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*Committee on the Internal Market and Consumer Protection*

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**2011/0438(COD)**

12.7.2012

# **AMENDMENTS**

## **469 - 763**

**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 469**  
**Cristian Silviu Buşoi**

**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) **all** 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*

*In order to safeguard competition this exception should be limited to the minimum. It should therefore be provided that all activities, meaning 100% of the activities of the legal person should be carried out for the controlling contracting authority.*

**Amendment 470**  
**Marian Harkin**

**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 90 % of the activities **in their entirety** 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*

*The background operation of a public authority creates unfair competition when operating directly or indirectly on the market. Exemption of competition should be limited to contracts awarded to public authorities entirely under the control of the awarding authority, and no*

*private participation in these entities should be admitted. This directive is an opportunity to clarify and simplify rules that guarantee the best use of public resources.*

**Amendment 471**  
**Riikka Manner**

**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) **all** 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*

*The proposal of the Commission means that the public sector entity can be directly awarded by its controlling public sector entity, and then go to the market by a 10 % portion. This 10 % could of course be millions of euros, which would strongly distort competition in many business areas. There is no level playing field if a public sector entity may sell services and products in the same competitive market with private entities.*

**Amendment 472**  
**Toine Manders**

**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) ten minste **50%** 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 473**  
**Françoise Castex**

**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 % des activités de cette personne morale sont exercées pour le **compte du** pouvoir adjudicateur qui la contrôle ou pour d'autres personnes morales qu'il contrôle;

Or. fr

**Amendment 474**  
**Christel Schaldemose**

**Proposal for a directive**  
**Article 11 – paragraph 1 – subparagraph 1 – point b**

*Text proposed by the Commission*

b) Mindst 90 % af den juridiske persons aktiviteter udføres for den kontrollerende ordregivende myndighed eller for andre juridiske personer, der kontrolleres af denne ordregivende myndighed

*Amendment*

b) Mindst 90 % af den juridiske persons aktiviteter udføres for den kontrollerende ordregivende myndighed eller for andre juridiske personer, der kontrolleres af denne ordregivende myndighed. **For affaldsforbrændingsanlæg fastsættes denne minimumsgrænse til 50 %.**

Or. da

**Amendment 475**  
**Marian Harkin**

**Proposal for a directive**  
**Article 11 – paragraph 1 – subparagraph 1 – point c**

*Text proposed by the Commission*

***(c) there is no private participation in the controlled legal person.***

*Amendment*

***deleted***

*Justification*

*The background operation of a public authority creates unfair competition when operating directly or indirectly on the market. Exemption of competition should be limited to contracts awarded to public authorities entirely under the control of the awarding authority, and no private participation in these entities should be admitted. This directive is an opportunity to clarify and simplify rules that guarantee the best use of public resources.*

**Amendment 476****Heide Rühle****Proposal for a directive****Article 11 – paragraph 1 – subparagraph 1 – point c***Text proposed by the Commission*

(c) there is no private participation in the controlled legal person.

*Amendment*

(c) there is no private participation in the controlled legal person, ***with the exception of legally enforced forms of private participation.***

Or. en

*Justification*

*There has to be a clear distinction between public-public cooperation and public-private partnerships. However in some Member States private participation might be an obligation enforced by law.*

**Amendment 477****Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen****Proposal for a directive****Article 11 – paragraph 1 – subparagraph 1 – point c***Text proposed by the Commission*

(c) es besteht ***keine*** private Beteiligung ***an*** der kontrollierten juristischen Person.

*Amendment*

(c) es besteht ***lediglich eine passive*** private Beteiligung, ***das heißt eine Beteiligung, die keinen Einfluß auf das operative Geschäft*** der kontrollierten juristischen Person ***ermöglicht.***

*Justification*

*Der Ausschluss sollte nur für eine "aktive" private Kapitalbeteiligung der kontrollierten juristischen Person gelten, durch die operative Entscheidungen beeinflusst werden können. Diese Änderung ermöglicht reine Kapitalbeteiligungen in die juristische Person, wie stille Einlagen, ohne die Ausnahme für Inhouse-Konstellationen zu verletzen. Die Öffnung für reine Kapitalbeteiligungen ist erforderlich, damit die Kommunen Dienstleistungen zu einem angemessenen Preis für die Bürger anbieten können.*

**Amendment 478****Andreas Schwab, Frank Engel, Sirpa Pietikäinen****Proposal for a directive****Article 11 – paragraph 1 – subparagraph 1 – point c***Text proposed by the Commission*

(c) es besteht keine private Beteiligung an der kontrollierten juristischen Person.

*Amendment*

(c) es besteht keine private Beteiligung an der kontrollierten juristischen Person, **sofern diese nicht in den jeweiligen Mitgliedsstaaten gesetzlich vorgesehen ist.**

*Justification*

*In einigen Mitgliedsstaaten ist aufgrund bestehender historischer Entwicklungen und gewachsener Strukturen eine private Beteiligung per Gesetz vorgesehen. Diese Formen der Zusammenarbeit sollten weiterhin möglich sein, im Übrigen sollte jegliche private Beteiligung jedoch gemäß Rechtsprechung des EuGH ausgeschlossen sein.*

**Amendment 479****Wim van de Camp****Proposal for a directive****Article 11 – paragraph 1 – subparagraph 1 – point c***Text proposed by the Commission*

(c) er is geen privé-deelneming in de gecontroleerde rechtspersoon.

*Amendment*

(c) er is geen **actieve** privé-deelneming in de gecontroleerde rechtspersoon.

**Amendment 480**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 11 – paragraph 1 – subparagraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

(c) *there is no* private participation in the controlled legal person.

(c) *the* private participation in the controlled legal person *does not exceed 50% of its voting shares*.

Or. en

*Justification*

*Private investors can only influence management decisions if they hold more than 50% of the voting shares of the controlled legal person. This amendment is to enable pure capital investments without affecting the exemption of in-house procurement and horizontal cooperation.*

**Amendment 481**  
**Pablo Arias Echeverría**

**Proposal for a directive**  
**Article 11 – paragraph 1 – subparagraph 1 – point c – point i (new)**

*Text proposed by the Commission*

*Amendment*

*i) que la persona jurídica controlada no persiga intereses distintos que los de los poderes públicos que influyen en ella;*

Or. es

**Amendment 482**  
**Pablo Arias Echeverría**

**Proposal for a directive**  
**Article 11 – paragraph 1 – subparagraph 1 – point c – point ii (new)**



*Text proposed by the Commission*

*Amendment*

***ii) que la persona jurídica controlada no obtenga ningún beneficio que no sea el reembolso de los costes reales de los contratos públicos celebrados con los poderes adjudicadores.***

Or. es

**Amendment 483**

**Heide Rühle**

**Proposal for a directive**

**Article 11 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

***A contracting authority shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments within the meaning of point (a) of the first subparagraph where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person.***

***deleted***

Or. en

*Justification*

*Point (a) of subparagraph 1 is clear enough no repetition needed.*

**Amendment 484**

**Wim van de Camp**

**Proposal for a directive**

**Article 11 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

***Een aanbestedende dienst wordt geacht op een rechtspersoon toezicht zoals op zijn eigen diensten uit te oefenen in de zin van***

***Schrappen***

*de eerste alinea, onder a), wanneer hij zowel op strategische doelstellingen als belangrijke beslissingen van de gecontroleerde rechtspersoon een beslissende invloed uitoefent.*

Or. nl

**Amendment 485**  
**Philippe Juvin**

**Proposal for a directive**  
**Article 11 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*Un pouvoir adjudicateur est réputé exercer sur une personne morale un contrôle semblable à celui qu'il exerce sur ses propres services, au sens du premier alinéa, point a), s'il exerce une influence décisive à la fois sur les objectifs stratégiques et sur les décisions importantes de la personne morale contrôlée.*

*supprimé*

Or. fr

*Justification*

*Clarification de l'article. Voir amendement à l'article 11 paragraphe 1 point (a).*

**Amendment 486**  
**Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen**

**Proposal for a directive**  
**Article 11 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*Bei einem öffentlichen Auftraggeber wird davon ausgegangen, dass er über die betreffende juristische Person eine Kontrolle ausübt, die der gleichkommt,*

*entfällt*

*die er im Sinne von Unterabsatz 1 Buchstabe a über seine eigenen Dienststellen ausübt, wenn er einen maßgeblichen Einfluss sowohl auf die strategischen Ziele als auch auf die wesentlichen Entscheidungen der kontrollierten juristischen Person hat.*

Or. de

*Justification*

*Um das erklärte Ziel der gesetzlichen Vereinfachungen zu erreichen, sollten übermäßige Erklärungen in einem Rechtstext vermieden werden und stattdessen in einer separaten Anleitung, Leitlinien, einem Handbuch oder erklärenden Veröffentlichungen der Kommission bereit gestellt werden. Daher sollte dieser Teil gestrichen werden. Eine über die einschlägige EuGH-Rechtsprechung hinausgehende Erläuterung ist an dieser Stelle unangebracht.*

**Amendment 487**  
**Peter Simon**

**Proposal for a directive**  
**Article 11 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*Bei einem öffentlichen Auftraggeber wird davon ausgegangen, dass er über die betreffende juristische Person eine Kontrolle ausübt, die der gleichkommt, die er im Sinne von Unterabsatz 1 Buchstabe a über seine eigenen Dienststellen ausübt, wenn er einen maßgeblichen Einfluss sowohl auf die strategischen Ziele als auch auf die wesentlichen Entscheidungen der kontrollierten juristischen Person hat.*      *entfällt*

Or. de

**Amendment 488**  
**Marian Harkin**

**Proposal for a directive**  
**Article 11 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*A contracting authority shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments within the meaning of point (a) of the first subparagraph where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person.*

*deleted*

Or. en

*Justification*

*The background operation of a public authority creates unfair competition when operating directly or indirectly on the market. Exemption of competition should be limited to contracts awarded to public authorities entirely under the control of the awarding authority, and no private participation in these entities should be admitted. This directive is an opportunity to clarify and simplify rules that guarantee the best use of public resources.*

**Amendment 489**  
**Andreas Schwab, Jürgen Creutzmann**

**Proposal for a directive**  
**Article 11 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

Bei einem öffentlichen Auftraggeber wird davon ausgegangen, dass er über die betreffende juristische Person eine Kontrolle ausübt, die der gleichkommt, die er im Sinne von Unterabsatz 1 Buchstabe a über seine eigenen Dienststellen ausübt, wenn er einen **maßgeblichen** Einfluss sowohl auf die strategischen Ziele als auch auf die wesentlichen Entscheidungen der kontrollierten juristischen Person hat.

Bei einem öffentlichen Auftraggeber wird davon ausgegangen, dass er über die betreffende juristische Person eine Kontrolle ausübt, die der gleichkommt, die er im Sinne von Unterabsatz 1 Buchstabe a über seine eigenen Dienststellen ausübt, wenn er einen **bestimmenden** Einfluss sowohl auf die strategischen Ziele als auch auf die wesentlichen Entscheidungen der kontrollierten juristischen Person hat.

Or. de

*Justification*

*Orientierungsmaßstab für die Kontrolle über eine beauftragte juristische Person sollte die Einflussmöglichkeit auf eine eigene Dienststelle des Auftraggebers sein, die vollständig der Aufsicht und den Weisungen ihrer Behördenleitung unterliegt. Die eigene Dienststelle verfügt über keine oder allenfalls nur geringe Selbständigkeit.*

**Amendment 490**  
**Evelyne Gebhardt**

**Proposal for a directive**  
**Article 11 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

Bei einem öffentlichen Auftraggeber wird davon ausgegangen, dass er über die betreffende juristische Person eine Kontrolle ausübt, die der gleichkommt, die er im Sinne von Unterabsatz 1 Buchstabe a über seine eigenen Dienststellen ausübt, wenn er einen maßgeblichen Einfluss sowohl auf die strategischen Ziele als auch auf die wesentlichen Entscheidungen der kontrollierten juristischen Person hat.

*Amendment*

Bei einem öffentlichen Auftraggeber wird davon ausgegangen, dass er über die betreffende juristische Person eine Kontrolle ausübt, die der gleichkommt, die er im Sinne von Unterabsatz 1 Buchstabe a über seine eigenen Dienststellen ausübt, wenn er einen maßgeblichen Einfluss sowohl auf die strategischen Ziele als auch auf die wesentlichen Entscheidungen der kontrollierten juristischen Person hat. ***Die vorstehend genannten Bedingungen sind entsprechend zu erfüllen, wenn ein öffentlicher Auftraggeber einen öffentlichen Auftrag an eine von ihm zusammen mit anderen öffentlichen Auftraggebern kontrollierte juristische Person vergibt.***

Or. de

**Amendment 491**  
**Cristian Silviu Buşoi**

**Proposal for a directive**  
**Article 11 – paragraph 2**

*Text proposed by the Commission*

***2. Paragraph 1 also applies where a controlled entity which is a contracting***

*Amendment*

***deleted***

*authority awards a contract to its controlling entity, or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract.*

Or. en

*Justification*

*The extension of the in-house exception should be limited to a minimum. This reverse in-house exception is an undue extension of the ECJ ruling in the Teckal case and should therefore be eliminated.*

**Amendment 492**  
**Marian Harkin**

**Proposal for a directive**  
**Article 11 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

*2. Paragraph 1 also applies where a controlled entity which is a contracting authority awards a contract to its controlling entity, or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract.*

*deleted*

Or. en

*Justification*

*The background operation of a public authority creates unfair competition when operating directly or indirectly on the market. Exemption of competition should be limited to contracts awarded to public authorities entirely under the control of the awarding authority, and no private participation in these entities should be admitted. This directive is an opportunity to clarify and simplify rules that guarantee the best use of public resources.*

**Amendment 493**  
**Heide Rühle**

**Proposal for a directive**  
**Article 11 – paragraph 2**

*Text proposed by the Commission*

2. Paragraph 1 also applies where a controlled entity which is a contracting authority awards a contract to its controlling entity, or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract.

*Amendment*

2. Paragraph 1 also applies where a controlled entity which is a contracting authority awards a contract to its controlling entity ***or entities***, or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract, ***with the exception of legally enforced forms of private participation.***

Or. en

**Amendment 494**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 11 – paragraph 2**

*Text proposed by the Commission*

2. Lid 1 is eveneens van toepassing wanneer een gecontroleerde entiteit die een aanbestedende dienst is, een opdracht gunt aan haar controlerende entiteit of aan een andere rechtspersoon die door dezelfde aanbestedende dienst wordt gecontroleerd, mits er geen privé-deelneming is in de rechtspersoon aan wie de overheidsopdracht wordt gegund.

*Amendment*

2. Lid 1 is eveneens van toepassing wanneer een gecontroleerde entiteit die een aanbestedende dienst is, een opdracht gunt aan haar controlerende entiteit of ***entiteiten of*** aan een andere rechtspersoon die door dezelfde aanbestedende dienst wordt gecontroleerd, mits er geen privé-deelneming is in de rechtspersoon aan wie de overheidsopdracht wordt gegund.

Or. nl

**Amendment 495**  
**Andreas Schwab, Anja Weisgerber**

**Proposal for a directive**  
**Article 11 – paragraph 2**

*Text proposed by the Commission*

2. Absatz 1 gilt auch, wenn ein kontrolliertes Unternehmen, bei dem es sich um einen öffentlichen Auftraggeber handelt, einen Auftrag an ***sein kontrollierendes Unternehmen*** oder eine andere von demselben Auftraggeber kontrollierte juristische Person vergibt, sofern keine private Beteiligung an der juristischen Person besteht, die den öffentlichen Auftrag erhalten soll.

*Amendment*

2. Absatz 1 gilt auch, wenn ein kontrolliertes Unternehmen, bei dem es sich um einen öffentlichen Auftraggeber handelt, einen Auftrag an ***seine kontrollierende Einheit*** oder ***kontrollierende Einheiten*** oder eine andere von demselben Auftraggeber kontrollierte juristische Person vergibt, sofern keine private Beteiligung an der juristischen Person besteht, die den öffentlichen Auftrag erhalten soll.

Or. de

*Justification*

*Diese Änderung betrifft nur die deutsche Fassung.*

**Amendment 496**

**Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen**

**Proposal for a directive**

**Article 11 – paragraph 2**

*Text proposed by the Commission*

2. Absatz 1 gilt auch, wenn ein kontrolliertes Unternehmen, bei dem es sich um einen öffentlichen Auftraggeber handelt, einen Auftrag an ***sein kontrollierendes Unternehmen*** oder eine andere von demselben Auftraggeber kontrollierte juristische Person vergibt, sofern ***keine*** private Beteiligung an der juristischen Person besteht, die den öffentlichen Auftrag erhalten soll.

*Amendment*

2. Absatz 1 gilt auch, wenn ein kontrolliertes Unternehmen, bei dem es sich um einen öffentlichen Auftraggeber handelt, einen Auftrag an ***seine kontrollierende Einheit*** oder ***seine kontrollierten Einheiten*** oder eine andere von demselben Auftraggeber kontrollierte juristische Person vergibt, sofern ***lediglich eine passive*** private Beteiligung, ***das heißt eine Beteiligung, die keinen Einfluß auf das operative Geschäft der kontrollierten juristischen Person ermöglicht***, an der juristischen Person besteht, die den öffentlichen Auftrag erhalten soll.

Or. de



## Justification

Es ist notwendig, hier auch den Fall der gemeinsamen Erbringung einer öffentlichen Aufgabe durch mehrere öffentliche Auftraggeber zu erfassen.

### Amendment 497

Peter Simon

#### Proposal for a directive

##### Article 11 – paragraph 2

###### *Text proposed by the Commission*

2. Absatz 1 gilt auch, wenn ein kontrolliertes Unternehmen, bei dem es sich um einen öffentlichen Auftraggeber handelt, einen Auftrag an *sein kontrollierendes Unternehmen* oder eine andere von demselben Auftraggeber kontrollierte juristische Person vergibt, sofern keine private Beteiligung an der juristischen Person besteht, die den öffentlichen Auftrag erhalten soll.

###### *Amendment*

2. Absatz 1 gilt auch, wenn ein kontrolliertes Unternehmen, bei dem es sich um einen öffentlichen Auftraggeber handelt, einen Auftrag an *seine kontrollierende Einheit bzw. Einheiten* oder eine andere von demselben Auftraggeber kontrollierte juristische Person vergibt, sofern keine private Beteiligung an der juristischen Person besteht, die den öffentlichen Auftrag erhalten soll.

Or. de

### Amendment 498

Jürgen Creutzmann

#### Proposal for a directive

##### Article 11 – paragraph 2

###### *Text proposed by the Commission*

2. Paragraph 1 also applies where a controlled entity which is a contracting authority awards a contract to its controlling entity, or to another legal person controlled by the same contracting authority, provided *that there is no* private participation in the legal person being awarded the public contract.

###### *Amendment*

2. Paragraph 1 also applies where a controlled entity which is a contracting authority awards a contract to its controlling entity, or to another legal person controlled by the same contracting authority, provided *the* private participation in the legal person being awarded the public contract *does not exceed 50% of its voting shares*.

*Justification*

*Private investors can only influence management decisions if they hold more than 50% of the voting shares of the controlled legal person. This amendment is to enable pure capital investments without affecting the exemption of in-house procurement and horizontal cooperation.*

**Amendment 499**  
**Evelyne Gebhardt**

**Proposal for a directive**  
**Article 11 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

***3. Ein öffentlicher Auftraggeber, der keine Kontrolle über eine juristische Person im Sinne von Absatz 1 ausübt, kann einen öffentlichen Auftrag auch ohne Anwendung dieser Richtlinie an eine von ihm zusammen mit anderen öffentlichen Auftraggebern kontrollierte juristische Person vergeben, wenn die folgenden Bedingungen erfüllt sind:***

***entfällt***

***(a) die öffentlichen Auftraggeber üben gemeinsam über die betreffende juristische Person eine Kontrolle aus, die der gleichkommt, die sie über ihre eigenen Dienststellen ausüben;***

***(b) mindestens 90 % der Tätigkeiten der juristischen Person werden für die die Kontrolle ausübenden öffentlichen Auftraggeber oder andere von denselben öffentlichen Auftraggebern kontrollierten juristischen Personen getätigt;***

***(c) es besteht keine private Beteiligung an der kontrollierten juristischen Person.***

***Für die Zwecke von Buchstabe a wird davon ausgegangen, dass öffentliche Auftraggeber gemeinsam eine juristische Person kontrollieren, wenn sämtliche der nachfolgend genannten Bedingungen***

*erfüllt sind:*

*(a) die Beschlussfassungsgremien der kontrollierten juristischen Person setzen sich aus Vertretern sämtlicher beteiligter öffentlicher Auftraggeber zusammen;*

*(b) diese öffentlichen Auftraggeber können folglich gemeinsam einen entscheidenden Einfluss auf die strategischen Ziele und wesentlichen Entscheidungen der kontrollierten juristischen Person ausüben;*

*(c) die kontrollierte juristische Person verfolgt keine Interessen, die sich von mit ihr zusammen arbeitenden öffentlichen Behörden unterscheiden;*

*(d) die kontrollierte juristische Person erwirtschaftet keine anderen Einnahmen als diejenigen, die sich aus der Rückzahlung der tatsächlich entstandenen Kosten im Zusammenhang mit den von den öffentlichen Auftraggebern vergebenen Aufträgen ergeben.*

Or. de

**Amendment 500**  
**Marian Harkin**

**Proposal for a directive**  
**Article 11 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

*3. A contracting authority, which does not exercise over a legal person control within the meaning of paragraph 1, may nevertheless award a public contract without applying this Directive to a legal person which it controls jointly with other contracting authorities, where the following conditions are fulfilled:*

*deleted*

*(a) the contracting authorities exercise jointly over the legal person a control which is similar to that which they*

*exercise over their own departments;*

*(b) at least 90 % of the activities of that legal person are carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;*

*(c) there is no private participation in the controlled legal person.*

*For the purposes of point (a), contracting authorities shall be deemed to jointly control a legal person where the following cumulative conditions are fulfilled:*

*(a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities;*

*(b) those contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person;*

*(c) the controlled legal person does not pursue any interests which are distinct from that of the public authorities affiliated to it;*

*(d) the controlled legal person does not draw any gains other than the reimbursement of actual costs from the public contracts with the contracting authorities.*

Or. en

#### *Justification*

*The background operation of a public authority creates unfair competition when operating directly or indirectly on the market. Exemption of competition should be limited to contracts awarded to public authorities entirely under the control of the awarding authority, and no private participation in these entities should be admitted. This directive is an opportunity to clarify and simplify rules that guarantee the best use of public resources.*

**Amendment 501**  
**Heide Rühle**

### Proposal for a directive

#### Article 11 – paragraph 3 – subparagraph 1 – introductory part

*Text proposed by the Commission*

3. A contracting authority, which does not exercise over a legal person control within the meaning of paragraph 1, may nevertheless award a public contract **without applying** this Directive to a legal person which it controls jointly with other contracting authorities, where the following conditions are fulfilled:

*Amendment*

3. A contracting authority, which does not exercise over a legal person control within the meaning of paragraph 1, may nevertheless award a public contract **outside the scope of** this Directive to a legal person which it controls jointly with other contracting authorities, where the following conditions are fulfilled:

Or. en

### Amendment 502

Wim van de Camp

### Proposal for a directive

#### Article 11 – paragraph 3 – subparagraph 1 – introductory part

*Text proposed by the Commission*

3. Een aanbestedende dienst die geen toezicht over een rechtspersoon uitoefent in de zin van lid 1, kan niettemin **zonder de bepalingen** van deze richtlijn **toe te passen** een opdracht gunnen aan een rechtspersoon die hij gezamenlijk met andere aanbestedende diensten controleert, wanneer aan de volgende voorwaarden is voldaan:

*Amendment*

3. Een aanbestedende dienst die geen toezicht over een rechtspersoon uitoefent in de zin van lid 1, kan niettemin **buiten de werkingssfeer** van deze richtlijn een opdracht gunnen aan een rechtspersoon die hij gezamenlijk met andere aanbestedende diensten controleert, wanneer aan de volgende voorwaarden is voldaan:

