

II

(Acts whose publication is not obligatory)

EUROPEAN CENTRAL BANK

GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 16 September 2004

on the procurement of euro banknotes

(ECB/2004/18)

(2004/703/EC)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

agreements for euro banknote production taking into account the principle of decentralisation and the need for an effective management framework.

Having regard to the Treaty establishing the European Community, and in particular Article 106(1) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 16 thereof,

Whereas:

(1) Article 16 of the Statute grants the Governing Council of the European Central Bank (ECB) the exclusive right to authorise the issue of euro banknotes within the Community. This exclusive right includes the competence to define the legal framework for the procurement of euro banknotes.

(2) Under Article 106(1) of the Treaty and Article 12.1 of the Statute, the ECB may allocate the responsibility for issuing euro banknotes to the national central banks of the Member States that have adopted the euro (the NCBs) in accordance with the NCBs' percentage shares in the ECB's subscribed capital for the relevant financial year calculated using the NCBs' weightings in the key referred to in Article 29.1 of the Statute (hereinafter the capital key). Moreover, the ECB should allocate the responsibility for concluding and managing supply

(3) The framework for the procurement of euro banknotes must, on the one hand, comply with the requirement laid down in Article 105(1) of the Treaty and in Article 2 of the Statute, for the Eurosystem to act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources and, on the other hand, take into account the particular nature of euro banknotes which are printed to be issued by the Eurosystem alone as a safe means of payment. In addition, in accordance with the principle of decentralisation, the framework for the procurement of euro banknotes must also take into account the fact that some NCBs have their own in-house printing works or use public printing works to produce euro banknotes.

(4) In view of the aforementioned principles, the Governing Council decided on 10 July 2003 that a common Eurosystem competitive approach to tendering (hereinafter the single Eurosystem tender procedure) should apply to the procurement of euro banknotes at the latest from 1 January 2012 onwards. NCBs that have an in-house printing works, or those using a public printing works may elect not to participate in the single Eurosystem tender procedure. In such cases, these printing works will remain responsible for the production of the euro banknotes that have been allocated to their NCBs in accordance with the capital key but will be excluded from participating in the single Eurosystem tender procedure. NCBs may decide to join the single Eurosystem tender procedure at a later date. Such a decision would be irreversible.

- (5) A transitional period, which allows both NCBs and printing works to prepare for this long-term approach, should start as soon as it has been ascertained that the production of at least half of the total annual Eurosystem euro banknote requirement will be tendered and at least half of all NCBs will tender the production of euro banknotes allocated to them. During the transitional period the single Eurosystem tender procedure will apply to those NCBs which tender the euro banknote production allocated to them for issuance.
- (6) The single Eurosystem tender procedure will ensure a level playing field between all printing works participating in the procedure by permitting competition between in-house, public and private printing works in a transparent and fair manner that does not give any of the parties involved an unfair competitive advantage. In order to ensure such a level playing field, specific rules on the composition of the single Eurosystem Procurement Committee (hereinafter the 'Procurement Committee'), the conduct of its members and the conditions for printing works participating in the single Eurosystem tender procedure, are needed.
- (7) Euro banknotes are of a sensitive and innovative nature. Therefore, they have to be produced in a fully secure, controlled and confidential manner that guarantees a reliable, high quality and sustained supply over time. Moreover, the Eurosystem needs to pay due regard to the possible impact of the production of euro banknotes on public health and safety and on the environment. All these requirements will be taken into account in the single Eurosystem tender procedure.
- (8) The Governing Council shall monitor all key raw materials and factors of production of euro banknotes and, if necessary, take adequate measures to ensure that they are selected and procured so as to ensure the continuity of supply of euro banknotes, and, without prejudice to European competition law and the European Commission's competencies, to prevent the Eurosystem suffering due to the abuse of a dominant market position by any contractor or supplier.
- (9) The supply agreements concluded after the completion of a single Eurosystem tender procedure between the contracting authority and individual printing works should comply with minimum common features established by the ECB so as to ensure harmonised terms and conditions for all contracted printing works.
- (10) The Governing Council should review this Guideline's operation after its entry into force in the light of the Eurosystem's practical experience with it. The provisions of this Guideline should be interpreted, where necessary, in accordance with the rules contained in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts⁽¹⁾.
- (11) In line with the ECB's general transparency policy, tender procedure information such as the eligibility and award criteria and the outcome of such procedures should be published.
- (12) In accordance with Article 12.1 and Article 14.3 of the Statute, ECB guidelines form an integral part of Community law,

