



EUROPEAN PARLIAMENT

2009 - 2014

Committee on the Internal Market and Consumer Protection

2011/0438(COD)

12.7.2012

AMENDMENTS

167 - 468

Draft report
Marc Tarabella
(PE483.468v01-00)

on the proposal for a directive of the European Parliament and of the Council
on public procurement

Proposal for a directive
(COM(2011)0896 – C7-0006/2012 – 2011/0438(COD))



Amendment 167
Heide Rühle

Proposal for a directive
Citation 1

Text proposed by the Commission

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1), Article 62 and Article 114 thereof,

Amendment

Having regard to the Treaty on the Functioning of the European Union, and in particular Article **14**, **Article** 53(1), Article 62 and Article 114 *as well as Protocol No 26* thereof,

Or. en

Amendment 168
Anna Hedh

Proposal for a directive
Citation 1

Text proposed by the Commission

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1), Article 62 and Article 114 thereof,

Amendment

Having regard to the Treaty on the Functioning of the European Union, and in particular Article **14**, **Article 45(2)**, **Article** 53(1), Article 62 and Article 114 *as well as Protocol No 26* thereof,

Or. en

Justification

The directive needs a clear social dimension and therefore a broader legal base.

Amendment 169
Heide Rühle

Proposal for a directive
Recital 1

Text proposed by the Commission

(1) The award of public contracts by or on behalf of Member States authorities has to comply with the principles of the ***Treaty on the Functioning of the European Union***, and in particular the free movement of goods, freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. However, for public contracts above a certain value, provisions should be drawn up coordinating national procurement procedures so as to ensure that these principles are given practical effect and public procurement is opened up to competition.

Amendment

(1) The award of public contracts by or on behalf of Member States authorities has to comply with the principles of the ***Treaties***, and in particular the free movement of goods, freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency ***and with the distribution of competencies as enshrined in Article 14 of the Treaty on the Functioning of the European Union and Protocol No 26. The European regulation of public procurement should respect the wide discretion of public authorities in carrying out their public service tasks.*** However, for public contracts above a certain value, provisions should be drawn up coordinating national procurement procedures so as to ensure that these principles are given practical effect and public procurement is opened up to competition.

Or. en

Justification

Adaption to the new provisions of the Lisbon Treaty

Amendment 170

Pablo Arias Echeverría

Proposal for a directive

Recital 1

Text proposed by the Commission

(1) La adjudicación de contratos públicos por las autoridades de los Estados miembros o en su nombre ha de respetar los principios del Tratado de

Amendment

(1) La adjudicación de contratos públicos por las autoridades de los Estados miembros o en su nombre ha de respetar los principios del Tratado de

Funcionamiento de la Unión Europea y, en particular, la libre circulación de mercancías, la libertad de establecimiento y la libre prestación de servicios, así como los principios que se derivan de estos, tales como los de igualdad de trato, no discriminación, reconocimiento mutuo, proporcionalidad y *transparencia*. Ahora bien, para los contratos públicos por encima de determinado valor, deben elaborarse disposiciones que coordinen los procedimientos de contratación nacionales a fin de asegurar que estos principios tengan un efecto práctico y que la contratación pública se abra a la competencia.

Funcionamiento de la Unión Europea y, en particular, la libre circulación de mercancías, la libertad de establecimiento y la libre prestación de servicios, así como los principios que se derivan de estos, tales como los de igualdad de trato, no discriminación, reconocimiento mutuo, *publicidad*, proporcionalidad, *transparencia* y *gestión eficiente de los recursos públicos*. Ahora bien, para los contratos públicos por encima de determinado valor, deben elaborarse disposiciones que coordinen los procedimientos de contratación nacionales a fin de asegurar que estos principios tengan un efecto práctico y que la contratación pública se abra a la competencia.

Or. es

Amendment 171

Morten Løkkegaard, Jens Rohde, Jürgen Creutzmann

Proposal for a directive

Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) Contracting authorities should always consider carefully the economic impact of a given requirement on the economic operators before it chooses to use such a requirement in the contract notice. Overly demanding requirements will raise transaction costs and can furthermore be an obstacle to the involvement of especially small and medium sized companies in public procurement.

Or. en

Amendment 172

Ramon Tremosa i Balcells

Proposal for a directive
Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) All the provisions of this legislation should be applied respecting the internal distribution of competences in Member States

Or. en

Amendment 173
Heide Rühle

Proposal for a directive
Recital 2

Text proposed by the Commission

Amendment

(2) Public procurement plays a key role in the Europe 2020 strategy¹² as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors¹³ and 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 contracts¹⁴ have to be revised and modernised in order to **increase** the efficiency of public spending, facilitating in particular the participation of small and medium-sized enterprises in public procurement and to enable procurers to make better use of public procurement in support of common societal goals. There is

(2) Public procurement plays a key role in the Europe 2020 strategy¹² as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors¹³ and 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 contracts¹⁴ have to be revised and modernised in order to **enable procurer to make better use of public procurement in support of sustainable development and other common societal goals, thereby increasing** the efficiency of public spending, **ensuring best value for money and** facilitating in particular the

also a need to clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

participation of small and medium-sized enterprises in public procurement and to enable procurers to make better use of public procurement in support of common societal goals. There is also a need to ***simplify the Directives and to*** clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union. ***This Directive provides legislation on how to buy. Contracting authorities may set demands that are stricter or go further than current Union legislation in order to reach the common objectives.***

Or. en

Justification

This Directive provides legislation on how to buy. Contracting authorities may set demands that are stricter or go further than current EU-Legislation in order to reach the common objectives.

Amendment 174

Anna Maria Corazza Bildt

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) Public procurement plays a key role in the Europe 2020 strategy as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors and Directive 2004/18/EC of the European Parliament

Amendment

(2) Public procurement plays a key role in the Europe 2020 strategy as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors and 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 have to be revised and modernised in order to increase the efficiency of public spending, facilitating in particular the participation of small and medium-sized enterprises in public procurement and to enable procurers to make better use of public procurement in support of common societal goals. There is also a need to clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

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 have to be revised and modernised in order to increase the efficiency of public spending, ***ensure value for money***, facilitate ***equal access and fair participation*** of small and medium-sized enterprises ***and craftsmen*** in public procurement, ***both at local and EU-wide level***, and enable procurers to make better use of public procurement in support of ***sustainable production and consumption***. There is also a need to clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

Or. en

Amendment 175 **Sirpa Pietikäinen**

Proposal for a directive **Recital 2**

Text proposed by the Commission

(2) Public procurement plays a key role in the Europe 2020 strategy¹² as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors¹³ and 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

Amendment

(2) Public procurement plays a key role in the Europe 2020 strategy¹² as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors¹³ and 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 contracts¹⁴ have to be revised and modernised in order to increase the efficiency of public spending, facilitating in particular the participation of small and medium-sized enterprises in public procurement and to enable procurers to make better use of public procurement in support of common societal goals. There is also a need to clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

supply contracts and public service contracts¹⁴ have to be revised and modernised in order to increase the efficiency of public spending, facilitating in particular the participation of small and medium-sized enterprises in public procurement and to enable procurers to make better use of public procurement in support of common societal goals **such as improvements in the area of animal welfare**. There is also a need to clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

Or. en

Amendment 176
Anna Hedh

Proposal for a directive
Recital 2

Text proposed by the Commission

(2) Public procurement plays a key role in the Europe 2020 strategy¹² as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors¹³ and 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 contracts¹⁴ have to be revised and modernised in order to increase the

Amendment

(2) Public procurement plays a key role in the Europe 2020 strategy as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors and 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 have to be revised and modernised in order to **enable procurers to**

efficiency of public spending, facilitating in particular the participation of small and medium-sized enterprises in public procurement and to enable procurers to make better use of public procurement in support of common societal goals. There is also a need to clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

make better use of public procurement in support of sustainable development compliance with social and labour rights and other common societal goals and in order thereby to increase the efficiency of public spending, ***guaranteeing the best possible result in terms of cost-effectiveness and*** facilitating in particular the participation of small and medium-sized enterprises in public procurement and to enable procurers to make better use of public procurement in support of common societal goals. There is also a need to ***simplify Union rules on public procurement, in particular as regards the method used to achieve the sustainability objectives which should be part and parcel of public procurement policy and*** clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

Or. en

Amendment 177
Heide Rühle

Proposal for a directive
Recital 3

Text proposed by the Commission

(3) The increasingly diverse forms of public action have made it necessary to define more clearly the notion of procurement itself. The Union rules on public procurement are not intended to cover all forms of disbursement of public money, but only those aimed at the acquisition of works, supplies or services for consideration. The notion of acquisition should be understood broadly in the sense of obtaining the benefits of the works, supplies or services in question, not necessarily requiring a transfer of

Amendment

(3) The increasingly diverse forms of public action have made it necessary to define more clearly the notion of procurement itself. The Union rules on public procurement are not intended to cover all forms of disbursement of public money, but only those aimed at the acquisition of works, supplies or services for consideration. The notion of acquisition should be understood broadly in the sense of obtaining the benefits of the works, supplies or services in question, not necessarily requiring a transfer of

ownership to the contracting authorities. Furthermore, the mere financing of an activity, which is frequently linked to the obligation to reimburse the amounts received where they are not used for the purposes intended, does not *usually* fall under the public procurement rules.

ownership to the contracting authorities. Furthermore, the mere financing of an activity, which is frequently linked to the obligation to reimburse the amounts received where they are not used for the purposes intended, does not fall under the public procurement rules. ***Contracts awarded to controlled entities as well as cooperation for the joint execution of public service tasks of the participating contracting authorities are not subject of the public procurement rules if the conditions set out in this Directive are fulfilled.***

Or. en

Justification

Necessary clarification along the lines of the ECJ ruling to create more legal certainty

Amendment 178

Malcolm Harbour, Edvard Kožušník, Adam Bielan

Proposal for a directive

Recital 3

Text proposed by the Commission

(3) The increasingly diverse forms of public action have made it necessary to define more clearly the notion of procurement itself. The Union rules on public procurement are not intended to cover all forms of disbursement of public money, but only those aimed at the acquisition of works, supplies or services for consideration. The notion of acquisition should be understood broadly in the sense of obtaining the benefits of the works, supplies or services in question, not necessarily requiring a transfer of ownership to the contracting authorities. Furthermore, the mere financing of an activity, which is frequently linked to the obligation to reimburse the amounts

Amendment

(3) The increasingly diverse forms of public action have made it necessary to define more clearly the notion of procurement itself. The Union rules on public procurement are not intended to cover all forms of disbursement of public money, but only those aimed at the acquisition of works, supplies or services for consideration. The notion of acquisition should be understood broadly in the sense of obtaining the benefits of the works, supplies or services in question, not necessarily requiring a transfer of ownership to the contracting authorities. Furthermore, the mere financing of an activity, which is frequently linked to the obligation to reimburse the amounts

received where they are not used for the purposes intended, does not usually fall under the public procurement rules.

received where they are not used for the purposes intended, does not usually fall under the public procurement rules. ***A body which operates in normal market conditions, aims to make a profit, and bears the losses resulting from the exercise of its activity should not be considered a body governed by public law for the purposes of this Directive.***

Or. en

Justification

Clarification on the scope of the Directive. See corresponding AM to the Article 2 definition.

Amendment 179 **Heide Rühle**

Proposal for a directive **Recital 4**

Text proposed by the Commission

(4) It has also proven necessary to clarify what should be understood as a single procurement, with the effect that the aggregate value of all contracts concluded for the purpose of this procurement has to be taken into account with regard to the thresholds of this directive, and that the procurement should be advertised as a whole, possibly split into lots. The concept of single procurement encompasses all supplies, works and services needed to carry out a particular project, for instance a works project or an entirety of works, supplies and/or services. ***Indications for the existence of one single project can for instance consist in overall prior planning and conception by the contracting authority, the fact that the different elements purchased fulfil a single economic and technical function or that they are otherwise logically interlinked and carried out in a narrow time frame.***

Amendment

(4) It has also proven necessary to clarify what should be understood as a single procurement, with the effect that the aggregate value of all contracts concluded for the purpose of this procurement has to be taken into account with regard to the thresholds of this directive, and that the procurement should be advertised as a whole, possibly split into lots. The concept of single procurement encompasses all supplies, works and services needed to carry out a particular project, for instance a works project or an entirety of works, supplies and/or services.

Justification

This notion is too vague and creates no legal security and is contrary to the idea of dividing contracts into lots.

Amendment 180

Malcolm Harbour, Edvard Kožušník

Proposal for a directive**Recital 4***Text proposed by the Commission*

(4) It has also proven necessary to clarify what should be understood as a single procurement, with the effect that the aggregate value of all contracts concluded for the purpose of this procurement has to be taken into account with regard to the thresholds of this directive, and that the procurement should be advertised as a whole, possibly split into lots. The concept of single procurement encompasses all supplies, works and services needed to carry out a particular project, for instance a works project or an entirety of works, supplies and/or services. Indications for the existence of one single project can for instance consist in overall prior planning and conception by the contracting authority, the fact that the different elements purchased fulfil a single economic and technical function or that they are otherwise logically interlinked and carried out in a narrow time frame.

Amendment

(4) The concept of single procurement encompasses all supplies, works and services needed to carry out a particular project, for instance a works project or an entirety of works, supplies and/or services. The aggregate value of all contracts concluded for the purpose of this procurement has to be taken into account with regard to the thresholds of this directive, and the procurement should be advertised as a whole, possibly split into lots.

Justification

The Commission's text can be simplified.

Amendment 181
Catherine Stihler

Proposal for a directive
Recital 4 a (new)

Text proposed by the Commission

Amendment

(4 a) Under Article 9 of the Treaty on the Functioning of the European Union, the Union must, in defining and implementing its policies and activities, take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health. This Directive contributes to attaining these objectives by encouraging socially sustainable public procurement, ensuring that social criteria are employed at all stages of the procurement procedure, and reinforcing all existing obligations at Union, national and international level relating to working conditions, social protection and public health.

Or. en

Amendment 182
Heide Rühle

Proposal for a directive
Recital 5

Text proposed by the Commission

Amendment

(5) Under Article **11** of the Treaty on the Functioning of the European Union, environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development. This Directive clarifies how the contracting authorities may contribute to the protection

(5) Under Article **9, 10 and 11** of the Treaty on the Functioning of the European Union, environmental protection requirements **and social considerations** must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development. This Directive clarifies how the contracting

of the environment and the promotion of sustainable development, whilst ensuring **that they can obtain** the best value for money for their contracts.

authorities may contribute to the protection of the environment and the promotion of sustainable development **and how they can use their discretionary power to select technical specifications and award criteria with the aim of achieving sustainable public procurement**, whilst ensuring the **link to the subject matter of the contract and obtaining** best value for money for their contracts.

Or. en

Justification

Social considerations are not enough covered by the Commission proposal

Amendment 183 **Sirpa Pietikäinen**

Proposal for a directive **Recital 5**

Text proposed by the Commission

(5) Under Article 11 of the Treaty on the Functioning of the European Union, environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development. This Directive clarifies how the contracting authorities **may** contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring that they can obtain the best value for money for their contracts.

Amendment

(5) Under Article 11 of the Treaty on the Functioning of the European Union, environmental protection requirements **and key social principles** must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development. **Article 9 of the Treaty on the Functioning of the European Union guarantees social protection and fight against social exclusion. Article 13 of the Treaty on the Functioning of the European Union recognises animals as sentient beings and requires full regard to be given to the welfare requirements of animals while formulating and enforcing some Union policies. Article 14 thereof emphasizes the role of services of general economic interest and their importance for the welfare of people.** This Directive clarifies

how the contracting authorities *shall* contribute to the **implementation of these principles and articles, to the** protection of the environment and the promotion of sustainable development, whilst ensuring that they can obtain the best value for money for their contracts.

Or. en

Amendment 184
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Recital 5

Text proposed by the Commission

(5) Under Article 11 of the Treaty on the Functioning of the European Union, environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development. This Directive clarifies how the contracting authorities *may* contribute to the protection of the environment and the **promotion** of sustainable **development**, whilst ensuring that they can obtain the best value for money for their contracts.

Amendment

(5) Under Article **9 of the Treaty on the Functioning of the European Union, the Union must take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health in defining and implementing its policies and activities.** Under Article 11 of the Treaty on the Functioning of the European Union, environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development. This Directive clarifies how the contracting authorities **should** contribute to the protection of the environment, **social protection** and **public health and safety and can use their discretionary powers to lay down technical specifications and award criteria conducive to the conclusion of socially and environmentally sustainable public contracts**, whilst **guaranteeing a link with the subject-matter of the contract and** ensuring that they can obtain the best value for money

for their contracts. *This Directive recognises in particular the right of any Member State to ratify and comply with ILO Convention No. 94.*

Or. en

Amendment 185
Barbara Weiler

Proposal for a directive
Recital 5

Text proposed by the Commission

(5) Under Article 11 of the Treaty on the Functioning of the European Union, environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, *in particular with a view to promoting* sustainable development. This Directive clarifies how the contracting authorities *may* contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring that they can obtain the best value for money for their contracts.

Amendment

(5) Under Article **9, 10 and** 11 of the Treaty on the Functioning of the European Union, environmental protection requirements *and key social principles* must be integrated into the definition and implementation of the Union policies and activities. *Under Article 3(3) of the Treaty on the European Union, the Union is also committed to contributing to* sustainable development. *Accordingly it is important to consider such principles when making procurement decisions, and in relation to all stages in the supply chain.* This Directive clarifies how the contracting authorities *have broad discretion to use technical specifications, award criteria and contract performance clauses to* contribute to the protection of the environment and the promotion of sustainable development, whilst *guaranteeing a link with the subject-matter of the contract and* ensuring that they can obtain the best value for money for their contracts.

Or. en

Amendment 186
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 5

Text proposed by the Commission

(5) Under Article 11 of the Treaty on the Functioning of the European Union, environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development. This Directive clarifies how the contracting authorities may contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring that they can obtain the best value for money for their contracts.

Amendment

(5) This Directive clarifies how the contracting authorities may contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring that they can obtain the best value for money for their contracts.

Or. en

Justification

The Commission's text can be simplified.

Amendment 187
Sirpa Pietikäinen

Proposal for a directive
Recital 5 a (new)

Text proposed by the Commission

Amendment

(5 a) The technical specifications, award criteria and contract performance conditions play separate, distinct roles in the public procurement process, and the substance of the specifications and criteria is not restricted by this categorisation. Through the technical specifications, the contracting authority defines absolute requirements for the procurement; ability to meet the technical specifications is a prerequisite for the tender to be considered and only works supplies or services which comply with the

specifications should therefore be considered. In contrast, award criteria enable the contracting authority to compare the advantages of various combinations of criteria. Each tender should be assessed against each of the criteria, but the ability to meet all the criteria is not necessarily a prerequisite for the award of a contract. Finally, the contract performance conditions should be included in the contract so that it is clear how the contract is to be performed.

Or. en

Amendment 188
Anna Hedh

Proposal for a directive
Recital 5 a (new)

Text proposed by the Commission

Amendment

(5 a) This Directive ensures the enforcement of Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses in order to ensure the respect of the rules of equal competition and the protection of workers in the context of the transfer of an undertaking. In particular the right to require employees to be taken over by the legal entity that take over the business.

Or. en

Amendment 189
Ádám Kósa

Proposal for a directive
Recital 5 a (new)

(5 a) The European Union and most Member States are party to the United Nations Convention on the Rights of Persons with Disabilities while the remaining Member States are in the process of ratifying it. It is important in the implementation of the relevant provisions of this Directive that the obligations and definitions stemming from this Convention with regard inter alia to accessibility are considered and applied.

Or. en

Amendment 190

Vicente Miguel Garcés Ramón

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) La conducta ilícita de los participantes en un procedimiento de contratación, como el intento de influir indebidamente en el proceso de toma de decisiones o de llegar a acuerdos con otros candidatos para manipular el resultado del procedimiento, puede dar lugar a infracciones de los principios básicos del Derecho de la Unión, así como a graves falseamientos de la competencia. Debe imponerse por tanto a los operadores económicos la obligación de presentar una declaración por su honor en la que declaren que no han llevado a cabo estas actividades ilícitas y se les debe excluir si se comprueba que esta declaración es falsa.

Amendment

(7) La conducta ilícita de los participantes en un procedimiento de contratación, como el intento de influir indebidamente en el proceso de toma de decisiones o de llegar a acuerdos con otros candidatos para manipular el resultado del procedimiento, ***así como cualquier acción que vulnere las normas laborales, medioambientales, sociales (especialmente en el ámbito de la integración de personas con discapacidad) y de salud pública,*** puede dar lugar a infracciones de los principios básicos del Derecho de la Unión, así como a graves falseamientos de la competencia. Debe imponerse por tanto a los operadores económicos la obligación de presentar una declaración por su honor en la que declaren que no han llevado a cabo estas actividades ilícitas y se les debe excluir si se comprueba que esta declaración es falsa.

Amendment 191
Marc Tarabella

Proposal for a directive
Recital 8 a (new)

Text proposed by the Commission

Amendment

(8 bis) Les objectifs consistant à améliorer l'accès des opérateurs économiques de l'Union aux marchés publics de certains pays tiers protégés par des mesures restrictives, et à assurer des conditions de concurrence égales sur le marché unique de l'Union, nécessitent que le traitement des travaux, fournitures et services provenant de pays tiers et non couverts par les engagements internationaux de l'Union soit harmonisé sur tout le territoire de celle-ci.

Or. fr

Amendment 192
Marc Tarabella

Proposal for a directive
Recital 8 b (new)

Text proposed by the Commission

Amendment

(8 ter) Les pouvoirs adjudicateurs excluent des procédures d'attribution de marché des travaux, fournitures et services non couverts par les engagements internationaux de l'Union. Par souci de transparence, les pouvoirs adjudicateurs qui entendent faire usage de cette compétence au titre de la présente directive pour exclure des procédures d'attribution de marchés des offres comprenant des produits et services originaires de l'extérieur de l'Union

européenne pour lesquels la valeur des travaux, fournitures et services non couverts dépasse 50 % de la valeur totale de ces produits et services, devraient en informer les opérateurs économiques.

Or. fr

Amendment 193
Malcolm Harbour

Proposal for a directive
Recital 9 a (new)

Text proposed by the Commission

Amendment

(9 a) The objectives of improving the access of Union economic operators to the public procurement markets of certain third countries protected by restrictive procurement measures and preserving equal conditions of competition within the Union Single Market require that the treatment of third-country goods and services not covered by the international commitments of the Union be harmonised throughout the Union. The Commission should assess whether to approve that contracting authorities exclude, for contracts with an estimated value equal or above EUR 5.000.000, from procedures for the award of contracts for supplies and services not covered by the international commitments which the Union is a party to.

Or. en

Amendment 194
Malcolm Harbour

Proposal for a directive
Recital 9 b (new)

(9 b) To ensure transparency, contracting authorities intending to make use of their power to exclude tenders comprising supplies and/or services originating from outside the European Union, for which the value of the non-covered supplies or services exceeds 50 % of the total value of these supplies or services from procedures for the award of contracts, should inform economic operators thereof in the contract notice published in the Official Journal of the European Union. The Commission should approve the intended exclusion if the international agreement concerning market access in the field of public procurement between the Union and the country where the supplies and/or services originate contains, for the supplies and/or services for which the exclusion is proposed, explicit market access reservations taken by the Union. Where such an agreement does not exist, the Commission should approve the exclusion where the third country maintains restrictive procurement measures leading to a lack of substantial reciprocity in market opening between the Union and the third country concerned for goods, services and economic operators.

Or. en

Amendment 195
Birgit Collin-Langen, Hans-Peter Mayer

Proposal for a directive
Recital 10 a (new)

(10 a) Von der Richtlinie sollte die Tätigkeit öffentlicher Amtsträger ausgenommen werden, die gesetzlich zu

Unabhängigkeit und Unparteilichkeit verpflichtet sind. Deren Auswahl sollte in einer Art und Weise erfolgen, die sich nicht nach Vergabevorschriften für öffentliche Aufträge richten kann.

Or. de

Amendment 196
Andreas Schwab

Proposal for a directive
Recital 10 a (new)

Text proposed by the Commission

Amendment

(10 a) Vom Anwendungsbereich der Richtlinie sind hingegen Dienstleistungsaufträge im Bereich des Zivil- und Katastrophenschutzes sowie der alltäglichen Gefahrenabwehr auszunehmen. Hierunter fällt insbesondere die Notfallrettung, sie ist Bestandteil der alltäglichen Gefahrenabwehr und vom Krankentransport abzugrenzen. Zur Gewährleistung eines erfolgreichen Zivil- und Katastrophenschutzes im Rahmen der alltäglichen Gefahrenabwehr im Interesse des Bürgers sollte die Anwendung primärrechtlicher Grundsätze ausreichend sein.

Or. de

Amendment 197
Heide Rühle

Proposal for a directive
Recital 10

Text proposed by the Commission

Amendment

(10) The results of the Evaluation on the Impact and Effectiveness of EU Public

deleted

Procurement Legislation¹⁶ demonstrated that the exclusion of certain services from the full application of the Directive should be reviewed. As a result, the full application of this directive is extended to a number of services (such as hotel and legal services, which both showed a particularly high percentage of cross-border trade).

Or. en

Justification

This statement is too onesided it takes not even the Parliaments statement on the Green Paper into consideration

Amendment 198
Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive
Recital 10

Text proposed by the Commission

Amendment

(10) Die Ergebnisse der Bewertung der Auswirkungen und der Effektivität der EU-Vorschriften für die öffentliche Auftragsvergabe¹⁶ hat gezeigt, dass der Ausschluss bestimmter Dienstleistungen von der vollständigen Anwendung der Richtlinie überprüft werden sollte. Vor diesem Hintergrund wird die vollständige Anwendung dieser Richtlinie auf eine Reihe weiterer Dienstleistungen (wie Hotel- und Rechtsdienstleistungen, die beide einen besonders hohen Prozentsatz an grenzüberschreitenden Geschäften aufweisen) ausgeweitet.

entfällt

Or. de

Amendment 199
Frank Engel, Andreas Schwab

Proposal for a directive
Recital 10

Text proposed by the Commission

Amendment

(10) The results of the Evaluation on the Impact and Effectiveness of EU Public Procurement Legislation¹⁶ demonstrated that the exclusion of certain services from the full application of the Directive should be reviewed. As a result, the full application of this directive is extended to a number of services (such as hotel and legal services, which both showed a particularly high percentage of cross-border trade).

deleted

Or. en

Amendment 200
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 10

Text proposed by the Commission

Amendment

(10) The results of the Evaluation on the Impact and Effectiveness of EU Public Procurement Legislation¹⁶ demonstrated that the exclusion of certain services from the full application of the Directive should be reviewed. As a result, the full application of this directive is extended to a number of services (such as hotel and legal services, which both showed a particularly high percentage of cross-border trade).

deleted

Or. en

Amendment 201
Cornelis de Jong

Proposal for a directive
Recital 10

Text proposed by the Commission

(10) The results of the Evaluation on the Impact and Effectiveness of EU Public Procurement Legislation¹⁶ demonstrated that the exclusion of certain services from the full application of the Directive should be reviewed. As a result, the full application of this directive is extended to a number of services (*such as hotel and legal services, which both showed a particularly high percentage of cross-border trade*).

Amendment

(10) The results of the Evaluation on the Impact and Effectiveness of EU Public Procurement Legislation¹⁶ demonstrated that the exclusion of certain services from the full application of the Directive should be reviewed. As a result, the full application of this directive is extended to a number of services.

Or. en

Amendment 202
Marc Tarabella

Proposal for a directive
Recital 10

Text proposed by the Commission

(10) Les résultats de l'évaluation de l'incidence et de l'efficacité de la législation de l'UE sur les marchés publics¹⁶ ont démontré qu'il faudrait réexaminer l'exclusion de certains services de l'application intégrale de la directive. L'application intégrale de la présente directive est par conséquent étendue à un certain nombre de services (*tels que les services hôteliers et juridiques, pour lesquels le pourcentage d'activité transfrontière est apparu particulièrement élevé*).

Amendment

(10) Les résultats de l'évaluation de l'incidence et de l'efficacité de la législation de l'UE sur les marchés publics¹⁶ ont démontré qu'il faudrait réexaminer l'exclusion de certains services de l'application intégrale de la directive. L'application intégrale de la présente directive est par conséquent étendue à un certain nombre de services *à l'exception des services juridiques et de protection sociale obligatoire. Cependant, la présente directive ne préjuge pas de la prérogative des pouvoirs adjudicateurs dans la gestion des services sociaux*.

Or. fr

Amendment 203
Frank Engel, Andreas Schwab

Proposal for a directive
Recital 11

Text proposed by the Commission

Amendment

(11) Other categories of services continue by their very nature to have a limited cross-border dimension, namely what are known as services to the person, such as certain social, health and educational services. These services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for public contracts for these services, with a higher threshold of EUR 500 000. Services to the person with values below this threshold will typically not be of interest to providers from other Member States, unless there are concrete indications to the contrary, such as Union financing for transborder projects. Contracts for services to the person above this threshold should be subject to Union-wide transparency. Given the importance of the cultural context and the sensitivity of these services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this directive take account of that imperative, imposing only observance of basic principles of transparency and equal treatment and making sure that contracting authorities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee¹⁷. Member States and/or public authorities remain free to provide these services themselves or to organise social services in a way that does not entail the conclusion of public contracts,

deleted

for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting authority, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

Or. en

Amendment 204
Heide Rühle

Proposal for a directive
Recital 11

Text proposed by the Commission

(11) **Other** categories of services continue by their very nature to have a limited cross-border dimension, namely what are known as services to the person, such as certain social, health and educational services. These services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for public contracts for these services, with a higher threshold of EUR 500 000. Services to the person with values below this threshold will typically not be of interest to providers from other Member States, unless there are concrete indications to the contrary, such as Union financing for transborder projects. Contracts for services to the person above this threshold should be subject to Union-wide transparency. Given the importance of the cultural context and the sensitivity of these services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this directive take account of

Amendment

(11) **Some** categories of services continue by their very nature to have a limited cross-border dimension, namely what are known as services to the person, such as certain social, health and educational services. These services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for public contracts for these services, with a higher threshold of EUR 500 000. Services to the person with values below this threshold will typically not be of interest to providers from other Member States, unless there are concrete indications to the contrary, such as Union financing for transborder projects. Contracts for services to the person above this threshold should be subject to Union-wide transparency. Given the importance of the cultural context and the sensitivity of these services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this directive take account of

that imperative, imposing only observance of basic principles of transparency and equal treatment and making sure that contracting authorities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee¹⁷. Member States and/or public authorities remain free to provide these services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting authority, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

that imperative, imposing only observance of basic principles of transparency and equal treatment and making sure that contracting authorities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee¹⁷. Member States and/or public authorities remain free to provide these services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting authority, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination. ***This Directive does not apply to tried and tested procedures in Member States that are based on the users free choice of service providers for services of general interest (i.e. voucher system, free choice model, triangular relationship) provided that account is taken of the general Treaty principles of equal treatment, transparency and non-discrimination.***

Or. en

Justification

A clarification about some models in Member States to deliver Social Services of General Interest.

Amendment 205

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive

Recital 11

(11) Andere Dienstleistungskategorien haben aufgrund ihrer Natur nach wie vor lediglich eine begrenzte grenzüberschreitende Dimension, insbesondere die sogenannten personenbezogenen Dienstleistungen, wie etwa bestimmte Dienstleistungen im Sozial-, im Gesundheits- und im Bildungsbereich. Diese Dienstleistungen werden in einem spezifischen Kontext erbracht, der sich, bedingt durch unterschiedliche kulturelle Traditionen, in den einzelnen Mitgliedstaaten höchst unterschiedlich darstellt. Daher sollten für öffentliche Aufträge, die derartige Dienstleistungen zum Gegenstand haben, eine besondere Regelung und ein höherer Schwellenwert von **500 000** EUR gelten. Bei einem darunter liegenden Auftragswert dürfte in der Regel davon auszugehen sein, dass die Erbringung personenbezogener Dienstleistungen für Dienstleister aus anderen Mitgliedstaaten nicht von Interesse ist, sofern nicht konkrete Anhaltspunkte vorliegen, die das Gegenteil vermuten lassen, wie etwa eine Finanzierung grenzüberschreitender Projekte durch die Union. Aufträge zur Erbringung personenbezogener Dienstleistungen oberhalb dieses Schwellenwerts sollten unionsweiten Transparenzvorschriften unterliegen. Angesichts der Bedeutung des kulturellen Kontexts und angesichts des sensiblen Charakters dieser Dienstleistungen sollte den Mitgliedstaaten ein weiter Ermessensspielraum eingeräumt werden, damit sie die Auswahl der Dienstleister in einer Weise organisieren können, die sie für am besten geeignet erachten. Die Vorschriften dieser Richtlinie tragen diesem Erfordernis Rechnung, indem sie lediglich die Einhaltung von Grundprinzipien der Transparenz und der Gleichbehandlung verlangen und sicherstellen, dass die öffentlichen Auftraggeber spezifische Qualitätskriterien

(11) Andere Dienstleistungskategorien haben aufgrund ihrer Natur nach wie vor lediglich eine begrenzte grenzüberschreitende Dimension, insbesondere die sogenannten personenbezogenen Dienstleistungen, wie etwa bestimmte Dienstleistungen im Sozial-, im Gesundheits- und im Bildungsbereich. Diese Dienstleistungen werden in einem spezifischen Kontext erbracht, der sich, bedingt durch unterschiedliche kulturelle Traditionen, in den einzelnen Mitgliedstaaten höchst unterschiedlich darstellt. Daher sollten für öffentliche Aufträge, die derartige Dienstleistungen zum Gegenstand haben, eine besondere Regelung und ein höherer Schwellenwert von **1 000 000** EUR gelten. Bei einem darunter liegenden Auftragswert dürfte in der Regel davon auszugehen sein, dass die Erbringung personenbezogener Dienstleistungen für Dienstleister aus anderen Mitgliedstaaten nicht von Interesse ist, sofern nicht konkrete Anhaltspunkte vorliegen, die das Gegenteil vermuten lassen, wie etwa eine Finanzierung grenzüberschreitender Projekte durch die Union. Aufträge zur Erbringung personenbezogener Dienstleistungen oberhalb dieses Schwellenwerts sollten unionsweiten Transparenzvorschriften unterliegen. Angesichts der Bedeutung des kulturellen Kontexts und angesichts des sensiblen Charakters dieser Dienstleistungen sollte den Mitgliedstaaten ein weiter Ermessensspielraum eingeräumt werden, damit sie die Auswahl der Dienstleister in einer Weise organisieren können, die sie für am besten geeignet erachten. ***Insbesondere sollten solche Verfahren als primärrechtskonforme Alternative zum öffentlichen Auftragsrecht anerkannt werden, wenn diese Verfahren darauf basieren, dass alle Dienstleistungserbringer, die in der Lage sind, die vorab gesetzlich festgelegten***

für die Auswahl von Dienstleistern anzuwenden können, wie etwa die Kriterien, die in dem vom Ausschuss für Sozialschutz der Europäischen Union definierten Europäischen Qualitätsrahmen für Sozialdienstleistungen¹⁷ festgelegt wurden. Den Mitgliedstaaten und/oder Behörden steht es auch künftig frei, diese Dienstleistungen selbst zu erbringen oder soziale Dienstleistungen in einer Weise zu organisieren, die nicht mit der Vergabe öffentlicher Aufträge verbunden ist, beispielsweise durch die bloße Finanzierung solcher Dienstleistungen oder durch Erteilung von Lizenzen oder Genehmigungen – ohne Beschränkungen oder Festsetzung von Quoten – für alle Wirtschaftsteilnehmer, die die vom öffentlichen Auftraggeber vorab festgelegten Kriterien erfüllen; Voraussetzung ist, dass ein solches System eine ausreichende Bekanntmachung gewährleistet und den Grundsätzen der Transparenz und Nichtdiskriminierung genügt.

