneous). They are also available from SIMAP web pages, under the section *Rules and Guidelines*.

9. DO ANY EUROPEAN RULES APPLY TO PUBLIC CONTRACTS BELOW THOSE THRESHOLDS?

Yes.

The Treaty establishing the European Communities establishes four fundamental principles that apply to public contracts whatever their value:

- No discrimination on grounds of nationality;
- Free movement of goods and the prohibition of quantitative restrictions on imports and exports and measures having equivalent effect;
- Freedom of establishment;
- Freedom to provide services.

10. WHAT ENTITIES ARE OBLIGED TO FOLLOW THE PROCEDURES SET OUT IN THE DIRECTIVES?

For works, service and supply contracts, the following contracting authorities are concerned:

- The State;
- Regional and local authorities (town councils, municipalities, Länder, regional administrations);
- Bodies governed by public law;
- Associations formed by regional or local authorities.

In addition to the public authorities, in the "utilities" sector the rules also apply for:

- Public undertakings, i.e. any undertaking over which the public authorities may exercise directly or indirectly a dominant influence through ownership, financial participation or regulation;
- Entities that are neither public authorities nor public undertakings, but have been granted special or exclusive rights in respect of one of the activities covered in the directives (water, energy, transport, and telecommunications).

11. WHAT TYPES OF CONTRACT NOTICE EXIST?

The three main notices that contracting authorities need to publish are the following:

1. Indicative notice (or pre-information)

Provides advance information about works, supplies or service contracts that, at the beginning of the budgetary year, the contracting authority intends to award during the next 12 months.

These notices are obligatory for the supplies and services where the total procurement, by product area, that a contracting authority envisages is equal or greater than EURO 750 000.

For works contracts, the contracting authority has to publish a summary of the essential characteristics of the contracts which they intend to award and the estimated value of which is not less than 5 000 000 SDRs or EURO 5 000 000 for contracts referred to in Article 2(1) of directive 93/37/EEC.

They do not guarantee that the contract will be placed. However, in the "utilities" sector, periodic indicative notices may be used for calling for competition.

2. Tender notices

Their publication marks the point at which the proper award procedure begins. They are compulsory for open, restricted and negotiated procedures.

In addition, contracting authorities that wish to carry out a design contest as part of the procedure leading to the award of a service contract shall make their intention known by means of a notice.

3. Contract award notices

They give particulars on the date the contract was awarded, the award criteria, the number of offers received, the name and address of the successful tenderer(s), and the price or price ranges paid. Contract award notices must be sent not later than 48 days after the contract in question has been awarded.

12. ARE THERE SPECIFIC FORMS THAT CONTRACTING AUTHORITIES MUST USE TO SUBMIT A NOTICE TO THE OFFICIAL JOURNAL?

Not as such. It is recommended that contracting authorities use the model contract notices published in the relevant Directives.

It is also possible to do this electronically. For contract authorities using SIMAP (see question n° 17), the forms can be filled in, checked and dispatched to the Office for Official Publications on line (see section *Purchaser point* of the SIMAP's Web site).

13. WE HAVE HEARD ABOUT DIFFERENT TYPES OF PROCEDURES; WHAT ARE THE CONSEQUENCES FOR US IF WE WANT TO SUBMIT?

The Directives provide for three types of award procedure that contracting authorities can use:

1) **Open procedure:**

All interested suppliers, contractors or service providers may submit tenders;

2) **Restricted procedure:**

Only those suppliers, contractors or service providers invited by the contracting authority may submit tenders.

The restricted procedure is in fact a two-part procedure, where companies first have to apply to the awarding authority for qualification to participate. The contracting authorities are entitled to request a number of strictly Directive-defined financial, technical and performance information and documentation

from interested companies for the evaluation and final qualification or disqualification.

It is extremely important that the company supplies all requested information. Even a minor failure to do so will lead to immediate disqualification.

After evaluation of the prequalification documents, only companies found qualified are invited to bid and will receive the tender documents from the awarding authority. By this procedure the number of companies invited to bid is limited to a **required minimum of 5 prequalified companies and a maximum of 20.**

3) **Negotiated procedure:**

The contracting authority consults suppliers, contractors or service providers of its choice and negotiates the terms of the contract with one or more of them.