Or. nl

### Amendment 503

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

### Proposal for a directive

#### Article 11 – paragraph 3 – subparagraph 1 – introductory part

*Text proposed by the Commission*

3. Ein öffentlicher Auftraggeber, der keine

*Amendment*

3. Ein öffentlicher Auftraggeber, der keine

Kontrolle über eine juristische Person im Sinne von Absatz 1 ausübt, kann einen öffentlichen Auftrag ***auch ohne Anwendung*** dieser Richtlinie an eine von ihm zusammen mit anderen öffentlichen Auftraggebern kontrollierte juristische Person vergeben, wenn die folgenden Bedingungen erfüllt sind:

Kontrolle über eine juristische Person im Sinne von Absatz 1 ausübt, kann einen öffentlichen Auftrag ***außerhalb des Anwendungsbereichs*** dieser Richtlinie an eine von ihm zusammen mit anderen öffentlichen Auftraggebern kontrollierte juristische Person vergeben, wenn die folgenden Bedingungen erfüllt sind:

Or. de

#### *Justification*

*Diese Formulierung suggeriert, dass öffentliche Auftraggeber sich entscheiden können, ob sie die Richtlinie anwenden oder nicht. Es muss vielmehr deutlich gemacht werden, dass die beschriebenen Fälle nicht in den Anwendungsbereich der Richtlinie fallen.*

#### **Amendment 504**

**Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen**

#### **Proposal for a directive**

#### **Article 11 – paragraph 3 – subparagraph 1 – point a**

##### *Text proposed by the Commission*

**(a) die öffentlichen Auftraggeber üben gemeinsam über die betreffende juristische Person eine Kontrolle aus, die der gleichkommt, die sie über ihre eigenen Dienststellen ausüben;**

##### *Amendment*

**(a) der Zweck der juristischen Person besteht in der Wahrnehmung einer allen staatlichen Stellen übertragenen öffentlichen Aufgabe;**

Or. de

#### *Justification*

*Das Europäische Parlament hat in seinen Entschlüssen vom 10. Mai 2010 und vom 5. Oktober 2011 die Auffassung vertreten, dass die öffentlich-öffentliche Zusammenarbeit nicht den Regeln für die öffentliche Auftragsvergabe unterliegen sollte, wenn unter anderem der Zweck der Partnerschaft die Wahrnehmung einer allen beteiligten staatlichen Stellen übertragenen öffentlichen Aufgabe ist.*

#### **Amendment 505**

**Philippe Juvin**

**Proposal for a directive**

**Article 11 – paragraph 3 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) les pouvoirs adjudicateurs exercent conjointement sur la personne morale concernée un contrôle *semblable* à celui qu'ils exercent sur leurs propres services;

*Amendment*

(a) les pouvoirs adjudicateurs exercent conjointement sur la personne morale concernée un contrôle *analogue* à celui qu'ils exercent sur leurs propres services, *c'est-à-dire qu'ils exercent 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" conjoint 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 506**

**Marc Tarabella**

**Proposal for a directive**

**Article 11 – paragraph 3 – subparagraph 1 – point b**

*Text proposed by the Commission*

*(b) au moins 90 % des activités de cette personne morale sont exercées pour les pouvoirs adjudicateurs qui la contrôlent ou pour d'autres personnes morales qu'ils contrôlent;*

*Amendment*

*supprimé*

**Amendment 507**

**Heide Rühle**

**Proposal for a directive**

**Article 11 – paragraph 3 – 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 authorities or other legal persons controlled by the same contracting authorities;

*Amendment*

(b) at least **80** % of the activities of that legal person, ***subject to the contract***, are carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;

Or. en

**Amendment 508**

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

**Proposal for a directive**

**Article 11 – paragraph 3 – subparagraph 1 – point b**

*Text proposed by the Commission*

(b) mindestens **90** % der Tätigkeiten der juristischen Person werden für die die Kontrolle ausübenden öffentlichen Auftraggeber oder andere von denselben öffentlichen Auftraggebern kontrollierten juristischen Personen getätigt;

*Amendment*

(b) mindestens **80** % der Tätigkeiten der juristischen Person, ***die Gegenstand des Auftrags sind***, werden für die die Kontrolle ausübenden öffentlichen Auftraggeber oder andere von denselben öffentlichen Auftraggebern kontrollierten juristischen Personen getätigt;

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 509**  
**Barbara Weiler**

**Proposal for a directive**  
**Article 11 – paragraph 3 – subparagraph 1 – point b**

*Text proposed by the Commission*

(b) mindestens **90 %** der Tätigkeiten der juristischen Person werden für die die Kontrolle ausübenden öffentlichen Auftraggeber oder andere von denselben öffentlichen Auftraggebern kontrollierten juristischen Personen getätigt;

*Amendment*

(b) mindestens **85 %** der Tätigkeiten der juristischen Person werden für die die Kontrolle ausübenden öffentlichen Auftraggeber oder andere von denselben öffentlichen Auftraggebern kontrollierten juristischen Personen getätigt;

Or. de

**Amendment 510**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 11 – paragraph 3 – subparagraph 1 – point b**

*Text proposed by the Commission*

(b) **ten minste 90%** van de activiteiten van deze rechtspersoon wordt verricht voor de controlerende aanbestedende diensten of andere rechtspersonen die door dezelfde aanbestedende diensten worden gecontroleerd;

*Amendment*

(b) **het merendeel** van de activiteiten van deze rechtspersoon wordt verricht voor de controlerende aanbestedende diensten of andere rechtspersonen die door dezelfde aanbestedende diensten worden gecontroleerd;

Or. nl

**Amendment 511**  
**Andreas Schwab, Frank Engel, Jürgen Creutzmann**

**Proposal for a directive**  
**Article 11 – paragraph 3 – subparagraph 1 – point b**

*Text proposed by the Commission*

(b) **mindestens 90 % der Tätigkeiten der juristischen Person werden** für die die Kontrolle ausübenden öffentlichen

*Amendment*

(b) **die juristische Person ist im Wesentlichen** für **den** die Kontrolle ausübenden öffentlichen Auftraggeber oder

Auftraggeber oder andere von *denselben* öffentlichen *Auftraggebern kontrollierten juristischen* Personen *getätigt*;

*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 512**

**Malcolm Harbour, Edvard Kožušník**

#### **Proposal for a directive**

**Article 11 – paragraph 3 – 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 authorities or other legal persons controlled by the same contracting authorities;

##### *Amendment*

(b) at least **80%** of the activities of that legal person are carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;

Or. en

#### **Amendment 513**

**Philippe Juvin**

#### **Proposal for a directive**

**Article 11 – paragraph 3 – subparagraph 1 – point b**

##### *Text proposed by the Commission*

(b) au moins 90 % *des activités* de cette

##### *Amendment*

(b) au moins 90 % *du chiffre d'affaires*

personne morale *sont exercées* pour les pouvoirs adjudicateurs qui la contrôlent ou pour d'autres personnes morales qu'ils contrôlent;

*total moyen* de cette personne morale *est exercé* pour les pouvoirs adjudicateurs qui la contrôlent ou pour d'autres personnes morales qu'ils contrôlent;

Or. fr

#### *Justification*

*Clarification des termes définissant le "in-house" conjoint et justifiant l'exclusion de tels contrats du champ d'application de la directive. 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'affaires".*

#### **Amendment 514** **Peter Simon**

#### **Proposal for a directive** **Article 11 – paragraph 3 – subparagraph 1 – point b**

##### *Text proposed by the Commission*

(b) **au moins 90 %** des Tätigkeiten der juristischen Person werden für die die Kontrolle ausübenden öffentlichen Auftraggeber oder andere von denselben öffentlichen Auftraggebern kontrollierten juristischen Personen getätigt;

##### *Amendment*

(b) **au moins 80 %** des Tätigkeiten der juristischen Person, **die Auftragsgegenstand sind**, werden für die die Kontrolle ausübenden öffentlichen Auftraggeber oder andere von denselben öffentlichen Auftraggebern kontrollierten juristischen Personen getätigt;

Or. de

#### **Amendment 515** **Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafał Trzaskowski**

#### **Proposal for a directive** **Article 11 – paragraph 3 – 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 authorities or other legal persons controlled by the same

##### *Amendment*

(b) **the essential part** of the activities of that legal person are carried out for the controlling contracting authorities or other legal persons controlled by the same

contracting authorities;

contracting authorities;

Or. en

*Justification*

*This formulation reflects the Court of Justice of the EU rulings.*

**Amendment 516**

**Cristian Silviu Buşoi**

**Proposal for a directive**

**Article 11 – paragraph 3 – 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 authorities or other legal persons controlled by the same contracting authorities;

*Amendment*

(b) **all** the activities of that legal person are carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;

Or. en

*Justification*

*In order to safeguard competition this exception should be limited to the minimum. It should therefore be provided that all activities, meaning 100% of the activities of the legal person should be carried out for the controlling contracting authority.*

**Amendment 517**

**Riikka Manner**

**Proposal for a directive**

**Article 11 – paragraph 3 – 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 authorities or other legal persons controlled by the same contracting authorities;

*Amendment*

(b) **all** of the activities of that legal person are carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;

*Justification*

*The proposal of the Commission means that the public sector entity can be directly awarded by its controlling public sector entity, and then go to the market by a 10 % portion. This 10 % could of course be millions of Euros, which would strongly distort competition in many business areas. There is no level playing field if a public sector entity may sell services and products in the same competitive market with private entities.*

**Amendment 518****Toine Manders****Proposal for a directive****Article 11 – paragraph 3 – subparagraph 1 – point b***Text proposed by the Commission*

(b) ten minste **90%** van de activiteiten van deze rechtspersoon wordt verricht voor de controlerende aanbestedende diensten of andere rechtspersonen die door dezelfde aanbestedende diensten worden gecontroleerd;

*Amendment*

(b) ten minste **50%** van de activiteiten van deze rechtspersoon wordt verricht voor de controlerende aanbestedende diensten of andere rechtspersonen die door dezelfde aanbestedende diensten worden gecontroleerd;

Or. nl

**Amendment 519****Françoise Castex****Proposal for a directive****Article 11 – paragraph 3 – subparagraph 1 – point b***Text proposed by the Commission*

(b) au moins 90 % des activités de cette personne morale sont exercées pour **les** pouvoirs adjudicateurs qui la contrôlent ou pour d'autres personnes morales qu'ils contrôlent;

*Amendment*

(b) au moins 90 % des activités de cette personne morale sont exercées pour **le compte des** pouvoirs adjudicateurs qui la contrôlent ou pour d'autres personnes morales qu'ils contrôlent;

Or. fr

## Amendment 520

Heide Rühle

### Proposal for a directive

#### Article 11 – paragraph 3 – subparagraph 1 – point c

*Text proposed by the Commission*

(c) there is no private participation in the controlled legal person.

*Amendment*

(c) there is no private participation in the controlled legal person, ***with the exception of legally enforced forms of private participation.***

Or. en

## Amendment 521

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

### Proposal for a directive

#### Article 11 – paragraph 3 – subparagraph 1 – point c

*Text proposed by the Commission*

(c) es besteht ***keine*** private Beteiligung ***an*** der kontrollierten juristischen Person.

*Amendment*

(c) es besteht ***lediglich eine passive*** private Beteiligung, ***das heißt eine Beteiligung, die keinen Einfluß auf das operative Geschäft*** der kontrollierten juristischen Person ***ermöglicht.***

Or. de

#### *Justification*

*Die bewährte Zusammenarbeit zwischen den öffentlichen Auftraggebern und Privaten sollte nicht durch das Vergaberecht ausgehebelt werden.*

## Amendment 522

Wim van de Camp

### Proposal for a directive

#### Article 11 – paragraph 3 – subparagraph 1 – point c

*Text proposed by the Commission*

(c) er is geen privé-deelneming in de

*Amendment*

(c) er is geen ***actieve*** privé-deelneming in

gecontroleerde rechtspersoon.

de gecontroleerde rechtspersoon.

Or. nl

### **Amendment 523**

**Andreas Schwab, Frank Engel**

#### **Proposal for a directive**

#### **Article 11 – paragraph 3 – subparagraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

(c) es besteht keine private Beteiligung an der kontrollierten juristischen Person.

(c) es besteht keine private Beteiligung an der kontrollierten juristischen Person, ***sofern diese nicht in den jeweiligen Mitgliedsstaaten gesetzlich vorgesehen ist.***

Or. de

#### *Justification*

*In einigen Mitgliedsstaaten ist aufgrund bestehender historischer Entwicklungen und gewachsener Strukturen eine private Beteiligung per Gesetz vorgesehen. Diese Formen der Zusammenarbeit sollten weiterhin möglich sein, im Übrigen sollte jegliche private Beteiligung jedoch gemäß Rechtsprechung des EuGH ausgeschlossen sein.*

### **Amendment 524**

**Jürgen Creutzmann**

#### **Proposal for a directive**

#### **Article 11 – paragraph 3 – subparagraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

(c) ***there is no*** private participation in the controlled legal person.

(c) ***the*** private participation in the controlled legal person ***does not exceed 50% of its voting shares.***

Or. en

#### *Justification*

*Private investors can only influence management decisions if they hold more than 50% of the*

*voting shares of the controlled legal person. This amendment is to enable pure capital investments without affecting the exemption of in-house procurement and horizontal cooperation.*

## **Amendment 525**

**Heide Rühle**

### **Proposal for a directive**

#### **Article 11 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*For the purposes of point (a), contracting authorities shall be deemed to jointly control a legal person where the following cumulative conditions are fulfilled:* **deleted**

*(a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities;*

*(b) those contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person;*

*(c) the controlled legal person does not pursue any interests which are distinct from that of the public authorities affiliated to it;*

*(d) the controlled legal person does not draw any gains other than the reimbursement of actual costs from the public contracts with the contracting authorities.*

Or. en

#### *Justification*

*This far-reaching interpretation of the ECJ ruling is unnecessary and does not contribute to make the text short and precise.*

## **Amendment 526**

**Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen**



**Proposal for a directive**  
**Article 11 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

***Für die Zwecke von Buchstabe a wird davon ausgegangen, dass öffentliche Auftraggeber gemeinsam eine juristische Person kontrollieren, wenn sämtliche der nachfolgend genannten Bedingungen erfüllt sind:*** ***entfällt***

***(a) die Beschlussfassungsgremien der kontrollierten juristischen Person setzen sich aus Vertretern sämtlicher beteiligter öffentlicher Auftraggeber zusammen;***

***(b) diese öffentlichen Auftraggeber können folglich gemeinsam einen entscheidenden Einfluss auf die strategischen Ziele und wesentlichen Entscheidungen der kontrollierten juristischen Person ausüben;***

***(c) die kontrollierte juristische Person verfolgt keine Interessen, die sich von mit ihr zusammen arbeitenden öffentlichen Behörden unterscheiden;***

***(d) die kontrollierte juristische Person erwirtschaftet keine anderen Einnahmen als diejenigen, die sich aus der Rückzahlung der tatsächlich entstandenen Kosten im Zusammenhang mit den von den öffentlichen Auftraggebern vergebenen Aufträgen ergeben.***

Or. de

*Justification*

*Folgeänderung zum Änderungsantrag derselben Verfasser zu Artikel 11 Absatz 3 Buchstabe a).*

**Amendment 527**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 11 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*Voor de toepassing van punt a) worden aanbestedende diensten geacht gezamenlijk toezicht uit te oefenen over een rechtspersoon wanneer aan de volgende voorwaarden is voldaan:*

*Schrappen*

*(a) de besluitvormingsorganen van de gecontroleerde rechtspersoon zijn samengesteld uit vertegenwoordigers van alle deelnemende aanbestedende diensten;*

*(b) deze aanbestedende diensten zijn in staat gezamenlijk beslissende invloed uit te oefenen over de strategische doelstellingen en belangrijke beslissingen van de gecontroleerde rechtspersoon;*

*(c) de gecontroleerde rechtspersoon streeft geen andere belangen na dan die van de met hem verbonden overheden;*

*(d) de gecontroleerde rechtspersoon haalt uit de overheidsopdrachten met de aanbestedende diensten geen andere winst dan een vergoeding van de reële kosten.*

Or. nl

**Amendment 528**  
**Peter Simon**

**Proposal for a directive**  
**Article 11 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*Für die Zwecke von Buchstabe a wird davon ausgegangen, dass öffentliche Auftraggeber gemeinsam eine juristische Person kontrollieren, wenn sämtliche der nachfolgend genannten Bedingungen erfüllt sind:*

*entfällt*

*(a) die Beschlussfassungsgremien der kontrollierten juristischen Person setzen*

*sich aus Vertretern sämtlicher beteiligter öffentlicher Auftraggeber zusammen;*

*(b) diese öffentlichen Auftraggeber können folglich gemeinsam einen entscheidenden Einfluss auf die strategischen Ziele und wesentlichen Entscheidungen der kontrollierten juristischen Person ausüben;*

*(c) die kontrollierte juristische Person verfolgt keine Interessen, die sich von mit ihr zusammen arbeitenden öffentlichen Behörden unterscheiden;*

*(d) die kontrollierte juristische Person erwirtschaftet keine anderen Einnahmen als diejenigen, die sich aus der Rückzahlung der tatsächlich entstandenen Kosten im Zusammenhang mit den von den öffentlichen Auftraggebern vergebenen Aufträgen ergeben.*

Or. de

#### **Amendment 529**

**Andreas Schwab, Jürgen Creutzmann**

#### **Proposal for a directive**

**Article 11 – paragraph 3 – subparagraph 2 – point a**

*Text proposed by the Commission*

(a) die Beschlussfassungsgremien der kontrollierten juristischen Person setzen sich aus Vertretern *sämtlicher beteiligter öffentlicher* Auftraggeber zusammen;

*Amendment*

(a) die Beschlussfassungsgremien der kontrollierten juristischen Person setzen sich aus Vertretern *der beteiligten öffentlichen* Auftraggeber zusammen;

Or. de

#### **Amendment 530**

**Sari Essayah**

#### **Proposal for a directive**

**Article 11 – paragraph 3 – subparagraph 2 – point a**

*Text proposed by the Commission*

*Amendment*

(a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities;

(a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities, ***while one representative may represent one or many participating contracting authorities;***

Or. en

**Amendment 531**

**Marc Tarabella**

**Proposal for a directive**

**Article 11 – paragraph 3 – subparagraph 2 – point c**

*Text proposed by the Commission*

*Amendment*

***(c) la personne morale contrôlée ne poursuit pas d'intérêts distincts de ceux des pouvoirs publics auxquels elle est liée;***

***supprimé***

Or. fr

**Amendment 532**

**Françoise Castex**

**Proposal for a directive**

**Article 11 – paragraph 3 – subparagraph 2 – point c**

*Text proposed by the Commission*

*Amendment*

***(c) la personne morale contrôlée ne poursuit pas d'intérêts distincts de ceux des pouvoirs publics auxquels elle est liée;***

***supprimé***

Or. fr

**Amendment 533**

**Frank Engel, Philippe Juvin, Anna Maria Corazza Bildt, Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 11 – paragraph 3 – subparagraph 2 – point c**

*Text proposed by the Commission*

(c) the controlled legal person does not pursue any interests which are ***distinct from*** that of the public authorities affiliated to it;

*Amendment*

(c) the controlled legal person does not pursue any interests which are ***in conflict with*** that of the public authorities affiliated to it;

Or. en

**Amendment 534**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 11 – paragraph 3 – subparagraph 2 – point c**

*Text proposed by the Commission*

(c) the controlled legal person does not pursue any interests which are ***distinct from*** that of the public authorities affiliated to it;

*Amendment*

(c) the controlled legal person does not pursue any interests which are ***contrary to*** that of the public authorities affiliated to it;

Or. en

*Justification*

*Subsidiaries are often founded in order to pursue interests which go beyond that of the controlling entity. It should therefore be sufficient if interests are not contradictory.*

**Amendment 535**  
**Sari Essayah**

**Proposal for a directive**  
**Article 11 – paragraph 3 – subparagraph 2 – point d**

*Text proposed by the Commission*

***(d) the controlled legal person does not draw any gains other than the reimbursement of actual costs from the public contracts with the contracting***

*Amendment*

***deleted***

*authorities.*

Or. en

**Amendment 536**

**Françoise Castex**

**Proposal for a directive**

**Article 11 – paragraph 3 – subparagraph 2 – point d**

*Text proposed by the Commission*

*Amendment*

*(d) la personne morale contrôlée ne tire aucun profit, autre que le remboursement des frais effectivement encourus, des marchés publics qui lui sont attribués par les pouvoirs adjudicateurs.*

*supprimé*

Or. fr

**Amendment 537**

**Sirpa Pietikäinen**

**Proposal for a directive**

**Article 11 – paragraph 3 – subparagraph 2 – point d**

*Text proposed by the Commission*

*Amendment*

(d) the controlled legal person **does not draw any** gains **other than** the reimbursement of actual costs from the public contracts with the contracting authorities.

(d) the controlled legal person gains **only** the reimbursement of actual costs, **and what is necessary for investing in development of further quality services**, from the public contracts with the contracting authorities.