Bedingungen zu erfüllen, unabhängig von ihrer Rechtsform zur Leistungserbringung zugelassen werden, vorausgesetzt, dass dabei den allgemeinen Grundsätzen der Gleichbehandlung, der Transparenz und der Nichtdiskriminierung Rechnung getragen wird. Die Vorschriften dieser Richtlinie tragen diesem Erfordernis Rechnung, indem sie lediglich die Einhaltung von Grundprinzipien der Transparenz und der Gleichbehandlung verlangen und sicherstellen, dass die öffentlichen Auftraggeber spezifische Qualitätskriterien für die Auswahl von Dienstleistern anzuwenden können, wie etwa die Kriterien, die in dem vom Ausschuss für Sozialschutz der Europäischen Union definierten Europäischen Qualitätsrahmen für Sozialdienstleistungen¹⁷ festgelegt wurden. Den Mitgliedstaaten und/oder Behörden steht es auch künftig frei, diese Dienstleistungen selbst zu erbringen oder soziale Dienstleistungen in einer Weise zu organisieren, die nicht mit der Vergabe öffentlicher Aufträge verbunden ist, beispielsweise durch die bloße Finanzierung solcher Dienstleistungen oder durch Erteilung von Lizenzen oder Genehmigungen – ohne Beschränkungen oder Festsetzung von Quoten – für alle Wirtschaftsteilnehmer, die die vom öffentlichen Auftraggeber vorab festgelegten Kriterien erfüllen; Voraussetzung ist, dass ein solches System eine ausreichende Bekanntmachung gewährleistet und den Grundsätzen der Transparenz und Nichtdiskriminierung genügt.

Or. de

Justification

Klarstellung, dass es den Mitgliedstaaten auch weiterhin möglich sein sollte, soziale Dienstleistungen in einer Weise zu organisieren, die nicht auf der Vergabe öffentlicher Aufträge basiert.

Amendment 206
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Recital 11

Text proposed by the Commission

(11) Other categories of services continue by their very nature to have a limited cross-border dimension, namely what are known as services to the person, such as certain social, health and educational services. These services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for public contracts for these services, with a higher threshold of EUR **500 000**. Services to the person with values below this threshold will typically not be of interest to providers from other Member States, unless there are concrete indications to the contrary, such as Union financing for transborder projects. Contracts for services to the person above this threshold should be subject to Union-wide transparency. Given the importance of the cultural context and the sensitivity of these services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this directive take account of that imperative, imposing only observance of basic principles of transparency and equal treatment and making sure that contracting authorities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee¹⁷. Member States and/or public authorities remain free to provide these services themselves or to organise social services in a way that does not entail the

Amendment

(11) Other categories of services continue by their very nature to have a limited cross-border dimension, namely what are known as services to the person, such as certain social, health and educational services. These services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for public contracts for these services, with a higher threshold of EUR **1 000 000**. Services to the person with values below this threshold will typically not be of interest to providers from other Member States, unless there are concrete indications to the contrary, such as Union financing for transborder projects. Contracts for services to the person above this threshold should be subject to Union-wide transparency. Given the importance of the cultural context and the sensitivity of these services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this directive take account of that imperative, imposing only observance of basic principles of transparency and equal treatment and making sure that contracting authorities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee¹⁷. Member States and/or public authorities remain free to provide these services themselves or to organise social services in a way that does not entail the

conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting authority, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting authority, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

Or. en

Amendment 207

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Recital 11

Text proposed by the Commission

(11) **Other** categories of services continue by their very nature to have a limited cross-border dimension, **namely** what are known as services to the person, such as certain social, health and educational services. These services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for public contracts for these services, with a higher threshold of EUR **500 000**. Services to the person with values below this threshold will typically not be of interest to providers from other Member States, unless there are concrete indications to the contrary, such as Union financing for transborder projects. Contracts for services to the person above this threshold should be subject to Union-wide transparency. Given the importance of the cultural context and the sensitivity of these services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this directive take account of

Amendment

(11) ***The results of the Evaluation on the Impact and Effectiveness of EU Public Procurement Legislation¹⁶ demonstrated that the exclusion of certain services from the full application of the Directive should be reviewed. Some*** categories of services continue by their very nature to have a limited cross-border dimension, ***for example*** what are known as services to the person, such as certain social, health and educational services. These services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for public contracts for these services, with a higher threshold of EUR **1 000 000**. Services to the person with values below this threshold will typically not be of interest to providers from other Member States, unless there are concrete indications to the contrary, such as Union financing for transborder projects. Contracts for services to the person above this threshold should be subject to Union-wide transparency. Given the importance of the cultural

that imperative, imposing only observance of basic principles of transparency and equal treatment and making sure that contracting authorities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee¹⁷. Member States and/or public authorities remain free to provide these services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting authority, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

context and the sensitivity of these services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this directive take account of that imperative, imposing only observance of basic principles of transparency and equal treatment and making sure that contracting authorities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee¹⁷. Member States and/or public authorities remain free to provide these services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting authority, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

¹⁶ *SEC(2011) 853 final, 27.6.2011*

Or. en

Justification

In line with the general approach of simplifying the Directives, it would not be appropriate, at this time, to subject other categories of services to the full application of the Directives. These services should, however, be subject to the specific regime for social and other specific services and the results of the application of this regime should be reviewed (by the Commission) within three years of the date when this Directive is implemented by Member States.

Amendment 208
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 13

Text proposed by the Commission

(13) Being addressed to Member States, this directive does not apply to procurement carried out by international organisations on their own behalf and for their own account. There is, however, a need to clarify to what extent this directive should be applied to procurement governed by specific international rules.

Amendment

(13) Being addressed to Member States, this directive does not apply to procurement carried out by international organisations on their own behalf and for their own account. There is, however, a need to clarify to what extent this directive should be applied to procurement governed by specific international rules. ***The Union institutions should, in particular, take into account the changes effected by this Directive and adjust their own procurement rules accordingly to reflect these changes.***

Or. en

Justification

Many EU enterprises, in particular SMEs, have built their business around procurements of the EU institutions. The Financial Regulation should take on board the changes brought about by this modernisation exercise to ensure a level playing field.

Amendment 209
Heide Rühle

Proposal for a directive
Recital 14

Text proposed by the Commission

(14) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by public procurement rules. The relevant case-law of the Court of Justice of the European Union is interpreted divergently between Member States and even between contracting authorities. It is therefore necessary to clarify in what cases contracts concluded between

Amendment

deleted

contracting authorities are not subject to the application of public procurement rules. Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. The sole fact that both parties to an agreement are themselves contracting authorities does not as such rule out the application of procurement rules. However, the application of public procurement rules should not interfere with the freedom of public authorities to decide how to organise the way they carry out their public service tasks. Contracts awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities should therefore be exempted from the application of the rules if the conditions set out in this directive are fulfilled. This directive should aim to ensure that any exempted public-public cooperation does not cause a distortion of competition in relation to private economic operators. Neither should the participation of a contracting authority as a tenderer in a procedure for the award of a public contract cause any distortion of competition.

Or. en

Justification

public-public cooperation does - under certain conditions - not fall under the Procurement regime as the ECJ has several times clearly stated.

Amendment 210
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Recital 14

Text proposed by the Commission

Amendment

(14) There is considerable legal uncertainty

(14) There is considerable legal uncertainty

as to how far cooperation between public authorities should be covered by public procurement rules. The relevant case-law of the Court of Justice of the European Union is interpreted divergently between Member States and even between contracting authorities. It is therefore necessary to clarify in what cases contracts concluded between contracting authorities are not subject to the application of public procurement rules. Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. ***The sole fact that both parties to an agreement are themselves contracting authorities does not as such rule out the application of procurement rules.*** However, the application of public procurement rules should not interfere with the freedom of public authorities to decide how to organise the way they carry out their public service tasks. Contracts awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities should therefore be exempted from the application of the rules if the conditions set out in this directive are fulfilled. ***This directive should aim to ensure that any exempted public-public cooperation does not cause a distortion of competition in relation to private economic operators. Neither should the participation of a contracting authority as a tenderer in a procedure for the award of a public contract cause any distortion of competition.***

as to how far cooperation between public authorities should be covered by public procurement rules. The relevant case-law of the Court of Justice of the European Union is interpreted divergently between Member States and even between contracting authorities. It is therefore necessary to clarify in what cases contracts concluded between contracting authorities are not subject to the application of public procurement rules. Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. However, the application of public procurement rules should not interfere with the freedom of public authorities to decide how to organise the way they carry out their public service tasks. ***In particular, this Directive is without prejudice to the right of public authorities at all levels to decide whether, how and to what extent they want to perform public functions themselves.*** Contracts awarded to controlled entities or ***social business, as defined in the Commission communication of 25 October 2011 entitled 'Social Business Initiative',*** or cooperation for the joint execution of the public service tasks of the participating contracting authorities should therefore be exempted from the application of the rules if the conditions set out in this directive are fulfilled.

Or. en

Amendment 211
Philippe Juvin

Proposal for a directive
Recital 14

(14) D'importantes incertitudes juridiques subsistent en ce qui concerne l'applicabilité des règles sur les marchés publics à la coopération entre pouvoirs publics. La jurisprudence applicable de la Cour de justice de l'Union européenne fait l'objet d'interprétations divergentes entre États membres et même entre pouvoirs adjudicateurs. Il est dès lors nécessaire de préciser dans quels cas les marchés conclus entre pouvoirs adjudicateurs ne sont pas soumis à l'application des règles relatives aux marchés publics. Ces précisions devraient s'appuyer sur les principes énoncés dans la jurisprudence pertinente de la Cour de justice. La seule circonstance que les deux parties à un accord sont elles-mêmes des pouvoirs adjudicateurs n'exclut pas en soi l'application des règles relatives aux marchés publics. L'application de ces règles ne *devrait toutefois* pas interférer avec *la liberté* des pouvoirs publics de décider de la manière dont ils organisent l'exercice de leurs missions de service public. Les marchés attribués à des entités contrôlées, *ou la coopération en vue de l'exécution conjointe des missions de service public des pouvoirs adjudicateurs participants* devraient par conséquent être exemptés de l'application des règles si les conditions définies dans la présente directive sont remplies. La présente directive devrait viser à ce qu'aucune coopération public-public ainsi exemptée ne fausse la concurrence à l'égard des opérateurs économiques privés. La participation d'un pouvoir adjudicateur à une procédure d'attribution de marché public en qualité de soumissionnaire ne devrait pas davantage entraîner de distorsion de la concurrence.

(14) D'importantes incertitudes juridiques subsistent en ce qui concerne l'applicabilité des règles sur les marchés publics à la coopération entre pouvoirs publics. La jurisprudence applicable de la Cour de justice de l'Union européenne fait l'objet d'interprétations divergentes entre États membres et même entre pouvoirs adjudicateurs. Il est dès lors nécessaire de préciser dans quels cas les marchés conclus entre pouvoirs adjudicateurs ne sont pas soumis à l'application des règles relatives aux marchés publics. Ces précisions devraient s'appuyer sur les principes énoncés dans la jurisprudence pertinente de la Cour de justice. La seule circonstance que les deux parties à un accord sont elles-mêmes des pouvoirs adjudicateurs n'exclut pas en soi l'application des règles relatives aux marchés publics. L'application de ces règles ne *doit* pas interférer avec *le droit* des pouvoirs publics de décider *librement* de la manière dont ils organisent l'exercice de leurs missions de service public. Les marchés attribués à des entités contrôlées devraient par conséquent être exemptés de l'application des règles si les conditions définies dans la présente directive sont remplies. La présente directive devrait viser à ce qu'aucune coopération public-public ainsi exemptée ne fausse la concurrence à l'égard des opérateurs économiques privés. La participation d'un pouvoir adjudicateur à une procédure d'attribution de marché public en qualité de soumissionnaire ne devrait pas davantage entraîner de distorsion de la concurrence.

Or. fr

Justification

Renforcement du Considérant. La question de la coopération entre pouvoirs publics pour réaliser conjointement une mission de service public fait l'objet d'un considérant séparé nouveau.

Amendment 212

Cristian Silviu Buşoi

Proposal for a directive

Recital 14

Text proposed by the Commission

(14) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by public procurement rules. The relevant case-law of the Court of Justice of the European Union is interpreted divergently between Member States and even between contracting authorities. It is therefore necessary to clarify in what cases contracts concluded between contracting authorities are not subject to the application of public procurement rules. Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. The sole fact that both parties to an agreement are themselves contracting authorities does not as such rule out the application of procurement rules. However, the application of public procurement rules should not interfere with the freedom of public authorities to decide how to organise the way they carry out their public service tasks. Contracts awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities should therefore be exempted from the application of the rules if the conditions set out in this directive are fulfilled. This directive should aim to ensure that any exempted public-public cooperation does not cause a distortion of competition in relation to private economic operators.

Amendment

(14) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by public procurement rules. The relevant case-law of the Court of Justice of the European Union is interpreted divergently between Member States and even between contracting authorities. It is therefore necessary to clarify in what cases contracts concluded between contracting authorities are not subject to the application of public procurement rules. Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. The sole fact that both parties to an agreement are themselves contracting authorities does not as such rule out the application of procurement rules. However, the application of public procurement rules should not interfere with the freedom of public authorities to decide how to organise the way they carry out their public service tasks. Contracts awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities should therefore be exempted from the application of the rules if the conditions set out in this directive are fulfilled. This directive should aim to ensure that any exempted public-public cooperation does not cause a distortion of competition in relation to private economic operators.

Neither should the participation of a contracting authority as a tenderer in a procedure for the award of a public contract cause any distortion of competition.

Neither should the participation of a contracting authority as a tenderer in a procedure for the award of a public contract cause any distortion of competition. *To achieve this, the conditions for the exclusion of contracts from the scope of this directive should be narrowly construed. In case any of the cumulative conditions for an exemption from the scope is not fulfilled any more during the term of a contract or cooperation that has been excluded from the procurement rules, that ongoing contract or cooperation has to be opened to competition through regular procurement procedures.*

Or. en

Amendment 213
Jürgen Creutzmann

Proposal for a directive
Recital 14

Text proposed by the Commission

(14) Es besteht erhebliche Rechtsunsicherheit darüber, inwieweit die Vorschriften für die öffentliche Auftragsvergabe auch für die Zusammenarbeit zwischen öffentlichen Stellen gelten. Die einschlägige Rechtsprechung des Gerichtshofs der Europäischen Union wird nicht nur von den einzelnen Mitgliedstaaten, sondern auch von den einzelnen öffentlichen Auftraggebern unterschiedlich ausgelegt. Daher gilt es klarzustellen, in welchen Fällen die zwischen öffentlichen Auftraggebern geschlossenen Verträge von der Anwendung der Vorschriften für die öffentliche Auftragsvergabe ausgenommen sind. Dabei sollte man sich von den Grundsätzen leiten lassen, die in der einschlägigen Rechtsprechung des Gerichtshofs dargelegt wurden. Der

Amendment

(14) Es besteht erhebliche Rechtsunsicherheit darüber, inwieweit die Vorschriften für die öffentliche Auftragsvergabe auch für die Zusammenarbeit zwischen öffentlichen Stellen gelten. Die einschlägige Rechtsprechung des Gerichtshofs der Europäischen Union wird nicht nur von den einzelnen Mitgliedstaaten, sondern auch von den einzelnen öffentlichen Auftraggebern unterschiedlich ausgelegt. Daher gilt es klarzustellen, in welchen Fällen die zwischen öffentlichen Auftraggebern geschlossenen Verträge von der Anwendung der Vorschriften für die öffentliche Auftragsvergabe ausgenommen sind. Dabei sollte man sich von den Grundsätzen leiten lassen, die in der einschlägigen Rechtsprechung des Gerichtshofs dargelegt wurden. Der

Umstand, dass beide Parteien einer Vereinbarung selbst öffentliche Auftraggeber sind, reicht allein nicht aus, um die Anwendung der Vergabevorschriften auszuschließen. Die Anwendung der Vorschriften für die öffentliche Auftragsvergabe sollte öffentliche Stellen jedoch nicht in ihrer Freiheit beschränken, selbst zu entscheiden, wie sie die Wahrnehmung ihrer öffentlichen Aufgaben organisieren. Die Vergabe von Aufträgen an von ihnen kontrollierte Unternehmen oder eine Zusammenarbeit zum Zweck der gemeinsamen Wahrnehmung öffentlicher Aufgaben der beteiligten öffentlichen Auftraggeber sollten daher von der Anwendung der einschlägigen Vorschriften ausgenommen werden, sofern die in dieser Richtlinie genannten Bedingungen erfüllt sind. Mit dieser Richtlinie sollte sichergestellt werden, dass eine von ihrem Anwendungsbereich ausgenommene öffentlich-öffentliche Zusammenarbeit keine Wettbewerbsverzerrung im Verhältnis zu privaten Wirtschaftsteilnehmern zur Folge hat. Genauso wenig sollte die Teilnahme eines öffentlichen Auftraggebers als Bieter an einem Vergabeverfahren eine Wettbewerbsverzerrung zu Folge haben.

Umstand, dass beide Parteien einer Vereinbarung selbst öffentliche Auftraggeber sind, reicht allein nicht aus, um die Anwendung der Vergabevorschriften auszuschließen. Die Anwendung der Vorschriften für die öffentliche Auftragsvergabe sollte öffentliche Stellen jedoch nicht in ihrer Freiheit beschränken, selbst zu entscheiden, wie sie die Wahrnehmung ihrer öffentlichen Aufgaben organisieren. Die Vergabe von Aufträgen an von ihnen kontrollierte Unternehmen oder eine Zusammenarbeit zum Zweck der gemeinsamen Wahrnehmung öffentlicher Aufgaben der beteiligten öffentlichen Auftraggeber sollten daher von der Anwendung der einschlägigen Vorschriften ausgenommen werden, sofern die in dieser Richtlinie genannten Bedingungen erfüllt sind. ***Vom Anwendungsbereich dieser Kriterien unberührt bleiben Kooperationen zwischen öffentlich-rechtlichen Rundfunkanstalten sowie zwischen öffentlich-rechtlichen Rundfunkanstalten und ihren Töchterunternehmen, sofern sie den spezifischen Europäischen Wettbewerbsvorschriften unterliegen, um Wettbewerbsverzerrungen auszuschließen.*** Mit dieser Richtlinie sollte sichergestellt werden, dass eine von ihrem Anwendungsbereich ausgenommene öffentlich-öffentliche Zusammenarbeit keine Wettbewerbsverzerrung im Verhältnis zu privaten Wirtschaftsteilnehmern zur Folge hat. Genauso wenig sollte die Teilnahme eines öffentlichen Auftraggebers als Bieter an einem Vergabeverfahren eine Wettbewerbsverzerrung zu Folge haben.

Or. de

Amendment 214
Marc Tarabella

Proposal for a directive
Recital 14

Text proposed by the Commission

(14) D'importantes incertitudes juridiques subsistent en ce qui concerne l'applicabilité des règles sur les marchés publics à la coopération entre pouvoirs publics. La jurisprudence applicable de la Cour de justice de l'Union européenne fait l'objet d'interprétations divergentes entre États membres et même entre pouvoirs adjudicateurs. Il est dès lors nécessaire de préciser dans quels cas les marchés conclus entre pouvoirs adjudicateurs ne sont pas soumis à l'application des règles relatives aux marchés publics. Ces précisions devraient s'appuyer sur les principes énoncés dans la jurisprudence pertinente de la Cour de justice. La seule circonstance que les deux parties à un accord sont elles-mêmes des pouvoirs adjudicateurs n'exclut pas en soi l'application des règles relatives aux marchés publics. L'application de ces règles ne devrait toutefois pas interférer avec la liberté des pouvoirs publics de décider de la manière dont ils organisent l'exercice de leurs missions de service public. ***Les marchés attribués à des entités contrôlées, ou la coopération en vue de l'exécution conjointe des missions de service public des pouvoirs adjudicateurs participants devraient par conséquent être exemptés de l'application des règles si les conditions définies dans la présente directive sont remplies.*** La présente directive devrait viser à ce qu'aucune coopération public-public ainsi exemptée ne fausse la concurrence à l'égard des opérateurs économiques privés. La participation d'un pouvoir adjudicateur à une procédure d'attribution de marché public en qualité de soumissionnaire ne devrait pas davantage entraîner de distorsion de la concurrence.

Amendment

(14) D'importantes incertitudes juridiques subsistent en ce qui concerne l'applicabilité des règles sur les marchés publics à la coopération entre pouvoirs publics. La jurisprudence applicable de la Cour de justice de l'Union européenne fait l'objet d'interprétations divergentes entre États membres et même entre pouvoirs adjudicateurs. Il est dès lors nécessaire de préciser dans quels cas les marchés conclus entre pouvoirs adjudicateurs ne sont pas soumis à l'application des règles relatives aux marchés publics. Ces précisions devraient s'appuyer sur les principes énoncés dans la jurisprudence pertinente de la Cour de justice. La seule circonstance que les deux parties à un accord sont elles-mêmes des pouvoirs adjudicateurs n'exclut pas en soi l'application des règles relatives aux marchés publics. L'application de ces règles ne devrait toutefois pas interférer avec la liberté des pouvoirs publics de décider de la manière dont ils organisent l'exercice de leurs missions de service public. La présente directive devrait viser à ce qu'aucune coopération public-public ainsi exemptée ne fausse la concurrence à l'égard des opérateurs économiques privés. La participation d'un pouvoir adjudicateur à une procédure d'attribution de marché public en qualité de soumissionnaire ne devrait pas davantage entraîner de distorsion de la concurrence.

Or. fr

Amendment 215
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 14 a (new)

Text proposed by the Commission

Amendment

(14 a) In order to make procedures faster and more efficient, time limits for participation in procurement procedures should be kept as short as possible without creating undue barriers to access for economic operators from across the Internal Market, in particular SMEs. When fixing the time limits for the receipt of tenders and requests to participate, contracting authorities should accordingly take into account the complexity of the contract and the time required for drawing up tenders in particular, even if this would entail setting time limits that are longer than the minima provided for under this Directive. Use of electronic means of information and communication, in particular full electronic availability of procurement documents and electronic transmission of communications does, on the other hand, lead to increased transparency and time savings. Therefore, provision should be made for reducing the minimum periods in line with the rules set by the WTO Government Procurement Agreement and subject to the condition that they are compatible with the specific mode of transmission envisaged at Union level. Furthermore, contracting authorities should have the opportunity to further shorten the time limits for receipt of requests to participate and tender submissions, in cases where a state of urgency renders the normal time limits impracticable, although running a procedure with publication is still possible. Only those situations where extreme urgency brought about by

unforeseeable events - and which are not attributable to the contracting authority - should be considered as exceptional, and only these situations would make it impossible to conduct a regular procedure even with shortened time limits. In such cases, contracting authorities should, wherever possible, award contracts though use of the negotiated procedure without prior publication. This may be the case where natural or man-made disasters require immediate action.

Or. en

Justification

These are necessary clarifications on exceptions to the normal tendering timeframes, in view of ensuring speed and efficiency in rolling out public procurement.

Amendment 216
Philippe Juvin

Proposal for a directive
Recital 14 bis (new)

Text proposed by the Commission

Amendment

(14 bis) La coopération entre pouvoirs publics locaux, ou entre pouvoirs publics locaux et groupements composés exclusivement de pouvoirs publics locaux, visant à effectuer conjointement des missions de services publics dans un but d'intérêt public dans le cadre de l'organisation interne des États membres, devrait être exemptée de l'application des règles de la présente directive. De même, les transferts de compétences relatifs à des missions de services publics entraînant un transfert global de responsabilité entre les pouvoirs publics locaux, ou entre les pouvoirs publics locaux et les groupements composés exclusivement de pouvoirs publics locaux, dans le cadre de l'organisation interne des États membres,

devraient être exemptés de l'application des règles de la présente directive.

Or. fr

Justification

Exclusion du transfert de compétences entre pouvoirs publics dans le but d'exercer une mission de service public rendue explicite.

Amendment 217

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Recital 15

Text proposed by the Commission

*(15) There is a widespread need for additional flexibility **and in particular for wider access to a procurement procedure providing** for negotiations, **as is explicitly foreseen in the Agreement, where negotiation is allowed** in all procedures. **Contracting authorities should, unless otherwise provided in the legislation of the Member State concerned, be able to use a competitive procedure with negotiation as provided for in this Directive, in various situations where open or restricted procedures without negotiations are not likely to lead to satisfactory procurement outcomes. This procedure should be accompanied by adequate safeguards ensuring observance of the principles of equal treatment and transparency. This will give greater leeway to contracting authorities to buy works, supplies and services perfectly adapted to their specific needs. At the same time, it should also** increase cross-border trade, as the evaluation has shown that contracts awarded by negotiated procedure with prior publication have a particularly high success rate **of** cross-border tenders.*

Amendment

*(15) Contracting authorities require additional flexibility to **choose** procurement **procedures which provide** for negotiations. **The Union rules on public procurement should align to the Government Procurement Agreement, which allows for** negotiation in all procedures. **A greater use of these** procedures **is also** likely to increase cross-border trade, as the evaluation has shown that contracts awarded by negotiated procedure with prior publication have a particularly high success rate **in attracting** cross-border tenders. **Member States should be able to provide for the use of the competitive procedure with negotiation or the competitive dialogue in various situations where the classic open or restricted procedures without negotiations are unlikely to deliver satisfactory outcomes.***

Justification

This change introduces flexibility in the rules, allowing for negotiations in all procedures.

Amendment 218

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, Andreas Schwab

Proposal for a directive**Recital 15***Text proposed by the Commission*

(15) Allgemein besteht Bedarf an mehr Flexibilität und insbesondere an einem breiteren Zugang zu einem Vergabeverfahren, das Verhandlungen beinhaltet, wie dies explizit im Beschaffungsübereinkommen vorgesehen ist, dem zufolge Verhandlungen bei allen Verfahren zulässig sind. Öffentliche Auftraggeber sollten in verschiedenen Situationen, in denen offene oder nichtoffene Verfahren ohne Verhandlungen nicht zu befriedigenden Beschaffungsergebnissen führen dürften, ein Verhandlungsverfahren, wie es in dieser Richtlinie vorgesehen ist, anwenden können, ***sofern die Rechtsvorschriften des betreffenden Mitgliedstaats nichts anderes vorsehen***. Für dieses Verfahren sollten angemessene Sicherheitsvorschriften gelten, die die Einhaltung der Grundsätze der Gleichbehandlung und Transparenz gewährleisten. Dies lässt öffentlichen Auftraggebern einen größeren Spielraum, um Bauleistungen, Lieferungen und Dienstleistungen einzukaufen, die genau auf ihren spezifischen Bedarf zugeschnitten sind. Gleichzeitig dürfte dies den grenzüberschreitenden Handel fördern, denn die einschlägigen Bewertungsarbeiten haben gezeigt, dass bei Aufträgen, die im Wege des Verhandlungsverfahrens mit vorheriger Veröffentlichung einer Bekanntmachung vergeben werden, die

Amendment

(15) Allgemein besteht Bedarf an mehr Flexibilität und insbesondere an einem breiteren Zugang zu einem Vergabeverfahren, das Verhandlungen beinhaltet, wie dies explizit im Beschaffungsübereinkommen vorgesehen ist, dem zufolge Verhandlungen bei allen Verfahren zulässig sind. Öffentliche Auftraggeber sollten in verschiedenen Situationen, in denen offene oder nichtoffene Verfahren ohne Verhandlungen nicht zu befriedigenden Beschaffungsergebnissen führen dürften, ein Verhandlungsverfahren, wie es in dieser Richtlinie vorgesehen ist, anwenden können. Für dieses Verfahren sollten angemessene Sicherheitsvorschriften gelten, die die Einhaltung der Grundsätze der Gleichbehandlung und Transparenz gewährleisten. Dies lässt öffentlichen Auftraggebern einen größeren Spielraum, um Bauleistungen, Lieferungen und Dienstleistungen einzukaufen, die genau auf ihren spezifischen Bedarf zugeschnitten sind. Gleichzeitig dürfte dies den grenzüberschreitenden Handel fördern, denn die einschlägigen Bewertungsarbeiten haben gezeigt, dass bei Aufträgen, die im Wege des Verhandlungsverfahrens mit vorheriger Veröffentlichung einer Bekanntmachung vergeben werden, die Erfolgsquote von Bietern aus anderen

Erfolgsquote von Bietern aus anderen
Mitgliedstaaten besonders hoch ist.

Mitgliedstaaten besonders hoch ist.

Or. de

Justification

In bestimmten Fällen ist das Verhandlungsverfahren das einzig mögliche Verfahren, um komplexe Aufträge vergeben zu können. Daher sollte es den öffentlichen Auftraggebern möglich sein, diese Art des Verfahrens in einem solchen Fall zu wählen. Um die Harmonisierung des Binnenmarktes und den grenzüberschreitenden Handel zu fördern, sollte das Verhandlungsverfahren in allen Mitgliedstaaten eingeführt werden.

Amendment 219

Frank Engel, András Gyürk, Andreas Schwab, Ildikó Gáll-Pelcz, Konstantinos Poupakis, Sirpa Pietikäinen

Proposal for a directive

Recital 15

Text proposed by the Commission

(15) Il existe un besoin généralisé de plus de souplesse, et notamment d'un accès plus large à une procédure de passation prévoyant des négociations, conformément à l'Accord, qui autorise expressément les négociations dans toutes les procédures. ***Sauf si la législation de l'État membre concerné en dispose autrement, les*** pouvoirs adjudicateurs devraient pouvoir recourir à une procédure concurrentielle avec négociation telle que prévue dans la présente directive dans diverses situations où une procédure ouverte ou une procédure restreinte sans négociation ne sont pas susceptibles de donner des résultats satisfaisants. Cette procédure devrait s'accompagner de limitations adéquates garantissant le respect des principes d'égalité de traitement et de transparence. Cette possibilité donnera une plus grande marge de manœuvre aux pouvoirs adjudicateurs pour commander des travaux, fournitures et services parfaitement adaptés à leurs besoins propres. Elle devrait

Amendment

(15) Il existe un besoin généralisé de plus de souplesse, et notamment d'un accès plus large à une procédure de passation prévoyant des négociations, conformément à l'Accord, qui autorise expressément les négociations dans toutes les procédures. ***Les*** pouvoirs adjudicateurs devraient pouvoir recourir à une procédure concurrentielle avec négociation telle que prévue dans la présente directive dans diverses situations où une procédure ouverte ou une procédure restreinte sans négociation ne sont pas susceptibles de donner des résultats satisfaisants. Cette procédure devrait s'accompagner de limitations adéquates garantissant le respect des principes d'égalité de traitement et de transparence. Cette possibilité donnera une plus grande marge de manœuvre aux pouvoirs adjudicateurs pour commander des travaux, fournitures et services parfaitement adaptés à leurs besoins propres. Elle devrait parallèlement renforcer l'activité transfrontière, étant

parallèlement renforcer l'activité transfrontière, étant donné que l'évaluation a montré que les offres transnationales obtiennent un taux de succès particulièrement élevé dans le cas de marchés passés par une procédure négociée avec publication préalable.

donné que l'évaluation a montré que les offres transnationales obtiennent un taux de succès particulièrement élevé dans le cas de marchés passés par une procédure négociée avec publication préalable.

Or. fr

Amendment 220
Wim van de Camp

Proposal for a directive
Recital 15

Text proposed by the Commission

(15) There is a widespread need for additional flexibility and in particular for wider access to a procurement procedure providing for negotiations, as is explicitly foreseen in the Agreement, where negotiation is allowed in all procedures. Contracting authorities should, unless otherwise provided in the legislation of the Member State concerned, be able to use a competitive procedure with negotiation as provided for in this Directive, in various situations where open or restricted procedures without negotiations are not likely to lead to satisfactory procurement outcomes. ***This*** procedure should be accompanied by adequate safeguards ensuring observance of the principles of equal treatment and transparency. This will give greater leeway to contracting authorities to buy works, supplies and services perfectly adapted to their specific needs. At the same time, it should also increase cross-border trade, as the evaluation has shown that contracts awarded by negotiated procedure with prior publication have a particularly ***high*** success rate of cross-border tenders.

Amendment

(15) There is a widespread need for additional flexibility and in particular for wider access to a procurement procedure providing for negotiations, as is explicitly foreseen in the Agreement, where negotiation is allowed in all procedures. Contracting authorities should, unless otherwise provided in the legislation of the Member State concerned, be able to use a competitive procedure with negotiation as provided for in this Directive, in various situations where open or restricted procedures without negotiations are not likely to lead to satisfactory procurement outcomes. ***In particular, contracting authorities should be able to use the competitive procedure with negotiation where negotiations are needed for example due to legal and financial makeup of the contract, for example in case of complex infrastructural projects or due to the complexity of the project, for example in case of the implementation of complex ICT-projects in organisations. The competitive procedure with negotiation*** should be accompanied by adequate safeguards ensuring observance of the principles of equal treatment and transparency. This will give greater leeway

to contracting authorities to buy works, supplies and services perfectly adapted to their specific needs. At the same time, it should also increase cross-border trade, as the evaluation has shown that contracts awarded by negotiated procedure with prior publication have a particularly **high** success rate of cross-border tenders.

Or. en

Justification

Making the negotiated procedure also explicitly accessible for the complex contracts, we need a limited broadening of the proposed scope by the Commission proposal.

Amendment 221

Pablo Arias Echeverría

Proposal for a directive

Recital 15

Text proposed by the Commission

(15) Existe una necesidad generalizada de mayor flexibilidad y, en particular, de un acceso más amplio a un procedimiento de contratación pública que prevea negociaciones, como las que prevé el Acuerdo explícitamente para todos los procedimientos. Salvo disposición en contrario en la legislación del Estado miembro de que se trate, los poderes adjudicadores deben tener la posibilidad de utilizar un procedimiento de licitación con negociación conforme a lo establecido en la presente Directiva, en situaciones diversas en las que no es probable que puedan obtenerse resultados satisfactorios de la contratación mediante procedimientos abiertos o restringidos sin negociación. Este procedimiento debe estar acompañado de salvaguardias adecuadas que garanticen la observancia de los principios de igualdad de trato y **de** transparencia. Esto dará a los poderes adjudicadores mayor

Amendment

(15) Existe una necesidad generalizada de mayor flexibilidad y, en particular, de un acceso más amplio a un procedimiento de contratación pública que prevea negociaciones, como las que prevé el Acuerdo explícitamente para todos los procedimientos. Salvo disposición en contrario en la legislación del Estado miembro de que se trate, los poderes adjudicadores deben tener la posibilidad de utilizar un procedimiento de licitación con negociación conforme a lo establecido en la presente Directiva, en situaciones diversas en las que no es probable que puedan obtenerse resultados satisfactorios de la contratación mediante procedimientos abiertos o restringidos sin negociación. Este procedimiento debe estar acompañado de salvaguardias adecuadas que garanticen la observancia de los principios de igualdad de trato y transparencia, **libre competencia, publicidad y gestión**

margen para adquirir obras, suministros y servicios perfectamente adaptados a sus necesidades específicas. Al mismo tiempo, debería incrementar también el comercio transfronterizo, ya que la evaluación ha mostrado que los contratos adjudicados mediante procedimiento negociado con publicación previa son obtenidos en un número especialmente elevado de ocasiones por ofertas transfronterizas.

eficiente de los recursos públicos. Esto dará a los poderes adjudicadores mayor margen para adquirir obras, suministros y servicios perfectamente adaptados a sus necesidades específicas. Al mismo tiempo, debería incrementar también el comercio transfronterizo, ya que la evaluación ha mostrado que los contratos adjudicados mediante procedimiento negociado con publicación previa son obtenidos en un número especialmente elevado de ocasiones por ofertas transfronterizas.

