



**Making your tenders comply
with the European Public
Procurement Directives**
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Historical background for GPP

- The EC Treaty / the Treaty of Amsterdam
- Court of Justice
- Public Procurements Directives (old vs new)
- "Buying Green"
- Actionplans for GPP
- Johannesburg 2002, world summit for Sustainable Development -
- International Conventions and agreements
- etc



How is this "greening" expressed in the new directives?

Directive 2004/17/EG (utilities sector)

Directive 2004/18/EG (classical sector)

preambles and recitals clarifies:

- i) the possibilities to meet the needs of the public concerned, including in the environmental and/or social area (recital 5, cl/ut)
- ii) ...the possibilities for adopting environmental considerations into the tender documents and promote sustainable development (recital 5, cl)



Court of Justice - clarifies the possibilities

- Bentjees C-37/87
- Nord-Pas-de-Calais C-225/98
- **Concordia ("The Helsinki Buses")
C-513/99**
- Preussen-Elektra C-379/98 (see also C-448/01)



The Court clarified:

- **Environmental considerations possible:**

provided that such criteria

- are linked to the subject of the contract,
- are expressly mentioned in the tender doc
- do not confer an unrestricted freedom of choice
- comply with the fundamental principles



The fundamental principles

- The freedom of movement of goods and freedom to provide services
- Non-discrimination
- Equal treatment
- Proportionality
- Transparency /predictability
- Mutual recognition



How do I make my tender comply with the directives?

- *Identify your needs*
- *Draw up a clear and precise technical spec, selection criteria and, possibly, contract performance clauses.*
- *Distinguish between:*
 - requirements on the subject of the contract
 - requirements on the supplier



How do I make my tender comply with the directives?

- **Technical specifications**
- **Specifications defined by eco-labels**
- **Use of variants**
- **Selection criteria**
- **Environmental management**
- **Award criteria**
- **Conditions for performance of contracts**





Technical specification

– ”*Environmental characteristics*”

Article 23 paragraph 3 b)

***Performance or functional requirements
such as:***

Energy- or water consumption

Contents of chemicals

Emissions

Raw materials

Performance of services

Production methods



Use of eco-labels

Article 23 paragraph 6

- **Specifications defined by eco-labels may be used**

On condition that:

- **Appropriate**
- **Scientifically based**
- **Free access**
- **Procedure with extensive dialogue**

Accept any appropriate means of proof



Award criteria

Article 53

- "Environmental characteristics"
- Weighting of criteria

Direct economically advantage – or not??

the "Helsinki Buses case" clarifies that each individual criterion does not necessarily need to give economical benefit for the p.a.



Variants

- Art 24
- **uncertainty about the actual existence, price or quality**
- **have to be indicated in advance in the tender document**
- *proper market analysis*
- *identify your needs*



