

# DECISIONS

## DECISION OF THE EUROPEAN CENTRAL BANK

of 27 July 2010

amending Decision ECB/2007/5 laying down the Rules on Procurement

(ECB/2010/8)

(2010/483/EU)

THE EXECUTIVE BOARD OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 11.6 thereof,

Having regard to Decision ECB/2004/2 of 19 February 2004 adopting the Rules of Procedure of the European Central Bank <sup>(1)</sup>, and in particular Article 19 thereof,

Whereas:

(1) The thresholds for public tender procedures laid down 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 <sup>(2)</sup> have been changed by Commission Regulation (EC) No 1177/2009 of 30 November 2009 amending Directives 2004/17/EC, 2004/18/EC and 2009/81/EC of the European Parliament and of the Council in respect of their application thresholds for the procedures for the award of contracts <sup>(3)</sup>. The European Central Bank (ECB), although not subject to Directive 2004/18/EC, intends to apply the same thresholds for its public tender procedures.

(2) Research and development contracts in the field of banknote security require special security measures and can therefore not be put out to tender. It should be clarified that such contracts fall under the exception laid down in Article 6(1)(c) of Decision ECB/2007/5 <sup>(4)</sup>.

(3) Following a recent judgment of the Court of Justice of the European Union <sup>(5)</sup>, it is necessary to clarify that the exemptions for cooperation agreements between the ECB and national central banks (NCBs) and cooperation

agreements between the ECB and other Union institutions and bodies, international organisations or government agencies not only cover cooperation in the fulfilment of public tasks, but also auxiliary services for the fulfilment of public tasks.

(4) Following recent judgments of the Court of Justice of the European Union <sup>(6)</sup>, the time limit for raising objections to the ECB's requirements needs to be refined further.

(5) For reasons of transparency, and without prejudice to Decision ECB/2004/3 of 4 March 2004 on public access to European Central Bank documents <sup>(7)</sup>, unsuccessful candidates and tenderers should be entitled to receive copies of all internal documents relating to the evaluation of their application or tender and, under certain conditions, copies of documents relating to the evaluation of the successful tender.

(6) It is necessary to clarify that in exceptional, duly justified cases, extensions of a contract may exceed the initial term of a contract.

(7) Decision ECB/2007/5 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

### Article 1

#### Amendments

Decision ECB/2007/5 is amended as follows:

1. in Article 1 the following definition is added:

'(q) "research and development contracts in the field of banknote security" means contracts related to theoretical work or practical experimentation, analysis and research carried out under controlled conditions either:

<sup>(1)</sup> OJ L 80, 18.3.2004, p. 33.

<sup>(2)</sup> OJ L 134, 30.4.2004, p. 114.

<sup>(3)</sup> OJ L 314, 1.12.2009, p. 64.

<sup>(4)</sup> OJ L 184, 14.7.2007, p. 34.

<sup>(5)</sup> Case C-480/06 *Commission v Germany* [2009] ECR I-4747.

<sup>(6)</sup> Case C-406/08 *Uniplex (UK) v NHS Business Services Authority* [2010] ECR I-0000 and C-456/08 *Commission v Ireland* [2010] ECR I-0000.

<sup>(7)</sup> OJ L 80, 18.3.2004, p. 42.

- for acquiring new knowledge and inventing new or improving existing materials, manufacturing processes or devices for the origination, production, transport, issuance, authentication and destruction of euro banknotes (including the origination materials of the latter),
- for initiating the manufacture of new or improving existing materials, products or devices for the origination, production, transport, issuance, authentication and destruction of euro banknotes (including the origination materials of the latter).

Research and development contracts in the field of banknote security do not include contracts for the pilot printing of euro banknotes.;

2. Article 2 is amended as follows:

(a) paragraph 3(a) is replaced by the following:

'(a) cooperation agreements between the ECB and NCBs which serve the fulfilment of Eurosystem/ESCB public tasks;'

(b) paragraph 3(c) is replaced by the following:

'(c) cooperation agreements between the ECB and other Union institutions and bodies, international organisations or government agencies, which serve the fulfilment of public tasks;'

3. Article 4(3) is replaced by the following:

'3. The following threshold amounts shall apply:

- (a) EUR 193 000 for supply and service contracts;
- (b) EUR 4 845 000 for works contracts.;

4. Article 6 is amended as follows:

(a) paragraph 1(c) is replaced by the following:

'(c) when the ECB has classified the contract as secret or when the performance of the contract must be accompanied by special security measures, in accordance with the ECB's rules on security or when the protection of the ECB's essential interests so requires. Research and development contracts in the field of banknote security require special security measures and are therefore exempt from the requirements laid down in this Decision.;

(b) the following paragraph 2(g) is added:

'(g) health and social services.;

5. Article 7(2) is replaced by the following:

'2. If a contract is concluded for a fixed term, its term may be extended beyond that initial term under the following conditions:

- (a) the contract notice or, in the case of a procedure under Chapter III, the request for a proposal, provided for the possibility of extensions;
- (b) the possible extensions are duly justified;
- (c) the possible extensions were taken into consideration when determining the applicable procedure in accordance with Article 4.

The totality of all extensions shall as a rule not exceed the term of the initial contract, except in duly justified cases.;

6. Article 21(2) is replaced by the following:

'2. If candidates or tenderers consider that the ECB's requirements laid down in the contract notice, the invitation to tender or supporting documents are incomplete, inconsistent or illegal or that the ECB or another candidate/tenderer has infringed the applicable procurement rules, they shall notify their objections to the ECB within 15 days. If the irregularities affect the invitation to tender or other documents sent by the ECB, the time limit shall start to run from the date of receipt of the documentation. In other cases, the time limit shall start to run from the moment the candidates or tenderers become aware of the irregularity or could reasonably have become aware of it. The ECB may then either correct or supplement the requirements or remedy the irregularity as requested, or reject the request indicating the reasons therefor. Objections which are not communicated to the ECB within 15 days may not be raised at a later stage.;

7. Article 28(3) is replaced by the following:

'3. Candidates and tenderers may, within 15 days of receipt of the notification, request the ECB to provide the reasons for rejecting their application or their tender and to provide copies of all documents relating to the evaluation of their application or tender. Unsuccessful tenderers whose tender was admissible may also ask for the name of the successful tenderer as well as the key characteristics and relative advantage of its tender. They may also request copies of all documents relating to the evaluation of the successful tender, subject to paragraph 4.;

8. Article 30(2) is replaced by the following:

‘2. Tenderers may, within 15 days of receipt of the notification, request the ECB to provide the reasons for rejecting their tender and to provide copies of all documents relating to the evaluation of their tender.’

provisions of Decision ECB/2007/5 in force at the date when the tender procedure started. For the purpose of this provision a tender procedure is deemed to start on the date on which the contract notice was sent to the *Official Journal of the European Union* or, in cases where no such notice is required, on the date when the ECB invited one or several suppliers to submit a tender.

*Article 2*

**Entry into force**

Done at Frankfurt am Main, 27 July 2010.

1. This Decision shall enter into force on 1 October 2010.

2. Tender procedures started before the entry into force of this Decision shall be completed in accordance with the

*The President of the ECB*

Jean-Claude TRICHET

---