Or. es

Amendment 222
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 15 a (new)

Text proposed by the Commission

Amendment

(15 a) For works contracts, such situations include works that are not standard buildings or where works include the design of an innovative solution. For services or supplies that require adaptation or design, the use of a competitive procedure with negotiation or competitive dialogue is likely to deliver added value. Such adaptation or design requirements are particularly beneficial in the case of complex purchases such as sophisticated products, intellectual services or major ICT projects. In these cases, negotiations may be necessary to guarantee that the supply or service in question corresponds to the needs of the contracting authority. In relation to "off-the shelf" services or supplies that can be provided by many different economic operators, the competitive procedure with negotiation and the competitive dialogue should not be used.

Or. en

Justification

This change introduces flexibility in the rules, allowing for negotiations in all procedures.

Amendment 223

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Recital 15 a (new)

Text proposed by the Commission

Amendment

(15 a) This Directive ensures the application of Directive 2001/23/EC on the approximation of laws of the Member States relating to the safeguarding or workers' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses in order to ensure the respect of the rules of equal competition and the protection of workers in the context of the transfer of the undertaking.

Or. en

Amendment 224

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Recital 15 b (new)

Text proposed by the Commission

Amendment

(15 b) The competitive procedure with negotiation should also be followed in cases where use of an open or restricted procedure delivered only invalid or unacceptable tenders. In particular tenders which do not comply with the procurement documents, which were received late, where there is evidence of collusion or corruption, or which have been found by the contracting authority to be abnormally low, should be considered

invalid. Tenders submitted by tenderers that do not have the required qualifications, and tenders whose price exceeds the contracting authority's budget as communicated prior to the launching of the procurement procedure should also be considered as unacceptable.

Or. en

Justification

This change introduces flexibility in the rules, allowing for negotiations in all procedures.

Amendment 225
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 15 c (new)

Text proposed by the Commission

Amendment

(15 c) The competitive procedure with negotiations should be accompanied by adequate safeguards ensuring that the principles of equal treatment and transparency are observed. In particular, contracting authorities should indicate up front the minimum requirements governing the nature of the procurement and which may not be changed in the course of negotiations. Award criteria and their weighting should remain stable throughout the entire procedure and not be subject to negotiations, in order to guarantee equal treatment of all economic operators. Negotiations should aim at improving the tenders to allow contracting authorities to acquire works, supplies and services ideally suited to their specific needs. Negotiations may concern all aspects of the purchased works, supplies or services including, for instance, quality, quantities, commercial clauses as well as social, environmental and innovative characteristics, insofar as they

do not constitute minimum requirements. The minimum requirements referred to here are the conditions and characteristics (particularly physical, functional and legal) that any tender should meet pursuant to Article 54(1)(a) of this Directive in order to allow the contracting authority to award the contract in accordance with the chosen award criterion. To ensure transparency of the process, all negotiating stages should be documented in conformity with Article 85(2) and Article 19(1)(a) of this Directive, so that contracting authorities can provide proof in writing, at the request of any candidate or tenderer, that they have ensured the equal treatment of all economic operators concerned. Furthermore, to ensure transparency, all tenders throughout the procedures are to be submitted in writing or via electronic means.

Or. en

Justification

Certain safeguards are required to ensure that the added flexibility in the use of procedures does not result in misuse.

Amendment 226
Marc Tarabella

Proposal for a directive
Recital 16

Text proposed by the Commission

(16) Pour les mêmes raisons, les pouvoirs adjudicateurs devraient avoir la liberté de recourir au dialogue compétitif. La valeur des marchés passés par cette procédure s'est considérablement accrue au cours des dernières années. Elle s'est révélée utile dans les cas où les pouvoirs adjudicateurs sont incapables de définir

Amendment

supprimé

les moyens de satisfaire leurs besoins ou d'évaluer les solutions que le marché peut offrir sur les plans technique, financier ou juridique. Une telle situation peut survenir notamment dans le cas de projets innovants, de la réalisation d'importantes infrastructures de transport intégrées, de grands réseaux informatiques ou de projets comportant un financement complexe et structuré.

Or. fr

Amendment 227

Malcolm Harbour, Edvard Kožušník, Frank Engel

Proposal for a directive

Recital 17

Text proposed by the Commission

(17) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. Public authorities should make the best strategic use of public procurement to *spur* innovation. Buying innovative goods and services plays a key role in improving the efficiency and quality of public services while addressing major societal challenges. It contributes to achieving best value for public money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative products and services and *thus* promoting sustainable economic growth. This *directive* should contribute to facilitating public procurement of innovation and help Member States in achieving the Innovation Union targets. *A* specific procurement procedure should *therefore be provided for which allows* contracting authorities to establish *a long-term* innovation partnership for the development and

Amendment

(17) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. Public authorities should make the best strategic use of public procurement to *drive* innovation. Buying innovative goods and services plays a key role in improving the efficiency and quality of public services while addressing major societal challenges. It contributes to achieving best value for public money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative products and services and promoting sustainable economic growth. *An innovative procurement model is detailed in the Commission's communication on pre-commercial procurement*¹. *This model promotes the take up in the procurement of research and development services which do not fall within the scope of this Directive. This model, which has been written into this Directive, is*

subsequent purchase of *a* new, innovative *product, service* or works provided *it* can be delivered to agreed performance levels and costs. The partnership should be structured in such a way that it can provide the necessary '*market-pull*', incentivising the development of *an* innovative *solution* without foreclosing the market.

recognised and will be available for all contracting authorities to consider. This Directive should however contribute to facilitating the public procurement of innovation more generally, and help Member States in achieving the Innovation Union targets. Where a need for the development of an innovative product, service or works and the subsequent purchase of the resulting output cannot be met by solutions already available on the market, contracting authorities should have access to a specific procurement procedure in respect of contracts falling within the scope of this Directive. This new procedure should allow contracting authorities to establish an innovation partnership for the development and subsequent purchase of new, innovative products, services or works, provided that these can be delivered to agreed performance levels and costs. The procedure should be based on the rules applying to the competitive procedure with negotiations and contracts should be awarded on the sole basis of the most economically advantageous tender, which is the most suited to comparing tenders for innovative solutions. Whether the innovation partnership concerns a very large project or a smaller project, it should be structured in such as a way that it can provide the necessary "market pull", incentivising the development of innovative solutions without foreclosing the market. Contracting authorities should therefore not misuse innovation partnerships to prevent, restrict or distort competition.

¹ COM (2007) 799 final: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Pre-commercial procurement: driving innovation to ensure sustainable high quality public services in Europe.

Justification

This Amendment details how the new innovation partnerships procedure should be used, adding to the Commission's original proposal, specifically by linking this new tool to the principles applying to the competitive procedure, where most relevant. This Amendment also clarifies that pre-commercial procurement as defined in a 2007 Commission Communication, and continues to apply, irrespective of this new innovation partnerships procedure, and has been built in separately into a new exemption.

Amendment 228 **Sirpa Pietikäinen**

Proposal for a directive **Recital 17**

Text proposed by the Commission

(17) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. Public authorities should make the best strategic use of public procurement to spur innovation. Buying innovative goods and services plays a key role in improving the efficiency and quality of public services while addressing major societal challenges. It contributes to achieving best value for public money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative products and services and thus promoting sustainable economic growth. This directive should contribute to facilitating public procurement of innovation and help Member States in achieving the Innovation Union targets. A specific procurement procedure should therefore be provided for which allows contracting authorities to establish a long-term innovation partnership for the development and subsequent purchase of a new, innovative product, service or works provided it can

Amendment

(17) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. Public authorities should make the best strategic use of public procurement to spur innovation. Buying innovative goods and services plays a key role in improving the efficiency and quality of public services while addressing major societal challenges. It contributes to achieving best value for public money as well as wider economic, environmental, ***animal welfare*** and societal benefits in terms of generating new ideas, translating them into innovative products and services and thus promoting sustainable economic growth. This directive should contribute to facilitating public procurement of innovation and help Member States in achieving the Innovation Union targets. A specific procurement procedure should therefore be provided for which allows contracting authorities to establish a long-term innovation partnership for the development and subsequent purchase of a new, innovative product, service or works

be delivered to agreed performance levels and costs. The partnership should be structured in such a way that it can provide the necessary ‘market-pull’, incentivising the development of an innovative solution without foreclosing the market.

provided it can be delivered to agreed performance levels and costs. The partnership should be structured in such a way that it can provide the necessary ‘market-pull’, incentivising the development of an innovative solution without foreclosing the market.

Or. en

Amendment 229 **Toine Manders**

Proposal for a directive **Recital 17**

Text proposed by the Commission

(17) Onderzoek en innovatie, waaronder eco-innovatie en sociale innovatie, behoren tot de voornaamste drijvende krachten van de toekomstige groei en staan centraal in de Europa 2020-strategie voor slimme, duurzame en inclusieve groei. Aanbestedende diensten moeten overheidsopdrachten zo strategisch mogelijk aanwenden om innovatie te bevorderen. De aankoop van innovatieve goederen en diensten speelt een centrale rol in het verbeteren van de efficiëntie en de kwaliteit van overheidsdiensten en vormt een antwoord op grote maatschappelijke uitdagingen. Hiermee kan worden gestreefd naar de beste prijs-/kwaliteitverhouding en naar ruimere economische, milieu- en maatschappelijke voordelen om nieuwe ideeën te doen rijpen, deze om te zetten in innovatieve producten en diensten en derhalve een duurzame economische groei te bevorderen. Deze richtlijn moet helpen innovatieve activiteiten in aanbestedingen te bevorderen en moet de lidstaten ondersteunen om de streefdoelen van de Innovatie-Unie te bereiken. Daarom moet worden voorzien in een specifieke aanbestedingsprocedure waarmee

Amendment

(17) Onderzoek en innovatie, waaronder eco-innovatie en sociale innovatie, behoren tot de voornaamste drijvende krachten van de toekomstige groei en staan centraal in de Europa 2020-strategie voor slimme, duurzame en inclusieve groei. Aanbestedende diensten moeten overheidsopdrachten zo strategisch mogelijk aanwenden om innovatie te bevorderen. De aankoop van innovatieve goederen en diensten speelt een centrale rol in het verbeteren van de efficiëntie en de kwaliteit van overheidsdiensten en vormt een antwoord op grote maatschappelijke uitdagingen. Hiermee kan worden gestreefd naar de beste prijs-/kwaliteitverhouding en naar ruimere economische, milieu- en maatschappelijke voordelen om nieuwe ideeën te doen rijpen, deze om te zetten in innovatieve producten en diensten en derhalve een duurzame economische groei te bevorderen. Deze richtlijn moet helpen innovatieve activiteiten in aanbestedingen te bevorderen en moet de lidstaten ondersteunen om de streefdoelen van de Innovatie-Unie te bereiken. Daarom moet worden voorzien in een specifieke aanbestedingsprocedure waarmee

aanbestedende diensten een innovatiepartnerschap op lange termijn kunnen aangaan voor de ontwikkeling en daaropvolgende aankoop van nieuwe innovatieve producten, diensten of werken, onder de voorwaarde dat deze geleverd kunnen worden tegen een overeengekomen kwaliteits- en kostenniveau. Het partnerschap dient zodanig te worden gestructureerd dat het de nodige „market-pull” kan opleveren om de ontwikkeling van een innovatieve oplossing te bevorderen zonder de markt af te schermen.

aanbestedende diensten een innovatiepartnerschap op lange termijn kunnen aangaan voor de ontwikkeling en daaropvolgende aankoop van nieuwe innovatieve producten, diensten of werken, onder de voorwaarde dat deze geleverd kunnen worden tegen een overeengekomen kwaliteits- en kostenniveau. Het partnerschap dient zodanig te worden gestructureerd dat het de nodige „market-pull” kan opleveren om de ontwikkeling van een innovatieve oplossing te bevorderen zonder de markt af te schermen. ***Daarnaast zouden aanbestedende diensten bij het stellen van de voorwaarden van de aanbesteding innovatieve kenmerken inclusief de best beschikbare technieken als criterium welke verband houdt met het voorwerp van de betrokken opdracht mogen instellen.***

Or. nl

Amendment 230
Marc Tarabella

Proposal for a directive
Recital 17

Text proposed by the Commission

(17) La recherche et l'innovation, y compris l'éco-innovation et l'innovation sociale, comptent parmi les principaux moteurs de la croissance future et constituent des priorités de la stratégie Europe 2020 pour une croissance intelligente, durable et inclusive. Les pouvoirs publics devraient faire le meilleur usage stratégique des marchés publics pour stimuler l'innovation. L'acquisition de biens et services innovants joue un rôle essentiel dans l'amélioration de l'efficacité et de la qualité des services publics et aide à faire face aux grands enjeux de société. Elle contribue à garantir une utilisation

Amendment

(17) La recherche et l'innovation, y compris l'éco-innovation et l'innovation sociale, comptent parmi les principaux moteurs de la croissance future et constituent des priorités de la stratégie Europe 2020 pour une croissance intelligente, durable et inclusive. Les pouvoirs publics devraient faire le meilleur usage stratégique des marchés publics pour stimuler l'innovation. L'acquisition de biens et services innovants joue un rôle essentiel dans l'amélioration de l'efficacité et de la qualité des services publics et aide à faire face aux grands enjeux de société. Elle contribue à garantir une utilisation

optimale des deniers publics ainsi qu'à dégager des avantages économiques, environnementaux et sociétaux au sens large à travers les nouvelles idées générées, leur concrétisation sous la forme de produits et services innovants et, partant, la promotion d'une croissance économique durable. La présente directive devrait contribuer à faciliter la passation de marchés publics à visée innovante et aider les États membres à atteindre les objectifs de l'Union de l'innovation. ***Il convient donc de prévoir une procédure spécifique de passation de marché permettant aux pouvoirs adjudicateurs d'établir un partenariat d'innovation à long terme en vue de développer et d'acquérir ensuite un produit, un service ou des travaux nouveaux et innovants, sous réserve qu'ils puissent être fournis aux niveaux de performance et au coût convenus. Ce partenariat devrait être structuré de manière à mettre en place le mécanisme d'incitation induite par la demande du marché qui est nécessaire au développement d'une solution innovante sans verrouiller le marché.***

optimale des deniers publics ainsi qu'à dégager des avantages économiques, environnementaux et sociétaux au sens large à travers les nouvelles idées générées, leur concrétisation sous la forme de produits et services innovants et, partant, la promotion d'une croissance économique durable. La présente directive devrait contribuer à faciliter la passation de marchés publics à visée innovante et aider les États membres à atteindre les objectifs de l'Union de l'innovation.

Or. fr

Amendment 231
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 17 a (new)

Text proposed by the Commission

Amendment

(17 a) Such a procedure should support new ways of developing public services, for instance, where employee led organisations which had previously operated in the public sector, are tasked with developing an innovative public service not available on the Union market.

Or. en

Justification

This gives an example of how the innovation partnership could be used to support the development of innovative public services, for example mutuals, which often do provide innovative approaches.

Amendment 232

Sergio Gaetano Cofferati

Proposal for a directive

Recital 18

Text proposed by the Commission

(18) Tenuto conto degli effetti pregiudizievoli sulla concorrenza, le procedure negoziate senza pubblicazione preventiva di un bando di gara dovrebbero essere utilizzate soltanto in circostanze eccezionali. L'eccezionalità deve essere circoscritta ai casi nei quali la pubblicazione non sia possibile per cause di forza maggiore, conformemente alla giurisprudenza costante della Corte di giustizia dell'Unione europea, o se è chiaro fin dall'inizio che la pubblicazione non genererebbe maggiore competitività, non da ultimo perché un solo operatore economico è oggettivamente in grado di eseguire l'appalto. Solo situazioni di reale esclusività possono giustificare l'utilizzazione della procedura negoziata senza pubblicazione preventiva, se la situazione di esclusività non è stata creata dalla stessa amministrazione aggiudicatrice per la futura gara di appalto e se non esistono sostituti adeguati, la cui disponibilità dovrebbe essere valutata accuratamente.

Amendment

(18) Tenuto conto degli effetti pregiudizievoli sulla concorrenza, le procedure negoziate senza pubblicazione preventiva di un bando di gara dovrebbero essere utilizzate soltanto in circostanze eccezionali. L'eccezionalità deve essere circoscritta ai casi nei quali la pubblicazione non sia possibile per cause di forza maggiore, conformemente alla giurisprudenza costante della Corte di giustizia dell'Unione europea, o se è chiaro fin dall'inizio che la pubblicazione non genererebbe maggiore competitività, non da ultimo perché un solo operatore economico è oggettivamente in grado di eseguire l'appalto. Solo situazioni di reale esclusività possono giustificare l'utilizzazione della procedura negoziata senza pubblicazione preventiva, se la situazione di esclusività non è stata creata dalla stessa amministrazione aggiudicatrice per la futura gara di appalto e se non esistono sostituti adeguati, la cui disponibilità dovrebbe essere valutata accuratamente. ***E' opportuno che le autorità aggiudicatrici, qualora ricorrano, nei casi definiti da questa Direttiva, ad una procedura negoziata senza pubblicazione preventiva, debbano mandare una relazione, in cui giustificano la loro scelta, all'organo di vigilanza, che dovrebbe avere tra i suoi compiti anche quello di analizzare e***

Amendment 233

Philippe Juvin

Proposal for a directive

Recital 19

Text proposed by the Commission

(19) Il est possible de simplifier considérablement la publication d'informations sur les marchés et de rendre les procédures de passation de marché plus efficaces et transparentes en recourant aux moyens électroniques d'information et de communication. Ceux-ci devraient devenir les moyens de communication et d'échange d'informations standard dans les procédures de passation. L'utilisation de moyens électroniques entraîne aussi des gains de temps. Par conséquent, il y a lieu de prévoir une réduction des délais minimaux en cas d'utilisation de ces moyens électroniques, à condition toutefois qu'ils soient compatibles avec les modalités de transmission spécifiques prévues au niveau de l'Union. En outre, l'emploi de moyens électroniques d'information et de communication comportant des fonctionnalités adéquates peut permettre aux pouvoirs adjudicateurs de prévenir, détecter et corriger des erreurs survenant au cours des procédures de passation de marché.

Amendment

(19) Il est possible de simplifier considérablement la publication d'informations sur les marchés et de rendre les procédures de passation de marché ***relevant de la présente directive*** plus efficaces et transparentes en recourant aux moyens électroniques d'information et de communication. Ceux-ci devraient devenir les moyens de communication et d'échange d'informations standard dans les procédures de passation. L'utilisation de moyens électroniques entraîne aussi des gains de temps. Par conséquent, il y a lieu de prévoir une réduction des délais minimaux en cas d'utilisation de ces moyens électroniques, à condition toutefois qu'ils soient compatibles avec les modalités de transmission spécifiques prévues au niveau de l'Union. En outre, l'emploi de moyens électroniques d'information et de communication comportant des fonctionnalités adéquates peut permettre aux pouvoirs adjudicateurs de prévenir, détecter et corriger des erreurs survenant au cours des procédures de passation de marché.

Justification

Le recours au moyens électroniques pour la publication d'informations sur les marchés s'applique exclusivement aux procédures de passation de marché relevant de la présente directive, et ne s'applique donc pas aux procédures de passation de marchés situés en-

dessous des seuils définis dans la présente directive, ces dernières relevant de la législation nationale en vigueur.

Amendment 234

Frank Engel, Wim van de Camp, Konstantinos Poupakis

Proposal for a directive

Recital 20

Text proposed by the Commission

(20) There is a strong trend emerging across Union public procurement markets towards the aggregation of demand by public purchasers, with a view to obtaining economies of scale, including lower prices and transaction costs, and to improving and professionalising procurement management. This can be achieved by concentrating purchases either by the number of contracting authorities involved or by volume and value over time. However, the aggregation and centralisation of purchases should be carefully monitored in order to avoid excessive concentration of purchasing power and collusion, and to preserve transparency and competition, as well as market access opportunities for small and medium-sized enterprises.

Amendment

(20) There is a strong trend emerging across Union public procurement markets towards the aggregation of demand by public purchasers, with a view to obtaining economies of scale, including lower prices and transaction costs, and to improving and professionalising procurement management. This can be achieved by concentrating purchases either by the number of contracting authorities involved or by volume and value over time. However, the aggregation and centralisation of purchases should be carefully monitored in order to avoid excessive concentration of purchasing power and collusion, and to preserve transparency and competition, as well as market access opportunities for small and medium-sized enterprises. ***The Commission should provide guidance to Member States and contracting authorities on the required monitoring of aggregated and centralised purchases to avoid excessive concentration of purchasing power and collusion. Such guidance should be provided by way of implementing act.***

Or. en

Amendment 235

Othmar Karas

Proposal for a directive
Recital 21

Text proposed by the Commission

(21) Das Instrument der Rahmenvereinbarung findet breite Anwendung und wird europaweit als eine effiziente Beschaffungsmethode angesehen. Daher sollte daran weitgehend festgehalten werden. Bestimmte Aspekte bedürfen jedoch einer Präzisierung, insbesondere die Bedingungen für die Inanspruchnahme einer Rahmenvereinbarung durch öffentliche Auftraggeber, die nicht selbst Partei der betreffenden Vereinbarung sind.

Amendment

(21) Das Instrument der Rahmenvereinbarung findet breite Anwendung und wird europaweit als eine effiziente Beschaffungsmethode angesehen. Daher sollte daran weitgehend festgehalten werden. Bestimmte Aspekte bedürfen jedoch einer Präzisierung, insbesondere die Bedingungen für die Inanspruchnahme einer Rahmenvereinbarung durch öffentliche Auftraggeber, die nicht selbst Partei der betreffenden Vereinbarung sind. ***Eine Erweiterung der Abrufberechtigten aus einer Rahmenvereinbarung soll unter den im Artikel 31 Absatz 2 beschriebenen Voraussetzungen zulässig sein.***

Or. de

Amendment 236
Anna Maria Corazza Bildt

Proposal for a directive
Recital 21 a (new)

Text proposed by the Commission

Amendment

(21 a) The objective conditions for determining which of the economic operators, party to the framework agreement, should perform a given task, such as supplies or services intended for use by natural persons, may include the needs or the choice of the natural persons concerned.

Or. en

Amendment 237
Cornelis de Jong

Proposal for a directive
Recital 24

Text proposed by the Commission

(24) Centralised purchasing techniques are increasingly used in most Member States. Central purchasing bodies are responsible for making acquisitions or awarding public contracts/framework agreements for other contracting authorities. In view of the large volumes purchased, such techniques help increase competition and professionalise public purchasing. Provision should therefore be made for a Union definition of central purchasing bodies dedicated to contracting authorities, without preventing the continuation of less institutionalised and systematic common purchasing or the established practice of having recourse to service providers that prepare and manage procurement procedures on behalf and for the account of a contracting authority. Rules should also be laid down for allocating responsibility for the observance of the obligations pursuant to this Directive, also in the case of remedies, among the central purchasing body and the contracting authorities procuring from or through the central purchasing body. Where the latter has sole responsibility for the conduct of the procurement procedures, it should also be solely and directly responsible for the legality of the procedures. Where a contracting authority conducts certain parts of the procedure, for instance the reopening of competition under a framework agreement or the award of individual contracts based on a dynamic purchasing system, it should continue to be responsible for the stages it conducts.

Amendment

(24) Centralised purchasing techniques are increasingly used in most Member States. Central purchasing bodies are responsible for making acquisitions or awarding public contracts/framework agreements for other contracting authorities. In view of the large volumes purchased, such techniques help increase competition and professionalise public purchasing, ***although specific attention must be paid to the accessibility of any such procedures for small and medium-sized enterprises***. Provision should therefore be made for a Union definition of central purchasing bodies dedicated to contracting authorities, without preventing the continuation of less institutionalised and systematic common purchasing or the established practice of having recourse to service providers that prepare and manage procurement procedures on behalf and for the account of a contracting authority. Rules should also be laid down for allocating responsibility for the observance of the obligations pursuant to this Directive, also in the case of remedies, among the central purchasing body and the contracting authorities procuring from or through the central purchasing body. Where the latter has sole responsibility for the conduct of the procurement procedures, it should also be solely and directly responsible for the legality of the procedures. Where a contracting authority conducts certain parts of the procedure, for instance the reopening of competition under a framework agreement or the award of individual contracts based on a dynamic purchasing system, it should continue to be responsible for the stages it conducts.

Or. en

Amendment 238

Heide Rühle

Proposal for a directive

Recital 25

Text proposed by the Commission

(25) Electronic means of communication are particularly well suited to support centralised purchasing practices and tools because of the possibility they offer to re-use and automatically process data and to minimise information and transaction costs. The use of such electronic means of communication should therefore, as a first step, be rendered compulsory for central purchasing bodies, while also facilitating converging practices across the Union. This should be followed by a general obligation to use electronic means of communication in all procurement procedures after a transition period *of two years*.

Amendment

(25) Electronic means of communication are particularly well suited to support centralised purchasing practices and tools because of the possibility they offer to re-use and automatically process data and to minimise information and transaction costs. The use of such electronic means of communication should therefore, as a first step, be rendered compulsory for central purchasing bodies, while also facilitating converging practices across the Union. This should be followed by a general obligation to use electronic means of communication in all procurement procedures after a transition period.

Or. en

Justification

This timeframe is too tight.

Amendment 239

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, Hans-Peter Mayer

Proposal for a directive

Recital 25

Text proposed by the Commission

(25) Elektronische Kommunikationsmittel sind in besonderem Maße für die Unterstützung zentralisierter Beschaffungsverfahren und –instrumente geeignet, da sie die Möglichkeit bieten, Daten weiterzuverwenden und automatisch

Amendment

(25) Elektronische Kommunikationsmittel sind in besonderem Maße für die Unterstützung zentralisierter Beschaffungsverfahren und –instrumente geeignet, da sie die Möglichkeit bieten, Daten weiterzuverwenden und automatisch

zu verarbeiten und Informations- und Transaktionskosten möglichst gering zu halten. Die Verwendung entsprechender elektronischer Kommunikationsmittel sollte daher – in einem ersten Schritt – für zentrale Beschaffungsstellen verpflichtend gemacht werden, was auch einer Konvergenz der Praktiken innerhalb der Union förderlich sein dürfte. Nach einer Übergangszeit von **zwei** Jahren sollte dann eine allgemeine Verpflichtung zur Nutzung elektronischer Kommunikationsmittel in sämtlichen Beschaffungsverfahren eingeführt werden.

zu verarbeiten und Informations- und Transaktionskosten möglichst gering zu halten. Die Verwendung entsprechender elektronischer Kommunikationsmittel sollte daher – in einem ersten Schritt – für zentrale Beschaffungsstellen verpflichtend gemacht werden, was auch einer Konvergenz der Praktiken innerhalb der Union förderlich sein dürfte. Nach einer Übergangszeit von **vier** Jahren sollte dann eine allgemeine Verpflichtung zur Nutzung elektronischer Kommunikationsmittel in sämtlichen Beschaffungsverfahren eingeführt werden.

Or. de

Amendment 240
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Recital 25

Text proposed by the Commission

(25) Electronic means of communication are particularly well suited to support centralised purchasing practices and tools because of the possibility they offer to re-use and automatically process data and to minimise information and transaction costs. The use of such electronic means of communication should therefore, ***as a first step, be rendered compulsory for central purchasing bodies, while also facilitating converging practices across the Union. This should be followed by a general obligation to use electronic means of communication in all procurement procedures after a transition period of two years.***

Amendment

(25) Electronic means of communication are particularly well suited to support centralised purchasing practices and tools because of the possibility they offer to re-use and automatically process data and to minimise information and transaction costs. The use of such electronic means of communication should therefore be ***encouraged.***

Or. en

Amendment 241

Philippe Juvin

Proposal for a directive

Recital 25

Text proposed by the Commission

(25) Les moyens de communication électroniques se prêtent particulièrement bien à la mise en œuvre de pratiques et d'outils de centralisation des achats, grâce à la possibilité qu'ils offrent de réutiliser et de traiter automatiquement les données et de réduire au minimum les frais d'information et de transaction. Il faudrait par conséquent, dans un premier temps, rendre obligatoire le recours à ces moyens de communication électroniques pour les centrales d'achat, tout en facilitant par ailleurs la convergence des pratiques dans toute l'Union. À cette première étape devrait succéder une obligation générale d'utiliser des moyens de communication électroniques dans toutes les procédures de passation de marchés, à l'issue d'une période transitoire de deux ans.

Amendment

(25) Les moyens de communication électroniques se prêtent particulièrement bien à la mise en œuvre de pratiques et d'outils de centralisation des achats, grâce à la possibilité qu'ils offrent de réutiliser et de traiter automatiquement les données et de réduire au minimum les frais d'information et de transaction. Il faudrait par conséquent, dans un premier temps, rendre obligatoire le recours à ces moyens de communication électroniques pour les centrales d'achat, tout en facilitant par ailleurs la convergence des pratiques dans toute l'Union. À cette première étape devrait succéder une obligation générale d'utiliser des moyens de communication électroniques dans toutes les procédures de passation de marchés, à l'issue d'une période transitoire de deux ans. ***La mise en œuvre de ces dispositions est sans préjudice des moyens de publication existant au niveau national en ce qui concerne les marchés publics situés en-dessous des seuils définis par la présente directive, et ce afin de préserver la sécurité juridique.***

Or. fr

Justification

L'obligation générale d'utiliser des moyens de communication électroniques dans toutes les procédures de passation de marchés ne doit pas porter préjudice aux dispositions existant au niveau national en matière de publication pour les marchés situés en-dessous des seuils prévus dans la présente directive.

Amendment 242

Bernadette Vergnaud

Proposal for a directive
Recital 25

Text proposed by the Commission

(25) Les moyens de communication électroniques se prêtent particulièrement bien à la mise en œuvre de pratiques et d'outils de centralisation des achats, grâce à la possibilité qu'ils offrent de réutiliser et de traiter automatiquement les données et de réduire au minimum les frais d'information et de transaction. Il faudrait par conséquent, dans un premier temps, rendre obligatoire le recours à ces moyens de communication électroniques pour les centrales d'achat, tout en facilitant par ailleurs la convergence des pratiques dans toute l'Union. À cette première étape devrait succéder une obligation générale d'utiliser des moyens de communication électroniques dans toutes les procédures de passation de marchés, à l'issue d'une période transitoire de deux ans.

Amendment

(25) Les moyens de communication électroniques se prêtent particulièrement bien à la mise en œuvre de pratiques et d'outils de centralisation des achats, grâce à la possibilité qu'ils offrent de réutiliser et de traiter automatiquement les données et de réduire au minimum les frais d'information et de transaction. Il faudrait par conséquent, dans un premier temps, rendre obligatoire le recours à ces moyens de communication électroniques pour les centrales d'achat, tout en facilitant par ailleurs la convergence des pratiques dans toute l'Union. À cette première étape devrait succéder une obligation générale d'utiliser des moyens de communication électroniques dans toutes les procédures de passation de marchés, à l'issue d'une période transitoire de deux ans. ***La mise en œuvre de cette obligation est sans préjudice des moyens de publication existant au niveau national en ce qui concerne les marchés publics en dessous des seuils fixés par la présente directive et ce afin de préserver la sécurité juridique.***

Or. fr

Amendment 243
Sari Essayah, Sirpa Pietikäinen

Proposal for a directive
Recital 25 a (new)

Text proposed by the Commission

Amendment

(25a) Member States should be encouraged to use a service voucher system, which is a new effective tool to arrange public services. It is beneficial to SMEs because it is very easy to get to

participate in a service voucher system. A service voucher system gives a freedom of choice to the citizen who may select the service provider from several alternatives. A service voucher system is beneficial to the authority as well, as it is much easier to establish a service voucher system compared to a classic public procurement.

Or. en

Amendment 244
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Recital 26

Text proposed by the Commission

Amendment

(26) Joint awarding of public contracts by contracting authorities from different Member States currently encounters specific legal difficulties, with special reference to conflicts of national laws. Despite the fact that Directive 2004/18/EC implicitly allowed for cross-border joint public procurement, in practice several national legal systems have explicitly or implicitly rendered cross-border joint procurement legally uncertain or impossible. Contracting authorities from different Member States may be interested in cooperating and in jointly awarding public contracts in order to derive maximum benefit from the potential of the internal market in terms of economies of scale and risk-benefit sharing, not least for innovative projects involving a greater amount of risk than reasonably bearable by a single contracting authority. Therefore new rules on cross-border joint procurement designating the applicable law should be established in order to facilitate cooperation between contracting authorities across the Single Market. In addition, contracting authorities from different Member States may set up joint

deleted

legal bodies established under national or Union law. Specific rules should be established for such form of joint procurement.

Or. en

Amendment 245
Heide Rühle

Proposal for a directive
Recital 27

Text proposed by the Commission

(27) The technical specifications drawn up by public purchasers need to allow public procurement to be opened up to competition. To that end, it must be possible to submit tenders that reflect the diversity of technical solutions so as to obtain a sufficient level of competition. Consequently, technical specifications should be drafted in such a way to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications in terms of functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on equivalent arrangements must be considered by contracting authorities. To demonstrate equivalence, tenderers can be required to provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them

Amendment

(27) The technical specifications drawn up by public purchasers need to allow public procurement to be opened up to competition. To that end, it must be possible to submit tenders that reflect the diversity of technical solutions so as to obtain a sufficient level of competition. Consequently, technical specifications should be drafted in such a way to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications in terms of functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on equivalent arrangements must be considered by contracting authorities. To demonstrate equivalence, tenderers can be required to provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them

within the relevant time limits.

within the relevant time limits. ***In order not to discriminate those tenderers who invest time and money for certificates or test reports, the burden for providing equivalence should be placed on the tenderer claiming equivalence.***

Or. en

Amendment 246
Wim van de Camp

Proposal for a directive
Recital 27

Text proposed by the Commission

(27) The technical specifications drawn up by public purchasers need to allow public procurement to be opened up to competition. To that end, it must be possible to submit tenders that reflect the diversity of technical solutions so as to obtain a sufficient level of competition. Consequently, technical specifications should be drafted in such a way to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications in terms of functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on equivalent arrangements must be considered by contracting authorities. To demonstrate equivalence, tenderers can be required to provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned

Amendment

(27) The technical specifications drawn up by public purchasers need to allow public procurement to be opened up to competition. To that end, it must be possible to submit tenders that reflect the diversity of technical solutions, ***standards and specifications in the market place***, so as to obtain a sufficient level of competition. Consequently, technical specifications should be drafted in such a way to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator, ***or that disadvantage economic operators on the basis of business or development model including with regard to standards or specifications implemented in a given solution or service***. Drawing up the technical specifications in terms of functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on equivalent arrangements must be considered ***equally*** by contracting

has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits.

authorities. To demonstrate equivalence, tenderers can be required to provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits. ***Contracting authorities must be able to provide a reason for any decision that equivalence does not exist in a given case.***

Or. en

Justification

As government is among the largest purchasers in all Member States, public procurement creates significant market opportunities for economic operators across Europe. To best foster innovation, job creation and growth, however, public procurement must be done in a manner that is non-discriminatory and technology neutral.