There are two types of negotiated procedure:

- a) negotiated procedure **with** publication of a notice in the Official Journal;
- b) negotiated procedure **without** publication of a notice.

Each Directive lists exhaustively the cases where these two types of negotiated procedure may be used.

14. WHERE CAN I OBTAIN INFORMATION ABOUT THESE NOTICES?

The notices are published in the series S of the Official Journal of the European Communities. The S supplement may be consulted on the TED database and on the "S" CD-ROM of the Office for Publications.

A considerable number of different notices are available on TED. Looking for the tenders that interest your company involves time and effort. The majority of EIC's who offer an alert service based on daily searches of TED use a software package which automates the download of information from a central site, the matching of current contracts against client profiles, and the printing and distribution of the results to each client.

15. WHAT IS THE TED DATABASE?

TED (Tenders Electronic Daily), is the on-line version of "Supplement S to the Official Journal of the European Communities". Formerly a print publication, this is now available from the Office for Publications on-line and on CD-ROM.

TED publishes calls for tenders, and also pre-information notes, contract awards and other types of documents. The field TD ("type of document") in TED is used to specify the document type.

TED is produced by EUR-OP (Office for Official Publications of the EC), Luxembourg. Information comes directly from the awarding authorities in the Member States. EUR-OP organises the input, classification, translation and publication of the data.

The free Internet access to the TED facility is operated by the Office for Official Publications (EUR-OP). It is available at <http://ted.eur-op.eu.int/ojs/html/index2.htm> (TED help-desk: ted.webmaster@opoce.cec.eu.int).

16. WHAT IS CPV?

The "Common Procurement Vocabulary", was introduced by DG Internal Market of the European Commission. It contains more than 5,000 product codes and is used in TED to identify relevant products.

The updated list of CPV codes is available on the CD ROM S or from the SIMAP Web site, section CPV, Standards and Best practices (<http://simap.eu.int>).

17. WHAT IS SIMAP?

SIMAP stands for "Système d'Informations sur les Marchés Publics". It is an information system on public procurement planned, designed and implemented by the European Commission. SIMAP is aimed at making optimum use of new information technology in the field of public procurement. The SIMAP web site (<http://simap.eu.int>) provides information on the EU's legal framework on public procurement, tender opportunities, electronic procurement, training etc.

II. DURING THE SUBMISSION OF A BID

18. HOW DO WE ASK FOR THE TENDER DOCUMENTS?

Tender documents should be asked for by written request to the contracting authority. (The EIC public procurement working group will review and update the "Standard Letters for requesting tendering documents" currently available on the EIC web site, under the Public Procurement theme, in the News Archive section).

19. WHAT ARE THE DEADLINES FOR SUBMITTING A BID?

All tender procedures have a number of specified deadlines as minimum, which the contracting authorities and the bidding companies strictly have to honour.

The Publication Office in Luxembourg must publish the tender notice within 12 days after the date of dispatch from the awarding authority. By accelerated procedure, within 5 days.

It should be noted that all deadlines are counted from the day of dispatch from the awarding authority.

	Time-limit for receipt of requests to participate		Time-limit for receipt of tenders	
	Normal	Urgent	Normal	Urgent
Open procedures	_____	_____	not less than 52 days (1)	_____
Restricted procedures	not less than 37 days	not less than 15 days	not less than 40 days (2)	not less than 10 days
Negotiated procedures	not less than 37 days	not less than 15 days	_____	_____

(1) Reduced to 36 days in the case of works and service contracts where an indicative notice has been published.

(2) Reduced to 26 days in the case of works and service contracts where an indicative notice has been published.

20. ARE THE AWARDING AUTHORITIES ENTITLED TO ASK FOR NATIONAL TECHNICAL STANDARDS?

It depends on the type of contract (works, supplies or services). Nevertheless, the following basic rules apply to all cases, including the "utilities" sectors:

The technical specifications shall be defined, by priority, by the contracting authority by reference to:

- National standards implementing European standards or
- European technical approvals or
- Common technical specifications (these are published in the Official Journal).

