

UTILITIES DIRECTIVE

WHY THE CLAUSE EXEMPTING ENERGY PURCHASES FROM TENDER REQUIREMENTS SHOULD NOT BE DELETED

1. The 1993 Utilities Directive was designed to give all undertakings in the water, energy, transport and telecommunications sectors within the Community equal access to public contracts and to promote cost-effective conduct on the part public authorities and public undertakings in those sectors. Energy purchases were exempted from tender requirements (Art. 9 (1)(b) of the Utilities Directive).
2. With its amendment proposal of 10 May 2000 (COM (200) 276 final), the Commission intends, inter alia, to take action in the light of the extensive competition now existing in the aforementioned sectors.

Due to liberalisation, some undertakings will have the possibility to go through the procedure for exemption envisaged in the amendment proposal (cf. Arts. 29 and 20). However, a largish number of undertakings will continue to be covered by the Directive. If Art. 9 (1)(b) is deleted, they must in future invite tenders for energy purchases despite liberalisation. This is even less justifiable today than in 1993, considering all the progress made in liberalisation.

3. Tender requirements would have considerable negative implications for the gas supply companies concerned. Like all other companies in the gas industry, they are now subject to fierce competition. The picture is characterised by gas-to-gas and interfuel competition. Tender requirements constitute an additional burden for those companies and cause distortion of competition (additional costs, loss of flexibility and efficiency). Competitors not exposed to this burden which include not only private gas suppliers but also the suppliers of oil as the main rival on the heat market, would be placed at an advantage.
4. Transparency and the prevention of discrimination are already ensured via the Gas Directive and competition. Tenders are not the adequate approach - neither in 1993 nor today.
5. For good reasons the Advisory Committee of Member States has decided in favour of retaining the exemption of energy supply contracts.

Eurogas welcomes the draft of the Advisory Committee (text attached)

Article 27

Contracts awarded by certain contracting entities for the purchase of water or for the supply of energy or of fuels for the production of energy

1. This directive shall not apply to :
 - (a) contracts which the contracting entities exercising the activity referred in Annex I award for the purchase of water;
 - (b) contracts which the contracting entities exercising one of the activity referred in Annexes II to V award for the supply of energy or of fuels for the production of energy,
 2. The Council shall re-examine the provisions of paragraph 1 when it has before it a report from the Commission together with appropriate proposals."
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