Amendment 247

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Recital 27

Text proposed by the Commission

(27) The technical specifications drawn up by public purchasers need to allow public procurement to be opened up to competition. To that end, it must be possible to submit tenders that reflect the diversity of technical solutions so as to obtain a sufficient level of competition. Consequently, technical specifications should ***be drafted in such a way to*** avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works ***habitually*** offered by that economic operator. Drawing up the technical

Amendment

(27) The technical specifications drawn up by public purchasers need to allow public procurement to be opened up to competition. To that end, it must be possible to submit tenders that reflect the diversity of technical solutions, ***standards and specifications in the marketplace*** so as to obtain a sufficient level of competition. Consequently, technical specifications should avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works ***commonly*** offered by that economic

specifications in terms of functional and performance requirements generally **allows this objective to be achieved in the best way possible** and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on equivalent arrangements must be considered by contracting authorities. To demonstrate equivalence, tenderers can be required to provide third-party verified evidence; **however**, other appropriate means of proof such as a technical dossier **of the manufacturer** should also be allowed where the economic operator concerned has no access to **such** certificates or test reports, or no possibility of obtaining them within the **relevant** time limits.

operator, **or that disadvantage economic operators on the basis of a business or development model or on the basis of specific standards or specifications implemented in a given solution or service**. Drawing up the technical specifications in terms of functional and performance requirements generally **circumvents these problems** and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on equivalent arrangements must be considered **equally** by contracting authorities. To demonstrate equivalence, tenderers can be required to provide third-party verified evidence. **However**, other appropriate means of proof such as a **manufacturers'** technical dossier should also be allowed where the economic operator concerned has no access to **relevant** certificates or test reports, or no possibility of obtaining them within the **applicable** time limits. **Contracting authorities must be able to provide justification for not granting equivalence in all cases.**

Or. en

Justification

Public procurement creates significant market opportunities for economic operators across Europe. To best drive innovation, job creation and growth, public procurement must be carried out in a non-discriminatory and technology neutral manner. A level playing field that allows economic operators to compete equally, regardless of development or business model or choice of standard or specification, ensures that the widest range of operators are able to participate in public tenders.

Amendment 248

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Recital 28

Text proposed by the Commission

(28) Contracting authorities that wish to purchase works, supplies or services with specific environmental, social or other characteristics should be able to refer to particular labels, such as the European Eco-label, (multi-)national eco-labels or any other label provided that the requirements for the label are linked to the subject-matter of the contract, such as the description of the product and its presentation, including packaging requirements. It is furthermore essential that these requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations, can participate, and that the label is accessible and available to all interested parties.

Amendment

(28) Contracting authorities that wish to purchase works, supplies or services with specific environmental, social or other characteristics should be able to refer to particular labels, such as the European Eco-label, (multi-)national eco-labels or any other label provided that the requirements for the label are linked to the subject-matter of the contract, such as the description of the product and its presentation, including packaging requirements **and the production process**. It is furthermore essential that these requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors, **trade unions** and environmental organisations, can participate, and that the label is accessible and available to all interested parties.

Or. en

Amendment 249

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Recital 28

Text proposed by the Commission

(28) Contracting authorities that wish to purchase works, supplies or services with specific environmental, social or other characteristics should be able to refer to particular labels, such as the European Eco-label, (multi-)national eco-labels or any other label provided that the requirements for the label are linked to the subject-matter of the contract, such as the description of the product and its presentation, including packaging requirements. It is furthermore essential

Amendment

(28) Contracting authorities that wish to purchase works, supplies or services with specific environmental, social or other characteristics should be able to refer to particular **social and environmental** labels, such as the European Eco-label, (multi-)national eco-labels or any other label provided that the requirements for the label are linked to the subject-matter of the contract, such as the description of the product and its presentation, including packaging requirements. It is furthermore

that these requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations, can participate, and that the label is accessible and available to all interested parties.

essential that these requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, **trade unions**, distributors and environmental organisations can participate, and that the label is accessible and available to all interested parties.

Or. en

Amendment 250
Alexander Alvaro, Jürgen Creutzmann

Proposal for a directive
Recital 29 a (new)

Text proposed by the Commission

Amendment

(29 a) For all procurement it is necessary that contracting authorities ensure that the products, services and works subject to the contract meet the requirements of data protection law. In order to ensure and demonstrate the protection of the rights and freedoms of data subjects with regard to the processing of personal data, tenderers should adopt internal policies and implement appropriate technical and organisational measures at the time of the design of the processing of personal data (data protection by design).

Or. en

Amendment 251
Heide Rühle

Proposal for a directive
Recital 30

Text proposed by the Commission

Amendment

(30) In order to foster the involvement of

(30) In order to foster the involvement of

small and medium-sized enterprises (SMEs) in the public procurement market, contracting authorities should be encouraged to divide contracts into lots, **and be obliged to state the reasons for not doing so**. Where contracts are divided into lots, contracting authorities may, for instance in order to preserve competition or to ensure security of supply, limit the number of lots for which an economic operator may tender; they may also limit the number of lots that may be awarded to any one tenderer.

small and medium-sized enterprises (SMEs) in the public procurement market, contracting authorities should be encouraged to divide contracts into lots. Where contracts are divided into lots, contracting authorities may, for instance in order to preserve competition or to ensure security of supply, limit the number of lots for which an economic operator may tender; they may also limit the number of lots that may be awarded to any one tenderer.

Or. en

Justification

The apply or explain principle creates more legal uncertainties.

Amendment 252

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Recital 30

Text proposed by the Commission

(30) In order to foster the involvement of small and medium-sized enterprises (SMEs) in the public procurement market, contracting authorities should **be encouraged to divide** contracts into lots, and **be obliged to state the reasons for not doing so**. **Where contracts are divided into lots, contracting authorities may, for instance in order to preserve competition or to ensure security of supply, limit the number of lots for which an economic operator may tender; they may also limit the number of lots that may be awarded to any one tenderer.**

Amendment

(30) **Public procurement should be adapted to the needs of SMEs. Contracting authorities should make use of the Code of Best Practice providing guidance on how they may apply the public procurement framework in a way that facilitates SME participation.** In order to foster the involvement of small and medium-sized enterprises (SMEs) in the public procurement market, contracting authorities should **in particular give consideration to dividing** contracts into lots and **ensure transparency in access to information on their reasons for doing so or choosing not to**. **Member States should introduce measures to promote the access of SMEs to public procurement, in particular through improved information**

and guidance on tendering and on the new opportunities offered by the modernised EU legal framework, and to foster the exchange of best practice and the organisation of training and events involving public procurers and SMEs.

Or. en

Justification

While there is clear need to promote SME access to public procurement, an near total obligation for contracting authorities to divide contracts into lots is the wrong approach. Moreover giving contracting authorities discretion to limit the number of lots won by individual suppliers is likely to work against rewarding innovative or otherwise competitive SMEs, and runs a serious risk of being abused in order to discriminate against "outsiders". Soft measures are preferable.

Amendment 253

Anna Maria Corazza Bildt

Proposal for a directive

Recital 30

Text proposed by the Commission

(30) In order to foster the involvement of small and medium-sized enterprises (SMEs) in the public procurement market, contracting authorities should be encouraged to divide contracts into lots, and be obliged to state the reasons for not doing so. Where contracts are divided into lots, contracting authorities may, for instance in order to preserve competition or to ensure security of supply, limit the number of lots for which an economic operator may tender; they may also limit the number of lots that may be awarded to any one tenderer.

Amendment

(30) In order to foster the involvement of small and medium-sized enterprises (SMEs) in the public procurement market, ***and especially for products that require quality for welfare, such as food for passive consumers in hospitals, schools, child and elders care***, contracting authorities should be encouraged to divide contracts into lots, and be obliged to state the reasons for not doing so. Where contracts are divided into lots, contracting authorities may, for instance in order to preserve competition or to ensure security of supply, limit the number of lots for which an economic operator may tender; they may also limit the number of lots that may be awarded to any one tenderer.

Or. en

Amendment 254
Sirpa Pietikäinen

Proposal for a directive
Recital 32

Text proposed by the Commission

(32) Many economic operators, and not least SMEs, find that a major obstacle to their participation in public procurement consists in administrative burdens deriving from the need to produce a substantial number of certificates or other documents related to exclusion and selection criteria. Limiting such requirements, for example through self-declarations, can result in considerable simplification for the benefit of both contracting authorities and economic operators. The tenderer to which it has been decided to award the contract should, however, be required to provide the relevant evidence and contracting authorities should not conclude contracts with tenderers unable to do so. Further simplification can be achieved through standardised documents such as the European Procurement Passport, which should be recognized by all contracting authorities and widely promoted among economic operators, in particular SMEs, for whom they can substantially lessen the administrative burden.

Amendment

(32) Many economic operators, and not least SMEs, find that a major obstacle to their participation in public procurement consists in administrative burdens deriving from the need to produce a substantial number of certificates or other documents related to exclusion and selection criteria. Limiting such requirements, for example through self-declarations, ***including declarations concerning compliance with rules and standards in the areas of animal welfare, health and public safety, social protection and labour standards***, can result in considerable simplification for the benefit of both contracting authorities and economic operators. The tenderer to which it has been decided to award the contract should, however, be required to provide the relevant evidence and contracting authorities should not conclude contracts with tenderers unable to do so. Further simplification can be achieved through standardised documents such as the European Procurement Passport, which should be recognized by all contracting authorities and widely promoted among economic operators, in particular SMEs, for whom they can substantially lessen the administrative burden.

Or. en

Amendment 255
Sari Essayah

Proposal for a directive
Recital 32 a (new)

(32a) Job creation depends heavily on small and medium sized enterprises. SMEs have been able to offer new, sustainable jobs even in the times of economic crisis. As public authorities use around 18 % of GDP on public procurement, this legislative regime has significant impact on SMEs' ability to continue creating new jobs. Thus, public contracts should be made as accessible as possible for SMEs, both above and below the thresholds, which are defined in this Directive. In addition to the specific tools, which are tailored to enhance the involvement of SMEs in the public procurement market, Member States and contracting authorities should be strongly encouraged to create SME-friendly public procurement strategies. The Commission has published a staff working document "European code of best practices facilitating access by SMEs to public procurement contracts" (SEC (2008)COM 2193, which aims at helping Member States create national strategies, programs and action plans in order to improve SMEs participation in these markets. Efficient public procurement policy has to be coherent. National, regional and local authorities have to rigorously apply the rules set in this Directive and on the other hand, implementing general policies designated to enhance SMEs access to public procurement markets will remain extremely important especially from the perspective of job creation.

Or. en

Amendment 256
Heide Rühle

Proposal for a directive
Recital 34

Text proposed by the Commission

(34) Public contracts should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Furthermore, contracting authorities should be given the possibility to exclude candidates or tenderers for violations of environmental or social obligations, including rules on accessibility for disabled persons or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights.

Amendment

(34) Public contracts should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Furthermore, contracting authorities should be given the possibility to exclude candidates or tenderers for violations of environmental, **labour** or social obligations, including rules on **working conditions, collective agreements and** accessibility for disabled persons or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights.

Or. en

Justification

The equal treatment of workers and the compliance with national laws is included in the current directive - there is no reason for deletion. Recital 34 of the current Directive 2004/18/EC: The laws, regulations and collective agreements, at both national and Community level, which are in force in the areas of employment conditions and safety at work apply during performance of a public contract, providing that such rules, and their application, comply with Community law.... If national law contains provisions to this effect, non-compliance with those obligations may be considered to be grave misconduct or an offence concerning the professional conduct of the economic operator concerned, liable to lead to the exclusion of that economic operator from the procedure for the award of a public contract.

Amendment 257
Sirpa Pietikäinen

Proposal for a directive
Recital 34

Text proposed by the Commission

(34) Public contracts should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Furthermore, contracting authorities should be given the possibility to exclude candidates or tenderers for violations of environmental or social obligations, including rules on accessibility for disabled persons or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights.

Amendment

(34) Public contracts should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Furthermore, contracting authorities should be given the possibility to exclude candidates or tenderers for violations of environmental or social obligations, ***animal welfare***, including rules on accessibility for disabled persons or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights.

Or. en

Amendment 258

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Recital 34

Text proposed by the Commission

(34) Public contracts should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Furthermore, contracting authorities should be given the possibility to exclude candidates or tenderers for violations of environmental or social obligations, including rules on accessibility for disabled persons or other forms of grave

Amendment

(34) Public contracts should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Furthermore, contracting authorities should be given the possibility to exclude candidates or tenderers for violations of environmental, ***labour*** or social obligations, including rules on ***working conditions***, accessibility for disabled

professional misconduct, such as violations of competition rules or of intellectual property rights.

persons or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights.

Or. en

Amendment 259
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Recital 35

Text proposed by the Commission

(35) Allowance should, however, be made for the possibility that economic operators may adopt compliance measures aimed at remedying the consequences of any criminal offences or misconduct and at effectively preventing further occurrences of the misbehaviour. These measures may consist in particular in personnel and organisation measures such as the severance of all links with persons or organisations involved in the misbehaviour, appropriate staff reorganisation measures, the implementation of reporting and control systems, the creation of an internal audit structure to monitor compliance and the adoption of internal liability and compensation rules. Where such measures offer sufficient guarantees, the economic operator in question should no longer be excluded on these grounds. Economic operators should have the possibility to request that contracting authorities examine the compliance measures taken with a view to possible admission to the procurement procedure.

Amendment

(35) Allowance should, however, be made for the possibility that economic operators may adopt compliance measures aimed at remedying the consequences of any criminal offences or misconduct and at effectively preventing further occurrences of the misbehaviour. These measures may consist in particular in personnel and organisation measures such as the severance of all links with persons or organisations involved in the misbehaviour, appropriate staff reorganisation measures, the implementation of reporting and control systems, the creation of an internal audit structure to monitor compliance and the adoption of internal liability and compensation rules. Where such measures offer sufficient guarantees, the economic operator in question should no longer be excluded on these grounds. Economic operators should have the possibility to request that contracting authorities examine the compliance measures taken with a view to possible admission to the procurement procedure. ***The maximum period for exclusion of an economic operator should be 10 years.***

Or. en

Amendment 260
Sirpa Pietikäinen

Proposal for a directive
Recital 36

Text proposed by the Commission

(36) Contracting authorities may require that environmental management measures or schemes are to be applied during the performance of a public contract. Environmental management schemes, whether or not they are registered under Union instruments such as Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)¹⁹, can demonstrate that the economic operator has the technical capability to perform the contract. A description of the measures implemented by the economic operator to ensure the same level of environmental protection should be accepted as an alternative to environmental management registration schemes as a form of evidence, where the economic operator concerned has no access to such environmental management registration schemes or no possibility of obtaining them within the relevant time limits.

Amendment

(36) Contracting authorities may require that environmental management measures or schemes are to be applied during the performance of a public contract. Environmental management schemes, whether or not they are registered under Union instruments such as Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)¹⁹, can demonstrate that the economic operator has the technical capability to perform the contract. A description of the measures implemented by the economic operator to ensure the same level of environmental **and animal welfare** protection should be accepted as an alternative to environmental management registration schemes as a form of evidence, where the economic operator concerned has no access to such environmental management registration schemes or no possibility of obtaining them within the relevant time limits.

Or. en

Amendment 261
Heide Rühle

Proposal for a directive
Recital 37

Text proposed by the Commission

(37) Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of

Amendment

(37) Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of

transparency, non-discrimination and equal treatment. These criteria should guarantee that tenders are assessed in conditions of effective competition, *also where* contracting authorities require high-quality works, supplies and services that are optimally suited to their needs, for instance where the chosen award criteria include factors linked to the production process. *As a result, contracting authorities should be allowed to adopt as award criteria either ‘the most economically advantageous tender’ or ‘the lowest cost’, taking into account that in the latter case they are free to set adequate quality standards by using technical specifications or contract performance conditions.*

transparency, non-discrimination and equal treatment. These criteria should guarantee that tenders are assessed in conditions of effective competition, *at the same time ensuring that* contracting authorities *may* require high-quality works, supplies and services that are optimally suited to their needs, for instance where the chosen award criteria include factors linked to the production process.

Or. en

Justification

The main procedure should be to procure to the best value for money or in other words the most economically advantageous tender. There is no need for a second criteria like the lowest costs as in the most economically tender the price criterion is included.

Amendment 262

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, Andreas Schwab

Proposal for a directive

Recital 37

Text proposed by the Commission

(37) Aufträge sollten auf der Grundlage objektiver Kriterien vergeben werden, die die Einhaltung der Grundsätze der Transparenz, der Nichtdiskriminierung und der Gleichbehandlung gewährleisten. Diese Kriterien sollten garantieren, dass die Angebote unter den Bedingungen eines effektiven Wettbewerbs bewertet werden, auch wenn die öffentlichen Auftraggeber qualitativ hochwertige Bauleistungen, Lieferungen und Dienstleistungen verlangen, die optimal auf ihre Bedürfnisse

Amendment

(37) Aufträge sollten auf der Grundlage objektiver Kriterien vergeben werden, die die Einhaltung der Grundsätze der Transparenz, der Nichtdiskriminierung und der Gleichbehandlung gewährleisten. Diese Kriterien sollten garantieren, dass die Angebote unter den Bedingungen eines effektiven Wettbewerbs bewertet werden, auch wenn die öffentlichen Auftraggeber qualitativ hochwertige Bauleistungen, Lieferungen und Dienstleistungen verlangen, die optimal auf ihre Bedürfnisse

zugeschnitten sind, beispielsweise wenn die festgelegten Zuschlagskriterien auf Faktoren abstellen, die mit dem Produktionsprozess verbunden sind. Folglich sollte *es öffentlichen Auftraggebern gestattet sein, als Zuschlagskriterium entweder* das „wirtschaftlich günstigste Angebot“ *oder* den „*niedrigsten* Preis“ *zu bestimmen*, wobei es ihnen *in letzterem Fall* freistehen sollte, angemessene Qualitätsstandards in Form von technischen Spezifikationen oder von Bedingungen für die Auftragsausführung festzulegen.

zugeschnitten sind, beispielsweise wenn die festgelegten Zuschlagskriterien auf Faktoren abstellen, die mit dem Produktionsprozess verbunden sind. Folglich sollte *der öffentliche Auftraggeber auf* das „wirtschaftlich günstigste Angebot“ *zurückgreifen. In sachlich begründeten Ausnahmefällen, insbesondere bei hochstandardisierten Produkten, sollte es dem öffentlichen Auftraggeber möglich sein, ausschließlich auf* den *günstigsten* Preis *oder die günstigsten Kosten abzustellen*, wobei es ihnen freistehen sollte, angemessene Qualitätsstandards in Form von technischen Spezifikationen oder von Bedingungen für die Auftragsausführung festzulegen.

Or. de

Justification

Das Kriterium des wirtschaftlich günstigsten Angebots hat sich in der Praxis als der Oberbegriff bewährt, unter den alle qualitativen, ökologischen und sozialen Kriterien sowie der Preis und die Kosten gefasst werden können.

Amendment 263 **Marc Tarabella**

Proposal for a directive **Recital 37**

Text proposed by the Commission

(37) L'attribution du marché devrait se faire selon des critères objectifs qui assurent le respect des principes de transparence, de non-discrimination et d'égalité de traitement. Ces critères devraient garantir que l'appréciation des offres se déroule dans des conditions de concurrence effective, y compris lorsque la demande des pouvoirs adjudicateurs porte sur des travaux, des fournitures ou des services de très haute qualité parfaitement

Amendment

(37) L'attribution du marché devrait se faire selon des critères objectifs qui assurent le respect des principes de transparence, de non-discrimination et d'égalité de traitement. Ces critères devraient garantir que l'appréciation des offres se déroule dans des conditions de concurrence effective, y compris lorsque la demande des pouvoirs adjudicateurs porte sur des travaux, des fournitures ou des services de très haute qualité parfaitement

adaptés à leurs besoins, par exemple lorsque les critères de passation retenus incluent des facteurs liés au processus de production. Les pouvoirs adjudicateurs devraient donc pouvoir adopter comme critère d'attribution *soit* «l'offre économiquement la plus avantageuse» *soit* «**le prix le plus bas**», compte tenu du fait que dans ce dernier cas, ils sont libres de fixer des normes de qualité adéquates dans le cadre des spécifications techniques ou des conditions d'exécution du marché.

adaptés à leurs besoins, par exemple lorsque les critères de passation retenus incluent des facteurs liés au processus de production. Les pouvoirs adjudicateurs devraient donc pouvoir adopter comme critère d'attribution «l'offre économiquement la plus avantageuse», compte tenu du fait que dans ce dernier cas, ils sont libres de fixer des normes de qualité adéquates dans le cadre des spécifications techniques ou des conditions d'exécution du marché.

Or. fr

Amendment 264
Jürgen Creutzmann

Proposal for a directive
Recital 37

Text proposed by the Commission

(37) Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of transparency, non-discrimination and equal treatment. ***These*** criteria should guarantee that tenders are assessed in conditions of effective competition, also where contracting authorities require high-quality works, supplies and services that are optimally suited to their needs, ***for instance where the chosen award criteria include factors linked to the production process.*** As a result, contracting authorities should be allowed to adopt as award criteria either 'the most economically advantageous tender' or '***the lowest cost***', ***taking into account that in the latter case they are free to set adequate quality standards by using technical specifications or contract performance conditions.***

Amendment

(37) Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of transparency, non-discrimination and equal treatment. ***Those*** criteria should guarantee that tenders are assessed in conditions of effective competition, also where contracting authorities require high-quality works, supplies and services that are optimally suited to their needs. As a result, contracting authorities should be allowed to adopt as award criteria either 'the most economically advantageous tender' or, in case ***of standardised goods, 'the lowest prize'***.

Or. en

Amendment 265

Frank Engel, Andreas Schwab, Konstantinos Poupakis, Anna Maria Corazza Bildt

Proposal for a directive

Recital 38

Text proposed by the Commission

(38) Lorsque les pouvoirs adjudicateurs **choisissent d'attribuer** le marché à l'offre économiquement la plus avantageuse, ils doivent définir les critères d'attribution qu'ils appliqueront pour déterminer celle des offres reçues qui présente le meilleur rapport qualité/prix. La détermination de ces critères dépend de l'objet du marché, puisqu'ils sont censés permettre d'évaluer le niveau de performance de chaque offre par rapport à cet objet, tel qu'il est défini dans les spécifications techniques, et de mesurer le rapport qualité/prix de celle-ci. En outre, ces critères ne devraient pas conférer une liberté de choix illimitée au pouvoir adjudicateur, et ils devraient garantir une concurrence effective et être accompagnés d'exigences qui permettent de vérifier effectivement les informations fournies par les soumissionnaires.

Amendment

(38) Lorsque les pouvoirs adjudicateurs **attribuent** le marché à l'offre économiquement la plus avantageuse, ils doivent définir les critères d'attribution qu'ils appliqueront pour déterminer celle des offres reçues qui présente le meilleur rapport qualité/prix. La détermination de ces critères dépend de l'objet du marché, puisqu'ils sont censés permettre d'évaluer le niveau de performance de chaque offre par rapport à cet objet, tel qu'il est défini dans les spécifications techniques, et de mesurer le rapport qualité/prix de celle-ci. En outre, ces critères ne devraient pas conférer une liberté de choix illimitée au pouvoir adjudicateur, et ils devraient garantir une concurrence effective et être accompagnés d'exigences qui permettent de vérifier effectivement les informations fournies par les soumissionnaires.

Or. fr

Amendment 266

Cornelis de Jong

Proposal for a directive

Recital 38

Text proposed by the Commission

(38) **Where contracting** authorities **choose to award a contract to the most economically advantageous tender, they** must determine the award criteria on the basis of which they will assess tenders in order to identify which one offers the best

Amendment

(38) **Contracting** authorities must determine the award criteria on the basis of which they will assess tenders in order to identify which one offers the best value for money. The determination of these criteria depends on the subject-matter of the

value for money. The determination of these criteria depends on the subject-matter of the contract since they must allow the level of performance offered by each tender to be assessed in the light of the subject-matter of the contract, as defined in the technical specifications, and the value for money of each tender to be measured. Furthermore, the chosen award criteria should ***not confer an unrestricted freedom of choice on the contracting authority and they should*** ensure the possibility of effective competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified.

contract since they must allow the level of performance offered by each tender to be assessed in the light of the subject-matter of the contract, as defined in the technical specifications, and the value for money of each tender to be measured. Furthermore, the chosen award criteria should ensure the possibility of effective ***and fair*** competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified.

Or. en

Amendment 267
Catherine Stihler

Proposal for a directive
Recital 38

Text proposed by the Commission

(38) Where contracting authorities choose to award a contract to the most economically advantageous tender, they must determine the award criteria on the basis of which they will assess tenders in order to identify which one offers the best value for money. The determination of these criteria depends on the subject-matter of the contract since they must allow the level of performance offered by each tender to be assessed in the light of the subject-matter of the contract, as defined in the technical specifications, and the value for money of each tender to be measured. Furthermore, the chosen award criteria should not confer an unrestricted freedom of choice on the contracting authority and they should ensure the possibility of effective competition and be accompanied by requirements that allow the information

Amendment

(38) Where contracting authorities choose to award a contract to the most economically advantageous tender, they must determine the award criteria on the basis of which they will assess tenders in order to identify which one offers the best value for money. The determination of these criteria depends on the subject-matter of the contract since they must allow the level of performance offered by each tender to be assessed in the light of the subject-matter of the contract, as defined in the technical specifications, and the value for money of each tender to be measured. Furthermore, the chosen award criteria should not confer an unrestricted freedom of choice on the contracting authority and they should ensure the possibility of effective competition and be accompanied by requirements that allow the information

provided by the tenderers to be effectively verified.

provided by the tenderers to be effectively verified. ***Where justified on public policy grounds in order to promote sustainable economic growth, contracting authorities may include criteria related to socio-economic impact in order to identify which tender offers the best value for money. Such cases may arise where there is a need to develop and retain a skilled workforce, foster business capacity in order to ensure that contracting authorities' future requirements can be met, or avoid any detrimental impact on the workforce or business capacity as a result of the contract award decision.***

Or. en

Amendment 268
Ian Hudghton

Proposal for a directive
Recital 38

Text proposed by the Commission

(38) Where contracting authorities choose to award a contract to the most economically advantageous tender, they must determine the award criteria on the basis of which they will assess tenders in order to identify which one offers the best value for money. The determination of these criteria depends on the subject-matter of the contract since they must allow the level of performance offered by each tender to be assessed in the light of the subject-matter of the contract, as defined in the technical specifications, and the value for money of each tender to be measured. Furthermore, the chosen award criteria should not confer an unrestricted freedom of choice on the contracting authority and they should ensure the possibility of effective competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively

Amendment

(38) Where contracting authorities choose to award a contract to the most economically advantageous tender, they must determine the award criteria on the basis of which they will assess tenders in order to identify which one offers the best value for money. The determination of these criteria depends on the subject-matter of the contract since they must allow the level of performance offered by each tender to be assessed in the light of the subject-matter of the contract, as defined in the technical specifications, and the value for money of each tender to be measured. Furthermore, the chosen award criteria should not confer an unrestricted freedom of choice on the contracting authority and they should ensure the possibility of effective competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively

verified.

verified. *Where justified on public policy grounds in order to promote sustainable economic growth, contracting authorities may include criteria related to socio-economic impact in order to identify which tender offers the best value for money. Such cases may arise where there is a need to develop and retain a skilled workforce, foster business capacity in order to ensure that contracting authorities' future requirements can be met, or avoid any detrimental impact on the workforce or business capacity as a result of the contract award decision.*

Or. en

Amendment 269

Anna Hedh

Proposal for a directive

Recital 38

Text proposed by the Commission

(38) *Where contracting authorities choose to award a contract to the most economically advantageous tender, they must determine **the award** criteria on the basis of which they will assess tenders in order to identify which one offers the best value for money. The determination of these criteria depends on the subject-matter of the contract since they must allow the level of performance offered by each tender to be assessed in the light of the **subject-matter** of the contract, as defined in the technical specifications, and the value for money of each tender to be measured. Furthermore, the chosen award criteria should not confer an unrestricted freedom of choice on the contracting authority and they should ensure the possibility of effective competition and be accompanied by requirements that allow the information provided by the tenderers*

Amendment

(38) *Contracting* authorities must determine **the award** criteria on the basis of which they will assess tenders in order to identify which one offers the best value, **including environmental and social responsibility**, for money. The determination of these criteria depends on the subject-matter of the contract **or the subject matter of the production** since they must allow the level of performance offered by each tender to be assessed in the light of the **subject-matters** of the contract **and production**, as defined in the technical specifications, and the value for money of each tender to be measured. Furthermore, the chosen award criteria should not confer an unrestricted freedom of choice on the contracting authority and they should ensure the possibility of effective **and fair** competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively

to be effectively verified.

verified.

Or. en

Amendment 270
Anna Maria Corazza Bildt

Proposal for a directive
Recital 38 a (new)

Text proposed by the Commission

Amendment

(38a) In particular for public procurement of food for hospitals, schools, child and elders care, it is necessary to ensure that passive consumers have full access to quality and nutritional products providing the best value for money.

Or. en

Amendment 271
Anna Maria Corazza Bildt

Proposal for a directive
Recital 38 b (new)

Text proposed by the Commission

Amendment

(38b) In this respect, contracting authorities may go beyond EU legislation, taking into account stricter environmental consideration and production methodology, including in the formulation of the award criteria, in full respect of EU law.

Or. en

Amendment 272
Sirpa Pietikäinen

Proposal for a directive
Recital 39

Text proposed by the Commission

(39) It is of utmost importance to fully exploit the potential of public procurement to achieve the objectives of the Europe 2020 Strategy for sustainable growth. In view of the important differences between individual sectors and markets, it would however not be appropriate to set general mandatory requirements for environmental, social and innovation procurement. The Union legislature has already set mandatory procurement requirements for obtaining specific goals in the sectors of road transport vehicles (Directive 2009/33/EC of the European Parliament and the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles²⁰) and office equipment (Regulation (EC) No 106/2008 of the European Parliament and the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment²¹). In addition, the definition of common methodologies for life cycle costing has significantly advanced. It therefore appears appropriate to continue on that path, leaving it to sector-specific legislation to set mandatory objectives and targets in function of the particular policies and conditions prevailing in the relevant sector and to promote the development and use of European approaches to life-cycle costing as a further underpinning for the use of public procurement in support of sustainable growth.

Amendment

(39) It is of utmost importance to fully exploit the potential of public procurement to achieve the objectives of the Europe 2020 Strategy for sustainable growth. In view of the important differences between individual sectors and markets, it would however not be appropriate to set general mandatory requirements for environmental, social and innovation procurement. The Union legislature has already set mandatory procurement requirements for obtaining specific goals in the sectors of road transport vehicles (Directive 2009/33/EC of the European Parliament and the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles²⁰) and office equipment (Regulation (EC) No 106/2008 of the European Parliament and the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment²¹). In addition, the definition of common methodologies for life cycle costing ***and the costing of socially sustainable production processes including levels of animal welfare*** has significantly advanced. It therefore appears appropriate to continue on that path, leaving it to sector-specific legislation to set mandatory objectives and targets in function of the particular policies and conditions prevailing in the relevant sector and to promote the development and use of European approaches to life-cycle costing as a further underpinning for the use of public procurement in support of sustainable growth.

Or. en

Amendment 273
Heide Rühle

Proposal for a directive
Recital 40

Text proposed by the Commission

(40) These sector-specific measures must be complemented by an adaptation of the public procurement Directives empowering contracting authorities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting authorities can determine the most economically advantageous tender ***and the lowest cost*** using a life-cycle costing approach, provided that the methodology to be used is established in an objective and non-discriminatory manner and accessible to all interested parties. The notion of life-cycle costing includes all costs over the life cycle of works, supplies or services, both their internal costs (such as development, production, use, maintenance and end-of-life disposal costs) and their external costs, provided they can be monetised and monitored. Common methodologies should be developed at the level of the Union for the calculation of life-cycle costs for specific categories of supplies or services; ***whenever such a methodology is developed its use should be made compulsory.***

Amendment

(40) These sector-specific measures must be complemented by an adaptation of the public procurement Directives empowering contracting authorities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting authorities can determine the most economically advantageous tender using a life-cycle costing approach, provided that the methodology to be used is established in an objective and non-discriminatory manner and accessible to all interested parties. The notion of life-cycle costing includes all costs over the life cycle of works, supplies or services, both their internal costs (such as development, production, use, maintenance and end-of-life disposal costs) and their external costs, provided they can be monetised and monitored. Common methodologies should be developed at the level of the Union for the calculation of life-cycle costs for specific categories of supplies or services.

Or. en

Justification

Contracting authorities should be encouraged to consider lifecycle costs. However the development of the calculation method is still experiencing problems. An obligation to use the EU method is far too ambitious further more European legislation on public procurement sets minimum requirement contracting authorities may go further in their requirements as long as they comply with the Treaty principles and the specific requirements for award criteria.

Amendment 274
Frank Engel, Wim van de Camp, Konstantinos Poupakis

Proposal for a directive
Recital 40

Text proposed by the Commission

(40) These sector-specific measures must be complemented by an adaptation of the public procurement Directives empowering contracting authorities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting authorities can determine the most economically advantageous tender and the lowest cost using a life-cycle costing approach, provided that the methodology to be used is established in an objective and non-discriminatory manner and accessible to all interested parties. The notion of life-cycle costing includes all costs over the life cycle of works, supplies or services, both their internal costs (such as development, production, use, maintenance and end-of-life disposal costs) and their external costs, provided they can be monetised and monitored. Common methodologies should be developed at the level of the Union for the calculation of life-cycle costs for specific categories of supplies or services; whenever such a methodology is developed its use should be made compulsory.

Amendment

(40) These sector-specific measures must be complemented by an adaptation of the public procurement Directives empowering contracting authorities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting authorities can determine the most economically advantageous tender and the lowest cost using a life-cycle costing approach, provided that the methodology to be used is established in an objective and non-discriminatory manner and accessible to all interested parties. The notion of life-cycle costing includes all costs over the life cycle of works, supplies or services, both their internal costs (such as **research,** development, production, use, maintenance and end-of-life disposal costs) and their external costs, provided they can be monetised and monitored. Common methodologies should be developed at the level of the Union for the calculation of life-cycle costs for specific categories of supplies or services; whenever such a methodology is developed its use should be made compulsory.

Or. en

Amendment 275

Malgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Recital 40

Text proposed by the Commission

(40) These sector-specific measures must be complemented by an adaptation of the public procurement Directives empowering

Amendment

(40) These sector-specific measures must be complemented by an adaptation of the public procurement Directives empowering

contracting authorities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting authorities can determine the most economically advantageous tender and the lowest cost using a life-cycle costing approach, provided that the methodology to be used is established in an objective and non-discriminatory manner and accessible to all interested parties. The notion of life-cycle costing includes all costs over the life cycle of works, supplies or services, both their internal costs (such as development, **production**, use, maintenance and end-of-life disposal costs) and their external costs, provided they can be monetised and monitored. Common methodologies should be developed at the level of the Union for the calculation of life-cycle costs for specific categories of supplies or services; whenever such a methodology is developed its use should be made compulsory.

contracting authorities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting authorities can determine the most economically advantageous tender and the lowest cost using a life-cycle costing approach, provided that the methodology to be used is established in an objective and non-discriminatory manner and accessible to all interested parties. The notion of life-cycle costing includes all costs over the life cycle of works, supplies or services, both their internal costs (such as development, use, maintenance and end-of-life disposal costs) and their external costs, provided they can be monetised and monitored. Common methodologies should be developed at the level of the Union for the calculation of life-cycle costs for specific categories of supplies or services; **adopted in close consultation with stakeholders, including industry**; whenever such a methodology is developed its use should be made compulsory.

Or. en

Amendment 276
Sirpa Pietikäinen

Proposal for a directive
Recital 40

Text proposed by the Commission

(40) These sector-specific measures must be complemented by an adaptation of the public procurement Directives empowering contracting authorities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting authorities can determine the most economically advantageous tender and the lowest cost using a life-cycle costing approach, provided that the methodology to be used

Amendment

(40) These sector-specific measures must be complemented by an adaptation of the public procurement Directives empowering contracting authorities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting authorities can determine the most economically advantageous tender and the lowest cost using a life-cycle costing approach **and economically viable animal welfare**

is established in an objective and non-discriminatory manner and accessible to all interested parties. The notion of life-cycle costing includes all costs over the life cycle of works, supplies or services, both their internal costs (such as development, production, use, maintenance and end-of-life disposal costs) and their external costs, provided they can be monetised and monitored. Common methodologies should be developed at the level of the Union for the calculation of life-cycle costs for specific categories of supplies or services; whenever such a methodology is developed its use should be made compulsory.

solutions, provided that the methodology to be used is established in an objective and non-discriminatory manner and accessible to all interested parties. The notion of life-cycle costing includes all costs over the life cycle of works, supplies or services, both their internal costs (such as development, production, use, maintenance and end-of-life disposal costs) and their external costs, provided they can be monetised and monitored. Common methodologies should be developed at the level of the Union for the calculation of life-cycle costs for specific categories of supplies or services; whenever such a methodology is developed its use should be made compulsory.