Or. en

**Amendment 538**

**Heide Rühle**

**Proposal for a directive**

**Article 11 – paragraph 4 – introductory part**

*Text proposed by the Commission*

*Amendment*

4. An agreement concluded between two or more contracting authorities shall not be deemed to be a public contract within the meaning of Article 2(6) of this Directive where the following cumulative conditions are fulfilled:

4. An agreement concluded between two or more contracting authorities shall not be deemed to be a public contract within the meaning of Article 2(7) of this Directive ***and thus fall outside the scope of this Directive*** where the following cumulative conditions are fulfilled:

Or. en

**Amendment 539**

**Peter Simon**

**Proposal for a directive**

**Article 11 – paragraph 4 – point a**

*Text proposed by the Commission*

*Amendment*

***(a) die Vereinbarung begründet eine echte Zusammenarbeit zwischen den beteiligten öffentlichen Auftraggebern mit dem Ziel, ihre öffentlichen Aufgaben gemeinsam wahrzunehmen, und umfasst wechselseitige Rechte und Pflichten der Parteien;***

***entfällt***

Or. de

**Amendment 540**

**Heide Rühle**

**Proposal for a directive**

**Article 11 – paragraph 4 – point a**

*Text proposed by the Commission*

*Amendment*

***(a) the agreement establishes a genuine cooperation between the participating contracting authorities aimed at carrying out jointly their public service tasks and involving mutual rights and obligations of the parties;***

***(a) the purpose of the partnership is the provision of a public-service task conferred on all participating public authorities, or the provision of an ancillary task necessary to deliver the public service task conferred on all the***

**Amendment 541**

**Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen**

**Proposal for a directive**

**Article 11 – paragraph 4 – point a**

*Text proposed by the Commission*

(a) die **Vereinbarung begründet eine echte Zusammenarbeit zwischen den beteiligten öffentlichen Auftraggebern mit dem Ziel, ihre öffentlichen Aufgaben gemeinsam wahrzunehmen, und umfasst wechselseitige Rechte und Pflichten der Parteien;**

*Amendment*

(a) **der Zweck der Partnerschaft ist die Erbringung einer im öffentlichen Interesse liegenden öffentlichen Aufgabe, die öffentlichen Gebietskörperschaften übertragen ist bzw. die Erbringung einer Nebenbeschäftigungstätigkeit im Sinne von Artikel 2 (17), die notwendig ist, die im öffentlichen Interesse liegende öffentliche Aufgabe zu erfüllen.**

**Eine Bündelung von Aufgaben liegt auch dann vor, wenn eine Kommune lediglich zur Zahlung verpflichtet ist, solange die Kommune aufgrund der Zusammenarbeit ihre eigenen Verpflichtungen wirtschaftlicher oder effektiver erfüllen kann.**

*Justification*

*Der Kommissionsvorschlag hilft bei der Klärung der Frage, was unter einer „echten Zusammenarbeit“ zu verstehen ist, nicht weiter. Klargestellt werden sollte allerdings, dass es sich um eine den öffentlichen Gebietskörperschaften übertragene öffentliche Aufgabe handeln muss. Hierunter müssen auch notwendige Nebenbeschäftigungstätigkeiten (IT, Infrastruktur etc.) fallen, derer sich die öffentlichen Gebietskörperschaften zur Erfüllung ihrer Aufgaben bedienen müssen.*

**Amendment 542**

**Andreas Schwab, Jürgen Creutzmann**



**Proposal for a directive**  
**Article 11 – paragraph 4 – point a**

*Text proposed by the Commission*

(a) die Vereinbarung begründet eine echte Zusammenarbeit zwischen den beteiligten öffentlichen Auftraggebern mit dem Ziel, ihre öffentlichen Aufgaben gemeinsam wahrzunehmen, **und umfasst wechselseitige Rechte und Pflichten der Parteien;**

*Amendment*

(a) die Vereinbarung begründet eine echte Zusammenarbeit zwischen den beteiligten öffentlichen Auftraggebern mit dem Ziel, ihre öffentlichen Aufgaben gemeinsam wahrzunehmen;

Or. de

**Amendment 543**  
**Philippe Juvin**

**Proposal for a directive**  
**Article 11 – paragraph 4 – point a**

*Text proposed by the Commission*

(a) l'accord établit une véritable coopération entre les pouvoirs adjudicateurs participants qui vise à mener **de concert** leurs missions de service public et prévoit des droits et des obligations mutuels pour les parties;

*Amendment*

(a) l'accord établit une véritable coopération entre les pouvoirs adjudicateurs participants qui vise à mener **conjointement** leurs missions de service public et prévoit des droits et des obligations mutuels pour les parties;

Or. fr

**Amendment 544**  
**Evelyne Gebhardt**

**Proposal for a directive**  
**Article 11 – paragraph 4 – point a**

*Text proposed by the Commission*

(a) die Vereinbarung begründet eine echte Zusammenarbeit zwischen den beteiligten öffentlichen Auftraggebern mit dem Ziel, ihre öffentlichen Aufgaben gemeinsam wahrzunehmen, **und umfasst**

*Amendment*

(a) die Vereinbarung begründet eine echte Zusammenarbeit zwischen den beteiligten öffentlichen Auftraggebern mit dem Ziel, ihre öffentlichen Aufgaben gemeinsam **oder füreinander** wahrzunehmen;

*wechselseitige Rechte und Pflichten der Parteien;*

Or. de

**Amendment 545**  
**Cristian Silviu Buşoi**

**Proposal for a directive**  
**Article 11 – paragraph 4 – point a**

*Text proposed by the Commission*

(a) the agreement establishes a genuine cooperation between the participating contracting authorities *aimed at carrying out jointly **their** public service tasks and involving mutual rights and obligations of the parties;*

*Amendment*

(a) the agreement establishes a genuine cooperation between the participating contracting authorities *acting as a competent authority in order to jointly ensure the organisation of the same public service mission;*

Or. en

*Justification*

*Clarification of the horizontal cooperation definition.*

**Amendment 546**  
**Heide Rühle**

**Proposal for a directive**  
**Article 11 – paragraph 4 – point b**

*Text proposed by the Commission*

(b) *the agreement is governed only by considerations relating to the public interest;*

*Amendment*

*deleted*

Or. en

**Amendment 547**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 11 – paragraph 4 – point b**

*Text proposed by the Commission*

*Amendment*

***(b) de overeenkomst berust alleen op overwegingen die verband houden met het openbare belang;***

***Schrappen***

Or. nl

**Amendment 548**  
**Evelyne Gebhardt**

**Proposal for a directive**  
**Article 11 – paragraph 4 – point b**

*Text proposed by the Commission*

*Amendment*

***(b) die Vereinbarung wird nur durch Überlegungen im Zusammenhang mit dem öffentlichen Interesse bestimmt;***

***entfällt***

Or. de

**Amendment 549**  
**Andreas Schwab, Jürgen Creutzmann**

**Proposal for a directive**  
**Article 11 – paragraph 4 – point b**

*Text proposed by the Commission*

*Amendment*

***(b) die Vereinbarung wird nur durch Überlegungen im **Zusammenhang mit dem** öffentlichen Interesse **bestimmt**;***

***(b) die Vereinbarung wird nur durch Überlegungen **des öffentlichen Interesses bestimmt**;darunter fallen auch untergeordnete Hilfsdienstleistungen, die erforderlich sind, um die im öffentlichen Interesse **liegenden Dienstleistungen durchzuführen**;***

Or. de

*Justification*

*Die Beschränkung auf im öffentlichen Interesse liegende Dienstleistungen aus der EuGH-Rechtsprechung in der Rechtssache C-480/06 sollte auch interne Hilfsdienstleistungen, derer sich ein öffentlicher Auftraggeber zur Funktionsfähigkeit seiner Dienste und eigenen Verwaltungsstrukturen sowie zur organisatorischen Durchführung der gesetzlichen Aufgaben bedient und die nicht gegenüber Dritten erbracht werden, erfassen.*

**Amendment 550**

**Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen**

**Proposal for a directive**

**Article 11 – paragraph 4 – point b**

*Text proposed by the Commission*

(b) die *Vereinbarung* wird *nur durch Überlegungen im Zusammenhang mit dem öffentlichen Interesse bestimmt*;

*Amendment*

(b) die *Aufgabe* wird *ausschließlich von den betroffenen öffentlichen Gebietskörperschaften, ohne die Beteiligung von aktivem privaten Kapital erfüllt*;

Or. de

*Justification*

*Selbstverständlich steht das öffentliche Interesse im Mittelpunkt der Vereinbarung. Konkreter ist jedoch der Verweis auf das Verbot von aktivem privaten Kapital.*

**Amendment 551**

**Peter Simon**

**Proposal for a directive**

**Article 11 – paragraph 4 – point b**

*Text proposed by the Commission*

(b) die Vereinbarung wird *nur* durch Überlegungen im Zusammenhang mit dem öffentlichen Interesse bestimmt;

*Amendment*

(b) die Vereinbarung wird durch Überlegungen im Zusammenhang mit dem öffentlichen Interesse bestimmt *und die Dienstleistungen sowie die dafür notwendigen Hilfsdienstleistungen beziehen sich hierauf*;

Or. de

**Amendment 552**  
**Cristian Silviu Buşoi**

**Proposal for a directive**  
**Article 11 – paragraph 4 – point b**

*Text proposed by the Commission*

(b) the agreement is governed only by considerations relating to the public interest;

*Amendment*

(b) the agreement is governed only by considerations relating to the public interest ***and has no market orientation***;

Or. en

*Justification*

*Such agreements should be excluded from the scope of the directive only if they have no market orientation. Otherwise competition would be restricted.*

**Amendment 553**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 11 – paragraph 4 – point c**

*Text proposed by the Commission*

***(c) de deelnemende aanbestedende diensten behalen op de open markt niet meer dan 10% van de omzet uit de activiteiten die relevant zijn in het kader van de overeenkomst;***

*Amendment*

***Schrappen***

Or. nl

**Amendment 554**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 11 – paragraph 4 – point c**

*Text proposed by the Commission*

*Amendment*

***(c) les pouvoirs adjudicateurs participants ne réalisent pas, sur le marché libre, plus de 10 %, de leurs activités pertinentes dans le cadre de l'accord, en termes de chiffre d'affaires;***

***supprimé***

Or. fr

#### **Amendment 555**

**Malcolm Harbour, Edvard Kožušník**

#### **Proposal for a directive**

**Article 11 – paragraph 4 – point c**

*Text proposed by the Commission*

*Amendment*

***(c) the participating contracting authorities do not perform on the open market more than 10 % in terms of turnover of the activities which are relevant in the context of the agreement;***

***deleted***

Or. en

#### *Justification*

*Many such entities created by public bodies operate trading subsidiaries to undertake a range of services, both to local authorities and associated entities, and other organisations where there is market failure to provide.*

#### **Amendment 556**

**Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen**

#### **Proposal for a directive**

**Article 11 – paragraph 4 – point c**

*Text proposed by the Commission*

*Amendment*

***(c) die beteiligten öffentlichen Auftraggeber üben, gemessen am Umsatz, nicht mehr als 10 % ihrer Tätigkeiten, die im Zusammenhang mit der Vereinbarung***

***entfällt***

*relevant sind, auf dem offenen Markt aus;*

Or. de

*Justification*

*Dieses Kriterium geht über die in der EuGH-Rechtsprechung „Stadtreinigung“ Hamburg“ (C-480/06) genannten Voraussetzungen hinaus. Es wird durch die Übernahme des 10 %-Wesentlichkeitskriteriums (90 %) eine unzulässige Analogie zur In-house-Rechtsprechung vorgenommen, die der EuGH nicht gezogen hat. Eine dem Beihilferecht entlehnte Terminologie geht hier fehl.*

**Amendment 557**

**Peter Simon**

**Proposal for a directive**

**Article 11 – paragraph 4 – point c**

*Text proposed by the Commission*

*Amendment*

*(c) die beteiligten öffentlichen Auftraggeber üben, gemessen am Umsatz, nicht mehr als 10 % ihrer Tätigkeiten, die im Zusammenhang mit der Vereinbarung relevant sind, auf dem offenen Markt aus;*

*entfällt*

Or. de

**Amendment 558**

**Heide Rühle**

**Proposal for a directive**

**Article 11 – paragraph 4 – point c**

*Text proposed by the Commission*

*Amendment*

(c) the participating **contracting** authorities do not perform on the open market more than **10** % in terms of turnover of the activities **which are relevant in the context of the agreement**;

(c) the participating **public** authorities do not perform on the open market more than **20** % in terms of turnover of the activities, **subject to the contract**;

Or. en

*Justification*

*This clarification is necessary in order not to create legal disputes.*

**Amendment 559**

**Barbara Weiler**

**Proposal for a directive**

**Article 11 – paragraph 4 – point c**

*Text proposed by the Commission*

(c) die beteiligten öffentlichen Auftraggeber üben, gemessen am Umsatz, nicht mehr als **10** % ihrer Tätigkeiten, die im Zusammenhang mit der Vereinbarung relevant sind, auf dem offenen Markt aus;

*Amendment*

(c) die beteiligten öffentlichen Auftraggeber üben, gemessen am Umsatz, nicht mehr als **15** % ihrer Tätigkeiten, die im Zusammenhang mit der Vereinbarung relevant sind, auf dem offenen Markt aus;

Or. de

**Amendment 560**

**Cristian Silviu Buşoi**

**Proposal for a directive**

**Article 11 – paragraph 4 – point c**

*Text proposed by the Commission*

(c) the participating contracting authorities do not perform on the open market **more than 10 % in terms of turnover of the activities which are relevant in the context of the agreement;**

*Amendment*

(c) the participating contracting authorities do not perform on the open market;

Or. en

*Justification*

*In line with amendments on paragraphs 1 and 3.*

**Amendment 561**

**Riikka Manner**



**Proposal for a directive**  
**Article 11 – paragraph 4 – point c**

*Text proposed by the Commission*

(c) the participating contracting authorities do not perform on the open market **more than 10 % in terms** of turnover of the activities which are relevant in the context of the agreement;

*Amendment*

(c) the participating contracting authorities do not perform on the open market **any** of turnover of the activities which are relevant in the context of the agreement;

Or. en

*Justification*

*The propositions means that the public sector entity can be directly awarded by another public authority, and then go to the market by a 10 % portion. This 10 % could of course be millions of Euros, which would strongly distort competition in many business areas. There is no level playing field if a public sector entity may sell services and products in the same competitive market with private entities.*

**Amendment 562**  
**Heide Rühle**

**Proposal for a directive**  
**Article 11 – paragraph 4 – point d**

*Text proposed by the Commission*

***(d) the agreement does not involve financial transfers between the participating contracting authorities, other than those corresponding to the reimbursement of actual costs of the works, services or supplies;***

*Amendment*

***deleted***

Or. en

**Amendment 563**  
**Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen**

**Proposal for a directive**  
**Article 11 – paragraph 4 – point d**

*Text proposed by the Commission*

*Amendment*

***(d) die Vereinbarung betrifft keine anderen Finanztransfers zwischen den beteiligten öffentlichen Auftraggebern als jene, die die Rückzahlung der tatsächlichen Kosten der Bauarbeiten, Dienstleistungen oder Lieferungen betreffen;***

***entfällt***

Or. de

*Justification*

*Das Kriterium geht über die in der EuGH-Rechtsprechung „Stadtreinigung“ Hamburg“ (C-480/06) genannten Voraussetzungen hinaus. Auch in der interkommunalen Zusammenarbeit geht es nicht um die Gewährleistung einer reinen Kostenerstattung. Das wenig praxisnahe Verbot von Finanztransfers geht über die einschlägige EuGH-Rechtsprechung hinaus und sollte gestrichen werden.*

**Amendment 564**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 11 – paragraph 4 – point d**

*Text proposed by the Commission*

*Amendment*

***(d) de overeenkomst houdt geen andere financiële overdrachten tussen de deelnemende aanbestedende diensten in dat die welke betrekking hebben op een vergoeding voor de reële kosten van de werken, leveringen of diensten;***

***Schrappen***

Or. nl

**Amendment 565**  
**Peter Simon**

**Proposal for a directive**  
**Article 11 – paragraph 4 – point d**

*Text proposed by the Commission*

*Amendment*

**(d) die Vereinbarung betrifft keine anderen Finanztransfers zwischen den beteiligten öffentlichen Auftraggebern als jene, die die Rückzahlung der tatsächlichen Kosten der Bauarbeiten, Dienstleistungen oder Lieferungen betreffen;**

**entfällt**

Or. de

**Amendment 566**  
**Evelyne Gebhardt**

**Proposal for a directive**  
**Article 11 – paragraph 4 – point d**

*Text proposed by the Commission*

*Amendment*

**(d) die Vereinbarung betrifft keine anderen Finanztransfers zwischen den beteiligten öffentlichen Auftraggebern als jene, die die Rückzahlung der tatsächlichen Kosten der Bauarbeiten, Dienstleistungen oder Lieferungen betreffen;**

**entfällt**

Or. de

**Amendment 567**  
**Andreas Schwab, Jürgen Creutzmann**

**Proposal for a directive**  
**Article 11 – paragraph 4 – point d**

*Text proposed by the Commission*

*Amendment*

(d) die Vereinbarung betrifft keine anderen Finanztransfers zwischen den beteiligten öffentlichen Auftraggebern als jene, die die Rückzahlung der tatsächlichen Kosten der Bauarbeiten, Dienstleistungen oder Lieferungen betreffen;

(d) die Vereinbarung betrifft **im Wesentlichen** keine anderen Finanztransfers zwischen den beteiligten öffentlichen Auftraggebern als jene, die die Rückzahlung der tatsächlichen Kosten der Bauarbeiten, Dienstleistungen oder

Lieferungen betreffen;

Or. de

**Amendment 568**

**Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen**

**Proposal for a directive**

**Article 11 – paragraph 4 – point e**

*Text proposed by the Commission*

*Amendment*

**(e) es besteht keine private Beteiligung an den involvierten öffentlichen Auftraggebern.**      **entfällt**

Or. de

*Justification*

*Dieses Kriterium geht über die in der EuGH-Rechtsprechung „Stadtreinigung“ Hamburg“ (C-480/06) genannten Voraussetzungen hinaus. Es wird eine unzulässige Analogie zur In-house-Rechtsprechung vorgenommen, die für die interkommunalen Zusammenarbeit nicht passt.*

**Amendment 569**

**Heide Rühle**

**Proposal for a directive**

**Article 11 – paragraph 4 – point e**

*Text proposed by the Commission*

*Amendment*

**(e) *there* is no *private* participation *in any* of the contracting authorities *involved*.**

**(e) *the task* is *carried out solely by the public authorities concerned, with* no participation of *a private party with the exception of* contracting authorities *participating in the cooperation as a public law body in the sense of Article 2(6) of this Directive*.**

Or. en

**Amendment 570**  
**Andreas Schwab, Frank Engel**

**Proposal for a directive**  
**Article 11 – paragraph 4 – point e**

*Text proposed by the Commission*

(e) es besteht keine private Beteiligung an den involvierten öffentlichen Auftraggebern.

*Amendment*

(e) es besteht keine private Beteiligung an den involvierten öffentlichen Auftraggebern, **sofern diese nicht in den jeweiligen Mitgliedsstaaten gesetzlich vorgesehen ist.**

Or. de

*Justification*

*In einigen Mitgliedsstaaten ist aufgrund bestehender historischer Entwicklungen und gewachsener Strukturen eine private Beteiligung per Gesetz vorgesehen. Diese Formen der Zusammenarbeit sollten weiterhin möglich sein, im Übrigen sollte jegliche private Beteiligung jedoch gemäß Rechtsprechung des EuGH ausgeschlossen sein.*

**Amendment 571**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 11 – paragraph 4 – point e**

*Text proposed by the Commission*

(e) **there is no** private participation in any of the contracting authorities **involved**.

*Amendment*

(e) **the** private participation in any of the contracting authorities **does not exceed 50% of its voting shares**.

Or. en

*Justification*

*Private investors can only influence management decisions if they hold more than 50% of the voting shares of the controlled legal person. This amendment is to enable pure capital investments without affecting the exemption of in-house procurement and horizontal cooperation.*

## **Amendment 572**

**Philippe Juvin**

### **Proposal for a directive**

#### **Article 11 – paragraph 4 bis (new)**

*Text proposed by the Commission*

*Amendment*

***4 bis. La présente directive ne s'applique pas à un accord conclu entre plusieurs pouvoirs adjudicateurs ou groupements composés de pouvoirs adjudicateurs, qui prévoit, dans le cadre de l'organisation interne des États membres, un transfert de compétences entre les parties en vue de l'accomplissement d'une mission de service public.***

***Les pouvoirs adjudicateurs ne font l'objet d'aucune participation privée.***

Or. fr

#### *Justification*

*L'exclusion explicite de la coopération horizontale (art. 11.4) suscite des doutes quant au statut du transfert de compétences entre pouvoirs publics ('intercommunalité' en droit français) qui ne fait pas, quant à lui, l'objet d'une exclusion explicite. Par conséquent un nouveau paragraphe est proposé pour exclure le transfert de compétences entre pouvoirs publics du champ d'application de la présente directive.*

## **Amendment 573**

**Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen**

### **Proposal for a directive**

#### **Article 11 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

***5. Die Tatsache, dass keine private Beteiligung im Sinne der Absätze 1 bis 4 vorhanden ist, wird zum Zeitpunkt der Auftragsvergabe oder des Abschlusses der Vereinbarung überprüft.***

***entfällt***

***Die in den Absätzen 1 bis vorgesehenen Ausschlüsse finden ab dem Zeitpunkt des Eingehens einer privaten Beteiligung***

*keine Anwendung mehr, so dass laufende Aufträge für den Wettbewerb im Rahmen der üblichen Vergabeverfahren geöffnet werden müssen.*

Or. de

*Justification*

*Folgeänderung zum Änderungsantrag derselben Verfasser zu Artikel 11 Absatz 1 Buchstabe c sowie Absatz 3 Buchstabe c.*

**Amendment 574**  
**Heide Rühle**

**Proposal for a directive**  
**Article 11 – paragraph 5 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

*The absence of private participation referred to in paragraphs 1 to 4 shall be verified at the time of the award of the contract or of the conclusion of the agreement.*

*deleted*

Or. en

**Amendment 575**  
**Cristian Silviu Buşoi**

**Proposal for a directive**  
**Article 11 – paragraph 5 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

The absence of private participation referred to in paragraphs 1 to 4 shall be verified at the time of the award of the contract or of the conclusion of the agreement.

The absence of *any form of* private participation *and all the other conditions* referred to in paragraphs 1 to 4 shall be verified at the time of the award of the contract or of the conclusion of the agreement.

Or. en

*Justification*

*All the conditions should be verified at the award stage, not only the private participation.*

**Amendment 576**

**Heide Rühle**

**Proposal for a directive**

**Article 11 – paragraph 5 – subparagraph 2**

*Text proposed by the Commission*

The exclusions provided for in paragraphs 1 to 4 shall cease to apply from the moment any private participation takes place, with the effect that ongoing contracts need to be opened to competition through regular procurement procedures.

*Amendment*

The exclusions provided for in paragraphs 1 to 4 shall cease to apply from the moment any private participation takes place, with the effect that ongoing contracts need to be opened to competition through regular procurement procedures, ***unless the private participation is legally enforced and/or the private participation was not foreseeable at the time of the initial contracting.***

Or. en

**Amendment 577**

**Andreas Schwab**

**Proposal for a directive**

**Article 11 – paragraph 5 – subparagraph 2**

*Text proposed by the Commission*

Die in den Absätzen 1 bis vorgesehenen Ausschlüsse finden ab dem Zeitpunkt des Eingehens einer privaten Beteiligung keine Anwendung mehr, so dass laufende Aufträge für den Wettbewerb im Rahmen der üblichen Vergabeverfahren geöffnet werden müssen.

*Amendment*

Die in den Absätzen 1 bis vorgesehenen Ausschlüsse finden ***nach Inkrafttreten der Richtlinie*** ab dem Zeitpunkt des Eingehens einer privaten Beteiligung keine Anwendung mehr, so dass laufende Aufträge für den Wettbewerb im Rahmen der üblichen Vergabeverfahren geöffnet werden müssen.

Or. de



**Amendment 578**  
**Cristian Silviu Buşoi**

**Proposal for a directive**  
**Article 11 – paragraph 5 – subparagraph 2**

*Text proposed by the Commission*

The exclusions provided for in paragraphs 1 to 4 shall cease to apply from the moment any *private participation takes place*, with the effect that ongoing contracts need to be opened to competition through regular procurement procedures.

*Amendment*

The exclusions provided for in paragraphs 1 to 4 shall cease to apply from the moment any *of the cumulative conditions listed therein is no longer fulfilled*, with the effect that ongoing contracts need to be opened to competition through regular procurement procedures.

Or. en

**Amendment 579**  
**Pablo Arias Echeverría**

**Proposal for a directive**  
**Article 11 – paragraph 5 – subparagraph 2**

*Text proposed by the Commission*

Las exclusiones previstas en los apartados 1 a 4 dejarán de aplicarse a partir del momento en que se efectúe cualquier participación privada, con la consecuencia de que deberá convocarse una licitación para la adjudicación de los contratos vigentes a través de los procedimientos de contratación normales.

*Amendment*

Las exclusiones previstas en los apartados 1 a 4 dejarán de aplicarse a partir del momento en que se efectúe cualquier participación privada, con la consecuencia de que deberá convocarse una licitación para la adjudicación de los contratos vigentes a través de los procedimientos de contratación normales, *salvo que la participación privada en la persona jurídica que la convierte en una empresa asociada se adquiera a través de cualquiera de los procedimientos previstos en la presente Directiva o en las Directivas (sustitución de la Directiva 2004/17/CE).*

Or. es

**Amendment 580**  
**Jens Rohde, Morten Løkkegaard**

**Proposal for a directive**  
**Article 11 – paragraph 5 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***When the contract concerns waste incineration, the percentages in article 11, paragraph 1, point b, paragraph 3, point b and paragraph 4, point c, are 50 %.***

Or. en

*Justification*

*There is a specific concern that the new wording could have damaging effects on waste incineration which is otherwise seen as an environmentally desirable manner to manage waste. As in some Member States local authorities are obliged by law to handle municipal waste, they have invested significant amounts in incinerations plants; investments which would not have been commercially viable and with the 90 % threshold they would have to tender out waste incineration even though there are no genuine commercial alternatives considering the low private capacity.*

**Amendment 581**  
**Heide Rühle**

**Proposal for a directive**  
**Article 11 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***5a. However transferring tasks between public sector organisations is a matter for the Member States' internal administrative organisation and is not subject to procurement rules.***

Or. en

**Amendment 582**  
**Anna Hedh**

**Proposal for a directive**  
**Article 11 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 11a**

***Service contracts awarded on the basis of  
exclusive right***

***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 treaties.***

Or. en

*Justification*

*Reintroducing Article 18 from the current Directive 2004/18/EC. This Article is important for operations of general interest, for example gaming (state-authorized lotteries) and waste disposal. The Article makes it possible for authorities to reserve some operations for specific in-house companies. The European Court has applied this provision in C-360/96.*

**Amendment 583**  
**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**  
**Article 12 – paragraph 1 – point a – introductory part**

*Text proposed by the Commission*

*Amendment*

(a) works contracts which are subsidised directly by contracting authorities by more than 50 % and the estimated value of which, net of VAT, is equal to or greater than EUR 5 000 000, where those contracts involve one of the following activities:

(a) works contracts which are subsidised directly by contracting authorities by more than 50 % and the estimated value of which, net of VAT, is equal to or greater than EUR 8 000 000, where those contracts involve one of the following activities:

Or. en

**Amendment 584**  
**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**  
**Article 12 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) service contracts which are subsidised directly by contracting authorities by more than 50 % and the estimated value of which, net of VAT, is equal to or greater than EUR **200 000** and which are connected to a works contract within the meaning of point (a).

