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*Committee on the Internal Market and Consumer Protection*

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**2011/0438(COD)**

12.7.2012

# **AMENDMENTS 764 - 1061**

**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 764**  
**Cornelis de Jong**

**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*

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 765**  
**Marian Harkin**

**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*

Contracting authorities shall ***behave with utmost good faith and 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 766**  
**Frank Engel, Konstantinos Poupakis**

**Proposal for a directive**  
**Article 28 – paragraph 3 – subparagraph 3 bis (new)**

*Text proposed by the Commission*

*Amendment*

***Tout manquement à l'alinéa 3 du présent paragraphe est de nature à engager la responsabilité du pouvoir adjudicateur.***

Or. fr

**Amendment 767**  
**Heide Rühle**

**Proposal for a directive**  
**Article 28 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

5. The contracting authority ***shall*** continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.

5. The contracting authority ***may either set a limited timeframe for the dialogue, which figures in the contract notice or*** continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.

Or. en

**Amendment 768**  
**Frank Engel**

**Proposal for a directive**  
**Article 28 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

5. Le pouvoir adjudicateur ***poursuit*** le dialogue jusqu'à ce qu'il soit en mesure

5. Le pouvoir adjudicateur ***peut*** :

d'identifier la ou les solutions qui sont susceptibles de répondre à ses besoins.

- soit prévoir une durée limitée du dialogue laquelle figure dans l'avis de marché ;
- soit poursuivre le dialogue jusqu'à ce qu'il soit en mesure d'identifier la ou les solutions qui sont susceptibles de répondre à ses besoins.

Or. fr

#### **Amendment 769**

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

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

**Article 28 – paragraph 6 - subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*These tenders may be clarified, specified and fine-tuned at the request of the contracting authority. However, such clarification, specification, fine-tuning or additional information may not involve changes to the essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document, where variations to those aspects, needs and requirements are likely to distort competition or have a discriminatory effect.*

Or. en

*Justification*

*Streamlining the procurement process.*

#### **Amendment 770**

**Heide Rühle**

**Proposal for a directive**  
**Article 28 – paragraph 7 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*At the request of the contracting authority, the tenderer identified as having submitted the most economically advantageous tender may be asked to clarify aspects of the tender or confirm commitments contained in the tender provided this does not have the effect of modifying substantial aspects of the tender or of the call for tender and does not risk distorting competition or causing discrimination.*

Or. en

**Amendment 771**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 28 – paragraph 7 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*Where necessary, in order to finalise financial commitments or other terms of the contract, the contracting authority may negotiate the final terms of the contract with the tenderer identified as having submitted the most economically advantageous tender in accordance with Article 66(1)(a) provided such negotiations do not have the effect of modifying essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document and does not risk distorting competition or causing discrimination.*

*At the request of the contracting authority, the tenderer identified as having submitted the most economically advantageous tender in accordance with Article 66(1) (a) may be asked to clarify aspects of the tender or confirm commitments contained in the tender provided this does not have the effect of modifying essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document and does not risk distorting competition or causing discrimination.*

Or. en

### *Justification*

*The proposed new wording is dangerous as it introduces the possibility for the contracting authorities to put a pressure on the price towards the tenderer identified as having submitted the most economically advantageous tender. The existing wording of directive 2004/18/EC (art. 29 par. 7) is therefore more appropriate, with slight adaptations to the terminology of the Commission proposal.*

#### **Amendment 772**

**Frank Engel, Anna Maria Corazza Bildt**

#### **Proposal for a directive Article 28 – paragraph 8**

*Text proposed by the Commission*

8. Les pouvoirs adjudicateurs **peuvent prévoir** des primes ou des paiements aux participants au dialogue.

*Amendment*

8. Les pouvoirs adjudicateurs **prévoient** des primes ou des paiements aux participants au dialogue **dans les conditions définies par le marché**.

Or. fr

#### **Amendment 773**

**Marian Harkin**

#### **Proposal for a directive Article 28 – paragraph 8**

*Text proposed by the Commission*

8. The contracting authorities **may** specify prizes or payments to the participants in the dialogue.

*Amendment*

8. The contracting authorities **shall** specify prizes or payments to the participants in the dialogue.

Or. en

#### **Amendment 774**

**Jürgen Creutzmann**

#### **Proposal for a directive Article 28 – paragraph 8**

*Text proposed by the Commission*

*Amendment*

8. The contracting authorities **may** specify prizes or payments to the participants in the dialogue.

8. The contracting authorities **shall** specify prizes or payments to the participants in the dialogue.

Or. en

*Justification*

*Time and cost necessary for participating in negotiated procedures following the submission of the initial tender are difficult/ impossible to estimate correctly. Consequently, the perspective of receiving some compensation for additional efforts is likely to attract contractors who would otherwise prefer to abstain from participation. This is likely to be beneficial for both competition and the quality of the works.*

**Amendment 775**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 29**

*Text proposed by the Commission*

*Amendment*

**Article 29**

**supprimé**

**Partenariat d'innovation**

**1. Dans un partenariat d'innovation, tout opérateur économique peut soumettre une demande de participation en réponse à un avis de marché en vue d'établir un partenariat structuré pour le développement d'un produit, de services ou de travaux innovants et d'acquérir ensuite les fournitures, services ou travaux résultants, à condition qu'ils correspondent aux niveaux de performance et aux coûts convenus.**

**2. Le partenariat est structuré en phases successives qui suivent les étapes du processus de recherche et d'innovation, qui peuvent aller jusqu'au stade de la fabrication du bien ou de la prestation des services. Il prévoit des objectifs**



*intermédiaires que le partenaire doit atteindre, ainsi qu'un paiement selon des tranches appropriées. Sur la base de ces objectifs, le pouvoir adjudicateur peut décider, après chaque phase, de mettre un terme au partenariat et de lancer une nouvelle procédure de passation de marché pour les phases restantes, à condition qu'il ait acquis les droits de propriété intellectuelle correspondants.*

*3. Le marché est attribué conformément aux règles applicables à la procédure concurrentielle avec négociation décrite à l'article 27.*

*Lors de la sélection des candidats, les pouvoirs adjudicateurs portent une attention particulière aux critères relatifs aux capacités et à l'expérience des soumissionnaires dans le domaine de la recherche et du développement et de l'élaboration de solutions innovantes. Ils peuvent limiter le nombre de candidats appropriés invités à participer à la procédure, conformément à l'article 64.*

*Seuls les opérateurs économiques faisant l'objet d'une invitation du pouvoir adjudicateur suite à l'évaluation des informations requises peuvent soumettre des projets de recherche et d'innovation qui visent à répondre aux besoins constatés par le pouvoir adjudicateur et que les solutions existantes ne permettent pas de couvrir. 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).*

*4. La structure du partenariat, et notamment la durée et la valeur de ses différentes phases, tiennent compte du degré d'innovation de la solution proposée et de la séquence des activités de recherche et d'innovation requises pour le développement d'une solution innovante non encore disponible sur le marché. La*

*valeur et la durée d'un marché pour l'achat des fournitures, des services ou des travaux résultants respectent des limites appropriées, compte tenu de la nécessité de recouvrer les coûts, y compris ceux encourus lors du développement d'une solution innovante, et de réaliser des bénéfices adéquats.*

*Les pouvoirs adjudicateurs ne peuvent recourir aux partenariats d'innovation de manière à empêcher, à restreindre ou à fausser la concurrence.*

Or. fr

**Amendment 776**  
**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**  
**Article 29**

*Text proposed by the Commission*

*Amendment*

*Article 29*

*deleted*

*Innovation partnership*

*1. In innovation partnerships, any economic operator may submit a request to participate in response to a contract notice with a view to establishing a structured partnership for the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works provided that they correspond to the agreed performance levels and costs.*

*2. The partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, possibly up to the manufacturing of the supply or the provision of the services. It shall provide for intermediate targets to be attained by the partner and provide for payment of the remuneration in appropriate instalments. Based on*

*those targets, the contracting authority may decide after each stage to terminate the partnership and launch a new procurement procedure for the remaining phases, provided that it has acquired the relevant intellectual property rights.*

*3. The contract shall be awarded in accordance with the rules for a competitive procedure with negotiation set out in Article 27.*

*In selecting candidates, contracting authorities shall pay particular attention to criteria concerning the tenderers' capacity and experience in the field of research and development and of developing innovative solutions. They may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.*

*Only those economic operators invited by the contracting authority following its assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by the contracting authority that cannot be met by existing solutions. The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1)(a).*

*4. The structure of the partnership and, in particular, the duration and value of the different phases shall reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The value and duration of a contract for the purchase of the resulting supply, service or works shall remain within appropriate limits, taking into account the need to recover the costs, including those incurred in developing an innovative solution, and to achieve an adequate*

*profit.*

***Contracting authorities shall not use innovation partnerships in such a way as to prevent, restrict or distort competition.***

Or. en

#### **Amendment 777**

**Malcolm Harbour, Edvard Kožušník, Frank Engel, Jürgen Creutzmann**

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

#### **Article 29 – paragraph 1**

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

1. In innovation partnerships, any economic operator may submit a request to participate in response to a contract notice with a view to establishing a structured partnership for the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works provided that they correspond to the agreed performance levels and costs.

##### *Amendment*

1. In innovation partnerships, any economic operator may submit a request to participate in response to a contract notice with a view to establishing a structured partnership for the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the agreed performance levels and costs. ***The contract setting up the innovation partnership shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1)(a).***

Or. en

##### *Justification*

*Streamlining the procurement process and improving the new innovation partnerships procedure.*

#### **Amendment 778**

**Frank Engel**

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

#### **Article 29 – paragraph 2– subparagraphs 1 a and 1 b (new)**

*Les droits de propriété intellectuelle ne sont concédés que pour permettre au pouvoir adjudicateur d'exploiter le résultat des phases précédentes, conformément à l'objet du partenariat en cas de changement de contractant au cours de la procédure, pour limiter la portée de cette acquisition des droits à l'égard de l'entreprise évincée.*

*Des clauses de propriété intellectuelle doivent définir très clairement les droits et obligations de chacune des parties en présence*

Or. fr

#### Amendment 779

Malcolm Harbour, Edvard Kožušník, Frank Engel

#### Proposal for a directive

#### Article 29 – paragraph 2

*Text proposed by the Commission*

2. The partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, *possibly up to* the manufacturing of the supply or the provision of the services. *It shall provide for* intermediate targets to be attained by the partner and provide for *payment of the* remuneration in appropriate instalments. Based on those targets, the contracting authority may decide after each stage to terminate the partnership and launch a new procurement procedure for the remaining phases, provided that it *has acquired* the *relevant intellectual property rights*.

*Amendment*

2. The partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, *which may include* the manufacturing of the supply, or the provision of the services *or the completion of the works*. *The partnership shall set* intermediate targets to be attained by the partner and provide for remuneration in appropriate instalments. Based on those targets, the contracting authority may decide after each stage to terminate the partnership and launch a new procurement procedure for the remaining phases, provided that *the contracting authority has indicated in the procurement documents under which conditions* it may *make use of this discretion to terminate*

the *partnership*.

Or. en

*Justification*

*Streamlining the procurement process and improving the innovation partnerships procedure.*

**Amendment 780**  
**Marian Harkin**

**Proposal for a directive**  
**Article 29 – paragraph 2**

*Text proposed by the Commission*

2. The partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, possibly up to the manufacturing of the supply or the provision of the services. It shall provide for intermediate targets to be attained by the partner and provide for payment of the remuneration in appropriate instalments. Based on those targets, the contracting authority may decide after each stage to terminate the partnership and launch a new procurement procedure for the remaining phases, ***provided that it has acquired the relevant intellectual property rights.***

*Amendment*

2. The partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, possibly up to the manufacturing of the supply or the provision of the services. It shall provide for intermediate targets to be attained by the partner and provide for payment of the remuneration in appropriate instalments. Based on those targets, the contracting authority may decide after each stage to terminate the partnership and launch a new procurement procedure for the remaining phases.

Or. en

*Justification*

*Clarifications should be given on the way how to manage this new procedure in order to encourage innovation and avoid tailor-made selection1 how to value intellectual property rights? (what will be the scale of the commercial market?)2 too vague definition3 awarding authorities will increasingly engage (expert) private market players instead of making use of in-house departments4 to clarify the definition of the procedure5 with whom will the intellectual property rights rest?*

**Amendment 781**  
**Malcolm Harbour, Edvard Kožušník, Frank Engel**

**Proposal for a directive**  
**Article 29 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. The contract shall be awarded according to this paragraph:***

***In the procurement documents, contracting authorities shall indicate which elements define the minimum requirements to be met. The indications shall be sufficiently precise so as to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the procedure.***

***The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice is sent, or where a prior information notice is used as a means of calling for competition, 30 days from the date on which the invitation to confirm interests is sent. The minimum time limit for the receipt of initial tenders shall be 30 days from the date on which the invitation is sent.***

***Contracting authorities shall negotiate with tenderers the initial and all subsequent tenders submitted, to improve the content to ensure that these tenders better fulfill the the award criteria specified in the procurement documents.***

***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, are informed in writing of any changes to the technical specifications of other procurement***

*documents other than those setting out the minimum requirements, providing sufficient time to allow such tenderers to modify and re-submit amended tenders following these changes.*

*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.*

*The minimum requirements and the award criteria shall not be subject to negotiations.*

*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:*

*-the contract award criteria set out in the contract documents or the contract notice are unaltered;*

*(a) this does not include new elements which would have affected the preparation of the tenders;*

*(b) this does not give rise to discrimination against any one of the tenderers.*

*Innovation partnership procedures 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 in the procurement documents, the contracting authority shall clearly indicate whether it will use this option.*



*Justification*

*Key AM on innovation partnerships tying the procedure to the competitive procedure with negotiation, but allowing for more negotiating possibilities in the case of innovation partnerships, given that these are required for the types of procurement which will fall under the new procedure, which explains why only certain most important parts of Article 27 to ensure transparency and fairness apply.*

**Amendment 782****Marian Harkin****Proposal for a directive****Article 29 – paragraph 3 – subparagraph 1***Text proposed by the Commission**Amendment*

**1. The contract shall be awarded in accordance with the rules for a competitive procedure with negotiation set out in Article 27.**

**deleted****Amendment 783****Malcolm Harbour, Edvard Kožušník, Frank Engel****Proposal for a directive****Article 29 – paragraph 3 – subparagraph 2***Text proposed by the Commission**Amendment*

In selecting candidates, contracting authorities shall pay particular attention to criteria concerning the **tenderers'** capacity **and experience** in the field of research and development and of developing innovative solutions. They may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.

In selecting candidates, contracting authorities shall pay particular attention to criteria concerning the **candidates'** capacity in the field of research and development and of developing innovative solutions. They may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.

*Justification*

*Improvements to the innovation partnerships procedure making it more accessible to innovative SMEs in particular.*

**Amendment 784**

**Malcolm Harbour, Edvard Kožušník, Frank Engel**

**Proposal for a directive**

**Article 29 – paragraph 3 – subparagraph 3**

*Text proposed by the Commission*

Only those economic operators invited by the contracting authority following its assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by the contracting authority that cannot be met by existing solutions. ***The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1)(a).***

*Amendment*

Only those economic operators invited by the contracting authority following its assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by the contracting authority that cannot be met by existing solutions.

Or. en

*Justification*

*Already mentioned in previous AMs on innovation partnerships.*

**Amendment 785**

**Malcolm Harbour, Edvard Kožušník, Frank Engel**

**Proposal for a directive**

**Article 29 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

The structure of the partnership and, in particular, the duration and value of the different phases shall reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of

*Amendment*

The ***contracting authority shall ensure that the*** structure of the partnership and, in particular, the duration and value of the different phases shall reflect the degree of innovation of the proposed solution and the sequence of the research and innovation

an innovative solution not yet available on the market. The value *and duration* of a *contract for the purchase of the resulting supply, service* or works shall *remain within appropriate limits, taking into account the need to recover the costs, including those incurred in developing an innovative solution, and to achieve an adequate profit.*

activities required for the development of an innovative solution not yet available on the market. The *estimated* value of *supplies, services* or works shall *not be disproportionate in relation to the investment required for their development.*

Or. en

#### *Justification*

*This AM ensures that the use of innovation partnerships is appropriate to the core objective behind this new procedure and that they deliver value for money.*

#### **Amendment 786**

**Malcolm Harbour, Edvard Kožušník, Frank Engel**

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

**Article 29 – paragraph 4 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*Contracting authorities shall not use innovation partnerships in such a way as to prevent, restrict or distort competition.*

*deleted*

Or. en

#### *Justification*

*Already covered above in another AM on innovation partnerships.*

#### **Amendment 787**

**Sari Essayah, Sirpa Pietikäinen**

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

**Article 29 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 29 a**

***A service voucher system***

***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

**Amendment 788**

**Marc Tarabella**

**Proposal for a directive**

**Article 30 – paragraph 1**

*Text proposed by the Commission*

1. Les États membres peuvent prévoir la possibilité, pour les pouvoirs adjudicateurs, de passer leurs marchés publics en recourant à une procédure négociée sans

*Amendment*

1. Les États membres peuvent prévoir la possibilité, pour les pouvoirs adjudicateurs, de passer leurs marchés publics en recourant à une procédure négociée sans

publication préalable dans les seuls cas mentionnés aux paragraphes 2 à 5.

publication préalable dans les seuls cas mentionnés aux paragraphes 2 à 5. ***Il est interdit au pouvoir adjudicateur d'utiliser la procédure négociée sans publicité pour négocier exclusivement le prix des prestations.***

Or. fr

**Amendment 789**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 30 – paragraph 1**

*Text proposed by the Commission*

1. Member States may provide that contracting authorities may award public contracts by a negotiated procedure without prior publication ***only in the cases laid down in paragraphs (2) to (5).***

*Amendment*

1. ***In the specific cases and circumstances laid down in paragraphs (2) to (5),*** Member States may provide that contracting authorities may award public contracts by a negotiated procedure without prior publication. ***In any other cases, the use of this procedure is not allowed.***

Or. en

*Justification*

*Streamlining the procurement process.*

**Amendment 790**  
**Raffaele Baldassarre, Lara Comi**

**Proposal for a directive**  
**Article 30 – paragraph 1**

*Text proposed by the Commission*

1. Gli Stati membri possono disporre che le amministrazioni aggiudicatrici possono aggiudicare appalti pubblici con una procedura negoziata senza pubblicazione

*Amendment*

1. Gli Stati membri possono disporre che le amministrazioni aggiudicatrici possono aggiudicare appalti pubblici con una procedura negoziata senza pubblicazione

preventiva soltanto nei casi di cui ai paragrafi da 2 a 5.

preventiva soltanto nei casi di cui ai paragrafi da 2 a 5 *nel caso in cui l'importo dell'appalto sia inferiore a 500.000 euro per gli appalti di lavori e 100.000 euro per gli appalti di servizi*

Or. it

**Amendment 791**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 30 – paragraph 2 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

The negotiated procedure without prior publication may be *foreseen* for public works contracts, public supply contracts and public service contracts in any of the following cases:

*Amendment*

The negotiated procedure without prior publication may be *used* for public works contracts, public supply contracts and public service contracts in any of the following cases:

Or. en

*Justification*

*Streamlining the procurement process.*

**Amendment 792**  
**Heide Rühle**

**Proposal for a directive**  
**Article 30 – paragraph 2 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a *restricted* procedure, provided that the initial conditions of the contract are not substantially altered *and that a report is sent to the Commission or the national oversight body designated according to*

*Amendment*

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure, *a restricted procedure* or a *negotiated procedure with prior publication*, provided that the initial conditions of the contract are not substantially altered.

*Article 84 where they so request.*

Or. en

*Justification*

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

**Amendment 793**

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

**Proposal for a directive**

**Article 30 – paragraph 2 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) wenn im Rahmen eines offenen oder nichtoffenen Verfahrens keine oder keine geeigneten Angebote oder keine Teilnahmeanträge abgegeben worden sind, sofern die ursprünglichen Auftragsbedingungen nicht grundlegend geändert werden **und sofern der Kommission oder der gemäß Artikel 84 benannten nationalen Aufsichtsbehörde auf Anforderung ein Bericht vorgelegt wird;**

*Amendment*

(a) wenn im Rahmen eines offenen oder nichtoffenen Verfahrens keine oder keine geeigneten Angebote oder keine Teilnahmeanträge abgegeben worden sind, sofern die ursprünglichen Auftragsbedingungen nicht grundlegend geändert werden;

Or. de

*Justification*

*Die unklar formulierte Berichtspflicht führt vor allem in Verbindung mit der Tatsache, dass es nur eine einzige nationale Stelle geben soll, zu unnötiger Bürokratie und unverhältnismäßigen Berichtspflichten für die öffentlichen Auftraggeber.*

**Amendment 794**

**Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski, Anna Maria Corazza Bildt**

**Proposal for a directive**

**Article 30 – paragraph 2 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission or the national ***oversight*** body ***designated according to Article 84*** where they so request.

*Amendment*

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission or the ***competent*** national body where they so request.

Or. en

*Justification*

*Proposed amendmet is connected with amendmets proposed to the Article 84*

**Amendment 795**

**Sergio Gaetano Cofferati**

**Proposal for a directive**

**Article 30 – paragraph 2 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) quando in risposta a una procedura aperta o ristretta, non sia pervenuta alcuna offerta o alcuna offerta appropriata o alcuna domanda di partecipazione, purché le condizioni iniziali del contratto non siano ***sostanzialmente*** modificate ***e che venga inviata una relazione alla Commissione o all'organo nazionale di vigilanza di cui all'articolo 84, nel caso in cui essi lo richiedano.***

*Amendment*

(a) quando in risposta a una procedura aperta o ristretta, non sia pervenuta alcuna offerta o alcuna offerta appropriata o alcuna domanda di partecipazione, purché le condizioni iniziali del contratto non siano modificate.