There are exceptions to these rules depending on the directive concerned.

21. WHAT ABOUT THE DOCUMENTS WE HAVE TO ISSUE ACCOMPANYING OUR BIDS?

Contracting authorities may demand certain documents or evidence to establish the legal existence of the tenderer and its economic and technical capacities to carry out the works, provide the services or supply the products concerned.

Legal existence

- Personal situation of the tenderer (an extract of the "judicial record" or of an equivalent document proving it is not bankrupt or being wound up, another extract or equivalent document proving it is not firmly convicted for an offence that concerns his professional conduct, certificate issued by the competent authority certifying the fulfilment of the obligations relating to the payment of social security contributions and taxes);
- Enrolment in a professional or trade register or an oath or a certificate in accordance with conditions laid down in the law of the Member State in which they are established.

Financial and economic standing

The contracting authorities may, as a general rule, ask for:

- Appropriate statements from bankers;
- The firm's balance sheet, or extracts therefrom, where the publication of a balance sheet is required on the country where the tenderer is established;
- A statement of the firm's overall turnover and its turnover in respect of the services, works, or supplies to which the contract relates.

Other documents may be required to assess the economic and financial standing. In any case, these must be appropriate to the subject matter of the contract and non-discriminatory.

Technical capacity

- Each directive contains an exhaustive list of the evidence that contracting authorities may require depending on the nature, the quantity and/or the use of the works and the services concerned.

22. IN WHICH LANGUAGE DO I HAVE TO BID?

With few exceptions, invitations to tender are published in all official EU languages (original text in the national language of the contracting authority and a short translation). However, you should note that the tender information received from an awarding authority will usually be sent in its native language, and users must be prepared to submit their bid in the awarding authority's language. This is no different from private business - if you want to obtain contracts, you should have some understanding of your counterpart's language!

23. HOW STRICT IS THE "DEADLINE FOR BIDDING"?

Very strict.

Deadlines are definite and, in order to avoid complications, must be strictly adhered to. If the deadline is, for example, 20 December 1995, it is useless to submit an offer on 21 December 1995 since it will certainly be rejected. Please also note that the deadlines normally signify the date when the awarding authority must receive the offer, **not** the date of the postmark. For this reason, you should calculate postal or express mail time in advance. As offers are often regarded as confidential, those received via fax are usually not accepted by awarding authorities.

24. CAN I NEGOTIATE WITH THE AWARDING AUTHORITY?

Usually not.

Public procurement is a very formal business which does not allow flexibility and negotiation. The authority states what is required, an offer is made and after the evaluation period the awarding authority will announce which organisation has been awarded the contract.

TED customers have reported different experiences with alterations to specifications. Normally the specifications are not negotiable, even if, for example, you are able to suggest a better technique for a machine other than that described in the documents. If, for any reason, you have any suggestions to make which differ from those specified in the original document, please check the specifications carefully to see if you are allowed to do so.

25. IS MY OFFER LEGALLY BINDING?

Yes.

Proposals made in respect to invitations to tender by the interested party are legally binding. If you make an offer and the offer is accepted, it is not possible for the offer to be withdrawn or for the prices to be modified. If it is necessary to do either, usually a penalty must be paid. (You will often find a note included in the tender documents in TED which reads "Tenders may lapse after three months." This indicates that the offer must be adhered to during this period of time as it was described in your bid.)

It is therefore advisable to prepare your offer very carefully. Be especially careful that you check all prices involved with possible subcontractors, if you can deliver what is required on time and (if in construction or service contracts) you have the manpower to execute the work required at the location required.

26. CAN I SUBMIT A BID TOGETHER WITH ANOTHER COMPANY?

Yes.

According to the works, supplies and services directives, a group of contractors, suppliers or service providers shall be allowed to submit a tender without having to assume a particular legal form. However, if the contract is awarded they may be required to assume a particular legal form if such transformation is necessary for the performance of the contract.