HAS ADOPTED THIS GUIDELINE:

TITLE I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Guideline:

- 'arm's length principle' shall mean the principle in accordance with which there shall be full separation between an in-house or public printing works' and its NCB's accounts and reimbursement by an in-house or public printing works of all administrative and organisational support that it receives from its NCB. In particular, this reimbursement shall cover: (a) the additional, variable costs incurred by an NCB in providing administrative and organisational support to its in-house printing works; (b) an appropriate contribution by the in-house printing works to the fixed costs related to the NCB's administrative and organisational support; and (c) an adequate return on the NCB's capital investment in the in-house printing works. Such contributions shall be calculated at market rates. This definition shall take into account the relevant case-law of the Court of Justice of the European Communities, as well as the relevant common cost accounting principles defined separately by the Governing Council;

⁽¹⁾ OJ L 134, 30.4.2004, p. 114.

2. 'confidential information' shall mean: (a) all non-public information regarding the proceedings and deliberations of the Procurement Committee; (b) all information contained in tender documents submitted by printing works and/or other third parties to the Procurement Committee; (c) all information which consists of trade secrets or other confidential or proprietary technical and/or business information related to euro banknote production; (d) information contained in the technical specifications for each euro banknote denomination; and (e) any other information regarding euro banknote production which is marked confidential or which by its nature a reasonable person would deem confidential;
3. 'contracting authorities' shall mean either the NCBs that conclude supply agreements with printing works which have been awarded production orders in accordance with the single Eurosystem tender procedure, or the ECB acting on their behalf;
4. 'control' shall mean the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 1(1) and (2) of the Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts⁽¹⁾, or a similar relationship between any legal person and an undertaking, whereby any subsidiary of a subsidiary undertaking shall also be considered to be a subsidiary of the parent undertaking which is at the head of those undertakings;
5. 'euro banknote production quality requirements (EBQR)' shall mean the documentation defining the common quality requirements for the production, acceptance and validation of euro banknotes as regularly reviewed by the Governing Council;
6. 'euro secure items' shall mean fully or partly printed euro banknotes, euro banknote components and other materials and information requiring security protection, the loss, theft, disclosure or publication of which could damage euro banknotes' integrity and/or assist in the production of counterfeit euro banknotes or their components;
7. 'in-house printing works' shall mean any printing works which is: (a) legally and organisationally part of an NCB; (b) a separate undertaking in which an NCB owns, directly or by way of control, at least 50 % of the voting rights or capital; or (c) a separate undertaking in which an NCB appoints over half of the members of the decision-making bodies;
8. 'public authorities' shall mean all public authorities, including the State and regional or local authorities;
9. 'public printing works' shall mean any printing works in which public authorities (a) own, directly or by way of control, at least 50 % of the voting rights or capital; or (b) appoint over half of the members of the decision-making bodies;
10. 'restricted procedure' shall mean the procurement procedure whereby only printing works complying with the eligibility criteria defined in this Guideline may submit tender bids;
11. 'supply agreement' shall mean a contract concluded in writing between a contracting authority and a printing works that has been awarded an order for the production of euro banknotes in consideration of payment;
12. 'transitional period' shall mean the period starting at the earliest on 1 January 2008 or on a date thereafter decided by the Governing Council once it has ascertained, acting on a proposal from the Executive Board, that the production of at least half of the total annual Eurosystem euro banknote requirement will be tendered and at least half of all NCBs will tender the production of euro banknotes allocated to them. The transitional period shall end, at the latest, on 31 December 2011.

Article 2

Scope of application

1. The single Eurosystem tender procedure shall start at the latest on 1 January 2012.
2. The procurement in any six-month period of banknotes denominated in euro that exceed a value of EUR 249 000, or any other value specified in Directive 2004/18/EC shall be subject to the single Eurosystem tender procedure set out in this Guideline.
3. The value referred to in paragraph 2 shall be calculated by taking into account the combined costs of all the production requirements for euro banknotes during a single Eurosystem tender procedure, including ancillary costs such as, amongst others, those related to the destruction of euro banknotes production waste, but excluding VAT and transportation costs.