Or. it

**Amendment 796**

**Cornelis de Jong, Mikael Gustafsson**



**Proposal for a directive**  
**Article 30 – paragraph 2 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered ***and that a report is sent to the Commission or the national oversight body designated according to Article 84 where they so request.***

*Amendment*

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered.

Or. en

**Amendment 797**  
**Peter Simon**

**Proposal for a directive**  
**Article 30 – paragraph 2 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) wenn im Rahmen eines offenen oder nichtoffenen Verfahrens keine oder keine geeigneten Angebote oder keine Teilnahmeanträge abgegeben worden sind, sofern die ursprünglichen Auftragsbedingungen nicht grundlegend geändert werden ***und sofern der Kommission oder der gemäß Artikel 84 benannten nationalen Aufsichtsbehörde auf Anforderung ein Bericht vorgelegt wird;***

*Amendment*

(a) wenn im Rahmen eines offenen oder nichtoffenen Verfahrens keine oder keine geeigneten Angebote oder keine Teilnahmeanträge abgegeben worden sind, sofern die ursprünglichen Auftragsbedingungen nicht grundlegend geändert werden;

Or. de

**Amendment 798**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 30 – paragraph 2 – subparagraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission *or the national oversight body designated according to Article 84 where they so request.*

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission.

Or. en

**Amendment 799**

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

**Proposal for a directive**

**Article 30 – paragraph 2 – subparagraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

(b) *where the aim of the procurement is the creation or obtention of a work of art;*

(b) *when for artistic reasons the contract may be awarded only to a particular economic operator;*

Or. en

*Justification*

*Limiting use of the negotiated procedure without prior publication only to work of art seems to be too narrow approach. Public contract in question may not refer to work of art but without a doubt have artistic nature (i.e. artistic performance, concert).*

**Amendment 800**

**Sergio Gaetano Cofferati**

**Proposal for a directive**

**Article 30 – paragraph 2 – subparagraph 1 – point c – point i**

*Text proposed by the Commission*

*Amendment*

*i) assenza di concorrenza per motivi*

*soppresso*

*tecnic*;

Or. it

**Amendment 801**

**Heide Rühle**

**Proposal for a directive**

**Article 30 – paragraph 2 – subparagraph 1 – point c – point i**

*Text proposed by the Commission*

*Amendment*

(i) the absence of competition for technical reasons;

(i) the absence of competition for technical *or legal* reasons;

Or. en

**Amendment 802**

**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**

**Article 30 – paragraph 2 – subparagraph 1 – point c – point i**

*Text proposed by the Commission*

*Amendment*

(i) the absence of competition for technical reasons;

(i) the absence of competition for technical *or legal* reasons;

Or. en

**Amendment 803**

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

**Proposal for a directive**

**Article 30 – paragraph 2 – subparagraph 1 – point c – point i**

*Text proposed by the Commission*

*Amendment*

i) nicht vorhandener Wettbewerb aus technischen Gründen;

i) nicht vorhandener Wettbewerb aus technischen *oder rechtlichen* Gründen;

Or. de

*Justification*

*Durch diese Ergänzung werden auch Fälle abgedeckt, in denen der öffentliche Auftraggeber ein Gebäude an einer ganz bestimmten Stelle benötigt und der Eigentümer nur verkauft, wenn er auch einen Bauauftrag bekommt.*

**Amendment 804**

**Peter Simon**

**Proposal for a directive**

**Article 30 – paragraph 2 – subparagraph 1 – point c – point i**

*Text proposed by the Commission*

*Amendment*

i) nicht vorhandener Wettbewerb aus technischen Gründen;

i) nicht vorhandener Wettbewerb aus **rechtlichen oder** technischen Gründen;

Or. de

**Amendment 805**

**Marc Tarabella**

**Proposal for a directive**

**Article 30 – paragraph 2 – subparagraph 1 – point c – point iii**

*Text proposed by the Commission*

*Amendment*

iii) des raisons liées à la protection de droits exclusifs.

iii) des raisons liées à la protection de droits exclusifs, **dont la priorité d'un site immobilier.**

Or. fr

**Amendment 806**

**Sabine Verheyen, Birgit Collin-Langen**

**Proposal for a directive**

**Article 30 – paragraph 2 – subparagraph 1 – point c – paragraph 1**

*Text proposed by the Commission*

*Amendment*

Diese Ausnahme gilt nur dann, wenn **es keine vernünftige Alternative oder Ersatzlösung gibt und** der mangelnde

Diese Ausnahme gilt nur dann, wenn der mangelnde Wettbewerb nicht das Ergebnis einer künstlichen Einschränkung der

Wettbewerb nicht das Ergebnis einer künstlichen Einschränkung der Auftragsvergabeparameter ist;

Auftragsvergabeparameter ist;

Or. de

**Amendment 807**  
**Evelyne Gebhardt**

**Proposal for a directive**  
**Article 30 – paragraph 2 – subparagraph 1 – point c – paragraph 1**

*Text proposed by the Commission*

*Amendment*

Diese Ausnahme gilt nur dann, wenn *es keine vernünftige Alternative oder Ersatzlösung gibt und* der mangelnde Wettbewerb nicht das Ergebnis einer künstlichen Einschränkung der Auftragsvergabeparameter ist;

Diese Ausnahme gilt nur dann, wenn der mangelnde Wettbewerb nicht das Ergebnis einer künstlichen Einschränkung der Auftragsvergabeparameter ist;

Or. de

**Amendment 808**  
**Heide Rühle**

**Proposal for a directive**  
**Article 30 – paragraph 2 – subparagraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

(d) insofar as is strictly necessary where, for reasons of extreme urgency **brought about by force majeure**, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

(d) insofar as is strictly necessary where, for reasons of extreme urgency **and which has not been foreseeable by the contracting authority**, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

Or. en

## Amendment 809

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

### Proposal for a directive

#### Article 30 – paragraph 2 – subparagraph 1 – point d

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

(d) insofar as is strictly necessary where, for reasons of extreme urgency **brought about by force majeure**, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

##### *Amendment*

(d) insofar as is strictly necessary where, for reasons of extreme urgency, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

Or. en

##### *Justification*

*Extreme urgency should not be limited only force majeure.*

## Amendment 810

Malcolm Harbour, Edvard Kožušník

### Proposal for a directive

#### Article 30 – paragraph 2 – subparagraph 1 – point d

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

(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by **force majeure**, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

##### *Amendment*

(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by **events unforeseeable by the contracting authority**, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

Or. en

*Streamlining the procurement process.*

**Amendment 811**

**Peter Simon**

**Proposal for a directive**

**Article 30 – paragraph 2 – subparagraph 1 – point d**

*Text proposed by the Commission*

(d) soweit dies unbedingt erforderlich ist, wenn äußerst dringende Gründe im Zusammenhang mit Ereignissen **höherer Gewalt** es nicht zulassen, die Fristen einzuhalten, die für die offenen, die nichtoffenen oder die Verhandlungsverfahren vorgeschrieben sind; die angeführten Umstände zur Begründung der äußersten Dringlichkeit dürfen auf keinen Fall den öffentlichen Auftraggebern zuzuschreiben sein.

*Amendment*

(d) soweit dies unbedingt erforderlich ist, wenn äußerst dringende Gründe im Zusammenhang mit **für den öffentlichen Auftraggeber nicht vorhersehbaren** Ereignissen es nicht zulassen, die Fristen einzuhalten, die für die offenen, die nichtoffenen oder die Verhandlungsverfahren vorgeschrieben sind; die angeführten Umstände zur Begründung der äußersten Dringlichkeit dürfen auf keinen Fall den öffentlichen Auftraggebern zuzuschreiben sein.

Or. de

**Amendment 812**

**Marc Tarabella**

**Proposal for a directive**

**Article 30 – paragraph 2 – subparagraph 1 – point d bis (new)**

*Text proposed by the Commission*

*Amendment*

***(d bis) Lorsqu'un opérateur économique prend l'initiative de proposer à un pouvoir adjudicateur un partenariat d'innovation en vue d'établir un partenariat structuré pour le développement d'un produit, de services ou de travaux innovants et d'acquérir ensuite les fournitures, services ou travaux résultants, à condition qu'ils correspondent aux niveaux de performance et aux coûts convenus.***

**Amendment 813**

**Heide Rühle**

**Proposal for a directive**

**Article 30 – paragraph 2 – subparagraph 2 – indent 1**

*Text proposed by the Commission*

– it is irregular or unacceptable, **and**

*Amendment*

– it is irregular or unacceptable, **or**

Or. en

**Amendment 814**

**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**

**Article 30 – paragraph 3 – point b**

*Text proposed by the Commission*

(b) for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the duration of such contracts as well as that of recurrent contracts shall not, as a general rule, exceed **three** years;

*Amendment*

(b) for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the duration of such contracts as well as that of recurrent contracts shall not, as a general rule, exceed **four** years;

Or. en

**Amendment 815**

**Malcolm Harbour, Edvard Kožušník**



**Proposal for a directive**  
**Article 30 – paragraph 4**

*Text proposed by the Commission*

4. The negotiated procedure without prior publication may be *foreseen* for public service contracts, where the contract concerned follows a design contest organised in accordance with this Directive and is to be awarded, under the applicable rules, to the winner or one of the winners of the design contest; in the latter case, all winners must be invited to participate in the negotiations.

*Amendment*

4. The negotiated procedure without prior publication may be *used* for public service contracts, where the contract concerned follows a design contest organised in accordance with this Directive and is to be awarded, under the applicable rules, to the winner or one of the winners of the design contest; in the latter case, all winners must be invited to participate in the negotiations.

Or. en

*Justification*

*The negotiated procedure is a procedure to be used, not just foreseen.*

**Amendment 816**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 30 – paragraph 5 – subparagraph 1**

*Text proposed by the Commission*

The negotiated procedure without prior publication may be *foreseen* for new works or services consisting in the repetition of similar works or services entrusted to the economic operator to which the same contracting authorities awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded according to a procedure in accordance with Article 24(1). The basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded.

*Amendment*

The negotiated procedure without prior publication may be *used* for new works or services consisting in the repetition of similar works or services entrusted to the economic operator to which the same contracting authorities awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded according to a procedure in accordance with Article 24(1). The basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded.

*Justification**ibid.***Amendment 817****Raffaele Baldassarre, Lara Comi****Proposal for a directive****Article 30 – paragraph 5 – subparagraph 1***Text proposed by the Commission*

La procedura negoziata senza pubblicazione preventiva può essere prevista per nuovi **lavori o** servizi consistenti nella ripetizione di **lavori o** servizi analoghi già affidati all'operatore economico aggiudicatario dell'appalto iniziale dalle medesime amministrazioni aggiudicatrici, a condizione che tali **lavori o** servizi siano conformi a un progetto di base e che tale progetto sia stato oggetto di un primo appalto aggiudicato secondo la procedura di cui all'articolo 24, paragrafo 1. Il progetto di base indica l'entità di eventuali **lavori o** servizi complementari e le condizioni alle quali essi verranno aggiudicati.

*Amendment*

La procedura negoziata senza pubblicazione preventiva può essere prevista per nuovi servizi consistenti nella ripetizione di servizi analoghi già affidati all'operatore economico aggiudicatario dell'appalto iniziale dalle medesime amministrazioni aggiudicatrici, a condizione che tali servizi siano conformi a un progetto di base e che tale progetto sia stato oggetto di un primo appalto aggiudicato secondo la procedura di cui all'articolo 24, paragrafo 1. Il progetto di base indica l'entità di eventuali servizi complementari e le condizioni alle quali essi verranno aggiudicati.

Or. it

**Amendment 818****Raffaele Baldassarre, Lara Comi****Proposal for a directive****Article 30 – paragraph 5 – subparagraph 2***Text proposed by the Commission*

La possibilità di valersi di questa procedura è indicata sin dall'avvio del confronto competitivo nella prima operazione e l'importo totale previsto per la

*Amendment*

La possibilità di valersi di questa procedura è indicata sin dall'avvio del confronto competitivo nella prima operazione e l'importo totale previsto per la

prosecuzione *dei lavori o* della prestazione dei servizi è preso in considerazione dalle amministrazioni aggiudicatrici per l'applicazione dell'articolo 4.

prosecuzione della prestazione dei servizi è preso in considerazione dalle amministrazioni aggiudicatrici per l'applicazione dell'articolo 4.

Or. it

#### **Amendment 819**

**Raffaele Baldassarre, Lara Comi**

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

#### **Article 30 – paragraph 5 – subparagraph 3**

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

Il ricorso a questa procedura è limitato al **triennio** successivo alla conclusione dell'appalto iniziale.

##### *Amendment*

Il ricorso a questa procedura è limitato al **biennio** successivo alla conclusione dell'appalto iniziale.

Or. it

#### **Amendment 820**

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

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

#### **Article 30 – paragraph 5 a (new)**

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

##### *Amendment*

**5 a. Öffentliche Auftraggeber können Elemente des offenen Verfahrens mit dem Verhandlungsverfahren kombinieren.**

Or. de

##### *Justification*

*Es sollte die Möglichkeit geben, ein einstufiges Vergabeverfahren durchzuführen. Dies würde dem öffentlichen Auftraggeber mehr Flexibilität geben, der so die Elemente des offenen Verfahrens mit denen des Verhandlungsverfahrens kombinieren könnte. Bei einem solchen einstufigen Verfahren sollte der öffentliche Auftraggeber wie im offenen Verfahren sofort Angebote von Bietern einholen und über diese Angebote verhandeln können.*

**Amendment 821**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 30 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***5 a. The negotiated procedure without prior publication may be used where the contracting authority considers that the contract should be awarded to a public service mutual in order to facilitate:***

***(i) the integration of public sector employees into the private sector; or,***

***(ii) the diversity of suppliers in the market covered by that public contract.***

***This exception only applies where the contract is awarded:***

***(i) to an entity in anticipation that it will become a public service mutual, once the individuals concerned leave their positions of employment in the public sector and the entity begins to supply services; or,***

***(ii) within the period of 3 years beginning with the date on which the public service mutual first begins to supply any services.***

Or. en

**Amendment 822**  
**Sergio Gaetano Cofferati**

**Proposal for a directive**  
**Article 30 – paragraph 5 bis (new)**

*Text proposed by the Commission*

*Amendment*

***5 bis. Se una amministrazione aggiudicatrice decide, ai sensi di questo Articolo, di avvalersi della procedura negoziata senza pubblicazione preventiva, fornisce all'organo di vigilanza di cui all'Articolo 84 una relazione dettagliata in***

*cui giustifica questa scelta ed in cui sono contenuti i documenti di appalto e le informazioni correlate, e, nel caso in cui si voglia ricorrere alla procedura negoziata senza pubblicazione preventiva in base al Paragrafo 2(a), i documenti di appalto della gara precedente.*

Or. it

**Amendment 823**  
**Matteo Salvini, Francesco Enrico Speroni**

**Proposal for a directive**  
**Article 31 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

*The term of a framework agreement shall not exceed four years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.*

*deleted*

Or. en

*Justification*

**Amendment 824**  
**Heide Rühle**

**Proposal for a directive**  
**Article 31 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

The term of a framework agreement shall not exceed **four** years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

The term of a framework agreement shall not exceed **six** years, save in exceptional cases duly justified, in particular by the subject of the framework agreement. ***The term of a framework agreement regarding the maintenance is based on the lifecycle of the work or supply.***

Or. en

*Justification*

*To solve problems like the maintenance contracts of elevators.*

**Amendment 825**

**Frank Engel, Constance Le Grip**

**Proposal for a directive**

**Article 31 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

La durée d'un accord-cadre ne dépasse pas quatre ans, sauf *dans* des *cas exceptionnels dûment justifiés, notamment* par l'objet de l'accord-cadre.

*Amendment*

La durée d'un accord-cadre ne dépasse pas quatre ans, sauf *s'il a pour objet des prestations d'une durée supérieure à 4 ans ou si un tel dépassement est justifié par la nécessité pour les opérateurs économiques de procéder à des investissements dont la durée d'amortissement est supérieure à 4 ans ou qui sont liés à l'embauche de personnel apte à effectuer les prestations ou à la formation de leur personnel afin de permettre d'effectuer les prestations.*

Or. fr

**Amendment 826**

**Vicente Miguel Garcés Ramón**

**Proposal for a directive**

**Article 31 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

La duración de un acuerdo marco no superará los *cuatro* años, *salvo* en casos excepcionales *debidamente justificados*, en particular por el objeto del acuerdo marco.

*Amendment*

La duración de un acuerdo marco no superará los *dos* años, *pudiendo llegar a cuatro años con la debida justificación o a un plazo superior* en casos excepcionales *debidamente justificados*, en particular por el objeto del acuerdo marco.

Or. es

**Amendment 827**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 31 – paragraph 1 – subparagraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

*In framework agreements on services the term of the framework agreement may exceed four years when the best interest of the end user, the nature of investment or the other aspects of the nature of the service so requires.*

Or. en

**Amendment 828**  
**Matteo Salvini, Francesco Enrico Speroni**

**Proposal for a directive**  
**Article 31 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in this paragraph and paragraphs 3 and 4.**

*deleted*

*Those procedures may be applied only between those contracting authorities clearly identified for this purpose in the call for competition or the invitation to confirm interest and those economic operators originally party to the framework agreement.*

*Contracts based on a framework agreement may under no circumstances make substantial modifications to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 3.*

*Contracting authorities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort*

*competition.*

Or. en

*Justification*

**Amendment 829**  
**Othmar Karas**

**Proposal for a directive**  
**Article 31 – paragraph 2 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***Eine Erweiterung des Kreises der öffentlichen Auftraggeber die eine Rahmenvereinbarung nutzen können ist ausnahmsweise dann zulässig, wenn die folgenden Bedingungen erfüllt sind:***

***(a) die Rahmenvereinbarung von einer zentralen Beschaffungsstelle abgeschlossen wurde;***

***(b) die Möglichkeit der Erweiterung in der ursprünglichen Bekanntmachung ausdrücklich vorgesehen war;***

***(c) der Rahmen für die Erweiterung anhand klarer Kriterien bestimmbar ist und***

***(d) die Erweiterung einvernehmlich erfolgt ist.***

Or. de

**Amendment 830**  
**Vicente Miguel Garcés Ramón**

**Proposal for a directive**  
**Article 31 – paragraph 2 – subparagraph 4**



*Text proposed by the Commission*

Los poderes adjudicadores no utilizarán los acuerdos marco de forma abusiva o de manera que la competencia se vea obstaculizada, restringida o falseada.

*Amendment*

Los poderes adjudicadores no utilizarán los acuerdos marco de forma abusiva o de manera que la competencia se vea obstaculizada, restringida o falseada ***debiendo justificar las cláusulas introducidas en los pliegos que hacen referencia a estas premisas dejando claras sus interpretaciones.***

Or. es

**Amendment 831**

**Pablo Arias Echeverría**

**Proposal for a directive**

**Article 31 – paragraph 2 – subparagraph 4**

*Text proposed by the Commission*

Los poderes adjudicadores no utilizarán los acuerdos marco de forma abusiva o de manera que la competencia se vea obstaculizada, restringida o falseada.