*Amendment*

(b) service contracts which are subsidised directly by contracting authorities by more than 50 % and the estimated value of which, net of VAT, is equal to or greater than EUR **400 000** and which are connected to a works contract within the meaning of point (a).

Or. en

**Amendment 585**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 14 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Subject to Article **346 of the Treaty on the Functioning of the European Union**, this Directive shall apply to the awarding of public contracts and to design contests organised in the fields of defence and security, with the exception of the following contracts:

*Amendment*

1. Subject to Article **1(3)**, this Directive shall apply to the awarding of public contracts and to design contests organised in the fields of defence and security, with the exception of the following contracts:

Or. en

*Justification*

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

**Amendment 586**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive  
Article 14 – paragraph 2**

*Text proposed by the Commission*

2. This Directive shall not apply to public contracts and design contests ***other than those referred to in*** paragraph 1 ***to the extent that the*** protection of the essential security interests of a Member State cannot be guaranteed in a procurement procedure as provided for in this Directive.

*Amendment*

2. This Directive shall not apply to public contracts and design contests ***not otherwise exempted under*** paragraph 1 ***where:***

***(a)*** the protection of the essential security interests of a Member State cannot be guaranteed in a procurement procedure as provided for in this Directive;

***(b)*** ***the application of this Directive would oblige the Member State to supply information the disclosure of which it considers contrary to its essential security interests; or***

***(c)*** ***the procurement and performance of the contract or contest must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned.***

Or. en

*Justification*

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

**Amendment 587  
Sari Essayah**

**Proposal for a directive  
Article 15 – title**

*Text proposed by the Commission*

***Principles*** of procurement

*Amendment*

***Purpose and principles*** of procurement

**Amendment 588**

**Mitro Repo**

**Proposal for a directive**

**Article 15 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*Hankintayksiköiden tulee hankintamenettelyn yhteydessä huolehtia siitä, että hankintamenettelyn kohteena olevissa palveluissa ja rakennusurakoissa työskentelevän henkilöstön kohtuulliset työehdot turvataan sekä siitä, ettei hankintamenettely johda epäasialliseen kohteluun.*

Or. fi

**Amendment 589**

**Sari Essayah**

**Proposal for a directive**

**Article 15 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*The purpose of this Directive is to safeguard the efficiency of the use of public funds, promote high-quality procurement, strengthen competition and the functioning of the public procurement markets and safeguard equal opportunities for companies and other providers in offering supply, service and public works contracts under competitive bidding for public procurement.*

Or. en

**Amendment 590**

**Marc Tarabella**

**Proposal for a directive  
Article 15 – paragraph 2**

*Text proposed by the Commission*

*Un marché ne peut être conçu avec l'objectif de le faire sortir du champ d'application de la présente directive ou de limiter artificiellement la concurrence.*

*Amendment*

*supprimé*

Or. fr

**Amendment 591**

**Pablo Arias Echeverría**

**Proposal for a directive  
Article 15 – paragraph 2**

*Text proposed by the Commission*

La contratación no será concebida con el objetivo de excluirla del ámbito de aplicación de la presente Directiva ni de restringir artificialmente la competencia.

*Amendment*

La contratación no será concebida con el objetivo de excluirla del ámbito de aplicación de la presente Directiva ni de restringir artificialmente la competencia.  
*Los procedimientos deberán estar siempre acompañados de salvaguardias adecuadas que garanticen la observancia de los principios de igualdad de trato y transparencia, libre competencia, publicidad y gestión eficiente de los recursos públicos.*

Or. es

**Amendment 592**

**Sirpa Pietikäinen**

**Proposal for a directive  
Article 15 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***Taloudellisten toimijoiden on noudatettava sen maan voimassa olevaa sosiaali- ja työlainsäädäntöä ja työolosuhteita koskevia säädöksiä, jossa hankintakohteena oleva työ, palvelu tai tuote suoritetaan siten kuin kansallisessa lainsäädännössä ja /tai kansainvälisissä työoikeutta koskevissa työehtosopimuksissa säädetään listan liite XI mukaan.***

Or. fi

**Amendment 593  
Cornelis de Jong**

**Proposal for a directive  
Article 15 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***Contracting authorities shall respect the delay of payment as established in Directive 2011/7/EU.***

Or. en

**Amendment 594  
Sergio Gaetano Cofferati**

**Proposal for a directive  
Article 15 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***Economic operators shall comply with obligations relating to social and employment protection and the working conditions which apply in the place where the work, service or supply is to be performed as set out by Union and national legislation and/or collective***



*agreements or international labour law provisions listed in Annex XI.*

Or. en

**Amendment 595**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 15 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*The E-procurement strategy and timeline for mandatory e-procurement by mid-2016 shall be implemented as proposed by the Commission. An easy access Europe-wide single platform with single operating system will be created with services provided in all official EU languages.*

Or. en

**Amendment 596**  
**Anna Hedh**

**Proposal for a directive**  
**Article 15 – paragraphs 2 a and b (new)**

*Text proposed by the Commission*

*Amendment*

*Public procurement is to be used to achieve a smart, sustainable and inclusive growth and to support common societal goals and to provide goods and services of high quality. It is the right of public authorities at all levels to decide how they want to provide commissioning and organise their services.*

*Economic operators shall apply obligations relating to social and employment protection and the working conditions which apply in the place where the work, service or supply is to be performed as set out by national*

*legislation and/or collective agreements or international labour law provisions listed in Annex XI and in particular ILO Convention 94.*

Or. en

**Amendment 597**  
**Sergio Gaetano Cofferati**

**Proposal for a directive**  
**Article 15 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

*Contracting authorities shall aim for "best value" in procurement policy. This is achieved through the awarding of the public contract to the most economically advantageous tender.*

Or. en

**Amendment 598**  
**Sergio Gaetano Cofferati**

**Proposal for a directive**  
**Article 15 – paragraph 2 c (new)**

*Text proposed by the Commission*

*Amendment*

*The details of public contracts shall be made public.*

Or. en

**Amendment 599**  
**Heide Rühle**

**Proposal for a directive**  
**Article 16 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

However, in the case of public service and public works contracts as well as public supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the *names and* relevant professional *qualifications* of the staff to be responsible for the performance of the contract in question.

*Amendment*

However, in the case of public service and public works contracts as well as public supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the relevant professional *qualification levels* of the staff to be responsible for the performance of the contract in question.

Or. en

**Amendment 600**  
**Marian Harkin**

**Proposal for a directive**  
**Article 16 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

However, in the case of public service and public works contracts as well as public supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, *the names and* relevant professional *qualifications* of the staff to be responsible for the performance of the contract in question.

*Amendment*

However, in the case of public service and public works contracts as well as public supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, relevant professional *qualification levels* of the staff to be responsible for the performance of the contract in question.

Or. en

*Justification*

*The current text seems to indicate that, for the provision of services which in their largest part consist of professional staff (such as engineering consultancy), the project teams may need to be defined by the candidates in the request to participate. It is in practical terms impossible for a tenderer to commit the allocated staff at this stage, taking into consideration the whole duration of the selection and award procedure*

**Amendment 601**  
**Pablo Arias Echeverría**

**Proposal for a directive**  
**Article 16 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

No obstante, en el caso de los contratos públicos de servicios y de obras, así como de los contratos públicos de suministro que tengan por objeto además servicios o trabajos de colocación e instalación, también podrá exigirse a las personas jurídicas que indiquen, en la oferta o en la solicitud de participación, **los nombres** y la cualificación profesional pertinente del personal responsable de ejecutar la prestación.

*Amendment*

No obstante, en el caso de los contratos públicos de servicios y de obras, así como de los contratos públicos de suministro que tengan por objeto además servicios o trabajos de colocación e instalación, también podrá exigirse a las personas jurídicas que indiquen, en la oferta o en la solicitud de participación, la cualificación profesional pertinente del personal responsable de ejecutar la prestación.

Or. es

**Amendment 602**  
**Heide Rühle**

**Proposal for a directive**  
**Article 17 – paragraph 1**

*Text proposed by the Commission*

Member States may reserve the right to participate in public procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled and disadvantaged workers or provide for such contracts to be performed in the context of sheltered employment programmes, provided that more than 30% of the employees of those workshops, economic operators or programmes are disabled **or** disadvantaged **workers**.

*Amendment*

Member States may reserve the right to participate in public procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled and disadvantaged workers or provide for such contracts to be performed in the context of sheltered employment programmes, provided that more than 30% of the employees of those workshops, economic operators or programmes are disabled **and/or** disadvantaged **persons**. **'Disadvantaged persons' includes amongst others: the unemployed, people experiencing particular difficulty in achieving integration, people at risk of exclusion, members of vulnerable groups**

*and members of disadvantaged minorities.*

Or. en

*Justification*

*The term ‘disadvantaged persons’ needs to be specified as it is much wider than ‘handicapped persons’ referred to in the current Directives. This definition creates more legal clarity.*

**Amendment 603**

**Vicente Miguel Garcés Ramón**

**Proposal for a directive**

**Article 17**

*Text proposed by the Commission*

Los Estados miembros podrán reservar el derecho a participar en *los* procedimientos de contratación a talleres protegidos y *operadores económicos cuyo objetivo principal sea la integración social y profesional de trabajadores discapacitados y desfavorecidos* o prever la ejecución de los contratos en el contexto de programas de empleo protegido, a condición de que más del 30 % de los empleados de los *talleres, los* operadores económicos o *los* programas sean trabajadores *discapacitados o* desfavorecidos.

*Amendment*

Los Estados miembros podrán reservar el derecho a participar en procedimientos de contratación *pública* a:

a) talleres protegidos *promovidos y participados mayoritariamente por entidades sin ánimo de lucro*, o prever la ejecución de los contratos en el contexto de programas de empleo protegido, *a condición de que la mayoría de los trabajadores afectados sean personas con discapacidad que, por razón de la naturaleza o la gravedad de sus deficiencias, no pueden ejercer una actividad profesional en condiciones normales o no encuentren fácilmente trabajo en el mercado ordinario;*

La convocatoria de licitación deberá hacer referencia a la presente disposición.

***b) empresas sociales o programas cuyo principal objetivo sea la integración social y profesional de trabajadores desfavorecidos***, a condición de que más del 30% de los empleados de los operadores económicos o programas, sean trabajadores desfavorecidos.

La convocatoria de licitación deberá hacer referencia a la presente disposición.

***En los Estados miembros en que las circunstancias lo justifiquen por existir un número importante de personas con discapacidad que pueden trabajar pero que siguen inactivas, la reserva de contratos reseñada en el apartado a) anterior deberá ser obligatoria al menos en el número o porcentaje determinado de contratos que se indiquen por los órganos de contratación u otros órganos competentes''.***

Or. es

**Amendment 604**  
**Catherine Stihler**

**Proposal for a directive**  
**Article 17 – paragraph 1**

*Text proposed by the Commission*

Member States may reserve the right to participate in public procurement procedures to sheltered ***workshops*** and economic operators whose main aim is the social and professional integration of disabled and disadvantaged workers or provide for such contracts to be performed in the context of sheltered employment programmes, provided that more than 30% of the employees of ***those workshops***, economic operators or programmes are disabled or disadvantaged workers.

*Amendment*

Member States may reserve the right to participate in public procurement procedures to sheltered ***employment*** and economic operators whose main aim is the social and professional integration of disabled and disadvantaged workers or provide for such contracts to be performed in the context of sheltered employment programmes, provided that more than 30% of the employees of ***sheltered employment***, economic operators or programmes are disabled or disadvantaged workers.

Or. en

## Amendment 605

Heide Rühle

### Proposal for a directive

#### Article 18 – paragraph 1

*Text proposed by the Commission*

1. **Unless otherwise provided** in this Directive or in the national law **concerning access to information**, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 48 and 53 of this Directive, the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

*Amendment*

1. **Notwithstanding provisions** in this Directive or in the national law , and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 48 and 53 of this Directive, the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

Or. en

#### *Justification*

*To clarify that this rule does not apply if the contracting authority is entitled or obliged to pass the relevant information - for example in due process of law*

## Amendment 606

Frank Engel, Konstantinos Poupakis

### Proposal for a directive

#### Article 18 – paragraph 1

*Text proposed by the Commission*

1. Sauf disposition contraire de la présente directive ou des règles de droit national régissant l'accès à l'information, et sans préjudice des obligations en matière de publicité sur les marchés attribués et d'information des candidats et des soumissionnaires qui figurent aux articles 48 et 53 de la présente directive, le pouvoir

*Amendment*

1. Sauf disposition contraire de la présente directive ou des règles de droit national régissant l'accès à l'information, et sans préjudice des obligations en matière de publicité sur les marchés attribués et d'information des candidats et des soumissionnaires qui figurent aux articles 48 et 53 de la présente directive, le pouvoir

adjudicateur ne divulgue pas les renseignements que les opérateurs économiques lui ont communiqués *à titre confidentiel, y compris, entre autres, les secrets techniques ou commerciaux et les aspects confidentiels des offres.*

adjudicateur ne divulgue pas les renseignements *et éléments constitutifs des offres* que les opérateurs économiques lui ont communiqués.

Or. fr

#### **Amendment 607**

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

#### **Proposal for a directive Article 18 – paragraph 1**

##### *Text proposed by the Commission*

1. Unbeschadet *der* Bestimmungen dieser Richtlinie oder des nationalen Rechts *betreffend den Zugang zu Informationen* und unbeschadet der Verpflichtungen zur Bekanntmachung vergebener Aufträge und der Unterrichtung der Bewerber und Bieter gemäß den Artikeln 48 und 53 dieser Richtlinie gibt ein öffentlicher Auftraggeber keine ihm von den Wirtschaftsteilnehmern übermittelten und von diesen als vertraulich eingestuften Informationen weiter, wozu insbesondere technische und handelsbezogene Geschäftsgeheimnisse sowie die vertraulichen Aspekte der Angebote selbst gehören.

##### *Amendment*

1. Unbeschadet *abweichender* Bestimmungen dieser Richtlinie oder des nationalen Rechts und unbeschadet der Verpflichtungen zur Bekanntmachung vergebener Aufträge und der Unterrichtung der Bewerber und Bieter gemäß den Artikeln 48 und 53 dieser Richtlinie gibt ein öffentlicher Auftraggeber keine ihm von den Wirtschaftsteilnehmern übermittelten und von diesen als vertraulich eingestuften Informationen weiter, wozu insbesondere technische und handelsbezogene Geschäftsgeheimnisse sowie die vertraulichen Aspekte der Angebote selbst gehören.

Or. de

##### *Justification*

*Klarstellung, dass diese Vorschrift dann nicht gilt, wenn der öffentliche Auftraggeber aufgrund abweichender anderer Vorschriften diese Informationen weitergeben darf oder muss, z. B. in einem Nachprüfungsverfahren, gegenüber der Rechtsaufsichtsbehörde oder in einem ordentlichen Gerichtsverfahren.*



## Amendment 608

Philippe Juvin

### Proposal for a directive

#### Article 18 – paragraph 1

*Text proposed by the Commission*

1. Sauf disposition contraire de la présente directive ou des règles de droit national régissant l'accès à l'information, et sans préjudice des obligations en matière de publicité sur les marchés attribués et d'information des candidats et des soumissionnaires qui figurent aux articles 48 et 53 de la présente directive, le pouvoir adjudicateur ne divulgue pas les renseignements que les opérateurs économiques lui ont communiqués **à titre confidentiel, y compris, entre autres**, les secrets techniques ou commerciaux et les aspects confidentiels des offres.

*Amendment*

1. Sauf disposition contraire de la présente directive ou des règles de droit national régissant l'accès à l'information, et sans préjudice des obligations en matière de publicité sur les marchés attribués et d'information des candidats et des soumissionnaires qui figurent aux articles 48 et 53 de la présente directive, le pouvoir adjudicateur ne divulgue pas les renseignements que les opérateurs économiques lui ont communiqués, **notamment** les secrets techniques ou commerciaux et les aspects confidentiels des offres.

***Tout manquement à cette obligation est de nature à engager la responsabilité du pouvoir adjudicateur.***

Or. fr

#### *Justification*

*Renforcement des dispositions relatives à la confidentialité des informations transmises par les candidats ou les soumissionnaires au pouvoir adjudicateur pendant la procédure de passation de marché. La responsabilité du pouvoir adjudicateur est engagée en cas de divulgation d'informations sensibles telles que les secrets techniques et commerciaux.*

## Amendment 609

Marian Harkin

### Proposal for a directive

#### Article 18 – paragraph 1

*Text proposed by the Commission*

1. Unless otherwise provided in this Directive or in the national law concerning access to information, and without

*Amendment*

1. Unless otherwise provided in this Directive or in the national law concerning access to information, and without

prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 48 and 53 of this Directive, the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 48 and 53 of this Directive, the contracting authority shall ***behave with utmost good faith and shall*** not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

Or. en

#### *Justification*

*This obligation should be exercised with 'utmost good faith' (uberrima fides) as it is already existing in some national legislation.*

**Amendment 610**  
**Frank Engel, Konstantinos Poupakis**

**Proposal for a directive**  
**Article 18 – paragraph 2**

*Text proposed by the Commission*

*2. Les pouvoirs adjudicateurs peuvent imposer aux opérateurs économiques des exigences visant à protéger la confidentialité des informations qu'ils mettent à disposition tout au long de la procédure de passation de marché.*

*Amendment*

*2. Tout manquement à cette obligation est de nature à engager la responsabilité du pouvoir adjudicateur ou de l'entité adjudicatrice.*

Or. fr

**Amendment 611**  
**Phil Prendergast**

**Proposal for a directive**  
**Article 18 – paragraph 2**

*Text proposed by the Commission*

2. Contracting authorities may impose on economic operators requirements aimed at protecting the confidential nature of information which the contracting authorities make available throughout the procurement procedure.

*Amendment*

2. Contracting authorities may impose on economic operators requirements aimed at protecting the confidential nature of information which the contracting authorities make available throughout the procurement procedure, ***should the disclosure of such information prejudice fair competition.***

Or. en

**Amendment 612**

**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**

**Article 18 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. This Article shall not prevent public disclosure of concluded contracts, including any subsequent changes.***

Or. en

**Amendment 613**

**Sergio Gaetano Cofferati**

**Proposal for a directive**

**Article 18 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2 a. Paragraphs 1 and 2 of this Article shall not prevent the public disclosure of contracts once concluded including any subsequent changes.***

Or. en

**Amendment 614**  
**Cristian Silviu Buşoi**

**Proposal for a directive**  
**Article 19 – paragraph 1 – subparagraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

***(c) telephone in the cases and  
circumstances referred to in paragraph 6;*** ***deleted***

Or. en

*Justification*

*Telephone is not really used in such procedures; communication means which are quicker and that ensure traceability are preferred.*

**Amendment 615**  
**Kerstin Westphal**

**Proposal for a directive**  
**Article 19 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

***Die Mitgliedstaaten können auch in  
anderen als den in den Artikeln 32, 33  
und 34 sowie in Artikel 35 Absatz 2,  
Artikel 49 Absatz 2 oder Artikel 51 dieser  
Richtlinie genannten Fällen die  
Mitgliedstaaten die Verwendung  
elektronischer Kommunikationsmittel  
verbindlich vorschreiben.*** ***entfällt***

Or. de

*Justification*

*Es ist auch in Zukunft notwendig, Angebote in schriftlicher Form mittels Zustellung per Post zuzulassen. Denn es ist kaum vorstellbar, dass kleinere Unternehmen, die sich nur etwa ein bis drei Mal pro Jahr an einer europaweiten Ausschreibung beteiligen, sich die notwendigen technischen Voraussetzungen leisten können und diese dann auch ständig aktualisieren. Eine solche Verpflichtung könnte dazu führen, dass KMU zugunsten von Großkonzernen vom Markt verdrängt werden.*

**Amendment 616**  
**Catherine Stihler**

**Proposal for a directive**  
**Article 19 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

The means of communication chosen must be generally available and not restrict economic operators' access to the procurement procedure.

*Amendment*

The means of communication chosen must be generally available, ***accessible to persons with disabilities***, and not restrict economic operators' access to the procurement procedure.

Or. en

**Amendment 617**  
**Ádám Kósa**

**Proposal for a directive**  
**Article 19 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

The means of communication chosen must be generally available and not restrict economic operators' access to the procurement procedure.

*Amendment*

The means of communication chosen must be generally available, ***accessible to persons with disabilities***, and not restrict economic operators' access to the procurement procedure.

Or. en

**Amendment 618**  
**Frank Engel, Wim van de Camp**

**Proposal for a directive**  
**Article 19 – paragraph 3 – subparagraph 3**

*Text proposed by the Commission*

To ensure the interoperability of technical formats as well as of process and messaging standards, especially in a cross-

*Amendment*

To ensure the interoperability of technical formats as well as of process and messaging standards, especially in a cross-

border context, the Commission *shall be empowered to adopt delegated acts in accordance with Article 89 to establish the mandatory* use of specific technical standards, at least with regard to the use of e-submission, electronic catalogues and means for electronic authentication.

border context, the Commission *should recommend* use of specific technical standards, at least with regard to the use of e-submission, electronic catalogues and means for electronic authentication.

Or. en

**Amendment 619**  
**Cristian Silviu Buşoi**

**Proposal for a directive**  
**Article 19 – paragraph 6 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) requests to participate in procedures for the award of public contracts may be made in writing *or by telephone; in the latter case, a written confirmation must be sent before expiry of the time limit set for their receipt;*

*Amendment*

(a) requests to participate in procedures for the award of public contracts may be made in writing;

Or. en

*Justification*

*Telephone is not really used in such procedures; communication means which are quicker and that ensure traceability are preferred.*

**Amendment 620**  
**Heide Rühle**

**Proposal for a directive**  
**Article 19 – paragraph 7 – subparagraph 1**

*Text proposed by the Commission*

7. Member States shall ensure that, at the latest **2** years after the date provided for in Article 92(1), all procurement procedures under this Directive are performed using

*Amendment*

7. Member States shall ensure that, at the latest **4** years after the date provided for in Article 92(1), all procurement procedures under this Directive are performed using

electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

Or. en

*Justification*

*This timeframe is too tight.*

**Amendment 621**

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

**Proposal for a directive**

**Article 19 – paragraph 7 – subparagraph 1**

*Text proposed by the Commission*

7. Die Mitgliedstaaten sorgen dafür, dass spätestens **zwei** Jahre nach dem in Artikel 92 Absatz 1 genannten Termin sämtliche nach dieser Richtlinie durchgeführten Auftragsvergabeverfahren unter Anwendung elektronischer Kommunikationsmittel, insbesondere aber der elektronischen Einreichung von Unterlagen, gemäß den Anforderungen dieser Richtlinie durchgeführt werden.

*Amendment*

7. Die Mitgliedstaaten sorgen dafür, dass spätestens **vier** Jahre nach dem in Artikel 92 Absatz 1 genannten Termin sämtliche nach dieser Richtlinie durchgeführten Auftragsvergabeverfahren unter Anwendung elektronischer Kommunikationsmittel, insbesondere aber der elektronischen Einreichung von Unterlagen, gemäß den Anforderungen dieser Richtlinie durchgeführt werden.

Or. de

*Justification*

*Die elektronische Beschaffung kann dazu führen, dass die Transaktionskosten gesenkt und die Transparenz erhöht wird. Allerdings ist die Vorgabe, die elektronische Kommunikation bei Vergabeverfahren bereits zwei Jahre nach Verabschiedung der Richtlinie zwingend in nationales Recht umzusetzen, zu ambitioniert. Die Einführung der elektronischen Beschaffung führt zu hohen Anfangskosten, zudem müssen sich die öffentlichen Auftraggeber und die Unternehmen an die neuen elektronischen Systeme anpassen.*

**Amendment 622**

**Malcolm Harbour, Edvard Kožušník, Andreas Schwab, Jürgen Creutzmann**

**Proposal for a directive**  
**Article 19 – paragraph 7 – subparagraph 1**

*Text proposed by the Commission*

7. Member States shall ensure that, **at the latest 2 years after the date provided for in Article 92(1), all** procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

*Amendment*

7. Member States shall ensure that, **by the 1st January 2017, at least 70 % of procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this** Article.