⁽¹⁾ OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2003/51/EC of the European Parliament and of the Council (OJ L 178, 17.7.2003, p. 16).

4. The value of supply agreements shall not be calculated so as to avoid the application of this Guideline, nor shall any procurement requirement for a given amount of euro banknotes be divided with this same intention.

5. The single Eurosystem tender procedure shall not apply to the research and development, including the design and origination, of euro banknotes. Such activities shall be subject to separate Eurosystem procurement rules.

TITLE II

PARTIES TO THE SINGLE EUROSISTEM TENDER PROCEDURE

Article 3

Establishment and composition of the Procurement Committee

1. A Procurement Committee shall be established, which shall consist of seven experts with relevant professional experience, appointed by the Governing Council acting on proposals from the ECB and the NCBs, selected from Eurosystem members qualified senior staff for predefined terms of office.

2. The ECB shall provide secretarial support to the Procurement Committee.

Article 4

Procurement Committee code of conduct

1. The ECB and the NCBs shall ensure that any member of their staff appointed to the Procurement Committee shall sign the declaration in Annex I to this Guideline.

2. If a member of the Procurement Committee infringes the code of conduct in Annex I, the Governing Council shall (a) dismiss them from the Procurement Committee; (b) communicate this, as appropriate, for disciplinary purposes to their respective employer; and (c) appoint a successor to the Procurement Committee.

3. The ECB and the NCBs shall introduce appropriate provisions in the legal documentation governing the employment relationships with their respective members of the Procurement Committee, enabling them, within the limits of applicable legislation, to monitor their Procurement Committee members' compliance with the code of conduct in Annex I and sanction any non-compliance therewith, as appropriate.

Article 5

The role of the Governing Council and of the Executive Board

1. The Governing Council, acting on a proposal from the Executive Board, shall keep the conditions for the start of the transitional period under review and it shall decide on the starting date for the transitional period.

2. The Governing Council, acting on a proposal from the Executive Board, shall decide whether printing works are eligible in accordance with Articles 7 and 8 to participate in the single Eurosystem tender procedure.

3. The Governing Council, acting on a proposal from the Procurement Committee via the Executive Board, shall adopt the internal rules of procedure, including the voting rules, of the Procurement Committee.

4. Prior to any single Eurosystem tender procedure the Governing Council shall decide which Eurosystem members are to be designated as contracting authorities.

5. The Governing Council, acting on a proposal from the Procurement Committee via the Executive Board, shall adopt the decision on the award of production orders.

6. The Governing Council shall, at the request of a printing works that has participated in the single Eurosystem tender procedure in accordance with this Guideline, review any such decision prior to the submission of a complaint to the Court of Justice of the European Communities.

7. The Governing Council, acting on a proposal from the Executive Board, shall ensure that the compliance of all parties with the rules and procedures laid down in this Guideline is audited.

Article 6

The ECB and the NCBs

1. The NCBs, or the ECB acting on behalf of the NCBs, shall enter into supply agreements with the printing works that have been awarded production orders and shall monitor the due performance of such agreements.

2. NCBs that have an in-house printing works and NCBs using public printing works may choose not to participate in the single Eurosystem tender procedure. In such cases these in-house or public printing works shall be excluded from the single Eurosystem tender procedure and they shall produce the euro banknotes allocated to their NCBs in accordance with the capital key. They may, however, decide to participate in the single Eurosystem tender procedure at a later date. Such a decision shall be irreversible.

3. Prior to conducting a single Eurosystem tender procedure the ECB and the NCBs shall not provide any confidential information to printing works, including (a) public printing works; and (b) in-house printing works, unless their NCBs do not participate in single Eurosystem tender procedures.

Article 7

Eligibility of printing works

1. Printing works, including in-house and public printing works, shall be eligible to participate in the single Eurosystem tender procedure on the following conditions:

(a) printing works shall be legally established in a European Union (EU) Member State. Furthermore, euro banknotes shall be produced in facilities that are physically located in a Member State;

(b) printing works shall sign a confidentiality agreement provided by the ECB;

(c) printing works shall be accredited by the Governing Council, acting on the Executive Board's assessment of their compliance with:

(i) the security rules for the production and storage of euro secure items decided separately by the Executive Board taking into account the Banknote Committee's views;

(ii) the EBQR decided separately by the Executive Board taking into account the Banknote Committee's views;

(iii) the health and safety requirements decided separately by the Executive Board taking into account the Banknote Committee's views; and

(iv) the requirements for the environmentally friendly production of euro banknotes decided separately by the Executive Board taking into account the Banknote Committee's views;

(d) printing works, including in-house and public printing works, shall not receive any aid granted by a Member State, NCB, or otherwise through State resources that is in any way incompatible with the Treaty;

(e) printing works shall not have been allocated part or all of the banknote production of an EU Member State without a tender procedure.

