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INFORMATION MEMOAward of public works contracts

The Commission has prepared a second proposed directive on public contracts. Its object is to co-ordinate procedures for the award of public works contracts in the Member States, and it has been drawn up by the Directorate-General for Competition in collaboration with Government experts in pursuance of Article 100 of the Treaty. Under this Article the Council, acting by means of a unanimous vote on a proposal of the Commission, is to issue directives for the approximation of such legislative and administrative provisions of the Member States as have a direct incidence on the establishment or functioning of the Common Market.

The draft of the directive was put before the Council on 16 March 1964. The purpose of the new directive, as of the earlier one, is to liberalize public works contracts.

One class of restrictions at present in force consists of laws, regulations and administrative practices in the Member States which wholly or partly exclude persons in other Member States from tendering for or executing such contracts. The first directive proposed by the Commission is aimed at abolishing these provisions and practices.

The second type of restriction results from the differences between the procedures for the award of public works contracts in the various Member States. Hence, in accordance with the General Programmes for the removal of restrictions on freedom of establishment and freedom to supply services, the second proposed directive lays down co-ordination measures intended to ensure that calls for tenders in this field are given publicity in all Community countries, that there shall be no discrimination in technical specifications, and that objective criteria shall be applied in judging the capacities of the persons tendering and the suitability of their tenders.

The two directives are closely connected. "Public works contracts" therefore has the same meaning in both. But they differ in so far as public works contracts awarded by railways do not come within the scope of the second directive. In some member countries

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the railways are operated by private enterprise, in others by the State, and co-ordination of the provisions for award of contracts by railways is therefore to be the subject of a separate directive.

The present directive provides for the abolition of all discrimination in technical specifications. Such discrimination covers any technical requirement that has the effect of penalizing or excluding enterprises in other Member States that wish to compete for contracts. Further discriminatory measures include specifications indicating particular patents, types, categories, models or processes when such indication is not justified by the nature of the project concerned. The directive does not, however, cover discriminatory specifications for building materials in the general annexes to the contract. Prohibition of such specifications will be provided for in another directive, based on Article 33(7) of the Treaty.

The directive lays down that a notice of public works contracts must be published in the official gazette of the European Communities. The notice must give all essential data. This will ensure that participants know in advance the exact grounds on which their tender may be accepted or rejected. The proposed rules for publication will at first apply to contracts worth more than 1 000 000 units of account. With effect from 1 January 1966 they will apply to contracts for more than 600 000 u.a., and from 1 January 1968 to contracts for more than 300 000 u.a.

All other provisions, in particular those introducing objective criteria for judging the capacities of the individuals tendering and the suitability of their tenders, apply to contracts with a value of more than 60 000 u.a. The draft includes a list of possible exceptions in which contracts may be awarded without compliance with the terms of the directive.

Finally, arrangements are made for setting up an expert committee of officials from the Member States to advise the Commission on questions which arise as the directive is implemented.

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