

**Proposal for a first directive of the Council on the co-ordination  
of procedures for the conclusion of public works contracts**

**(submitted by the Commission to the Council on 28 July 1964)**

**Supplement to**

**BULLETIN**

**of the European Economic Community**

**No. 9/10 - 1964**

Pages 12-22

EXECUTIVE SECRETARIAT OF THE COMMISSION  
OF THE EUROPEAN ECONOMIC COMMUNITY

# Proposal for a first directive of the Council on the co-ordination of procedures for the conclusion of public works contracts

(submitted by the Commission to the Council on 28 July 1964)

*The Council of the European Economic Community,*

*Having regard* to the Treaty establishing the European Economic Community, and in particular Articles 7, 54, 63, 100 and 223 thereof;

*Having regard* to the General Programme for the removal of restrictions on freedom of establishment, and in particular Title IV, B, 1 thereof;

*Having regard* to the General Programme for the removal of restrictions on freedom to supply services, and in particular Title V, C, e, 1 thereof;

*Having regard* to the proposal of the Commission;

*Having regard* to the opinion of the European Parliament;

*Having regard* to the opinion of the Economic and Social Committee;

*Whereas* the simultaneous realization of freedom of establishment and freedom to supply services with regard to public works contracts concluded in the Member States for governments, their local or regional authorities or other public corporations requires, side by side with the removal of restrictions, the co-ordination of national procedures for the conclusion of such contracts:

*Whereas* this co-ordination must, however, respect as fully as possible the current procedures and practices of the Member States;

*Whereas* the Council of Ministers in its declaration appended to the aforementioned General Programmes has indicated that co-ordination should be based on certain principles as to the prohibition of technical specifications with discriminatory effects, adequate publicity for public works contracts, the elaboration of objective criteria for participation, and the establishment of procedure for joint oversight of the observance of these principles;

*Whereas* it is important to ensure that bodies operating the railways in the Community are not subject to different arrangements, when awarding works contracts, owing to their different legal status, and whereas therefore

the present directive should not apply to railways run by national boards, pending a special directive on this point;

*Whereas* it is necessary to provide for exceptional cases in which the provisions to co-ordinate procedures need not be applied, but also explicitly to limit the number of such cases;

*Whereas* public works contracts worth less than 60 000 units of account seem unlikely to attract competition at Common Market level, and it is therefore reasonable that the provisions for co-ordination should not be applied to them;

*Whereas* for practical reasons, Community-wide publicity cannot apply to all contracts subject to the provisions for co-ordination, and it is advisable to fix for the transitional period degressive limits of 1 million 600 000 and 300 000 units of account;

*Whereas* it is desirable to set up an Advisory Committee in pursuance of Article 54 (3 b) to assist the Commission in examining any problems arising in implementing the present directive, and also with a view to preparing future Community regulations concerning public works, and in order to fulfil one of the requirements mentioned in the declaration of the Council referred to above;

*Has adopted the present directive:*

## TITLE I

### General provisions

#### Article 1

1. a) Public works contracts are written contracts between the contractor, on the one hand, and, on the other, the bodies awarding the contract as defined in sub-paragraph b) below, for the construction, maintenance or demolition of a building work referred to in Article 2 b) of the "first directive concerning the participation of firms in the execution of building work for governments, their local or regional authorities or other public corporations";

b) The following are held to be the awarding bodies in the six Member States: governments, their local or regional authorities and the bodies listed under a) in the Annex of the directive mentioned above.

c) For public works contracts, the awarding bodies shall apply their national procedures, subject to the provisions of the present directive;

d) The procedures for the conclusion of public works contracts shall be compulsory except in cases where the consideration for the work to be carried out consists not only in a price but also in the right to make use of the finished work during a specified period. In this case the awardee of the contract may have recourse to a system of concessions. Where the concessionaire is an awarding body referred to under b), he shall be obliged, for works to be carried out by third parties, to observe the national procedures for the conclusion of public contracts, adapted to conform with the provisions of the present directive;

e) The provisions of the present directive shall not apply to public works contracts relating to railways. The conditions under which works contracts are awarded by the bodies operating the railways in the six Member States will be the object of a special co-ordinating directive.