2. The independent external auditors shall audit compliance with the prohibition laid down in paragraph 1(d). The audited printing works shall annually report the independent external auditors' findings to the Procurement Committee. To this end, all printing works participating in single Eurosystem tender procedures shall fully identify their income and costs and in particular provide information on: (a) the setting-off of any operating losses; and (b) whether an NCB or any public authority has provided the printing works with capital, non-refundable grants or loans on preferential terms; and (c) any forgoing of profits by an NCB or any public authority or the recovery of sums due; and (d) any forgoing by an NCB or any public authority of a normal return on public funds provided to the printing works; and (e) any compensation received for financial burdens or tasks imposed on it by an NCB or by any public authority.

3. Joint ventures, consortia or any other cooperative ventures permitted by law, as well as printing works using subcontractors shall qualify for participation in the procurement procedures provided that:

(a) each member of a cooperative venture and each subcontractor individually complies with the eligibility criteria set out in paragraphs 1 and 2;

(b) a main contractor or consortium leader shall remain responsible for the whole euro banknote production process required to fulfil the contract;

(c) the members of a cooperative venture are all jointly and severally liable vis-à-vis the contracting authority for the production of the euro banknotes; and

(d) the bidder shall inform the Procurement Committee of the identity and specific roles of all members of a cooperative venture and of each subcontractor.

4. All printing works that have not yet been accredited in accordance with paragraph 1(c) and which are legally established in the EU may obtain information from the ECB relating to the requirements set out in this Article. Before releasing this information, or part of it, the Governing Council shall, acting on a proposal from the Executive Board, assess whether the printing works requesting information are bona fide. In particular, the Governing Council shall check, in accordance with any applicable national laws and regulations, the personal records of the owners and managers of the printing works concerned. If these checks reveal that any owner or manager of the printing works requesting information has been convicted for an offence concerning their professional conduct, such information shall not be released to the printing works requesting information. Bona fide printing works shall sign a confidentiality agreement provided by the ECB.

5. The ECB shall inform all accredited printing works at least six months prior to the start of the single Eurosystem tender procedure of the Eurosystem's euro banknote requirements as referred to in paragraph 1(c)(i) to (iv).

Article 8

Additional eligibility criteria for in-house and public printing works

1. In-house and public printing works shall comply with the eligibility criteria laid down in Article 7 and with the following additional eligibility criteria:

- (a) they shall have effective internal arrangements implementing the arm's length principle; and
- (b) their income and costs shall be assigned on the basis of common cost accounting principles defined separately by the Governing Council acting on a proposal from the Executive Board; and
- (c) independent external auditors shall monitor in-house and public printing works' compliance with the abovementioned additional eligibility criteria. In-house and public printing works shall report the independent external auditors' findings annually to the Procurement Committee.

2. From the time that an NCB decides that its in-house or public printing works will participate in the single Eurosystem tender procedure, the representative(s) of such an in-house or public printing works shall resign from the Banknote Committee and its subgroups.

Article 9

Exclusion from the single Eurosystem tender procedure

1. If, for a given procurement, tender bids appear to be abnormally low in relation to the euro banknotes to be provided, the Procurement Committee shall, before rejecting those tender bids, request in writing details of the relevant constituent elements and shall verify those constituent elements taking into account the explanations received. Where the Procurement Committee establishes that a tender bid is abnormally low on grounds that the tenderer has obtained State aid, the tender bid can only be rejected on those grounds alone after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the Procurement Committee, that the aid in question was granted legally.

2. The Governing Council, acting on a proposal from the Procurement Committee via the Executive Board, or on a proposal from the Executive Board, shall disqualify a printing works from future participation in the single Eurosystem tender procedure if it fails to comply with the eligibility criteria set out in Articles 7 and 8. This exclusion shall remain in force until the eligibility criteria set out in Articles 7 and 8 are met. If an in-house or a public printing works that participates in the single Eurosystem tender procedure is disqualified, the production of the euro banknotes allocated to its NCB in accordance with the capital key shall be tendered in accordance with the single Eurosystem tender procedure.