It is important to note that the Community Directives on public procurement do not contain any provisions which could impede European Economic Interest Groupings (Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG) OJ L 199, 31.07.1985) to tender for a public contract. In 1997, the Commission adopted a communication entitled "Participation of European Economic Interest Groupings (EEIGs) in public contracts and programmes financed by public funds" (COM(97) 434 final, of 9.9.1997) (OJ C 285 , 20.09.1997). The communication sets out once again the definition of the EEIG and clarifies some of its characteristics and the way in which it operates so as to ensure that it can tender for public contracts and participate in programmes financed by public funds on an equal footing with other firms.

27. IF A CONTRACT IS SPLIT INTO LOTS, IS IT POSSIBLE TO SUBMIT ONLY FOR PART OF THEM?

Contracts of and above the threshold values can be divided into separate lots / contracts, but must nevertheless be published. As long as the contracting authority allows it, it is possible to submit to part of the lots.

Contracting authorities can not subdivide a contract into more sub threshold value lots in order to evade publication and competition.

The distinction is quite important and has profound implications to the public procurement market in the sense that several supplies contracts otherwise might be handled as works contracts not meeting the threshold of EURO 5.000.000, and in that way evade publication and competition.

An example of this could be the renovation and transformation of a coal terminal into a grain terminal.

The total project sum is less than EURO 5 million. Construction is EURO 2 million and machinery equipment is EURO 3 million.

Conventional thinking might judge this a sub threshold construction project not eligible for publication, but in terms of the Directives this in fact is a supply project, because machinery supplies are the major part of the project and above the threshold for supplies.

28. HOW MUCH DOES IT COST TO SUBMIT A BID?

In most cases, bidding is free. However, experience shows that private companies sometimes underestimate the commercial cost of bidding: Making a valid bid (including obtaining the necessary documents etc.) also involves costs which should be considered when deciding whether or not to bid.

III. AFTER THE SUBMISSION OF A BID

29. WHAT ARE THE AWARDING CRITERIA?

Contract award can be based on one of two principles:

- The lowest price;
- The most economically advantageous tender.

For the purposes of determining the most advantageous tender there is a non-exhaustive list of criteria: price, delivery or completion date, technical merit, quality, aesthetic and functional characteristics, running costs, cost-effectiveness, after-sales service and technical assistance.

The awarding criteria have to be listed either in the tender notice or in the tender documents.

1. How do I get information about the selected supplier?

The Supplies, Works and Services Directives require contracting authorities to publish in the Official Journal **details of how contracts have been awarded.**

The notice must be drawn up in accordance with the **model** annexed to the Directives and must be sent **not later than 48 days** after the contract in question has been awarded.

It must give such particulars such as the date of award of the contract, the award criteria, the number of offers received, the name and address of the successful tenderer(s), and the price or range of prices paid.

The Works Directive requires contracting authorities that wish to award a works **concession** contract, worth not less than EURO 5 million, to make known their intention by means of a notice published in the Official Journal and in the TED database; it places concessionaires under the same obligation in respect of contracts they intend to award to third parties.

30. MY OFFER HAS BEEN ACCEPTED. CAN I BE SURE TO BE PAID?

Companies which have participated successfully in invitations to tender confirm that the payment methods used in public procurement differ from those used in the private market. Delays in payment may be considerably longer than in the private market; so it is advisable to

avoid being dependent on rapid payment. However, public procurement is "safe" business - the payment is usually guaranteed due to the public status of the awarding authority.

31. I DID OBTAIN A BID. WHAT ABOUT THE DURATION OF THE CONTRACT?

The Directives do not cover the contracts' duration. It is, therefore, up to the contracting authority to decide what it is the duration of the contract (reference made usually in the tendering documents).

32. WHAT CAN I DO IF I FEEL MY BID HAS BEEN REJECTED FOR UNFAIR REASONS?

The Supplies, Works and Services Directives also require contracting authorities to inform, within 15 days of the date on which the request is received, any eliminated candidate or tenderer who so requests of the **reasons for rejection** of his application or his tender, and, in the case of a tender, the name of the successful tenderer.

Any potential contractor who considers that he has been injured by an unlawful decision on the part of the contracting authority may seek review. In order to ensure that everyone has the same rights, the Commission drew up the review procedure directives (see question n° 4).

