II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 22 July 1980

adapting and supplementing in respect of certain contracting authorities Directive 77/62/EEC coordinating procedures for the award of public supply contracts

(80/767/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas by its Decision 80/271/EEC concerning the conclusion of the Multilateral Agreements resulting from the 1973 to 1979 trade negotiations (4) the Council approved on behalf of the European Economic Community *inter alia* the Agreement on government procurement, hereinafter referred to as 'the Agreement', the purpose of which is to establish an international framework of balanced rights and obligations with respect to government procurement with a view to achieving liberalization and expansion of world trade;

Whereas the provisions of the Agreement will also apply to relations between Member States;

Whereas Directive 77/62/EEC (5) coordinated the national procedures relating to public supply contracts in order to introduce equal conditions of competition for such contracts in all the Member States;

Whereas, in view of the international rights and commitments devolving on the Community as a result of the acceptance of the Agreement, the arrangements to be applied to tenderers and products from signatory third countries are those defined by that Agreement;

Whereas, certain provisions of the Agreement introduce more favourable conditions for tenderers than those laid down in Directive 77/62/EEC;

Whereas, when contracts are awarded by contracting authorities within the meaning of the Agreement, the opportunities for access to Community public contracts available under the Treaty to undertakings and products from the Member States must be at least as favourable as the conditions of access to public contracts within the Community accorded under the arrangements contained

(1) OJ No C 287, 17. 11. 1979, p. 9.
(2) OJ No C 117, 12. 5. 1980, p. 87.
(3) OJ No C 182, 21. 7. 1980, p. 8.
(4) OJ No L 71, 17. 3. 1980, p. 1.
(5) OJ No L 13, 15. 1. 1977, p. 1.

in the Agreement to undertakings and products from third countries which are signatories to the Agreement;

Whereas it is therefore necessary to adapt and supplement the provisions of Directive 77/62/EEC in respect of certain contracting authorities;

Whereas the provisions of this Directive will have to be re-examined in the light of the way in which the Member States apply this Directive and the Agreement, and of the results of the further negotiations provided for in Article IX (6) of the Agreement,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. For the purposes of this Directive, 'contracting authorities' means the entities referred to in Annex I and, to the extent that rectifications, modifications or amendments may have been made, their successor entities.

2. The Commission shall update Annex I on the basis of any such rectifications, modifications or amendments and shall have the updated version published in the *Official Journal of the European Communities.*

Article 2

1. In awarding public supply contracts, the contracting authorities referred to in Article 1 shall be subject to the provisions of Directive 77/62/EEC save as otherwise provided in this Directive.

2. The application of paragraph 1 to public contracts with an estimated value net of VAT which is between the sum laid down in Article 3 and 200 000 European units of account shall in particular be confined to:

— purchasing contracts,

— the products listed in Annex II where the contracts are awarded by contracting authorities in the field of defence.

In addition, such public contracts shall not be subject to Article 9 (2) to (7) of Directive 77/62/EEC if the organ used for publication under Article V (3) of the Agreement is other than the *Official Journal of the European Communities.*

Article 3

The value of 200 000 European units of account laid down in Article 5 (1) (a) of Directive 77/62/EEC shall be replaced by 140 000 European units of account in respect of the contracting authorities covered by this Directive.

After consulting the Advisory Committee for Public Contracts, the Commission shall decide on any adjustments to be made to the latter value on the basis of the procedures adopted for determining the value in European units of account of the amount given in Article I (1) (b) of the Agreement.

The adjusted values shall be published in the *Official Journal of the European Communities.*

Article 4

Article 6 (1) (f) of Directive 77/62/EEC shall not apply.

Article 5

The contracting authorities shall prepare a report in writing on each contract awarded under Article 6 (1) (a) to (e) of Directive 77/62/EEC. They shall ensure that each report contains the name of the contracting authoritiy, the value and kind of goods purchased and the country of origin, and a statement of whichever of the circumstances referred to in paragraph 1 (a) to (e) prevailed at the time when the contract was awarded. The report shall remain with the contracting authority concerned. If needed, this information shall be supplied to the authorities responsible for the contracting authority in order that it may, if required, be used by the Commission and, through the Commission, by the Advisory Committee for Public Contracts.

Article 6

1. In open procedures, the time limit for the receipt of tenders fixed by the contracting authorities shall be not less than 42 days from the date of dispatch of the notice to the bodies competent to publish such notice.