2. For the purpose of the present directive:

a) The term "contractor" shall be understood in its widest connotation, to include without distinction the words "contractor" in the strict sense, "enterprise", "builder" and "firm or company" as defined in Article 58 of the Treaty;

b) A contractor who has submitted a tender is here termed the "tenderer"; a person who, as a result of the advertisement referred to in Article 8, second paragraph, has applied to take part in a limited tender is here termed the "candidate".

#### Article 2

1. National procedure by which any interested contractor may submit a tender shall be subject to the common rules of the present directive regarding open tender within the meaning of Articles 6-10, 13, 14, 18, 20-26, 28 and 29.

2. National procedures by which tenders may only be submitted by contractors who have been invited to do so shall be subject to the common rules regarding limited tender within the meaning of Articles 6-9, 11-13, 15, 16 and 18-29.

3. Contracts concluded in the cases referred to in Article 5 shall be subject only to the common rules of Articles 6, 7 and 17 with the exception of contracts concluded in the case referred to under Article 5 j), which

latter shall remain subject to all the common rules except those of Title III of the present directive.

4. Contracts referred to under Nos. 1, 2 and 3 shall also come under the provisions of Articles 30-37 concerning the Advisory Committee on public works contracts.

#### Article 3

The common rules contained in the present directive, as well as the provisions of Article 5, shall be applied in the circumstances mentioned in Article 2 to public works contracts estimated to be worth not less than 60 000 units of account (EMA).

The common rules of publication referred to in Articles 8-17 do not apply to contracts estimated to be worth less than:

i) 1 million units of account (EMA) during the period 1 January 1965 to 31 December 1965;

ii) 600.000 units of account (EMA) during the period 1 January 1965 to 31 December 1967;

iii) 300 000 units of account (EMA) from 1 January 1968.

The suspension provided for in Article 5 of the directive referred to in Article 1 (1 a) above shall not give Member States the right to suspend the publication required by Title III.

The equivalence between amounts in units of account and amounts in national currency is given in the Annex.

#### Article 4

In computing the amounts referred to in Articles 3, 5 and 28, the prices of supplies to be incorporated in the work but forming the subject of a separate contract shall be taken into consideration in addition to the amounts of the public works contracts.

#### Article 5

The bodies that award public works contracts may do so without applying the common rules of the present directive, save those of Articles 6, 7 and 17, in the following cases:

a) When no tenders or no regular tenders have been submitted after recourse has been had to one of the procedures laid down in the present directive, or when the tenders submitted are unacceptable having regard to national provisions compatible with the requirements of Title IV:

b) For works the execution of which is reserved exclusively for a contractor holding patents or licences relating to inventions or improvements, or exclusive import or utilization rights granted by the producer for supplies or techniques related thereto, or when the work can only be carried out by a single contractor or supplier, irrespective of whether he is established within the Community or not;

c) Where no monopoly exists either *de jure* or *de facto*, but for technical reasons the work can manifestly be given only to a particular contractor, irrespective of whether he is established within the Community or not;

d) For the repair or restoration of works of an artistic nature, which can only be entrusted to experienced artists or specialized technicians, irrespective of whether they are established within the Community or not;

e) For work which is only undertaken for purposes of research, testing, study or improvement;

f) Only so far as is strictly necessary, when owing to unforeseen circumstances the awardee of the contract is confronted with an urgent need that does not allow of the delay involved in other procedures;

g) When the object of the contract is of a secret nature;

h) For additional work which was not comprised in the initial project or in the first contract concluded, and which owing to an unforeseen circumstance is necessary for the execution of the work as therein described, provided that this additional work is given to the contractor who carried out the said work:

i) When this work cannot for technical or economic reasons be separated from the principal contract without great inconvenience to the awardee of the contract; or

ii) When this work, although separable from the initial contract, is strictly necessary to complete it;

