

Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (Text with EEA relevance)

TITLE V

STATISTICAL OBLIGATIONS, EXECUTORY POWERS AND FINAL PROVISIONS

Article 65

Statistical obligations

In order to permit assessment of the results of applying this Directive, Member States shall forward to the Commission a statistical report, prepared in accordance with Article 66, addressing supply, services and works contracts awarded by contracting authorities/entities during the preceding year, by no later than 31 October of each year,

Article 66

Content of the statistical report

The statistical report shall specify the number and value of contracts awarded, by Member State or third country of the successful tenderer. It shall address, separately, supply, services and works contracts.

The data referred to in the first paragraph shall be broken down by procedure used and shall specify, for each procedure, supplies, services and works identified by group of the CPV nomenclature.

Where contracts have been concluded in accordance with the negotiated procedure without publication of a contract notice, the data referred to in the first paragraph shall also be broken down by the circumstances referred to in Article 28.

The content of the statistical report shall be determined in accordance with the advisory procedure referred to in Article 67(2).

f¹Article 66a

Exercise of the delegation

1 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2 The power to adopt delegated acts referred to in Article 68(1) and Article 69(2) shall be conferred on the Commission for a period of five years from 26 July 2019. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods

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of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3 The delegation of power referred to in Article 68(1) and Article 69(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4 Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁽¹⁾.

5 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6 A delegated act adopted pursuant to Article 68(1) and Article 69(2) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Textual Amendments

- F1** Inserted by [Regulation \(EU\) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union \(Text with EEA relevance\)](#).

Article 66b

Urgency procedure

1 Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2 Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 66a(6). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or by the Council.]

Textual Amendments

- F1** Inserted by [Regulation \(EU\) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union \(Text with EEA relevance\)](#).

Article 67

Committee procedure

1 The Commission shall be assisted by the Advisory Committee for Public Contracts set up by Article 1 of Council Decision 71/306/EEC⁽²⁾ (the Committee).

2 Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

F²₃

F²₄

Textual Amendments

- F2** Deleted by [Regulation \(EU\) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union \(Text with EEA relevance\)](#).

Article 68

Revision of thresholds

1 At the same time as the revision of the thresholds laid down in Directive 2004/17/EC referred to in Article 69 thereof, the Commission shall also revise the thresholds laid down in Article 8 of this Directive by aligning:

- a the threshold established in Article 8(a) of this Directive to the revised threshold laid down in Article 16(a) of Directive 2004/17/EC;
- b the threshold established in Article 8(b) of this Directive to the revised threshold laid down in Article 16(b) of Directive 2004/17/EC.

[^{F3}The Commission is empowered to adopt delegated acts in accordance with Article 66a amending the thresholds as provided for in the first subparagraph.]

[^{F1}Where it is necessary to revise the thresholds as provided for in the first subparagraph, and time constraints prevent the use of the procedure set in Article 66a and therefore imperative grounds of urgency so require, the procedure provided for in Article 66b shall apply to delegated acts adopted pursuant to this paragraph.]

2 The value of the thresholds set pursuant to paragraph 1 in the national currencies of Member States which do not participate in the euro shall be aligned to the values of the thresholds laid down in Directive 2004/17/EC referred to in paragraph 1, calculated in accordance with the second subparagraph of Article 69(2) of Directive 2004/17/EC.

3 The revised thresholds referred to in paragraph 1 and their corresponding values in national currencies shall be published by the Commission in the *Official Journal of the European Union* at the beginning of the November following their revision.

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Textual Amendments

- F1** Inserted by Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union (Text with EEA relevance).
- F3** Substituted by Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union (Text with EEA relevance).

Article 69

Amendments

1 In accordance with the advisory procedure referred to in Article 67(2), the Commission may amend:

- a the procedures for the drawing-up, transmission, receipt, translation, collection and distribution of the notices referred to in Article 30 and the statistical reports provided for in Article 65;
- b the procedure for sending and publishing the data referred to in Annex VI on grounds of technical progress or for administrative reasons;
- c the list of registers, declarations and certificates set out in Annex VII, when, on the basis of notifications from Member States, this proves necessary.

[^{F3}2 The Commission is empowered to adopt delegated acts in accordance with Article 66a amending:

- a the reference numbers in the CPV nomenclature set out in Annexes I and II, insofar as this does not change the material scope of this Directive, and the procedures for reference in the notices to particular headings in the CPV nomenclature within the categories of services listed in those Annexes;
- b the technical details and characteristics of the devices for electronic receipt referred to in points (a), (f) and (g) of Annex VIII.]

Textual Amendments

- F3** Substituted by Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union (Text with EEA relevance).

Article 70

Amendment to Directive 2004/17/EC

The following Article shall be inserted in Directive 2004/17/EC:

Article 22a

Contracts in the fields of defence and security

This Directive shall not apply to contracts to which Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security⁽³⁾ applies, nor to contracts to which that Directive does not apply pursuant to Articles 8, 12 and 13 thereof..

Article 71

Amendment to Directive 2004/18/EC

Article 10 of Directive 2004/18/EC shall be replaced by the following:

Article 10

Contracts in the fields of defence and security

Subject to Article 296 of the Treaty, this Directive shall apply to public contracts awarded in the fields of defence and security, with the exception of contracts to which Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security⁽⁴⁾ applies.

This Directive shall not apply to contracts to which Directive 2009/81/EC does not apply pursuant to Articles 8, 12 and 13 thereof..

Article 72

Transposition

1 By 21 August 2011, Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

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Article 73

Review and reporting

1 By 21 August 2012, the Commission shall report on the measures taken by Member States with a view to the transposition of this Directive, and in particular Article 21 and Articles 50 to 54 thereof.

2 The Commission shall review the implementation of this Directive and report thereon to the European Parliament and the Council by 21 August 2016. It shall evaluate in particular whether, and to what extent, the objectives of this Directive have been achieved with regard to the functioning of the internal market and the development of a European defence equipment market and a European Defence Technological and Industrial Base, having regard, *inter alia*, to the situation of small and medium-sized enterprises. Where appropriate, the report shall be accompanied by a legislative proposal.

3 The Commission shall also review the application of Article 39(1), investigating in particular the feasibility of harmonising the conditions for the reinstatement of candidates or tenderers with prior convictions excluding them from participation in public procurements, and shall, if appropriate, bring forward, a legislative proposal to that effect.

Article 74

Entry into force

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

Article 75

Addressees

This Directive is addressed to the Member States.

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- (1) [^{F1}OJ L 123, 12.5.2016, p. 1.]
- (2) OJ L 185, 16.8.1971, p. 15.
- (3) OJ L 217, 20.8.2009, p. 76’.
- (4) OJ L 217, 20.8.2009, p. 76’.

Textual Amendments

- F1** Inserted by [Regulation \(EU\) 2019/1243](#) of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union (Text with EEA relevance).