*Amendment*

Los poderes adjudicadores no utilizarán los acuerdos marco de forma abusiva o de manera que la competencia se vea obstaculizada, restringida o falseada, ***debiendo justificar las cláusulas introducidas en los pliegos que hacen referencia a estas premisas dejando claras sus interpretaciones.***

Or. es

**Amendment 832**

**Matteo Salvini, Francesco Enrico Speroni**

**Proposal for a directive**

**Article 31 – paragraph 3**

*Text proposed by the Commission*

***3. Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the***

*Amendment*

***deleted***

*limits of the terms laid down in the framework agreement.*

*For the award of those contracts, contracting authorities may consult the operator party to the framework agreement in writing, requesting it to supplement its tender as necessary.*

Or. en

### **Amendment 833**

**Matteo Salvini, Francesco Enrico Speroni**

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

#### **Article 31 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. Where a framework agreement is concluded with more than one economic operator, it may be performed in one of the two following ways:**

**deleted**

**(a) following the terms and conditions of the framework agreement, without reopening competition, where it sets out all the terms governing the provision of the works, services and supplies concerned and the objective conditions for determining which of the economic operators, party to the framework agreement, shall perform them; the latter conditions shall be indicated in the procurement documents;**

**(b) where not all the terms governing the provision of the works, services and supplies are laid down in the framework agreement, through reopening competition amongst the economic operators parties to the framework agreement.**

Or. en

**Amendment 834**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 31 – paragraph 4 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

*(aa) partly without reopening of competition in accordance with point (a) where the framework agreement sets out all the terms governing the provision of the works, services and supplies concerned; and partly with reopening of competition amongst the economic operators parties to the framework agreement in accordance with point (b), regardless of whether the framework agreement sets out all the terms governing the provision of the works, services and supplies concerned.*

*A framework agreement may be performed in accordance with this point only where this possibility has been stipulated by the contracting authority in the procurement documents. Where all the terms governing their provision are set out in the framework agreement, the choice of whether specific works, supplies or services shall be acquired following a reopening of competition or directly on the terms set out in the framework agreement, shall be made pursuant to objective criteria, which shall be set out in the specifications of the framework agreement. The specifications of the framework agreement shall also specify which terms may be subject to reopening of competition.*

Or. en

*Justification*

*This Amendment is a necessary adaptation to the rules for frameworks to ensure innovative contracting authorities' existing arrangements are not adversely affected.*

**Amendment 835**  
**Matteo Salvini, Francesco Enrico Speroni**

**Proposal for a directive**  
**Article 31 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

**5. The competition referred to in paragraph (4)(b) shall be based on the same terms as applied for the award of the framework agreement and, where necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the specifications of the framework agreement, in accordance with the following procedure:**

*deleted*

**(a) for every contract to be awarded, contracting authorities shall consult in writing the economic operators capable of performing the contract;**

**(b) contracting authorities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in tenders;**

**(c) tenders shall be submitted in writing, and their content shall not be opened until the stipulated time limit for reply has expired;**

**(d) contracting authorities shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.**

Or. en

**Amendment 836**  
**Vicente Miguel Garcés Ramón**

**Proposal for a directive**  
**Article 31 – paragraph 5 – point b**

*Text proposed by the Commission*

(b) los poderes adjudicadores fijarán un plazo suficiente para presentar las ofertas relativas a cada contrato específico teniendo en cuenta factores como la complejidad del objeto del contrato y el tiempo necesario para el envío de la oferta;

*Amendment*

(b) los poderes adjudicadores fijarán un plazo suficiente para presentar las ofertas relativas a cada contrato específico teniendo en cuenta factores como la complejidad del objeto del contrato y el tiempo necesario para el envío de la oferta.  
***El plazo deberá ser superior a quince días hábiles si es necesario visitar distintas instalaciones para presentar las ofertas;***

Or. es

**Amendment 837**  
**Pablo Arias Echeverría**

**Proposal for a directive**  
**Article 31 – paragraph 5 – point b**

*Text proposed by the Commission*

(b) los poderes adjudicadores fijarán un plazo suficiente para presentar las ofertas relativas a cada contrato específico teniendo en cuenta factores como la complejidad del objeto del contrato y el tiempo necesario para el envío de la oferta;

*Amendment*

(b) los poderes adjudicadores fijarán un plazo suficiente para presentar las ofertas relativas a cada contrato específico teniendo en cuenta factores como la complejidad del objeto del contrato y el tiempo necesario para el envío de la oferta.  
***El plazo deberá ser superior a quince días hábiles si es necesario visitar distintas instalaciones para presentar las ofertas.***

Or. es

**Amendment 838**  
**Vicente Miguel Garcés Ramón**

**Proposal for a directive**  
**Article 31 – paragraph 5 – point d bis (new)**

*Text proposed by the Commission*

*Amendment*

*(d bis) Los poderes adjudicadores tendrán en cuenta el cumplimiento de la legislación laboral para las licitaciones de servicios en que exista subrogación de personal y destinadas a empresas de los sectores económicos considerados de mano de obra intensiva y de poco valor agregado, considerando ofertas anormales o desproporcionadas todas aquellas en que el precio de la oferta sea menor a los costes laborales y los inherentes a los mismos que determinen los convenios colectivos o a los mínimos establecidos por la ley laboral según corresponda.*

Or. es

**Amendment 839**

**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**

**Article 31 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

*5 a. Contracting authorities have the possibility to add new economic operators to the framework agreement during the term of the contract, provided that these economic operators meet all the criteria set in this article, and did not exist yet at the time of the conclusion of the agreement.*

*Contracting authorities have the possibility to remove economic operators from the framework agreement during the term of the contract, where the economic operator has shown significant or persistent deficiencies in the performance of any substantive requirement under the agreement.*

**Amendment 840****Othmar Karas****Proposal for a directive****Article 32 – paragraph 1***Text proposed by the Commission*

1. Für Beschaffungen von marktüblichen **Waren** bzw. **Leistungen**, bei denen die allgemein auf dem Markt verfügbaren Merkmale den Anforderungen der öffentlichen Auftraggeber genügen, können letztere auf ein dynamisches Beschaffungssystem zurückgreifen. Beim dynamischen Beschaffungssystem handelt es sich um ein vollelektronisches Verfahren, das jedem Wirtschaftsteilnehmer offen steht, der die Eignungskriterien erfüllt.

*Amendment*

1. Für Beschaffungen von marktüblichen **Standardgütern** bzw. **Dienstleistungen**, bei denen die allgemein auf dem Markt verfügbaren Merkmale den Anforderungen der öffentlichen Auftraggeber genügen, können letztere auf ein dynamisches Beschaffungssystem zurückgreifen. Beim dynamischen Beschaffungssystem handelt es sich um ein vollelektronisches Verfahren, das jedem Wirtschaftsteilnehmer offen steht, der die Eignungskriterien erfüllt.

**Amendment 841****Cornelis de Jong****Proposal for a directive****Article 32 – paragraph 1***Text proposed by the Commission*

1. For commonly used purchases the characteristics of which, as generally available on the market, meet the requirements of the contracting authorities, contracting authorities may use a dynamic purchasing system. The dynamic purchasing system shall be operated as a completely electronic process, open throughout its validity to any economic operator that satisfies the selection criteria.

*Amendment*

1. For commonly used purchases the characteristics of which, as generally available on the market **and at a more or less standardised quality**, meet the requirements of the contracting authorities, contracting authorities may use a dynamic purchasing system. **This system cannot be used for the purchase of services and complex or non standardised products.** The dynamic purchasing system shall be operated as a completely electronic process, open throughout its validity to any

economic operator that satisfies the selection criteria.

Or. en

**Amendment 842**  
**Othmar Karas**

**Proposal for a directive**  
**Article 32 – paragraph 2**

*Text proposed by the Commission*

2. Bei der Auftragsvergabe über ein dynamisches Beschaffungssystem befolgen die öffentlichen Auftraggeber die Vorschriften für das nichtoffene Verfahren. Alle Bewerber, die die Auswahlkriterien erfüllen, werden zum System zugelassen. Die Zahl der zum System zugelassenen Bewerber darf nicht nach Artikel 64 begrenzt werden. Die gesamte Kommunikation im Zusammenhang mit dem dynamischen Beschaffungssystem erfolgt elektronisch im Sinne der Artikel 19 Absätze 2 bis 6.

*Amendment*

2. Bei der Auftragsvergabe über ein dynamisches Beschaffungssystem befolgen die öffentlichen Auftraggeber **grundsätzlich** die Vorschriften für das nichtoffene Verfahren. Alle Bewerber, die die Auswahlkriterien erfüllen, werden zum System zugelassen. Die Zahl der zum System zugelassenen Bewerber darf nicht nach Artikel 64 begrenzt werden. Die gesamte Kommunikation im Zusammenhang mit dem dynamischen Beschaffungssystem erfolgt elektronisch im Sinne der Artikel 19 Absätze 2 bis 6.

Or. de

**Amendment 843**  
**Othmar Karas**

**Proposal for a directive**  
**Article 32 – paragraph 3 – point a**

*Text proposed by the Commission*

(a) sie veröffentlichen einen Aufruf zum Wettbewerb, in dem sie **präzisieren, dass es sich um ein dynamisches Beschaffungssystem handelt**;

*Amendment*

(a) sie veröffentlichen einen Aufruf zum Wettbewerb, in dem sie **das dynamische Beschaffungssystem darstellen und den Verfahrensablauf beschreiben**;

Or. de



## Amendment 844

Othmar Karas

### Proposal for a directive

#### Article 32 – paragraph 3 – point b

*Text proposed by the Commission*

(b) in den **Spezifikationen geben** sie mindestens die Art und geschätzte Quantität der geplanten Beschaffungen an, sowie alle erforderlichen Informationen betreffend das Beschaffungssystem, die verwendete elektronische Ausrüstung und die technischen Vorkehrungen und Spezifikationen der Verbindung;

*Amendment*

(b) in den **Bedingungen des Dynamischen Beschaffungssystem geb** sie mindestens die Art und geschätzte Quantität der geplanten Beschaffungen an, sowie alle erforderlichen Informationen betreffend das Beschaffungssystem, die verwendete elektronische Ausrüstung und die technischen Vorkehrungen und Spezifikationen der Verbindung;

Or. de

## Amendment 845

Othmar Karas

### Proposal for a directive

#### Article 32 – paragraph 4 – subparagraph 1

*Text proposed by the Commission*

Die öffentlichen Auftraggeber räumen während der gesamten Dauer des dynamischen Beschaffungssystems jedem Wirtschaftsteilnehmer die Möglichkeit ein, die Teilnahme am System unter den in Absatz 2 genannten Bedingungen zu beantragen. Die öffentlichen Auftraggeber bringen ihre Bewertung derartiger Anträge auf der Grundlage der Bewertungskriterien innerhalb von **10 Arbeitstagen** nach deren Eingang zum Abschluss.

*Amendment*

Die öffentlichen Auftraggeber räumen während der gesamten Dauer des dynamischen Beschaffungssystems jedem Wirtschaftsteilnehmer die Möglichkeit ein, die Teilnahme am System unter den in Absatz 2 genannten Bedingungen zu beantragen. Die öffentlichen Auftraggeber bringen ihre Bewertung derartiger Anträge auf der Grundlage der Bewertungskriterien innerhalb von **21 Kalendertagen oder einer vom Arbeitgeber festgelegten angemessenen Frist** nach deren Eingang zum Abschluss.

Or. de

**Amendment 846**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 32 – paragraph 6 – introductory part**

*Text proposed by the Commission*

6. De aanbestedende diensten vermelden de looptijd van het dynamisch aankoopstelsel in de oproep tot mededinging. **Zij brengen de Commissie op de hoogte van elke verandering in looptijd, met gebruik van de volgende standaardformulieren:**

*Amendment*

6. De aanbestedende diensten vermelden de looptijd van het dynamisch aankoopstelsel in de oproep tot mededinging.

Or. nl

*Justification*

*De Europese Commissie introduceert rapportageverplichtingen die zorgen voor administratieve lasten voor aanbestedende diensten en leiden tot gedetailleerde regelgeving.*

**Amendment 847**  
**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**  
**Article 32 – paragraph 6 – introductory part**

*Text proposed by the Commission*

6. Contracting authorities shall indicate the duration of the dynamic purchasing system in the call for competition. **They shall notify the Commission of any change in duration, using the following standard forms:**

*Amendment*

6. Contracting authorities shall indicate the duration of the dynamic purchasing system in the call for competition.

Or. en

**Amendment 848**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 32 – paragraph 6 – point a**

*Text proposed by the Commission*

*Amendment*

*(a) wanneer de looptijd wordt gewijzigd zonder dat het systeem wordt beëindigd, het formulier dat aanvankelijk is gebruikt voor de oproep tot mededinging voor het dynamisch aankoopstelsel;*

*Schrappen*

Or. nl

**Amendment 849**  
**Cornelis de Jong**

**Proposal for a directive**  
**Article 32 – paragraph 6 – point a**

*Text proposed by the Commission*

*Amendment*

*(a) where the duration is changed without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;*

*deleted*

Or. en

**Amendment 850**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 32 – paragraph 6 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) wanneer het systeem wordt beëindigd, een aankondiging van gegunde opdracht als bedoeld in artikel 48.*

*Schrappen*

Or. nl

**Amendment 851**  
**Cornelis de Jong**

**Proposal for a directive**  
**Article 32 – paragraph 6 – point b**

*Text proposed by the Commission*

*(b) where the system is terminated, a contract award notice referred to in Article 48.*

*Amendment*

*deleted*

Or. en

**Amendment 852**  
**Othmar Karas**

**Proposal for a directive**  
**Article 32 – paragraph 7**

*Text proposed by the Commission*

7. Den betreffenden Wirtschaftsteilnehmern oder den am dynamischen Beschaffungssystem teilnehmenden Parteien dürfen keine Bearbeitungsgebühren in Rechnung gestellt werden.

*Amendment*

7. Den betreffenden Wirtschaftsteilnehmern oder den am dynamischen Beschaffungssystem teilnehmenden Parteien dürfen *während des Vergabeverfahrens* keine Bearbeitungsgebühren in Rechnung gestellt werden.

Or. de

**Amendment 853**  
**Heide Rühle**

**Proposal for a directive**  
**Article 33 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Contracting* authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

*Amendment*

*Only for standardised services and supplies, contracting* authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are

presented.

Or. en

#### **Amendment 854**

**Barbara Weiler**

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

#### **Article 33 – paragraph 1 – subparagraph 1**

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

Die öffentlichen Auftraggeber können auf elektronische Auktionen zurückgreifen, bei denen neue, nach unten revidierte Preise und/ oder neue, auf bestimmte Komponenten der Angebote abstellende Werte vorgelegt werden.

##### *Amendment*

Die öffentlichen Auftraggeber können auf elektronische Auktionen zurückgreifen, bei denen neue, nach unten revidierte Preise und/ oder neue, auf bestimmte Komponenten der Angebote abstellende Werte vorgelegt werden. ***Der Anwendungsbereich der elektronischen Auktion ist auf voll standardisierte Liefer- und Dienstleistungen beschränkt.***

Or. de

#### **Amendment 855**

**Sirpa Pietikäinen**

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

#### **Article 33 – paragraph 1 – subparagraph 1**

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

Contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

##### *Amendment*

Contracting authorities may use electronic auctions ***for standardised goods***, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

Or. en

#### **Amendment 856**

**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**  
**Article 33 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

*Amendment*

Contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented. ***Electronic auctions can only be used for commonly used purchases of goods that are generally available on the market at a more or less standardised quality. They cannot be used for the purchase of services or complex or non standardised products.***

Or. en

**Amendment 857**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 33 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Les pouvoirs adjudicateurs peuvent recourir à des enchères électroniques où sont présentés de nouveaux prix, révisés à la baisse, et/ou de nouvelles valeurs portant sur certains éléments des offres.

*Amendment*

Les pouvoirs adjudicateurs peuvent recourir à des enchères électroniques ***seulement pour l'achat des biens standardisées***, où sont présentés de nouveaux prix, révisés à la baisse, et/ou de nouvelles valeurs portant sur certains éléments des offres.

Or. fr

**Amendment 858**  
**Andreas Schwab, Frank Engel, Birgit Collin-Langen, Sabine Verheyen, Jürgen Creutzmann**

**Proposal for a directive**  
**Article 33 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Die öffentlichen Auftraggeber können auf elektronische Auktionen zurückgreifen, bei denen neue, nach unten revidierte Preise und/ oder neue, auf bestimmte Komponenten der Angebote abstellende Werte vorgelegt werden.

*Amendment*

Die öffentlichen Auftraggeber können **für voll standardisierte Liefer- und Dienstleistungen** auf elektronische Auktionen zurückgreifen, bei denen neue, nach unten revidierte Preise und/ oder neue, auf bestimmte Komponenten der Angebote abstellende Werte vorgelegt werden.

Or. de

*Justification*

*Elektronische Auktionen können für voll standardisierte Liefer- und Dienstleistungen sinnvoll, in komplexen Vergaben dagegen in aller Regel ungeeignet oder gar kontraproduktiv sein. Für Bauvergaben sind sie strukturell nicht geeignet.*

**Amendment 859**

**Mitro Repo**

**Proposal for a directive**

**Article 33 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

*Amendment*

Contracting authorities may use electronic auctions **for standardised goods**, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

Or. en

**Amendment 860**

**Raffaele Baldassarre, Lara Comi**

**Proposal for a directive**

**Article 33 – paragraph 1 – subparagraph 2 – point a (new)**

*Text proposed by the Commission*

*Amendment*

**(a) Questo articolo non si applica ai contratti pubblici di lavori e agli affidamenti di servizi di architettura ed ingegneria**

Or. it

**Amendment 861**

**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**

**Article 33 – paragraph 6 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

**Where the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied by the outcome of a full evaluation of the relevant tenderer, carried out in accordance with the weighting provided for in the first subparagraph of Article 66(5).**

**The invitation shall be accompanied by the outcome of a full evaluation of the relevant tenderer, carried out in accordance with the weighting provided for in the first subparagraph of Article 66(5).**

Or. en

**Amendment 862**

**Lara Comi, Raffaele Baldassarre**

**Proposal for a directive**

**Article 34 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

Gli Stati membri possono **rendere obbligatorio** l'uso di cataloghi elettronici per **alcuni tipi** di appalti.

Gli Stati membri possono **prevedere** l'uso di cataloghi elettronici per **gli appalti di servizi e forniture. Questo articolo non si applica agli appalti pubblici di lavori e agli affidamenti di servizi di architettura e ingegneria.**

Or. it



**Amendment 863**

**Toine Manders**

**Proposal for a directive**

**Article 34 bis (new)**

*Text proposed by the Commission*

*Amendment*

**Article 34 bis**

*Centrale website elektronisch aanbesteden*  
*Aanbestedende diensten kunnen in het kader van de transparantie de uitgevoerde werken e.d. publiceren op een daartoe centraal ingestelde website, met specificaties in bedragen, hoeveelheden en dergelijke, zodat andere aanbestedende diensten kunnen vergelijken wat voor vergelijkbare werken e.d. is betaald en daarop hun uit te schrijven opdrachten kunnen baseren, waardoor kostenbesparingen kunnen ontstaan en grote afwijkingen tussen prijzen van opdrachten inzichtelijk worden, zodat eventuele fraude eenvoudiger kan worden opgespoord.*

Or. nl

**Amendment 864**

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

**Proposal for a directive**

**Article 35 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. **Contracting** authorities may purchase works, supplies and/or services from or through a central purchasing body.

1. **Member States may stipulate that contracting** authorities may purchase works, supplies and/or services from or through a central purchasing body.

Or. en

## *Justification*

*Member States should have a possibility to allow contracting authorities use services of central purchasing body, but they should not be obligated to do so. Central purchasing is one of the procurement method that leads to aggregation of demand which could be unfavourable for SMEs. Thus, Member States should be allowed to decide whether to develop centralised procurement methods or not, depending on their national policy.*

### **Amendment 865**

**Raffaele Baldassarre, Lara Comi**

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

#### **Article 35 – paragraph 1**

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

1. Le amministrazioni aggiudicatrici possono acquistare lavori, forniture e/o servizi facendo ricorso ad una centrale di committenza.

##### *Amendment*

1. Le amministrazioni aggiudicatrici possono acquistare lavori, forniture e/o servizi facendo ricorso ad una centrale di committenza. ***Gli Stati membri incoraggiano il ricorso a aste appaltanti centralizzate particolarmente nel caso di committenti di limitate dimensioni***

Or. it

### **Amendment 866**

**Sirpa Pietikäinen**

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

#### **Article 35 – paragraph 1**

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

1. Contracting authorities may purchase works, supplies and/or services from or through a central purchasing body.

##### *Amendment*

1. Contracting authorities may purchase works, supplies and/or services from or through a central purchasing body, ***provided that the aggregation of tenders to a bigger lots do not prevent genuine competition and do not enable the emergence of oligo- and monopolies or de facto prevent end users' right to have a choice. Central purchasing body has to ensure that in all of its activities it will;***

*1) detect and prevent contracts with a risk of advancing monopolistic and oligopolistic structures and markets;*

*2) prevent factually and effectively procurement contracts and processes that undermine SMEs' and local businesses' possibilities to participate and win the contracts*

*3) not prevent the end users' right to have a choice and to be heard*

Or. en

**Amendment 867**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 35 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

*2. Member States shall provide for the possibility for contracting authorities to have recourse to centralised purchasing activities offered by central purchasing bodies established in another Member State.*

*deleted*

Or. en

**Amendment 868**  
**Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafał Trzaskowski**

**Proposal for a directive**  
**Article 35 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Member States *shall* provide for the possibility for contracting authorities to have recourse to centralised purchasing activities offered by central purchasing bodies established in another Member State.

2. Member States *may also* provide for the possibility for contracting authorities to have recourse to centralised purchasing activities offered by central purchasing bodies established in another Member State.

*Justification*

*Member States should have a possibility to allow contracting authorities use services of central purchasing body established in another Member State, but they should not be obligated to do so. In some Member States option provided for in art. 35.2 of the Commission's proposal may cause problems in national legislation (i.e. it could not be possible for contracting authorities to be subject of legal provisions of other Member State, in particular with regard to regulations governing review procedures).*

**Amendment 869**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 35 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

Un pouvoir adjudicateur se conforme aux obligations qui lui incombent en vertu de la présente directive lorsqu'il passe des marchés en recourant à des activités d'achat centralisées, à condition que l'ensemble des phases des procédures de passation de marché concernées et leur exécution soient menées par la centrale d'achat *seule*, depuis la publication de l'avis de mise en concurrence jusqu'à la fin de l'exécution du ou des marchés qui en résultent.

*Amendment*

Un pouvoir adjudicateur se conforme aux obligations qui lui incombent en vertu de la présente directive lorsqu'il passe des marchés en recourant à des activités d'achat centralisées, à condition que l'ensemble des phases des procédures de passation de marché concernées et leur exécution soient menées par la centrale d'achat, depuis la publication de l'avis de mise en concurrence jusqu'à la fin de l'exécution du ou des marchés qui en résultent.

Or. fr

**Amendment 870**  
**Heide Rühle**

**Proposal for a directive**  
**Article 36**

*Text proposed by the Commission*

**Article 36**  
***Ancillary purchasing activities***

*Amendment****deleted***

*The providers of ancillary purchasing activities shall be chosen in accordance with the procurement procedures set out in this Directive.*

Or. en

**Amendment 871**  
**Heide Rühle**

**Proposal for a directive**  
**Article 37 – paragraph 1**

*Text proposed by the Commission*

1. **One** or more contracting authorities may agree to perform certain specific procurements jointly.

*Amendment*

1. **Two** or more contracting authorities may agree to perform certain specific procurements jointly.

Or. en

**Amendment 872**  
**Heide Rühle**

**Proposal for a directive**  
**Article 37 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

Where **one contracting authority alone conducts** the procurement **procedures concerned in all its stages from the publication of the call for competition to the end of the performance of the ensuing contract or contracts, that contracting authority shall have sole responsibility** for fulfilling the obligations pursuant to this Directive.

*Amendment*

Where the **conduct of a procurement procedure in its entirety is carried out jointly by the contracting authorities concerned, they shall be jointly responsible** for fulfilling the obligations pursuant to this Directive. **Contracting authorities shall be deemed to conduct an award procedure jointly where one contracting authority manages the procedure on both its own behalf and on that of the other contracting authorities concerned.**

Or. en

## Amendment 873

Heide Rühle

### Proposal for a directive

#### Article 37 – paragraph 2 – subparagraph 2

*Text proposed by the Commission*

However, where the conduct of the procurement procedures **and the performance of the ensuing contracts** is carried out by **more than one of the participating** contracting authorities, each shall **continue to** be responsible for fulfilling its obligations pursuant to this Directive in respect of the stages it conducts.