However, the combined amount of contracts concluded under i) and ii) above must not exceed 50% of the initial amount of the first contract;

i) In exceptional cases where the nature of work or the uncertainties which it involves do not allow of a sound estimate and where the work must consequently be done on a "costs plus" basis; the awarding authorities shall inform the Advisory Committee of any case in which the present provision is applied;

j) During the transitional period, should price formation be in fact shielded from the normal play of competition within the Community, and provided that the number of contractors who are nationals of other Member States and who are invited to tender is not less than one third of the total number of contractors invited to tender. Provided that in such case the contractors invited to tender must conform to the standards for selection laid down in Chapter I of Title IV of the present directive and the contract shall be awarded in conformity with the rules of Chapter 2 of the said title. Member States shall inform the Advisory Committee of any case where recourse has been had to the present provision.

Each year before the end of March the Member States shall send to the Advisory Committee a statement of the number and amounts of contracts awarded under a) to j) during the previous year. As far as possible they shall list separately the contracts awarded by virtue of each of these provisions.

This obligation relates to contracts worth over 1 million units of account (EMA) during the period 1 January 1965 to 31 December 1965, over 600 000 units of account (EMA) during the period 1 January 1966 to 31 December 1967, and over 300 000 units of account (EMA) from 1 January 1968.

## TITLE II

### Common rules relating to technical specifications

#### Article 6

For the purposes of the present directive, technical specifications regarding public works contracts include all the technical stipulations contained, in particular, in the general and special articles and conditions of contract which permit a piece of work, a building material, a product or an article to be supplied to be described objectively (as to quality, performance, etc.), so that this piece of work, building material, product or article may be suitable for the use for which the awardee of the contract intends it.

These technical specifications include all mechanical, physical and chemical characteristics, classification and standards, conditions of inspection, trial and acceptance of the works or of the components and materials which enter into these works. Technical specifications also apply to construction techniques or methods and all other conditions of a technical nature which the awardee of the contract may require, under general

or special regulations, for the completed works or for the components or materials which enter into these works.

If among the projects meriting consideration there is one that has been drawn up with a system of calculation of the work that is different from that of the country awarding the contract but compatible with the requirements of the articles and conditions of contract, the department commissioning the work must examine the project in the light of the justifications and explanations supplied by the tenderer.

#### *Article 7*

The technical specification referred to in Article 6 must not present or involve any discriminatory effect.

The above paragraph applies to all discriminatory laws, regulations and administrative practices that constitute restrictions on freedom to supply services within the meaning of the first paragraph of Article 60 of the Treaty and of Title III of the "General Programme for the removal of restrictions on freedom to supply services", and also to any form of discrimination that may occur when an individual contract is concluded and is embodied, in particular, in the articles and conditions relating to it. As regards discriminatory laws, regulations or administrative practices hindering the import of goods, Articles 31, 32 (first paragraph) and 37(7) remain applicable.

Any technical requirement which has the effect of favouring one or more enterprises, either directly or indirectly, to the detriment of enterprises in the other States of the Community, or of excluding one of these latter enterprises, is held to be discriminatory within the meaning of the present directive.

In particular, specifications which contain the following indications where these are not justified by the nature of the project concerned are held to be discriminatory:

1. Mention of the brand name of a particular product, appliance or material or of the firm manufacturing or selling it, even if the name is followed by the words "or the like" or "or equivalent"; or a similar effect produced simply by reference to catalogues or prospectuses;

2. Mention of particular patents, types, categories, models or processes or reference to objects already forming part of the works or to catalogues, or any other oblique reference to objects already forming part of the works or to catalogues, or any other oblique references to particular makes or sources;

3. The name of any place or origin, working, extraction, manufacture or production;

4. Stipulation of characteristics or specifications of a technical or other nature such as to favour a particular make or source or to exclude it outright.