Or. en

Amendment 277
Jürgen Creutzmann

Proposal for a directive
Recital 40

Text proposed by the Commission

(40) These sector-specific measures must be complemented by an adaptation of the public procurement Directives empowering contracting authorities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting authorities can determine the most economically advantageous tender **and the lowest cost** using a life-cycle costing approach, provided that the methodology to be used is established in an objective and non-discriminatory manner and accessible to all interested parties. The notion of life-cycle costing includes all costs over the life cycle of works, supplies or services, **both their internal costs** (such as **development, production**, use, maintenance and end-of-life disposal costs) **and their external**

Amendment

(40) These sector-specific measures must be complemented by an adaptation of the public procurement Directives empowering contracting authorities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting authorities can determine the most economically advantageous tender using a life-cycle costing approach, provided that the methodology to be used is established in an objective and non-discriminatory manner and accessible to all interested parties. The notion of life-cycle costing includes all **internal** costs over the life cycle of works, supplies or services (such as use, maintenance and end-of-life disposal costs).

costs, provided they can be monetised and monitored. Common methodologies should be developed at the level of the Union for the calculation of life-cycle costs for specific categories of supplies or services; whenever such a methodology is developed its use should be made compulsory.

Or. en

(See amendments on Article 66)

Justification

Life-cycle costing should be one of the options in order to determine the economically most advantageous tender (EMAT) rather than an alternative to it. The alternative to EMAT should be the lowest prize, but only for standardised products.

Amendment 278

Barbara Weiler

Proposal for a directive

Recital 41 a (new)

Text proposed by the Commission

Amendment

(41 a) Taking into account recent case law of the Court of Justice of the EU, contracting authorities can choose an award criterion which refers to the fact that the product concerned is of fair trade origin, including the requirement to pay a minimum and price premium to producers.

Or. en

Amendment 279

Catherine Stihler

Proposal for a directive

Recital 41 a (new)

(41 a) Taking into account recent case law of the Court of Justice of the EU, contracting authorities can chose an award criterion which refers to the fact that the product concerned is of fair trade origin, including the requirement to pay a minimum and price premium to producers.

Or. en

Justification

Following the May 2012 CJEU decision on the case C-368/10 European Commission vs Kingdom of the Netherlands (the North Holland case), it is clear that even under the current Directive award criteria can encompass social considerations. The decision clearly says that "there is no requirement that an award criterion relates to an intrinsic characteristic of a product, that is to say something which forms part of the material substance thereof. [...] There is therefore nothing, in principle, to preclude such a criterion from referring to the fact that the product concerned was of fair trade origin".

Amendment 280
Heide Rühle

Proposal for a directive
Recital 41

Text proposed by the Commission

(41) Furthermore, in technical specifications ***and*** in award criteria, contracting authorities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the public contract. In order to better integrate social considerations in public procurement, procurers may ***also be allowed to*** include, in the award criterion ***of the most economically advantageous tender***, characteristics related to the

Amendment

(41) Furthermore, in technical specifications, in award criteria ***and in contract performance clauses***, contracting authorities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the public contract. In order to better integrate social considerations in public procurement, procurers may include, in the award criterion characteristics related to the working conditions of the persons

working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may **only** concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event **remain limited to characteristics that have immediate consequences on staff members in their working environment**. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services²² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender.

directly participating in the process of production or provision in question. Those characteristics may concern **among others** the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event **be linked to the subject matter of the contract**. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services²² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender. **Contracting authorities may include social considerations (i.a. ILO core conventions) in the technical specifications when this is relevant and linked to the subject matter of the contract.**

Or. en

Justification

Social considerations are not enough covered by the Commission proposal . Their application should be allowed in all phases of the procurement process as long as they are clearly linked to the subject matter of the contract.

Amendment 281
Vicente Miguel Garcés Ramón

Proposal for a directive
Recital 41

Text proposed by the Commission

(41) Por otra parte, debe admitirse que los poderes adjudicadores hagan referencia, en las especificaciones técnicas y en los criterios de adjudicación, a un proceso de producción específico, a un determinado modo de prestación de servicios o a un proceso concreto correspondiente a cualquier otra fase del ciclo de vida de un producto o servicio, a condición de que estén relacionados con el objeto del contrato público. A fin de integrar mejor las consideraciones sociales en la contratación pública, puede autorizarse también a los compradores a incluir, en el criterio de adjudicación de la oferta económicamente más ventajosa, características relacionadas con las condiciones de trabajo de las personas que participen directamente en el proceso de producción o la prestación de que se trate. Esas características solo podrán tener como objetivo proteger la salud del personal participante en el proceso de producción o favorecer la integración social de las personas desfavorecidas o los miembros de grupos vulnerables entre las personas encargadas de ejecutar el contrato, incluida la accesibilidad de las personas con discapacidad. En cualquier caso, todo criterio de adjudicación que incluya esas características debe quedar limitado a las que tengan repercusiones inmediatas para el personal en su entorno de trabajo. Deberían aplicarse de conformidad con la Directiva 96/71/CE del Parlamento Europeo y del Consejo, de 16 de diciembre de 1996, sobre el desplazamiento de trabajadores efectuado en el marco de una prestación de servicios²², y de una forma que no discrimine, directa o indirectamente, a los operadores

Amendment

(41) Por otra parte, debe admitirse que los poderes adjudicadores hagan referencia, en las especificaciones técnicas y en los criterios de adjudicación, a un proceso de producción específico, a un determinado modo de prestación de servicios o a un proceso concreto correspondiente a cualquier otra fase del ciclo de vida de un producto o servicio, a condición de que estén relacionados con el objeto del contrato público. A fin de integrar mejor las consideraciones sociales en la contratación pública, puede autorizarse también a los compradores a incluir, en el criterio de adjudicación de la oferta económicamente más ventajosa, características relacionadas con las condiciones de trabajo de las personas que participen directamente en el proceso de producción o la prestación de que se trate, **como, entre otras, aquellas que puedan tener como objetivo proteger la salud del personal participante en el proceso de producción o favorecer la integración social de las personas desfavorecidas o los miembros de grupos vulnerables entre las personas encargadas de ejecutar el contrato, incluida la accesibilidad de las personas con discapacidad.** . Esas características solo podrán tener como objetivo proteger la salud del personal participante en el proceso de producción o favorecer la integración social de las personas desfavorecidas o los miembros de grupos vulnerables entre las personas encargadas de ejecutar el contrato, incluida la accesibilidad de las personas con discapacidad. En cualquier caso, todo criterio de adjudicación que incluya esas características debe quedar limitado a las que tengan repercusiones inmediatas para

económicos de otros Estados miembros o de terceros países que sean partes en el Acuerdo o en los Acuerdos de Libre Comercio en los que la Unión sea parte. Por lo que respecta a los contratos de servicios y los contratos que impliquen la elaboración de proyectos de obras, los poderes adjudicadores deben estar autorizados también a utilizar como criterio de adjudicación la organización, la cualificación y la experiencia del personal encargado de ejecutar el contrato, ya que pueden afectar a la calidad de dicha ejecución y, en consecuencia, al valor económico de la oferta.

el personal en su entorno de trabajo. Deberían aplicarse de conformidad con la Directiva 96/71/CE del Parlamento Europeo y del Consejo, de 16 de diciembre de 1996, sobre el desplazamiento de trabajadores efectuado en el marco de una prestación de servicios²², y de una forma que no discrimine, directa o indirectamente, a los operadores económicos de otros Estados miembros o de terceros países que sean partes en el Acuerdo o en los Acuerdos de Libre Comercio en los que la Unión sea parte. Por lo que respecta a los contratos de servicios y los contratos que impliquen la elaboración de proyectos de obras, los poderes adjudicadores deben estar autorizados también a utilizar como criterio de adjudicación la organización, la cualificación y la experiencia del personal encargado de ejecutar el contrato, ya que pueden afectar a la calidad de dicha ejecución y, en consecuencia, al valor económico de la oferta.

Or. es

Amendment 282

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Recital 41

Text proposed by the Commission

(41) Furthermore, in technical specifications and in award criteria, contracting authorities should be allowed to refer to ***a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service***, provided that ***they*** are linked to the subject-matter of the ***public*** contract. ***In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion***

Amendment

(41) Furthermore, in technical specifications and in award criteria, contracting authorities should be allowed to refer to ***the monetisation*** of the life cycle of ***the works, service or supply and accordingly to social and environmental sustainability***, provided that ***these characteristics*** are linked to the subject-matter of the contract. ***The technical specifications and award criteria should be interpreted broadly. Contracting authorities may also use the technical***

of the most economically advantageous tender, characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services²² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender.

specifications and award criteria to minimise damaging social or environmental effects or maximise positive social or environmental effects. As part of the award criteria, contracting authorities should be able to consider the existence of an embedded life-cycle approach aiming at minimising cost and maximising resource efficiency and which should be applied in the framework of the provision of works, services or supplies in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries which are parties to the WTO's Government Procurement Agreement, or operators from other third countries with whom the Union is party to a Free Trade Agreement. Contracting authorities should also be allowed to use as technical specifications and award criteria the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality and social sustainability of contract performance and, as a result, the identification of the tender which offers the best value for money. Contracting authorities should include these considerations in the award criterion of the most economically advantageous tender.

Or. en

Justification

An Amendment to Article 2 paragraph 1 – point 22 introduces the term of “life cycle ” as embedded in a works, supply or service as a result of choices made in the non-use phases of the life cycle, so long as there is no loss of the link to the subject matter of the contract, and accordingly so long as this applies from the point of purchase. These considerations are intended to be included into what constitutes the MEAT. This amended recital makes a

reference to this provision.

Amendment 283

Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Recital 41

Text proposed by the Commission

(41) Furthermore, in technical specifications and in award criteria, contracting authorities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the public contract. In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender, characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services²² and in a way that does not discriminate directly or indirectly against economic operators from other Member

Amendment

(41) In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender, characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services²² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to

States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender.

performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender.

Or. en

Amendment 284 **Evelyne Gebhardt, Birgit Sippel**

Proposal for a directive **Recital 41**

Text proposed by the Commission

(41) Darüber hinaus sollte es den öffentlichen Auftraggebern gestattet sein, in den technischen Spezifikationen und in den Zuschlagskriterien auf einen spezifischen Produktionsprozess, eine spezifische Art und Weise der Erbringung von Dienstleistungen oder einen spezifischen Prozess in einer anderen Lebenszyklusphase eines Produkts oder einer Dienstleistung Bezug zu nehmen, sofern diese einen unmittelbaren Bezug zum Gegenstand des öffentlichen Auftrags aufweisen. **Im** Hinblick auf eine stärkere Berücksichtigung sozialer Belange bei der öffentlichen Auftragsvergabe **kann es** den Beschaffern ferner gestattet werden, im Rahmen **des Zuschlagskriteriums des wirtschaftlich günstigsten Angebots** Aspekte einzubeziehen, die die Arbeitsbedingungen der unmittelbar am Produktionsprozess oder an der Leistungserbringung beteiligten Personen betreffen. Derartige Aspekte dürfen sich **ausschließlich** auf den Gesundheitsschutz

Amendment

(41) Darüber hinaus sollte es den öffentlichen Auftraggebern gestattet sein, in den technischen Spezifikationen und in den Zuschlagskriterien auf **Lebenszyklusmerkmale, wie** einen spezifischen Produktionsprozess, **einschließlich z.B. sozialer und umweltbezogener Aspekte**, eine spezifische Art und Weise der Erbringung von Dienstleistungen, **funktionale oder ausführungsbezogene Anforderungen zur Minimierung oder Maximierung umweltbezogener oder sozialer Auswirkungen oder** einen spezifischen Prozess in einer anderen Lebenszyklusphase eines Produkts oder einer Dienstleistung Bezug zu nehmen, sofern diese einen unmittelbaren Bezug zum Gegenstand des öffentlichen Auftrags aufweisen. **Die Regel, dass ein Bezug zum Auftragsgegenstand bestehen muss, sollte weit ausgelegt werden. Entsprechend kann es im** Hinblick auf eine stärkere Berücksichtigung sozialer Belange bei der

der am Produktionsprozess beteiligten Mitarbeiter oder die Förderung der sozialen Integration – einschließlich Barrierefreiheit für Menschen mit Behinderungen – von für die Ausführung des Auftrags eingesetzten Angehörigen benachteiligter oder sozial schwacher Personengruppen beziehen. Zuschlagskriterien, die auf derartige Aspekte abstellen, sollten in jedem Fall auf Merkmale beschränkt bleiben, die unmittelbare Auswirkungen auf die Mitarbeiter in ihrer Arbeitsumgebung haben. Sie sollten im Einklang mit der Richtlinie 96/71/EG des Europäischen Parlaments und des Rates vom 16. Dezember 1996 über die Entsendung von Arbeitnehmern im Rahmen der Erbringung von Dienstleistungen²² und in einer Weise angewandt werden, die Wirtschaftsteilnehmer aus anderen Mitgliedstaaten oder Drittländern, die Partei des Beschaffungsübereinkommens oder der Freihandelsabkommen sind, denen die Union beigetreten ist, weder unmittelbar noch mittelbar diskriminiert. Bei Dienstleistungsaufträgen und Aufträgen, die die Planung von Bauleistungen umfassen, sollte es öffentlichen Auftraggebern ferner gestattet sein, Organisation, Qualifikation und Erfahrung der Mitarbeiter, die für die Ausführung des betreffenden Auftrags eingesetzt werden, als **Zuschlagskriterium** zugrunde zu legen, da es sich hier um einen Faktor handelt, der sich auf die Qualität der Auftragsausführung und damit auf den wirtschaftlichen Wert des Angebots auswirkt.

öffentlichen Auftragsvergabe den Beschaffern ferner gestattet werden, im Rahmen **der technischen Spezifikationen und der Zuschlagskriterien** Aspekte einzubeziehen, die die Arbeitsbedingungen der unmittelbar am Produktionsprozess oder an der Leistungserbringung beteiligten Personen betreffen. Derartige Aspekte dürfen sich **beispielsweise** auf den Gesundheitsschutz der am Produktionsprozess beteiligten Mitarbeiter, **die Gleichstellung der Geschlechter (z.B. gleiche Entlohnung, Vereinbarkeit von Arbeits- und Privatleben), den Zugang zu Maßnahmen der beruflichen Fortbildung, die Einbeziehung und Konsultation der Nutzer, die Erschwinglichkeit, die Menschenrechte, den ethisch ausgerichteten Handel** oder die Förderung der sozialen Integration – einschließlich Barrierefreiheit für Menschen mit Behinderungen – von für die Ausführung des Auftrags eingesetzten Angehörigen benachteiligter oder sozial schwacher Personengruppen (**wie Langzeitarbeitslose, Roma, Migranten oder jungen und ältere Arbeitnehmer**) beziehen. Zuschlagskriterien, die auf derartige Aspekte abstellen, sollten in jedem Fall auf Merkmale beschränkt bleiben, die unmittelbare Auswirkungen auf die Mitarbeiter in ihrer Arbeitsumgebung haben. Sie sollten im Einklang mit der Richtlinie 96/71/EG des Europäischen Parlaments und des Rates vom 16. Dezember 1996 über die Entsendung von Arbeitnehmern im Rahmen der Erbringung von Dienstleistungen²² und in einer Weise angewandt werden, die Wirtschaftsteilnehmer aus anderen Mitgliedstaaten oder Drittländern, die Partei des Beschaffungsübereinkommens oder der Freihandelsabkommen sind, denen die Union beigetreten ist, weder unmittelbar noch mittelbar diskriminiert. Bei Dienstleistungsaufträgen und Aufträgen, die die Planung von Bauleistungen umfassen, sollte es öffentlichen Auftraggebern ferner gestattet

sein, Organisation, Qualifikation und Erfahrung der Mitarbeiter, die für die Ausführung des betreffenden Auftrags eingesetzt werden, als **technische Spezifikationen oder Zuschlagskriterien** zugrunde zu legen, da es sich hier um einen Faktor handelt, der sich auf die Qualität **und Nachhaltigkeit** der Auftragsausführung und damit auf den wirtschaftlichen Wert des Angebots auswirkt. **Die öffentlichen Auftraggeber dürfen auch soziale Belange im Zusammenhang mit den externen sozialen Kosten, die mit dem Lebenszyklus direkt in Verbindung stehen und zu denen beispielsweise die Auswirkungen der Produktion auf die Umgebung und die angrenzenden Gemeinschaften gehören, in die technischen Spezifikationen oder Zuschlagskriterien aufnehmen. Die öffentlichen Auftraggeber sollten in den technischen Spezifikationen Verpflichtungen in Bezug auf die sozialen Gegebenheiten und die Beschäftigungsbedingungen, die Gesundheit und Sicherheit am Arbeitsplatz, die soziale Sicherheit und die Arbeitsbedingungen festlegen, so wie sie in EU-Rechtsvorschriften, nationalen Gesetzen, Regelungen oder Verwaltungsvorschriften, Schiedssprüchen, Kollektivvereinbarungen und -verträgen sowie den in Anhang XI genannten internationalen arbeitsrechtlichen Bestimmungen festgelegt sind, die am Ort der Leistungserbringung gelten; diese Verpflichtungen gelten auch in grenzüberschreitenden Situationen, in denen Arbeitnehmer eines Mitgliedstaats Dienstleistungen in einem anderen Mitgliedstaat erbringen.**

Or. de

Amendment 285
Sirpa Pietikäinen

AM\908710XM.doc

107/217

PE492.857v01-00

XM

Proposal for a directive
Recital 41

Text proposed by the Commission

(41) Furthermore, in technical specifications and in award criteria, contracting authorities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the public contract. In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender, characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences *on* staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services²² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities should also be allowed to use as an award

Amendment

(41) Furthermore, in technical specifications and in award criteria, contracting authorities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service *and levels of animal welfare improvements*, provided that they are linked to the subject-matter of the public contract. In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender, characteristics related to *and* the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services²² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities

criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender.

should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender.

Or. en

Amendment 286 **Catherine Stihler**

Proposal for a directive **Recital 41**

Text proposed by the Commission

(41) Furthermore, in technical specifications and in award criteria, contracting authorities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the public contract. In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender, characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment.

Amendment

(41) Furthermore, in technical specifications and in award criteria, contracting authorities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the public contract. In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender, characteristics related to the working **and employment** conditions of the persons directly participating in the process of production or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment.

They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services²² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender.

They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services²² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender.

Or. en

Amendment 287

Anna Hedh

Proposal for a directive

Recital 41

Text proposed by the Commission

(41) Furthermore, in technical specifications and in award criteria, contracting authorities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, ***provided that they are linked to*** the subject-matter of the ***public*** contract. In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender, characteristics related to the working conditions ***of the persons directly participating in the process of production***

Amendment

(41) Furthermore, in technical specifications and in award criteria, contracting authorities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service ***or the production of the*** subject-matter of the contract. In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender, characteristics related to the working conditions. ***Contracting authorities*** may ***require*** the production of

or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services²² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender.

certificates/labels drawn up by independent bodies attesting that the economic operator complies with rules and standards in the field of health and safety, social and labour law defined by Union and national legislation and by collective agreements which apply in the place where the work, service or supply is to be performed.

Or. en

Justification

The reference to the posting directive is not necessary. If it is to be included the directive 2008/104/EC of the European parliament and of the Council of 19 November 2008 on temporary work should also be added.

Amendment 288
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Recital 41

Text proposed by the Commission

(41) Furthermore, in technical specifications and in award criteria, contracting authorities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the public contract. In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender, characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may *only* concern the ***protection of health of the staff involved in the production process*** or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members ***in their working environment***. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services²² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities should also be allowed to use as an award

Amendment

(41) Furthermore, in technical specifications and in award criteria, contracting authorities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the public contract. In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender, characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. ***Those characteristics may concern working conditions along the supply chain as stated in national labour laws and regulations in which production processes take place and in international conventions as listed in Annex XI, whatever the most favourable for workers. These provisions include those defined by the eight ILO Core Conventions (freedom of association and collective bargaining, forced and compulsory labour, discrimination in respect of employment and occupation, child labour); occupational safety and health; working time; wages and social security.*** Those characteristics may *also* concern the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members working ***conditions***. They should be applied in accordance with Directive

criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender.

96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services²² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender.

Or. en

Justification

It might be useful to introduce working conditions as technical specifications and as award criteria not only regarding the “protection of health”; they should refer also to other working conditions that are essential components of the “decent work” concept defined by ILO.

Amendment 289

Ivo Belet

Proposal for a directive

Recital 41

Text proposed by the Commission

(41) Furthermore, in technical specifications and in award criteria, contracting authorities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the public contract. In order to better integrate social considerations in public

Amendment

(41) Furthermore, in technical specifications and in award criteria, contracting authorities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the public contract. In order to better integrate social considerations in public

procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender, characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services²² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender.

procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender, characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services²² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender. ***Taking into account recent case law of the Court of Justice of the EU, contracting authorities can choose an award criterion which refers to the fact that the product concerned is of fair trade origin, including the requirement to pay a minimum and price premium to producers.***

Or. en

Amendment 290
Jürgen Creutzmann

Proposal for a directive
Recital 41

Text proposed by the Commission

(41) Furthermore, in technical specifications ***and in award criteria***, contracting authorities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the public contract. ***In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender, characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services²² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to***

Amendment

(41) Furthermore, in technical specifications, contracting authorities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the public contract and ***proportionate*** to the ***value*** and ***objectives*** of the contract.

the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender.

Or. en

(See Articles 40 and 66)

Justification

The reference to "the process of production" or of "any other stage of its life cycle" in the technical specifications and award criteria is too vague and increases the discretion of contracting authorities at the expense of transparency and effective competition. The principle of ensuring a link to the subject matter of the contract could easily be broken.

Amendment 291

Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Recital 42

Text proposed by the Commission

(42) Angebote, deren Preis im Verhältnis zu den angebotenen Bauleistungen, Lieferungen oder Dienstleistungen ungewöhnlich niedrig erscheint, können auf technisch, wirtschaftlich oder rechtlich fragwürdigen Annahmen oder Praktiken basieren. Um etwaige Probleme während der Auftragsausführung zu vermeiden, sollten öffentliche Auftraggeber verpflichtet werden, eine Erläuterung des angesetzten Preises zu verlangen, wenn ein Angebot erheblich unter den von anderen Bietern verlangten Preisen liegt. Kann der Bieter keine hinreichende Begründung geben, sollte der öffentliche Auftraggeber

Amendment

(42) Angebote, deren Preis im Verhältnis zu den angebotenen Bauleistungen, Lieferungen oder Dienstleistungen ungewöhnlich niedrig erscheint, können auf technisch, wirtschaftlich oder rechtlich fragwürdigen Annahmen oder Praktiken basieren. Um etwaige Probleme während der Auftragsausführung zu vermeiden, sollten öffentliche Auftraggeber verpflichtet werden, eine Erläuterung des angesetzten Preises zu verlangen, wenn ein Angebot erheblich unter den von anderen Bietern verlangten Preisen liegt. Kann der Bieter keine hinreichende Begründung geben, sollte der öffentliche Auftraggeber

berechtig sein, das Angebot **abzulehnen**. Eine Ablehnung sollte obligatorisch sein in Fällen, in denen der öffentliche Auftraggeber festgestellt hat, dass die angegebenen ungewöhnlich niedrigen Preise aus der Nichtbeachtung **verbindlicher sozial-, arbeits- oder** umweltrechtlicher Vorschriften der Union oder **internationaler arbeitsrechtlicher Vorschriften** resultieren.

das Angebot **ablehnen**. Eine Ablehnung sollte obligatorisch sein in Fällen, in denen der öffentliche Auftraggeber festgestellt hat, dass die angegebenen ungewöhnlich niedrigen Preise aus der Nichtbeachtung umweltrechtlicher Vorschriften der Union oder **von Verpflichtungen in Bezug auf die sozialen Gegebenheiten und Beschäftigungsbedingungen, die Gesundheit und Sicherheit am Arbeitsplatz, die soziale Sicherheit und die Arbeitsbedingungen** resultieren, **so wie sie in EU-Rechtsvorschriften, nationalen Gesetzen, Regelungen oder Verwaltungsvorschriften, Schiedssprüchen, Kollektivvereinbarungen und -verträgen sowie den in Anhang XI genannten internationalen arbeitsrechtlichen Bestimmungen festgelegt sind, die am Ort der Leistungserbringung gelten; diese Verpflichtungen gelten auch in grenzüberschreitenden Situationen, in denen Arbeitnehmer eines Mitgliedstaats Dienstleistungen in einem anderen Mitgliedstaat erbringen.**

Or. de

Amendment 292
Christel Schaldemose

Proposal for a directive
Recital 43

Text proposed by the Commission

(43) Vilkårene for udførelse af en kontrakt er i overensstemmelse med dette direktiv, hvis de hverken direkte eller indirekte er diskriminerende, hvis de er forbundet med kontraktens genstand, og hvis de er anført i udbudsbekendtgørelsen, den vejledende forhåndsmeddelelse til at iværksætte udbud eller udbudsdokumenterne. Vilkårene kan bl.a. have til formål at fremme efteruddannelse på arbejdspladsen, skaffe

Amendment

(43) Vilkårene for udførelse af en kontrakt er i overensstemmelse med dette direktiv, hvis de hverken direkte eller indirekte er diskriminerende, hvis de er forbundet med kontraktens genstand, og hvis de er anført i udbudsbekendtgørelsen, den vejledende forhåndsmeddelelse til at iværksætte udbud eller udbudsdokumenterne. Vilkårene kan bl.a. have til formål at fremme efteruddannelse på arbejdspladsen, skaffe

beskæftigelse til personer med særlige integrationsproblemer, bekæmpe arbejdsløshed, beskytte miljøet eller dyrevelfærd. Som eksempler kan bl.a. nævnes krav om - ved udførelsen af kontrakten - at ansætte langtidsledige eller iværksætte uddannelsesinitiativer for ledige eller for unge, at overholde substansen i de grundlæggende ILO-konventioner, selv hvis sådanne konventioner ikke er gennemført i national ret, og at ansætte flere handicappede, end den nationale lovgivning kræver.

beskæftigelse til personer med særlige integrationsproblemer, bekæmpe arbejdsløshed, beskytte miljøet eller dyrevelfærd. Som eksempler kan bl.a. nævnes krav om - ved udførelsen af kontrakten - at ansætte langtidslidige eller iværksætte uddannelsesinitiativer for ledige eller for unge, at overholde substansen i de grundlæggende ILO-konventioner, selv hvis sådanne konventioner ikke er gennemført i national ret, og at ansætte flere handicappede, end den nationale lovgivning kræver. ***Betingelserne vedrørende kontraktens udførelse kan bestemmes i henhold til Kommissionens vejledning af oktober 2010: Sociale hensyn ved indkøb - En vejledning i mulighederne for at tage sociale hensyn ved offentlige indkøb (SEK(2010)1258 (endelig)).***

Or. da

Amendment 293

Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Recital 43

Text proposed by the Commission

(43) Die Bedingungen für die Auftragsausführung sind mit dieser Richtlinie vereinbar, wenn sie nicht unmittelbar oder mittelbar eine Diskriminierung nach sich ziehen, wenn sie mit dem Auftragsgegenstand zusammenhängen und wenn sie in der Auftragsbekanntmachung, der als Aufruf zum Wettbewerb dienenden Vorinformation oder den Auftragsunterlagen genannt werden. Sie können insbesondere dem Ziel dienen, die berufliche Ausbildung auf den Baustellen sowie die Beschäftigung von Personen zu fördern, deren Eingliederung besondere Schwierigkeiten bereitet, die

Amendment

(43) Die Bedingungen für die Auftragsausführung sind mit dieser Richtlinie vereinbar, wenn sie nicht unmittelbar oder mittelbar eine Diskriminierung nach sich ziehen, wenn sie mit dem Auftragsgegenstand zusammenhängen und wenn sie in der Auftragsbekanntmachung, der als Aufruf zum Wettbewerb dienenden Vorinformation oder den Auftragsunterlagen genannt werden. Sie können insbesondere dem Ziel dienen, die berufliche Ausbildung auf den Baustellen sowie die Beschäftigung von Personen zu fördern, deren Eingliederung besondere Schwierigkeiten bereitet, die

Arbeitslosigkeit zu bekämpfen oder die Umwelt zu schützen. Unter anderem können beispielsweise für den Zeitraum der Auftragsausführung geltende Anforderungen genannt werden bezüglich der Einstellung von Langzeitarbeitslosen oder der Durchführung von Schulungsmaßnahmen für Arbeitslose oder Jugendliche, der weitgehenden Einhaltung grundlegender Übereinkommen der Internationalen Arbeitsorganisation (IAO) – auch wenn diese nicht in innerstaatliches Recht umgesetzt wurden – oder der Beschäftigung einer höheren Zahl von Menschen mit Behinderungen als nach nationalem Recht vorgeschrieben.

Arbeitslosigkeit zu bekämpfen oder die Umwelt zu schützen. Unter anderem können beispielsweise für den Zeitraum der Auftragsausführung geltende Anforderungen genannt werden bezüglich der Einstellung von Langzeitarbeitslosen oder der Durchführung von Schulungsmaßnahmen für Arbeitslose oder Jugendliche, der weitgehenden Einhaltung grundlegender Übereinkommen der Internationalen Arbeitsorganisation (IAO) – auch wenn diese nicht in innerstaatliches Recht umgesetzt wurden – oder der Beschäftigung einer höheren Zahl von Menschen mit Behinderungen als nach nationalem Recht vorgeschrieben. ***Im Zusammenhang mit den Verpflichtungen in Bezug auf die sozialen Gegebenheiten und Beschäftigungsbedingungen, die Gesundheit und Sicherheit am Arbeitsplatz, die soziale Sicherheit und die Arbeitsbedingungen, so wie sie in EU-Rechtsvorschriften, nationalen Gesetzen, Regelungen oder Verwaltungsvorschriften, Schiedssprüchen, Kollektivvereinbarungen und -verträgen sowie den in Anhang XI genannten internationalen arbeitsrechtlichen Bestimmungen festgelegt sind, die am Ort der Leistungserbringung gelten, sollten die öffentlichen Auftraggeber Bestimmungen festlegen, mit denen ein angemessenes Schutzniveau in den Klauseln zur Auftragsdurchführung festgesetzt wird.***

Or. de

Amendment 294

Morten Løkkegaard, Jens Rohde, Jürgen Creutzmann

Proposal for a directive

Recital 43

Text proposed by the Commission

(43) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked to the subject-matter of the contract and are indicated in the contract notice, the prior information notice used as a means of calling for competition or the procurement documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, ***the fight against unemployment, protection of the environment or animal welfare. For instance, mention may be made, amongst other things, of the requirements □ applicable during performance of the contract □ to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, even where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation.***

Amendment

(43) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked ***directly*** to the subject-matter of the contract and are indicated in the contract notice, the prior information notice used as a means of calling for competition or the procurement documents. They may, in particular, be intended to favour on-site vocational training ***or*** the employment of people experiencing particular difficulty in achieving integration.

Or. en

Amendment 295
Anna Hedh

Proposal for a directive
Recital 43

Text proposed by the Commission

(43) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked to the subject-matter of the contract and are indicated in

Amendment

(43) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked to the subject-matter of the contract and ***or production,***

the contract notice, the prior information notice used as a means of calling for competition or the procurement documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment, protection of the environment or animal welfare. For instance, mention may be made, amongst other things, of the requirements □ applicable during performance of the contract □ to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, even where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation.

and are indicated in the contract notice, the prior information notice used as a means of calling for competition or the procurement documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment, protection of the environment or animal welfare. For instance, mention may be made, amongst other things, of the requirements □ applicable during performance of the contract □ to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, *in particular ILO Convention 94*, even where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation.

Or. en

Justification

This amendment stresses the importance of ILO Convention 94 on Labour Clauses (Public Contracts) which specifically regulates public procurement. EU must commit itself to ILO standards.

Amendment 296 Jürgen Creutzmann

Proposal for a directive Recital 43

Text proposed by the Commission

(43) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked to the subject-matter of the contract and are indicated in

Amendment

(43) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked to the subject-matter of the contract and are indicated in

the *contract* notice, *the prior information notice* used *as a means of calling* for competition or the procurement documents. They may, in particular, be intended to favour on-site vocational training, *the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment, protection of the environment or animal welfare*. For *instance*, mention may be made, *amongst other things*, of the requirements □ applicable during performance of the contract □ *to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, even where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation*.

the notice used *to make the call* for competition, or *in* the procurement documents. They may, in particular, be intended to favour on-site vocational *or professional* training. For *example*, mention may be made of the requirements applicable during *the* performance of the contract to implement training measures for the unemployed or *for* young persons.

Or. en

Justification

The deleted text would risk to weaken the link to the subject matter of the contract.

Amendment 297
Louis Grech

Proposal for a directive
Recital 43 a (new)

Text proposed by the Commission

Amendment

(43 a) The European Commission should assist Member States to provide training and guidance on competitive dialogue to SMEs, providing examples of its applications and value, in order to encourage uptake.

Or. en

Amendment 298
Sergio Gaetano Cofferati, Marc Tarabella

Proposal for a directive
Recital 43 bis (new)

Text proposed by the Commission

Amendment

(43 bis) E' necessario, per assicurare un corretto funzionamento degli appalti pubblici, che lo strumento del subappalto sia opportunamente regolato. L'amministrazione aggiudicatrice dovrebbe essere informata, nelle offerte presentate, delle eventuali parti del contratto che un offerente intenderebbe subappaltare, nonche' dei subappaltatori proposti. Ogni cambiamento nella catena di subappalto ad appalto in corso dovrebbe garantire una performance dell'appalto pari a quella definita nell'offerta presentata e dovrebbe essere convenuto dall'autorita' aggiudicatrice. L'autorita' aggiudicatrice dovrebbe provvedere, dove la natura del contratto lo consente, al pagamento diretto ai subappaltatori. E' infine necessario che sia stabilito un sistema di 'joint and several liability' nella catena del subappalto e che tale catena sia limitata al massimo a tre subappalti consecutivi verticali.

Or. it

Amendment 299
Christel Schaldemose

Proposal for a directive
Recital 44 a (new)

Text proposed by the Commission

Amendment

(44 a) Medlemsstaterne kan anvende kontraktklausuler, der indeholder

bestemmelser om overholdelse af kollektive overenskomster, såfremt dette er nævnt i den ordregivende myndigheds udbudsbekendtgørelse eller i udbudsbetingelserne, så princippet om gennemsigtighed overholdes.

Or. da

Amendment 300
Christel Schaldemose

Proposal for a directive
Recital 44 b (new)

Text proposed by the Commission

Amendment

(44 b) Direktivets bestemmelser skal respektere medlemsstaternes forskellige arbejdsmarkedsmodeller, herunder de arbejdsmarkedsmodeller, hvor kollektive overenskomster gælder.