*Amendment*

However, where the conduct of the procurement procedures is **not in its entirety** carried out **jointly** by the contracting authorities **concerned** each shall be responsible for fulfilling its obligations pursuant to this Directive in respect of the stages it conducts.

Or. en

## Amendment 874

Cornelis de Jong, Mikael Gustafsson

### Proposal for a directive

#### Article 38

*Text proposed by the Commission*

#### *Article 38*

***Joint procurement between contracting authorities from different Member States***

***1. Without prejudice to Article 11, contracting authorities from different Member States may jointly award public contracts by using one of the means described in this Article.***

***2. Several contracting authorities may purchase works, supplies and/or services from or through a central purchasing body located in another Member State. In that case, the procurement procedure shall be conducted in accordance with the national provisions of the Member State where the central purchasing body is located.***

*Amendment*

***deleted***

***3. Several contracting authorities from different Member States may jointly award a public contract. In that case, the participating contracting authorities shall conclude an agreement that determines***

***(a) which national provisions shall apply to the procurement procedure.***

***(b) the internal organisation of the procurement procedure, including the management of the procedure, the sharing of responsibilities, the distribution of the works, supplies or services to be procured, and the conclusion of contracts.***

***(c) When determining the applicable national law in accordance with point (a), contracting authorities may choose the national provisions of any Member State in which at least one of the participating authorities is located.***

***4. Where several contracting authorities from different Member States have set up a joint legal entity, including European Groupings of territorial cooperation under Regulation (EC) N° 1082/2006 of the European Parliament and of the Council<sup>1</sup> or other entities established under Union law, the participating contracting authorities shall, by a decision of the competent body of the joint legal entity, agree on the applicable national procurement rules of one of the following Member States:***

***(a) the national provisions of the Member State where the joint legal entity has its registered office;***

***(b) the national provisions of the Member State where the joint legal entity is carrying out its activities.***

***(c) This agreement may either apply for an undetermined period, when fixed in***

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<sup>1</sup> OJ L 210 of 31.7.2006, p. 19

*the constitutive act of the joint legal entity, or may be limited to a certain period of time, certain types of contracts or to one or more individual contract awards.*

*5. In the absence of an agreement determining the applicable public procurement law, the national legislation governing the contract award shall be determined following the rules set out below:*

*(a) where the procedure is conducted or managed by one participating contracting authority on behalf of the others, the national provisions of the Member State of that contracting authority shall apply;*

*(b) where the procedure is not conducted or managed by one participating contracting authority on behalf of the others, and*

*(i) concerns a works contract, contracting authorities shall apply the national provisions of the Member State where most of the works are located;*

*(ii) concerns a service or supply contract, contracting authorities shall apply the national provisions of the Member State where the major part of the services or supplies is provided;*

*(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b), contracting authorities shall apply the national provisions of the Member State of the contracting authority which bears the biggest share of the costs.*

*6. In the absence of an agreement determining the applicable public procurement law under paragraph 4, the national legislation governing procurement procedures conducted by joint legal entities set up by several contracting authorities from different Member States shall be determined*



*following the following rules:*

*(a) where the procedure is conducted or managed by the competent organ of the joint legal entity, the national provisions of the Member State where the legal entity has its registered office shall apply.*

*(b) where the procedure is conducted or managed by a member of the legal entity on behalf of that legal entity, the rules set out in points (a) and (b) of paragraph 5 shall apply.*

*where it is not possible to determine the applicable national law pursuant to points (a) or (b) of paragraph 5, the contracting authorities shall apply the national provisions of the Member State where the legal entity has its registered office.*

*7. One or more contracting authorities may award individual contracts under a framework agreement concluded by or jointly with a contracting authority located in another Member State, provided that the framework agreement contains specific provisions enabling the respective contracting authority or contracting authorities to award the individual contracts.*

*8. Decisions on the award of public contracts in cross-border public procurement shall be subject to the ordinary review mechanisms available under the national law applicable.*

*9. In order to enable the effective operation of review mechanisms, Member States shall ensure that the decisions of review bodies within the meaning of Council Directive 89/665/EEC<sup>1</sup> located in other Member States are fully executed in their domestic legal order, where such decisions involve contracting authorities established on their territory participating in the relevant cross-border public procurement procedure.*

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<sup>1</sup> OJ L 395, 30.12. 1989, p. 33.

**Amendment 875**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 38**

*Text proposed by the Commission*

*Amendment*

**Article 38**

**deleted**

***Joint procurement between contracting authorities from different Member States***

***1. Without prejudice to Article 11, contracting authorities from different Member States may jointly award public contracts by using one of the means described in this Article.***

***2. Several contracting authorities may purchase works, supplies and/or services from or through a central purchasing body located in another Member State. In that case, the procurement procedure shall be conducted in accordance with the national provisions of the Member State where the central purchasing body is located.***

***3. Several contracting authorities from different Member States may jointly award a public contract. In that case, the participating contracting authorities shall conclude an agreement that determines***

***(c) which national provisions shall apply to the procurement procedure.***

***(d) the internal organisation of the procurement procedure, including the management of the procedure, the sharing of responsibilities, the distribution of the works, supplies or services to be procured, and the conclusion of contracts.***

***(c) When determining the applicable national law in accordance with point (a),***

*contracting authorities may choose the national provisions of any Member State in which at least one of the participating authorities is located.*

*4. Where several contracting authorities from different Member States have set up a joint legal entity, including European Groupings of territorial cooperation under Regulation (EC) N° 1082/2006 of the European Parliament and of the Council<sup>1</sup> or other entities established under Union law, the participating contracting authorities shall, by a decision of the competent body of the joint legal entity, agree on the applicable national procurement rules of one of the following Member States:*

*(e) the national provisions of the Member State where the joint legal entity has its registered office;*

*(f) the national provisions of the Member State where the joint legal entity is carrying out its activities.*

*(g) This agreement may either apply for an undetermined period, when fixed in the constitutive act of the joint legal entity, or may be limited to a certain period of time, certain types of contracts or to one or more individual contract awards.*

*5. In the absence of an agreement determining the applicable public procurement law, the national legislation governing the contract award shall be determined following the rules set out below:*

*(a) where the procedure is conducted or managed by one participating contracting authority on behalf of the others, the national provisions of the Member State of that contracting authority shall apply;*

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<sup>1</sup> OJ L 210 of 31.7.2006, p. 19

*(b) where the procedure is not conducted or managed by one participating contracting authority on behalf of the others, and*

*(i) concerns a works contract, contracting authorities shall apply the national provisions of the Member State where most of the works are located;*

*(ii) concerns a service or supply contract, contracting authorities shall apply the national provisions of the Member State where the major part of the services or supplies is provided;*

*(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b), contracting authorities shall apply the national provisions of the Member State of the contracting authority which bears the biggest share of the costs.*

*6. In the absence of an agreement determining the applicable public procurement law under paragraph 4, the national legislation governing procurement procedures conducted by joint legal entities set up by several contracting authorities from different Member States shall be determined following the following rules:*

*(h) where the procedure is conducted or managed by the competent organ of the joint legal entity, the national provisions of the Member State where the legal entity has its registered office shall apply.*

*(i) where the procedure is conducted or managed by a member of the legal entity on behalf of that legal entity, the rules set out in points (a) and (b) of paragraph 5 shall apply.*

*where it is not possible to determine the applicable national law pursuant to points (a) or (b) of paragraph 5, the contracting authorities shall apply the national provisions of the Member State where the*

*legal entity has its registered office.*

*7. One or more contracting authorities may award individual contracts under a framework agreement concluded by or jointly with a contracting authority located in another Member State, provided that the framework agreement contains specific provisions enabling the respective contracting authority or contracting authorities to award the individual contracts.*

*8. Decisions on the award of public contracts in cross-border public procurement shall be subject to the ordinary review mechanisms available under the national law applicable.*

*9. In order to enable the effective operation of review mechanisms, Member States shall ensure that the decisions of review bodies within the meaning of Council Directive 89/665/EEC<sup>1</sup> located in other Member States are fully executed in their domestic legal order, where such decisions involve contracting authorities established on their territory participating in the relevant cross-border public procurement procedure.*

Or. en

#### **Amendment 876**

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

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

#### **Article 38 – paragraph 1**

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

1. Without prejudice to Article 11, contracting authorities from *different* Member States *may jointly* award public *contracts by using one* of the *means described in this Article*.

##### *Amendment*

1. Without prejudice to Article 11, *Member States may stipulate that* contracting authorities *may award public contracts jointly with contracting authorities* from *other* Member States *if:*

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<sup>1</sup> OJ L 395, 30.12. 1989, p. 33.

(a) joint award *of public contract is justified due to cross-border nature* of the contract

or;

(b) public contract is co-financed by contracting authorities from different Member States

or;

(c) public contract is of innovative nature

Or. en

#### *Justification*

*Member States should have a possibility to decide whether contracting authority may award a contract jointly with contracting authorities from other Member States. Moreover, there should be concrete conditions under which a contract may be awarded jointly with contracting authorities from other Member States.*

#### **Amendment 877**

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

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

#### **Article 38 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. Several contracting authorities may purchase works, supplies and/or services from or through a central purchasing body located in another Member State. In that case, the procurement procedure shall be conducted in accordance with the national provisions of the Member State where the central purchasing body is located.***

***deleted***

Or. en

#### **Amendment 878**

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

**Proposal for a directive**  
**Article 38 – paragraph 3 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

*Several contracting authorities from different Member States may jointly award a public contract.* In *that* case, the participating contracting authorities shall conclude an agreement that determines:

In *the* case *referred to in the paragraph 1*, the participating contracting authorities shall conclude an agreement that determines:

Or. en

**Amendment 879**  
**Andreas Schwab**

**Proposal for a directive**  
**Article 38 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

Bei der Festlegung des anwendbaren einzelstaatlichen Rechts gemäß Buchstabe a **können** die öffentlichen Auftraggeber die Bestimmungen eines Mitgliedstaats wählen, in dem zumindest eine der beteiligten Behörden belegen ist.

Bei der Festlegung des anwendbaren einzelstaatlichen Rechts gemäß Buchstabe a **müssen** die öffentlichen Auftraggeber die Bestimmungen eines Mitgliedstaats wählen, in dem zumindest eine der beteiligten Behörden belegen ist.

Or. de

*Justification*

*Die Rechtswahlmöglichkeit der Parteien sollte an die Sachgesetzlichkeiten des Auftrags geknüpft werden.*

**Amendment 880**  
**Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski**

**Proposal for a directive**  
**Article 38 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

**5. In the absence of an agreement determining the applicable public**

**deleted**

*procurement law, the national legislation governing the contract award shall be determined following the rules set out below:*

*(a) where the procedure is conducted or managed by one participating contracting authority on behalf of the others, the national provisions of the Member State of that contracting authority shall apply;*

*(b) where the procedure is not conducted or managed by one participating contracting authority on behalf of the others, and*

*(i) concerns a works contract, contracting authorities shall apply the national provisions of the Member State where most of the works are located;*

*(ii) concerns a service or supply contract, contracting authorities shall apply the national provisions of the Member State where the major part of the services or supplies is provided;*

*(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b), contracting authorities shall apply the national provisions of the Member State of the contracting authority which bears the biggest share of the costs.*

Or. en

#### *Justification*

*It is sufficient that contracting authorities shall agree on the applicable national procurement rules. Paragraph 5 is not necessary. Deletion of this paragraph will simplify the Article.*

**Amendment 881**  
**Heide Rühle**

**Proposal for a directive**  
**Article 38 – paragraph 5 – point c**



*Text proposed by the Commission*

*Amendment*

***(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b), contracting authorities shall apply the national provisions of the Member State of the contracting authority which bears the biggest share of the costs.***

***deleted***

Or. en

**Amendment 882**

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

**Proposal for a directive**

**Article 38 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***5 a. Several contracting authorities from different Member States may purchase works, supplies and/or services from or through a central purchasing body located in another Member State, if those Member States provided for the possibility referred to in Article 35 paragraph 2 and all the conditions referred to in the paragraph 1 are fulfilled. In that case, parties shall conclude an agreement that determines which national provisions shall apply to the procurement procedure.***

Or. en

**Amendment 883**

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

**Proposal for a directive**

**Article 38 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

***6. In the absence of an agreement determining the applicable public***

***deleted***

*procurement law under paragraph 4, the national legislation governing procurement procedures conducted by joint legal entities set up by several contracting authorities from different Member States shall be determined following the following rules:*

*(a) where the procedure is conducted or managed by the competent organ of the joint legal entity, the national provisions of the Member State where the legal entity has its registered office shall apply.*

*(b) where the procedure is conducted or managed by a member of the legal entity on behalf of that legal entity, the rules set out in points (a) and (b) of paragraph 5 shall apply.*

*(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b) of paragraph 5, the contracting authorities shall apply the national provisions of the Member State where the legal entity has its registered office.*

Or. en

#### *Justification*

*It is sufficient that contracting authorities shall agree on the applicable national procurement rules. Paragraph 6 is not necessary. Deletion of this paragraph will simplify the Article.*

#### **Amendment 884**

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

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

#### **Article 38 – paragraph 7**

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

**7. One** or more contracting authorities may award individual contracts under a framework agreement concluded by or jointly with a contracting authority located

##### *Amendment*

**7. Member States may stipulate that one** or more contracting authorities may award individual contracts under a framework agreement concluded by or jointly with a

in another Member State, provided that the framework agreement contains specific provisions enabling the respective contracting authority or contracting authorities to award the individual contracts.

contracting authority located in another Member State, provided that the framework agreement contains specific provisions enabling the respective contracting authority or contracting authorities to award the individual contracts.

Or. en

#### **Amendment 885**

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

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

#### **Article 38 – paragraph 9**

*Text proposed by the Commission*

*Amendment*

***9. In order to enable the effective operation of review mechanisms, Member States shall ensure that the decisions of review bodies within the meaning of Council Directive 89/665/EEC<sup>33</sup> located in other Member States are fully executed in their domestic legal order, where such decisions involve contracting authorities established on their territory participating in the relevant cross-border public procurement procedure.***

***deleted***

Or. en

#### *Justification*

*Such provision may cause problems in practice. It is not clear how Member States should ensure that decisions of review bodies (which are not necessarily of judicial nature) established in other Member States are fully executed in their domestic legal order.*

#### **Amendment 886**

**Sirpa Pietikäinen**

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

#### **Article 39 – paragraph -1 (new)**

***-1. Before launching the procurement procedures, Member States, together with contracting authorities and political leaders at all relevant levels shall establish a procurement strategy, at all relevant levels - national, regional and local - which meets the priorities of this Directive. Public authorities shall ensure that the strategy is followed and implemented, in line with the priorities of this Directive. The strategies shall ensure that at least the following principles are complied with:***

***a) procurement authorities together with political leaders at national, regional and local levels shall be key players in defining the principles of the procurement strategies;***

***b) before a procurement procedure begins, public hearings and consultations with the end users of products and services shall be arranged. The views of the end users shall be documented and taken into account when executing the procurement process;***

***c) the procurement strategy shall be a political tool and binding document when implementing and executing procurement processes. The priorities and aims of any procurement process may not differ from the strategy.***

Or. en

**Amendment 887**  
**Heide Rühle**

**Proposal for a directive**  
**Article 39 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

1. Before launching a procurement

1. Before launching a procurement

procedure, contracting authorities may conduct market consultations in order to assess the structure, capability and capacity of the market **and** to inform economic operators of their procurement plans and requirements.

procedure, contracting authorities may conduct market consultations in order to assess the structure, capability and capacity of the market **and/or** to inform economic operators of their procurement plans and requirements.

Or. en

#### **Amendment 888**

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

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

#### **Article 39 – paragraph 1 – subparagraph 1**

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

Vor der **Lancierung** eines Vergabeverfahrens können die öffentlichen Auftraggeber **Marktkonsultationen** durchführen, um die Struktur, die Möglichkeiten und die Fähigkeit des Marktes zu bewerten **und** die Wirtschaftsteilnehmer über ihre Auftragsvergabepläne und -anforderungen zu unterrichten.

##### *Amendment*

Vor der **Einleitung** eines Vergabeverfahrens können die öffentlichen Auftraggeber **Markterkundungen** durchführen, um die Struktur, die Möglichkeiten und die Fähigkeit des Marktes zu bewerten **oder** die Wirtschaftsteilnehmer über ihre Auftragsvergabepläne und -anforderungen zu unterrichten.

Or. de

##### *Justification*

*Sprachliche Klarstellung, dass der verfahrensrechtliche Beginn eines Vergabeverfahrens die zeitliche Grenze darstellt und nicht etwa eine interne Entscheidung des öffentlichen Auftraggebers. „Marktkonsultationen“ sollte durch „Markterkundungen“ ersetzt werden, da durch das Wort „Konsultation“ Markterkundungen auf solche mit „Dialogcharakter“ eingeengt sein könnte. Es sollten aber z. B. auch schlichte Abfragen möglich sein, ob eine bestimmte Leistung am Markt überhaupt angeboten wird.*

#### **Amendment 889**

**Heide Rühle**

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

#### **Article 39 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

For this purpose, contracting authorities may seek or accept advice from administrative support structures or from third parties or market participants, ***provided that such advice does not have the effect of precluding competition and does not result in a violation of the principles of non-discrimination and transparency.***

*Amendment*

For this purpose, contracting authorities may seek or accept advice from administrative support structures or from third parties or market participants.

Or. en

*Justification*

*redundant*

**Amendment 890**  
**Anja Weisgerber**

**Proposal for a directive**  
**Article 39 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

Zu diesem Zweck können die öffentlichen Auftraggeber den Rat von unterstützenden Verwaltungsstrukturen oder Dritten bzw. Marktteilnehmern einholen oder akzeptieren, ***sofern dieser Rat nicht wettbewerbsschädigend ist und nicht zu einem Verstoß gegen die Grundsätze der Nichtdiskriminierung und der Transparenz verstößt.***

*Amendment*

Zu diesem Zweck können die öffentlichen Auftraggeber den Rat von unterstützenden Verwaltungsstrukturen oder Dritten bzw. Marktteilnehmern einholen oder akzeptieren.

Or. de

*Justification*

*Der zweite Halbsatz sollte gestrichen werden, da er zu Anwendungsproblemen in der Praxis führt. Die Kriterien für eine Wettbewerbsschädlichkeit eines Rates sind kaum fassbar. Ferner ist nicht klar, welcher Beurteilungszeitpunkt (ex-ante oder ex-post Perspektive) für den öffentlichen Auftraggeber ausschlaggebend ist. Außerdem unterliegt die öffentliche Hand ohnehin dem allgemeinen Gebot der Nichtdiskriminierung und Transparenz.*

## **Amendment 891**

**António Fernando Correia de Campos**

### **Proposal for a directive**

#### **Article 39 – paragraph 1 – subparagraph 2**

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

Para este efeito, as autoridades adjudicantes podem solicitar ou aceitar pareceres de estruturas de apoio administrativo, de terceiros ou de participantes no mercado, na condição de que esses pareceres não tenham por efeito impedir a concorrência e resultem em qualquer violação dos princípios da não-discriminação e da transparência.

##### *Amendment*

Para este efeito, as autoridades adjudicantes podem solicitar ou aceitar pareceres de estruturas de apoio administrativo, de terceiros ou de participantes no mercado, na condição de que esses pareceres não tenham por efeito impedir a concorrência e resultem em qualquer violação dos princípios da não-discriminação e da transparência ***e de que a entidade consultada seja impedida de participar no procedimento de adjudicação.***

Or. pt

## **Amendment 892**

**Frank Engel, Sirpa Pietikäinen**

### **Proposal for a directive**

#### **Article 39 – paragraph 2 – subparagraph 2**

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

Such measures shall include the communication to the other candidates and tenderers of any relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. .

##### *Amendment*

Such measures shall include the communication to the other candidates and tenderers of any relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders.

***Contracting authorities shall either be required***

***(i) to clarify in their invitation to participate in a consultation what***

*information will be considered relevant and thus may be shared with all potential bidders or*

*(ii) to set out in detail the rights of and procedures available to consultation participants that allow them to protect confidential information.*

The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment

The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

Or. en

### *Justification*

*Although the measures proposed by the Commission in Article 39(2) provide a necessary balance between the possibility for procurers to conduct market consultations and the assurance for bidders that participation will not lead to exclusion provided that the established provisions are respected, there is a potential practical difficulty in identifying and agreeing with contracting authorities in each case what constitutes “relevant information” to be shared in a preliminary market consultation and what should be kept confidential. Allowing contracting authorities to clearly set out either information that could become relevant for sharing or procedures to protect confidential information will bring more clarity to the different parties and safeguard the interests of economic operators.*

## **Amendment 893**

**Philippe Juvin**

### **Proposal for a directive**

#### **Article 39 – paragraph 2 – subparagraph 2**

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

Ces mesures consistent notamment à communiquer aux autres candidats et soumissionnaires toute information *utile échangée* dans le contexte de la participation du candidat ou soumissionnaire susmentionné à la préparation de la procédure, et à fixer des délais adéquats pour la réception des offres. Le candidat ou soumissionnaire concerné ne sera exclu de la procédure que

##### *Amendment*

Ces mesures consistent notamment à communiquer aux autres candidats et soumissionnaires toute information *fournie par le pouvoir adjudicateur* dans le contexte de la participation du candidat ou soumissionnaire susmentionné à la préparation de la procédure, et à fixer des délais adéquats pour la réception des offres. Le candidat ou soumissionnaire concerné ne sera exclu de la procédure que



s'il n'existe pas d'autre moyen d'assurer le respect du principe de l'égalité de traitement.

s'il n'existe pas d'autre moyen d'assurer le respect du principe de l'égalité de traitement.