Where there are Community standards or precise rules of equivalence, the general and special articles and conditions of contract must observe them. Where there are not, the technical specifications shall appear in the general and special articles and conditions of contract and appended documents, with a description of the methods of inspection, trial, acceptance and calculation, unless an exception can be justified by the nature of the work concerned.

There is no discrimination when national standards are laid down as technical specifications, except when Community standards or rules of equivalence as referred to in the foregoing paragraph are in existence.

### TITLE III

#### Common rules regarding publication

##### *Article 8*

The publication provided for in the present directive is intended to ensure the widest possible competition whether in open or in limited tenders. To this end, it brings to the notice of contractors of other Member States projects for which public bodies in the Member States are proposing to award contracts.

More particularly, in limited tenders, publication is intended to enable contractors of the Member States to show their interest by applying to the awarding bodies for an invitation to tender on the terms stipulated.

##### *Article 9*

Bodies which wish to award a contract for public works by open or limited tender shall announce their intention in the form of a notice.

This notice shall be sent to the Commission of the EEC and published in full in the official gazette of the European Communities in the official languages of the Community, the text in the original language being the only authentic one.

When the accelerated procedure provided for in Article 12 is adopted, the notice is published in the four editions of the official gazette of the European Communities but in the original language only.

The official gazette of the European Communities shall publish the notice referred to in the foregoing paragraphs within ten days from the date of posting, and in the case of the accelerated procedure of Article 12 within six days from the date of posting.

Publication in the official gazette or, in the absence of these, in the specialized organs of the country awarding the contract must not be effected before the aforementioned date of posting and must include mention of this date.

The body which will award the contract must be in a position to provide proof of the date of posting.

#### *Article 10*

For open tenders, the final date for the receipt of tenders shall be fixed by the body which will award the contract at not less than 35 days from the date on which the notice is dispatched. Any additional information which may be requested must be furnished by the awarding body at least six days before the final date fixed for the receipt of tenders.

When tenders can only be submitted after a visit to the site or after documents appended to the articles and conditions of contract have been examined on the spot, or if a detailed survey is required, the final date for the submission of tenders shall be not less than 49 days from the date on which the notice is dispatched.

#### *Article 11*

For limited tenders, the final date for the receipt of applications for invitations to tender shall be fixed by the body which will award the contract at not less than 21 days from the date on which the notice is dispatched.

The awarding bodies shall write simultaneously to the accepted candidates, inviting them to submit their tenders, and they may decide at their discretion when these invitations shall be dispatched.

The final date for the submission of tenders shall be fixed by the body which will award the contract at not less than 21 days from the date on which the written invitation is dispatched. Any additional information which may be requested must be furnished by the awarding body at least six days before

the final date fixed for the submission of tenders.

When tenders can only be submitted after a visit to the site or after documents appended to the articles and conditions of contract have been examined on the spot, or if a detailed survey is required, at least 35 days shall be allowed for the submission of tenders.

#### *Article 12*

In cases of urgency where the time-limits laid down in the foregoing article would be impracticable, the body inviting tenders may apply the shorter time-limits set out hereunder:

- i) For the receipt of applications for invitations to tender, not less than 12 days from the date of dispatch of the notice;
- ii) For the submission of tenders, not less than 8 days from the date of invitation.

Any additional information which may be requested must be furnished by the inviter at least 4 days before the final date fixed for the submission of tenders.

Awarding bodies may decide at their discretion how soon invitations to tender shall be dispatched.

Applications for invitations to tender and invitations to submit a tender may be made by letter, telegram, telex or telephone.

#### *Article 13*

The notice published in the official gazette of the European Communities shall contain all information necessary to give contractors a clear enough picture of the work that will be required and the conditions attached to it.

The notice published in national official gazettes, or, in the absence of these, in specialized organs, shall not contain any information other than that published in the official gazettes of the European Communities.