Member States shall ensure that, **by the 1st January 2020, 100 % of** procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

***In relation to the public procurement of Works contracts, Member States shall furthermore encourage the systematic use of digital three-dimensional representations following the general timescales for the implementation of electronic procurement set out in the first and second sub paragraphs.***

Or. en

*Justification*

*This two step approach is considered as a more realistic target than the Commission's proposed target, and allows contracting authorities sufficient planning and implementation time.*

**Amendment 623**  
**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**  
**Article 19 – paragraph 7 – subparagraph 1**

*Text proposed by the Commission*

7. Member States shall **ensure that, at the latest 2 years after the date provided for in**

*Amendment*

7. Member States shall **take all necessary steps to facilitate the use of electronic**



*Article 92(1)*, all procurement procedures under this Directive **are performed using electronic means of communication, in particular e-submission**, in accordance with the requirements of this Article.

*means of communication, in particular e-submission, for* all procurement procedures under this Directive, in accordance with the requirements of this Article.

Or. en

**Amendment 624**  
**Peter Simon**

**Proposal for a directive**  
**Article 19 – paragraph 7 – subparagraph 1**

*Text proposed by the Commission*

7. Die Mitgliedstaaten sorgen dafür, dass **spätesten zwei Jahre** nach dem in Artikel 92 Absatz 1 genannten Termin sämtliche nach dieser Richtlinie durchgeführten Auftragsvergabeverfahren unter Anwendung elektronischer Kommunikationsmittel, insbesondere aber der elektronischen Einreichung von Unterlagen, gemäß den Anforderungen dieser Richtlinie durchgeführt werden.

*Amendment*

7. Die Mitgliedstaaten sorgen dafür, dass **spätestens vier Jahre** nach dem in Artikel 92 Absatz 1 genannten Termin sämtliche nach dieser Richtlinie durchgeführten Auftragsvergabeverfahren unter Anwendung elektronischer Kommunikationsmittel, insbesondere aber der elektronischen Einreichung von Unterlagen, gemäß den Anforderungen dieser Richtlinie durchgeführt werden.

Or. de

**Amendment 625**  
**Robert Rochefort**

**Proposal for a directive**  
**Article 19 – paragraph 7 – subparagraph 1**

*Text proposed by the Commission*

7. Les États membres veillent à ce que, **deux** ans au plus tard après la date prévue à l'article 92, paragraphe 1, toutes les procédures de passation de marché relevant de la présente directive soient effectuées par des moyens de communication électroniques, et notamment par soumission électronique, conformément

*Amendment*

7. Les États membres veillent à ce que, **trois** ans au plus tard après la date prévue à l'article 92, paragraphe 1, toutes les procédures de passation de marché relevant de la présente directive soient effectuées par des moyens de communication électroniques, et notamment par soumission électronique, conformément

aux exigences du présent article.

aux exigences du présent article.

Or. fr

**Amendment 626**  
**Monica Luisa Macovei**

**Proposal for a directive**  
**Article 21 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

1. Member States shall ***provide for rules*** to effectively prevent, identify and immediately remedy conflicts of interests arising in the conduct of procurement procedures that are subject to this Directive, including the design and preparation of the procedure, the drawing-up of the procurement documents, the selection of candidates and tenderers ***and*** the award of the contract, so as to avoid any distortion of competition and ensure equal treatment of all tenderers.

*Amendment*

1. Member States shall ***put in place mechanisms*** to effectively prevent, identify and immediately remedy ***actual, potential or perceived*** conflicts of interests arising in the conduct of procurement procedures that are subject to this Directive, including the design and preparation of the procedure, the drawing-up of the procurement documents, the selection of candidates and tenderers, the award of the contract ***and the implementation phase***, so as to avoid any distortion of competition and ensure equal treatment of all tenderers.

Or. en

**Amendment 627**  
**Phil Prendergast**

**Proposal for a directive**  
**Article 21 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

1. Member States shall provide for rules to effectively prevent, identify and immediately remedy conflicts of interests arising in the conduct of procurement procedures that are subject to this Directive, including the design and preparation of the procedure, the drawing-up of the procurement documents, the

*Amendment*

1. Member States shall provide for rules to effectively prevent, identify and immediately remedy conflicts of interests arising in the conduct of procurement procedures that are subject to this Directive, including ***preliminary market consultations***, the design and preparation of the procedure, the drawing-up of the

selection of candidates and tenderers and the award of the contract, so as to avoid any distortion of competition and ensure equal treatment of all tenderers.

procurement documents, the selection of candidates and tenderers and the award of the contract, so as to avoid any distortion of competition and ensure equal treatment of all tenderers.

Or. en

## **Amendment 628**

**Frank Engel, Philippe Juvin, Wim van de Camp**

### **Proposal for a directive**

#### **Article 21 – paragraph 1 – subparagraph 2**

##### *Text proposed by the Commission*

The notion of conflict of interests shall at least cover any situation where the categories of persons referred to in paragraph 2 have, directly or indirectly, a **private** interest in the outcome of the procurement procedure, which may be perceived to impair the impartial and objective performance of their duties.

##### *Amendment*

The notion of conflict of interests shall at least cover any situation where the categories of persons referred to in paragraph 2 have, directly or indirectly, a **common** interest in the outcome of the procurement procedure, which may be perceived to impair the impartial and objective performance of their duties.

Or. en

## **Amendment 629**

**Marc Tarabella**

### **Proposal for a directive**

#### **Article 21 – paragraph 1 – subparagraph 2**

##### *Text proposed by the Commission*

La notion de conflit d'intérêts **couvre au moins toutes** les situations où les catégories de personnes visées au paragraphe 2 ont un intérêt privé direct ou indirect dans le résultat de la procédure de passation de marché qui peut être perçu comme portant atteinte à l'exercice impartial et objectif de leurs fonctions.

##### *Amendment*

La notion de conflit d'intérêts **visé** les situations où les catégories de personnes visées au paragraphe 2 ont un intérêt privé direct ou indirect dans le résultat de la procédure de passation de marché qui peut être perçu comme portant atteinte à l'exercice impartial et objectif de leurs fonctions.

Or. fr

**Amendment 630**

**Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski**

**Proposal for a directive**

**Article 21 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

The notion of conflict of interests shall **at least** cover any situation where the categories of persons referred to in paragraph 2 have, directly or indirectly, a private interest in the outcome of the procurement procedure, which may be perceived to impair the impartial and objective performance of their duties.

*Amendment*

The notion of conflict of interests shall cover any situation where the categories of persons referred to in paragraph 2 have, directly or indirectly, a private interest in the outcome of the procurement procedure, which may be perceived to impair the impartial and objective performance of their duties.

Or. en

**Amendment 631**

**Frank Engel, Philippe Juvin, Wim van de Camp**

**Proposal for a directive**

**Article 21 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

For the purposes of this Article, **'private interests'** means any family, **emotional life, economic, political or other** shared **interests** with the candidates or the tenderers, including conflicting professional interests.

*Amendment*

For the purposes of this Article, **"common interests"** means any **economic interest or family ties**, shared with the candidates or the tenderers, including conflicting professional interests.

Or. en

**Amendment 632**

**Marc Tarabella**

**Proposal for a directive**

**Article 21 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

*Aux fins du présent article, on entend par «intérêt privé» tout intérêt familial, sentimental, économique, politique ou autre partagé avec les candidats ou soumissionnaires, y compris les intérêts professionnels conflictuels.*

*L'intérêt privé est entendu au sens d'intérêt patrimonial ou financier partagé avec les candidats ou soumissionnaires ainsi que comprenant les avantages découlant des paiements financiers directs, au moyen d'emploi, de contrat de travail, d'investissements et la participation dans les activités soutenues par les contrats.*

Or. fr

**Amendment 633**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 21 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) le directeur du pouvoir adjudicateur et les membres des organes décisionnels du pouvoir adjudicateur qui, sans nécessairement participer à la conduite de la procédure de passation de marché, peuvent néanmoins influencer sur son résultat.*

*supprimé*

Or. fr

**Amendment 634**  
**Heide Rühle**

**Proposal for a directive**  
**Article 21 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) the chairperson of the contracting authority and members of decision-making bodies of the contracting authority who, without necessarily being involved in*

*(b) the chairperson of the contracting authority who, without necessarily being involved in the conduct of the procurement procedure, may nevertheless influence the*

the conduct of the procurement procedure, may nevertheless influence the outcome of that procedure.

outcome of that procedure.

Or. en

#### *Justification*

*'Members of the decision making bodies' means local councillors, regional and national deputies - this is a very far reaching definition creating a lot of bureaucracy. There are other instrument in place in most Member States better adapted to the need to fight corruption.*

#### **Amendment 635** **Heide Rühle**

#### **Proposal for a directive** **Article 21 – paragraph 3 – subparagraph 1 – point b**

##### *Text proposed by the Commission*

(b) that candidates and tenderers are required to submit at the beginning of the procurement procedure a declaration on the existence of any privileged links with the persons referred to in paragraph 2(b), which are likely to place those persons in a situation of conflict of interests; the contracting authority shall indicate in the individual report referred to in Article 85 whether any candidate or tenderer has submitted a declaration.

##### *Amendment*

(b) that candidates and tenderers, *e.g. company directors or any other person having powers of decision, powers or control in respect of the candidate or tenderer*, are required to submit at the beginning of the procurement procedure a declaration on the existence of any privileged links with the persons referred to in paragraph 2(b), which are likely to place those persons in a situation of conflict of interests; the contracting authority shall indicate in the individual report referred to in Article 85 whether any candidate or tenderer has submitted a declaration.

Or. en

#### **Amendment 636** **Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski**

#### **Proposal for a directive** **Article 21 – paragraph 3 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

***Where privileged links are identified, the contracting authority shall immediately inform the oversight body designated in accordance with Article 84 and take appropriate measures to avoid any undue influence on the award process and ensure equal treatment of candidates and tenderers. Where the conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.***

***deleted***

Or. en

**Amendment 637**

**Heide Rühle**

**Proposal for a directive**

**Article 21 – paragraph 3 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

Where privileged links are identified, the contracting authority shall immediately ***inform the oversight body designated in accordance with Article 84 and*** take appropriate measures to avoid any undue influence on the award process and ensure equal treatment of candidates and tenderers. ***Where the conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.***

Where privileged links are identified, the contracting authority shall immediately take appropriate measures to avoid any undue influence on the award process, ***document those measures adequately*** and ensure equal treatment of candidates and tenderers.

Or. en

*Justification*

*Far too bureaucratic. The last sentence is not necessary, since the first sentence is clear enough. Transparency is the main priority.*

**Amendment 638**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 21 – paragraph 3 – subparagraph 3**

*Text proposed by the Commission*

Where privileged links are identified, the contracting authority shall immediately ***inform the oversight body designated in accordance with Article 84 and*** take appropriate measures to avoid any undue influence on the award process and ensure equal treatment of candidates and tenderers. Where the conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.

*Amendment*

Where privileged links are identified, the contracting authority shall immediately take appropriate measures to avoid any undue influence on the award process and ensure equal treatment of candidates and tenderers. Where the conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.

Or. en

*(See deletion of Article 84)*

**Amendment 639**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 21 – paragraph 3 – subparagraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***Member States shall ensure that an individual who reports undisclosed conflicts of interest of other staff members referred to in paragraph 2(a) in good faith has the right to be protected against retaliation. Retaliation means any direct or indirect detrimental action recommended, threatened or taken against an individual because of such action.***

Or. en



*Justification*

*Member States should implement a well-functioning whistleblowing system to ensure that these provisions have an impact.*

**Amendment 640**

**Heide Rühle**

**Proposal for a directive**

**Article 21 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

***4. All measures taken pursuant to this Article shall be documented in the individual report referred to in Article 85.*** ***deleted***

Or. en

*Justification*

*far too bureaucratic, one purpose of this revision was to simplify in order to create more cost-effectiveness.*

**Amendment 641**

**Monica Luisa Macovei**

**Proposal for a directive**

**Article 21 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. Member States shall ensure that appropriate mechanisms are in place to prevent, detect and remedy conflict of interests situations. Such mechanisms may involve the use of technological solutions.***

Or. en

**Amendment 642**

**Anna Hedh**

**Proposal for a directive**  
**Article 21 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. Member States that have whistleblower protection for public employees to combat corruption and other breaches of civil law and/or crimes (within the public sector) may request that an equivalent protection is given to an employee employed by the economic operator, if the economic operator performs publically funded services.***

Or. en

**Amendment 643**  
**Monica Luisa Macovei**

**Proposal for a directive**  
**Article 21 – paragraph 4 b (new)**

*Text proposed by the Commission*

*Amendment*

***4b. Member States shall take the necessary measures to ensure effective and timely redress, as well as the application of effective, dissuasive and proportionate sanctions in case the rules on conflict of interests are breached. The redress and sanctions shall include annulment of public contracts concluded in breach of conflict of interests rules and liability for damages.***

Or. en

**Amendment 644**  
**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**  
**Article 21 a (new)**

**Article 21a**

***Protection of whistleblowers***

***Procurement agencies and authorities shall have in place internal whistleblowing procedures for staff to ensure that:***

***(a) any staff member (including temporary and contract workers, interns and consultants) who makes a good-faith disclosure regarding any type of material wrongdoing is protected from any and all forms of retaliation, harassment or deleterious actions;***

***(b) the confidentiality of whistleblowers is maintained unless explicitly waived by them;***

***(c) adequate mechanisms are made available for disclosures to be made, such as helplines and online forms;***

***(d) a whistleblower who has been retaliated against has the right to a fair hearing before an impartial forum and shall be fully compensated; those who commit retaliation shall be duly sanctioned;***

***(e) disclosures are properly investigated and corrective action taken (if appropriate), and that whistleblowers have the option to participate in these procedures;***

***(f) managers must prove that any actions taken against a whistleblower were motivated by reasons other than the whistleblowing;***

***(g) inaccurate disclosures, if made in good faith, are protected; disclosures shown to be made in bad faith are not protected;***

***(h) management and staff should be adequately trained in whistleblower rights, policies and procedures;***

*(i) whistleblower policies should be monitored and evaluated at regular intervals by independent bodies;*

*(j) external whistleblowing to elected officials, NGOs, the media and other appropriate parties is protected if internal channels do not function or do not exist.*

Or. en

## **Amendment 645**

**Morten Løkkegaard, Jens Rohde**

### **Proposal for a directive**

#### **Article 22**

*Text proposed by the Commission*

*Amendment*

#### **Article 22**

**deleted**

#### ***Illicit conduct***

***Candidates shall be required at the beginning of the procedure to provide a declaration on honour that they have not undertaken and will not undertake to:***

***(a) unduly influence the decision-making process of the contracting authority or obtain confidential information that may confer upon them undue advantages in the procurement procedure;***

***(b) enter into agreements with other candidates and tenderers aimed at distorting competition;***

***(c) deliberately provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.***

Or. en

#### *Justification*

*In order to simplify the procedures for businesses, article 22 is merged into article 59 - The Procurement Passport. The purpose of the Passport is for all businesses to use it as a single*

*standard document. Therefore it makes sense to reduce the administrative burden by merging the two articles.*

**Amendment 646**  
**Sari Essayah**

**Proposal for a directive**  
**Article 22**

*Text proposed by the Commission*

*Amendment*

**Article 22**

**deleted**

***Illicit conduct***

***Candidates shall be required at the beginning of the procedure to provide a declaration on honour that they have not undertaken and will not undertake to:***

***(a) unduly influence the decision-making process of the contracting authority or obtain confidential information that may confer upon them undue advantages in the procurement procedure;***

***(b) enter into agreements with other candidates and tenderers aimed at distorting competition;***

***(c) deliberately provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.***

Or. en

**Amendment 647**  
**Philippe Juvin**

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

*Text proposed by the Commission*

*Amendment*

**(a) influencer indûment sur le processus décisionnel du pouvoir adjudicateur, ou obtenir des informations confidentielles**

**(a) influencer indûment sur le processus décisionnel du pouvoir adjudicateur *par des moyens illicites*, ou obtenir des**

susceptibles de leur donner un avantage indu lors de la procédure de passation de marché;

informations confidentielles susceptibles de leur donner un avantage indu lors de la procédure de passation de marché;

Or. fr

*Justification*

*Précision des dispositions relatives à la conduite illicite.*

**Amendment 648  
Malcolm Harbour**

**Proposal for a directive  
Title 1 – chapter 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***Chapter II a***

***Treatment of non-covered supplies or services***

***Article 22a***

***Exclusion of tenders comprising non-covered supplies or services***

***1. Upon request of contracting authorities the Commission shall assess whether to approve, for contracts with an estimated value equal or above EUR 5.000.000 exclusive of value-added tax (VAT) the exclusion from procedures for the award of contracts tenders comprising supplies or services originating outside the Union, if the value of the non-covered supplies or services exceeds 50 % of the total value of the supplies or services constituting the tender, under the following conditions.***

***2. Where contracting authorities intend to request the exclusion from procedures for the award of contracts on the basis of paragraph 1, they shall indicate this in the contract notice published in accordance with Article 47.***

***Contracting authorities shall require tenderers to provide information on the***

*origin of the supplies and/or services contained in the tender, and on their value.*

*The Commission may adopt implementing acts establishing standard forms for declarations concerning the origin of supplies and services.*

*Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91(2).*

*Where contracting authorities receive tenders that meet the conditions of paragraph 1 for which they intend to request the exclusion for that reason, they shall notify the Commission. During the notification procedure the contracting authority may continue its analysis of the tenders.*

*The notification shall be sent by electronic means using a standard form. The Commission shall adopt implementing acts establishing the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91(2). That standard form shall contain the following information:*

*(a) the name and contact details of the contracting authority;*

*(b) a description of the object of the contract;*

*(c) the name and contact details of the economic operator whose tender would be excluded;*

*(d) information on the origin of the economic operator, the supplies and/or services and their value;*

*The Commission may ask the contracting authority for additional information.*

*That information shall be provided within eight working days, commencing on the first working day following the date on which it receives the request for additional information. If the Commission*

*receives no information within this period the period established in paragraph 3 shall be suspended, until the Commission receives the requested information.*

*3. For contracts referred to in paragraph 1, the Commission shall adopt an implementing act concerning the approval of the intended exclusion within a period of two months commencing on the first working day following the date on which it receives the notification. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 91(2a). This period may be extended once by a maximum of two months in duly justified cases, in particular if the information contained in the notification or in the documents annexed thereto is incomplete or inexact or if the facts as reported undergo any substantive changes. If, at the end of this two-month period, or the extended period the Commission has not adopted a decision approving or disapproving the exclusion, the exclusion shall be deemed to have been disapproved by the Commission.*

*4. When adopting implementing acts pursuant to paragraph 3, the Commission shall approve the intended exclusion in the following cases:*

*(a) if the international agreement concerning market access in the field of public procurement between the Union and the country where the goods 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;*

*(b) where an agreement referred to in point (a) does not exist and 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 the purposes of point (b), a lack of substantial reciprocity is presumed where*



*restrictive procurement measures result in serious and recurring discriminations of Union economic operators, goods and services.*

*When adopting implementing acts pursuant to paragraph 3, the Commission shall not approve an intended exclusion where it would violate market access commitments entered into by the Union in its international agreements.*

*5. When assessing whether a lack of substantial reciprocity exists, the Commission shall examine the following:*

*(a) to what degree public procurement laws of the country concerned ensure transparency in line with international standards in the field of public procurement and preclude any discrimination against Union goods, services and economic operators;*

*(b) to what degree public authorities and/or individual procuring authorities maintain or adopt discriminatory practices against Union goods, services and economic operators.*

*6. Before the Commission takes a decision pursuant to paragraph 3 it shall hear the tenderer or tenderers concerned.*

*7. Contracting authorities which have excluded tenders pursuant to paragraph 1 shall indicate this in the contract award notice they publish pursuant to Article 48 of this Directive.*

#### *Article 22b*

##### *Rules of origin*

*1. The origin of a product shall be determined in accordance with Article 22 to 26 of Regulation (EC) No 2913/1992 of the European Parliament and of the Council of 12 October 1992 establishing the Community Customs Code<sup>1</sup>.*

*2. The origin of a service shall be determined on the basis of the origin of the natural or legal person providing it.*

*3. For the purpose of this Directive, supplies or services originating in the countries of the European Economic Area other than the Member States shall be treated equally to those originating in the Member States.*

*Article 22c*

*Implementation of the reciprocity conditions*

*Contracts concluded with an economic operator in violation of Commission implementing acts adopted pursuant to Article 22a upon intended exclusion notified by contracting authorities shall be declared ineffective within the meaning of Directive 2007/66/EC.*

Or. en

**Amendment 649**  
**Marc Tarabella**

**Proposal for a directive**  
**Title 1 – chapter 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**CHAPITRE II bis**

**Règles de réciprocité**

**Article 22 bis**

***Exclusion, par les pouvoirs adjudicateurs, d'offres comprenant des produits et services non couverts.***

***1. Les pouvoirs adjudicateurs évaluent s'il y a lieu d'exclure des procédures d'attribution de marchés publics des offres contenant des travaux, fournitures ou services provenant de pays tiers n'étant pas liés par un accord international, si la valeur des travaux, fournitures ou services non couverts représente plus de 50 % de la valeur totale des travaux, fournitures ou services constituant l'offre,***

*dans le respect du présent article.*

*Une offre, provenant d'un pays tiers n'étant pas lié par un accord international, est automatiquement rejetée si le prix est inférieur à 30% du prix ou du coût moyen des autres offres.*

*2. Les pouvoirs adjudicateurs peuvent exiger des soumissionnaires qu'ils fournissent des informations sur l'origine des travaux, fournitures ou services contenus dans l'offre ainsi que sur leur valeur. Ils acceptent les déclarations sur l'honneur en tant que moyen provisoire empêchant l'exclusion d'une offre en vertu du paragraphe 1. Un pouvoir adjudicateur peut demander à un soumissionnaire, à tout moment de la procédure, de fournir tout ou partie des documents requis, si cela apparaît nécessaire pour assurer le bon déroulement de la procédure. Lorsque les pouvoirs adjudicateurs reçoivent des offres répondant aux conditions du paragraphe 1 qu'ils envisagent d'exclure, ils le notifient à la Commission. Ils peuvent poursuivre leur analyse des offres pendant la procédure de notification. La notification est transmise par voie électronique au moyen d'un formulaire standard. La Commission peut adopter des actes d'exécution établissant les formulaires standard pour les déclarations relatives à l'origine des travaux, fournitures ou services. Ces actes d'exécution sont adoptés en conformité avec la procédure consultative visée à l'article 91, paragraphe 2. Le formulaire standard contient les informations suivantes:*

*(a) le nom et les coordonnées du pouvoir adjudicateur;*

*(b) une description de l'objet du marché;*

*(c) le nom et les coordonnées de l'opérateur économique dont l'offre doit être exclue;*

*(d) des informations sur l'origine de*

*l'opérateur économique, sur les travaux, fournitures ou services et sur leur valeur.*

*3. Lorsque la Commission n'approuve pas la décision du pouvoir adjudicateur d'exclure une offre en vertu du paragraphe 1, la Commission doit notifier sa désapprobation motivée dans un délai des 15 jours à partir du premier jour ouvrable après la date à laquelle la Commission reçoit la notification. Ce délai peut être prolongé une fois pour un maximum de 15 jours, dans des cas dûment justifiés, notamment lorsque les informations figurant dans la notification ou dans les documents annexes sont incomplètes ou inexacts ou lorsque les faits rapportés subissent des modifications substantielles. Si, à la fin de cette période de 30 jours la Commission n'a pas adopté de décision approuvant ou rejetant l'exclusion, celle-ci est réputée acceptée par la Commission.*

*4. L'exclusion des procédures d'attribution de marchés des offres contenant des travaux, fournitures ou services doit remplir les conditions suivantes:*

*(a) si l'accord international concernant l'accès au marché dans le domaine des marchés publics conclu entre l'Union et le pays d'origine des produits ou services comporte, pour les produits ou services dont l'exclusion est proposée, des réserves explicites concernant l'accès au marché formulées par l'Union;*

*(b) lorsque l'accord visé au point a) n'existe pas et que le pays tiers applique des mesures restrictives en matière de passation de marchés, qui entraînent un manque de réciprocité substantielle en termes d'ouverture du marché entre l'Union et le pays tiers concerné.*

*Aux fins du point (b), l'absence de réciprocité substantielle est présumée lorsque les mesures restrictives en matière de passation de marchés se traduisent par des discriminations graves et persistantes*

*à l'égard des opérateurs économiques, des travaux, fournitures et services de l'Union.*

*5. La Commission entend les pouvoirs adjudicateurs concernés avant de prendre une décision en vertu du paragraphe 3.*

*Article 22 ter*

*Mise en oeuvre des conditions de réciprocité*

*Les marchés conclus avec un opérateur économique en violation de l'approbation de la Commission d'exclure une offre, conformément à l'article 22 bis, suite à la notification d'une intention d'exclusion par les pouvoirs adjudicateurs, sont déclarés dépourvus d'effets au sens de la directive 2007/66/CE.*

Or. fr

**Amendment 650**  
**Riikka Manner**

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

*Text proposed by the Commission*

*Amendment*

*1 a. In arranging public services contracting authorities may use a service voucher system in order to give customers freedom to choose the service provider. A contracting authority defines the value of the service voucher as well as services in which it can be used and the customers who may use it.*

*A contracting authority may set the requirements which the service provider has to meet in order to be included in the service voucher system. These requirements must be non-discriminatory and proportionate to the subject matter of the service. All service providers that meet the requirements must be included in the system. The list of service providers must*

*be made publicly available.*

*A contracting authority may also choose the service providers to be included in the service voucher system through a procedure provided in this Directive.*

*A customer may select any service provider in the service voucher system or choose not to use the system.*

Or. en

#### *Justification*

*In current economic situation there is a need for new effective tools to arrange public services. A service voucher system is one additional way of doing that. It is beneficial to SMEs because it is very easy to get to a service voucher system. It gives a freedom of choice to the citizen who may decide who is the service provider. Obviously a service voucher system is beneficial to the authority as well.*

**Amendment 651**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*Contracting authorities need not publish a call for competition where they include in the competitive procedure with negotiation or competitive dialogue all of, and only, the tenderers which satisfy the criteria of Articles 55 to 65 and which, during the prior open or restricted procedure, have submitted tenders in accordance with the formal requirements of the tendering procedure.*

Or. en

**Amendment 652**  
**Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann**

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

Member States **may** provide that contracting authorities may apply innovation partnerships as regulated in this Directive.