Or. fr

### *Justification*

*Les soumissionnaires ne doivent pouvoir recevoir que les informations fournies par le pouvoir adjudicateur dans le cadre de la procédure de consultation préalable du marché, et non les informations "échangées" qui peuvent inclure des éléments de l'offre, ce qui discriminerait les soumissionnaires participant à la procédure de consultation préalable du marché.*

### **Amendment 894 Jürgen Creutzmann**

#### **Proposal for a directive Article 39 – paragraph 2 – subparagraph 2**

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

Such measures shall include the communication to the other candidates and tenderers of any relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

##### *Amendment*

Such measures shall include the communication to the other candidates and tenderers of any relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. ***Contracting authorities shall either (i) clarify in their invitation to participate in a consultation what information will be considered relevant and thus may be shared with all potential bidders or (ii) set out in detail the rights of and procedures available to consultation participants that allow them to protect confidential information.*** The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

Or. en

## *Justification*

*there is a potential practical difficulty in identifying and agreeing with contracting authorities in each case what constitutes “relevant information” to be shared in a preliminary market consultation and what should be kept confidential. Allowing contracting authorities to clearly set out either information that could become relevant for sharing or procedures to protect confidential information will bring more clarity to the different parties and safeguard the interests of economic operators.*

### **Amendment 895** **Heide Rühle**

#### **Proposal for a directive** **Article 40 – paragraph 1 – subparagraph 1**

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

The technical specifications as defined in ***point 1 of Annex VIII*** shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply.

##### *Amendment*

The technical specifications as defined in shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply ***and have to be linked to the subject matter of the contract.***

Or. en

### **Amendment 896** **Sirpa Pietikäinen**

#### **Proposal for a directive** **Article 40 – paragraph 1 – subparagraph 1**

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

The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply.

##### *Amendment*

The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply ***in order to achieve the use, sustainability and animal welfare objectives of the contracting authority.***

Or. en

## Amendment 897

Morten Løkkegaard, Jürgen Creutzmann, Jens Rohde

### Proposal for a directive

#### Article 40 – paragraph 1 – subparagraph 1

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

The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement documents. They shall define the *characteristics required of a works*, service or supply.

##### *Amendment*

The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement documents. They shall define the *functionality that a work*, service or supply *is to deliver*.

Or. en

## Amendment 898

Evelyne Gebhardt, Birgit Sippel

### Proposal for a directive

#### Article 40 – paragraph 1 – subparagraph 2 - point a and b (new)

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

Diese Merkmale können sich auch auf den spezifischen Produktionsprozess bzw. die spezifische Erbringung der angeforderten Bauleistungen, Lieferungen oder Dienstleistungen oder jedes sonstige in Artikel 2 Absatz 22 genannte Lebenszyklusstadium beziehen.

##### *Amendment*

Diese Merkmale können sich auch auf den spezifischen Produktionsprozess bzw. die spezifische Erbringung der angeforderten Bauleistungen, Lieferungen oder Dienstleistungen oder jedes sonstige in Artikel 2 Absatz 22 genannte Lebenszyklusstadium beziehen. *Als technische Spezifikationen sollen auch berücksichtigt werden:*

*(a) soziale Kriterien wie die Beachtung würdiger Arbeitsbedingungen, Vorschriften über Gesundheit und Sicherheit, Tarifverhandlungen, Gleichstellung der Geschlechter (z.B. gleiche Entlohnung, Vereinbarkeit von Arbeits- und Privatleben), soziale Integration, einschließlich der Beschäftigungsmöglichkeiten für behinderte, benachteiligte oder sozial schwache Arbeitnehmer (wie z.B.*

*Langzeitarbeitslose, Roma, Migranten oder junge und ältere Arbeitnehmer), Zugang zu Maßnahmen der beruflichen Fortbildung, Einbeziehung und Konsultation der Nutzer, Erschwinglichkeit, Menschenrechte und ethisch ausgerichteter Handel;*

*(b) bei Dienstleistungsaufträgen und Aufträgen, die die Planung von Bauleistungen umfassen, die Organisation, Qualifikation und Erfahrung der Mitarbeiter, die für die Ausführung des Auftrags eingesetzt werden.*

Or. de

**Amendment 899**  
**Heide Rühle**

**Proposal for a directive**  
**Article 40 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle *as referred to in point (22) of Article 2.*

*Amendment*

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle.

Or. en

**Amendment 900**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 40 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

Ces caractéristiques peuvent également se référer au processus spécifique de production ou de fourniture des travaux, des fournitures ou des services, ou à un

*Amendment*

Ces caractéristiques peuvent également se référer au processus spécifique de production ou de fourniture des travaux, des fournitures ou des services, ou à un

quelconque stade de leur cycle de vie *comme visé* à l'article 2, *point* 22).

quelconque stade de leur cycle de vie *et au processus de production socialement durable visés* à l'article 2 *points* (22), (22 bis) *et* (22 ter).

Or. fr

**Amendment 901**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 40 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2.

*Amendment*

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle *including socially sustainable and animal welfare sensitive production processes* as referred to in point (22) of Article 2.

Or. en

**Amendment 902**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 40 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2.

*Amendment*

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2, *provided that they are linked to the subject-matter of the contract and proportionate to the value and objectives of the contract.*

Or. en

### *Justification*

*Candidates cannot be required to prove things on which they do not have any access, competency or responsibility up to the whole supply chain. For these reasons, technical specifications must remain strictly linked to the subject-matter of the contract and the requirements must be proportionate to the value and objectives of the contract.*

#### **Amendment 903**

**Evelyne Gebhardt, Birgit Sippel**

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

**Article 40 – paragraph 1 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***Die Verpflichtungen in Bezug auf die sozialen Gegebenheiten und Beschäftigungsbedingungen, wie die Gesundheit und Sicherheit am Arbeitsplatz, die soziale Sicherheit und die Arbeitsbedingungen, so wie sie in EU-Rechtsvorschriften, nationalen Gesetzen, Regelungen oder Verwaltungsvorschriften, Schiedssprüchen, Kollektivvereinbarungen und -verträgen sowie den in Anhang XI genannten internationalen arbeitsrechtlichen Bestimmungen festgelegt sind, die am Ort der Leistungserbringung gelten, werden von den öffentlichen Auftraggebern in den technischen Spezifikationen als Teil der unabdingbaren Anforderungen bei der Vergabe des Auftrags eindeutig dargelegt.***

Or. de

#### **Amendment 904**

**Vicente Miguel Garcés Ramón**

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

**Article 40 – paragraph 1 – subparagraph 4**

*Text proposed by the Commission*

Para toda contratación cuyo objeto esté destinado a ser utilizado por personas, ya sea el público en general o el personal del poder adjudicador, estas especificaciones técnicas se redactarán, salvo en casos debidamente justificados, de manera que se tengan en cuenta los criterios de accesibilidad para las personas con discapacidad o el diseño para todos los usuarios.

*Amendment*

Para toda contratación cuyo objeto esté destinado a ser utilizado por personas, ya sea el público en general o el personal del poder adjudicador, estas especificaciones técnicas se redactarán, salvo, ***excepcionalmente***, en casos debidamente justificados, de manera que se tengan en cuenta los criterios de accesibilidad para las personas con discapacidad o el diseño para todos los usuarios.

Or. es

**Amendment 905**  
**Catherine Stihler**

**Proposal for a directive**  
**Article 40 – paragraph 1 – subparagraph 4**

*Text proposed by the Commission*

For all procurement the subject of which is intended for use by persons, whether general public or staff of the contracting authority, those technical specifications shall, ***except in duly justified cases***, be drawn up so as to take into account accessibility criteria for people with disabilities or design for all users.

*Amendment*

For all procurement the subject of which is intended for use by persons, whether general public or staff of the contracting authority, those technical specifications shall, be drawn up so as to take into account accessibility criteria for people with disabilities or design for all users.

Or. en

*Justification*

*The United Nations Convention on the Rights of Persons with Disabilities came into force in the European Union in January 2011. Article 4 (d) of the Convention specifies that State Parties should refrain from engaging in any act or practice that is inconsistent with the Convention and ensure that public authorities and institutions act in conformity with the Convention. Articles 4, 9, and articles 19 to 30 of the Convention are very clear about general and specific obligations regarding equal access for disabled people and set out obligations of parties in relation to accessibility. There are no exceptions to these principles in the Convention.*

**Amendment 906**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 40 – paragraph 1 – subparagraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

*Technical specifications may also include, as appropriate, requirements relating to:*

*(a) performance, including levels of environmental and climate performance and performance in terms of social impact;*

*(b) life cycle characteristics;*

*(c) the organisation, qualification and experience of the staff assigned to performing the contract in question;*

*(d) safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions;*

*(e) rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve.*

*f) promotion of innovative goods and services by tendering for solutions for problems, instead of specifically defined goods and services;*

Or. en

**Amendment 907**  
**Alexander Alvaro, Jürgen Creutzmann**



**Proposal for a directive**  
**Article 40 – paragraph 1 – subparagraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

*For all procurement, technical specifications shall be drawn up so as to ensure that the products, services and works subject to the contract meet the requirements of data protection law at the time of the design of the processing of personal data (data protection by design).*

Or. en

**Amendment 908**  
**Heide Rühle**

**Proposal for a directive**  
**Article 40 – paragraph 1 – subparagraph 5**

*Text proposed by the Commission*

*Amendment*

Where mandatory accessibility standards are adopted by a legislative act of the Union, technical specifications shall, as far as accessibility criteria are concerned, be defined by reference thereto.

Where mandatory accessibility standards are adopted by a legislative act of the Union, technical specifications shall, as far as accessibility criteria *for persons with disabilities or design for all users* are concerned, be defined by reference thereto.

Or. en

**Amendment 909**  
**Matteo Salvini, Francesco Enrico Speroni**

**Proposal for a directive**  
**Article 40 – paragraph 1 – subparagraph 5**

*Text proposed by the Commission*

*Amendment*

Where mandatory accessibility standards are adopted by a legislative act of the Union, technical specifications shall, as far as accessibility criteria are concerned, be

Where mandatory accessibility, *environmental or social* standards are adopted by a legislative act of the Union, technical specifications shall, as far as

defined by reference thereto.

accessibility, *environmental or social* criteria are concerned, be defined by reference thereto.

Or. en

**Amendment 910**  
**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**  
**Article 40 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**1. Technical specifications may also include requirements relating to:**

**a) Employment conditions, organisation, qualification and experience of staff assigned to performing the contract in question;**

Or. en

**Amendment 911**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 40 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Teknisillä eritelmillä on varmistettava talouden toimijoille yhtäläinen pääsy hankintamenettelyyn, eivätkä ne saa haitata perusteettomasti julkisten hankintojen avaamista kilpailulle.

2. Teknisillä eritelmillä on varmistettava talouden toimijoille yhtäläinen pääsy hankintamenettelyyn, eivätkä ne saa haitata perusteettomasti julkisten hankintojen avaamista kilpailulle. ***Tekniset eritelmät tulee laatia siten, että tarjouskilpailussa tai muussa hankintamenettelyssä menestyminen ei perustu yksinomaan tai pääasiallisesti työntekijöiden työsuhdeturvalla tai työehdoilla kilpailemiseen.***

Or. fi

**Amendment 912**  
**Mitro Repo**

**Proposal for a directive**  
**Article 40 – paragraph 2**

*Text proposed by the Commission*

2. Teknisillä eritelmillä on varmistettava talouden toimijoille yhtäläinen pääsy hankintamenettelyyn, eivätkä ne saa haitata perusteettomasti julkisten hankintojen avaamista kilpailulle.

*Amendment*

2. Teknisillä eritelmillä on varmistettava talouden toimijoille yhtäläinen pääsy hankintamenettelyyn, eivätkä ne saa haitata perusteettomasti julkisten hankintojen avaamista kilpailulle.

***Teknisillä eritelmillä on huolehdittava siitä, ettei julkinen hankinta perustu yksinomaan henkilöstön heikoimmilla työehdoilla kilpailemiseen tai työntekijöiden työpaikkojen menetykseen.***

Or. fi

**Amendment 913**  
**Heide Rühle**

**Proposal for a directive**  
**Article 40 – paragraph 3 – point a**

*Text proposed by the Commission*

(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

*Amendment*

(a) in terms of performance or functional requirements, including environmental ***and social*** characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

Or. en

**Amendment 914**  
**Evelyne Gebhardt**

**Proposal for a directive**  
**Article 40 – paragraph 3 – point a**

*Text proposed by the Commission*

(a) in Form von Leistungs- oder Funktionsanforderungen, einschließlich Umweltmerkmale, sofern die Parameter hinreichend genau sind, um den Bietern ein klares Bild vom Auftragsgegenstand zu vermitteln und dem öffentlichen Auftraggeber die Erteilung des Zuschlags zu ermöglichen;

*Amendment*

(a) in Form von Leistungs- oder Funktionsanforderungen, einschließlich Umweltmerkmale, **und soziale Merkmale** sofern die Parameter hinreichend genau sind, um den Bietern ein klares Bild vom Auftragsgegenstand zu vermitteln und dem öffentlichen Auftraggeber die Erteilung des Zuschlags zu ermöglichen; **einschließlich, in Einklang mit Absatz 1, der Anforderungen in Bezug auf die Lebenszyklusmerkmale der angeforderten Bauleistungen, Lieferungen oder Dienstleistungen gemäß Artikel 2 Ziffer 22a (neu);**

Or. de

**Amendment 915**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 40 – paragraph 3 – point a**

*Text proposed by the Commission*

(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

*Amendment*

(a) in terms of performance or functional requirements, including **social, environmental and animal welfare** characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

Or. en

**Amendment 916**  
**Toine Manders**

**Proposal for a directive**  
**Article 40 – paragraph 3 – point a**

*Text proposed by the Commission*

(a) in termen van prestatie- of functionele eisen, inclusief milieukenmerken, mits de parameters voldoende nauwkeurig zijn opdat de inschrijvers het voorwerp van de opdracht kunnen bepalen en de aanbestedende diensten de opdracht kunnen gunnen;

*Amendment*

(a) in termen van prestatie- of functionele eisen, inclusief milieukenmerken, mits de parameters voldoende nauwkeurig zijn opdat de inschrijvers het voorwerp van de opdracht kunnen bepalen en de aanbestedende diensten de opdracht kunnen gunnen. ***De prestatie- en functionele eisen dienen dusdanig geformuleerd te zijn dat alle inschrijvers die voldoen aan gelijkwaardige of vergelijkbare eisen toegang hebben tot de aanbesteding. Ingeval de aanbestedende dienst de inschrijving weigert op de grond dat er geen sprake is van gelijkwaardigheid of vergelijkbaarheid, dient deze aanbestedende dienst hiervoor bewijzen te overleggen aan de inschrijver.***

Or. nl

**Amendment 917**  
**Heide Rühle**

**Proposal for a directive**  
**Article 40 – paragraph 3 – point b**

*Text proposed by the Commission*

(b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European ***technical approvals***, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or  when those do not exist  national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words ‘or equivalent’;

*Amendment*

(b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European ***Technical Assessment***, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or when ***any of*** those do not exist national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the

words ‘or equivalent’;

Or. en

**Amendment 918**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 40 – paragraph 3 – point b**

*Text proposed by the Commission*

(b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or  when those do not exist  national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words ‘or equivalent’;

*Amendment*

(b) by reference to technical specifications and, in order of preference, **and without discrimination as to development method, to** national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or  when those do not exist  national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words ‘or equivalent’;

Or. en

**Amendment 919**  
**Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann**

**Proposal for a directive**  
**Article 40 – paragraph 3 – point b**

*Text proposed by the Commission*

(b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference

*Amendment*

(b) by reference to technical specifications and, in order of preference, **and without discrimination as to development method, to** national standards transposing European standards, European technical approvals, common technical specifications,

systems established by the European standardisation bodies or  when those do not exist  national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words 'or equivalent';

international standards, other technical reference systems established by the European standardisation bodies or  when those do not exist  national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words 'or equivalent';

Or. en

### *Justification*

*Technical specifications should be non-discriminatory and technology neutral. These fundamental principles should apply equally to the use of standards and specifications in procurement. Non-discriminatory, technology neutral specifications require economic operators to compete to produce the best solutions, which drives innovation and economic growth. Technology neutrality also ensures that authorities can pick from the widest range of products and services, promoting best value for money.*

### **Amendment 920 Mitro Repo**

#### **Proposal for a directive Article 40 – paragraph 3 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***da) Standardeihin ja muuhun tekniseen viitejärjestelmään rinnastettaviksi laatuksiteereiksi hyväksytään myös valtakunnalliset, alueelliset ja toimialakohtaiset työ- ja virkaehtosopimukset, jossa hankinta toteutetaan.***

Or. fi

### **Amendment 921 Heide Rühle**

**Proposal for a directive**  
**Article 40 – paragraph 4**

*Text proposed by the Commission*

4. **Unless** justified by the subject-matter of the contract, technical specifications **shall not** refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production **with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible.** Such reference shall be accompanied by the words ‘or equivalent’.

*Amendment*

4. **When** justified by the subject-matter of the contract, technical specifications **may** refer to a specific make or source, or a particular process **which characterises the products or services**, or to trade marks, patents, types or a specific origin or production. Such reference shall be accompanied by the words ‘or equivalent’.

Or. en

**Amendment 922**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 40 – paragraph 4**

*Text proposed by the Commission*

4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words ‘or equivalent’.

*Amendment*

4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process, or **development or business model or method**, or to trade marks, patents, types or a specific origin or production **or location of production**, with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words ‘or equivalent’.



**Amendment 923****Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann****Proposal for a directive****Article 40 – paragraph 4***Text proposed by the Commission*

4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production **with** the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words ‘or equivalent’.

*Amendment*

4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process **or development or business model or method**, or to trade marks, patents, types or a specific origin or production **or location of production, as any such reference would have** the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall **systematically** be accompanied by the words "or equivalent".

Or. en

*Justification*

*To promote innovation and economic growth, it is essential that all tenderers compete on an equal footing. Discrimination, including on technology or location of production should only be allowed in very exceptional circumstances. Any preferences, whether for certain technologies, business models, vendors or product origins, stifle innovation and competition with the effect that public bodies cannot select solutions that best match the needs of a given procurement.*

**Amendment 924****Cornelis de Jong, Mikael Gustafsson****Proposal for a directive****Article 40 – paragraph 4**

*Text proposed by the Commission*

4. **Unless** justified by the subject-matter of the contract, technical specifications **shall not** refer to a specific make or source, or a particular process, **or to trade marks, patents**, types or a specific origin or production **with the effect of favouring or eliminating certain undertakings or certain products**. Such reference shall be **permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible**. Such reference shall be accompanied by the words 'or equivalent'.

*Amendment*

4. **On an exceptional basis, and only when** justified by the subject-matter of the contract, technical specifications **may** refer to a specific make or source, or a particular process, types or a specific origin or production. Such reference shall be accompanied by the words 'or equivalent'.

Or. en

**Amendment 925**  
**Philippe Juvin**

**Proposal for a directive**  
**Article 40 – paragraph 4**

*Text proposed by the Commission*

4. À moins qu'elles ne soient justifiées par l'objet du marché, les spécifications techniques ne peuvent pas faire mention d'une fabrication ou d'une provenance déterminée ou d'un procédé particulier, ni faire référence à une marque, à un brevet ou à un type, à une origine ou à une production déterminée qui auraient pour effet de favoriser ou d'éliminer certaines entreprises ou certains produits. Cette mention ou référence est autorisée, à titre exceptionnel, dans le cas où une description suffisamment précise et intelligible de l'objet du marché n'est pas possible par application du paragraphe 3; une telle mention ou référence est accompagnée des termes «ou équivalent».

*Amendment*

4. À moins qu'elles ne soient justifiées par l'objet du marché, les spécifications techniques ne peuvent pas faire mention d'une fabrication ou d'une provenance déterminée ou d'un procédé particulier, ni faire référence à une marque, à un brevet ou à un type, à une origine ou à une production déterminée qui auraient pour effet de favoriser ou d'éliminer certaines entreprises ou certains produits.

Cette mention ou référence est autorisée, à

titre exceptionnel:

*a) dans le cas où une description suffisamment précise et intelligible de l'objet du marché n'est pas possible par application du paragraphe 3; une telle mention ou référence est accompagnée des termes «ou équivalent»;*

*b) lorsque le marché le justifie et que la mention ou référence porte sur la localisation sur le territoire de l'Union européenne de la production ou du procédé.*

Or. fr

#### *Justification*

*Les précisions relatives à la localisation sur le territoire de l'Union européenne de la production ou du procédé doivent pouvoir rester possibles lorsque le marché le justifie.*

#### **Amendment 926 Heide Rühle**

#### **Proposal for a directive Article 40 – paragraph 5**

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

5. Where a contracting authority uses the option of referring to the specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the grounds that the works, supplies and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in its tender by *whatever* appropriate means, including the means of proof referred to in Article 42, that the solutions it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

##### *Amendment*

5. Where a contracting authority uses the option of referring to the specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the grounds that the works, supplies and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in its tender by appropriate means, including the means of proof referred to in Article 42, that the solutions it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

Or. en

## *Justification*

*To limit the burden on Contracting Authorities and in order not to discriminate those tenderer who invest time and money for certificates or test reports, the burden for providing equivalence should be placed on the tenderer claiming equivalence.*

### **Amendment 927**

**Morten Løkkegaard, Jürgen Creutzmann, Jens Rohde**

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

#### **Article 40 – paragraph 6 – subparagraph 1**

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

Where a contracting authority uses the option laid down in point (a) of paragraph 3 to formulate technical specifications *in terms of* performance or functional requirements, it shall not reject a tender for works, supplies or services which comply with a national standard transposing a European standard, a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardisation body, where those specifications address the performance or functional requirements which it has laid down.