3. The Procurement Committee may reject tender bids if a printing works no longer complies with the eligibility criteria set out in this Guideline. The Procurement Committee shall adopt and document any decisions in this respect.

TITLE III

SINGLE EUROSISTEM TENDER PROCEDURE

Article 10

Separation of tender procedures

The required quantity of each euro banknote denomination shall be the object of a separate single Eurosystem tender procedure.

Article 11

Restricted procedure

1. The Procurement Committee shall apply a restricted procedure to the procurement of supply agreements for euro banknotes.

2. The Procurement Committee shall publish its intention to initiate a restricted procedure in the *Official Journal of the European Union*. This notice shall include as a minimum:

- (a) information on the total amount of euro banknotes required, as well as the volume of the production quantities which can be tendered, and the timeframe required for production and delivery;
- (b) the eligibility criteria set out in Articles 7 and 8;
- (c) the closing date for submitting applications to participate and the address to which they must be sent;
- (d) the request to provide evidence on sound financial status and professional standing in accordance with paragraph 3; and
- (e) the official Community language to be used in the single Eurosystem tender procedure.

3. Printing works applying to participate in a restricted procedure shall submit together with their applications the following evidence relating to their sound financial status and professional standing:

- (a) copies of their annual accounts for the last three years;
- (b) a signed declaration from the printing works certified by its external auditor that: (i) in the six months prior to the procurement no substantial change in the participation on, or the control over, its capital has taken place; and (ii) during this period no substantial deterioration of its financial status has occurred;
- (c) a signed declaration from the printing works certified by its external auditor that it is not the subject of proceedings for a declaration of bankruptcy, or for an order for compulsory winding-up or administration by the court, or for an arrangement with creditors or of any similar proceedings under national laws or regulations;
- (d) a signed declaration from the printing works affirming that no member of its decision-making bodies has been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*; and

- (e) a signed declaration from the printing works certified by its external auditor affirming that it has fulfilled: (i) its obligations relating to the payment of social security contributions in accordance with the legal provisions of the Member State of establishment; and (ii) its obligations relating to the payment of taxes in accordance with the legal provisions of the Member State of establishment.

4. As regards paragraphs 3(b), (c), (d) and (e), the Procurement Committee may in exceptional circumstances require a printing works to submit sufficient evidence as specified in Article 45(3) of Directive 2004/18/EC.

5. The time limit for the receipt of applications to participate shall not be less than 37 calendar days from the date on which the contract notice is published in the *Official Journal of the European Union*.

6. The Procurement Committee shall simultaneously and in writing invite all printing works that have submitted documentation complying with the requirements of paragraph 3, the eligibility criteria laid down in Articles 7 and 8 and with the time limit in paragraph 5, to submit tender bids. The letter of invitation shall be accompanied by supporting documentation regarding the euro banknotes to be procured. It shall include as a minimum:

- (a) where appropriate, the address from which further information regarding the tender can be requested and the closing date for making such a request;
- (b) the closing date for receipt of tender bids, the address to which they must be sent and the language in which they must be drawn up;
- (c) a reference to the contract notice published;
- (d) an indication of the information and documents which need to be provided by the printing works. In particular a tender bid must comply with all predefined tender requirements such as quality standards, volumes produced, production and delivery schedules, and detail the price offered for each production quantity as defined by the Procurement Committee; and

(e) the criteria for the award of production orders set out in Article 13.

7. Provided that it has been requested in good time, additional information relating to a specific procurement shall be supplied to all printing works not later than six calendar days before the final date fixed for the receipt of tender bids.

8. The time limit for receipt of written tender bids shall not be less than 40 calendar days from the date of dispatch of the written invitation.

9. Where urgency renders the time limits laid down in paragraphs 5 and 8 impracticable, the Procurement Committee may fix the following time limits:

(a) a time limit for the receipt of applications to participate together with any required accompanying information specified in paragraphs 3 and 4, which shall not be less than 15 calendar days from the date of dispatch of the original invitation; and

(b) a time limit for the receipt of tender bids, which shall not be less than 10 calendar days from the date of dispatch of the invitation to tender.