Or. da

Amendment 301
Vicente Miguel Garcés Ramón

Proposal for a directive
Recital 44

Text proposed by the Commission

Amendment

(44) Las disposiciones legales y reglamentarias y los convenios colectivos, tanto nacionales como de la Unión, vigentes en materia de condiciones de trabajo y de seguridad en el trabajo, se aplicarán durante la ejecución de un contrato, siempre que dichas normas, así como su aplicación, se ajusten al Derecho de la Unión. Para las situaciones transfronterizas, en las que los trabajadores de un Estado miembro prestan servicios en otro Estado miembro para la ejecución de

(44) Las disposiciones legales y reglamentarias y los convenios colectivos, tanto nacionales como de la Unión, vigentes en materia de condiciones de trabajo, *de integración laboral para las personas con discapacidad* y de seguridad en el trabajo, se aplicarán durante la ejecución de un contrato, siempre que dichas normas, así como su aplicación, se ajusten al Derecho de la Unión. Para las situaciones transfronterizas, en las que los trabajadores de un Estado miembro prestan

un contrato público, la Directiva 96/71/CE del Parlamento Europeo y del Consejo, de 16 de diciembre de 1996, sobre el desplazamiento de trabajadores efectuado en el marco de una prestación de servicios²³, enuncia las condiciones mínimas que han de respetarse en el país de acogida en relación con dichos trabajadores desplazados. Si el Derecho nacional contiene disposiciones a tal efecto, el incumplimiento de dichas obligaciones se podrá considerar una falta grave del operador económico, pudiendo acarrearle su exclusión del procedimiento de adjudicación de un contrato público.

servicios en otro Estado miembro para la ejecución de un contrato público, la Directiva 96/71/CE del Parlamento Europeo y del Consejo, de 16 de diciembre de 1996, sobre el desplazamiento de trabajadores efectuado en el marco de una prestación de servicios²³, enuncia las condiciones mínimas que han de respetarse en el país de acogida en relación con dichos trabajadores desplazados. Si el Derecho nacional contiene disposiciones a tal efecto, el incumplimiento de dichas obligaciones se podrá considerar una falta grave del operador económico, pudiendo acarrearle su exclusión del procedimiento de adjudicación de un contrato público.

Or. es

Amendment 302

Sergio Gaetano Coffferati, Marc Tarabella

Proposal for a directive

Recital 48 a (new)

Text proposed by the Commission

Amendment

(48 a) Contracting authorities should respect the delay of payment as established in Directive 2011/7/EU.

Or. en

Amendment 303

Heide Rühle

Proposal for a directive

Recital 49

Text proposed by the Commission

Amendment

(49) The evaluation has shown that Member States do not consistently and systematically monitor the implementation and functioning of public procurement

deleted

rules. This has a negative impact on the correct implementation of provisions stemming from these directives, which is a major source of cost and uncertainty. Several Member States have appointed a national central body dealing with public procurement issues, but the tasks entrusted to such bodies vary considerably across Member States. Clearer, more consistent and authoritative monitoring and control mechanisms would increase knowledge of the functioning of procurement rules, improve legal certainty for businesses and contracting authorities, and contribute to establishing a level playing field. Such mechanisms could serve as tools for the detection and early resolution of problems, especially with regard to projects cofunded by the Union, and for the identification of structural deficiencies. There is in particular a strong need to coordinate these mechanisms to ensure consistent application, control and monitoring of public procurement policy, as well as systematic assessment of the outcomes of procurement policy across the Union.

Or. en

Amendment 304

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Recital 49

Text proposed by the Commission

(49) The evaluation has shown that ***Member States do not consistently and systematically monitor the implementation and functioning*** of public procurement rules. ***This has a negative impact on the correct implementation of provisions stemming from these directives, which is a major source of cost and uncertainty. Several Member States have appointed a***

Amendment

(49) The evaluation has shown that ***there is still considerable room for improvement in the application of the Union*** public procurement rules. ***In view of a more efficient and consistent application of the rules, it is on the one hand essential to get a good overview on possible structural problems and general patterns in national procurement policies, in order to address***

national *central body dealing with public procurement issues, but the tasks entrusted to such bodies vary considerably across Member States. Clearer, more consistent and authoritative monitoring and control mechanisms would increase knowledge of the functioning of procurement rules, improve legal certainty for businesses and contracting authorities, and contribute to establishing a level playing field. Such mechanisms could serve as tools for the detection and early resolution of problems, especially with regard to projects cofunded by the Union, and for the identification of structural deficiencies. There is in particular a strong need to coordinate these mechanisms to ensure consistent application, control and monitoring of public procurement policy, as well as systematic assessment of the outcomes of procurement policy across the Union.*

possible problems in a more targeted way. This overview should be gained through appropriate monitoring, the results of which should be regularly published, in order to allow an informed debate on possible improvements of procurement rules and practice. On the other hand, better guidance and assistance to contracting authorities and economic operators could also greatly contribute to enhancing the efficiency of public procurement, through better knowledge, increased legal certainty and professionalisation of procurement practices; such guidance should be made available to contracting authorities and economic operators wherever it appears necessary, to ensure correct application of the rules.

Or. en

Justification

Alternative proposals on governance.

Amendment 305

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Recital 49

Text proposed by the Commission

(49) The evaluation has shown that Member States do not consistently and systematically monitor the implementation and functioning of public procurement rules. This has a negative impact on the correct implementation of provisions stemming from these directives, which is a major source of cost and uncertainty. *Several Member States have appointed a*

Amendment

(49) The evaluation has shown that Member States do not consistently and systematically monitor the implementation and functioning of public procurement rules. This has a negative impact on the correct implementation of provisions stemming from these directives, which is a major source of cost and uncertainty. Member States *should therefore step up*

national central body dealing with public procurement issues, but the tasks entrusted to such bodies vary considerably across Member States. Clearer, more consistent and authoritative monitoring and control mechanisms would increase knowledge of the functioning of procurement rules, improve legal certainty for businesses and contracting authorities, and contribute to establishing a level playing field. Such mechanisms could serve as tools for the detection and early resolution of problems, especially with regard to projects cofunded by the Union, and for the identification of structural deficiencies. There is in particular a strong need to coordinate these mechanisms to ensure consistent application, control and monitoring of public procurement policy, as well as systematic assessment of the outcomes of procurement policy across the Union.

their monitoring efforts and in the case of uncertainties they should not hesitate to ask the Commission for clarification. Moreover, the European Commission should report annually on the need for clarifications, on new jurisprudence of the European Court of Justice, and on frequently heard complaints concerning the implementation of this Directive.

Or. en

Amendment 306
Heide Rühle

Proposal for a directive
Recital 50

Text proposed by the Commission

(50) Member States should designate a single national authority in charge of monitoring, implementation and control of public procurement. Such a central body should have first-hand and timely information, particularly in relation to different problems affecting the implementation of public procurement law. It should be able to provide immediate feedback on the functioning of the policy and the potential weaknesses in national legislation and practice and contribute to the quick identification of solutions. In view of efficiently fighting

Amendment

deleted

corruption and fraud, this central body and the general public should also have the possibility to inspect the texts of concluded contracts. High-value contracts should hence be transmitted to the oversight body with a possibility of interested persons to have access to these documents, to the extent that legitimate public or private interests are not jeopardized.

Or. en

Justification

These articles cause unnecessary administrative burdens. It is up to the Member States to organise their interior administration. Member States can decide to create an over-sight body (article 84) without European regulation. Article 84 is contrary to the principle of subsidiarity.

Amendment 307

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Recital 50

Text proposed by the Commission

Amendment

(50) Member States should designate a single national authority in charge of monitoring, implementation and control of public procurement. Such a central body should have first-hand and timely information, particularly in relation to different problems affecting the implementation of public procurement law. It should be able to provide immediate feedback on the functioning of the policy and the potential weaknesses in national legislation and practice and contribute to the quick identification of solutions. In view of efficiently fighting corruption and fraud, this central body and the general public should also have the possibility to inspect the texts of concluded contracts. High-value contracts

deleted

should hence be transmitted to the oversight body with a possibility of interested persons to have access to these documents, to the extent that legitimate public or private interests are not jeopardized.

Or. en

Justification

Alternative proposals on governance. Such a body sits at odds with the principle of subsidiarity and would be impossible to implement in those Member States with devolved administrations and federal structures.

Amendment 308

Cornelis de Jong

Proposal for a directive

Recital 50

Text proposed by the Commission

Amendment

(50) Member States should designate a single national authority in charge of monitoring, implementation and control of public procurement. Such a central body should have first-hand and timely information, particularly in relation to different problems affecting the implementation of public procurement law. It should be able to provide immediate feedback on the functioning of the policy and the potential weaknesses in national legislation and practice and contribute to the quick identification of solutions. In view of efficiently fighting corruption and fraud, this central body and the general public should also have the possibility to inspect the texts of concluded contracts. High-value contracts should hence be transmitted to the oversight body with a possibility of interested persons to have access to these documents, to the extent that legitimate public or private interests are not

deleted

jeopardized.

Or. en

Amendment 309

Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Recital 50

Text proposed by the Commission

Amendment

(50) Member States should designate a single national authority in charge of monitoring, implementation and control of public procurement. Such a central body should have first-hand and timely information, particularly in relation to different problems affecting the implementation of public procurement law. It should be able to provide immediate feedback on the functioning of the policy and the potential weaknesses in national legislation and practice and contribute to the quick identification of solutions. In view of efficiently fighting corruption and fraud, this central body and the general public should also have the possibility to inspect the texts of concluded contracts. High-value contracts should hence be transmitted to the oversight body with a possibility of interested persons to have access to these documents, to the extent that legitimate public or private interests are not jeopardized.

deleted

Or. en

Justification

It is not a proportional measure to impose on Member States obligation to create additional bodies. Moreover, various competences assigned to such a body, as for example oversight, coordination, reporting may create conflict of interests.

Amendment 310
Jürgen Creutzmann

Proposal for a directive
Recital 50

Text proposed by the Commission

Amendment

(50) Member States should designate a single national authority in charge of monitoring, implementation and control of public procurement. Such a central body should have first-hand and timely information, particularly in relation to different problems affecting the implementation of public procurement law. It should be able to provide immediate feedback on the functioning of the policy and the potential weaknesses in national legislation and practice and contribute to the quick identification of solutions. In view of efficiently fighting corruption and fraud, this central body and the general public should also have the possibility to inspect the texts of concluded contracts. High-value contracts should hence be transmitted to the oversight body with a possibility of interested persons to have access to these documents, to the extent that legitimate public or private interests are not jeopardized.

deleted

Or. en

(See deletion of Article 84)

Amendment 311
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 51

Text proposed by the Commission

Amendment

(51) Not all contracting authorities may have the internal expertise to deal with

(51) Any stakeholder should be empowered to signal violations of this

economically or technically complex contracts. Against this background, appropriate professional support would be an effective complement to monitoring and control activities. On the one hand, this objective can be achieved by knowledge sharing tools (knowledge centres) offering technical assistance to contracting authorities; on the other hand, business, not least SMEs, should benefit from administrative assistance, in particular when participating in procurement procedures on a cross-border basis.

Directive to a competent authority or Court. Member States should be able to provide for recourse to monitoring authorities, sectoral oversight bodies, municipal, regional or national competition or auditing authorities, ombudsmen, and where these exist, national oversight authorities.

Or. en

Justification

Simplification.

Amendment 312
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 52

Text proposed by the Commission

(52) Monitoring, oversight and support structures or mechanisms exist already at national level and can of course be used to ensure monitoring, implementation and control of public procurement and to provide the required support to contracting authorities and economic operators.

Amendment

(52) Traceability and transparency of decision-making in procurement procedures is essential for ensuring sound procedures, including effectively fighting corruption and fraud. Contracting authorities should keep copies of concluded contracts for high-value contracts to be able to provide access to these documents to interested parties in accordance with applicable rules on access to documentation. Furthermore, the essential elements and decisions of individual procurement procedures should be documented in a procurement report. To limit administrative burdens, the procurement report should refer to information already contained in the

relevant contract award notices. The electronic systems for publication of these notices, managed by the Commission, should also be improved in view of facilitating data entry while making it easier to extract reports and exchange data between systems.

Or. en

Justification

Alternative proposals on governance.

Amendment 313
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 53

Text proposed by the Commission

Amendment

(53) Effective cooperation is necessary to ensure consistent advice and practice within each Member State and across the Union. Bodies designated for monitoring, implementation, control and technical assistance should be able to share information and cooperate; in the same context, the national authority designated by each Member State should act as the preferred contact point with the Commission services for the purpose of collecting data, exchanging information and monitoring the implementation of Union public procurement law.

deleted

Or. en

Justification

Alternative proposals on governance.

Amendment 314

Heide Rühle

Proposal for a directive

Recital 53

Text proposed by the Commission

(53) Effective cooperation is necessary to ensure consistent advice and practice within each Member State and across the Union. Bodies designated for **monitoring, implementation, control and** technical assistance should be able to share information and cooperate; ***in the same context, the national authority designated by each Member State should act as the preferred contact point with the Commission services for the purpose of collecting data, exchanging information and monitoring the implementation of Union public procurement law.***

Amendment

(53) Effective cooperation is necessary to ensure consistent advice and practice within each Member State and across the Union. Bodies designated for technical assistance should be able to share information and cooperate.

Or. en

Justification

These articles cause unnecessary administrative burdens. It is up to the Member States to organise their interior administration. Member States can decide to create an over-sight body (article 84) without European regulation. Article 84 is contrary to the principle of subsidiarity

Amendment 315

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Recital 53

Text proposed by the Commission

(53) Effective cooperation is necessary to ensure consistent advice and practice within each Member State and across the Union. Bodies designated for monitoring, implementation, control and technical assistance should be able to share

Amendment

(53) Effective cooperation is necessary to ensure consistent advice and practice within each Member State and across the Union. Bodies designated for monitoring, implementation, control and technical assistance should be able to share

information and cooperate; *in the same context, the national authority designated by each Member State should act as the preferred contact point with the Commission services for the purpose of collecting data, exchanging information and monitoring the implementation of Union public procurement law.*

information and cooperate.

Or. en

Amendment 316

Louis Grech

Proposal for a directive

Recital 53

Text proposed by the Commission

(53) Effective cooperation is necessary to ensure consistent advice and practice within each Member State and across the Union. Bodies designated for monitoring, implementation, control and technical assistance should be able to share information and cooperate; in the same context, the national authority designated by each Member State should act as the preferred contact point with the Commission services for the purpose of collecting data, exchanging information and monitoring the implementation of Union public procurement law.

Amendment

(53) Effective cooperation is necessary to ensure consistent advice and practice within each Member State and across the Union. Bodies designated for monitoring, implementation, control and technical assistance should be able to share information and cooperate; in the same context, the national authority designated by each Member State should act as the preferred contact point with the Commission services for the purpose of collecting data, exchanging information and monitoring the implementation of Union public procurement law. ***The European Commission should assist Member States by providing guidelines, training sessions and a helpdesk facility throughout the procurement process in order to promote cross-border procurement.***

Or. en

Amendment 317

Heide Rühle

Proposal for a directive
Recital 54

Text proposed by the Commission

(54) In order to adapt to rapid technical, economic and regulatory developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of a number of non-essential elements of this Directive. In fact, due to the need to comply with international agreements, the Commission should be empowered to modify the technical procedures for the calculation methods concerning thresholds as well as to periodically revise the thresholds themselves and to adapt Annexes V and XI; ***the lists of central government authorities are subject to variations due to administrative changes at national level. These are notified to the Commission, which should be empowered to adapt the Annex I; references to the CPV nomenclature may undergo regulatory changes at EU level and it is necessary to reflect those changes into the text of this Directive; the technical details and characteristics of the devices for electronic receipt should be kept up to date with technological developments and administrative needs***; it is also necessary to empower the Commission to make mandatory technical standards for electronic communication to ensure the interoperability of technical formats, processes and messaging in procurement procedures conducted using electronic means of communication taking into account technological developments and administrative needs; and the content of the European Procurement Passport to reflect administrative needs and regulatory changes at both national and EU level; the list of legislative acts of the Union establishing common methodologies for the calculation of life-cycle costs should be quickly adapted to incorporate the

Amendment

(54) In order to adapt to rapid technical, economic and regulatory developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of a number of non-essential elements of this Directive. In fact, due to the need to comply with international agreements, the Commission should be empowered to modify the technical procedures for the calculation methods concerning thresholds as well as to periodically revise the thresholds themselves and to adapt Annexes V and XI; it is also necessary to empower the Commission to make mandatory technical standards for electronic communication to ensure the interoperability of technical formats, processes and messaging in procurement procedures conducted using electronic means of communication taking into account technological developments and administrative needs; and the content of the European Procurement Passport to reflect administrative needs and regulatory changes at both national and EU level; the list of legislative acts of the Union establishing common methodologies for the calculation of life-cycle costs should be quickly adapted to incorporate the measures adopted on a sectoral basis. In order to satisfy these needs, the Commission should be empowered to keep the list of legislative acts including LCC methodologies up-to date.

measures adopted on a sectoral basis. In order to satisfy these needs, the Commission should be empowered to keep the list of legislative acts including LCC methodologies up-to date.

Or. en

Amendment 318
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Recital 54

Text proposed by the Commission

(54) In order to adapt to rapid technical, economic and regulatory developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of a number of non-essential elements of this Directive. In fact, due to the need to comply with international agreements, the Commission should be empowered to modify the technical procedures for the calculation methods concerning thresholds as well as to periodically revise the thresholds themselves and to adapt Annexes V and XI; the lists of central government authorities are subject to variations due to administrative changes at national level. These are notified to the Commission, which should be empowered to adapt the Annex I; references to the CPV nomenclature may undergo regulatory changes at EU level and it is necessary to reflect those changes into the text of this Directive; the technical details and characteristics of the devices for electronic receipt should be kept up to date with technological developments and administrative needs; it is also necessary to empower the Commission to make mandatory technical standards for electronic communication to ensure the

Amendment

(54) In order to adapt to rapid technical, economic and regulatory developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of a number of non-essential elements of this Directive. In fact, due to the need to comply with international agreements, the Commission should be empowered to modify the technical procedures for the calculation methods concerning thresholds as well as to periodically revise the thresholds themselves and to adapt Annexes V and XI; the lists of central government authorities are subject to variations due to administrative changes at national level. These are notified to the Commission, which should be empowered to adapt the Annex I; references to the CPV nomenclature may undergo regulatory changes at EU level and it is necessary to reflect those changes into the text of this Directive; the technical details and characteristics of the devices for electronic receipt should be kept up to date with technological developments and administrative needs; it is also necessary to empower the Commission to make mandatory technical standards for electronic communication to ensure the

interoperability of technical formats, processes and messaging in procurement procedures conducted using electronic means of communication taking into account technological developments and administrative needs; and the content of the European Procurement Passport to reflect administrative needs and regulatory changes at both national and EU level; the list of legislative acts of the Union establishing common methodologies for the calculation of life-cycle costs should be quickly adapted to incorporate the measures adopted on a sectoral basis. ***In order to satisfy these needs, the Commission should be empowered to keep the list of legislative acts including LCC methodologies up-to date.***

interoperability of technical formats, processes and messaging in procurement procedures conducted using electronic means of communication taking into account technological developments and administrative needs; and the content of the European Procurement Passport to reflect administrative needs and regulatory changes at both national and EU level; the list of legislative acts of the Union establishing common methodologies for the calculation of life-cycle costs should be quickly adapted to incorporate the measures adopted on a sectoral basis.

Or. en

Amendment 319
Malcolm Harbour, Edvard Kožušník, Frank Engel

Proposal for a directive
Recital 54

Text proposed by the Commission

(54) In order to adapt to rapid technical, economic and regulatory developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of a number of non-essential elements of this Directive. In fact, due to the need to comply with international agreements, the Commission should be empowered to modify the technical procedures for the calculation methods concerning thresholds as well as to periodically revise the thresholds themselves and to adapt Annexes V and XI; the lists of central government authorities are subject to variations due to administrative changes at national level. These are notified to the

Amendment

(54) In order to adapt to rapid technical, economic and regulatory developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of a number of non-essential elements of this Directive. In fact, due to the need to comply with international agreements, the Commission should be empowered to modify the technical procedures for the calculation methods concerning thresholds as well as to periodically revise the thresholds themselves and to adapt Annexes V and XI; the lists of central government authorities are subject to variations due to administrative changes at national level. These are notified to the

Commission, which should be empowered to adapt the Annex I; references to the CPV nomenclature may undergo regulatory changes at EU level and it is necessary to reflect those changes into the text of this Directive; the technical details and characteristics of the devices for electronic receipt should be kept up to date with technological developments and administrative needs; it is also necessary to empower the Commission to make mandatory technical standards for electronic communication to ensure the interoperability of technical formats, processes and messaging in procurement procedures conducted using electronic means of communication taking into account technological developments and administrative needs; and the content of the European Procurement Passport to reflect administrative needs and regulatory changes at both national and EU level; the list of legislative acts of the Union establishing common methodologies for the calculation of life-cycle costs should be quickly adapted to incorporate the measures adopted on a sectoral basis. In order to satisfy these needs, the Commission should be empowered to keep the list of legislative acts including LCC methodologies up-to date.

Commission, which should be empowered to adapt the Annex I; references to the CPV nomenclature may undergo regulatory changes at EU level and it is necessary to reflect those changes into the text of this Directive; the technical details and characteristics of the devices for electronic receipt should be kept up to date with technological developments and administrative needs; it is also necessary to empower the Commission to make mandatory technical standards for electronic communication, ***such as the submission of three-dimensional digital representations in the case of the public procurement of works***, to ensure the interoperability of technical formats, processes and messaging in procurement procedures conducted using electronic means of communication taking into account technological developments and administrative needs; and the content of the European Procurement Passport to reflect administrative needs and regulatory changes at both national and EU level; the list of legislative acts of the Union establishing common methodologies for the calculation of life-cycle costs should be quickly adapted to incorporate the measures adopted on a sectoral basis. In order to satisfy these needs, the Commission should be empowered to keep the list of legislative acts including LCC methodologies up-to date.

Or. en

Justification

Digital three-dimensional representations are essential tools enabling contracting authorities to improve the decision-making through the design, execution and the operation of public works, particularly for activities described in Annex II. Several Member States already require tenderers to submit interoperable three-dimensional digital representations for public works contracts.

Amendment 320
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Recital 55

Text proposed by the Commission

(55) It is of particular importance that the Commission carries out appropriate consultations *during its preparatory work*, including *at expert level*. When preparing and drawing up delegated acts, the Commission should ensure simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

Amendment

(55) It is of particular importance that the Commission carries out appropriate consultations *with all stakeholders*, including *SME-, environmental-, and consumer organisations and trade unions*. When preparing and drawing up delegated acts, the Commission should ensure simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

Or. en

Amendment 321
Heide Rühle

Proposal for a directive
Recital 56

Text proposed by the Commission

(56) In order to ensure uniform conditions for the implementation of this Directive, as for the drawing up of the standard forms for the publication of notices, the standard form for the European Procurement Passport *and the common template to be used by the oversight bodies for drawing up the implementation and statistical report*, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No. 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers²⁴. The advisory

Amendment

(56) In order to ensure uniform conditions for the implementation of this Directive, as for the drawing up of the standard forms for the publication of notices, the standard form for the European Procurement Passport, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No. 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers²⁴. The advisory procedure should be used for the adoption of these implementing acts, which do not have any impact either from the financial

procedure should be used for the adoption of these implementing acts, which do not have any impact either from the financial point of views or on the nature and scope of obligations stemming from this Directive. On the contrary, these acts are characterised by a mere administrative purpose and serve to facilitate the application of the rules set by this Directive.

point of views or on the nature and scope of obligations stemming from this Directive. On the contrary, these acts are characterised by a mere administrative purpose and serve to facilitate the application of the rules set by this Directive.

Or. en

Amendment 322
Cornelis de Jong

Proposal for a directive
Recital 56

Text proposed by the Commission

(56) In order to ensure uniform conditions for the implementation of this Directive, as for the drawing up of the standard forms for the publication of notices, the standard form for the European Procurement Passport ***and the common template to be used by the oversight bodies for drawing up the implementation and statistical report***, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No. 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers²⁴. The advisory procedure should be used for the adoption of these implementing acts, which do not have any impact either from the financial point of views or on the nature and scope of obligations stemming from this Directive. On the contrary, these acts are characterised by a mere administrative purpose and serve to facilitate the

Amendment

(56) In order to ensure uniform conditions for the implementation of this Directive, as for the drawing up of the standard forms for the publication of notices, the standard form for the European Procurement Passport, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No. 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers²⁴. The advisory procedure should be used for the adoption of these implementing acts, which do not have any impact either from the financial point of views or on the nature and scope of obligations stemming from this Directive. On the contrary, these acts are characterised by a mere administrative purpose and serve to facilitate the application of the rules set by this Directive.

application of the rules set by this Directive.

Or. en

Amendment 323
Sirpa Pietikäinen

Proposal for a directive
Article 1 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

This directive shall not apply to services of general economic interest (SGEI), when

a) the services have been defined according to the principles of EU legislation;

b) the public authorities have met the requirements of transparency and equal treatment in notification procedure;

c) the amount of service providers is inadequate with regard to the aims of this directive.

Or. en

Amendment 324
Sirpa Pietikäinen

Proposal for a directive
Article 1 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. This Directive sets out how Union institutions, Member States and central and local government authorities working together with partners from the public, private and voluntary sectors intend to set about improving public procurement. It sets out Union principles for procurement in the public sector, linked to the Union's

principles for high quality public services.

In order to fully meet the aims of this Directive contracting authorities shall ensure that comprehensive procurement strategies are carried out at the level of each procurement entity. As part of this process public hearings and consultations with the end users of products and services shall be arranged.

Or. en

Amendment 325

Heide Rühle

Proposal for a directive

Article 1 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Procurement within the meaning of this Directive is the purchase *or other forms of acquisition of* works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities, *whether or not the works, supplies or services are intended for a public purpose.*

Amendment

2. Procurement within the meaning of this Directive is the purchase of works, supplies or services *via public contracts* by one or more contracting authorities from economic operators chosen by those contracting authorities.

Or. en

Justification

The Procurement Directive does only apply to ‘procurements’ including lease and hire activities. According to the ruling of the European Court (ECJ) works, supplies or services that are not intended for a public purpose and are not in the direct benefit of the contracting authority are not subject to procurement law (C-451/08).

Amendment 326

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive

Article 1 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Auftragsvergabe im Sinne dieser Richtlinie bezeichnet die Beschaffung **oder andere Formen des Erwerbs** von Bauleistungen, Lieferungen oder Dienstleistungen durch einen oder mehrere öffentliche Auftraggeber von Wirtschaftsteilnehmern, die **von diesen öffentlichen Auftraggebern ausgewählt werden, unabhängig davon, ob diese Bauleistungen, Lieferungen oder Dienstleistungen für einen öffentlichen Zweck bestimmt sind.**

Amendment

2. Auftragsvergabe im Sinne dieser Richtlinie bezeichnet die Beschaffung von Bauleistungen, Lieferungen oder Dienstleistungen **mittels öffentlicher Verträge** durch einen oder mehrere öffentliche Auftraggeber von Wirtschaftsteilnehmern, **sofern die Bauleistung, die Lieferung oder die Dienstleistung dem öffentlichen Auftraggeber unmittelbar wirtschaftlich zugute kommt.**

Or. de

Justification

Klarstellung, dass nicht jede Beteiligung der öffentlichen Hand an der Durchführung von Bau-, Liefer- oder Dienstleistungen bereits eine Auftragsvergabe begründet. Auch der EuGH verwendet das Unmittelbarkeitskriterium zur Abgrenzung (z. B. Urteil vom 25.03.2010 (C-451/08)).

Amendment 327

Andreas Schwab, Anja Weisgerber

Proposal for a directive

Article 1 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Procurement within the meaning of this Directive is the purchase or other forms of acquisition of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities, **whether or not the works, supplies or services are intended for a public purpose.**

Amendment

2. Procurement within the meaning of this Directive is the purchase or other forms of acquisition of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities.

Or. en

Justification

According to the ECJ ruling C-451/08, works, supplies and services which are not intended for a public purpose, do not fall under the scope of EU procurement rules.

Amendment 328 **Evelyne Gebhardt**

Proposal for a directive **Article 1 – paragraph 2 – subparagraph 1**

Text proposed by the Commission

2. Auftragsvergabe im Sinne dieser Richtlinie bezeichnet die Beschaffung oder andere Formen des Erwerbs von Bauleistungen, Lieferungen oder Dienstleistungen durch einen oder mehrere öffentliche Auftraggeber von Wirtschaftsteilnehmern, die von diesen öffentlichen Auftraggebern ausgewählt werden, unabhängig davon, ob diese Bauleistungen, Lieferungen oder Dienstleistungen für einen öffentlichen Zweck bestimmt sind.

Amendment

2. Auftragsvergabe im Sinne dieser Richtlinie bezeichnet die Beschaffung oder andere Formen des Erwerbs von Bauleistungen, Lieferungen oder **der Erbringung von Dienstleistungen im Sinne dieser Richtlinie** durch einen oder mehrere öffentliche Auftraggeber von Wirtschaftsteilnehmern, die von diesen öffentlichen Auftraggebern ausgewählt werden, unabhängig davon, ob diese Bauleistungen, Lieferungen oder Dienstleistungen für einen öffentlichen Zweck bestimmt sind.

Or. de

Amendment 329 **Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski**

Proposal for a directive **Article 1 – paragraph 2 – subparagraph 1**

Text proposed by the Commission

2. Procurement within the meaning of this Directive is the purchase **or other forms of acquisition of** works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities, **whether or not** the works, supplies or services **are intended for a public purpose**.

Amendment

2. Procurement within the meaning of this Directive is the purchase of works, supplies or services **via public contracts** by one or more contracting authorities from economic operators chosen by those contracting authorities. **Procurement within the meaning of this Directive is the acquisition of** works, supplies or services

by means of public contracts by one or more contracting authorities from economic operators chosen by those contracting authorities.

Or. en

Justification

The basis of the procurement definition should be a single contract and not a single project. One project may have many contracts some of which may fall within the scope of the Directive, some of which may not. Adding up values of services, supplies and works only because they are part of the same project is of no additional value.

Amendment 330 **Peter Simon**

Proposal for a directive **Article 1 – paragraph 2 – subparagraph 1**

Text proposed by the Commission

2. Auftragsvergabe im Sinne dieser Richtlinie bezeichnet die Beschaffung *oder andere Formen des Erwerbs* von Bauleistungen, Lieferungen oder Dienstleistungen durch einen oder mehrere öffentliche Auftraggeber von Wirtschaftsteilnehmern, die von diesen öffentlichen Auftraggebern ausgewählt werden, *unabhängig davon, ob diese Bauleistungen, Lieferungen oder Dienstleistungen für einen öffentlichen Zweck bestimmt sind.*

Amendment

2. Auftragsvergabe im Sinne dieser Richtlinie bezeichnet die Beschaffung von Bauleistungen, Lieferungen oder Dienstleistungen *im Rahmen öffentlicher Aufträge* durch einen oder mehrere öffentliche Auftraggeber von Wirtschaftsteilnehmern, die von diesen öffentlichen Auftraggebern ausgewählt werden.

Or. de

Amendment 331 **Heide Rühle**

Proposal for a directive **Article 1 – paragraph 2 – subparagraph 2**

Text proposed by the Commission

Amendment

An entirety of works, supplies and/or services, even if purchased through different contracts, constitutes a single procurement within the meaning of this Directive, if the contracts are part of one single project. **deleted**

Or. en

Justification

This notion is too general and too vague.

Amendment 332

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, Hans-Peter Mayer

Proposal for a directive

Article 1 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

Die Gesamtheit der Bauleistungen, Lieferungen und/ oder Dienstleistungen – auch wenn sie im Rahmen verschiedener Aufträge beschafft werden – stellt eine einzige Auftragsvergabe im Sinne dieser Richtlinie dar, sofern die Aufträge Teil eines einzigen Projekts sind. **entfällt**

Or. de

Justification

Die Basis der Definition des Beschaffungsprozesses sollte ein Vertrag und kein Projekt sein. Die Werte von Dienstleistungen, Lieferungen und Arbeiten nur aufzusummieren, weil sie Teil des gleichen Projekts sind, bringt keinen Mehrwert. So sind zum Beispiel die Leistungen des Architekten und die rechtliche Beratung im Zusammenhang mit einem Bauauftrag deutlich getrennt von den Dienstleistungen, die mit dem eigentlichen Bau verbunden sind.

Amendment 333

Cornelis de Jong

Proposal for a directive
Article 1 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

An entirety of works, supplies and/or services, even if purchased through different contracts, constitutes a single procurement within the meaning of this Directive, if the contracts are part of one single project. **deleted**

Or. en

Amendment 334

Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 1 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

An entirety of works, supplies and/or services, even if purchased through different contracts, constitutes a single procurement within the meaning of this Directive, if the contracts are part of one single project. **deleted**

Or. en

Justification

The basis of the procurement definition should be a single contract and not a single project. One project may have many contracts some of which may fall within the scope of the Directive, some of which may not. Adding up values of services, supplies and works only because they are part of the same project is of no additional value.

Amendment 335

Peter Simon

Proposal for a directive
Article 1 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

Die Gesamtheit der Bauleistungen, Lieferungen und/ oder Dienstleistungen – auch wenn sie im Rahmen verschiedener Aufträge beschafft werden – stellt eine einzige Auftragsvergabe im Sinne dieser Richtlinie dar, sofern die Aufträge Teil eines einzigen Projekts sind.

entfällt

Or. de

Amendment 336

Andreas Schwab, Sirpa Pietikäinen, Jürgen Creutzmann

Proposal for a directive

Article 1 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

An entirety of works, supplies ***and/or*** services, even if purchased through different contracts, constitutes a single procurement within the meaning of this Directive, if the contracts are part of one single project.

An entirety of works, supplies ***or*** services ***which are uniform in character by their economic and technical functions***, even if purchased through different contracts, constitutes a single procurement within the meaning of this Directive, if the contracts are part of one single project.

Or. en

Justification

The wording of the Commission proposal which aims at preventing the circumvention of EU procurement rules through the artificial splitting up of contracts is too far reaching, for instance in case of construction and architectural planning. Therefore, the proposed wording is based on paragraph 41 of the recent ECJ ruling C-574/10.

Amendment 337

Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 1 – paragraph 2 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

This Directive is without prejudice to the right of public authorities at all levels to decide whether, how and to what extent they want to perform public functions themselves pursuant to Protocol No 26 of the Treaty. Public authorities may perform public interest tasks using their own resources, without being obliged to call on external economic operators. They may do so in cooperation with other public authorities without this relationship necessarily taking the form of a public procurement contract.

Or. en

Justification

This new article completes the frame of the scope of application of the directive. Community law does not require from the local authorities to make use of a certain legal form or a certain operating mode in order to fulfill their missions of public service. In particular, the way that local authorities are grouped together must not be subject to falling under the scope of internal market rules. Such an assertion within a community law text is very useful in order to prevent future contentious cases.

Amendment 338

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 1 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. This Directive shall not apply to contracts for the supply of goods or the provision services which are subject by law to a fixed price and in relation to which a public procurement procedures ipso facto holds no value.

Or. en

Amendment 339
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 1 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The application of this Directive is subject to Articles 36, 51, 52, 62 and 346 of the Treaty on the Functioning of the European Union.

Or. en

Justification

This Amendment ensures that there is no overlap between this Directive and rules governing defence procurement.

Amendment 340
Anna Hedh

Proposal for a directive
Article 1 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Contracts for social and other specific services listed in Annex XVI are exclusively regulated by Articles 74 to 76 of this Directive.

Or. en

Justification

The form of the proposed directive is such that social and other services are regulated only by articles 74-76. This should be stated as early as possible in the text of the proposal.

Amendment 341
Robert Rochefort

Proposal for a directive
Article 1 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 bis. Les services régis par le régime général de la présente directive sont ceux énumérés à l'annexe XVI A. Les articles 74 à 76 de la présente directive s'appliquent aux marchés de services spécifiques énumérés à l'annexe XVI B.