##### *Amendment*

Where a contracting authority uses the option laid down in point (a) of paragraph 3 to formulate technical specifications *based on* performance or functional requirements, it shall not reject a tender for works, supplies or services which comply with a national standard transposing a European standard, a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardisation body, where those specifications address the performance or functional requirements which it has laid down.

Or. en

### **Amendment 928**

**Heide Rühle**

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

#### **Article 40 – paragraph 6 – subparagraph 2**

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

In its tender, the tenderer shall prove by *any* appropriate means, including those referred to in Article 42, that the work, supply or service in compliance with the standard meets the performance or

##### *Amendment*

In its tender, the tenderer shall prove by appropriate means, including those referred to in Article 42, that the work, supply or service in compliance with the standard meets the performance or functional

functional requirements of the contracting authority.

requirements of the contracting authority.

Or. en

#### **Amendment 929**

**Cornelis de Jong, Mikael Gustafsson**

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

**Article 40 – paragraph 6 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***Contracting authorities must be able to control and follow up that the requirements are fulfilled, during the tendering process as well as during the performance of the contract.***

Or. en

#### **Amendment 930**

**Heide Rühle**

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

**Article 41 – paragraph 1 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

Where contracting authorities lay down environmental, social or other ***characteristics of a works, service or supply in terms of performance or functional*** requirements ***as referred to in point (a) of Article 40(3)*** they may require that these works, services or supplies ***bear a specific label***, provided that all of the following conditions are fulfilled:

Where contracting authorities lay down ***in the technical specifications, the award criteria or the contract performance clauses*** environmental, social or other requirements ***or criteria***, they may require ***a specific label as means of proof*** that these works, services or supplies ***correspond to such requirements or criteria***, provided that all of the following conditions are fulfilled:

Or. en

**Amendment 931**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 41 – paragraph 1 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

Where contracting authorities lay down environmental, social or other characteristics of a works, service or supply in terms of performance or functional requirements as referred to in point (a) of Article 40(3) they may require that these works, services or supplies bear a specific label, provided that all of the following conditions are fulfilled:

*Amendment*

Where contracting authorities lay down environmental, social or other characteristics of a works, service or supply in terms of performance or functional requirements as referred to in point (a) of Article 40(3) they may require that these works, services or supplies bear a specific label, ***certificate or other assurance scheme***, provided that all of the following conditions are fulfilled:

Or. en

**Amendment 932**  
**Morten Løkkegaard, Jens Rohde**

**Proposal for a directive**  
**Article 41 – paragraph 1 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

Where contracting authorities lay down environmental, ***social or other*** characteristics of a works, service or supply in terms of performance or functional requirements as referred to in point (a) of Article 40(3) they may require that these works, services or supplies bear a specific label, provided that all of the following conditions are fulfilled:

*Amendment*

Where contracting authorities lay down environmental characteristics of a works, service or supply in terms of performance or functional requirements as referred to in point (a) of Article 40(3) they may require that these works, services or supplies bear a specific label, provided that all of the following conditions are fulfilled:

Or. en

**Amendment 933**  
**Ivo Belet**

**Proposal for a directive**

**Article 41 – paragraph 1 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

Where contracting authorities lay down environmental, social or other characteristics of a works, service or supply in terms of performance or functional requirements as referred to in point (a) of Article 40(3) they may require that these works, services or supplies bear a specific label, provided that all of the following conditions are fulfilled:

*Amendment*

Where contracting authorities lay down environmental, social or other characteristics of a works, service or supply in terms of performance or functional requirements as referred to in point (a) of Article 40(3) they may require that these works, services or supplies bear a specific label, ***certificate or other assurance scheme***, provided that all of the following conditions are fulfilled:

Or. en

**Amendment 934**

**Heide Rühle**

**Proposal for a directive**

**Article 41 – paragraph 1 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) the requirements ***for*** the label only concern ***characteristics*** which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

*Amendment*

(a) the requirements ***to be met in order to obtain*** the label only concern ***criteria*** which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

Or. en

**Amendment 935**

**Frank Engel**

**Proposal for a directive**

**Article 41 – paragraph 1 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) les critères d'obtention du label ***ne***

*Amendment*

(a) les critères d'obtention du label sont

*concernent que des caractéristiques liées à l'objet du marché et* sont appropriés pour définir les caractéristiques des travaux, fournitures ou services qui font l'objet du marché;

appropriés pour définir les caractéristiques des travaux, fournitures ou services qui font l'objet du marché;

Or. fr

**Amendment 936**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 41 – paragraph 1 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) the requirements for the label only concern characteristics which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

*Amendment*

(a) the requirements for the label, ***certificate or other assurance scheme***, only concern characteristics which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

Or. en

**Amendment 937**  
**Anna Hedh**

**Proposal for a directive**  
**Article 41 – paragraph 1 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) the requirements for the label only concern characteristics which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

*Amendment*

(a) the requirements for the label only concern characteristics which are linked to the subject-matter of the contract ***or the production of the subject-matter of the contract*** and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

Or. en



### *Justification*

*When limiting the requirements to the characteristics which are linked to the subject-matter of the contract there is no room for labels concerning for example the working environment.*

#### **Amendment 938**

**Ivo Belet**

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

#### **Article 41 – paragraph 1 – subparagraph 1 – point a**

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

(a) the requirements for the label only concern characteristics which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

##### *Amendment*

(a) the requirements for the label, ***certificate or other assurance scheme*** only concern characteristics which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

Or. en

#### **Amendment 939**

**Heide Rühle**

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

#### **Article 41 – paragraph 1 – subparagraph 1 – point b**

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

(b) the requirements for the label are ***drawn up on the basis of scientific information or*** based on ***other*** objectively verifiable and non-discriminatory criteria;

##### *Amendment*

(b) the requirements for the label ***to be met in order to obtain the label*** are based on objectively verifiable and non-discriminatory criteria;

Or. en

#### **Amendment 940**

**Sirpa Pietikäinen**

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

#### **Article 41 – paragraph 1 – subparagraph 1 – point b**

*Text proposed by the Commission*

(b) the requirements for the label are drawn up on the basis of scientific information or based on other objectively verifiable and non-discriminatory criteria;

*Amendment*

(b) the requirements for the label, ***certificate or other assurance scheme***, are drawn up on the basis of scientific information or based on other objectively verifiable and non-discriminatory criteria;

Or. en

**Amendment 941**

**Ivo Belet**

**Proposal for a directive**

**Article 41 – paragraph 1 – subparagraph 1 – point b**

*Text proposed by the Commission*

(b) the requirements for the label are drawn up on the basis of scientific information or based on other objectively verifiable and non-discriminatory criteria;

*Amendment*

(b) the requirements for the label, ***certificate or other assurance scheme*** are drawn up on the basis of scientific information or based on other objectively verifiable and non-discriminatory criteria;

Or. en

**Amendment 942**

**Toine Manders**

**Proposal for a directive**

**Article 41 – paragraph 1 – subparagraph 1 – point b bis (new)**

*Text proposed by the Commission*

*Amendment*

***(b bis) de voorschriften voor de keur staan in redelijke verhouding tot de aard van de opdracht***

Or. nl

**Amendment 943**

**Heide Rühle**

**Proposal for a directive**

**Article 41 – paragraph 1 – subparagraph 1 – point c**

*Text proposed by the Commission*

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations, may participate,

*Amendment*

(c) the labels are established in an open and transparent procedure in which all **relevant** stakeholders, including government bodies, consumers, manufacturers, **trade unions**, distributors and environmental **and social** organisations, **have a substantial role**. **Government bodies** may participate **but are not obligatory**.

Or. en

**Amendment 944**

**Vicente Miguel Garcés Ramón**

**Proposal for a directive**

**Article 41 – paragraph 1 – subparagraph 1 – point c**

*Text proposed by the Commission*

(c) que las etiquetas se establezcan en un procedimiento abierto y transparente en el que puedan participar todas las partes implicadas, como organismos públicos, consumidores, fabricantes, distribuidores y organizaciones medioambientales;

*Amendment*

(c) que las etiquetas se establezcan en un procedimiento abierto y transparente en el que puedan participar todas las partes implicadas, como organismos públicos, consumidores, fabricantes, distribuidores, organizaciones medioambientales y **sociales**;

Or. es

**Amendment 945**

**Sirpa Pietikäinen**

**Proposal for a directive**

**Article 41 – paragraph 1 – subparagraph 1 – point c**

*Text proposed by the Commission*

(c) the labels are established in an open and transparent procedure in which all

*Amendment*

(c) the labels, **certificate or other assurance scheme**, are established in an

stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations, may participate,

open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations, may participate,

Or. en

**Amendment 946**  
**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**  
**Article 41 – paragraph 1 – subparagraph 1 – point c**

*Text proposed by the Commission*

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations, may participate,

*Amendment*

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, **trade unions**, manufacturers, distributors and environmental organisations, may participate,

Or. en

**Amendment 947**  
**Matteo Salvini, Francesco Enrico Speroni**

**Proposal for a directive**  
**Article 41 – paragraph 1 – subparagraph 1 – point c**

*Text proposed by the Commission*

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations, may participate,

*Amendment*

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, **trades unions**, distributors and environmental organisations may participate,

Or. en

**Amendment 948**

**Ivo Belet**

**Proposal for a directive**

**Article 41 – paragraph 1 – subparagraph 1 – point c**

*Text proposed by the Commission*

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations, may participate,

*Amendment*

(c) the labels, ***certificates or other assurance schemes*** are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental ***and social*** organisations, may participate,

Or. en

**Amendment 949**

**Ádám Kósa**

**Proposal for a directive**

**Article 41 – paragraph 1 – subparagraph 1 – point c**

*Text proposed by the Commission*

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations, may participate,

*Amendment*

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations, ***organisations of persons with disabilities***, may participate,

Or. en

**Amendment 950**

**Sirpa Pietikäinen**

**Proposal for a directive**

**Article 41 – paragraph 1 – subparagraph 1 – point d**

*Text proposed by the Commission*

(d) the labels are accessible to all interested

*Amendment*

(d) the labels, ***certificate or other***

parties;

*assurance scheme*, are accessible to all interested parties;

Or. en

**Amendment 951**  
**Ivo Belet**

**Proposal for a directive**  
**Article 41 – paragraph 1 – subparagraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

(d) the labels are accessible to all interested parties;

(d) the labels, *certificates or other assurance schemes* are accessible to all interested parties;

Or. en

**Amendment 952**  
**Heide Rühle**

**Proposal for a directive**  
**Article 41 – paragraph 1 – subparagraph 1 – point e**

*Text proposed by the Commission*

*Amendment*

(e) the *criteria of* the label are set by a third party which is independent from the economic operator applying for the label.

(e) the *requirements to be met in order to obtain* the label are set by a third party which is independent from the economic operator applying for the label.

Or. en

**Amendment 953**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 41 – paragraph 1 – subparagraph 1 – point e**

*Text proposed by the Commission*

*Amendment*

(e) the *criteria* of the label are set by a

(e) the *verification and attribution* of the

third party which is independent from the economic operator applying for the label.

*compliance with the label, certificate or other assurance scheme* are set by a third party which is independent from the economic operator applying for the label, *certificate or other assurance scheme in question*.

Or. en

#### **Amendment 954**

**Ivo Belet**

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

#### **Article 41 – paragraph 1 – subparagraph 1 – point e**

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

(e) the criteria of the label are set by a third party which is independent from the economic operator applying for the label.

##### *Amendment*

(e) the criteria of the label, *certificate or other assurance scheme* are set by a third party which is independent from the economic operator applying for the label, *certificate or other assurance scheme in question*.

Or. en

#### **Amendment 955**

**Sari Essayah**

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

#### **Article 41 – paragraph 1 – subparagraph 1 – point e**

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

(e) the criteria of the label are set by a third party which is independent from the economic operator applying for the label.

##### *Amendment*

(e) the criteria of the label are set by a third party *accredited according to the recognized accreditation standards*, which is independent from the economic operator applying for the label.

Or. en

**Amendment 956**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 41 – paragraph 1 – subparagraph 1 – point e a (new)**

*Text proposed by the Commission*

*Amendment*

*(ea) the label, certificate or other assurance scheme should provide and ensure the highest level of accountability and quality linked to the subject-matter of contract to avoid any misuse of labelling system.*

Or. en

**Amendment 957**  
**Christel Schaldemose**

**Proposal for a directive**  
**Article 41 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting authorities. For products that do not bear the label, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.*

*For products that do not bear the label, contracting authorities may also accept a technical dossier of the manufacturer or other appropriate means of proof. For products that do not bear the label, contracting authorities may also accept a technical dossier of the manufacturer or other appropriate means of proof, but only from economic operators that do not have access to such certificate, or no possibility of obtaining them within the relevant time limit.*

Or. en

**Amendment 958**  
**Christel Schaldemose**

**Proposal for a directive**  
**Article 41 – paragraph 1 – subparagraph 2**



*Text proposed by the Commission*

Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting authorities. For products that do not bear the label, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.

*Amendment*

Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting authorities. For products that do not bear the label, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof *of equivalence*.

Or. en

**Amendment 959**  
**Heide Rühle**

**Proposal for a directive**  
**Article 41 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting authorities. *For products that do not bear the label, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.*

*Amendment*

Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the *specific* label indicated by the contracting authorities. *Contracting authorities shall accept other appropriate means of proving such requirements, which may include a technical dossier of the manufacturer where the economic operator concerned has no access to the label, or no possibility of obtaining it within the relevant time limits, provided that the lack of access is not attributable to the economic operator concerned. However in order not to discriminate those tenderers who invest time and money for certificates or test reports, the burden for approving equivalence should be placed on the tenderer claiming equivalence.*

Or. en

## Amendment 960

Frank Engel, Anna Maria Corazza Bildt

### Proposal for a directive

#### Article 41 – paragraph 1 – subparagraph 2

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

Les pouvoirs adjudicateurs qui exigent un label particulier acceptent tous les labels équivalents satisfaisant aux critères du label spécifié par les pouvoirs adjudicateurs. Pour les produits ne bénéficiant pas du label, les pouvoirs adjudicateurs acceptent aussi un dossier technique du fabricant ou d'autres moyens de preuve appropriés.

##### *Amendment*

Les pouvoirs adjudicateurs qui exigent un label particulier acceptent tous les labels équivalents satisfaisant aux critères du label spécifié par les pouvoirs adjudicateurs. Pour les produits ne bénéficiant pas du label, les pouvoirs adjudicateurs acceptent aussi un dossier technique du fabricant ou d'autres moyens de preuve appropriés. ***La preuve d'équivalence par rapport au label demandé revient au soumissionnaire.***

Or. fr

## Amendment 961

Vicente Miguel Garcés Ramón

### Proposal for a directive

#### Article 41 – paragraph 1 – subparagraph 2

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

Los poderes adjudicadores que exijan una etiqueta específica deberán aceptar todas las etiquetas equivalentes que cumplan los requisitos de la etiqueta indicada por los poderes adjudicadores. En el caso de los productos que no lleven la etiqueta, los poderes adjudicadores deberán aceptar también un expediente técnico del fabricante u otro medio de prueba adecuado.

##### *Amendment*

Los poderes adjudicadores que exijan una etiqueta específica deberán aceptar todas las etiquetas equivalentes que cumplan los requisitos de la etiqueta indicada por los poderes adjudicadores. En el caso de los productos que no lleven la etiqueta, los poderes adjudicadores deberán aceptar también un expediente técnico del fabricante u otro medio de prueba adecuado. ***Se favorecerán o primarán aquellas etiquetas, expedientes técnicos u otros medios de prueba en cuyo proceso de desarrollo, certificación o verificación hayan participado organismos gubernamentales, organizaciones medioambientales o sociales.***

**Amendment 962**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 41 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting authorities. For products that do not bear the label, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.

*Amendment*

Contracting authorities requiring a specific label, ***certificate or other assurance scheme*** shall accept all equivalent labels that fulfil the requirements of the label, ***certificate or other assurance scheme*** indicated by the contracting authorities. For products that do not bear the label, ***certificate or other assurance scheme***, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.

Or. en

**Amendment 963**  
**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**  
**Article 41 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting authorities. ***For products that do not bear the label, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.***

*Amendment*

Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting authorities.

Or. en

## Amendment 964

Philippe Juvin

### Proposal for a directive

#### Article 41 – paragraph 1 – subparagraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***L'exigence d'un label particulier par le pouvoir adjudicateur ne doit pas viser à discriminer les soumissionnaires dans le cadre d'une procédure de passation de marché.***

Or. fr

*Justification*

*Le recours aux labels dans la définition des critères d'attribution et leur mise en oeuvre ne doit pas conduire à des pratiques discriminatoires visant à privilégier certains soumissionnaires par rapport à d'autres.*

## Amendment 965

Ivo Belet

### Proposal for a directive

#### Article 41 – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting authorities. For products that do not bear the label, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.

Contracting authorities requiring a specific label, ***certificate and other assurance scheme*** shall accept all equivalent labels that fulfil the requirements of the label, ***certificate and other assurance scheme*** indicated by the contracting authorities. For products that do not bear the label, ***certificate and other assurance scheme***, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.

Or. en

**Amendment 966**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 41 – paragraph 2**

*Text proposed by the Commission*

2. Where a label fulfils the conditions provided in points (b), (c), (d) and (e) of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting authorities may define the technical specification by reference to those of the detailed specifications of that label, or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

*Amendment*

2. Where a label, ***certificate or other assurance scheme*** fulfils the conditions provided in points (b), (c), (d) and (e) of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting authorities may define the technical specification by reference to those of the detailed specifications of that label, ***certificate or other assurance scheme, or***, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

Or. en

**Amendment 967**  
**Ivo Belet**

**Proposal for a directive**  
**Article 41 – paragraph 2**

*Text proposed by the Commission*

2. Where a label fulfils the conditions provided in points (b), (c), (d) and (e) of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting authorities may define the technical specification by reference to those of the detailed specifications of that label, or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

*Amendment*

2. Where a label, ***certificate and other assurance scheme*** fulfils the conditions provided in points (b), (c), (d) and (e) of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting authorities may define the technical specification by reference to those of the detailed specifications of that label, ***certificate and other assurance scheme, or***, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

Or. en

**Amendment 968**  
**Heide Rühle**

**Proposal for a directive**  
**Article 42 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Contracting authorities may require that economic operators provide a test report from a recognised body or a certificate issued by such a body as means of proof of conformity with the technical specifications.

*Amendment*

Contracting authorities may require that economic operators provide a test report from a recognised body or a certificate issued by such a body as means of proof of conformity with ***requirements or criteria set out in*** the technical specifications, ***the award criteria or the contract performance clauses***.

Or. en

**Amendment 969**  
**Heide Rühle**

**Proposal for a directive**  
**Article 42 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

Where contracting authorities require the submission of certificates drawn up by ***recognised bodies attesting*** conformity ***with a particular technical specification***, certificates from equivalent other recognised bodies shall also be accepted by the contracting authorities.

*Amendment*

Where contracting authorities require the submission of certificates drawn up by ***a specific*** conformity ***assessment body***, certificates from equivalent other recognised bodies shall also be accepted by the contracting authorities.

Or. en

**Amendment 970**  
**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**  
**Article 42 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. Contracting authorities shall accept other appropriate means of proof than those referred to in paragraph 1, such as a technical dossier of the manufacturer where the economic operator concerned has no access to the certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits.**

**deleted**

Or. en

**Amendment 971**  
**Heide Rühle**

**Proposal for a directive**  
**Article 42 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Contracting authorities shall accept other appropriate means of proof than those referred to in paragraph 1, such as a technical dossier of the manufacturer where the economic operator concerned has no access to the certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits.

2. Contracting authorities shall accept other appropriate means of proof than those referred to in paragraph 1, such as a technical dossier of the manufacturer where the economic operator concerned has no access to the certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits, ***provided that the lack of access is not attributable to the economic operator concerned. However to limit the burden on Contracting Authorities and in order not to discriminate those tenderers who invest time and money for certificates or test reports, the burden for providing equivalence should be placed on the tenderer claiming equivalence.***

Or. en

## Amendment 972

Morten Løkkegaard, Jürgen Creutzmann, Jens Rohde

### Proposal for a directive Article 42 – paragraph 2

*Text proposed by the Commission*

2. Contracting authorities shall accept other appropriate means of proof than those referred to in paragraph 1, such as a technical dossier of the manufacturer where the economic operator concerned has no access to the certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits.

*Amendment*

2. Contracting authorities shall accept other appropriate ***and equivalent*** means of proof than those referred to in paragraph 1, such as a technical dossier of the manufacturer where the economic operator concerned has no access to the certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits.

Or. en

## Amendment 973

Raffaele Baldassarre, Lara Comi

### Proposal for a directive Article 42 – paragraph 2

*Text proposed by the Commission*

2. Le amministrazioni aggiudicatrici accettano altri mezzi di prova appropriati, diversi da quelli di cui al paragrafo 1, quale una documentazione tecnica del fabbricante, se l'operatore economico interessato non ha accesso ai certificati o alle relazioni di prova di cui al paragrafo 1, o non ha la possibilità di ottenerli entro i termini richiesti.

*Amendment*

2. Le amministrazioni aggiudicatrici accettano altri mezzi di prova appropriati, diversi da quelli di cui al paragrafo 1, quale una documentazione tecnica del fabbricante, se l'operatore economico interessato non ha accesso ai certificati o alle relazioni di prova di cui al paragrafo 1, o non ha la possibilità di ottenerli entro i termini richiesti. ***I suddetti mezzi di prova devono essere supportati da informazioni scientifiche, verificabili e non discriminatorie***

Or. it

## Amendment 974

Heide Rühle



**Proposal for a directive**  
**Article 42 – paragraph 4**

*Text proposed by the Commission*

4. Member States shall make available to other Member States, upon request, any information related to the evidence and documents submitted in accordance with Article 40(6), Article 41 and paragraphs 1, 2 and 3 of this Article **to prove compliance with technical requirements**. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 88.