10. Tender bids may not be opened before the announced deadline for their receipt. All tender bids shall be opened at the same time and their contents shall be recorded in writing. At the time of opening more than half of the members of the Procurement Committee must be present.

11. In addition to the case referred to in Article 9(3), tender bids received may be rejected: (a) if the deadlines are not respected; or (b) when not all the information or documents specified in the letter of invitation have been submitted. The Procurement Committee shall adopt and document any decisions in this respect.

Article 12

Exemptions

1. The Governing Council may, acting on a proposal from the Procurement Committee via the Executive Board, or from the Executive Board, approve exemptions to the procedure laid down in Article 11, or to specific aspects of this procedure. Any such decision shall be duly motivated and fully substantiated in writing.

2. Any such exemption shall only be allowed in one or more of the following circumstances:

(a) in the absence of tender bids or of appropriate tender bids in response to the procedure set out in Article 11 provided that the original terms of the tender are not substantially altered; or

(b) if for reasons of extreme urgency brought about by events unforeseeable by the Procurement Committee, complying with the normal procedure set out in Article 11 would put the procurement of euro banknotes at risk.

Article 13

Award criteria

1. The Procurement Committee shall evaluate and rank all tender bids against the economically most advantageous tender. This evaluation shall take into account the following criteria:

(a) the tendered ex-works price per indicated production quantity; and

(b) compliance with all tender requirements in particular in terms of quality and security standards, volumes produced, production and delivery schedules.

2. The weighting of the criteria set out in paragraph 1 shall be such that the criterion of the tendered price per indicated production quantity shall be predominant.

3. Prior to any single Eurosystem tender procedure the Governing Council may, acting on a proposal from the Executive Board, specify additional award criteria. Such additional criteria should ensure the stability and continuity of the supply of euro banknotes over the long term and avoid dependence on a sole supplier. Particularly, the Governing Council may determine the maximum volume of the total tendered amount that a bidder, including joint ventures, consortia or any other cooperative ventures permitted by law, can obtain.

*Article 14***Award decision**

1. The Procurement Committee shall draw up a list of the eligible printing works that it proposes for production orders, indicating the respective amounts and denominations of euro banknotes to be printed by them. The reasons underlying this proposed list shall be clearly and properly documented. The Procurement Committee shall submit this list for approval to the Governing Council via the Executive Board. The Governing Council may refer the proposal back to the Procurement Committee for further explanations or for renewed consideration before taking a decision.

2. The Governing Council shall take a decision on which printing works are awarded production orders, and on the respective amounts and denominations of euro banknotes to be produced by such printing works, no later than two months after the Procurement Committee has submitted a proposal to the Executive Board.

3. Without prejudice to Article 6(3) the Governing Council's decision shall be notified to the printing works participating in the single Eurosystem tender procedure and to all NCBs. They shall also be informed of: (a) the price of the successful tender bids; (b) the ranking of their respective tender bids; (c) the price range of all tender bids; and (d) any further relevant considerations that influenced the award decision.

*Article 15***Review of award decision**

1. A printing works that has participated in the single Eurosystem tender procedure in accordance with this Guideline may request the Governing Council to review its decision. Such a request shall be made in writing within 15 calendar days of the date of dispatch of the Governing Council's decision and shall include all supporting arguments and documentation.

2. In such cases, the Governing Council, acting on a proposal from the Executive Board, shall either reconfirm the list of printing works awarded production orders, or refer the request back to the Procurement Committee for renewed consideration in the light of the procurement rules specified in this Guideline.

3. The Governing Council's final decision, either reconfirming or amending the list of printing works, shall be taken within 30 calendar days of the submission of the request and shall be duly motivated. Written notification thereof shall be given to the printing works concerned.

*Article 16***Supply agreements**

1. Following the conclusion of a single Eurosystem tender procedure and once the time limits in Article 15 for review of the award decision have expired, the contracting authorities shall conclude supply agreements with the printing works that have been awarded production orders. These supply agreements shall comply with the minimum common features set out in Annex II to this Guideline. The Executive Board shall be provided with copies of the supply agreements entered into by the contracting authorities with the abovementioned printing works.

2. A supply agreement shall be concluded for a period defined beforehand by the Governing Council, and the supply agreement shall specify the number of euro banknotes to be delivered periodically. The supply agreement shall allow the contracting authority to periodically amend the number of euro banknotes specified therein for production, however, such amendments shall remain within the range that is specified in the conditions set out in the invitation to tender (alternatively the delivery schedule can be amended).