These directives harmonise the remedies available in Member States for ensuring correct application of the directives. It requires Member States to introduce procedures for reviewing effectively and as swiftly as possible, decisions that have infringed Community law on public procurement or national law implementing that law. These procedures must make it possible, at any stage of the contract award procedure, to:

- take interim measures, such as suspending a decision of the contracting authority;

- set aside unlawful decisions;
- award damages to people harmed.

The procedures also enable the Commission to act where a clear and manifest infringement of Community rules has occurred. In this case, the Commission notifies the Member States and the contracting authority of the reasons why it has concluded that there has been a clear and manifest infringement. Within 21 days the Member States must reply indicating that the infringement has been corrected, the award procedure has been suspended or providing reasons as to why no correction has been made.

Any supplier, contractor or service provider who considers that he/she has been harmed is also free to submit a complaint to the Commission, who after careful examination may decide to launch an infringement procedure against the Member State. The procedure is, therefore, aimed at putting an end to a breach of Community Law by a Member State. It does not provide individual redress and it is recommended that conflicts are settled primarily at national level.

33. WHAT COMMUNITY RULES DO PUBLIC PURCHASERS SOMETIMES BREACH DURING THE AWARD PROCEDURE?

Here are some examples of the breaches in Community rules of which, deliberately or by ignorance, contracting authorities are sometimes guilty:

- Deliberate splitting of the contracts;
- Failure to supply interested firms with full and accurate information;
- Inclusion of discriminatory requirements in the contract documents;
- Failure to comply with the advertising rules (e.g. Misinterpretation of the scope of the directives);
- Failure to comply with the technical rules (e.g.: lack of references to European standards);
- Failure to comply with the rules on selection (e.g. unfair or unreasonable requirements regarding proof);
- Failure to comply with the rules relating to the award of the contract (e.g. use of award criteria not revealed to tenderers).

34. WHO CAN HELP ME TO SUBMIT A COMPLAINT TO THE COMMISSION AND IS THERE A SPECIFIC TIME LIMIT TO DO IT?

There are no formal requirements for submitting complaints to the Commission against a Member State. Nevertheless, the Commission has published in the Official Journal a model of complaint (OJ C 119, 30.4.1999, p. 5).

There is no specific deadline to submit a complaint but, to ensure that the Commission's action is effective, complaints should be lodged before the contract is signed, at the latest when tenders are being compared.

IV MISCELLANEOUS

REFERENCES

European Commission: The rules governing the procedures in the award of public procurement contracts, OPOCE, Luxembourg, 1997

European Commission: Guide to the Community rules on public works contracts, OPOCE, Luxembourg, 1997

European Commission: Guide to the Community rules on public supply contracts, OPOCE, Luxembourg, 1997

European Commission: Guide to the Community rules on public procurement of services, OPOCE, Luxembourg, 1997

These documents are available from SIMAP web pages, under the heading "Rules and Guidelines".

USEFUL WEB SITES

CELEX

<http://europa.eu.int/celex>

EUR-Lex

<http://europa.eu.int/eur-lex/en/index.html>

DG Internal Market's web site section on Public Procurement

http://europa.eu.int/comm/internal_market/en/publproc/index.htm

SIMAP

<http://simap.eu.int>

TED Internet site

<http://www.ted.eur-op.eu.int/ojs/html/index2.htm>

Eur-OP

<http://eur-op.eu.int>

VALUES OF THRESHOLDS IN THE FIELD OF PUBLIC PROCUREMENT APPLICABLE FROM 1 JANUARY 2000 (OJ No C379, 31.12.99)

A. Values of thresholds under the directives on public procurement

1. The values of the thresholds applicable as of 1 January 2000 for public supplies contracts pursuant to Council Directive 93/36/EEC¹ and to the Agreement on Government Procurement (hereinafter referred to as the GPA), as concluded by the Council on behalf of the Community (Decision 94/800/EC² of 22 December 1994), are as follows:

	EURO 200 000	EURO 750 000	EURO 139 312 (SDR 130 000)	EURO 214 326 (SDR 200 000)
Belgian Franc (BEF)/ Luxembourg Franc (LUF)	8,067,980	30,254,925	5,619,832	8,645,889
Danish Krone (DKK)	1,496,000	5,610,000	1,042,054	1,603,158
Deutsche Mark (DEM)	391,166	1,466,873	272,471	419,185
Greek Drachmi (GRD)	64,376,800	241,413,000	44,842,304	68,988,110
Spanish Peseta (ESP)	33,277,200	124,789,500	23,179,566	35,660,846
French Franc (FRF)	1,311,914	4,919,678	913,827	1,405,886
Irish Punt (IEP)	157,513	590,673	109,717	168,795
Italian Lira (ITL)	387,254,000	1452,202,500	269,745,646	414,993,004
Dutch Gulden (NLG)	440,742	1,652,783	307,003	472,312
Austrian Schilling (ATS)	2,752,060	10,320,225	1,916,975	2,949,190
Portugese Escudo (PTE)	40,096,400	150,361,500	27,929,548	42,968,505
Finnish Markka (FIM)	1,189,146	4,459,298	828,311	1,274,324
Swedish Krona (SEK)	1,756,000	6,585,000	1,223,159	1,881,782
Sterling Pound (GBP)	134,800	505,500	93,896	144,456

¹ OJ No L 199, 9.8.1993, p. 1.

² OJ No L 336, 23.12.1994, p. 1.

2. The values of the thresholds applicable as of 1 January 2000 for works contracts pursuant to Council Directive 93/37/EEC³ and to the GPA, as concluded by the Council on behalf of the Community (Decision 94/800/EC), are as follows:

	EURO 1 000 000	EURO 5 000 000	EURO 5 358 153 (SDR 5 000 000)
Belgian Franc (BEF)/ Luxembourg Franc (LUF)	40,339,900	201,699,500	216,147,356
Danish Krone (DKK)	7,480,000	37,400,000	40,078,984
Deutsche Mark (DEM)	1,955,830	9,779,150	10,479,636
Greek Drachmi (GRD)	321,884,000	1,609,420,000	1,724,703,720
Spanish Peseta (ESP)	166,386,000	831,930,000	891,521,645
French Franc (FRF)	6,559,570	32,797,850	35,147,180
Irish Punt (IEP)	787,564	3,937,820	4,219,888
Italian Lira (ITL)	1,936,270,000	9,681,350,000	10,374,830,909
Dutch Gulden (NLG)	2,207,310	11,018,550	11,807,815
Austrian Schilling (ATS)	13,760,300	68,801,500	73,729,793
Portugese Escudo (PTE)	200,482,000	1,002,410,000	1,074,213,230
Finnish Markka (FIM)	5,945,730	29,728,650	31,858,131
Swedish Krona (SEK)	8,780,000	43,900,000	47,044,583
Sterling Pound (GBP)	674,000	3,370,000	3,611,395

3. The values of the thresholds applicable as of 1 January 2000 for public service contracts pursuant to Council Directive 92/50/EEC⁴ and to the GPA, as concluded by the Council on behalf of the Community (Decision 94/800/EC), are as follows:

	EURO 80 000	EURO 750 000	EURO 200 000	EURO 139 312 (SDR 130 000)	EURO 214 326 (SDR 200 000)
Belgian Franc(BEF)/ Luxembourg Franc(LUF)	3,227,192	30,254,925	8,067,980	5,619,832	8,645,889
Danish Krone (DKK)	598,400	5,610,000	1,496,000	1,042,054	1,603,158
Deutsche Mark (DEM)	156,466	1,466,873	391,166	272,471	419,185
Greek Drachmi (GRD)	25,750,720	241,413,000	64,376,800	44,842,304	68,988,110
Spanish Peseta (ESP)	13,310,880	124,789,500	33,277,200	23,179,566	35,660,846
French Franc (FRF)	524,766	4,919,678	1,311,914	913,827	1,405,886
Irish Punt (IEP)	63,005	590,673	157,513	109,717	168,795
Italian Lira (ITL)	154,901,600	1452,202,500	387,254,000	269,745,646	414,993,004
Dutch Gulden (NLG)	176,299	1,652,783	440,742	307,003	472,312
Austrian Schilling(ATS)	1,100,824	10,320,225	2,752,060	1,916,975	2,949,190
Portugese Escudo (PTE)	16,038,560	150,361,500	40,096,400	27,929,548	42,968,505
Finnish Markka (FIM)	475,658	4,459,298	1,189,146	828,311	1,274,324
Swedish Krona (SEK)	702,400	6,585,000	1,756,000	1,223,159	1,881,782
Sterling Pound (GBP)	53,920	505,500	134,800	93,896	144,456

³ OJ No L 199, 9.8.1993, p. 54.

