In response to paragraph 2 of GATT/AIR/1363 the following communication has been received from the Commission of the European Communities.

You will remember that at its meeting of 3 and 4 March last, the Sub-Group agreed that OECD member countries participating in the negotiations would forward to the GATT secretariat, as necessary, an updating of information contained in the OECD publication ("Government Purchasing" - Paris 1976).

You know too that on 21 December 1976 the Council of the European Communities adopted a directive, No. 77/62/EEC, co-ordinating procedures for the award of public supply contracts, which was accompanied by various statements and resolutions.

With the entry into force of this directive, eighteen months after the date of its notification, the member States will be obliged to amend their legislation and regulations on procedures for the award of their public supply contracts.

Attached hereto you will find a note indicating the general lines along which legislation and regulations will have to be amended to comply with the provisions of Directive 77/62.
COMMUNICATION TO THE GATT SECRETARIAT OF THE SUBSTANCE
OF THE DIRECTIVE ON PUBLIC SUPPLY CONTRACTS

At the meeting of the Sub-Group "Government Procurement" of 3 and 4 March 1977, it was agreed that the European Communities would inform the GATT secretariat of the lines along which the legislation of member States on public supply contracts will have to be amended, effective 1 July 1978, in pursuance of Council Directive No. 77/62/EEC\(^1\) of 21 December 1976 co-ordinating procedures for the award of public supply contracts.

The present note sets forth the main points on which the national legislations will have to be harmonized.

1. Procedures for the award of public supply contracts

Two procedures will be available to the purchasing bodies of member States that are subject to application of the directive:

- The **open procedure**, in which the purchasing body makes known its intention to award a contract by publishing a notice in the O.J.E.C. and at the same time invites all interested undertakings to tender;

- The **restricted procedure**, in which the purchasing body, by publishing a notice in the O.J.E.C., simply requests interested undertakings to make themselves known. From among the undertakings that have responded to this invitation, the purchasing body then chooses those which it will ask to tender.

The so-called "private contract" procedure will no longer be possible except in a limited number of cases stipulated in the directive, and subject to compliance with certain strict conditions.

The purchasing body will be free to choose one or other procedure depending on the characteristics of the contract to be awarded. If it uses the restricted procedure, it will have to invite suppliers of other member States under the same conditions as national suppliers.

2. Advertising of contracts to be awarded

As already stated, under both procedures a notice, which must be drawn up in accordance with the model established by the Council and published in Annex II to the directive, must be published in the O.J.E.C. This will not preclude the

\(^1\) O.J.E.C. No. L 13 of 15 January 1977
purchasing body from publishing the notice in the national or local press, specialized or not, but any such publication must be identical in content to the Community notice and its date must be the same as that of publication of the notice in the O.J.E.C.

In private contract cases, there is, of course, no provision for advertising.

The notices thus published must contain certain minimum particulars, and in particular must indicate time-limits, languages in which requests must be drawn up, the conditions required of undertakings for their participation, etc.

3. Conditions required of undertakings for participation in contracts

All undertakings of member States wishing to participate in an open procedure or a restricted procedure must furnish proof of their financial and economic standing and of their technical capacity to execute the contract properly. Certain documents must be produced as evidence of such standing and capacity.

All undertakings that comply with the required conditions must be allowed to tender (open procedure) or may be invited to tender (restricted procedure).

The directive stipulates certain cases in which a supplier may be excluded from participation in a contract (conviction of an offence concerning professional conduct, non-payment of social security contributions or of taxes, whether in the supplier's country of origin or in the country of the contracting authority, bankruptcy, etc.). Any supplier may likewise be requested to prove his enrolment in a professional register of his country of origin.

4. Criteria for award of contracts

The purchasing bodies will apply:

- either the criterion of the lowest price;

- or the criterion of the most economically advantageous tender; this criterion is a combination of several other criteria, e.g. price, delivery date, running costs, cost-effectiveness, etc.

The purchasing bodies must state to the potential suppliers which criterion or criteria they intend to apply to the award, either in the notice published in the O.J.E.C., or in the contract documents which will be furnished to any interested supplier upon request.
5. **Disclosure of tenders and awards**

The directive does not require any contracting authority to make any public announcement of tenders received or awards made.

6. **Exclusion of certain bodies from field of application of the directive**

Certain purchasing bodies are excluded for the time being from the field of application of the directive, namely bodies which, in the member States, administer transport services or the production, distribution and transmission or transport services for water or energy and telecommunications services.

Measures are under consideration to ensure that these bodies award contracts under conditions allowing equal access for Community undertakings.

7. **Treatment of products originating in third countries**

The directive does not make any express provision in regard to these products. A Council resolution adopted at the same time as the directive, and a Council statement of the same date, nevertheless mention the possibility for a member State, and in respect of certain products and categories of products originating in third countries which are in free circulation in another member State, to request permission from the Commission to take protective measures in respect of those products, in cases where the latter are subject to similar measures when imported directly into that member State.

8. **Hearing and examination of complaints**

The out-of-court or contentious procedures already existing in member States will continue to apply, without prejudice to the competence of the Court of Justice of the European Communities at Luxembourg.

In addition, any member State may bring before the Advisory Committee for Public Contracts any complaint filed by one of its national undertakings that considers itself adversely affected by a procedure for the award of a contract under the directive.


---

2. These documents are available in the secretariat.