*Amendment*

Member States **shall** provide that contracting authorities may apply innovation partnerships as regulated in this Directive.

Or. en

*Justification*

*The promotion of flexibility in the choice of procedures and the promotion of innovative procurement practice are key priorities in this modernisation exercise. As such, transposition of the most relevant procedures should not be optional and, instead should be uniform across all Member States to ensure a level playing field.*

**Amendment 653**  
**Frank Engel, Andreas Schwab, Anna Maria Corazza Bildt**

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

Les États membres **peuvent prévoir** la possibilité, pour les pouvoirs adjudicateurs, de mettre en œuvre des partenariats d'innovation tels que régis par la présente directive.

*Amendment*

Les États membres **prévoient** la possibilité, pour les pouvoirs adjudicateurs, de mettre en œuvre des partenariats d'innovation tels que régis par la présente directive.

Or. fr

**Amendment 654**  
**Evelyne Gebhardt**

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***Die Mitgliedstaaten schreiben vor, dass die öffentlichen Auftraggeber das***

*Verhandlungsverfahren oder den wettbewerblichen Dialog anwenden, wenn der öffentliche Auftrag zu einem Unternehmensübergang führen könnte.*

Or. de

**Amendment 655**  
**Christel Schaldemose**

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 4 – introductory part**

*Text proposed by the Commission*

De kan også bestemme, at ordregivende myndigheder kan anvende udbud med forhandling eller konkurrencepræget dialog, *i nedenstående tilfælde:*

*Amendment*

De kan også bestemme, at ordregivende myndigheder kan anvende udbud med forhandling eller konkurrencepræget dialog, *jf. artikel 27 og 28, således at det ikke fører til konkurrenceforvridning eller forskelsbehandling.*

Or. da

**Amendment 656**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 4**

*Text proposed by the Commission*

*They may* also provide that contracting authorities may use a competitive procedure with negotiation or a competitive dialogue in *any* of the following *cases*:

- (a) with regard to works, *where the works contract has as its object both the design and the execution of works within the meaning of Article 2(8) or where negotiations are needed to establish the legal or financial makeup of the project;*
- (b) *in respect of public works contracts,*

*Amendment*

*Member States shall* also provide that contracting authorities may use a competitive procedure with negotiation or a competitive dialogue in *the following situations*:

- a) with regard to works, *supplies or services fulfilling one of the following criteria:*
- i) where the needs of the contracting*



*for works which are performed solely for purposes of research or innovation, testing or development and not with the aim of ensuring profitability or recovering research and development costs;*

*(c) with regard to services or supplies, where the technical specifications cannot be established with sufficient precision with reference to any of the standards, European technical approvals, Common technical specifications or technical references within the meaning of points 2 to 5 of Annex VIII;*

*(d) in the event of irregular or unacceptable tenders within the meaning of Article 30(2)(a) in response to an open or a restricted procedure;*

*(e) due to specific circumstances related to the nature or the complexity of the works, supplies or services or the risks attaching thereto, the contract cannot be awarded without prior negotiations.*

*authority cannot be met without adaptation of readily available solutions;*

*ii) they include design or innovative solutions;*

*iii) the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of the risks attaching to them;*

*iv) the technical specifications of which cannot be established with sufficient precision by the contracting authority with reference to a standard, European Technical Approval, Common Technical Specification or technical reference within the meaning of points 2 to 5 of Annex VIII;*

*b) with regard to works, supplies or services where, in response to an open or a restricted procedure, only irregular or unacceptable tenders are submitted. In such situations contracting authorities need not publish a contract notice where they include in the negotiated procedure all of, and only, the tenderers which satisfy the criteria set out in Article 55 to 63 and which, during the prior open or restricted procedure, have submitted tenders in accordance with the formal requirements of the procurement procedure.*

Or. en

#### *Justification*

*This Amendment adds flexibility on the use of negotiations. The promotion of flexibility in the*

*choice of procedures and the promotion of innovative procurement practice are key priorities in this modernisation exercise. As such, transposition of the most relevant procedures should not be optional and, instead should be uniform across all Member States to ensure a level playing field.*

#### **Amendment 657**

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

#### **Proposal for a directive**

#### **Article 24 – paragraph 1 – subparagraph 4 – introductory part**

*Text proposed by the Commission*

*Auch können sie vorschreiben*, dass die öffentlichen Auftraggeber auf ein Verhandlungsverfahren oder den wettbewerblichen Dialog in **de** folgenden Fällen zurückgreifen können :

*Amendment*

*Die Mitgliedstaaten schreiben vor*, dass die öffentlichen Auftraggeber auf ein Verhandlungsverfahren oder den wettbewerblichen Dialog in **den** folgenden Fällen zurückgreifen können :

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.*

#### **Amendment 658**

**Frank Engel, Andreas Schwab, Anna Maria Corazza Bildt**

#### **Proposal for a directive**

#### **Article 24 – paragraph 1 – subparagraph 4 – introductory part**

*Text proposed by the Commission*

Ils **peuvent** également **prévoir** la possibilité, pour les pouvoirs adjudicateurs, de recourir à une procédure concurrentielle avec négociation ou à un dialogue compétitif dans les cas suivants:

*Amendment*

Ils **prévoient** également la possibilité, pour les pouvoirs adjudicateurs, de recourir à une procédure concurrentielle avec négociation ou à un dialogue compétitif dans les cas suivants:

Or. fr

**Amendment 659**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 4 – introductory part**

*Text proposed by the Commission*

Zij **kunnen** ook **bepalen** dat aanbestedende diensten een procedure van gunning door onderhandelingen of een concurrentiegericht dialoog kunnen toepassen in de volgende gevallen:

*Amendment*

Zij **bepalen** ook dat aanbestedende diensten een procedure van gunning door onderhandelingen of een concurrentiegericht dialoog kunnen toepassen in de volgende gevallen:

Or. nl

**Amendment 660**  
**Christel Schaldemose**

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 4 – point a**

*Text proposed by the Commission*

*a) ved bygge- og anlægsarbejder, hvis bygge- og anlægskontraktens genstand omfatter både projektering og udførelse af bygge- og anlægsarbejder, jf. artikel 2, stk. 8, eller hvis det er nødvendigt med forhandling for at fastlægge projektets juridiske eller finansielle opbygning*

*Amendment*

*udgår*

Or. da

**Amendment 661**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 4 – point a**

*Text proposed by the Commission*

(a) en ce qui concerne les travaux, lorsque **le marché de travaux a pour objet conjointement** la conception *et* l'exécution

*Amendment*

(a) en ce qui concerne les travaux, lorsque **les marchés ont des objets multiples tels que** la conception, l'exécution, **le**

de travaux au sens de l'article 2, point 8),  
ou lorsque des négociations sont  
nécessaires pour établir les modalités  
juridiques ou financières du projet;

*financement, l'exploitation et la  
maintenance* de travaux au sens de l'article  
2, point 8), ou lorsque des négociations  
sont nécessaires pour établir les modalités  
juridiques ou financières du projet;

Or. fr

**Amendment 662**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 4 – point a**

*Text proposed by the Commission*

*Amendment*

(a) with regard to works, *where the works contract has as its object both the design and the execution of works within the meaning of Article 2(8) or* where negotiations are needed to establish the legal or financial makeup of the project;

(a) with regard to works, where negotiations are needed to establish the legal or financial makeup of the project;

Or. en

*Justification*

*This provision could create incentives for contracting authorities to summarise design and execution of works in one big contract, which may not always be the preferable option.*

**Amendment 663**  
**Christel Schaldemose**

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 4 – point b**

*Text proposed by the Commission*

*Amendment*

*b) ved offentlige bygge- og anlægskontrakter, hvis der er tale om bygge- og anlægsarbejder, der udføres udelukkende med henblik på forskning eller innovation, prøvning eller udvikling, og ikke med det formål at sikre indtjening*

*udgår*

*eller opnå dækning af omkostninger til forskning og udvikling*

Or. da

**Amendment 664**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 4 – point b**

*Text proposed by the Commission*

(b) dans le cas des marchés publics de travaux, pour les travaux qui sont réalisés uniquement à des fins de recherche ou d'innovation, d'expérimentation ou de mise au point et non dans le but d'assurer une rentabilité ou le recouvrement des coûts de recherche et de développement;

*Amendment*

(b) dans le cas des marchés publics de travaux, **de fournitures et de services** pour les travaux qui sont réalisés uniquement à des fins de recherche ou d'innovation, d'expérimentation ou de mise au point et non dans le but d'assurer une rentabilité ou le recouvrement des coûts de recherche et de développement;

Or. fr

**Amendment 665**  
**Christel Schaldemose**

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 4 – point c**

*Text proposed by the Commission*

***c) ved tjenesteydelser eller vareindkøb, hvis de tekniske specifikationer ikke kan fastlægges tilstrækkeligt præcist med henvisning til standarder, europæiske tekniske godkendelser, fælles tekniske specifikationer eller tekniske referencer, jf. punkt 2-5 i bilag VIII***

*Amendment*

***udgår***

Or. da

**Amendment 666**  
**Marian Harkin**

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 4 – point c**

*Text proposed by the Commission*

(c) with regard to services or supplies, where the technical specifications cannot be established with sufficient precision with reference to any of the standards, European technical approvals, Common technical specifications or technical references within the meaning of points 2 to 5 of Annex VIII;

*Amendment*

(c) with regard to **knowledge-based** services or supplies, where the technical specifications cannot be established with sufficient precision with reference to any of the standards, European technical approvals, Common technical specifications or technical references within the meaning of points 2 to 5 of Annex VIII;

Or. en

*Justification*

*The competitive procedure with negotiation is the only possible procedure that is appropriate for creative services because their result cannot be anticipated as the consequence their creative nature. Therefore ‘intellectual or knowledge-based services’ (see definition proposed in article 1) should be clearly mentioned as such and the transposition of the competitive procedure with negotiation made compulsory.*

**Amendment 667**  
**Christel Schaldemose**

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 4 – point d**

*Text proposed by the Commission*

**d) i tilfælde af ukorrekte eller uacceptable tilbud, jf. artikel 30, stk. 2, litra a), i forbindelse med et offentligt eller begrænset udbud**

*Amendment*

**udgår**

Or. da

**Amendment 668**  
**Christel Schaldemose**

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 4 – point e**

*Text proposed by the Commission*

*Amendment*

*e) hvis kontrakten som følge af særlige omstændigheder med hensyn til arbejdernes, leverancernes eller tjenesternes art og kompleksitet og risici i forbindelse med dem ikke kan tildeles uden forudgående forhandling.*

*udgår*

Or. da

**Amendment 669**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 4 – point e**

*Text proposed by the Commission*

*Amendment*

(e) due to specific circumstances related to the nature or the complexity of the works, supplies or services or the risks attaching thereto, the contract cannot be awarded without prior negotiations.

(e) *where contracting authorities justify in the call for competition that* due to specific circumstances related to the nature, *the legal* or *financial makeup or* the complexity of the works, supplies or services or the risks attaching thereto, the contract cannot be awarded without prior negotiations.

Or. en

*Justification*

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

**Amendment 670**  
**Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen**

**Proposal for a directive**

**Article 24 – paragraph 1 – subparagraph 4 – point e a (new)**

*Text proposed by the Commission*

*Amendment*

**(ea) wenn die spezifischen Beschaffungsbedürfnisse des öffentlichen Auftraggebers nicht ohne ausschließlichen Rückgriff auf standardisierte Lösungen erfüllt werden können.**

Or. de

*Justification*

*Falls die öffentlichen Auftraggeber im Vergabeverfahren nicht ausschließlich auf standardisierte Produkte oder Dienstleistungen zurückgreifen können, sollte es den öffentlichen Auftraggebern möglich sein, das Verhandlungsverfahren zu wählen.*

**Amendment 671**

**Evelyne Gebhardt**

**Proposal for a directive**

**Article 24 – paragraph 1 – subparagraph 4 – point e a (new)**

*Text proposed by the Commission*

*Amendment*

**(ea) auf Grund der Erfordernis einer Konsultation mit Arbeitnehmervertreter und -vertreterinnen bei Bauarbeiten oder Dienstleistungen, wenn Mitarbeiter davon betroffen sind.**

Or. de

**Amendment 672**

**Christel Schaldemose**

**Proposal for a directive**

**Article 24 – paragraph 1 – subparagraph 4 a (new)**



*Text proposed by the Commission*

*Amendment*

*I perioden mellem tilbudsfristens udløb og underskrivelse af kontrakten må ordregivende myndigheder gå i dialog med de bydende, når det sker med henblik på at afklare eller afhjælpe fejl, mangler eller misforståelser i buddene eller, når det sker med henblik på at præcisere eller supplere indholdet af buddene, og i det omfang det ikke giver anledning til forskelsbehandling.*

Or. da

**Amendment 673**  
**Christel Schaldemose**

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 5**

*Text proposed by the Commission*

*Amendment*

*Medlemsstaterne kan bestemme ikke at omsætte procedurerne med udbud med forhandling, konkurrencepræget dialog eller innovationspartnerskaber til national lovgivning.*

*udgår*

Or. da

**Amendment 674**  
**Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann**

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 5**

*Text proposed by the Commission*

*Amendment*

*Member States may decide not to transpose into their national law the competitive procedure with negotiation, the competitive dialogue and the innovation partnership procedures.*

*deleted*

*Justification*

*The promotion of flexibility in the choice of procedures and the promotion of innovative procurement practice are key priorities in this modernisation exercise. As such, transposition of the most relevant procedures should not be optional and, instead should be uniform across all Member States to ensure a level playing field.*

**Amendment 675**

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

**Proposal for a directive****Article 24 – paragraph 1 – subparagraph 5**

*Text proposed by the Commission*

*Amendment*

***Die Mitgliedstaaten können beschließen, das Verhandlungsverfahren, den wettbewerblichen Dialog und die Innovationspartnerschaft nicht in ihr einzelstaatliches Recht umzusetzen.***      ***entfällt***

*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 676**

**Frank Engel, András Gyürk, Andreas Schwab, Ildikó Gáll-Pelcz, Anna Maria Corazza Bildt**

**Proposal for a directive****Article 24 – paragraph 1 – subparagraph 5**

*Text proposed by the Commission*

*Amendment*

***Les États membres peuvent décider de ne***      ***supprimé***

*pas transposer dans leur droit interne la procédure concurrentielle avec négociation et les procédures relatives au dialogue compétitif et au partenariat d'innovation.*

Or. fr

**Amendment 677**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 5**

*Text proposed by the Commission*

*Amendment*

*De lidstaten kunnen besluiten de procedure van gunning door onderhandelingen, de concurrentiegerichte dialoog of het innovatiepartnerschap niet in nationale wetgeving om te zetten.*

*Schrappen*

Or. nl

*Justification*

*De procedure van gunning door onderhandelingen, de concurrentiegerichte dialoog en het innovatiepartnerschap bieden de aanbestedende diensten goede mogelijkheden hun inkoopbeleid eenvoudiger, flexibeler en efficiënter vorm te geven. Door lidstaten de mogelijkheid te geven deze procedures niet te implementeren, wordt aanbestedende diensten deze vrijheid ontnomen. Het is belangrijk dat alle aanbestedende diensten in de toekomst gebruik kunnen maken van deze nieuwe procedures.*

**Amendment 678**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 5**

*Text proposed by the Commission*

*Amendment*

*Les États membres peuvent décider de ne pas transposer dans leur droit interne la*

*supprimé*

*procédure concurrentielle avec négociation et les procédures relatives au dialogue compétitif et au partenariat d'innovation.*

Or. fr

**Amendment 679**  
**Phil Prendergast**

**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 5**

*Text proposed by the Commission*

Member States *may decide not to* transpose into their national law the competitive procedure with negotiation, the competitive dialogue and the innovation partnership procedures.

*Amendment*

Member States *shall* transpose into their national law the competitive procedure with negotiation, the competitive dialogue and the innovation partnership procedures.

Or. en

**Amendment 680**  
**Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann**

**Proposal for a directive**  
**Article 24 – paragraph 2 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

The call for competition *may* be made by *one of the following means*:

*Amendment*

The call for competition *shall* be made by *a contract notice pursuant to Article 47*.

Or. en

*Justification*

*This Amendment adds flexibility on the use of negotiations.*

**Amendment 681**  
**Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann**

**Proposal for a directive**  
**Article 24 – paragraph 2 – subparagraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

**(a) a contract notice pursuant to Article 47,** **deleted**

Or. en

*Justification*

*Moved to the introductory paragraph. This Amendment adds flexibility on the use of negotiations.*

**Amendment 682**  
**Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann**

**Proposal for a directive**  
**Article 24 – paragraph 2 – subparagraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) where the contract is awarded by restricted or competitive procedure with negotiation by a sub-central contracting authority, by means of a prior information notice pursuant to Article 46(2).** **deleted**

Or. en

*Justification*

*This Amendment adds flexibility on the use of negotiations.*

**Amendment 683**  
**Cornelis de Jong**

**Proposal for a directive**  
**Article 24 – paragraph 2 – subparagraph 1 – point b**

*Text proposed by the Commission*

(b) where the contract is awarded by restricted or competitive procedure with negotiation by a **sub-central** contracting authority, by means of a prior information notice pursuant to Article 46(2).

*Amendment*

(b) where the contract is awarded by restricted or competitive procedure with negotiation by a contracting authority, by means of a prior information notice pursuant to Article 46(2).

Or. en

**Amendment 684**

**Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann**

**Proposal for a directive**

**Article 24 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

***In the case referred to in point (b),*** economic operators having expressed their interest following the publication of the prior information notice shall subsequently be invited to confirm their interest in writing by means of an ‘invitation to confirm interest’ in conformity with Article 52.

*Amendment*

***Where the contract is awarded by restricted or competitive procedure with negotiation by a sub-central contracting authority, Member States shall provide, notwithstanding the 1st subparagraph, that the call for competition may be made by means of a prior information notice pursuant to Article 46(2). They may also reserve this possibility to specific categories of sub-central contracting authorities.***

***Where the call for competition is made by means of a prior information notice pursuant to Article 46(2),*** economic operators, having expressed their interest following the publication of the prior information notice, shall subsequently be invited to confirm their interest in writing by means of an ‘invitation to confirm interest’ in conformity with Article 52.

Or. en

*Justification*

*This Amendment adds flexibility on the use of negotiations. It also ensures harmonised transposition across the EU.*

**Amendment 685**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 24 – paragraph 3**

*Text proposed by the Commission*

3. Member States *may* provide that contracting authorities may apply a negotiated procedure without prior publication *only in the specific cases and circumstances* referred to *expressly* in Article 30.

*Amendment*

3. *In the specific cases and circumstances referred to expressly in Article 30*, Member States *shall* provide that contracting authorities may apply a negotiated procedure without prior publication. *Member States shall not allow the use of this procedure in any other cases than those* referred to in Article 30.

Or. en

*Justification*

*This Amendment adds flexibility on the use of negotiations. It also ensures harmonised transposition across the EU.*

**Amendment 686**  
**Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, Hans-Peter Mayer**

**Proposal for a directive**  
**Article 25 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

Die Frist für den Eingang der Angebote beträgt mindestens **40** Tage, gerechnet ab dem Tag der Absendung der Bekanntmachung.

*Amendment*

Die Frist für den Eingang der Angebote beträgt mindestens **21** Tage, gerechnet ab dem Tag der Absendung der Bekanntmachung. *In besonderen Ausnahmefällen kann die Frist auf 40 Tage verlängert werden.*

Or. de

*Justification*

*Verkürzte Bewerbungsfristen führen zu einer Beschleunigung des Verfahrens, ohne dass eine*

*QualitätseinbuÙe bei den Angeboten in Kauf genommen werden müsste. Mit der Bewerbung als solcher sind für die Bewerber noch keine Verpflichtungen verbunden. Sofern nicht schon in diesem Stadium Bescheinigungen verlangt werden, deren Beschaffung längere Zeit in Anspruch nimmt, kann der zur Bewerbung geforderte Bewerbungsbogen relativ zügig ausgefüllt und abgegeben werden.*

**Amendment 687**

**António Fernando Correia de Campos**

**Proposal for a directive**

**Article 25 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

O prazo mínimo de receção das propostas é de **40** dias a contar da data de envio do anúncio de concurso.

*Amendment*

O prazo mínimo de receção das propostas é de **45** dias a contar da data de envio do anúncio de concurso.

Or. pt

**Amendment 688**

**Sari Essayah**

**Proposal for a directive**

**Article 25 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

The minimum time limit for the receipt of tenders shall be **40** days from the date on which the contract notice was sent.

*Amendment*

The minimum time limit for the receipt of tenders shall be **45** days from the date on which the contract notice was sent.

Or. en

**Amendment 689**

**Marian Harkin**

**Proposal for a directive**

**Article 25 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

The minimum time limit for the receipt of

*Amendment*

The minimum time limit for the receipt of



tenders shall be **40** days from the date on which the contract notice was sent.

tenders shall be **52** days from the date on which the contract notice was sent.

Or. en

*Justification*

*New time limits are too short in practical terms and may limit competition*

**Amendment 690**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 25 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

The minimum time limit for the receipt of tenders shall be **40** days from the date on which the contract notice was sent.

*Amendment*

The minimum time limit for the receipt of tenders shall be **47** days from the date on which the contract notice was sent.