Or. fr

Amendment 342
Evelyne Gebhardt

Proposal for a directive
Article 1 a (new)

Text proposed by the Commission

Amendment

Article 1a

Diese Richtlinie berührt nicht das Arbeitsrecht, d.h. gesetzliche oder vertragliche Bestimmungen über Arbeits- und Beschäftigungsbedingungen, einschließlich des Gesundheitsschutzes und der Sicherheit am Arbeitsplatz und über die Beziehungen zwischen Arbeitgebern und Arbeitnehmern, die von den Mitgliedstaaten gemäß nationalem Recht unter Wahrung des Gemeinschaftsrechts angewandt werden. In gleicher Weise berührt die Richtlinie auch nicht die Rechtsvorschriften der Mitgliedstaaten über die soziale Sicherheit.

Or. de

Amendment 343
Evelyne Gebhardt

**Proposal for a directive
Article 1 b (new)**

Text proposed by the Commission

Amendment

Article 1b

Diese Richtlinie berührt nicht die Ausübung der in den Mitgliedstaaten und durch das Gemeinschaftsrecht anerkannten Grundrechte. Sie berührt auch nicht das Recht, gemäß nationalem Recht und nationalen Praktiken unter Wahrung des Gemeinschaftsrechts Tarifverträge auszuhandeln, abzuschließen und durchzusetzen sowie Arbeitskampfmaßnahmen zu ergreifen.

Or. de

**Amendment 344
Evelyne Gebhardt**

**Proposal for a directive
Article 1 c (new)**

Text proposed by the Commission

Amendment

Article c

Diese Richtlinie berührt nicht das Recht der Mitgliedstaaten, im Einklang mit dem Gemeinschaftsrecht festzulegen, welche Leistungen sie als von allgemeinem wirtschaftlichem Interesse erachten, wie diese Dienstleistungen unter Beachtung der Vorschriften über staatliche Beihilfen organisiert und finanziert werden sollten und welchen spezifischen Verpflichtungen sie unterliegen sollten.

Or. de

**Amendment 345
Malcolm Harbour, Edvard Kožušník, Adam Bielan**

Proposal for a directive
Article 2 – paragraph 1 – point 6 – introductory part

Text proposed by the Commission

Amendment

(6) ‘bodies governed by public law’ means bodies ***that have all of the following characteristics:***

(6) ‘bodies governed by public law’ means bodies:

Or. en

Amendment 346
Heide Rühle

Proposal for a directive
Article 2 – paragraph 1 – point 6 – point a

Text proposed by the Commission

Amendment

(a) they are established for or have the specific ***purpose of meeting needs in the general interest, not having an industrial or commercial character; for that purpose, a body which operates in normal market conditions, aims to make a profit, and bears the losses resulting from the exercise of its activity does not have the*** purpose of meeting needs in the general interest, not having an industrial or commercial character;

(a) they are established for or have the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

Or. en

Justification

This is the definition of the current directive and is established, no need to change it. This legislation defines how to procure public goods, works and services there is no need to overstep the legal basis and define via backdoor in a very restrictive way services of public interest. This does not respect the basis principle of subsidiarity in this area.

Amendment 347
Malcolm Harbour, Edvard Kožušník, Adam Bielan

Proposal for a directive
Article 2 – paragraph 1 – point 6 – point a

Text proposed by the Commission

(a) **they are** established for or have the specific purpose of meeting needs in the general interest, **not having an industrial or commercial character; for that purpose, a body which operates in normal market conditions, aims to make a profit, and bears the losses resulting from the exercise of its activity does** not have the purpose of meeting needs in the general interest, **not having** an industrial or commercial character;

Amendment

(a) established for, or **which** have the specific purpose of, meeting needs in the general interest; **these needs should** not have an industrial or commercial character;

Or. en

Justification

Clarification and simplification of the definition of BGPL.

Amendment 348
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Article 2 – paragraph 1 – point 6 – point a

Text proposed by the Commission

(a) they are established for or have the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; for that purpose, a body which operates in normal market conditions, **aims to make a profit**, and **bears the losses resulting from the exercise of its activity** does not have the purpose of meeting needs in the general interest, not having an industrial or commercial character;

Amendment

(a) they are established for or have the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; for that purpose, a body which operates in normal market conditions and **engages in economic activities by offering goods and services on the market** does not have the purpose of meeting needs in the general interest, not having an industrial or commercial character;

Or. en

Justification

The current wording of the provision leads to legal uncertainty as it refers to notions that are vaguely mentioned and could trigger divergent interpretations and extensive litigation. The proposed amendment uses the definition of economic activities provided by the Commission in its Communication on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest, in line with the established case law of the ECJ.

Amendment 349

Malcolm Harbour, Edvard Kožušník, Adam Bielan

Proposal for a directive

Article 2 – paragraph 1 – point 6 – point b

Text proposed by the Commission

Amendment

(b) *they have* legal personality;

(b) *having* legal personality;

Or. en

Amendment 350

Malcolm Harbour, Edvard Kožušník, Adam Bielan, Jürgen Creutzmann

Proposal for a directive

Article 2 – paragraph 1 – point 6 – point c

Text proposed by the Commission

Amendment

(c) *they are financed, for the most part, by* the State, regional or local authorities, or other bodies governed by public law; *or subject to management supervision by those bodies; or have an* administrative, managerial or supervisory board, *more than half of whose members are appointed* by the State, regional or local authorities, or *by* other bodies *governed* by public law.

(c) *which satisfy at least one of the following conditions:*

(i) The majority of the *funding is from the* State, regional or local authorities, or other bodies governed by public law;

(ii) The majority of the administrative, managerial or supervisory board *is appointed by the state, regional or local authorities, or other bodies governed by*

public law;

(iii) Decisions are ***subject to management control*** by the State, regional or local authorities, or other bodies ***governed*** by public law.

Or. en

Justification

This clarifies the scope of coverage of the Directive in terms of what types of organisation should be covered.

Amendment 351

Ivo Belet

Proposal for a directive

Article 2 – paragraph 1 – point 6 – point c

Text proposed by the Commission

(c) they are financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; ***or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.***

Amendment

(c) they are financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies;

Or. en

Amendment 352

Ivo Belet

Proposal for a directive

Article 2 – paragraph 1 – point 6 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the majority of the body's administrative, managerial or supervisory

board is appointed by the State, regional or local authorities, or other bodies governed by public law;

Or. en

Amendment 353
Heide Rühle

Proposal for a directive
Article 2 – paragraph 1 – point 8 – point a a (new)

Text proposed by the Commission

Amendment

(aa) or a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority. A 'work' means the outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function.

Or. en

Justification

Definition of 2004/18/EC its approved and has worked well.

Amendment 354
Heide Rühle

Proposal for a directive
Article 2 – paragraph 1 – point 8 – point b

Text proposed by the Commission

Amendment

(b) the execution, or both the design and execution, of a work;

deleted

Or. en

Amendment 355

Heide Rühle

Proposal for a directive

Article 2 – paragraph 1 – point 8 – point c

Text proposed by the Commission

(c) the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work;

Amendment

deleted

Or. en

Amendment 356

Marc Tarabella

Proposal for a directive

Article 2 – paragraph 1 – point 8 – point c

Text proposed by the Commission

(c) la réalisation, par quelque moyen que ce soit, d'un ouvrage répondant aux besoins précisés par le pouvoir adjudicateur qui exerce une influence déterminante sur sa nature ou sa conception;

Amendment

(c) la réalisation, d'un ouvrage répondant aux besoins précisés par le pouvoir adjudicateur qui exerce une influence déterminante sur sa nature ou sa conception;

Or. fr

Amendment 357

Evelyne Gebhardt

Proposal for a directive

Article 2 – paragraph 1 – point 11 a (new)

Text proposed by the Commission

Amendment

(11 a) „Dienstleistungskonzessionen“ sind Verträge, die von öffentlichen Dienstleistungsaufträgen nur insoweit abweichen, als die Gegenleistung für die Erbringung der Dienstleistungen

ausschließlich in dem Recht zur Nutzung der Dienstleistung oder in diesem Recht zuzüglich der Zahlung eines Preises besteht.

Or. de

Amendment 358
Marc Tarabella

Proposal for a directive
Article 2 – paragraph 1 – point 12

Text proposed by the Commission

(12) «opérateur économique»: toute personne physique ou morale ou *entité* publique, ou groupement de ces personnes *et/ou entités*, qui offre la réalisation de travaux et/ou d'ouvrages, la fourniture de produits ou la prestation de services sur le marché;

Amendment

(12) «opérateur économique»: toute personne physique ou morale *privée* ou publique, ou groupement de ces personnes, qui offre la réalisation de travaux et/ou d'ouvrages, la fourniture de produits ou la prestation de services sur le marché;

Or. fr

Amendment 359
Heide Rühle

Proposal for a directive
Article 2 – paragraph 1 – point 15

Text proposed by the Commission

(15) ‘procurement documents’ means *all documents* produced or referred to by the contracting authority to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice where it is used a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally

Amendment

(15) ‘procurement documents’ means *any document* produced or referred to by the contracting authority to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice where it is used a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally

applicable obligations and any additional documents.

applicable obligations and any additional documents.

Or. en

Amendment 360

Mitro Repo

Proposal for a directive

Article 2 – paragraph 1 – point 18

Text proposed by the Commission

(18) ‘central purchasing body’ means a contracting authority providing centralised purchasing activities and, possibly, ancillary purchasing activities;

Amendment

(18) ‘central purchasing body’ means a contracting authority ***within the meaning of point 1 of this Article or a contracting entity within the meaning of Article 4 of Directive .../.../EU [Directive replacing Directive 2004/17/EC]***, providing centralised purchasing activities and, possibly, ancillary purchasing activities;

Or. en

Amendment 361

Sari Essayah, Sirpa Pietikäinen

Proposal for a directive

Article 2 – paragraph 1 – point 19 a (new)

Text proposed by the Commission

Amendment

(19a) ‘service voucher system’ is a system where a contracting authority gives a service voucher to a customer who can then acquire a service from a service provider which is included by the contracting authority to the service voucher system. The contracting authority pays the sum corresponding to the value of the service voucher to the service provider;

Or. en

Amendment 362

Malcolm Harbour, Edvard Kožušník, Frank Engel

Proposal for a directive

Article 2 – paragraph 1 – point 21

Text proposed by the Commission

(21) ‘electronic means’ means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

Amendment

(21) ‘electronic means’ means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means; ***in the case of a works contract ‘electronic means’ shall also refer to the use of interoperable three-dimensional representations covering the design, execution and the operation of the building or infrastructure;***

Or. en

Justification

This is an essential tool enabling contracting authorities to improve the decision-making process, mainly for activities described in Annex II. This measure should be brought in along with the E-procurement implementation targets, and will save taxpayers money by ensuring that alternative designs are evaluated with comparative ease, and in particular, that energy and other lifecycle savings are properly costed and compared.

Amendment 363

Frank Engel, Wim van de Camp, Konstantinos Poupakis

Proposal for a directive

Article 2 – paragraph 1 – point 22

Text proposed by the Commission

(22) ‘life cycle’ means all consecutive and/or interlinked stages, including production, transport, use and maintenance, throughout the existence of a product or a works or the provision of a service, from raw material acquisition or generation of

Amendment

(22) ‘life cycle’ means all consecutive and/or interlinked stages, including ***research, development,*** production, transport, use and maintenance, throughout the existence of a product or a works or the provision of a service, from raw material

resources to disposal, clearance and finalisation.

acquisition or generation of resources to disposal, clearance and finalisation.

Or. en

Amendment 364

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 2 – paragraph 1 – point 22

Text proposed by the Commission

(22) 'life cycle' means ***all consecutive and/or interlinked stages, including production, transport, use and maintenance, throughout the existence of a product or a works or the provision of a service, from raw material acquisition or generation of resources to disposal, clearance and finalisation.***

Amendment

(22) 'life cycle' means ***monetising, wherever possible, the full costs associated to the public procurement, including maintenance and resource (including energy) efficiency costs, end-of-life recycling costs, and social impact costs where these relate to performance of the contract. Efficient design, planning and use of electronic means can also be included in life cycle monetisation. For the purposes of public procurement, the life cycle runs from the point of purchase throughout the lifetime of the works, supplies or services and forms an integral and in-dissociable part of the calculation of what constitutes the Most Economically Advantageous Tender.***

Or. en

Justification

While contracting authorities shall, in the interest of the taxpayer, be responsible for ensuring that value for money is secured as regards whatever solution is selected through public procurement, and that this does not end up costing more to society or the environment overall on the long run, this responsibility can only reasonably run from the point of purchase. Contracting authorities cannot be held responsible for the detrimental environmental or social choices of private undertakings.

Amendment 365

Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 2 – paragraph 1 – point 22

Text proposed by the Commission

(22) ‘life cycle’ means all consecutive and/or interlinked stages, including **production**, transport, use and maintenance, throughout the existence of a product or a works or the provision of a service, **from raw material acquisition or generation of resources to disposal, clearance and finalisation.**

Amendment

(22) ‘life cycle’ means all consecutive and/or interlinked stages, including **research, development**, transport, use and maintenance, throughout the existence of a product or a works or the provision of a service, **provided data in relation to these are measurable and can be collated in a meaningful manner.**

Or. en

Amendment 366
Morten Løkkegaard, Jens Rohde

Proposal for a directive
Article 2 – paragraph 1 – point 22

Text proposed by the Commission

(22) ‘life cycle’ means all consecutive and/or interlinked stages, including production, **transport**, use and maintenance, throughout the existence of a product or a works or the provision of a service, from raw material acquisition or generation of resources to disposal, clearance and finalisation.

Amendment

(22) ‘life cycle’ means all consecutive and/or interlinked stages, including production, use and maintenance, throughout the existence of a product or a works or the provision of a service, from raw material acquisition or generation of resources to disposal, clearance and finalisation.

Or. en

Amendment 367
Jürgen Creutzmann

Proposal for a directive
Article 2 – paragraph 1 – point 22

Text proposed by the Commission

(22) ‘life cycle’ means all consecutive

Amendment

(22) ‘life cycle’ means all consecutive

and/or interlinked stages, ***including production, transport, use and maintenance, throughout the existence*** of a product or a works or the provision of a service, from ***raw material acquisition or generation of resources*** to disposal, clearance and finalisation.

and/or interlinked stages of a product or a works or the provision of a service, from acquisition to ***use, maintenance***, disposal, clearance and finalisation.

Or. en

(See Article 67)

Amendment 368
Sirpa Pietikäinen

Proposal for a directive
Article 2 – paragraph 1 – point 22 a (new)

Text proposed by the Commission

Amendment

(22a) 'Life cycle characteristics' relate to any part of the life cycle of a product or works or the provision of a service, including socially sustainable and animal welfare sensitive production processes, as defined in point (22) of this article, including all aspects relating to environmental protection, working conditions, labour rights, equality, social inclusion, human rights, impacts on adjacent communities, and ethical trade. Life cycle characteristics are embedded in a product as a result of choices made in the production or other non-use phases of the life cycle of the product, even if such characteristics are not apparent in the physical characteristics or functional qualities of the resulting product or service.

Or. en

Amendment 369
Catherine Stihler

Proposal for a directive
Article 2 – paragraph 1 – point 22 a (new)

Text proposed by the Commission

Amendment

(22a) 'Life cycle characteristics' relate to choices relating to any part of the life cycle of a product or works or the provision of a service, as defined in point (22) of this article, including all aspects of choices relating to environmental protection, working conditions, labour rights, equality, social inclusion, human rights and ethical trade. Life cycle characteristics are embedded in a product as a result of choices made in the production or other non-use phases of the life cycle of the product, even if such characteristics are not apparent in the physical characteristics or functional qualities of the resulting product or service.

Or. en

Justification

As stated by the Court of Justice of the EU in its ruling on the case C-368/10 European Commission vs Kingdom of the Netherlands (the North Holland case), it is clear that even under the current Directive contracting authorities seeking the 'most economically advantageous tender' can value social considerations. Previous cases had already established that environmental considerations were permissible. Specifically, in North Holland it was decided that fair trade criteria (i.e. principles attaching to the transactions around the product) can be taken into consideration as award criteria.

Amendment 370
Jürgen Creutzmann

Proposal for a directive
Article 2 – paragraph 1 – point 22 a (new)

Text proposed by the Commission

Amendment

(22a) 'standardised products' means products which do not differ significantly in their composition or characteristics.

Amendment 371
Heide Rühle

Proposal for a directive
Article 2 – paragraph 1 – point 23 a (new)

Text proposed by the Commission

Amendment

(23a) Service concession' is a contract of the same type as a public service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment.

Or. en

Amendment 372
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 2 – paragraph 1 – point 23 a (new)

Text proposed by the Commission

Amendment

(23a) A 'public service mutual' is an organisation which has the following characteristics:

a) It is principally made up of individuals who have left their position of employment within the public sector in order to deliver public services by way of that organisation;

b) The majority of services provided by the organisation are provided to the public sector, and;

c) Employee ownership or engagement has a significant impact on the governance of the organisation.

A public service mutual can take a variety of forms in terms of business model and

membership.

Or. en

Amendment 373
Sirpa Pietikäinen

Proposal for a directive
Article 2 – paragraph 1 – point 23 a (new)

Text proposed by the Commission

Amendment

(23a) The "Procurement Strategy" means the strategy of public procurement. It sets out Union principles for procurement in the public sector and the guiding principles and activities to implement the vision at the national, regional and local level.

Or. en

Amendment 374
Ádám Kósa

Proposal for a directive
Article 2 – paragraph 1 – point 23 a (new)

Text proposed by the Commission

Amendment

(23a) 'Accessibility' means easiness to approach, enter, exit, operate, participate in and use safely, independently, and with dignity a good, service, site, technology (including information and communication technologies and systems) or built environment, by a person with a disability or reduced mobility under all circumstances (including emergency cases). This does not exclude the use of assistive devices or augmentative and alternative communication to achieve accessibility for particular groups of persons with disabilities where this is needed.

Amendment 375

Marc Tarabella

Proposal for a directive

Article 2 – paragraph 1 – point 23 bis (new)

Text proposed by the Commission

Amendment

(23 bis) «produit, travail, fourniture ou service non couvert», est un produit, travail, fourniture ou service provenant d'un pays avec lequel l'Union n'a pas conclu d'accord international dans le domaine des marchés publics, y compris un engagement en matière d'accès au marché, ou un produit, travail, fourniture ou service provenant d'un pays avec lequel l'Union a conclu un tel accord international, mais auquel cet accord ne s'applique pas;

Or. fr

Amendment 376

Malcolm Harbour

Proposal for a directive

Article 2 – paragraph 1 – point 23 b (new)

Text proposed by the Commission

Amendment

(23b) 'non-covered supplies or services' means a product or service originating in a country with which the Union has not concluded an international agreement in the field of public procurement including market access commitments or a product or service originating in a country with which the Union has concluded such an agreement, but in respect of which the relevant agreement does not apply.

Or. en

Amendment 377
Catherine Stihler

Proposal for a directive
Article 2 – paragraph 1 point 23 b (new)

Text proposed by the Commission

Amendment

(23b) 'Accessibility' means easiness to approach, enter, exit, operate, participate in and use safely, independently, and with dignity a good, service, site, technology (including information and communication technologies and systems) or built environment, by a person with a disability or reduced mobility under all circumstances (including emergency cases). This does not exclude the use of assistive devices or augmentative and alternative communication to achieve accessibility for particular groups of persons with disabilities where this is needed.

Or. en

Amendment 378
Pablo Arias Echeverría

Proposal for a directive
Article 3 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

En el caso de los contratos que tengan por objeto una contratación regulada por la presente Directiva, así como una contratación u otros elementos no regulados por ella o por las Directivas [sustitución de 2004/17/CE] o 2009/81/CE²⁶, la ***parte del contrato que constituya una contratación regulada por la presente Directiva se adjudicará de conformidad con lo dispuesto en ella.***

En el caso de los contratos que tengan por objeto una contratación regulada por la presente Directiva, así como una contratación u otros elementos no regulados por ella o por las Directivas [sustitución de 2004/17/CE] o 2009/81/CE²⁶, la ***aplicación de la presente Directiva se determinará sobre la base del objeto principal del contrato.***

Amendment 379
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 3 – paragraph 2

Text proposed by the Commission

In the case of contracts which have as their object procurement covered by this Directive as well as procurement or other elements *not* covered by *it or by Directives* [replacing 2004/17/EC] or *2009/81/EC*²⁶, the part of the contract which constitutes procurement covered by this Directive shall be awarded in accordance with the provisions of this Directive.

In the case of mixed contracts containing elements of public contracts and of concessions, the part of the contract which constitutes a public contract covered by this Directive shall be awarded in accordance with the provisions of this Directive.

Where the different parts of the contract in question are objectively not separable, the application of this Directive shall be determined on the basis of the main subject of that contract.

Amendment

Subject to paragraphs 3 and 4:

(a) in the case of contracts which have as their object procurement covered by this Directive as well as procurement or other elements covered by *Directive* [replacing 2004/17/EC] or *otherwise not covered by this Directive*, the part of the contract which constitutes procurement covered by this Directive shall be awarded in accordance with the provisions of this Directive;

(b) in the case of mixed contracts containing elements of public contracts and of concessions, the part of the contract which constitutes a public contract covered by this Directive shall be awarded in accordance with the provisions of this Directive;

(c) where the different parts of the contract in question are objectively not separable, the application of this Directive shall be determined on the basis of the main subject of that contract.

Justification

This Amendment ensure there is no overlap between this Directive and applicable rules on defence procurement.

Amendment 380

Pablo Arias Echeverría

Proposal for a directive

Article 3 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Cuando se trate de contratos mixtos que contengan elementos de contratos públicos y de concesiones, la ***parte que sea un contrato público regulado por*** la presente Directiva se ***adjudicará de conformidad con lo dispuesto en ella.***

Amendment

Cuando se trate de contratos mixtos que contengan elementos de contratos públicos y de concesiones, la ***aplicación de*** la presente Directiva se ***determinará sobre la base del objeto principal del contrato.***

Or. es

Amendment 381

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In the case of contracts which have as their object procurement covered by this Directive as well as procurement or other elements covered by Directive 2009/81/EC, the contract shall be awarded in accordance with Directive 2009/81/EC provided that the award of a single contract is justified for objective reasons.

Or. en

Justification

This Amendment ensure there is no overlap between this Directive and applicable rules on

defence.

Amendment 382

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 3 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. In the case of contracts which have as their object procurement covered by this Directive and Directive 2009/81/EC as well as procurement or other elements not being subject to either Directive, the contract shall not be subject to this Directive provided that the award of a single contract is justified for objective reasons. The decision to award a single contract may not, however, be taken for the purpose of excluding contracts from the application of this Directive.

Or. en

Justification

This Amendment ensures there is no overlap between this Directive and applicable rules on defence procurement.

Amendment 383

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 4 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) EUR **5 000 000** for public works contracts;

(a) EUR **8 000 000** for public works contracts;

Or. en

Amendment 384
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Article 4 – paragraph 1 – point a

Text proposed by the Commission

(a) EUR **5 000 000** for public works contracts;

Amendment

(a) EUR **7 500 000** for public works contracts;

Or. en

Amendment 385
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 4 – paragraph 1 – point b

Text proposed by the Commission

(b) EUR **130 000** for public supply and service contracts awarded by central government authorities and design contests organised by such authorities; where public supply contracts are awarded by contracting authorities operating in the field of defence, that threshold shall apply only to contracts concerning products covered by Annex III;

Amendment

(b) EUR **300 000** for public supply and service contracts awarded by central government authorities and design contests organised by such authorities; where public supply contracts are awarded by contracting authorities operating in the field of defence, that threshold shall apply only to contracts concerning products covered by Annex III;

Or. en

Amendment 386
Wim van de Camp

Proposal for a directive
Article 4 – paragraph 1 – point b

Text proposed by the Commission

(b) **130 000** euro voor overheidsopdrachten voor leveringen en voor diensten gegund door aanbestedende diensten die centrale overheidsinstanties zijn, en voor door deze

Amendment

(b) **260 000** euro voor overheidsopdrachten voor leveringen en voor diensten gegund door aanbestedende diensten die centrale overheidsinstanties zijn, en voor door deze

instanties georganiseerde prijsvragen; wat betreft overheidsopdrachten voor leveringen afkomstig van aanbestedende diensten die op het gebied van defensie werkzaam zijn, geldt deze drempel alleen voor opdrachten betreffende producten die onder bijlage III vallen;

instanties georganiseerde prijsvragen; wat betreft overheidsopdrachten voor leveringen afkomstig van aanbestedende diensten die op het gebied van defensie werkzaam zijn, geldt deze drempel alleen voor opdrachten betreffende producten die onder bijlage III vallen;

Or. nl

Amendment 387

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Article 4 – paragraph 1 – point b

Text proposed by the Commission

(b) EUR **130 000** for public supply and service contracts awarded by central government authorities and design contests organised by such authorities; where public supply contracts are awarded by contracting authorities operating in the field of defence, that threshold shall apply only to contracts concerning products covered by Annex III;

Amendment

(b) EUR **195 000** for public supply and service contracts awarded by central government authorities and design contests organised by such authorities; where public supply contracts are awarded by contracting authorities operating in the field of defence, that threshold shall apply only to contracts concerning products covered by Annex III;

Or. en

Amendment 388

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, Hans-Peter Mayer

Proposal for a directive

Article 4 – paragraph 1 – point c

Text proposed by the Commission

(c) **200 000** EUR bei öffentlichen Liefer- und Dienstleistungsaufträgen, die von subzentralen öffentlichen Auftraggebern vergeben werden, und bei von diesen Behörden ausgerichteten Wettbewerben;

Amendment

(c) **400 000** EUR bei öffentlichen Liefer- und Dienstleistungsaufträgen, die von subzentralen öffentlichen Auftraggebern vergeben werden, und bei von diesen Behörden ausgerichteten Wettbewerben;

Or. de

Justification

Der niedrige Schwellenwert widerspricht dem Ziel, ein optimales Preis-Leistungs-Verhältnis zu ermöglichen. Bei der Vergabe eines Auftrags für Gebäudereinigung ist es z. B. gängige Praxis, dass die Reinigung eines großen Verwaltungsgebäudes zusammen mit mehreren kleinen Gebäuden ausgeschrieben wird, um insgesamt ein gutes Preis-Leistungs-Verhältnis zu bekommen. Möchte der öffentliche Auftraggeber ein gutes wirtschaftliches Ergebnis erzielen, liegt der Auftrag regelmäßig über dem Schwellenwert.

Amendment 389

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 4 – paragraph 1 – point c

Text proposed by the Commission

(c) EUR **200 000** for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities.

Amendment

(c) EUR **400 000** for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities.

Or. en

Amendment 390

Wim van de Camp

Proposal for a directive

Article 4 – paragraph 1 – point c

Text proposed by the Commission

(c) **200 000** euro voor overheidsopdrachten voor leveringen en voor diensten gegund door lagere aanbestedende diensten en voor door deze diensten georganiseerde prijsvragen;

Amendment

(c) **400 000** euro voor overheidsopdrachten voor leveringen en voor diensten gegund door lagere aanbestedende diensten en voor door deze diensten georganiseerde prijsvragen;

Or. nl

Amendment 391

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Article 4 – paragraph 1 – point c

Text proposed by the Commission

(c) EUR **200 000** for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities.

Amendment

(c) EUR **300 000** for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities.

Or. en

Amendment 392
Christel Schaldemose

Proposal for a directive
Article 4 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

c a) Medlemsstaterne kan i forhold til bestemmelserne i artikel 4, stk. 1 (c) vælge ikke at konkurrenceudsætte på EU-niveau, når værdien for indkøbet placerer sig mellem 200 000 EUR og 1 000 000 EUR.

Or. da

Amendment 393
Frank Engel, Andreas Schwab

Proposal for a directive
Article 4 – paragraph 1 – point d

Text proposed by the Commission

(d) EUR 500 000 for public contracts for social and other specific services listed in Annex XVI.

Amendment

deleted

Or. en

Justification

linked to the re-introduction of the distinction of A and B services

Amendment 394

Christel Schaldemose

Proposal for a directive

Article 4 – paragraph 1 – point d

Text proposed by the Commission

Amendment

**d) 500 000 EUR for offentlige kontrakter udgår
vedrørende sociale tjenesteydelser og
andre specifikke tjenesteydelser, der er
anført i bilag XVI.**

Or. da

Amendment 395

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, Hans-Peter Mayer

Proposal for a directive

Article 4 – paragraph 1 – point d

Text proposed by the Commission

Amendment

**(d) 500 000 EUR für öffentliche Aufträge
betreffend soziale und andere besondere
Dienstleistungen im Sinne von Anhang
XVI.**

**(d) 1 000 000 EUR für öffentliche Aufträge
betreffend soziale und andere besondere
Dienstleistungen im Sinne von Anhang
XVI.**

Or. de

Justification

Anpassung des Schwellenwertes für soziale Dienstleistungen und andere besondere Dienstleistungen an den Wert in der Sektorenrichtlinie, der bei 1 000 000 EUR liegt. Der Wert sollte identisch sein, da es sich jeweils um die gleichen Dienstleistungen handelt. Dies erscheint auch deswegen angebracht, da soziale Dienstleistungen für gewöhnlich örtlich sehr beschränkt erbracht werden und wenig Relevanz für den Binnenmarkt haben.

Amendment 396
Sirpa Pietikäinen

Proposal for a directive
Article 4 – paragraph 1 – point d

Text proposed by the Commission

(d) EUR **500 000** for public contracts for social and other specific services listed in Annex XVI.

Amendment

(d) EUR **1000 000** for public contracts for social and other specific services listed in Annex XVI.

Or. en

Amendment 397
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 4 – paragraph 1 – point d

Text proposed by the Commission

(d) EUR **500 000** for public contracts for social and other specific services listed in Annex XVI.

Amendment

(d) EUR **1 000 000** for public contracts for social and other specific services listed in Annex XVI.

Or. en

Amendment 398
Wim van de Camp

Proposal for a directive
Article 4 – paragraph 1 – point d

Text proposed by the Commission

(d) **500 000** euro voor overheidsopdrachten voor sociale en andere specifieke diensten in de zin van bijlage XVI.

Amendment

(d) **1 000 000** euro voor overheidsopdrachten voor sociale en andere specifieke diensten in de zin van bijlage XVI.

Or. nl

Amendment 399
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 4 – paragraph 1 – point d

Text proposed by the Commission

(d) EUR **500 000** for public contracts for social and other specific services listed in Annex XVI.

Amendment

(d) EUR **1 000 000** for public contracts for social and other specific services listed in Annex XVI.

Or. en

Amendment 400
Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 4 – paragraph 1 – point d

Text proposed by the Commission

(d) EUR **500 000** for public contracts for social and other specific services listed in Annex XVI.

Amendment

(d) EUR **1 000 000** for public contracts for social and other specific services listed in Annex XVI.

Or. en

Justification

The threshold for social services and other specific services should be aligned with the thresholds of the utilities directive (article 12 c of the Commission's proposal), which is EUR 1 000 000. This appears even more appropriate since social services are usually very locally provided and have less significant relevance for the internal market.

Amendment 401
Robert Rochefort

Proposal for a directive
Article 4 – paragraph 1 – point d

Text proposed by the Commission

(d) 500 000 EUR pour les marchés publics de services sociaux et d'autres services

Amendment

(d) 500 000 EUR pour les marchés publics de services sociaux et d'autres services

spécifiques énumérés à *l'annexe XVI*.

spécifiques énumérés à *l'annexe XVI B*.

Or. fr

Amendment 402
Kerstin Westphal

Proposal for a directive
Article 4 – paragraph 1 – point d

Text proposed by the Commission

(d) **500 000** EUR für öffentliche Aufträge betreffend soziale und andere besondere Dienstleistungen im Sinne von Anhang XVI.

Amendment

(d) **1 000 000** EUR für öffentliche Aufträge betreffend soziale und andere besondere Dienstleistungen im Sinne von Anhang XVI.

Or. de

Justification

Der Schwellenwert sollte in der Vergaberichtlinie und in der Sektorenrichtlinie (dort Artikel 12 c des Kommissionsvorschlags), welcher bei 1 000 000 EUR liegt, einheitlich sein, da es sich jeweils um die gleichen Dienstleistungen handelt und eine einheitliche Rechtsanwendung wünschenswert ist. Dies erscheint auch deswegen angebracht, da soziale Dienstleistungen für gewöhnlich örtlich sehr beschränkt erbracht werden und wenig Relevanz für den Binnenmarkt haben.

Amendment 403
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Article 4 – paragraph 1 – point d

Text proposed by the Commission

(d) EUR **500 000** for public contracts for social and other specific services listed in Annex XVI.

Amendment

(d) EUR **750 000** for public contracts for social and other specific services listed in Annex XVI.

Or. en

Amendment 404

Ivo Belet

Proposal for a directive

Article 4 – paragraph 1 –point d a (new)

Text proposed by the Commission

Amendment

(da) EUR 500 000 for public supply and service contracts awarded by non-profit civil society organisations, and design contests organised by such organisations, even if they are considered as 'bodies governed by public law'.

Or. en

Amendment 405

Morten Løkkegaard, Jürgen Creutzmann, Jens Rohde

Proposal for a directive

Article 4 – paragraph a (new)

Text proposed by the Commission

Amendment

For works, goods and service contracts falling below these thresholds, Member States shall implement national procedures for open competitions that ensure compliance with the Treaty principles of equal access, non-discrimination and transparency

Or. en

Amendment 406

Heide Rühle

Proposal for a directive

Article 5 – paragraph 9

Text proposed by the Commission

Amendment

9. Contracting authorities may award contracts for individual lots without

deleted

applying the procedures provided for under this Directive, provided that the estimated value net of VAT of the lot concerned is less than EUR 80 000 for supplies or services or EUR 1 million for works. However, the aggregate value of the lots thus awarded without applying this Directive shall not exceed 20 % of the aggregate value of all the lots into which the proposed work, the proposed acquisition of similar supplies or the proposed purchase of services has been divided.

Or. en

Justification

Similar to the Amendment on Article 44 it has to be outlined that those provisions will create unnecessary administrative burden without added value for example for SMEs'.

Amendment 407

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 5 – paragraph 9

Text proposed by the Commission

9. Contracting authorities may award contracts for individual lots without applying the procedures provided for under this Directive, provided that the estimated value net of VAT of the lot concerned is less than EUR **80 000** for supplies or services or EUR **1 million** for works. However, the aggregate value of the lots thus awarded without applying this Directive shall not exceed 20 % of the aggregate value of all the lots into which the proposed work, the proposed acquisition of similar supplies or the proposed purchase of services has been divided.

Amendment

9. Contracting authorities may award contracts for individual lots without applying the procedures provided for under this Directive, provided that the estimated value net of VAT of the lot concerned is less than EUR **160 000** for supplies or services or EUR **2 million** for works. However, the aggregate value of the lots thus awarded without applying this Directive shall not exceed 20 % of the aggregate value of all the lots into which the proposed work, the proposed acquisition of similar supplies or the proposed purchase of services has been divided.

Or. en

Amendment 408
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Article 5 – paragraph 9

Text proposed by the Commission

9. Contracting authorities may award contracts for individual lots without applying the procedures provided for under this Directive, provided that the estimated value net of VAT of the lot concerned is less than EUR **80 000** for supplies or services or EUR **1 million** for works. However, the aggregate value of the lots thus awarded without applying this Directive shall not exceed **20** % of the aggregate value of all the lots into which the proposed work, the proposed acquisition of similar supplies or the proposed purchase of services has been divided.

Amendment

9. Contracting authorities may award contracts for individual lots without applying the procedures provided for under this Directive, provided that the estimated value net of VAT of the lot concerned is less than EUR **120 000** for supplies or services or EUR **1 500 000** for works. However, the aggregate value of the lots thus awarded without applying this Directive shall not exceed **30** % of the aggregate value of all the lots into which the proposed work, the proposed acquisition of similar supplies or the proposed purchase of services has been divided.