#### *Article 14*

For open tenders, the notice shall at least state:

- a) The date when it was dispatched to the official gazette of the European Communities;
- b) That the contract will be awarded by open tender;

c) The place where the work is to be carried out, the nature and extent of the requirements, and the general features of the work; if the contract is divided into several lots, the size of the different lots and whether it is possible to tender for one lot, for several lots or for the whole; in the case of contracts whose object, in addition to the eventual execution of the work, is the drawing-up of schemes, only such indications as are necessary to enable contractors to understand the aim of the contract and to submit schemes corresponding to this aim;

d) The time which would be allowed for the execution of the contract;

e) The address of the department which will award the contract;

f) The address of the department to which requests for the special articles and conditions of contract and additional documents must be directed, and the final date by which this request must be made, together with the amount and method of payment of the sum payable to obtain these documents;

g) The address of the department which will supply additional information about the articles and conditions of contract or about the work, together with the days and times when such information can be obtained;

h) The final date by which tenders and appended documents containing the technical description of the tender must be submitted, the address to which they must be sent and the language or languages in which they must be written;

i) The documents to be enclosed with the tender to provide proof of the technical qualifications and business capacity of the tenderer in accordance with the conditions laid down in Articles 20-26;

j) The persons who will be present at the opening of the tenders and the time and place thereof;

k) Indications as to the sureties or other guarantees required by the body awarding the contract, in whatever form;

l) The methods of financing and payment for the work done and/or references to the texts in which they are set out;

m) The formal conditions for the acceptance of the tender or references to the texts in which they are set out;

n) Whether groups of contractors must, in order to be allowed to tender, assume a definite legal form;

o) The criteria for awarding the contract in conformity with Article 28;

p) The length of time during which tenderers must maintain their tenders.

#### Article 15

For limited tenders, the notice shall at least give:

a) The information referred to in points a), b), c), d), e), n) and o) of Article 14;

b) The final date by which applications for invitations to tender must be submitted, the address to which they must be sent and the language or languages in which they must be written;

c) The final date by which invitations to submit tenders will be sent out by the department which will award the contract;

d) The information that must be included in the application for an invitation to tender in the form of declarations which are subject to subsequent verification and which enable the technical qualifications and business capacity of the candidate to be assessed in accordance with the conditions laid down in Articles 20-27.

#### Article 16

For limited tenders, the invitation to tender shall include at least:

a) The information referred to in points f), g), h), i), k), l), m) and p) of Article 14;

b) Reference to the notice mentioned in Article 15;

c) Mention of the documents to be enclosed to support the declarations furnished by the candidates in conformity with Article 15 d).

#### Article 17

Public bodies which award contracts may at their discretion publish in the official gazette of the European Communities notices of public works contracts of which publication is not compulsory under the present directive, provided that they are worth not less than 60 000 units of account.

### TITLE IV

#### Common rules regarding participation

#### Article 18

The criteria for participation comprise standards for the selection of contractors and criteria for the award of contracts.

The body which will award the contract shall verify the suitability of contractors who are not excluded under the terms of Article 20 by applying the criteria of business, financial and technical capacity referred to in Articles 23-26, the contract being awarded according to the criteria laid down in Chapter 2 of the present title.

#### Article 19

In the case of limited tender as defined in Article 2(2), the body which will award the contract shall select from among candidates possessing the qualifications required under Articles 20-26 those whom they will invite to tender.

Where individual cases are examined by the Advisory Committee, non-discrimination as regards nationality shall be presumed if the number of candidates who are nationals of the other Member States, have the qualifications required under Articles 20-26 and are invited to tender, is not less than one third of the total number of accepted candidates.

Where there is an insufficient number of candidates who are nationals of other Member States and have the qualifications required under Articles 20-26, the body which will award the contract cannot claim this presumption unless all the said candidates are invited to tender.