Or. en

*Justification*

*The time limit for receipt of tenders should be extended to 47 days, which gives candidates enough time to prepare their tender and is still shorter than the current time limit (52 days).*

**Amendment 691**  
**Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, Hans-Peter Mayer**

**Proposal for a directive**  
**Article 25 – paragraph 2**

*Text proposed by the Commission*

***2. Hat der öffentliche Auftraggeber eine Vorinformation veröffentlicht, die nicht als Aufruf zum Wettbewerb dient, kann die Mindestfrist für den Eingang der Angebote nach Absatz 1 Unterabsatz 2 dieses Artikels auf 20 Tage verkürzt werden, sofern beide der nachfolgend***

*Amendment*

***entfällt***

*genannten Bedingungen erfüllt sind:*

*(a) die Vorinformation enthielt alle für die Bekanntmachung nach Anhang VI Teil B Abschnitt I geforderten Informationen, soweit diese zum Zeitpunkt der Veröffentlichung der Vorinformation vorlagen;*

*(b) die regelmäßige nicht verbindliche Bekanntmachung wurde zwischen 45 Tagen und 12 Monaten vor dem Tag der Absendung der Auftragsbekanntmachung übermittelt.*

Or. de

*Justification*

*Die Mindestfrist sollte auf 21 Tage verkürzt werden (siehe Änderungsantrag derselben Verfasser zu Art. 25 Abs. 1) und in Ausnahmefällen auf 40 Tage verlängert werden können. Die Fälle des Art. 25 Abs. 2 sind durch die Umdrehung des Regel-Ausnahme-Verhältnisses somit entbehrlich.*

**Amendment 692**

**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**

**Article 25 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. Where contracting authorities have published a prior information notice which is not used as a means of calling for competition, the minimum time limit for the receipt of tenders, as laid down in the second subparagraph of paragraph 1 of this Article, may be shortened to **20** days, provided that both of the following conditions are fulfilled:

*Amendment*

2. Where contracting authorities have published a prior information notice which is not used as a means of calling for competition, the minimum time limit for the receipt of tenders, as laid down in the second subparagraph of paragraph 1 of this Article, may be shortened to **15** days, provided that both of the following conditions are fulfilled:

Or. en

*Justification*

*Streamlining the procurement process.*

**Amendment 693**  
**Sari Essayah**

**Proposal for a directive**  
**Article 25 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. Where contracting authorities have published a prior information notice which is not used as a means of calling for competition, the minimum time limit for the receipt of tenders, as laid down in the second subparagraph of paragraph 1 of this Article, may be shortened to **20** days, provided that both of the following conditions are fulfilled:

*Amendment*

2. Where contracting authorities have published a prior information notice which is not used as a means of calling for competition, the minimum time limit for the receipt of tenders, as laid down in the second subparagraph of paragraph 1 of this Article, may be shortened to **30** days, provided that both of the following conditions are fulfilled:

Or. en

**Amendment 694**  
**Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, Hans-Peter Mayer**

**Proposal for a directive**  
**Article 25 – paragraph 3**

*Text proposed by the Commission*

**3. Für den Fall, dass eine von den öffentlichen Auftraggebern gebühlich belegte Dringlichkeit die Einhaltung der Frist gemäß Absatz 1 Unterabsatz 2 unmöglich macht, können sie eine Frist festlegen, die 20 Tage nach dem Termin der Übermittlung der Auftragsbekanntmachung nicht unterschreiten darf.**

*Amendment*

**entfällt**

Or. de

*Justification*

*Die Mindestfrist sollte auf 21 Tage verkürzt werden (siehe Änderungsantrag derselben Verfasser zu Art. 25 Abs. 1) und in Ausnahmefällen auf 40 Tage verlängert werden können.*

*Die Fälle des Art. 25 Abs. 2 sind durch die Umdrehung des Regel-Ausnahme-Verhältnisses somit entbehrlich.*

**Amendment 695**

**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**

**Article 25 – paragraph 3**

*Text proposed by the Commission*

3. Where a state of urgency duly substantiated by the contracting authorities renders impracticable the time limit laid down in the second subparagraph of paragraph 1, they may fix a time limit which shall be not less than **20** days from the date on which the contract notice was sent.

*Amendment*

3. Where a state of urgency duly substantiated by the contracting authorities renders impracticable the time limit laid down in the second subparagraph of paragraph 1, they may fix a time limit which shall be not less than **15** days from the date on which the contract notice was sent.

Or. en

*Justification*

*Streamlining the procurement process.*

**Amendment 696**

**Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen**

**Proposal for a directive**

**Article 25 – paragraph 4**

*Text proposed by the Commission*

***4. Der öffentliche Auftraggeber kann die Frist für den Eingang der Angebote gemäß Absatz 1 Unterabsatz 2 um fünf Tage verkürzen, wenn er die elektronische Übermittlung der Angebote gemäß Artikel 19 Absätze 3, 4 und 5 akzeptiert.***

*Amendment*

***entfällt***

Or. de

*Justification*

*Die Mindestfrist sollte auf 21 Tage verkürzt werden (siehe Änderungsantrag derselben Verfasser zu Art. 25 Abs. 1) und in Ausnahmefällen auf 40 Tage verlängert werden können. Die Fälle des Art. 25 Abs. 2 sind durch die Umdrehung des Regel-Ausnahme-Verhältnisses somit entbehrlich.*

**Amendment 697**  
**Cornelis de Jong**

**Proposal for a directive**  
**Article 25 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. The contracting authority may reduce by five days the time limit for receipt of tenders set out in the second subparagraph of paragraph 1 where it accepts that tenders may be submitted by electronic means in accordance with Article 19(3), (4) and (5).** **deleted**

Or. en

**Amendment 698**  
**Sari Essayah**

**Proposal for a directive**  
**Article 25 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. The contracting authority may reduce by five days the time limit for receipt of tenders set out in the second subparagraph of paragraph 1 where it accepts that tenders may be submitted by electronic means in accordance with Article 19(3), (4) and (5).** **deleted**

Or. en

## **Amendment 699**

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

### **Proposal for a directive**

#### **Article 26 – paragraph 1 – subparagraph 2**

##### *Text proposed by the Commission*

Die Mindestfrist für den Eingang der Teilnahmeanträge beträgt **30** Tage ab dem Datum, an dem die Bekanntmachung bzw., wenn eine Vorinformation als Aufruf zum Wettbewerb dient, der Aufruf zur Interessensbestätigung übermittelt wird.

##### *Amendment*

Die Mindestfrist für den Eingang der Teilnahmeanträge beträgt **21** Tage ab dem Datum, an dem die Bekanntmachung bzw., wenn eine Vorinformation als Aufruf zum Wettbewerb dient, der Aufruf zur Interessensbestätigung übermittelt wird.

Or. de

##### *Justification*

*Die von der Kommission vorgeschlagene Frist ist zu lang, ausreichend ist aus der Perspektive der Vergabepraxis eine Fristverkürzung auf 21 Tage. Verkürzte Bewerbungsfristen führen zu einer Beschleunigung des Verfahrens, ohne dass eine Qualitätseinbuße bei den Angeboten in Kauf genommen werden müsste. Mit der Bewerbung sind für den Bewerber noch keine Verpflichtungen verbunden, der zur Bewerbung geforderte Bewerbungsbogen kann relativ zügig ausgefüllt und abgegeben werden.*

## **Amendment 700**

**Sari Essayah**

### **Proposal for a directive**

#### **Article 26 – paragraph 1 – subparagraph 2**

##### *Text proposed by the Commission*

The minimum time limit for receipt of requests to participate shall be **30** days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent.

##### *Amendment*

The minimum time limit for receipt of requests to participate shall be **45** days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent.

Or. en

**Amendment 701**  
**Marian Harkin**

**Proposal for a directive**  
**Article 26 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

The minimum time limit for receipt of requests to participate shall be **30** days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent.

*Amendment*

The minimum time limit for receipt of requests to participate shall be **37** days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent.

Or. en

**Amendment 702**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 26 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

The minimum time limit for receipt of requests to participate shall be **30** days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent.

*Amendment*

The minimum time limit for receipt of requests to participate shall be **35** days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent.

Or. en

*Justification*

*The time limit for receipt of requests to participate should be extended to 35 days, which gives candidates enough time to prepare their tender and is still shorter than the current time limit (37 days).*

**Amendment 703**  
**Marian Harkin**

**Proposal for a directive**  
**Article 26 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

2. Only those economic operators *invited* by the contracting authority following their assessment of the requested information may submit a tender. Contracting authorities may limit the number of suitable candidates to be *invited* to participate in the procedure in accordance with Article 64.

*Amendment*

2. Only those economic operators *selected* by the contracting authority following their assessment of the requested information may submit a tender. Contracting authorities may limit the number of suitable candidates to be *selected* to participate in the procedure in accordance with Article 64.

Or. en

**Amendment 704**

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

**Proposal for a directive**  
**Article 26 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

Die Frist für den Eingang der Angebote beträgt mindestens **35** Tage, gerechnet ab dem Tag der Absendung der Aufforderung zur Angebotsabgabe.

*Amendment*

Die Frist für den Eingang der Angebote beträgt mindestens **21** Tage, gerechnet ab dem Tag der Absendung der Aufforderung zur Angebotsabgabe.

Or. de

*Justification*

*Die von der Kommission vorgeschlagene Frist ist zu lang, ausreichend ist aus der Perspektive der Vergabepraxis eine Fristverkürzung auf 21 Tage. Verkürzte Bewerbungsfristen führen zu einer Beschleunigung des Verfahrens, ohne dass eine Qualitätseinbuße bei den Angeboten in Kauf genommen werden müsste. Mit der Bewerbung sind für den Bewerber noch keine Verpflichtungen verbunden, der zur Bewerbung geforderte Bewerbungsbogen kann relativ zügig ausgefüllt und abgegeben werden.*

**Amendment 705**

**Malcolm Harbour, Edvard Kožušník**



**Proposal for a directive**  
**Article 26 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

The minimum time limit for the receipt of tenders shall be **35** days from the date on which the invitation to tender is sent.

*Amendment*

The minimum time limit for the receipt of tenders shall be **30** days from the date on which the invitation to tender is sent.

Or. en

*Justification*

*Streamlining the procurement process.*

**Amendment 706**  
**Sari Essayah**

**Proposal for a directive**  
**Article 26 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

The minimum time limit for the receipt of tenders shall be **35** days from the date on which the invitation to tender is sent.

*Amendment*

The minimum time limit for the receipt of tenders shall be **45** days from the date on which the invitation to tender is sent.

Or. en

**Amendment 707**  
**Marian Harkin**

**Proposal for a directive**  
**Article 26 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

The minimum time limit for the receipt of tenders shall be **35** days from the date on which the invitation to tender is sent.

*Amendment*

The minimum time limit for the receipt of tenders shall be **40** days from the date on which the invitation to tender is sent.

Or. en

**Amendment 708**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 26 – paragraph 3 – introductory part**

*Text proposed by the Commission*

3. Where contracting authorities have published a prior information notice which is not used as a means of calling for competition, the minimum time limit for the receipt of tenders as laid down in the second subparagraph of paragraph 2 of this Article may be shortened to **15** days, provided that all of the following conditions are fulfilled:

*Amendment*

3. Where contracting authorities have published a prior information notice which is not used as a means of calling for competition, the minimum time limit for the receipt of tenders as laid down in the second subparagraph of paragraph 2 of this Article may be shortened to **10** days, provided that all of the following conditions are fulfilled:

Or. en

*Justification*

*Streamlining the procurement process.*

**Amendment 709**  
**Marian Harkin**

**Proposal for a directive**  
**Article 26 – paragraph 3 – introductory part**

*Text proposed by the Commission*

3. Where contracting authorities have published a prior information notice which is not used as a means of calling for competition, the minimum time limit for the receipt of tenders as laid down in the second subparagraph of paragraph 2 of this Article may be shortened to **15** days, provided that all of the following conditions are fulfilled:

*Amendment*

3. Where contracting authorities have published a prior information notice which is not used as a means of calling for competition, the minimum time limit for the receipt of tenders as laid down in the second subparagraph of paragraph 2 of this Article may, **as a general rule**, be shortened to **36** days, **but under no circumstances to less than 22 days**, provided that all of the following conditions are fulfilled:

Or. en

## Amendment 710

Marian Harkin

### Proposal for a directive

#### Article 26 – paragraph 3 – point b

*Text proposed by the Commission*

(b) it was sent for publication between **45** days and 12 months before the date on which the contract notice was sent.

*Amendment*

(b) it was sent for publication between **52** days and 12 months before the date on which the contract notice was sent.

Or. en

## Amendment 711

Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann

### Proposal for a directive

#### Article 26 – paragraph 4

*Text proposed by the Commission*

4. **Sub-central** contracting authorities may set the time limit for the receipt of tenders by mutual agreement between the contracting authority and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders. **Where it is not possible to reach** agreement on the time limit for the receipt of tenders, the contracting authority shall fix a time limit which shall be at least 10 days from the date of the invitation to tender.

*Amendment*

4. **Member States shall provide that all or specific categories of sub-central** contracting authorities may set the time limit for the receipt of tenders by mutual agreement between the contracting authority and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders. **In the absence of an** agreement on the time limit for the receipt of tenders, the contracting authority shall fix a time limit which shall be at least 10 days from the date of the invitation to tender.

Or. en

*Justification*

*Streamlining the procurement process and also ensuring harmonised transposition across the EU.*

## **Amendment 712**

**Sari Essayah**

### **Proposal for a directive Article 26 – paragraph 4**

*Text proposed by the Commission*

4. Sub-central contracting authorities may set the time limit for the receipt of tenders by mutual agreement between the contracting authority and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders. Where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting authority shall fix a time limit which shall be at least **10** days from the date of the invitation to tender.

*Amendment*

4. Sub-central contracting authorities may set the time limit for the receipt of tenders by mutual agreement between the contracting authority and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders. Where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting authority shall fix a time limit which shall be at least **15** days from the date of the invitation to tender.

Or. en

## **Amendment 713**

**Mitro Repo**

### **Proposal for a directive Article 26 – paragraph 4**

*Text proposed by the Commission*

4. Keskushallintoa alemmalla tasolla toimivat hankintaviranomaiset voivat asettaa määräajan tarjousten vastaanottamiselle hankintaviranomaisen ja valittujen ehdokkaiden välisellä sopimuksella, jos kaikille ehdokkaille annetaan yhtä pitkä määräaika tarjousten valmistelua ja jättämistä varten. Jos määräajasta tarjousten vastaanottamiselle ei päästä sopimukseen, hankintaviranomaisen on asetettava määräaika, joka on vähintään **10** päivää tarjouspyynnön esittämispäivästä.

*Amendment*

4. Keskushallintoa alemmalla tasolla toimivat hankintaviranomaiset voivat asettaa määräajan tarjousten vastaanottamiselle hankintaviranomaisen ja valittujen ehdokkaiden välisellä sopimuksella, jos kaikille ehdokkaille annetaan yhtä pitkä määräaika tarjousten valmistelua ja jättämistä varten. Jos määräajasta tarjousten vastaanottamiselle ei päästä sopimukseen, hankintaviranomaisen on asetettava määräaika, joka on vähintään **15** päivää tarjouspyynnön esittämispäivästä.

Or. fi

**Amendment 714**

**Sari Essayah**

**Proposal for a directive**

**Article 26 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

**5. The time limit for receipt of tenders provided for in paragraph 2 may be reduced by five days where the contracting authority accepts that tenders may be submitted by electronic means in conformity with Article 19(3), (4) and (5).**

**deleted**

Or. en

**Amendment 715**

**Sari Essayah**

**Proposal for a directive**

**Article 26 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

**5a. When the contracting authority makes corrections to the tender documents during the time limits mentioned in paragraphs 1, 2, 3, and 4, there shall be 15 days prolongation of these time limits.**

Or. en

**Amendment 716**

**Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann**

**Proposal for a directive**

**Article 27 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

1. In competitive procedures with negotiation, any economic operator may

1. In competitive procedures with negotiation, any economic operator may

submit a request to participate in response to a call for competition by providing the **requested** information for qualitative selection.

submit a request to participate in response to a call for competition **containing the information set out in Annex VI parts B and C** by providing the information for qualitative selection **that is requested by the contracting authority**.

Or. en

*Justification*

*Streamlining the procurement process.*

**Amendment 717**  
**Heide Rühle**

**Proposal for a directive**  
**Article 27 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

In the contract notice or in the invitation to confirm interest contracting authorities shall describe the procurement and the minimum requirements to be met and specify the award criteria so as to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the negotiations. ***In the technical specifications, contracting authorities shall specify which parts thereof define the minimum requirements.***

*Amendment*

In the contract notice or in the invitation to confirm interest contracting authorities shall describe the procurement and the minimum requirements to be met and specify the ***main award criterion or*** criteria so as to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the negotiations.

Or. en

*Justification*

*This would make the negotiation procedure more restrictive than the open procedure and would decrease the legal certainty.*

**Amendment 718**  
**Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann**

**Proposal for a directive**  
**Article 27 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

In the *contract notice or in the invitation to confirm interest* contracting authorities shall *describe* the *procurement and the* minimum requirements to be met *and specify the award criteria* so as to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the *negotiations. In the technical specifications, contracting authorities shall specify which parts thereof define the the minimum requirements.*

*Amendment*

In the *procurement documents*, contracting authorities shall *indicate which elements define* the minimum requirements to be met. *The indications shall be sufficiently precise* as to enable economic operators to identify the *precise* nature and scope of the procurement and decide whether to request to participate in the *procedure*.

Or. en

*Justification*

*Streamlining the procurement process.*

**Amendment 719**  
**Peter Simon**

**Proposal for a directive**  
**Article 27 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

In der Auftragsbekanntmachung oder der Aufforderung zur Interessensbestätigung beschreiben die öffentlichen Auftraggeber die Auftragsvergabe sowie die einzuhaltenden Mindestanforderungen und spezifizieren die *Zuschlagskriterien*, um die Wirtschaftsteilnehmer in die Lage zu versetzen, Art und Umfang der Auftragsvergabe in Erfahrung zu bringen und darüber zu befinden, ob sie eine Teilnahme an den Verhandlungen beantragen werden. *In den technischen Spezifikationen erläutern die öffentlichen Auftraggeber, welche Teile davon die*

*Amendment*

In der Auftragsbekanntmachung oder der Aufforderung zur Interessensbestätigung beschreiben die öffentlichen Auftraggeber die Auftragsvergabe sowie die einzuhaltenden Mindestanforderungen und spezifizieren die *Hauptzuschlagskriterien*, um die Wirtschaftsteilnehmer in die Lage zu versetzen, Art und Umfang der Auftragsvergabe in Erfahrung zu bringen und darüber zu befinden, ob sie eine Teilnahme an den Verhandlungen beantragen werden.

*Mindestanforderungen festlegen.*

Or. de

**Amendment 720**

**Sabine Verheyen, Birgit Collin-Langen**

**Proposal for a directive**

**Article 27 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

In der Auftragsbekanntmachung oder der Aufforderung zur Interessensbestätigung beschreiben die öffentlichen Auftraggeber die Auftragsvergabe sowie die einzuhaltenden Mindestanforderungen und spezifizieren die Zuschlagskriterien, um die Wirtschaftsteilnehmer in die Lage zu versetzen, Art und Umfang der Auftragsvergabe in Erfahrung zu bringen und darüber zu befinden, ob sie eine Teilnahme an den Verhandlungen beantragen werden. ***In den technischen Spezifikationen erläutern die öffentlichen Auftraggeber, welche Teile davon die Mindestanforderungen festlegen.***

*Amendment*

In der Auftragsbekanntmachung oder der Aufforderung zur Interessensbestätigung beschreiben die öffentlichen Auftraggeber die Auftragsvergabe sowie die einzuhaltenden Mindestanforderungen und spezifizieren die Zuschlagskriterien, um die Wirtschaftsteilnehmer in die Lage zu versetzen, Art und Umfang der Auftragsvergabe in Erfahrung zu bringen und darüber zu befinden, ob sie eine Teilnahme an den Verhandlungen beantragen werden.

Or. de

*Justification*

*Der neu eingeführte Artikel 27 Absatz 1, Unterabsatz 2 sieht Vorgaben für das Verhandlungsverfahren vor, die strenger als die derzeit gültigen sind. Dies wird nicht nur zu einer Verschlechterung in der Auftragsvergabepraxis führen, sondern auch dem übergeordneten Ziel dieses Reformvorschlags, der Vereinfachung und Flexibilisierung der Verfahren, widersprechen. Der Auftraggeber sollte nicht verpflichtet werden, Mindestanforderungen bereits im Vorfeld des Verfahrens auszuweisen.*

**Amendment 721**

**Marian Harkin**

**Proposal for a directive**

**Article 27 – paragraph 1 – subparagraph 2**



*Text proposed by the Commission*

In the contract notice or in the invitation to confirm interest contracting authorities shall describe the procurement and the minimum requirements to be met and specify the award criteria so as to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the negotiations. In the **technical** specifications, contracting authorities shall specify which parts thereof define the the minimum requirements.

*Amendment*

In the contract notice or in the invitation to confirm interest contracting authorities shall describe the procurement and the minimum requirements to be met and specify the award criteria so as to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the negotiations. In the specifications, contracting authorities shall specify which parts thereof define the the minimum requirements.

Or. en

*Justification*

*To ensure quality/best value, especially of design (solutions) and engineering consultancy services, negotiation should not become a bargaining:1 price for original scope should be protected2 need for clarification of how to conduct the negotiation3 minimum requirements cannot be changed*

**Amendment 722**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 27 – paragraph 1 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***In order to promote innovations contracting authorities can call for innovative solutions for problems, instead of defining specific products or services.***

Or. en

**Amendment 723**  
**Heide Rühle**

**Proposal for a directive**  
**Article 27 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

The minimum time limit for receipt of requests to participate shall be **30 days** from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent; the minimum time limit for the receipt of tenders shall be **30 days** from the date on which the invitation is sent. Article 26 (3) to (6) shall apply.

*Amendment*

The minimum time limit for receipt of requests to participate shall be **sufficient** from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent; the minimum time limit for the receipt of tenders shall be **sufficient** from the date on which the invitation is sent. Article 26 (3) to (6) shall apply.

Or. en

**Amendment 724**

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

**Proposal for a directive**  
**Article 27 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

**Die Mindestfrist für** den Eingang der Teilnahmeanträge **beträgt 30 Tage** ab dem Datum, an dem die Auftragsbekanntmachung oder, wenn eine Vorinformation als Aufruf zum Wettbewerb dient, der Aufruf zur Interessensbestätigung übermittelt wird. Die Frist für den Eingang der Angebote **beträgt mindestens 30 Tage, gerechnet** ab dem Tag der Absendung des Aufrufs. Es gilt Artikel 26 Absätze 3 bis 6.

*Amendment*

**Für** den Eingang der Teilnahmeanträge **wird eine ausreichende Frist** ab dem Datum, an dem die Auftragsbekanntmachung oder, wenn eine Vorinformation als Aufruf zum Wettbewerb dient, der Aufruf zur Interessensbestätigung übermittelt wird, **gesetzt**. Die Frist für den Eingang der Angebote **wird** ab dem Tag der Absendung des Aufrufs **gerechnet und muss ausreichend lang sein**. Es gilt Artikel 26 Absätze 3 bis 6.

Or. de

*Justification*

*Die neu eingeführte Mindestfrist von 30 Tagen sollte durch eine „ausreichende Frist“ ersetzt werden, um den öffentlichen Auftraggebern mehr Flexibilität zu geben. Die Frist für den Eingang der Teilnahmeanträge sollte nicht auf eine bestimmte Anzahl von Tagen festgelegt,*

*sondern in das Ermessen der ausschreibenden Stelle gelegt werden. In der Vergangenheit hat sich gezeigt, dass Teilnahmeanträge bei wesentlich kürzeren Fristen ebenso vollständig und korrekt abgegeben wurden.*

**Amendment 725**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 27 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

The minimum time limit for receipt of requests to participate shall be **30** days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent; the minimum time limit for the receipt of tenders shall be 30 days from the date on which the invitation is sent. Article 26 (3) to (6) shall apply.

*Amendment*

The minimum time limit for receipt of requests to participate shall be **35** days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent; the minimum time limit for the receipt of tenders shall be 30 days from the date on which the invitation is sent. Article 26 (3) to (6) shall apply.

