

Council Directive of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (89/665/EEC)

[^{F1}Article 1

Scope and availability of review procedures

[^{F21} This Directive applies to contracts referred to in Directive 2014/24/EU of the European Parliament and of the Council⁽¹⁾ unless such contracts are excluded in accordance with Articles 7, 8, 9, 10, 11, 12, 15, 16, 17 and 37 of that Directive.

This Directive also applies to concessions awarded by contracting authorities, referred to in Directive 2014/23/EU of the European Parliament and of the Council⁽²⁾ unless such concessions are excluded in accordance with Articles 10, 11, 12, 17 and 25 of that Directive.

Contracts within the meaning of this Directive include public contracts, framework agreements, works and services concessions and dynamic purchasing systems.

Member States shall take the measures necessary to ensure that, as regards contracts falling within the scope of Directive 2014/24/EU or Directive 2014/23/EU, decisions taken by the contracting authorities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in Articles 2 to 2f of this Directive, on the grounds that such decisions have infringed Union law in the field of public procurement or national rules transposing that law.]

2 Member States shall ensure that there is no discrimination between undertakings claiming harm in the context of a procedure for the award of a contract as a result of the distinction made by this Directive between national rules implementing Community law and other national rules.

3 Member States shall ensure that the review procedures are available, under detailed rules which the Member States may establish, at least to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement.

4 Member States may require that the person wishing to use a review procedure has notified the contracting authority of the alleged infringement and of his intention to seek review, provided that this does not affect the standstill period in accordance with Article 2a(2) or any other time limits for applying for review in accordance with Article 2c.

5 Member States may require that the person concerned first seek review with the contracting authority. In that case, Member States shall ensure that the submission of such an application for review results in immediate suspension of the possibility to conclude the contract.

Member States shall decide on the appropriate means of communication, including fax or electronic means, to be used for the application for review provided for in the first subparagraph.

The suspension referred to in the first subparagraph shall not end before the expiry of a period of at least 10 calendar days with effect from the day following the date on which

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the contracting authority has sent a reply if fax or electronic means are used, or, if other means of communication are used, before the expiry of either at least 15 calendar days with effect from the day following the date on which the contracting authority has sent a reply, or at least 10 calendar days with effect from the day following the date of the receipt of a reply.]

Textual Amendments

- F1** Substituted by [Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts \(Text with EEA relevance\)](#).
- F2** Substituted by [Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts \(Text with EEA relevance\)](#).

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- (1) [^{F1} [^{F2} Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement (OJ L 94, 28.3.2014, p. 65).]]
- (2) [^{F1} [^{F2} Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contract (OJ L 94, 28.3.2014, p. 1).]]

Textual Amendments

- F1** Substituted by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (Text with EEA relevance).
- F2** Substituted by Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (Text with EEA relevance).