

EUROPEAN BACKGROUND INFORMATION COMMUNITY

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BACKGROUND NOTE

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PUBLIC SUPPLY CONTRACTS IN THE EUROPEAN COMMUNITY

From now on most important contracts which will require the spending of public money by any of the nine nations of the European Community will have to be put out to tender throughout the Community. The Directive of the Council of the European Communities ordering this procedure was adopted on December 21, 1976. It means that the contracting authorities in the member states such as ministries, decentralized public bodies, regional governments, departments, and communes must open their supply purchases with public funds to Community competition. The European Commission estimates that the total value of these public sector purchases is \$20 billion at 1978 prices.

Apart from its contribution to the achievement of an internal common market, today's decision is also important in that it will strengthen the Community position during the international negotiations currently taking place at the OECD in Paris and GATT in Geneva, the purpose of which is the elimination from the rules governing public contracts of obstacles to free trade between the partners involved. On this particular aspect of the negotiations the Community will henceforth present a united front and the Council has adopted a Resolution concerning access to Community supply contracts for products originating in non-member countries.

Certain sectors apart - transport, water and energy production and distribution, and telecommunications: all contracts of a given value 200,000 European units of account or more, such as for office equipment, supplies for hospitals, universities and schools, for scientific research, and for public supplies for defence must be advertised, that is to say notified to undertakings in a position to tender for the supplies in question.

A limited exception is also provided in the case of data processing equipment supply contracts which Member States will, however, not be able to avail themselves of after January 1, 1981, unless there is an explicit Council Decision amending that date.

Advertisements will appear in the Official Journal of the European Communities in a standard format and in all six Community languages. Undertakings which fulfill the technical and financial requirements - the same in all cases - may tender: they will all be treated on an equal footing. In choosing, the purchaser will apply criteria published beforehand which are designed to limit arbitrary administrative decisions as far as possible.

An Advisory Committee will have the task of supervising the operation of the Directive, of ensuring that it is uniformly applied in practice in all the Member States, and of investigating complaints by undertakings which consider that they have been unfairly treated under an incorrect award procedure. It will be presided over by the Commission, and constitutes a means of permanent contact between the national administrations responsible for public contracts policy and management. It will also be involved in the work which remains to be done in this field.

The new Directive supplements that adopted in 1971 for public works contracts. However, all problems are a long way from resolution. For various legal and economic reasons, some sectors as described above remain outside the scope of the Community rules. The Commission has however already indicated its intention of preparing and proposing to the Council, with all possible speed, arrangements which would enable contracts which are still restricted to be opened to Community competition.

The Council considered it necessary to prepare measures to ensure that supply contracts awarded by the bodies responsible for telecommunications services in the Member States should be opened to competition at Community level on a reciprocal basis.

*One EUA was equivalent to \$1.27 on December 24, 1976