*Amendment*

4. Member States shall make available to other Member States, upon request, any information related to the evidence and documents submitted in accordance with Article 40(6), Article 41 and paragraphs 1, 2 and 3 of this Article. The competent authorities of the Member State of establishment **of the economic operator** shall provide this information in accordance with Article 88.

Or. en

**Amendment 975**  
**Heide Rühle**

**Proposal for a directive**  
**Article 43 – paragraph 1**

*Text proposed by the Commission*

1. Contracting authorities **may** authorise tenderers to submit variants. **They** shall indicate in the contract notice or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest whether or not they authorise variants. Variants shall not be **authorised** without such indication.

*Amendment*

1. Contracting authorities **shall** authorise tenderers to submit variants **as long as they are linked to the subject matter of the contract. If they do not authorise variants, they** shall indicate **this** in the contract notice or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest whether or not they authorise variants. Variants shall not be **rejected** without such indication.

Or. en

**Amendment 976**  
**Frank Engel, Andreas Schwab**

**Proposal for a directive**  
**Article 43 – paragraph 1**

*Text proposed by the Commission*

1. Les *pouvoirs adjudicateurs* peuvent *autoriser les soumissionnaires* à présenter des variantes. *Ils indiquent dans l'avis de marché ou, lorsque le moyen de mise en concurrence est un avis de préinformation, dans l'invitation à confirmer l'intérêt, s'ils autorisent ou non les variantes. À défaut de cette indication, les variantes ne sont pas autorisées.*

*Amendment*

1. Les *soumissionnaires* peuvent présenter des variantes *avec une proposition de base*.

Or. fr

**Amendment 977**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 43 – paragraph 1 subpara -1 (new)**

*Text proposed by the Commission*

**Amendment 978**  
**Cornelis de Jong**

**Proposal for a directive**  
**Article 43 – paragraph 1**

*Text proposed by the Commission*

1. Contracting authorities *may authorise* tenderers to submit variants. *They* shall indicate in the contract notice or, where a prior information notice is used as a means of calling for competition, in the invitation

*Amendment*

*1. Une variante est un mode alternatif de conception, d'exécution ou de financement du marché.*

Or. fr

*Amendment*

1. Contracting authorities *allow* tenderers to submit variants. *If the contracting authorities do not wish to allow the submission of variants, they* shall indicate *this* in the contract notice or, where a prior

to confirm interest *whether or not they authorise variants*. Variants shall *not* be authorised without such indication.

information notice is used as a means of calling for competition, in the invitation to confirm interest. Variants shall be authorised without such indication.

Or. en

**Amendment 979**  
**Robert Rochefort**

**Proposal for a directive**  
**Article 43 – paragraph 1**

*Text proposed by the Commission*

1. Les pouvoirs adjudicateurs peuvent *autoriser les* soumissionnaires à présenter des variantes. Ils indiquent dans l'avis de marché ou, lorsque le moyen de mise en concurrence est un avis de préinformation, dans l'invitation à confirmer l'intérêt, s'ils *autorisent* ou non les variantes. À défaut de cette indication, les variantes *ne* sont *pas* autorisées.

*Amendment*

1. Les pouvoirs adjudicateurs peuvent *interdire aux* soumissionnaires *de* présenter des variantes. Ils indiquent dans l'avis de marché ou, lorsque le moyen de mise en concurrence est un avis de préinformation, dans l'invitation à confirmer l'intérêt, s'ils *interdisent* ou non les variantes. À défaut de cette indication, les variantes sont autorisées.

Or. fr

**Amendment 980**  
**Morten Løkkegaard, Jürgen Creutzmann, Jens Rohde**

**Proposal for a directive**  
**Article 43 – paragraph 1**

*Text proposed by the Commission*

1. Contracting authorities may authorise tenderers to submit variants. They shall *indicate* in the contract notice or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest *whether or not they authorise variants*. Variants shall *not* be authorised without such indication.

*Amendment*

1. Contracting authorities may authorise tenderers to submit variants. They shall *as a general rule authorise variants unless otherwise stated* in the contract notice or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest. Variants shall be authorised without such indication *to the contrary*.

**Amendment 981**

**Heide Rühle**

**Proposal for a directive**

**Article 43 – paragraph 2**

*Text proposed by the Commission*

2. Contracting authorities authorising variants shall state in the procurement documents the minimum requirements to be met by the variants **and any specific requirements for their presentation**. They shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

*Amendment*

2. Contracting authorities authorising variants shall state in the procurement documents the minimum requirements to be met by the variants. They shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

Or. en

**Amendment 982**

**Frank Engel, Andreas Schwab**

**Proposal for a directive**

**Article 43 – paragraph 2**

*Text proposed by the Commission*

2. Les pouvoirs adjudicateurs **qui autorisent les variantes** mentionnent dans les documents de marché les exigences minimales que les variantes doivent respecter ainsi que les modalités de leur soumission. Ils s'assurent aussi que les critères d'attribution retenus puissent être appliqués de façon pertinente tant aux variantes qui respectent ces exigences minimales qu'aux offres conformes qui ne sont pas des variantes.

*Amendment*

2. Les pouvoirs adjudicateurs mentionnent dans les documents de marché les exigences minimales que les variantes doivent respecter ainsi que les modalités de leur soumission. Ils s'assurent aussi que les critères d'attribution retenus puissent être appliqués de façon pertinente tant aux variantes qui respectent ces exigences minimales qu'aux offres conformes qui ne sont pas des variantes.

Or. fr

**Amendment 983**  
**Robert Rochefort**

**Proposal for a directive**  
**Article 43 – paragraph 2**

*Text proposed by the Commission*

2. **Les pouvoirs adjudicateurs qui autorisent** les variantes mentionnent dans les documents de marché les exigences minimales que les variantes doivent respecter ainsi que les modalités de leur soumission. Ils s'assurent aussi que les critères d'attribution retenus puissent être appliqués de façon pertinente tant aux variantes qui respectent ces exigences minimales qu'aux offres conformes qui ne sont pas des variantes.

*Amendment*

2. **Lorsque les variantes ne sont pas interdites, les pouvoirs adjudicateurs** mentionnent dans les documents de marché les exigences minimales que les variantes doivent respecter ainsi que les modalités de leur soumission. Ils s'assurent aussi que les critères d'attribution retenus puissent être appliqués de façon pertinente tant aux variantes qui respectent ces exigences minimales qu'aux offres conformes qui ne sont pas des variantes.

Or. fr

**Amendment 984**  
**Phil Prendergast**

**Proposal for a directive**  
**Article 43 – paragraph 2**

*Text proposed by the Commission*

2. **Contracting authorities authorising variants shall state** in the procurement documents the minimum requirements to be met by the variants and any **specific** requirements for their presentation. They shall also ensure that the chosen award criteria can be usefully applied to variants meeting those **minimum** requirements as well as to conforming tenders which are not variants.

*Amendment*

2. **Variants may be authorised** in the procurement documents **which define** the minimum requirements to be met by the variants and any requirements for their presentation. **These minimum requirements are mandatory to ensure that the variants will not affect the subject matter of the contract. The contracting authority may reject any variants on the ground that it would affect the subject matter of the contract.** They shall also ensure that the chosen award criteria can be usefully applied to variants meeting those requirements as well as to conforming tenders which are not variants.

**Amendment 985**

**Heide Rühle**

**Proposal for a directive**

**Article 43 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

*Only variants meeting the minimum requirements laid down by the contracting authorities shall be taken into consideration.*

*deleted*

**Amendment 986**

**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**

**Article 43 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*In procedures for awarding public supply or service contracts, contracting authorities that have authorised variants shall not reject a variant on the sole ground that it would, where successful, lead to either a service contract rather than a public supply contract or a supply contract rather than a public service contract.*

*deleted*

**Amendment 987**

**Heide Rühle**

**Proposal for a directive**

**Article 43 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

In procedures for awarding public supply or service contracts, contracting authorities ***that have authorised variants*** shall not reject a variant on the sole ground that it would, where successful, lead to either a service contract rather than a public supply contract or a supply contract rather than a public service contract.

*Amendment*

In procedures for awarding public supply or service contracts, contracting authorities shall not reject a variant on the sole ground that it would, where successful, lead to either a service contract rather than a public supply contract or a supply contract rather than a public service contract.

Or. en

*Justification*

*To encourage innovative products and production methods variants are one of the best instruments there use should be encouraged and not hindered.*

**Amendment 988**  
**Robert Rochefort**

**Proposal for a directive**  
**Article 43 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

Dans les procédures de passation de marchés publics de fournitures ou de services, les pouvoirs adjudicateurs qui ont ***autorisé des*** variantes ne peuvent rejeter une variante pour la seule raison qu'elle aboutirait, si elle était retenue, respectivement soit à un marché de services au lieu d'un marché public de fournitures, soit à un marché de fournitures au lieu d'un marché public de services.

*Amendment*

Dans les procédures de passation de marchés publics de fournitures ou de services, les pouvoirs adjudicateurs qui ***n'ont pas interdit les*** variantes ne peuvent rejeter une variante pour la seule raison qu'elle aboutirait, si elle était retenue, respectivement soit à un marché de services au lieu d'un marché public de fournitures, soit à un marché de fournitures au lieu d'un marché public de services.

Or. fr

**Amendment 989**  
**Christel Schaldemose**

**Proposal for a directive**  
**Article 44**

*Text proposed by the Commission*

*Amendment*

**Article 44**

**udgår**

***Division of contracts into lots***

***1. Public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.***

***Contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, whether tenders are limited to one or more lots only.***

***2. Contracting authorities may, even where the possibility to tender for all lots has been indicated, limit the number of lots that may be awarded to a tenderer, provided that the maximum number is stated in the contract notice or in the invitation to confirm interest. Contracting authorities shall determine and indicate in the procurement documents the objective and non-discriminatory criteria or rules for awarding the different lots where the application of the chosen award criteria would result in the award to one tenderer of more lots than the maximum number.***

***3. Where more than one lot may be awarded to the same tenderer, contracting authorities may provide that they will either award a contract per lot or one or more contracts covering several or all lots.***

***Contracting authorities shall specify in the procurement documents whether they reserve the right to make such a choice***



*and, if so, which lots may be grouped together under one contract.*

*Contracting authorities shall first determine the tenders fulfilling best the award criteria set out pursuant to Article 66 for each individual lot. They may award a contract for more than one lot to a tenderer that is not ranked first in respect of all individual lots covered by this contract, provided that the award criteria set out pursuant to Article 66 are better fulfilled with regard to all the lots covered by that contract. Contracting authorities shall specify the methods they intend to use for such comparison in the procurement documents. Such methods shall be transparent, objective and non-discriminatory.*

*4. Contracting authorities may require that all contractors coordinate their activities under the direction of the economic operator to which has been awarded a lot involving the coordination of the entire project or its relevant parts.*

Or. da

**Amendment 990**  
**Heide Rühle**

**Proposal for a directive**  
**Article 44 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Public contracts may be subdivided into homogenous or heterogeneous lots. *For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall provide* in the contract notice or in the invitation to confirm interest *a specific*

*Amendment*

Public contracts may be subdivided into homogenous or heterogeneous lots. *Member States shall provide for provisions on the subdivision of contracts into lots at their national level. Contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, whether tenders are limited to one or more lots only.*

*explanation of its reasons.*

Or. en

*Justification*

*The value of a contract is determined by the very nature and scale of the goods, works or services procured. Why a contract is valued above €500,000 will be self-evident according to the subject matter. It is therefore an unnecessary administrative burden, and an exaggerated duty, for contracting authorities to have to explain and give reasons in every larger contract why the contract has a value above €500,000 and has not been disaggregated.*

**Amendment 991**

**Frank Engel, Philippe Juvin**

**Proposal for a directive**

**Article 44 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Les marchés publics peuvent être divisés en lots homogènes ou hétérogènes. En ce qui concerne les marchés publics dont la valeur déterminée conformément à l'article 5 est égale ou supérieure aux seuils fixés par l'article 4 sans être inférieure à 500 000 EUR, *si* le pouvoir adjudicateur ***ne juge pas appropriée une subdivision en lots, il*** fournit une justification ***spécifique*** dans l'avis de marché ou dans l'invitation à ***confirmer l'intérêt.***

*Amendment*

Les marchés publics peuvent être divisés en lots homogènes ou hétérogènes. En ce qui concerne les marchés publics dont la valeur déterminée conformément à l'article 5 est égale ou supérieure aux seuils fixés par l'article 4 sans être inférieure à 500 000 EUR, le pouvoir adjudicateur fournit une justification dans l'avis de marché ou dans l'invitation ***sur son choix de recourir ou non à une subdivision en lots.***

Or. fr

**Amendment 992**

**Andreas Schwab, Anja Weisgerber**

**Proposal for a directive**

**Article 44 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Public contracts may be subdivided into homogenous or heterogeneous lots. ***For***

*Amendment*

Public contracts may be subdivided into homogenous or heterogeneous lots.

*contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.*

Or. en

**Amendment 993**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 44 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Les marchés publics peuvent être divisés en lots **homogènes ou hétérogènes**. En ce qui concerne les marchés publics dont la valeur déterminée conformément à l'article 5 est égale ou supérieure aux seuils fixés par l'article 4 sans être inférieure à 500 000 EUR, si le pouvoir adjudicateur ne juge pas appropriée une subdivision en lots, il fournit une justification spécifique dans l'avis de marché ou dans l'invitation à confirmer l'intérêt.*

*Amendment*

Les marchés publics peuvent être divisés en lots.

Or. fr

**Amendment 994**  
**Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski, Herbert Dorfmann**

**Proposal for a directive**  
**Article 44 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Public contracts may be subdivided into

*Amendment*

Public contracts may be subdivided into

*homogenous or heterogeneous* lots. For contracts with a value equal to or greater than *the thresholds provided for in Article 4 but not less* than EUR 500 000, determined in accordance with Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall *provide* in the contract notice or in the invitation to confirm interest *a specific explanation of its reasons*.

lots. For *supply and services* contracts with a value equal to or greater than **EUR 500 000** and for *works contracts with a value equal to or greater* than EUR 10 000 000 determined in accordance with Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall *state that* in the contract notice or in the invitation to confirm interest.

Or. en

#### *Justification*

*For the sake of simplification there is no need to indicate that the Article refers to contracts with a value equal to or greater than the thresholds indicated in Article 4, as it is obvious. It is sufficient just to indicate concrete thresholds, which should be different for supply and services contracts on the one hand and for works on the other hand, as those thresholds differ traditionally under public procurement directives.*

#### **Amendment 995** **Malcolm Harbour, Edvard Kožušník**

#### **Proposal for a directive** **Article 44 – paragraph 1 – subparagraph 1**

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

Public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, *where the contracting authority does not deem it appropriate to split* into lots, *it shall provide* in the contract notice or in the invitation to confirm interest *a specific explanation of its reasons*.

##### *Amendment*

*To facilitate greater access to public procurement by small and medium-sized enterprise, public* contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 1 000 000, determined in accordance with Article 5, contracting *authorities shall provide justification for not sub-dividing the contract* into lots in the contract notice or in the invitation to confirm interest.

Or. en

**Amendment 996**  
**Cornelis de Jong**

**Proposal for a directive**  
**Article 44 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.*

*Amendment*

*With a view to maximising competition, and unless the subject-matter of the contract makes division on the basis of the nature of the services involved impossible, the contracting authority shall award the contract in separate lots. If the contract cannot be split into lots because its subject-matter makes division on the basis of the nature of the services involved impossible, the contracting authority shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.*

Or. en

**Amendment 997**  
**Sabine Verheyen, Birgit Collin-Langen**

**Proposal for a directive**  
**Article 44 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Öffentliche Aufträge können in homogene oder heterogene Lose unterteilt werden. Bei Aufträgen mit einem Wert, der den Schwellenwerten in Artikel 4 entspricht oder sie übersteigt, aber 500 000 EUR nicht unterschreitet, so wie in Artikel 5 festgelegt, und bei denen der öffentliche Auftraggeber eine Unterteilung in Lose für nicht sinnvoll hält, wird dies ausführlich in der Auftragsbekanntmachung oder in der Aufforderung zur Interessensbestätigung erläutert.*

*Amendment*

*Zur Förderung des größtmöglichen Wettbewerbs kann der öffentliche Auftraggeber den Auftrag in einzelnen Losen vergeben. Sofern im Einzelfall sachliche Gründe existieren, die einer Aufteilung in Lose entgegenstehen, kann der öffentliche Auftraggeber von einer Aufteilung des Auftrags absehen.*

Or. de

*Justification*

*Hier werden den öffentlichen Auftraggebern unnötige Verwaltungslasten aufgebürdet, die im Sinne der Vereinfachung zu streichen sind.*

**Amendment 998**

**Sirpa Pietikäinen, Anneli Jäätteenmäki**

**Proposal for a directive**

**Article 44 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Public contracts *may* be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.

*Amendment*

***In order to enhance competition and help SMEs to get to the public procurement,*** public contracts *shall* be subdivided into homogenous or heterogeneous lots, ***when appropriate according to the nature of the contract.*** For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.

Or. en

**Amendment 999**

**Raffaele Baldassarre, Lara Comi**

**Proposal for a directive**

**Article 44 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Gli appalti possono essere suddivisi in lotti omogenei o eterogenei. Per gli appalti di valore pari o superiore alle soglie di cui all'articolo 4 ma non inferiori a 500 000 EUR, determinati conformemente all'articolo 5, *se* l'amministrazione aggiudicatrice ***non ritiene appropriato***

*Amendment*

Gli appalti possono essere suddivisi in lotti omogenei o eterogenei. Per gli appalti di valore pari o superiore alle soglie di cui all'articolo 4 ma non inferiori a 500 000 EUR, determinati conformemente all'articolo 5, l'amministrazione aggiudicatrice fornisce nel bando di gara o

*suddividerli in lotti, essa* fornisce nel bando di gara o nell'invito a confermare interesse un chiarimento specifico delle sue ragioni.

nell'invito a confermare interesse un chiarimento specifico delle sue ragioni ***riguardanti la scelta di suddividere o non suddividere l'appalto in lotti***

Or. it

**Amendment 1000**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 44 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, ***where*** the contracting authority ***does not deem it appropriate to split into lots, it*** shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its ***reasons***.

*Amendment*

Public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, the contracting authority shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its ***decision in favour of or against a division into lots***.

Or. en

*Justification*

*The division of contracts into lots facilitates the participation of SMEs in public procurement and contracting authorities should at least be obliged to consider this option. However, the directive should be more neutral and favour neither the division of contracts into lots nor a single contract, as the decision has to be taken on a case-by-case basis taking into consideration technical and economic factors.*

**Amendment 1001**  
**Riikka Manner**

**Proposal for a directive**  
**Article 44 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Public contracts may be subdivided into homogenous or heterogeneous lots. ***For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.***

*Amendment*

***In order to enhance competition and help SMEs to get to the public procurement, public contracts may be subdivided into homogenous or heterogeneous lots, except in the procurement where the contracting authority does not deem it appropriate to split into lots.***

Or. en

*Justification*

*It is obviously important to encourage the contracting authority to subdivide the contract into lots in order to make it easier to SMEs to participate to public tendering competitions. However, there should not be an obligation to splitting into lots, because then the contracting authority might split into lots an agreement that it should not have split. This is often the case in for example construction and IT contracts.*

**Amendment 1002  
Phil Prendergast**

**Proposal for a directive  
Article 44 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, ***where*** the contracting authority ***does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.***

*Amendment*

Public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500,000 determined in accordance with Article 5, the contracting authority shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons ***for their decision to divide or not divide the contract into lots, as regards the indissolubility in technical, legal or financial terms. For specific***



*contracts, Member States may define and impose compulsory lots.*

Or. en

### **Amendment 1003**

**Marc Tarabella**

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

#### **Article 44 – paragraph 1 – subparagraph 2**

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

Dans l'avis de marché ou dans l'invitation à confirmer l'intérêt, les pouvoirs adjudicateurs indiquent si *les offres sont limitées* ou non à un lot ou à un certain nombre de lots.

##### *Amendment*

Dans l'avis de marché ou dans l'invitation à confirmer l'intérêt, les pouvoirs adjudicateurs indiquent si *le marché est limité* ou non à un lot ou à un certain nombre de lots. *Ils choisissent librement le nombre de lots, en tenant compte notamment des caractéristiques techniques des prestations demandées, de la structure du secteur économique en cause et, le cas échéant, des règles applicables à certaines professions.*

Or. fr

### **Amendment 1004**

**Malgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski, Herbert Dorfmann**

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

#### **Article 44 – paragraph 1 – subparagraph 2**

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

*Contracting authorities* shall indicate, in the contract notice *or* in the invitation to confirm interest, *whether tenders are limited to one or more lots only*.

##### *Amendment*

*Where the contracting authority limits the possibility to tender to one or more lots it shall indicate it* in the contract notice, in the invitation to confirm interest *or in the procurement documents*.