Or. en

*Justification*

*The time limit for receipt of requests to participate should be extended to 35 days, which gives candidates enough time to prepare their tender and is still shorter than the current time limit (37 days).*

**Amendment 726**  
**Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann**

**Proposal for a directive**  
**Article 27 – paragraph 2**

*Text proposed by the Commission*

2. Only those economic operators invited by the contracting authority following their assessment of the requested information may submit **a written** tender which shall be the basis for the subsequent negotiations. Contracting authorities may limit the

*Amendment*

2. Only those economic operators invited by the contracting authority following their assessment of the requested information may submit **an initial** tender which shall be the basis for the subsequent negotiations. Contracting authorities may limit the

number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.

number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.

Or. en

*Justification*

*Technical adjustment to ensure use of Electronic Procurement is allowed. This follows the Council's approach on the choice of procedures.*

**Amendment 727**

**Heide Rühle**

**Proposal for a directive**

**Article 27 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

3. Contracting authorities shall negotiate with tenderers the tenders submitted by them to improve the content of the offers in order to better correspond to the award criteria and minimum requirements *referred to in the second subparagraph of paragraph 1.*

*Amendment*

3. Contracting authorities shall negotiate with tenderers the tenders submitted by them to improve the content of the offers in order to better correspond to the award criteria and minimum requirements. ***The negotiation may focus on the legal, technical and financial components of the tender as well as on the variants and the correction of material errors.***

Or. en

**Amendment 728**

**Marc Tarabella**

**Proposal for a directive**

**Article 27 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

3. Les pouvoirs adjudicateurs négocient avec les soumissionnaires les offres que ***ceux-ci*** ont présentées en vue d'améliorer leur contenu afin de les faire mieux correspondre aux critères d'attribution et

*Amendment*

3. Les pouvoirs adjudicateurs négocient avec les soumissionnaires les offres ***et les documents du marché, sous réserve de l'alinéa 2,*** que ont présentées en vue d'améliorer leur contenu afin de les faire

aux exigences minimales visées au paragraphe 1, deuxième alinéa.

mieux correspondre aux critères d'attribution et aux exigences minimales visées au paragraphe 1, deuxième alinéa.

Or. fr

#### **Amendment 729**

**Malcolm Harbour, Edvard Kožušník**

#### **Proposal for a directive**

#### **Article 27 – paragraph 3 – subparagraph 1**

##### *Text proposed by the Commission*

3. **Contracting** authorities shall negotiate with tenderers the tenders submitted by them to improve the content of the offers in order to better *correspond to* the award criteria *and minimum requirements referred to in the second subparagraph of paragraph 1.*

##### *Amendment*

3. **Unless otherwise stipulated in the fourth subparagraph, contracting** authorities shall negotiate with tenderers the *initial and all subsequent* tenders submitted by them, *except for the final tenders within the meaning of paragraph 6,* to improve the content of the offers in order to *ensure that the tenders* better *fulfill* the award criteria *specified in a procurement document.*

Or. en

##### *Justification*

*Streamlining the procurement process.*

#### **Amendment 730**

**Marian Harkin**

#### **Proposal for a directive**

#### **Article 27 – paragraph 3 – subparagraph 1**

##### *Text proposed by the Commission*

3. Contracting authorities shall negotiate with tenderers *the tenders submitted by them to improve* the content of the *offers in order to better correspond* to the *award criteria and* minimum requirements

##### *Amendment*

3. Contracting authorities shall negotiate with *the* tenderers the content of the *tender, subject* to the minimum requirements referred to in the second subparagraph of paragraph 1.

referred to in the second subparagraph of paragraph 1.

Or. en

#### **Amendment 731**

**Malcolm Harbour, Edvard Kožušník**

#### **Proposal for a directive**

#### **Article 27 – paragraph 3 – subparagraph 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

The *following* shall not be *changed in the course of the* negotiations:

The *minimum requirements and the award criteria* shall not be *subject to* negotiations.

Or. en

*Justification*

*Streamlining the procurement process.*

#### **Amendment 732**

**Malcolm Harbour, Edvard Kožušník**

#### **Proposal for a directive**

#### **Article 27 – paragraph 3 – subparagraph 2 – point a**

*Text proposed by the Commission*

*Amendment*

*(a) the description of the procurement;*

*deleted*

Or. en

*Justification*

*Streamlining the procurement process.*

#### **Amendment 733**

**Christel Schaldemose**

**Proposal for a directive**  
**Article 27 – paragraph 3 – subparagraph 2 – point a**

*Text proposed by the Commission*

*Amendment*

**a) *Beskrivelsen af udbuddet*** ***udgår***

Or. da

**Amendment 734**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 27 – paragraph 3 – subparagraph 2 – point a**

*Text proposed by the Commission*

*Amendment*

(a) the description of the procurement;

(a) the ***general*** description of the procurement;

Or. en

**Amendment 735**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 27 – paragraph 3 – subparagraph 2 – point a**

*Text proposed by the Commission*

*Amendment*

(a) ***la description*** du marché;

(a) ***l'objet*** du marché;

Or. fr

**Amendment 736**  
**Heide Rühle**

**Proposal for a directive**  
**Article 27 – paragraph 3 – subparagraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) *the part of the technical specifications*** ***deleted***

*which define the minimum requirements;*

Or. en

**Amendment 737**

**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**

**Article 27 – paragraph 3 – subparagraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) the part of the technical specifications which define the minimum requirements;* **deleted**

Or. en

*Justification*

*Covered by the new proposal on this subparagraph. Streamlining the procurement process.*

**Amendment 738**

**Peter Simon**

**Proposal for a directive**

**Article 27 – paragraph 3 – subparagraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) der Teil der technischen Spezifikationen, der die Mindestanforderungen festlegt;* **entfällt**

Or. de

**Amendment 739**

**Sabine Verheyen, Birgit Collin-Langen**

**Proposal for a directive**

**Article 27 – paragraph 3 – subparagraph 2 – point b**



*Text proposed by the Commission*

*Amendment*

***(b) der Teil der technischen  
Spezifikationen, der die  
Mindestanforderungen festlegt;***

***entfällt***

Or. de

*Justification*

*Neue Verwaltungslasten sollte im Sinne der Vereinfachung und Flexibilisierung des EU-Vergaberechts dringend vermieden werden. Daher ist dieser Zusatz ersatzlos zu streichen.*

**Amendment 740**

**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**

**Article 27 – paragraph 3 – subparagraph 2 – point c**

*Text proposed by the Commission*

*Amendment*

***(c) the award criteria.***

***deleted***

Or. en

*Justification*

*Covered by the new proposal on this subparagraph. Streamlining the procurement process.*

**Amendment 741**

**Heide Rühle**

**Proposal for a directive**

**Article 27 – paragraph 3 – subparagraph 2 – point c**

*Text proposed by the Commission*

*Amendment*

***(c) the award criteria.***

***(c) the **main** award **criterion or** criteria.***

Or. en

**Amendment 742**

**Peter Simon**

**Proposal for a directive**

**Article 27 – paragraph 3 – subparagraph 2 – point c**

*Text proposed by the Commission*

(c) die *Zuschlagskriterien*.

*Amendment*

(c) die *Hauptzuschlagskriterien*.

Or. de

**Amendment 743**

**Sabine Verheyen, Birgit Collin-Langen**

**Proposal for a directive**

**Article 27 – paragraph 3 – subparagraph 2 – point c**

*Text proposed by the Commission*

(c) die *Zuschlagskriterien*.

*Amendment*

(c) die *Hauptzuschlagskriterien*.

Or. de

*Justification*

*Im Dialog mit den Bietern sollten kleine Anpassungen der Auftragsunterlagen möglich sein.*

**Amendment 744**

**Jürgen Creutzmann**

**Proposal for a directive**

**Article 27 – paragraph 3 – subparagraph 2 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

*(ca) the price, where there is no modification of other elements of the tender.*

Or. en

*Justification*

*This is to avoid that negotiations are merely used to lower the price of a product.*

**Amendment 745**

**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**

**Article 27 – paragraph 3 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***Once the deadline for submitting tenders has expired, and before proceeding to their examination, contracting authorities may specify a weighting attached to the subheadings of an award criterion defined in advance in accordance with Article 66(5), provided that:***

***(a) the contract award criteria set out in the contract documents or the contract notice are unaltered;***

***(b) this does not include new elements which would have affected the preparation of the tenders;***

***(c) this does not give rise to discrimination against any one of the tenderers.***

Or. en

*Justification*

*Simplification and streamlining the procurement process.*

**Amendment 746**

**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**

**Article 27 – paragraph 3 – subparagraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***Contracting authorities may award contracts on the basis of initial tenders***

*without negotiation where they have clearly indicated in the contract notice, the invitation to confirm interest or in any other procurement document, that they reserve the right to do so.*

Or. en

*Justification*

*Streamlining the procurement process.*

**Amendment 747**

**Marc Tarabella**

**Proposal for a directive**

**Article 27 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

4. Au cours de la négociation, les pouvoirs adjudicateurs assurent l'égalité de traitement de tous les soumissionnaires. À cette fin, ils ne donnent pas, de manière discriminatoire, d'information susceptible d'avantager certains soumissionnaires par rapport à d'autres. Ils veillent en particulier à ce que tous les soumissionnaires dont les offres n'ont pas été éliminées en vertu du paragraphe 5 soient informés par écrit de tous les changements apportés *aux spécifications techniques, autres que celles qui définissent les exigences minimales*, en temps utile pour permettre à ces soumissionnaires, suite à ces changements, de modifier leurs offres et de les présenter à nouveau s'il y a lieu.

*Amendment*

4. Au cours de la négociation, les pouvoirs adjudicateurs assurent l'égalité de traitement de tous les soumissionnaires. À cette fin, ils ne donnent pas, de manière discriminatoire, d'information susceptible d'avantager certains soumissionnaires par rapport à d'autres. Ils veillent en particulier à ce que tous les soumissionnaires dont les offres n'ont pas été éliminées en vertu du paragraphe 5 soient informés par écrit de tous les changements apportés *en cours de négociation*, en temps utile pour permettre à ces soumissionnaires, suite à ces changements, de modifier leurs offres et de les présenter à nouveau s'il y a lieu.

Or. fr

**Amendment 748**

**Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann**

**Proposal for a directive**  
**Article 27 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

4. During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. They shall take particular care to ensure that all tenderers, whose tenders have not been eliminated pursuant to paragraph 5, are informed in writing of any changes to the technical specifications other than those setting out the minimum requirements, *in adequate time to allow* such tenderers to modify and re-submit amended tenders following these changes, *as appropriate*.

*Amendment*

4. During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. They shall take particular care to ensure that all tenderers, whose tenders have not been eliminated pursuant to paragraph 5, are informed in writing of any changes to the technical specifications *or other procurement documents, other* than those setting out the minimum requirements, *providing sufficient time for* such tenderers to modify and re-submit amended tenders following these changes.

Or. en

*Justification*

*Streamlining the procurement process.*

**Amendment 749**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 27 – paragraph 4 – subparagraph 2**

*Text proposed by the Commission*

*Contracting* authorities shall not reveal to the other participants *solutions proposed or other* confidential information communicated by a candidate participating in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific *solutions or other confidential* information.

*Amendment*

*In accordance with Article 18, contracting* authorities shall not reveal to the other participants confidential information communicated by a candidate participating in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

*Justification**Streamlining the procurement process.***Amendment 750**  
**Cornelis de Jong****Proposal for a directive**  
**Article 27 – paragraph 4 – subparagraph 2***Text proposed by the Commission*

Contracting authorities ***shall not*** reveal to the other participants solutions proposed ***or other*** confidential information communicated by a candidate participating in the negotiations without its agreement. Such agreement shall ***not take the form of a general waiver but shall*** be given with reference to the intended communication of ***specific solutions or*** other confidential information.

*Amendment*

Contracting authorities ***have the possibility, by means of an agreement in the form of a general waiver, to*** reveal to the other participants solutions proposed ***by a candidate participating in the negotiations. Other*** confidential information communicated by a candidate participating in the negotiations, ***shall not be revealed*** without its agreement. Such agreement shall be given with reference to the intended communication of ***this*** other confidential information.

Or. en

**Amendment 751**  
**António Fernando Correia de Campos****Proposal for a directive**  
**Article 27 – paragraph 4 – subparagraph 2***Text proposed by the Commission*

As autoridades adjudicantes não podem revelar aos outros participantes as soluções propostas nem outras informações confidenciais comunicadas por um candidato que participe nas negociações sem o consentimento deste último. ***Esse consentimento não deve ser dado em termos gerais, mas sim referir-se***

*Amendment*

As autoridades adjudicantes não podem revelar aos outros participantes as soluções propostas nem outras informações confidenciais comunicadas por um candidato que participe nas negociações sem o consentimento deste último.

*especificamente à projetada comunicação de soluções concretas ou de outras informações confidenciais.*

Or. pt

**Amendment 752**

**Heide Rühle**

**Proposal for a directive  
Article 27 – paragraph 5**

*Text proposed by the Commission*

5. Competitive procedures with negotiation may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the **award** criteria specified in the contract notice, in the invitation to confirm interest or in the procurement documents. In the contract notice, the invitation to confirm interest or the procurement documents, the contracting authority shall indicate whether it will use this option.

*Amendment*

5. Competitive procedures with negotiation may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the **selection** criteria specified in the contract notice, in the invitation to confirm interest or in the procurement documents. In the contract notice, the invitation to confirm interest or the procurement documents, the contracting authority shall indicate whether it will use this option.

Or. en

**Amendment 753**

**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive  
Article 27 – paragraph 6**

*Text proposed by the Commission*

6. Where the contracting authority intends to conclude the negotiations, it shall inform the remaining tenderers and set a common deadline to submit any new or revised tenders. They shall assess the tenders **as negotiated** on the basis of the initially indicated award criteria and award the contract in accordance with Articles 66 to 69.

*Amendment*

6. Where the contracting authority intends to conclude the negotiations, it shall inform the remaining tenderers and set a common deadline to submit any new or revised tenders. They shall assess the **final** tenders on the basis of the initially indicated award criteria and award the contract in accordance with Articles 66 to 69.

*Justification*

*Streamlining the procurement process.*

**Amendment 754**

**Marc Tarabella**

**Proposal for a directive**

**Article 27 – paragraph 6 a (new)**

*Text proposed by the Commission*

*Amendment*

**6 bis. Il est interdit aux pouvoirs adjudicateurs de négocier exclusivement le prix des offres.**

Or. fr

**Amendment 755**

**Marc Tarabella**

**Proposal for a directive**

**Article 28**

*Text proposed by the Commission*

*Amendment*

**Article 28**

***supprimé***

***Dialogue compétitif***

***1. Dans un dialogue compétitif, tout opérateur économique peut soumettre une demande de participation en réponse à un avis de mise en concurrence en fournissant les informations requises aux fins de la sélection qualitative.***

***Le délai minimal de réception des demandes de participation est de 30 jours à compter de la date de l'envoi de l'avis de marché.***

***Seuls les opérateurs économiques faisant l'objet d'une invitation du pouvoir adjudicateur suite à l'évaluation des***



*informations requises peuvent participer au dialogue. Les pouvoirs adjudicateurs peuvent limiter le nombre de candidats appropriés invités à participer à la procédure, conformément à l'article 64. Le marché est attribué sur la seule base du critère d'attribution à l'offre économiquement la plus avantageuse, conformément à l'article 66, paragraphe 1, point a).*

*2. Les pouvoirs adjudicateurs indiquent leurs besoins et leurs exigences dans l'avis de marché et définissent ces besoins et ces exigences dans l'avis et/ou dans un document descriptif. À cette occasion, et dans les mêmes documents, ils indiquent et définissent également les critères d'attribution retenus.*

*3. Les pouvoirs adjudicateurs ouvrent, avec les candidats sélectionnés conformément aux dispositions pertinentes des articles 54 à 65, un dialogue dont l'objet est l'identification et la définition des moyens propres à satisfaire au mieux leurs besoins. Au cours de ce dialogue, ils peuvent discuter tous les aspects du marché avec les candidats sélectionnés.*

*Au cours du dialogue, les pouvoirs adjudicateurs assurent l'égalité de traitement de tous les soumissionnaires. À cette fin, ils ne donnent pas, de manière discriminatoire, d'information susceptible d'avantager certains soumissionnaires par rapport à d'autres.*

*Les pouvoirs adjudicateurs ne révèlent pas aux autres participants les solutions proposées ou d'autres informations confidentielles communiquées par un candidat participant au dialogue sans l'accord de celui-ci. Cet accord ne constitue pas une dispense générale mais se rapporte à la communication de solutions spécifiques ou d'autres informations confidentielles spécifiques visée en l'espèce.*

**4. Les dialogues compétitifs peuvent se dérouler en phases successives de manière à réduire le nombre de solutions à discuter pendant la phase du dialogue en appliquant les critères d'attribution définis dans l'avis de marché ou dans le document descriptif. Dans l'avis de marché ou le document descriptif, le pouvoir adjudicateur indique s'il sera fait usage de cette possibilité.**

**5. Le pouvoir adjudicateur poursuit le dialogue jusqu'à ce qu'il soit en mesure d'identifier la ou les solutions qui sont susceptibles de répondre à ses besoins.**

**6. Après avoir déclaré la conclusion du dialogue et en avoir informé les participants, les pouvoirs adjudicateurs les invitent à remettre leur offre finale sur la base de la ou des solutions présentées et spécifiées au cours du dialogue. Ces offres comprennent tous les éléments requis et nécessaires pour la réalisation du projet.**

**7. Les pouvoirs adjudicateurs évaluent les offres reçues en fonction des critères d'attribution fixés dans l'avis de marché ou dans le document descriptif.**

**S'il y a lieu, afin de finaliser les engagements financiers ou d'autres termes du marché, le pouvoir adjudicateur peut négocier les termes définitifs du marché avec le soumissionnaire identifié comme ayant remis l'offre économiquement la plus avantageuse conformément à l'article 66, paragraphe 1, point a), à condition que ces négociations n'aient pas pour effet de modifier des aspects essentiels de l'offre ou du marché public, parmi lesquels les besoins et les exigences indiqués dans l'avis de marché ou dans le document descriptif, et ne risquent pas de fausser la concurrence ou d'entraîner des discriminations.**

**8. Les pouvoirs adjudicateurs peuvent prévoir des primes ou des paiements aux**

*participants au dialogue.*

Or. fr

**Amendment 756**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 28 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

The minimum time limit for receipt of requests to participate shall be **30** days from the date on which the contract notice is sent.

*Amendment*

The minimum time limit for receipt of requests to participate shall be **35** days from the date on which the contract notice is sent.

Or. en

*Justification*

*The time limit for receipt of request to participate should be extended to 35 days, which gives candidates enough time to prepare their tender and is still shorter than the current time limit (37 days).*

**Amendment 757**  
**Frank Engel, Konstantinos Poupakis**

**Proposal for a directive**  
**Article 28 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

Seuls les opérateurs économiques faisant l'objet d'une invitation du pouvoir adjudicateur suite à l'évaluation des informations requises peuvent participer au dialogue. Les pouvoirs adjudicateurs **peuvent limiter** le nombre de candidats appropriés invités à participer à la procédure, conformément à l'article 64. **Le marché est attribué sur la seule base du critère d'attribution à l'offre économiquement la plus avantageuse,**

*Amendment*

Seuls les opérateurs économiques faisant l'objet d'une invitation du pouvoir adjudicateur suite à l'évaluation des informations requises peuvent participer au dialogue. Les pouvoirs adjudicateurs **ont la faculté de nommer, en leur sein, un chef de projet afin de garantir le respect de délais raisonnables par un pilotage efficace de chacune des phases du dialogue.** Le nombre de candidats appropriés invités à participer à la

*conformément à l'article 66, paragraphe 1, point a).*

procédure *peut être limité* conformément à l'article 64.

Or. fr

**Amendment 758**  
**Heide Rühle**

**Proposal for a directive**  
**Article 28 – paragraph 2**

*Text proposed by the Commission*

2. Contracting authorities shall set out their needs and requirements in the contract notice and they shall define these needs and requirements in the notice and/or in a descriptive document. At the same time and in the same documents, they shall also set out and define the chosen award criteria.

*Amendment*

2. Contracting authorities shall set out their needs and requirements in the contract notice and they shall define these needs and requirements in the notice and/or in a descriptive document. At the same time and in the same documents, they shall also set out and define the chosen *main award criterion or* criteria.

Or. en

**Amendment 759**  
**Peter Simon**

**Proposal for a directive**  
**Article 28 – paragraph 2**

*Text proposed by the Commission*

2. Die öffentlichen Auftraggeber veröffentlichen eine Auftragsbekanntmachung, in der sie ihre Bedürfnisse und Anforderungen formulieren, die sie in dieser Bekanntmachung und/oder in einer Beschreibung näher erläutern. Gleichzeitig erläutern und definieren sie in denselben Unterlagen die zugrunde gelegten *Auswahlkriterien*.

*Amendment*

2. Die öffentlichen Auftraggeber veröffentlichen eine Auftragsbekanntmachung, in der sie ihre Bedürfnisse und Anforderungen formulieren, die sie in dieser Bekanntmachung und/oder in einer Beschreibung näher erläutern. Gleichzeitig erläutern und definieren sie in denselben Unterlagen die zugrunde gelegten *Hauptauswahlkriterien*.

Or. de

**Amendment 760**  
**Sabine Verheyen, Birgit Collin-Langen**

**Proposal for a directive**  
**Article 28 – paragraph 2**

*Text proposed by the Commission*

2. Die öffentlichen Auftraggeber veröffentlichen eine Auftragsbekanntmachung, in der sie ihre Bedürfnisse und Anforderungen formulieren, die sie in dieser Bekanntmachung und/oder in einer Beschreibung näher erläutern. Gleichzeitig erläutern und definieren sie in denselben Unterlagen die zugrunde gelegten **Auswahlkriterien**.

*Amendment*

2. Die öffentlichen Auftraggeber veröffentlichen eine Auftragsbekanntmachung, in der sie ihre Bedürfnisse und Anforderungen formulieren, die sie in dieser Bekanntmachung und/oder in einer Beschreibung näher erläutern. Gleichzeitig erläutern und definieren sie in denselben Unterlagen die zugrunde gelegten **Hauptauswahlkriterien**.

Or. de

*Justification*

*Im Dialog mit den Bietern sollten kleine Anpassungen der Auftragsunterlagen möglich sein.*

**Amendment 761**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 28 – paragraph 2 - subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Once the deadline for submitting tenders has expired, and before proceeding to their examination, contracting authorities may specify a weighting attached to the subheadings of an award criterion defined in advance in accordance with Article 66(5), provided that:***

***(a) the contract award criteria set out in the contract documents or the contract notice are unaltered;***

*(b) this does not include new elements which would have affected the preparation of the tenders;*

*(c) this does not give rise to discrimination against any one of the tenderers.*

Or. en

*Justification*

*Streamlining the procurement process.*

**Amendment 762**

**Frank Engel, Konstantinos Poupakis**

**Proposal for a directive**

**Article 28 – paragraph 3 – subparagraph 3**

*Text proposed by the Commission*

Les pouvoirs adjudicateurs ne ***révèlent pas*** aux autres participants les solutions proposées ou d'autres informations confidentielles communiquées par un candidat participant au dialogue sans l'accord de celui-ci. Cet accord ne constitue pas une dispense générale mais se rapporte à la communication de solutions spécifiques ou d'autres informations confidentielles spécifiques visée en l'espèce.

*Amendment*

Les pouvoirs adjudicateurs ne ***peuvent en aucun cas révéler*** aux autres participants les solutions proposées ou d'autres informations confidentielles communiquées par un candidat participant au dialogue sans l'accord de celui-ci, ***qui ne peut pas être imposé comme condition de participation à la procédure de dialogue compétitif***. Cet accord ne constitue pas une dispense générale mais se rapporte à la communication de solutions spécifiques ou d'autres informations confidentielles spécifiques visée en l'espèce.

Or. fr

**Amendment 763**

**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**

**Article 28 – paragraph 3 – subparagraph 3**

*Text proposed by the Commission*

**Contracting** authorities shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific ***solutions or other specific confidential*** information.

*Amendment*

***In accordance with Article 18, contracting*** authorities shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

Or. en

*Justification*

*Streamlining the procurement process.*