Or. en

Amendment 409
Toine Manders

Proposal for a directive
Article 6 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Om de twee jaar vanaf 30 juni 2014 controleert de Commissie of de in artikel 4, onder a), b) en c), vastgestelde drempels overeenstemmen met de in de overeenkomst inzake overheidsopdrachten (GPA-overeenkomst) vastgestelde drempels en herziet zij indien nodig deze drempels.

Amendment

Om de twee jaar vanaf 30 juni 2014 controleert de Commissie of de in artikel 4, onder a), b) en c), vastgestelde drempels overeenstemmen met de in de overeenkomst inzake overheidsopdrachten (GPA-overeenkomst) vastgestelde drempels en herziet zij indien nodig deze drempels. ***De Commissie verhoogt de drempels waar mogelijk, en ingeval de drempels zijn vastgelegd in de GPA-overeenkomst, zal de Commissie bij de***

volgende onderhandelingen de verhoging van de drempels prioriteren.

Or. nl

Amendment 410
Toine Manders

Proposal for a directive
Article 6 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Voorts ziet de Commissie waar mogelijk toe op een correcte toepassing van het wederkerigheidsbeginsel ten aanzien van de toegang tot overheidsopdrachten door derde landen.

Or. nl

Amendment 411
Frank Engel, Andreas Schwab

Proposal for a directive
Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6a

Arrangements for public service contracts

Contracts which have as their object services listed in Annex XVI A shall be awarded in accordance with Articles 39 to 69.

Contracts which have as their object services listed in Annex XVI B shall be subject solely to Article 40 and Article 48(1).

Contracts which have as their object services listed both in Annex XVI A and in Annex XVI B shall be awarded in accordance with Articles 39 to 88 where

the value of the services listed in Annex XVI A is greater than the value of the services listed in Annex XVI B. In other cases, contracts shall be awarded in accordance with Article 40 and Article 48(1).

Or. en

Justification

re-introduction of the distinction of A and B services

Amendment 412

Tiziano Motti

Proposal for a directive

Article 7 – paragraph 1 a and 1 b (new)

Text proposed by the Commission

Amendment

This Directive shall not apply to public contracts for the principal purpose of permitting the contracting authorities to provide postal services and other services than postal services.

For the purposes of this Article:

"postal services": means services consisting of the clearance, sorting, routing and delivery of postal items. This shall include both services falling within as well as services falling outside the scope of the universal service set up in conformity with Directive 97/67/EC;

"other services than postal services": means services provided in the following areas:

(i) mail service management services (services both preceding and subsequent to despatch, including "mailroom management services");

(ii) added-value services linked to and provided entirely by electronic means (including the secure transmission of

coded documents by electronic means, address management services and transmission of registered electronic mail);

(iii) services concerning postal items not included in point (a), such as direct mail bearing no address;

(iv) financial services, as defined in the CPV under the reference numbers from 66100000-1 to 66720000-3 and in Article 19(c) and including in particular postal money orders and postal giro transfers;

(v) philatelic services;

(vi) logistics services (services combining physical delivery and/or warehousing with other non-postal functions).

Or. en

Justification

In view of the situation of effective market competition in the postal services' sector following the implementation of the EU rules aimed at liberalizing that sector, public contracts in that area should be excluded from the scope of this Directive insofar as they are intended primarily to allow the contracting authorities to exercise certain activities in the postal sector

Amendment 413

Frank Engel, Wim van de Camp, Sirpa Pietikäinen

Proposal for a directive

Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7a

Exclusion for goods falling under a fixed price regime

This Directive shall not apply to contracts for the supply of goods or the provision of services which are subject by law to a fixed price.

Or. en

Amendment 414
Evelyne Gebhardt

Proposal for a directive
Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7a

***Diese Richtlinie gilt nicht für
Dienstleistungskonzessionen gemäß
Artikel 2, Paragraph 1, 11 a (neu).***

Or. de

Amendment 415
Evelyne Gebhardt

Proposal for a directive
Article 7 b (new)

Text proposed by the Commission

Amendment

Article 7b

***Diese Richtlinie gilt nicht für öffentliche
Dienstleistungsaufträge, die von einem
öffentlichen Auftraggeber an einen
anderen öffentlichen Auftraggeber oder
an einen Verband von öffentlichen
Auftraggebern aufgrund eines
ausschließlichen Rechts vergeben werden,
das dieser aufgrund veröffentlichter, mit
dem Vertrag übereinstimmender Rechts
oder Verwaltungsvorschriften innehat.***

Or. de

Amendment 416
András Gyürk, Ildikó Gáll-Pelcz

Proposal for a directive
Article 8 a (new)

Article 8a

Specific exclusions in the field of postal services

This Directive shall not apply to public contracts for the principal purpose of permitting the contracting authorities to provide postal services and other services than postal services.

For the purposes of this Article:

"postal services": means services consisting of the clearance, sorting, routing and delivery of postal items. This shall include both services falling within as well as services falling outside the scope of the universal service set up in conformity with Directive 97/67/EC;

"other services than postal services": means services provided in the following areas:

(i) mail service management services (services both preceding and subsequent to despatch, including "mailroom management services");

(ii) added-value services linked to and provided entirely by electronic means (including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail);

(iii) services concerning postal items not included in point (a), such as direct mail bearing no address;

(iv) financial services, as defined in the CPV under the reference numbers from 66100000-1 to 66720000-3 and in Article 19(c) and including in particular postal money orders and postal giro transfers;

(v) philatelic services;

(vi) logistics services (services combining physical delivery and/or warehousing with

other non-postal functions).

Or. en

Amendment 417
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8a

Specific exclusions in the field of postal services

This Directive shall not apply to public contracts for the principal purpose of permitting the contracting authorities to provide postal services and other services than postal services.

For the purposes of this Article:

"postal services": means services consisting of the clearance, sorting, routing and delivery of postal items. This shall include both services falling within as well as services falling outside the scope of the universal service set up in conformity with Directive 97/67/EC;

"other services than postal services": means services provided in the following areas:

(i) mail service management services (services both preceding and subsequent to despatch, including "mailroom management services");

(ii) added-value services linked to and provided entirely by electronic means (including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail);

(iii) services concerning postal items not

included in point (a), such as direct mail bearing no address;

(iv) financial services, as defined in the CPV under the reference numbers from 66100000-1 to 66720000-3 and in Article 19(c) and including in particular postal money orders and postal giro transfers;

(v) philatelic services;

(vi) logistics services (services combining physical delivery and/or warehousing with other non-postal functions).

Or. en

Justification

The Classic Directive should not apply to contracts which have been excluded from the scope of the Utilities Directive. In view of the situation of effective market competition in the postal services' sector following the implementation of the EU rules aimed at liberalizing that sector, public contracts in that area should be excluded from the scope of this Directive as they are intended primarily to allow the contracting authorities to exercise certain activities in the postal sector.

Amendment 418 **Philippe Juvin**

Proposal for a directive **Article 10 – paragraph 1 – point b**

Text proposed by the Commission

(b) ayant pour objet l'achat, le développement, la production ou la coproduction de programmes destinés à des services de médias audiovisuels qui sont attribués par des organismes de radiodiffusion, ni aux marchés concernant les temps de diffusion qui sont attribués à des services de médias audiovisuels;

Amendment

(b) ayant pour objet l'achat, le développement, la production ou la coproduction de programmes ***et de services préparatoires connexes*** destinés à des services de médias audiovisuels qui sont attribués par des organismes de radiodiffusion, ni aux marchés concernant les temps de diffusion qui sont attribués à des services de médias audiovisuels, ***les services de médias étant définis comme incluant toute transmission et diffusion utilisant toute forme de réseau électronique;***

Justification

Prise en compte dans la formulation de ce paragraphe des évolutions technologiques dans le secteur des médias.

Amendment 419

Heide Rühle

Proposal for a directive

Article 10 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) arbitration and conciliation services;

deleted

Or. en

Amendment 420

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 10 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) arbitration and conciliation services;

(c) arbitration and conciliation services **and any of the following legal services:**

(i) legal representation of a client in judicial proceedings before courts, tribunals or public authorities by a lawyer within the meaning of Article 1 of Directive 77/249/EEC;

(ii) document certification services which must be provided by notaries;

(iii) legal services provided by trustees, appointed guardians or other legal services the providers of which are designated by a court or tribunal in the Member State concerned;

(iv) other legal services which in the Member State concerned are connected

with the exercise of official authority.

Or. en

Amendment 421
Birgit Collin-Langen, Hans-Peter Mayer

Proposal for a directive
Article 10 – paragraph 1 – point c

Text proposed by the Commission

(c) Schiedsgerichts- und
Schlichtungsdienstleistungen;

Amendment

(c) Schiedsgerichts- und
Schlichtungsdienstleistungen, **sowie die
Tätigkeit eines öffentlichen Amtsträgers,
der gesetzlich zur Unabhängigkeit und
Unparteilichkeit verpflichtet ist,
insbesondere eines Notars;**

Or. de

Amendment 422
Marc Tarabella

Proposal for a directive
Article 10 – paragraph 1 – point c

Text proposed by the Commission

(c) concernant les services d'arbitrage et de
conciliation;

Amendment

(c) concernant les services d'arbitrage et de
conciliation **ainsi que les services d'avocat
consistant dans la représentation en
justice;**

Or. fr

Amendment 423
Marian Harkin

Proposal for a directive
Article 10 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) arbitration and conciliation services;

(c) arbitration and conciliation services,
including dispute adjudication services;

Or. en

Justification

'Dispute adjudication services' is a specific conciliation service linked to the use of the international FIDIC conditions of contracts for building and engineering works, adopted by the World Bank.

Amendment 424
Peter Simon

Proposal for a directive
Article 10 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) Schiedsgerichts- und
Schlichtungsdienstleistungen;

(c) Schiedsgerichts- und
Schlichtungsdienstleistungen,
***Rechtsdienstleistungen sowie notarielle
Dienstleistungen;***

Or. de

Amendment 425
Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 10 – paragraph 1 – point c

Text proposed by the Commission

Amendment

c) usług arbitrażowych lub pojednawczych;

c) usług arbitrażowych lub pojednawczych,
***jak i czynności funkcjonariusza
publicznego, który zobligowany jest do
niezawisłości i bezstronności;***

Or. pl

Amendment 426

Malcolm Harbour, Edvard Kožušník, Adam Bielan, Jürgen Creutzmann

Proposal for a directive

Article 10 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

- (ca) any of the following legal services:*
- (i) legal representation of a client in judicial proceedings before the national courts, tribunals or public authorities of a Member State by a lawyer within the meaning of Article 1 of Directive 77/249/EEC;*
 - (ii) document certification services which must be provided by notaries;*
 - (iii) legal services provided by trustees, appointed guardians or other legal services the providers of which are designated by a court or tribunal in the Member State concerned;*
 - (iv) other legal services which in the Member State concerned are connected, even occasionally, with the exercise of official authority;*

Or. en

Justification

This is a compromise solution to not have to reinstate Part B services. The AM introduces more exemptions from the applicability of the Directives while maintaining the new Article on Social and other Services, which is broadened as part of the same exercise with furthermore a doubled threshold.

Amendment 427

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive

Article 10 – paragraph 1 – point c a (new)

(ca) folgenden rechtliche Dienstleistungen:

(i) rechtliche Vertretung eines Mandanten in juristischen Verfahren vor Gerichten oder Verwaltungen durch einen Rechtsanwalt im Sinne des Artikels 1 der Richtlinie 77/249/EEC

(ii) Beglaubigungen und Beurkundungen von Dokumenten durch Notare

(iii) Rechtsdienste, die von Bevollmächtigten, bestellten Vormunden oder andere Rechtsdienste, die von den Mitgliedstaaten vor ihren Gerichten vorgesehen sind

(iv) andere Rechtsdienste, die in den Mitgliedstaaten, wenn auch nur gelegentlich, mit der Ausführung öffentlicher Verwaltung verbunden sind.

Or. de

Justification

Die Einbeziehung notarieller Tätigkeiten in den Anwendungsbereich der Richtlinie würde die Kompetenz der Mitgliedstaaten berühren, den Notaren die Funktion eines Rechtspflegeorgans zuzuweisen und den Notaren damit gewerbliches Verhalten zu untersagen ist und die Vergütung durch gesetzliche Regelungen zu bestimmen. Die Ziele des Vergabeverfahrens, nämlich Kosten- und Leistungswettbewerb, können bei notariellen Leistungen von vornherein nicht erreicht werden.

Amendment 428

Frank Engel, Wim van de Camp, Andreas Schwab

Proposal for a directive

Article 10 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive

(d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive

2004/39/EC of the European Parliament and of the Council²⁷, central bank services and operations conducted with the European Financial Stability Facility;

2004/39/EC of the European Parliament and of the Council²⁷, central bank services and operations conducted with the European Financial Stability Facility, **or transactions by the contracting authorities to raise money or capital**;

Or. en

Amendment 429
Barbara Weiler

Proposal for a directive
Article 10 – paragraph 1 – point d

Text proposed by the Commission

(d) Finanzdienstleistungen im Zusammenhang mit der Ausgabe, dem Verkauf, dem Ankauf oder der Übertragung von Wertpapieren oder anderen Finanzinstrumenten im Sinne der Richtlinie 2004/39/EG des Europäischen Parlaments und des Rates²⁷ sowie Dienstleistungen der Zentralbanken und mit der Europäischen Finanzstabilisierungsfazilität durchgeführte Transaktionen;

Amendment

(d) Finanzdienstleistungen im Zusammenhang mit der Ausgabe, dem Verkauf, dem Ankauf oder der Übertragung von Wertpapieren oder anderen Finanzinstrumenten im Sinne der Richtlinie 2004/39/EG des Europäischen Parlaments und des Rates²⁷, **Geschäfte, die der Geld- oder Kapitalbeschaffung der öffentlichen Auftraggeber dienen** sowie Dienstleistungen der Zentralbanken und mit der Europäischen Finanzstabilisierungsfazilität durchgeführte Transaktionen;

Or. de

Amendment 430
Kerstin Westphal

Proposal for a directive
Article 10 – paragraph 1 – point d

Text proposed by the Commission

(d) Finanzdienstleistungen im Zusammenhang mit der Ausgabe, dem Verkauf, dem Ankauf oder der Übertragung von Wertpapieren oder

Amendment

(d) Finanzdienstleistungen im Zusammenhang mit der Ausgabe, dem Verkauf, dem Ankauf oder der Übertragung von Wertpapieren oder

anderen Finanzinstrumenten im Sinne der Richtlinie 2004/39/EG des Europäischen Parlaments und des Rates²⁷ sowie Dienstleistungen der Zentralbanken und mit der Europäischen Finanzstabilisierungsfazilität durchgeführte Transaktionen;

anderen Finanzinstrumenten im Sinne der Richtlinie 2004/39/EG des Europäischen Parlaments und des Rates²⁷, **Geschäfte, die der Geld- oder Kapitalbeschaffung der öffentlichen Auftraggebers dienen** sowie Dienstleistungen der Zentralbanken und mit der Europäischen Finanzstabilisierungsfazilität durchgeführte Transaktionen;

Or. de

Justification

Aktuell fragen die Kommunen unkompliziert bei gut 20 Banken nach einem Kreditangebot nach. Wenn die Banken über einen längeren Zeitraum - bisher wenige Stunden - ihre Konditionen vorhalten müssen, ohne sich entsprechend refinanzieren zu können, müssten so genannte Swaptions für den Zeitpunkt der Kreditbereitstellung in der Zukunft kalkuliert werden. Die Kosten hierfür liegen über den heutigen Kommunalkreditkonditionen und würden die Finanzierungskosten für die öffentliche Hand erheblich erhöhen.

Amendment 431 **Heide Rühle**

Proposal for a directive **Article 10 – paragraph 1 – point d**

Text proposed by the Commission

(d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council²⁷, central bank services and operations conducted with the European Financial Stability Facility;

Amendment

(d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council²⁷, **transactions by the contracting authorities to raise money or capital**, central bank services and operations conducted with the European Financial Stability Facility;

Or. en

Amendment 432 **Peter Simon**

Proposal for a directive
Article 10 – paragraph 1 – point d

Text proposed by the Commission

(d) Finanzdienstleistungen im Zusammenhang mit der Ausgabe, dem Verkauf, dem Ankauf oder der Übertragung von Wertpapieren oder anderen Finanzinstrumenten im Sinne der Richtlinie 2004/39/EG des Europäischen Parlaments und des Rates²⁷ **sowie** Dienstleistungen der Zentralbanken und mit der Europäischen Finanzstabilisierungsfazilität durchgeführte Transaktionen;

Amendment

(d) Finanzdienstleistungen im Zusammenhang mit der Ausgabe, dem Verkauf, dem Ankauf oder der Übertragung von Wertpapieren oder anderen Finanzinstrumenten im Sinne der Richtlinie 2004/39/EG des Europäischen Parlaments und des Rates²⁷, Dienstleistungen der Zentralbanken und mit der Europäischen Finanzstabilisierungsfazilität durchgeführte Transaktionen **sowie *Geschäfte, die der Geld- oder Kapitalbeschaffung der öffentlichen Auftraggeber dienen***;

Or. de

Amendment 433
Jürgen Creutzmann

Proposal for a directive
Article 10 – paragraph 1 – point d

Text proposed by the Commission

(d) Finanzdienstleistungen im Zusammenhang mit der Ausgabe, dem Verkauf, dem Ankauf oder der Übertragung von Wertpapieren oder anderen Finanzinstrumenten im Sinne der Richtlinie 2004/39/EG des Europäischen Parlaments und des Rates²⁷ sowie Dienstleistungen der Zentralbanken und mit der Europäischen Finanzstabilisierungsfazilität durchgeführte Transaktionen;

Amendment

(d) Finanzdienstleistungen im Zusammenhang mit der Ausgabe, dem Verkauf, dem Ankauf oder der Übertragung von Wertpapieren oder anderen Finanzinstrumenten im Sinne der Richtlinie 2004/39/EG des Europäischen Parlaments und des Rates²⁷, ***Geschäfte, die der Geld- oder Kapitalbeschaffung der öffentlichen Auftraggeber dienen*** sowie Dienstleistungen der Zentralbanken und mit der Europäischen Finanzstabilisierungsfazilität durchgeführte Transaktionen;

Or. de

Justification

Eine Ausschreibungspflicht für öffentliche Kredite mindert die Praktikabilität der Verfahren öffentlicher Finanzierungen und erhöht deren Kosten erheblich. Die Ausnahme von Finanzdienstleistungen sollte sich daher auch auf die Gledanlage und -beschaffung beziehen.

Amendment 434

Peter Simon

Proposal for a directive

Article 10 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) Zivilschutz, Katastrophenschutz und alltägliche Gefahrenabwehr;

Or. de

Amendment 435

Evelyne Gebhardt

Proposal for a directive

Article 10 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) Finanzgeschäfte, die der Geld- oder Kapitalbeschaffung, der Anlage oder der Finanzierung von Vergaben der öffentlichen Auftraggeber dienen;

Or. de

Amendment 436

Bernadette Vergnaud

Proposal for a directive

Article 10 – paragraph 1 – point d bis (new)

Text proposed by the Commission

Amendment

(d bis) ayant pour objet les opérations d'approvisionnement en argent ou en

capital des pouvoirs adjudicateurs.

Or. fr

Justification

La suppression de l'exemption accordée aux clients publics en matière de refinancement par le recours à l'emprunt crée une incertitude ayant un effet négatif sur les taux et un biais de concurrence favorable aux marchés financiers qui bénéficient d'une exemption.

Amendment 437

Peter Simon

Proposal for a directive

Article 10 – paragraph 1 – point d b (new)

Text proposed by the Commission

Amendment

(db) aufgrund im Einklang mit den EU-Verträgen stehender, besonderer oder ausschließlicher Rechte zu vergebende Verträge;

Or. de

Amendment 438

Heide Rühle

Proposal for a directive

Article 10 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) employment contracts;

(e) employment contracts *including the secondment of temporary personnel;*

Or. en

Amendment 439

Marc Tarabella

Proposal for a directive
Article 10 – paragraph 1 – point e

Text proposed by the Commission

(e) concernant les contrats d'emploi;

Amendment

(e) concernant les contrats d'emploi ***et le régime de protection sociale obligatoire***;

Or. fr

Amendment 440
Anna Hedh

Proposal for a directive
Article 10 – paragraph 1 – point e

Text proposed by the Commission

(e) employment contracts;

Amendment

(e) employment contracts ***or collective agreements which contributes to the improvement of conditions of work and employment***;

Or. en

Justification

This amendment aims to address the concerns caused by ECJ judgement Commission v. Germany 271/08 ECJ. The proposed text is based on paragraph 59 of the Albany case 67/97/ECJ and aims to exclude collective agreements which contributes to the improvement of conditions of work and employment, inter alia agreements on supplementary pensions schemes and insurances etc.

Amendment 441
Sirpa Pietikäinen

Proposal for a directive
Article 10 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) the SGEI contracts that ensure compliance with the EU law and that are granted following an open, transparent

and non-discriminatory procedure.

Or. en

Amendment 442

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, Andreas Schwab

Proposal for a directive

Article 10 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) Zivil- und Katastrophenschutz sowie die alltägliche Gefahrenabwehr.

Or. de

Justification

Bei der Vergabe von Aufträgen im Bereich des Zivil- und Katastrophenschutzes dürfen Kriterien wie Wirtschaftlichkeit keinen entscheidenden Ausschlag geben. Insbesondere die Notfallrettung fällt hierunter, sie ist insoweit vom Krankenransport abzugrenzen. Die Notfallrettung bedarf vor allem in ländlichen Gemeinden einer großen Anzahl von ehrenamtlichen Helfern, diese ehrenamtliche Struktur wäre durch die Anwendung des Vergaberechts gefährdet.

Amendment 443

Heide Rühle

Proposal for a directive

Article 10 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) civil protection, emergency preparedness and response and emergency medical services;

Or. en

Amendment 444

Andreas Schwab, Frank Engel, Sirpa Pietikäinen, Anja Weisgerber

Proposal for a directive
Article 10 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) Zivil- und Katastrophenschutz sowie die alltägliche Gefahrenabwehr.

Or. de

Justification

Hierunter fällt insbesondere die Notfallrettung, sie ist Bestandteil der alltäglichen Gefahrenabwehr und ist vom Krankentransport abzugrenzen. Zur Gewährleistung eines erfolgreichen Zivil- und Katastrophenschutzes im Rahmen der alltäglichen Gefahrenabwehr im Interesse des Bürgers sollte die Anwendung primärrechtlicher Grundsätze ausreichend sein.

Amendment 445
Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann

Proposal for a directive
Article 10 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(f a) hotel and restaurant services with CPV reference numbers from 55100000-1 to 55524000-9, and from 98340000-8 to 98341100-6, provided that the services can be provided only by economic operators located in a specific region.

Or. en

Amendment 446
Andreas Schwab, Birgit Collin-Langen, Sabine Verheyen, Anja Weisgerber, Jürgen Creutzmann

Proposal for a directive
Article 10 – paragraph 1 – point f b (new)

Text proposed by the Commission

Amendment

(fb) öffentliche Dienstleistungsaufträge, die von einem öffentlichen Auftraggeber an einen öffentlichen Auftraggeber oder an einen Verband von öffentlichen Auftraggebern aufgrund eines ausschließlichen Rechts vergeben werden, das er aufgrund veröffentlichter, mit dem Vertrag übereinstimmender Rechts- oder Verwaltungsvorschriften innehat.

Or. de

Justification

Die Europäischen Verträge gewähren den Mitgliedsstaaten ausdrücklich das Recht, ausschließliche Rechte zu übertragen. Dies sollte in den Vergabevorschriften Eingang finden.

Amendment 447

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, Hans-Peter Mayer

Proposal for a directive

Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Auf öffentliche Dienstleistungsaufträge, die Folgendes zum Gegenstand haben, finden nur die Artikel 40, 41 und 48 dieser Richtlinie Anwendung:

(a) Neben- und Hilfstätigkeiten des Verkehrs;

(b) Rechtsberatung;

(c) Gebäudereinigung;

(d) Landverkehr einschließlich Geldtransporte und Kurierdienste;

(e) Auskunft- und Schutzdienste.

Or. de

Justification

Die Unterscheidung zwischen „A“- und „B“-Dienstleistungen ist von der Idee her beizubehalten, da die Aufhebung dieser Unterscheidung in der Praxis zu einem erheblich höheren Verwaltungsaufwand führt. Darüber hinaus sollten, um eine weitere Verfahrensvereinfachung zu erreichen, mehr Dienstleistungen, die nach derzeit gültigem Recht „A“-Dienstleistungen sind, als „B“-Dienstleistungen eingestuft werden.

Amendment 448

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

This Directive shall not apply to public service contracts awarded by a contracting authority to another contracting authority or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a published law, regulation or administrative provision which is compatible with the Treaty on the Functioning of the European Union.

Or. en

Amendment 449

Kerstin Westphal

Proposal for a directive

Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Dienstleistungsaufträge, die aufgrund eines ausschließlichen Rechts vergeben werden: Diese Richtlinie gilt nicht für öffentliche Dienstleistungsaufträge, die von einem öffentlichen Auftraggeber an einen anderen öffentlichen Auftraggeber oder an einen Verband von öffentlichen Auftraggebern aufgrund eines

ausschließlichen Rechts vergeben werden, das dieser aufgrund veröffentlichter, mit dem Vertrag übereinstimmender Rechts- oder Verwaltungsvorschriften innehat.

Or. de

Justification

Die aktuelle Richtlinie 2004/18 schließt öffentliche Versorgungsverträge aus, die auf einem exklusiven Recht basieren, das in einem (veröffentlichtem) Gesetz, einer Regulierung oder einer Verwaltungsvorschrift enthalten ist, die mit den EU-Verträgen kompatibel sind. Diese exklusiven Rechte entsprechen der Möglichkeit, die den EU-Mitgliedstaaten im EU-Vertrag gewährt werden, solche Exklusivrechte zu vergeben.

Amendment 450
Kerstin Westphal

Proposal for a directive
Article 10 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

Zivil- und Katastrophenschutz sowie die alltägliche Gefahrenabwehr

Or. de

Justification

Die Abwehr von Gefahren, wie im Katastrophenschutz und der Notfallrettung, gehört zu den Aufgaben der Gefahrenabwehr, welche von der öffentlichen Hand sichergestellt werden muss.

Amendment 451
Philippe Juvin

Proposal for a directive
Article 10 – paragraph 2

Text proposed by the Commission

Amendment

Les services de médias audiovisuels visés au paragraphe 1, point b), incluent toute transmission et diffusion utilisant toute

supprimé

forme de réseau électronique.

Or. fr

Justification

Voir amendement à l'article 10 paragraphe 1 point (b)

Amendment 452
Heide Rühle

Proposal for a directive
Article 10 a (new)

Text proposed by the Commission

Amendment

Article 10a

Service contracts awarded on the basis of exclusive rights

This Directive shall not apply to public service contracts awarded by a contracting authority to another contracting authority or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a published law, regulation or administrative provision which is compatible with the Treaty.

Or. en

Justification

Reintroducing Article 18 from the current Directive 2004/18/EC. This Article is important for operations of services of general economic interest it excludes public service contracts that are based on an exclusive right enshrined in public law, regulations or administrative provision, compatible with the Treaty. The ECJ has applied this provision in C-360/96.

Amendment 453
Heide Rühle

Proposal for a directive
Article 10 b (new)

Text proposed by the Commission

Amendment

Article 10b

Specific Regimes to deliver SGI

This Directive shall not apply to tried and tested Member State procedures that are based on the user's free choice of service providers (i.e. voucher system, free choice model, triangular relationship) as well as the principle that all providers which are able to comply with the conditions previously laid down by law should, irrespective of their legal form, be permitted to provide services, provided that account is taken of the general principles of equal treatment, transparency and non-discrimination.

Or. en

Amendment 454

Heide Rühle

Proposal for a directive

Article 10 c (new)

Text proposed by the Commission

Amendment

Article 10c

Service concession

Without prejudice to the application of Article 10a , this Directive shall not apply to service concessions as defined in Article 2(23 a).

Or. en

Amendment 455

Anna Hedh

Proposal for a directive

Article 11

Text proposed by the Commission

Amendment

Article 11

deleted

[...]

Or. en

Amendment 456

Marc Tarabella

Proposal for a directive

Article 11 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

Un marché attribué par un pouvoir adjudicateur à une autre personne morale ne relève pas du champ d'application de la présente directive lorsque toutes les conditions suivantes sont réunies:

1. Le choix de la mise en place d'une structure entièrement publique pour gérer des services d'intérêt économique général ou des services sociaux est une prérogative de puissance publique relevant de la compétence exclusive des États membres.

Un marché attribué par un pouvoir adjudicateur à une autre personne morale ne relève pas du champ d'application de la présente directive lorsque toutes les conditions suivantes sont réunies:

Or. fr

Amendment 457

Philippe Juvin

Proposal for a directive

Article 11 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) le pouvoir adjudicateur exerce sur la personne morale concernée un contrôle ***semblable*** à celui qu'il exerce sur ses propres services;

(a) le pouvoir adjudicateur exerce sur la personne morale concernée un contrôle ***analogue*** à celui qu'il exerce sur ses propres services, ***c'est à dire qu'il exerce une influence décisive à la fois sur les***

objectifs stratégiques et sur les décisions importantes de la personne morale contrôlée. Afin de déterminer l'existence d'un tel contrôle, il peut également être tenu compte d'éléments tels que le niveau de représentation au sein des organes d'administration, de direction ou de surveillance, les précisions y relatives dans les statuts ou la propriété;

Or. fr

Justification

Clarification des critères définissant le "in-house" et justifiant l'exclusion de tels contrats du champ d'application de la directive. Le terme "contrôle analogue" est celui issu de la jurisprudence de la CJUE et renforce le critère de contrôle exercé par le pouvoir adjudicateur sur l'entité contrôlée. La notion de contrôle analogue est spécifiée également par des éléments repris du règlement (CE) n°1370/2007 (transport public de voyageurs) afin de faciliter son identification.

Amendment 458
Marc Tarabella

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) au moins 90 % des activités de cette personne morale sont exercées pour le pouvoir adjudicateur qui la contrôle ou pour d'autres personnes morales qu'il contrôle;

supprimé

Or. fr

Amendment 459
Heide Rühle

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) at least **90** % of the activities of that legal person are carried out for the controlling contracting authority or for other legal persons controlled by that contracting authority;

Amendment

(b) at least **80** % of the activities of that legal person, **subject to the contract**, are carried out for the controlling contracting authority or for other legal persons controlled by that contracting authority;

Or. en

Amendment 460

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, Hans-Peter Mayer

Proposal for a directive

Article 11 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) mindestens **90** % der Tätigkeiten der juristischen Person werden für den die Kontrolle ausübenden öffentlichen Auftraggeber oder für andere von diesem kontrollierte juristische Personen ausgeführt;

Amendment

(b) mindestens **80** % der Tätigkeiten der juristischen Person, **die Gegenstand des Auftrags sind**, werden für den die Kontrolle ausübenden öffentlichen Auftraggeber oder für andere von diesem kontrollierte juristische Personen ausgeführt;

Or. de

Justification

Für kommunale Unternehmen bringt die Zusammenfassung der Tätigkeiten in unterschiedlichen Sektoren in einer gemeinsamen Holding-Struktur wichtige Synergien mit sich, die nicht durch das Vergaberecht ausgehebelt werden sollten. Daher sollten die für die Operationalisierung des Wesentlichkeitskriteriums relevanten Umsätze auf diejenigen reduziert werden, die Gegenstand der Vergabe sind.

Amendment 461

Barbara Weiler

Proposal for a directive

Article 11 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) mindestens **90 %** der Tätigkeiten der juristischen Person werden für den die Kontrolle ausübenden öffentlichen Auftraggeber oder für andere von diesem kontrollierte juristische Personen ausgeführt;

Amendment

(b) mindestens **85 %** der Tätigkeiten der juristischen Person werden für den die Kontrolle ausübenden öffentlichen Auftraggeber oder für andere von diesem kontrollierte juristische Personen ausgeführt;

Or. de

Amendment 462
Wim van de Camp

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) **ten minste 90%** van de activiteiten van deze rechtspersoon wordt uitgeoefend voor de controlerende aanbestedende dienst of voor andere rechtspersonen die door deze aanbestedende dienst worden gecontroleerd;

Amendment

(b) **het merendeel** van de activiteiten van deze rechtspersoon wordt uitgeoefend voor de controlerende aanbestedende dienst of voor andere rechtspersonen die door deze aanbestedende dienst worden gecontroleerd;

Or. nl

Amendment 463
Andreas Schwab, Frank Engel, Jürgen Creutzmann

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) **mindestens 90 % der Tätigkeiten der juristischen Person werden** für den die Kontrolle ausübenden öffentlichen Auftraggeber oder für andere von diesem kontrollierte juristische Personen **ausgeführt**;

Amendment

(b) **die juristische Person ist im Wesentlichen** für den die Kontrolle ausübenden öffentlichen Auftraggeber oder für andere von diesem kontrollierte juristische Personen **tätig. Es wird vermutet, dass die juristische Person im Wesentlichen für den die Kontrolle ausübenden öffentlichen Auftraggeber**

oder für andere von diesem kontrollierte juristische Personen tätig ist, wenn sie mindestens 90 % ihrer Tätigkeit, die Gegenstand des Auftrags ist, für diese(n) ausführt;

Or. de

Justification

Der Vorschlag kombiniert die Rechtsprechung des EuGH in der Rechtssache C-107/98 mit einer "safe-harbour-clause", mit der widerlegbar vermutet wird, wann eine Inhouse-Tätigkeit vorliegt.

Amendment 464

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 11 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) at least **90 %** of the activities of that legal person are carried out for the controlling contracting authority or for other legal persons controlled by that contracting authority;

Amendment

(b) at least **80%** of the activities of that legal person are carried out for the controlling contracting authority or for other legal persons controlled by that contracting authority;

Or. en

Amendment 465

Philippe Juvin

Proposal for a directive

Article 11 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) au moins 90 % **des activités** de cette personne morale **sont exercées** pour le pouvoir adjudicateur qui la contrôle ou pour d'autres personnes morales qu'il contrôle;

Amendment

(b) au moins 90 % **du chiffre d'affaires total moyen** de cette personne morale **est exercé** pour le pouvoir adjudicateur qui la contrôle ou pour d'autres personnes morales qu'il contrôle;

Justification

Clarification des critères définissant le "in-house": l'expression "90% des activités" clarifie un des termes de la jurisprudence ("essentiel des activités") et laisse l'autre imprécis, d'où la proposition d'introduire "90% du chiffre d'affaire total moyen".

Amendment 466
Peter Simon

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) mindestens **90** % der Tätigkeiten der juristischen Person werden für den die Kontrolle ausübenden öffentlichen Auftraggeber oder für andere von diesem kontrollierte juristische Personen ausgeführt;

Amendment

(b) mindestens **80** % der Tätigkeiten der juristischen Person, **die Auftragsgegenstand sind**, werden für den die Kontrolle ausübenden öffentlichen Auftraggeber oder für andere von diesem kontrollierte juristische Personen ausgeführt;

Or. de

Amendment 467
Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) **at least 90** % of the activities of that legal person are carried out for the controlling contracting authority or for other legal persons controlled by that contracting authority;

Amendment

(b) **the essential part** of the activities of that legal person are carried out for the controlling contracting authority or for other legal persons controlled by that contracting authority;

Or. en

Justification

This formulation reflects the Court of Justice of the EU rulings.

Amendment 468

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 11 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) almeno il **90%** delle attività di tale persona giuridica sono effettuate per l'amministrazione aggiudicatrice controllante o per altre persone giuridiche controllate dall'amministrazione aggiudicatrice di cui trattasi;

Amendment

(b) almeno il **100%** delle attività di tale persona giuridica sono effettuate per l'amministrazione aggiudicatrice controllante o per altre persone giuridiche controllate dall'amministrazione aggiudicatrice di cui trattasi;

Or. it