### CHAPTER 1

#### CRITERIA FOR SELECTION OF CANDIDATES

##### Article 20

A contractor may be debarred from entering into the contract:

a) If he is in a state of bankruptcy or liquidation, or has suspended activities, or is party to a settlement in court or subject to a scheme of composition, or is in any similar situation resulting from other such proceedings provided for in national laws or regulations;

b) If he is the object of bankruptcy proceedings, a settlement in court, a scheme of composition or other such proceedings provided for in national laws or regulations;

c) If a final judgment has been pronounced against him for an offence relating to his professional conduct;

d) If, in a professional matter, he has committed an offence or serious misdemeanour or has to the certain knowledge of

the body awarding the contract acted in bad faith;

e) If he is in default on the payment of social security contributions in accordance with the regulations of the State where he is established or those of the State in which the contract is to be awarded;

f) If he has been guilty of false declarations when furnishing information as required by the present chapter.

The contractor shall present a certificate issued by a competent authority, or, where the national laws do not so permit, a declaration, to the effect that he is not in any of the situations mentioned in a), b), c), d) or e).

If the contractor is in one of the situations mentioned in a) or b), a declaration stating the financial situation of the firm and its capacity to carry out the works satisfactorily may be required in order to enable him to be a party to the contract.

##### Article 21

An awarding body which excludes a firm on any of the grounds set out in Article 20 shall inform the Advisory Committee to this effect.

If the contractor concerned so requests, the awarding body shall inform him of the reasons for his exclusion if the latter is based on sub-paragraphs a), b) or c) of Article 20.

##### Article 22

Any contractor wishing to tender for a public works contract may be asked to supply proof that his name is entered in the professional register of the State of the Community in which he is established: for Germany, the "Handelsregister" and the "Handwerksrolle"; for Belgium the "registre du commerce" or "handelsregister"; for France, the "registre du commerce"; for Italy, the "Registro della Camera di Commercio, Industria o Agricoltura"; for Luxembourg, the "registre du commerce" and the "rôle de la Chambre des Métiers"; for the Netherlands, the "handelsregister".

##### Article 23

The contractor may furnish proof of his financial standing and capacity to undertake the work:

a) By bank references:

b) By presentation of the balance-sheets of the firm, or of extracts from them, in cases where publication of balance-sheets is required



by the company law of the State where the contractor is established;

c) By a declaration stating the overall turnover of the firm and its turnover of building works for the last three financial years.

The body which will award the contract shall state in the notice or invitation to tender which of these references will be required.

In the absence of the above means of proof, the contractor shall be permitted to furnish proof of his business and financial capacity by any other document.

#### Article 24

Proof of the technical capacity of the contractor and of the persons referred to under e) below may be furnished:

a) By the educational and professional certificates held by the managerial staff of the firm and, in particular, by the technical staff responsible for directing works;

b) By certificates stating the works executed and/or directed during the last five years, their amount, the period when and the place where they were carried out, and whether the technical rules were observed and the work was satisfactorily completed;

i) In the case of works executed and/or directed for public bodies, the certificate shall be drawn up or endorsed by the competent authority; it shall be handed to the contractor or, if it is not the practice of that authority to hand over such certificates direct, it shall be sent by the latter, at the request of the contractor, to the interested public authorities in the other Member States;

ii) In the case of work executed and/or for individuals, the certificate must be given where possible by the principal or, as the case may be, by the person in charge of the works, and in this latter case it must be endorsed by the principal;

c) By a declaration stating the tools, material and technical equipment which the contractor has available to carry out the work in question;

d) By a declaration stating the average number of workers employed over the year by the firm during the last three years;

e) By a declaration indicating the firms of consultant architects and civil engineers, whether they are associated with the contracting firm or not, in cases where the body which will award the contract requires that the contractor should call on their services, or if the contractor intends to do so.

The body which will award the contract shall state in the notice or in the invitation which of these references will be required.