TITLE IV

RULES APPLICABLE PRIOR TO THE TRANSITIONAL PERIOD*Article 17***Production of euro banknotes prior to the transitional period**

Without prejudice to Article 6(2), prior to the start of the transitional period NCBs shall either produce the euro banknotes allocated to them in their in-house printing works or respective public printing works, or alternatively they shall award such production in accordance with applicable legislation to accredited printing works.

TITLE V

TRANSITIONAL PROVISIONS*Article 18***Participation of in-house or public printing works in the single Eurosystem tender procedure during the transitional period**

1. The procedures laid down in this Guideline shall apply during the transitional period to those NCBs that tender the production of the euro banknotes allocated to them.

2. During the transitional period in-house or public printing works may participate in the single Eurosystem tender procedure on condition that:

(a) the Governing Council, acting on a proposal from the Executive Board, confirms that they comply with the eligibility criteria laid down in Articles 7 and 8; and

(b) the NCB of the printing works concerned does not exercise the right set out in Article 6(2) to choose not to participate in the single Eurosystem tender procedure.

3. A decision to participate in the single Eurosystem tender procedure shall be irreversible.

Article 19

Procurement Committee composition and functioning during the transitional period

1. During the transitional period the Procurement Committee shall consist of five members.

2. During the transitional period the rules and procedures of this Title shall apply by way of derogation from those contained in Titles I, II and III. The remaining rules and procedures set out in this Guideline shall apply *mutatis mutandis* in the transitional period.

TITLE VI

FINAL PROVISIONS

Article 20

Entry into force

This Guideline shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 21

Review

The Governing Council shall review this Guideline at the beginning of 2008 and every two years thereafter.

Article 22

Addressees

This Guideline is addressed to the national central banks of participating Member States.

Done at Frankfurt am Main, 16 September 2004.

For the Governing Council of the ECB

The President of the ECB

Jean-Claude TRICHET

ANNEX I

Declaration regarding compliance with the Procurement Committee Code of Conduct

Without prejudice to the [ECB's][the NCB's] binding code of conduct, [add name], a member of the Procurement Committee, undertakes to comply with the following code of conduct:

- (a) members of the Procurement Committee must abstain from evaluating individual tender bids submitted by the in-house or public printing works of their respective NCB;
- (b) members of the Procurement Committee should avoid any situation likely to give rise to a conflict of interest, in particular as regards past, current or future links of a personal or professional nature with any printing works or with any member of a printing works' decision-making bodies or management;
- (c) members of the Procurement Committee are prohibited from using confidential information whenever they conduct private financial transactions for their benefit or for the benefit of their immediate family members;
- (d) members of the Procurement Committee must observe strict confidentiality regarding confidential information. Specifically, any such confidential information shall not be passed on to their respective NCBs or to the ECB; and
- (e) members of the Procurement Committee must refrain from soliciting any gifts and/or entertainment from printing works that are accredited, or might apply for accreditation, as a precondition for producing euro banknotes. Members of the Procurement Committee must not accept gifts and/or entertainment from printing works in excess of a customary or negligible amount, whether financial or non-financial. Any such gifts and/or entertainment must be reported to the other members of the Procurement Committee. Members may not be employed by any printing works that has been awarded a production order for a minimum period of two years after leaving the Procurement Committee.

The signatory understands that in the event that they infringe any of these rules the Governing Council will: (i) dismiss them from the Procurement Committee; (ii) communicate this, as appropriate for disciplinary purposes, to their respective employer; and (iii) appoint a successor to the Procurement Committee.

Name

Date

ANNEX II

Minimum common features for supply agreements

To the extent allowed by the applicable laws, supply agreements must comply with the following minimum common features.

