

The European Commission is seeking to put in place a Council Directive on the coordination of procedures for the award of certain public works contracts, public supply contracts and public service contracts in the fields of defence and security.

This proposal contributes to the general efforts undertaken by Member States to develop a truly integrated European Security and Defence Policy (ESDP). It is aimed at completing the European legislative framework for the award of critical public contracts in the fields of defence and security.

The Commission decided to develop a new framework because most Member States were not relying on Directive 2004/18/EC on public contracts for sensitive security and defence contracts. Instead they have been mostly invoking exceptions relying on Article 296 of the Treaty in particular. The Commission argues that it leads to 'uncoordinated national contract award' and non-compliance with the principles of transparency, non-discrimination and equal treatment included in the EU Treaty.

The Commission proposes to introduce a new legal instrument which takes into account the particular nature of public contracts in the field of security and defence. The creation of a common framework of procurement rules is expected to increase the security of information.

It is in line with the Commission's communication released in 2003 entitled 'Towards an EU Defence Equipment Policy' and the 2004 Green Paper on Defence Procurement.

The main new provisions introduced to adapt Directive 2004/18/EC are as followed:

- the procedures: more flexibility is proposed to allow the publication of contract notice without specific justification or requirements of open procedure to guarantee security.
- security of supply: special provisions to guarantee the sensitive public contracts are protected
- security of information: safeguards for the award procedure as regards the criteria for selecting candidates and contractual requirements

This Directive would enter into force on the day following that of its publication in the Official Journal of the European Union.

The proposal is now awaiting the opinion of the European Parliament which is scheduled for the December 2008 plenary session.