#### Article 25

1. On the entry into force of the present directive Member States which have official registers of approved contractors shall revise them in the light of Article 20, subparagraphs a) to d) and f) and Articles 22-24.

2. Firms so registered may, for each contract, submit to the awarding body a certificate of registration made out by the competent authority.

3. Such registration, duly certified by the competent authority, shall constitute for the awarding bodies of the other Member States presumptive evidence of approval of the contractor within the meaning of Article 20 a)-d), f) and Articles 22-24 for works of the type carried out by this contractor.

Information which is implied by official registration cannot be called in question. However, as regards the payment of social security contributions, an additional certificate may be required from every registered contractor for each contract.

The bodies awarding public works contracts in the other Member States shall accord the benefit of the above provisions only to firms established in the country which drew up the official register.

4. For the registration of foreign contractors no proofs and declarations may be required other than those which are required of national contractors and in no case other than those provided for in Articles 20 and 22-24.

5. Those of the Member States which have official registers must make known to the other Member States the address of the bodies to whom applications for registration may be made.

#### Article 26

The bodies which will award the contract shall decide which references are to be furnished by the contractor in conformity with the last paragraph of Article 20 and Articles 22-25 according to the nature, extent and cost of the works to be carried out and having regard to the methods of financing and payment that have been decided upon in conformity with Articles 14 and 16.

### Article 27

In the first phase of the procedure for limited tender, candidates shall fulfil the requirements of Articles 20 and 22-25 by simple declaration.

The body that will award the contract shall ask for supporting documents to be produced only at the time when tenders are submitted, except in the case referred to in the second paragraph of Article 20.

## CHAPTER 2

### CRITERIA FOR AWARD OF CONTRACTS

#### Article 28

The criteria for the award of contracts may be:

- i) Either the lowest price only;
- ii) Or different criteria varying according to the contract in question, such as price, transport costs, time for completion, running costs, profitability or, where firms are invited to submit competitive schemes or where alternative plans are provided for or required, the technical merit.

When several criteria are applied, the awarding body shall wherever possible mention them in the notice in descending order of importance. He may also assign to each of these criteria a coefficient in order to set a precise figure on its importance.

During the transitional period, the body awarding the contract may adopt the criterion of price, calculated according to current national rules, for contracts estimated at less than 1 million units of account (EMA) during the period 1 January 1965 to 31 December 1965, 600 000 units of account (EMA) for the period 1 January 1966 to 31 December 1967, and 300 000 units of account (EMA) from 1 January 1968 to the end of the transitional period.

#### Article 29

1. The financial terms, such as payment in advance or on account and manner of payment shall be indicated for each contract, in conformity with Articles 14(1) and 16 a). The body awarding the contract shall adhere strictly to these terms and may not allow any other financial arrangement to be a consideration in awarding the contract.

2. When the works require the contractor to deliver supplies, it must be stated in the special articles and conditions whether or not the prices specified include transport.

3. When the time to be taken to carry out the work as stated in the notice is adopted as a criterion for the award of the contract, the special articles and conditions shall indicate how this criterion will apply.

The special articles and conditions shall also state whether and to what amount penalties will be imposed or bonuses paid if the works are completed later than or in advance of the date agreed in the contract.

4. The special articles and conditions of contract shall define the standards by which the technical merit of the works which are the subject of the contract will be assessed in cases where this criterion can be applied in conformity with Article 28, sub-paragraph ii).

## TITLE V

### Role of the Commission Advisory Committee for public works contracts

#### Article 30

The Commission of the European Economic Community shall be assisted by an Advisory Committee when examining disputes and problems arising from measures taken by the Member States to give effect to the directives for the removal of restrictions on freedom of establishment and freedom to supply services in the matter of public works contracts and for the co-ordination of procedures for the conclusion of public works contracts. To this end, the Advisory Committee shall be charged, in particular:

a) To draw up formal opinions for the Commission on specific cases referred to it by the Commission or by one of the members of the Committee relating to the implementation of the directives and the application by the national authorities of the rules governing the participation of nationals and companies of the other Member States in works commissioned by the public authorities or public corporations of a Member State;

b) To study, in relation to the application of the directives, the desirability of amendments or supplementary provisions.