2. In restricted procedures, the time limit for the receipt of applications to be invited to tender fixed by the contracting authorities shall be not less than 42 days from the date of dispatch of the notice to the bodies competent to publish such notice.

3. The bodies competent to publish the notices referred to in paragraphs 1 and 2 shall do so not later than 12 days after the date of dispatch of the said notices.

4. In restricted procedures, the time limit for the receipt of tenders fixed by the contracting authorities shall not be less than 30 days from the date of dispatch of the written invitation.

Article 7

For the purposes of the award of public contracts by the contracting authorities referred to in Article 1 (1), Member States shall apply in their relations conditions as favourable as those which they grant to third countries in implementation of the Agreement, in particular those in Articles V and VI on the selective procedure, information and review. The Member States shall to this end consult each other within the Advisory Committee for Public Contracts on the measures to be taken pursuant to the Agreement.

Article 8

1. The Commission shall ensure that this Directive is applied in consultation with the Advisory Committee for Public Contracts and where appropriate will submit new proposals to the Council with the aim in particular of harmonizing the measures taken by the Member States for application of this Directive. These proposals shall be made within two years of the entry into force of this Directive.

2. The Commission shall review this Directive and any new measures which may be adopted by virtue of paragraph 1, having regard to the results of the further negotiations provided for in Article IX (6) of the Agreement and shall, if necessary, submit appropriate proposals to the Council.

Article 9

Member States shall adopt the measures necessary to comply with this Directive not later than 1 January 1981. They shall forthwith inform the Commission thereof.

Article 10

Member States shall communicate to the Commission the texts of the main provisions of national laws, regulations or administrative provisions which they adopt in the field covered by this Directive.

Article 11

This Directive is addressed to the Member States.

Done at Brussels, 22 July 1980.

For the Council

The President

G. THORN

ANNEX I

BELGIUM

I. MINISTERIAL DEPARTMENTS

1. Services du premier ministre	Diensten van de Eerste Minister
2. Ministère des affaires économiques	Ministerie van Economische Zaken
3. Ministère des affaires étrangères, du commerce extérieur et de la coopération au développement	Ministerie van Buitenlandse Zaken, van Buitenlandse Handel en van Ontwikkelingssamenwerking
4. Ministère de l'agriculture	Ministerie van Landbouw
5. Ministère des classes moyennes	Ministerie van de Middenstand
6. Ministère des communications	Ministerie van Verkeerswezen
7. Ministère de la défense nationale	Ministerie van Landsverdediging
8. Ministère de l'éducation nationale et de la culture	Ministerie van Nationale Opvoeding en Cultuur
9. Ministère de l'emploi et du travail	Ministerie van Tewerkstelling en Arbeid
10. Ministère des finances	Ministerie van Financiën
11. Ministère de l'intérieur	Ministerie van Binnenlandse Zaken
12. Ministère de la justice	Ministerie van Justitie
13. Ministère de la prévoyance sociale	Ministerie van Sociale Voorzorg
14. Ministère de la santé publique et de l'environnement	Ministerie van Volksgezondheid en Leefmilieu
15. Ministère des travaux publics — Fonds des routes — Fonds des bâtiments	Ministerie van Openbare Werken — Wegenfonds — Gebouwenfonds
16. Régie des postes (1)	Regie der Posterijen (1)

II. LIST OF MINISTRIES AND STATE DEPARTMENTS WHOSE PURCHASING IS EFFECTED THROUGH THE ENTITIES LISTED AT I.

Premier ministre	Eerste Minister
Vice-premier ministre et ministre de la fonction publique	Vice-Eerste Minister en Minister van Openbaar Ambt
Vice-premier ministre et ministre de la défense nationale	Vice-Eerste Minister en Minister van Landsverdediging
Ministre de la justice	Minister van Justitie
Ministre des affaires étrangères	Minister van Buitenlandse Zaken
Ministre des affaires économiques	Minister van Economische Zaken
Ministre de la prévoyance sociale et secrétaire d'État aux affaires sociales, adjoint au ministre des affaires wallonnes	Minister van Sociale Voorzorg en Staatssecretaris voor Sociale Zaken, toegevoegd aan de Minister voor Waalse Aangelegenheden
Ministre des communications	Minister van Verkeerswezen
Ministre de l'éducation nationale (néerlandaise)	Minister van Nationale Opvoeding (Nederlands)
Ministre de l'agriculture et des classes moyennes	Minister van Landbouw en Middenstand
Ministre de la culture néerlandaise et ministre des affaires flamandes	Minister van de Nederlandse Cultuur en Minister voor Vlaamse Aangelegenheden

(1) Postal business only.