⁴ OJ No L 209, 24.7. 1992, p. 1.

4. The values of the thresholds applicable as of 1 January 2000 for supplies contracts and service contracts and for works contracts pursuant to Council Directive 93/38/EEC⁵ and to the GPA, as concluded by the Council on behalf of the Community (Decision 94/800/EC), are as follows:

	EURO 400 000	EURO 600 000	EURO 750 000	EURO 1 000 000	EURO 5 000 000
Belgian Franc/ (BEF)					
Luxembourg Franc (LUF)	16,135,960	24,203,940	30,254,925	40,339,900	201,699,500
Danish Krone (DKK)	2,992,000	4,488,000	5,610,000	7,480,000	37,400,000
Deutsche Mark (DEM)	782,332	1,173,498	1,466,873	1,955,830	9,779,150
Greek Drachmir (GRD)	128,753,600	193,130,400	241,413,000	321,884,000	1,609,420,000
Spanish Peseta (ESP)	66,554,400	99,831,600	124,789,500	166,386,000	831,930,000
French Franc (FRF)	2,623,828	3,935,742	4,919,678	6,559,570	32,797,850
Irish Punt (IEP)	315,026	472,538	590,673	787,564	3,937,820
Italian Lira (ITL)	774,508,000	1,161,762,000	1452,202,500	1,936,270,000	9,681,350,000
Dutch Gulden (NLG)	881,484	1,322,226	1,652,783	2,207,310	11,018,550
Austrian Schilling (ATS)	5,504,120	8,256,180	10,320,225	13,760,300	68,801,500
Portugese Escudo (PTE)	80,192,800	120,289,200	150,361,500	200,482,000	1,002,410,000
Finnish Markka (FIM)	2,378,292	3,567,438	4,459,298	5,945,730	29,728,650
Swedish Krona (SEK)	3,512,000	5,268,000	6,585,000	8,780,000	43,900,000
Sterling Pound (GBP)	269,600	404,400	505,500	674,000	3,370,000

	EURO 428 653 (SDR 400 000)	EURO 5 358 153 (SDR 5 000 000)
Belgian Franc (BEF)/		
Luxembourg Franc (LUF)	17,291,819	216,147,356
Danish Krone (DKK)	3,206,324	40,078,984
Deutsche Mark (DEM)	838,372	10,479,636
Greek Drachmi (GRD)	137,976,542	1,724,703,720
Spanish Peseta (ESP)	71,321,858	891,521,645
French Franc (FRF)	2,811,779	35,147,180
Irish Punt (IEP)	337,592	4,219,888
Italian Lira (ITL)	829,988	10,374,830,909
Dutch Gulden (NLG)	944,627	11,807,815
Austrian Schilling (ATS)	5,898,394	73,729,793
Portugese Escudo (PTE)	85,937,211	1,074,213,230
Finnish Markka (FIM)	2,548,655	31,858,131
Swedish Krona (SEK)	3,206,324	47,044,583
Sterling Pound (GBP)	288,912	3,611,395

B. Impact of the introduction of the EURO

A Commission communication on the impact of the changeover to the EURO on Community policies, institutions and legislation⁶ spells out the implications of the change for directives. In particular, it specifies that:

The calculation will be based on the average daily values of their currencies against the ECU for the 16 months before 1 January 1999 (1 September 1997 – 31 December 1998) together with their average daily values against

⁵ OJ No L 199, 9.8.1993, p. 84.

⁶ COM(97)560 final, 5.11.1997.

the EURO for the remaining 8 months (1 January 1999 – 31 August 1999) of the 24 month review period. For participating Member States the EURO amounts of the thresholds will apply directly.