### *Article 31*

The Member States shall furnish the Committee, at the request of its chairman, with all information relevant to the discharge of its task.

### *Article 32*

The members of the Committee shall be officials designated by the Member States — one full member and one alternative per country. Alternates may attend all meetings.

The members of the Committee may call on the assistance of other officials in an expert capacity.

The Committee may if it sees fit consult any other person for the examination of specific cases.

The Commission shall defray the travelling and subsistence expenses of members and alternates.

The Member States shall defray the travelling and subsistence expenses of experts and other persons consulted.

### *Article 33*

The chairman of the Committee shall be an official of the Commission of the European Economic Community. He may be assisted by technical advisers.

The chairman shall have no vote.

Secretarial services shall be provided by the Commission.

### *Article 34*

Without prejudice to the provisions of Article 214 of the Treaty, the members of the Committee, experts, officials of the Commission and technical advisers shall be bound to secrecy regarding their discussions.

### *Article 35*

The Committee shall be convened by its chairman, either on his own initiative or at the request of one of its members.

### *Article 36*

Two thirds of the members shall constitute a quorum. Each member, or in his absence his alternate, shall have one vote.

The opinions of the Committee shall be motivated. They shall be adopted by an

absolute majority of the votes cast; they shall be accompanied by a statement of the views expressed by the minority where the latter so requests.

### *Article 37*

The Committee shall draw up rules of procedure as necessary.

## TITLE VI

### Final provisions

#### *Article 38*

For the last two subdivided periods defined in Article 3, second paragraph, which precede the end of the transitional period, the limits for application of the common rules regarding publication may be revised at any time until six months before they come into force.

The time limits laid down in Articles 10, 11 and 12 may be revised after 1 July 1965.

The cases referred to in Article 5 j) and in the last paragraph of Article 28, will be reviewed at the end of the transitional period.

#### *Article 39*

In order to adapt their national procedures to the provisions of the present directive, the Member States shall bring into force the necessary laws, regulations or administrative provisions within six months from notification of the present directive and shall notify the Commission thereof forthwith.

#### *Article 40*

The Member States shall inform the Commission of any further proposed laws, regulations or administrative provisions which they contemplate adopting in matters relating to procedure for the conclusion of public works contracts.

#### *Article 41*

The text of the annex to the present directive is an integral part thereof.

#### *Article 42*

The present directive is addressed to the Member States.

## ANNEX

*Limits of application of the measures of co-ordination laid down in the directive on public works contracts*

1. Equivalence between units of account (EMA) and national currencies (parities of the International Monetary Fund) :

Unit of account EMA	Belgian or Luxembourg franc	Deutsche Mark	French franc	Italian lira	Guilder
1	50	4	4.93706	625	3.62
60 000	3 000 000	240 000	296 223,6	37 500 000	217 200
300 000	15 000 000	1 200 000	1 481 118	187 500 000	1 086 000
600 000	30 000 000	2 400 000	2 962 236	375 000 000	2 172 000
1 000 000	50 000 000	4 000 000	4 937 060	625 000 000	3 620 000

2. Equivalence adopted (round figures) for the purposes of the directive :

Unit of account EMA	Belgian or Luxembourg franc	Deutsche Mark	French franc	Italian lira	Guilder
1	50	4	4.93706	625	3.62
60 000	3 000 000	240 000	300 000	40 000 000	250 000
300 000	15 000 000	1 200 000	1 500 000	200 000 000	1 000 000
600 000	30 000 000	2 400 000	3 000 000	400 000 000	2 000 000
1 000 000	50 000 000	4 000 000	5 000 000	600 000 000	3 500 000