Ministre de l'éducation nationale (française)	Minister van Nationale Opvoeding (Frans)
Ministre de la santé publique et de l'environnement	Minister van Volksgezondheid en Leefmilieu
Ministre des finances	Minister van Financiën
Ministre du commerce extérieur	Minister van Buitenlandse Handel
Ministre de la coopération au développement	Minister van Ontwikkelingssamenwerking
Ministre des postes, télégraphes et téléphones et ministre des affaires bruxelloises (1)	Minister van Posterijen, Telegrafie en Telefonie en Minister voor Brusselse Aangelegenheden (1)
Ministre des pensions	Minister van Pensioenen
Ministre de l'emploi et du travail	Minister van Tewerkstelling en Arbeid
Ministre de l'intérieur	Minister van Binnenlandse Zaken
Ministre de la politique scientifique	Minister van Wetenschapsbeleid
Ministre de la culture française	Minister van Franse Cultuur
Ministre des travaux publics et ministre des affaires wallonnes	Minister van Openbare Werken en Minister voor Waalse Aangelegenheden
Secrétaire d'État à l'économie régionale, adjoint au ministre des affaires wallonnes	Staatssecretaris voor de regionale economie, toegevoegd aan de Minister voor Waalse Aangelegenheden
Secrétaire d'État au budget, adjoint au premier ministre, et secrétaire d'État à l'économie régionale, adjoint au ministre des affaires flamandes	Staatssecretaris voor de begroting, toegevoegd aan de Eerste Minister en Staatssecretaris voor de Regionale Economie, toegevoegd aan de Minister voor Vlaamse Aangelegenheden
Secrétaire d'État à la réforme des institutions, adjoint au premier ministre	Staatssecretaris voor Institutionele Hervormingen, toegevoegd aan de Eerste Minister
Secrétaire d'État à la culture française, adjoint au ministre de la culture française	Staatssecretaris voor Franse Cultuur, toegevoegd aan de Minister voor Franse Cultuur
Secrétaire d'État aux affaires économiques, adjoint au ministre des affaires économiques, et	Staatssecretaris voor Economische Zaken, toegevoegd aan de Minister voor Economische Zaken en
secrétaire d'État aux affaires sociales, adjoint au ministre des affaires flamandes	Staatssecretaris voor Sociale Zaken, toegevoegd aan de Minister voor Vlaamse Aangelegenheden
Secrétaire d'État à la réforme des institutions, adjoint au vice-premier ministre	Staatssecretaris voor Institutionele Hervormingen, toegevoegd aan de Vice-Eerste Minister
Secrétaire d'État à la culture néerlandaise, adjoint au ministre de la culture néerlandaise, et	Staatssecretaris voor Nederlandse Cultuur, toegevoegd aan de Minister voor Nederlandse Cultuur en
secrétaire d'État aux affaires sociales, adjoint au ministre des affaires bruxelloises	Staatssecretaris voor Sociale Zaken, toegevoegd aan de Minister voor Brusselse Aangelegenheden

III. GOVERNMENT INSTITUTIONS

1. Régie des services frigorifiques de l'État belge	Regie der Belgische Rijkskoel- en Vriesdiensten
2. Fonds général des bâtiments scolaires de l'État	Gebouwenfonds voor de Rijksscholen
3. Fonds de construction d'institutions hospitalières et médico-sociales	Fonds voor de bouw van ziekenhuizen en medisch-sociale inrichtingen
4. Institut national du logement	Nationaal Instituut voor de huisvesting
5. Société nationale terrienne	Nationale landmaatschappij
6. Office national de sécurité sociale	Rijksdienst voor sociale zekerheid
7. Institut national d'assurances sociales pour travailleurs indépendants	Rijksinstituut voor de sociale verzekeringen der zelfstandigen
8. Institut national d'assurance maladie-invalidité	Rijksinstituut voor ziekte- en invaliditeitsverzekering

(1) Postal business only.