Selection Criteria

Technical and/or professional capacity

Article 48

**Appropriate education and skill,
experience, equipment etc**

Article 45

**Possible exclusion due to a conviction by a
judgement**



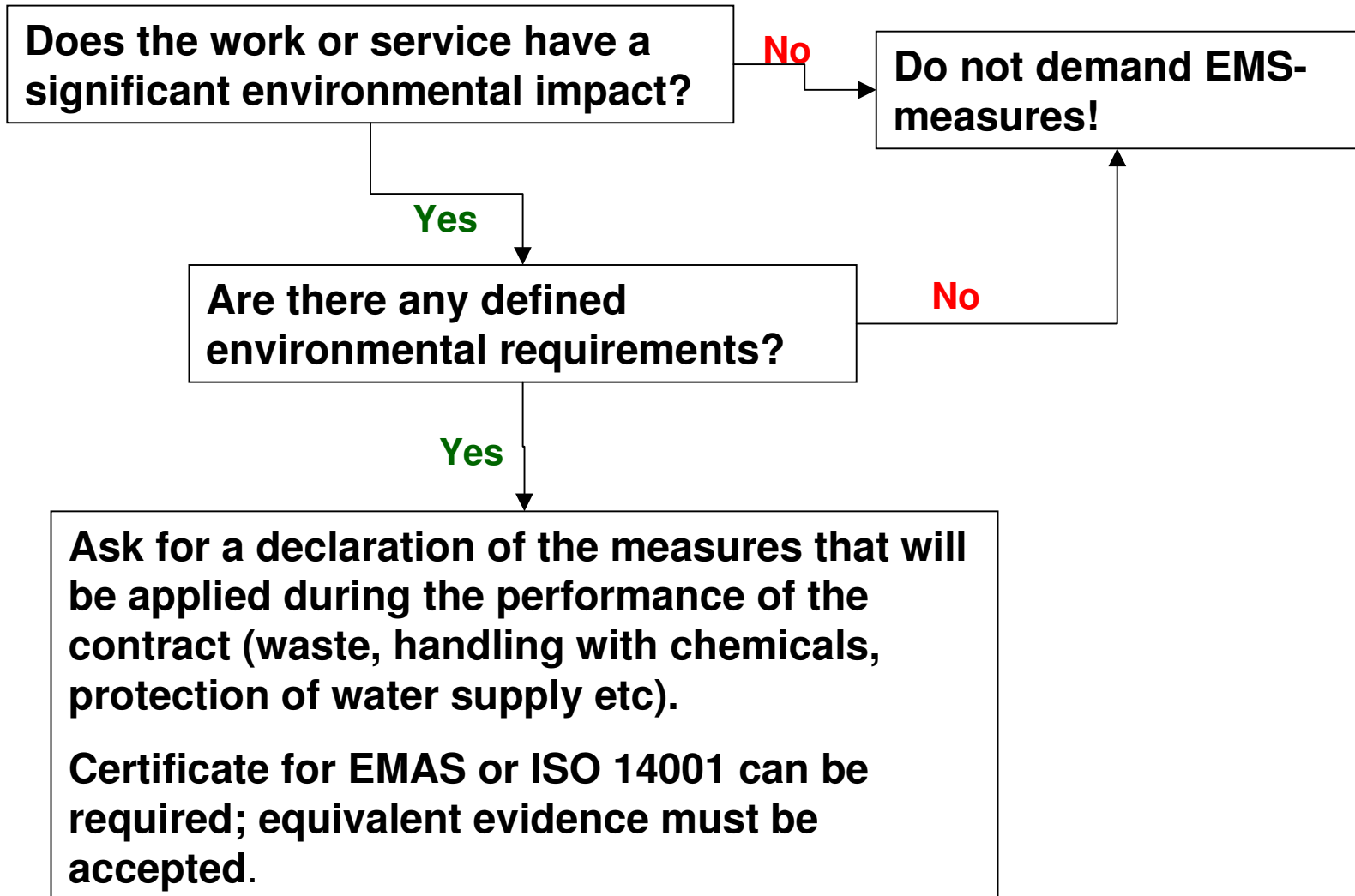
Use of Environmental Management

Article 48 p 2 f)

- **For public works and services - when appropriate**
- **On the condition that:**
 - the environmental aspects for the contract are specified**
 - *proportionality*
 - *link to subject*
 - *predictability*



Demands for EMS – queries:





Conditions for performance of contracts

Article 26

The conditions may concern social and environmental considerations.

On the condition that:

- complying with the Community law
- predictability
- linked to the subject of the contract





Discussion

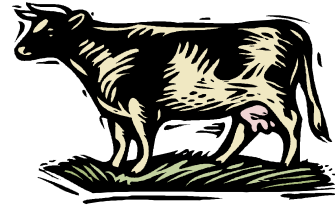
Production/manufacturing methods

- *In case of requirements – they have to comply with:*
 - *Principal rule:* linked to the subject *and* effect the products characteristics
 - Proportionality
 - Non-discriminating



Production methods?

Production



YES – give a visible effect on the product and has a link to the subject of the contract

Production



No – do not give a visible effect or only "invisible" and/or have not a link to the subject

If not EU has specific defined political goals for e.g. minimizing the climate impact (see Court of Justice, C-448/01 Preussen-Elektra / Wienstoem) or similar strategies with significant purposes.