- 1.1. The Eurosystem's plans for the production of euro banknotes must be included as an integral part of the supply agreements. In particular, the exact amounts of euro banknotes to be produced and delivered, the contracting authorities' right to amend the total number of euro banknotes within predefined limits (alternatively the delivery schedule), the allocation of production over the production lines made available by the printing works, as well as the plans for the main production stages including the acceptance and validation stage, must all be detailed in supply agreements. Comprehensive details of the management, acceptance and validation (on the basis of quantity and quality checks) of the euro banknotes must be laid down in supply agreements.
- 1.2. Supply agreements must contain a clause on the reporting of production progress, in accordance with the standards and procedures to be defined separately by the ECB.
- 1.3. Supply agreements must contain a clause on over/underproduction of euro banknotes. The amount of allowed over/underproduction and their treatment must be specified separately by the ECB, and must be accurately reported to the ECB in the frame of the common reporting system on production progress. In addition, supply agreements must contain a clause prohibiting printing works from holding stocks of excess euro banknotes after a supply agreement has been fulfilled.
- 1.4. Contracting authorities should introduce appropriate contractual safeguards into their supply agreements to the effect that the amount and delivery schedule of ordered euro banknotes may be changed within the limits established by the ECB.
- 1.5. Contracting authorities should introduce appropriate clauses into their supply agreements, which allow them to terminate a supply agreement if unforeseen circumstances arise (e.g. the launch of a new series). The clause should provide for appropriate compensation for losses and damage to be paid according to a scheme to be defined by the ECB.
- 1.6. Supply agreements must specify the price of the euro banknotes to be printed.
- 1.7. The contracting authorities must have the right to withhold payment of any invoice or part of an invoice when situations arise that are not in accordance with the supply agreements, particularly in the case of any defect in or non-compliance of the delivered euro banknotes with the EBQR.
- 1.8. Supply agreements must expressly differentiate between level 1 quality control by the printing works concerned, and level 2 quality validation by the contracting authority in accordance with the EBQR. In particular, supply agreements must include a procedure, (to be laid down separately by the Executive Board taking into account the Banknote Committee's views), to authorise, before large-scale printing starts, the start of the main stages of production, e.g. for paper manufacturing, offset printing and intaglio printing. Supply agreements must allow the contracting authorities to accommodate reasonably justified revisions to the EBQR subject to endorsement by the ECB beforehand.
- 1.9. Printing works must have the complete current technical specifications necessary to produce euro banknotes when commencing production. Printing works must ensure that euro banknotes are produced in strict compliance with these technical specifications.
- 1.10. Printing works must, when commencing production, possess a complete and detailed description of (a) the current quality control procedures applicable to the production of euro banknotes; and (b) the current common acceptance criteria and procedures. Contracting authorities must be allowed to revise supply agreements, subject to endorsement by the ECB beforehand. The printing works must undertake to respect all these standards and to produce euro banknotes in strict compliance with the said quality control procedures.
- 1.11. Printing works must possess the complete and detailed security rules for the production, storage and transport of euro secure items decided separately by the Executive Board taking into account the Banknote Committee's views. Supply agreements must allow the contracting authorities to provide justified revisions to these documents subject to endorsement by the ECB beforehand. Printing works must undertake in supply agreements to respect the agreement and to produce euro banknotes in strict compliance with the said security rules.

- 1.12. Supply agreements must include a clause that deals with late delivery, quality and quantity problems and any other failure by the printing works to comply with the supply agreements. A contractual penalty clause (or any other appropriate remedy) must be included in the supply agreements. For example, if any quality/quantity defects are detected within a predefined period laid down in the supply agreements, the contracting authority must oblige the respective printing works to replace the defective euro banknotes at no extra cost within a reasonable period defined beforehand. These rules will be decided separately by the Executive Board taking into account the Banknote Committee's views.
 - 1.13. Supply agreements must contain a liability clause which must at least include the printing works's liability for direct damage or losses as a result of its negligence or deliberate action. Contracting authorities may investigate whether any claims for damages on the basis of indirect losses such as loss of profit, loss of production, additional production costs, loss of business, etc. must also be covered by the supply agreements. Moreover, neither contractual party will be considered in default of the supply agreements if and to the extent that such default is due to *force majeure*.
 - 1.14. Supply agreements must specify the numbering of euro banknotes, as defined by the ECB.
 - 1.15. Supply agreements must contain a confidentiality clause as decided separately by the Executive Board taking into account the Banknote Committee's views. In particular, all information disclosed by contracting authorities to the printing works, but excluding any information that is in or enters the public domain, must be treated as strictly confidential and must not be disclosed to any third parties without the prior written consent of the contracting authority.
 - 1.16. Finally, in order to guarantee the confidential nature of any proceedings, all disputes between the parties arising out of a supply agreement will be settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules.
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