Or. en

*Justification*

*It seems to be sufficient to oblige contracting authorities to inform, in the contract notice or in the invitation to confirm interest, about its decision not to split contract into lots. Contracting authorities should not be required to provide specific explanations of its reasons. It is not clear what would be added value of such requirement. The wording of second subparagraph has been adjusted for the sake of clarification.*

**Amendment 1005**

**Andreas Schwab, Frank Engel, Birgit Collin-Langen, Sabine Verheyen, Anja Weisgerber**

**Proposal for a directive**

**Article 44 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. Contracting authorities may, even where the possibility to tender for all lots has been indicated, limit the number of lots that may be awarded to a tenderer, provided that the maximum number is stated in the contract notice or in the invitation to confirm interest. Contracting authorities shall determine and indicate in the procurement documents the objective and non-discriminatory criteria or rules for awarding the different lots where the application of the chosen award criteria would result in the award to one tenderer of more lots than the maximum number.***

***deleted***

Or. en

*Justification*

*Simplification of procurement rules*

**Amendment 1006**

**Marc Tarabella**

**Proposal for a directive**

**Article 44 – paragraph 2**

*Text proposed by the Commission*

2. Les **pouvoirs adjudicateurs** peuvent, **même lorsqu'ils ont indiqué la possibilité de soumissionner pour tous les lots, limiter** le nombre de lots qui peuvent être attribués à un même soumissionnaire, à condition que ce nombre maximal soit inscrit dans l'avis de marché ou dans l'invitation à confirmer l'intérêt. Les pouvoirs adjudicateurs déterminent et indiquent dans les documents de marché les critères ou règles objectifs et non discriminatoires qu'ils prévoient d'utiliser pour l'attribution des différents lots **lorsque l'application des critères d'attribution retenus conduirait à attribuer à un soumissionnaire un nombre de lots supérieur au nombre maximal fixé.**

*Amendment*

2. Les **candidats ne peuvent pas présenter des offres variables selon le nombre de lots susceptibles d'être obtenus. Les pouvoirs adjudicateurs limitent** le nombre de lots qui peuvent être attribués à un même soumissionnaire, à condition que ce nombre maximal soit inscrit dans l'avis de marché ou dans l'invitation à confirmer l'intérêt. Les pouvoirs adjudicateurs déterminent et indiquent dans les documents de marché les critères ou règles objectifs et non discriminatoires qu'ils prévoient d'utiliser pour l'attribution des différents lots.

Or. fr

**Amendment 1007**

**Andreas Schwab, Frank Engel, Birgit Collin-Langen, Sabine Verheyen, Anja Weisgerber**

**Proposal for a directive  
Article 44 – paragraph 3**

*Text proposed by the Commission*

3. **Where more than one lot may be awarded to the same tenderer, contracting authorities may provide that they will either award a contract per lot or one or more contracts covering several or all lots.**

**Contracting authorities shall specify in the procurement documents whether they reserve the right to make such a choice and, if so, which lots may be grouped together under one contract.**

**Contracting authorities shall first determine the tenders fulfilling best the award criteria set out pursuant to Article 66 for each individual lot. They may**

*Amendment*

**deleted**

*award a contract for more than one lot to a tenderer that is not ranked first in respect of all individual lots covered by this contract, provided that the award criteria set out pursuant to Article 66 are better fulfilled with regard to all the lots covered by that contract. Contracting authorities shall specify the methods they intend to use for such comparison in the procurement documents. Such methods shall be transparent, objective and non-discriminatory.*

Or. en

*Justification*

*Simplification of procurement rules.*

**Amendment 1008**  
**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**  
**Article 44 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

*3. Where more than one lot may be awarded to the same tenderer, contracting authorities may provide that they will either award a contract per lot or one or more contracts covering several or all lots.*

*deleted*

*Contracting authorities shall specify in the procurement documents whether they reserve the right to make such a choice and, if so, which lots may be grouped together under one contract.*

*Contracting authorities shall first determine the tenders fulfilling best the award criteria set out pursuant to Article 66 for each individual lot. They may award a contract for more than one lot to a tenderer that is not ranked first in respect of all individual lots covered by this contract, provided that the award*

*criteria set out pursuant to Article 66 are better fulfilled with regard to all the lots covered by that contract. Contracting authorities shall specify the methods they intend to use for such comparison in the procurement documents. Such methods shall be transparent, objective and non-discriminatory.*

Or. en

#### **Amendment 1009**

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

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

#### **Article 44 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

*Where more than one lot may be awarded to the same tenderer, contracting authorities may provide that they will either award a contract per lot or one or more contracts covering several or all lots.*                      *deleted*

Or. en

#### *Justification*

*Paragraph 3 could lead to contrary of what is the aim of the proposal, namely to enable better acces of SMEs to public contracts, as it may lead to aggregation of procurement, excluding therefore SMEs.*

#### **Amendment 1010**

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

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

#### **Article 44 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*Contracting authorities shall specify in the procurement documents whether they reserve the right to make such a choice*                      *deleted*

*and, if so, which lots may be grouped together under one contract.*

Or. en

#### **Amendment 1011**

**Sirpa Pietikäinen, Anna Maria Corazza Bildt**

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

#### **Article 44 – paragraph 3 – subparagraph 2**

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

Contracting authorities shall specify in the procurement documents whether they reserve the right to make such a choice and, if so, which lots may be grouped together under one contract.

##### *Amendment*

Contracting authorities shall specify in the procurement documents whether they reserve the right to make such a choice and, if so, which lots may be grouped together under one contract. ***If one contract is awarded it may not restrict competition or lead to monopolisation of the market.***

Or. en

#### **Amendment 1012**

**Heide Rühle**

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

#### **Article 44 – paragraph 3 – subparagraph 3**

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

***Contracting authorities shall first determine the tenders fulfilling best the award criteria set out pursuant to Article 66 for each individual lot. They may award a contract for more than one lot to a tenderer that is not ranked first in respect of all individual lots covered by this contract, provided that the award criteria set out pursuant to Article 66 are better fulfilled with regard to all the lots covered by that contract. Contracting authorities shall specify the methods they intend to use for such comparison in the***

##### *Amendment*

***deleted***

*procurement documents. Such methods shall be transparent, objective and non-discriminatory.*

Or. en

*Justification*

*The value of a contract is determined by the very nature and scale of the goods, works or services procured. Why a contract is valued above €500,000 will be self-evident according to the subject matter. It is therefore an unnecessary administrative burden, and an exaggerated duty, for contracting authorities to have to explain and give reasons in every larger contract why the contract has a value above €500,000 and has not been disaggregated.*

**Amendment 1013**

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

**Proposal for a directive**

**Article 44 – paragraph 3 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

*Contracting authorities shall first determine the tenders fulfilling best the award criteria set out pursuant to Article 66 for each individual lot. They may award a contract for more than one lot to a tenderer that is not ranked first in respect of all individual lots covered by this contract, provided that the award criteria set out pursuant to Article 66 are better fulfilled with regard to all the lots covered by that contract. Contracting authorities shall specify the methods they intend to use for such comparison in the procurement documents. Such methods shall be transparent, objective and non-discriminatory.*

*deleted*

Or. en

**Amendment 1014**

**Heide Rühle**

**Proposal for a directive**  
**Article 44 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. Contracting authorities may require that all contractors coordinate their activities under the direction of the economic operator to which has been awarded a lot involving the coordination of the entire project or its relevant parts.** *deleted*

Or. en

*Justification*

*The value of a contract is determined by the very nature and scale of the goods, works or services procured. Why a contract is valued above €500,000 will be self-evident according the subject matter. It is therefore an unnecessary administrative burden, and an exaggerated duty, for contracting authorities to have to explain and give reasons in every larger contract why the contract has a value above €500,000 and has not been disaggregated.*

**Amendment 1015**

**Andreas Schwab, Frank Engel, Birgit Collin-Langen, Sabine Verheyen, Anja Weisgerber**

**Proposal for a directive**  
**Article 44 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. Contracting authorities may require that all contractors coordinate their activities under the direction of the economic operator to which has been awarded a lot involving the coordination of the entire project or its relevant parts.** *deleted*

Or. en

*Justification*

*Simplification of procurement rules.*



**Amendment 1016**

**Cornelis de Jong**

**Proposal for a directive**

**Article 46 – paragraph 2 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

For restricted and competitive procedures with negotiation, *sub-central* contracting authorities may use a prior information notice as a call for competition pursuant to Article 24(2), provided that the notice fulfils all of the following conditions:

*Amendment*

For restricted and competitive procedures with negotiation, contracting authorities may use a prior information notice as a call for competition pursuant to Article 24(2), provided that the notice fulfils all of the following conditions:

Or. en

**Amendment 1017**

**Cornelis de Jong**

**Proposal for a directive**

**Article 46 – paragraph 2 – subparagraph 1 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

*(da) where the economic operator figures in the register of non-compliance as set up in Article 83a.*

Or. en

**Amendment 1018**

**Louis Grech**

**Proposal for a directive**

**Article 46 – paragraph 2 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*Member States, where appropriate, should adopt the 'citizen choice model' for public procurement tenders, in particular, with tenders for personal service, such as housekeeping services for elderly persons. Through this, citizens would be able to*

*decide on a specific operator from bidders that meet the quality criteria, agree to a (maximum) price and are awarded a framework contract by the contracting authority.*

Or. en

## **Amendment 1019**

**Andreas Schwab, Sirpa Pietikäinen, Jürgen Creutzmann**

### **Proposal for a directive**

#### **Article 48 – paragraph 1 – subparagraph 1**

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

Not later than **48** days after the award of a contract or the conclusion of a framework agreement, contracting authorities shall send a contract award notice on the results of the procurement procedure.

##### *Amendment*

Not later than **14** days after the award of a contract or the conclusion of a framework agreement, contracting authorities shall send a contract award notice on the results of the procurement procedure. ***In case of an incomplete or incoherent contract award notice, the Commission will contact the Contracting Authority with the aim to receive completion or clarification of the contract award notice.***

Or. en

##### *Justification*

*TED data is not reliable because Contracting Authorities often forget to send contract award notices. By shortening the deadline, this pillar of data gathering would be made more effective. Furthermore, CANs are often incomplete or incoherent and in practice, the Commission does not get back to the Contracting Authorities for clarification. It would therefore be helpful to introduce a clear obligation of the Commission to check data for completeness and coherence.*

## **Amendment 1020**

**Frank Engel, Andreas Schwab**

### **Proposal for a directive**

#### **Article 48 – paragraph 1 – subparagraph 1 a (new)**

*Text proposed by the Commission*

Not later than 48 days after the award of a contract or the conclusion of a framework agreement, contracting authorities shall send a contract award notice on the results of the procurement procedure.

*Amendment*

Not later than 48 days after the award of a contract or the conclusion of a framework agreement, contracting authorities shall send a contract award notice on the results of the procurement procedure.

***In the case of public contracts for services listed in Annex XVI B, the contracting authorities shall indicate in the notice whether they agree to its publication. For such services contracts the Commission shall draw up the rules for establishing statistical reports on the basis of such notices and for the publication of such reports in accordance with the procedure laid down in Article 91.***

Or. en

*Justification*

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

**Amendment 1021**

**António Fernando Correia de Campos**

**Proposal for a directive  
Article 48 – paragraph 3**

*Text proposed by the Commission*

3. As autoridades adjudicantes enviam um anúncio sobre o resultado da adjudicação dos contratos baseados num sistema de aquisição dinâmico o mais tardar 48 dias após a adjudicação de cada contrato.  
***Podem, contudo, agrupar esses anúncios por trimestre. Nesse caso, enviam os anúncios agrupados o mais tardar 48 dias após o fim de cada trimestre.***

*Amendment*

3. As autoridades adjudicantes enviam um anúncio sobre o resultado da adjudicação dos contratos baseados num sistema de aquisição dinâmico o mais tardar 48 dias após a adjudicação de cada contrato.

Or. pt

**Amendment 1022**  
**Heide Rühle**

**Proposal for a directive**  
**Article 50 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

***1. Notices referred to in Articles 46, 47 and 48 and the information contained therein shall not be published at national level before the publication pursuant to Article 49.***

***deleted***

Or. en

*Justification*

*Bureaucratic and unnecessary burden and source of mistakes*

**Amendment 1023**  
**Heide Rühle**

**Proposal for a directive**  
**Article 51 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Contracting authorities shall offer ***unrestricted and*** full direct access free of charge by electronic means to the procurement documents from the date of publication of the notice in accordance with Article 49 or the date on which the invitation to confirm interest is sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which this documentation is accessible.

1. Contracting authorities shall offer full direct access free of charge by electronic means to the procurement documents from the date of publication of the notice in accordance with Article 49 or the date on which the invitation to confirm interest is sent. ***Contracting authorities may ask under specific circumstances for name, adress or other means to identify the tenderer.*** The text of the notice or the invitation to confirm interest shall specify the internet address at which this documentation is accessible.

Or. en

*Justification*

*There might be need to prove for example the tenderers data (name, adress etc.)*

**Amendment 1024**

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

**Proposal for a directive**

**Article 51 – paragraph 1**

*Text proposed by the Commission*

1. Die öffentlichen Auftraggeber bieten ab dem Datum der Veröffentlichung der Bekanntmachung gemäß Artikel 49 oder dem Datum der Aufforderung zur Interessensbestätigung einen uneingeschränkten und vollständigen Zugang anhand elektronischer Mittel zu diesen Auftragsunterlagen an. Der Text der Bekanntmachung oder der Aufforderung zur Interessenbestätigung müssen die Internet-Adresse, über die diese Unterlagen abrufbar sind, enthalten.

*Amendment*

1. Die öffentlichen Auftraggeber bieten ab dem Datum der Veröffentlichung der Bekanntmachung gemäß Artikel 49 oder dem Datum der Aufforderung zur Interessensbestätigung einen uneingeschränkten und vollständigen Zugang anhand elektronischer Mittel zu diesen Auftragsunterlagen an. Der Text der Bekanntmachung oder der Aufforderung zur Interessenbestätigung müssen die Internet-Adresse, über die diese Unterlagen abrufbar sind, enthalten. ***Der öffentliche Auftraggeber darf den Zugang davon abhängig machen, dass der Bewerber dem Auftraggeber zuvor Name, Anschrift und sonstige Daten mitteilt oder entsprechende Unterlagen zur Verfügung stellt, anhand derer die Identität des Bewerbers zweifelsfrei festgestellt werden kann.***

Or. de

*Justification*

*Der öffentliche Auftraggeber hat z. B. bei sicherheitsrelevanten Aufträgen ein berechtigtes Interesse daran, zu erfahren, wer die Ausschreibungsunterlagen anfordert.*

**Amendment 1025**

**Pablo Arias Echeverría**

**Proposal for a directive**

**Article 51 – paragraph 2 bis (new)**

*Text proposed by the Commission*

*Amendment*

**2 bis. Esta información adicional se proporcionará a todos los licitadores que participen en el proceso de licitación.**

Or. es

**Amendment 1026**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 52 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

Dans les procédures restreintes, **les dialogues compétitifs, les partenariats d'innovation** et les procédures concurrentielles avec négociation, les pouvoirs adjudicateurs invitent simultanément et par écrit les candidats retenus à présenter leurs offres **ou, dans le cas du dialogue compétitif, à participer au dialogue.**

Dans les procédures restreintes, et les procédures concurrentielles avec négociation, les pouvoirs adjudicateurs invitent simultanément et par écrit les candidats retenus à présenter leurs offres.

Or. fr

**Amendment 1027**  
**Anja Weisgerber, Andreas Schwab**

**Proposal for a directive**  
**Article 52 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Die in Absatz 1 genannten Aufforderungen enthalten einen Verweis auf die elektronische Adresse, über die die Spezifikationen oder die Beschreibung und alle zusätzlichen Unterlagen **direkt elektronisch zur Verfügung gestellt wurden**. Diese Aufzeichnungen müssen zudem die in Anhang X vorgesehenen

2. Die in Absatz 1 genannten Aufforderungen enthalten einen Verweis auf die elektronische Adresse, über die die Spezifikationen oder die Beschreibung und alle zusätzlichen Unterlagen **für die Bieter abrufbar sind**. Diese Aufzeichnungen müssen zudem die in Anhang X vorgesehenen Angaben enthalten.

Angaben enthalten.

Or. de

*Justification*

*Klarstellung, dass es ausreichend ist, die Informationen im Internet bereitzustellen. Eine Information der einzelnen Bieter sollte nicht vorgeschrieben werden. Die Bieter müssen hier selbst verantwortlich sein.*

**Amendment 1028**

**Pablo Arias Echeverría**

**Proposal for a directive**

**Article 53 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. *A petición de la parte interesada, los* poderes adjudicadores comunicarán, lo antes posible, y, en cualquier caso, en un plazo de 15 días a partir de la recepción de una solicitud por escrito:

*Amendment*

2. Los poderes adjudicadores comunicarán, lo antes posible, ***a partir de la fecha de la adjudicación de la concesión, de la desestimación de la solicitud de participación, de la desestimación de la oferta*** y, en cualquier caso, en un plazo de 15 días a partir de la recepción de una solicitud por escrito:

Or. es

**Amendment 1029**

**Heide Rühle**

**Proposal for a directive**

**Article 54 – paragraph 2**

*Text proposed by the Commission*

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where ***they have*** established that the tender does not comply, ***at least in an equivalent manner***, with obligations established by Union legislation in the field of social and labour

*Amendment*

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where ***it has been*** established that the tender does not comply with obligations established by Union ***or national*** legislation in the field of social and labour law or environmental law

law or environmental law or *of* the international social and environmental law provisions listed in Annex XI.

or *collective agreements which apply in the place where the work, service or supply is performed or by the* international social and environmental law provisions listed in Annex XI *and provided they are linked to the subject matter of the contract.*

Or. en

### **Amendment 1030**

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

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

#### **Article 54 – paragraph 2**

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

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where *they have* established that the tender does not comply, *at least in an equivalent manner*, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.

##### *Amendment*

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where *it has been* established that the tender does not comply, with obligations established by Union *or national* legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.

Or. en

##### *Justification*

*Art. 54 paragraph 2 refers to the compliance with EU legislation. This formulation is very wide and in this way unclear. Furthermore it is already possible under the existing directive to exclude tenderers who do not act legally. Therefore, this provision is unnecessary. This kind of regulation is superfluous because it is self-evident that both, tenderer and contracting authority, have to respect EU legislation.*

### **Amendment 1031**

**Alexander Alvaro, Jürgen Creutzmann**

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

#### **Article 54 – paragraph 2**



*Text proposed by the Commission*

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.

*Amendment*

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law, **data protection law** or environmental law or of the international social and environmental law provisions listed in Annex XI.

Or. en

**Amendment 1032**

**Peter Simon**

**Proposal for a directive**

**Article 54 – paragraph 2**

*Text proposed by the Commission*

2. Die öffentlichen Auftraggeber können entscheiden, einen Auftrag nicht an einen Bieter mit dem besten Angebot zu vergeben, wenn **sie** festgestellt **haben**, dass der Bieter zumindest nicht in angemessener Weise den Anforderungen der Unionsrechtsvorschriften auf dem Gebiet des Sozial- und Arbeitsrechts oder des Umweltrechts bzw. der in Anhang XI genannten internationalen Sozial- und Umweltsrechtsvorschriften genügt.

*Amendment*

2. Die öffentlichen Auftraggeber können entscheiden, einen Auftrag nicht an einen Bieter mit dem besten Angebot zu vergeben, wenn festgestellt **wurde**, dass der Bieter zumindest nicht in angemessener Weise den Anforderungen der **nationalen Rechtsvorschriften sowie der** Unionsrechtsvorschriften auf dem Gebiet des Sozial- und Arbeitsrechts oder des Umweltrechts bzw. der in Anhang XI genannten internationalen Sozial- und Umweltsrechtsvorschriften genügt.

Or. de

**Amendment 1033**

**Anna Hedh**

**Proposal for a directive**

**Article 54 – paragraph 2**

*Text proposed by the Commission*

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.

*Amendment*

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation **and national laws, regulations and other binding provisions** in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.

Or. en

*Justification*

*The reference to regulations in this article is limited to Union legislation in specific regulatory fields. This reference should be extended in such a way that national legislation and systems for regulating the labour market are taken into account.*

**Amendment 1034**

**Sabine Verheyen, Birgit Collin-Langen**

**Proposal for a directive**

**Article 54 – paragraph 2**

*Text proposed by the Commission*

2. Die öffentlichen Auftraggeber können entscheiden, einen Auftrag nicht an einen Bieter mit dem besten Angebot zu vergeben, wenn **sie** festgestellt **haben**, dass der Bieter zumindest nicht in angemessener Weise den Anforderungen der **Unionsrechtsvorschriften** auf dem Gebiet des Sozial- und Arbeitsrechts oder des Umweltrechts bzw. der in Anhang XI genannten internationalen Sozial- und Umweltschichtvorschriften genügt.

*Amendment*

2. Die öffentlichen Auftraggeber können entscheiden, einen Auftrag nicht an einen Bieter mit dem besten Angebot zu vergeben, wenn festgestellt **wurde**, dass der Bieter zumindest nicht in angemessener Weise den Anforderungen der **Unions- und nationalen Rechtsvorschriften** auf dem Gebiet des Sozial- und Arbeitsrechts oder des Umweltrechts bzw. der in Anhang XI genannten internationalen Sozial- und Umweltschichtvorschriften genügt.

Or. de

## *Justification*

*Neben der Einhaltung der EU-Gesetzgebung müssen die Bieter ebenso die nationalen Rechtsvorschriften einhalten.*

### **Amendment 1035**

**Matteo Salvini, Francesco Enrico Speroni**

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

#### **Article 54 – paragraph 2**

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

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or *of* the international *social and environmental law provisions* listed in Annex XI.

##### *Amendment*

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or *with the obligations regarding working conditions along the supply chain as stated in national labour laws and regulations in which production processes take place and in international conventions as listed in Annex XI, whatever the most favourable of workers.*

##### *These provisions include:*

*(a) those defined by the eight ILO Core Conventions (freedom of association and collective bargaining, forced and compulsory labour, discrimination in respect of employment and occupation, child labour);*

*(b) occupational safety and health;*

*(c) working time;*

*(d) wages and*

*(e) social security.*

Or. en

**Amendment 1036**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 54 – paragraph 2**

*Text proposed by the Commission*

2. Contracting authorities **may decide** not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.

*Amendment*

2. Contracting authorities **shall** not award a contract to the tenderer submitting the best tender where they have established **based on clear and sufficient evidence** that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.

Or. en

*Justification*

*It should be clear that contracting authorities should not award a contract to a candidate who proves to violate social, labour or environmental law.*

**Amendment 1037**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 54 – paragraph 3**

*Text proposed by the Commission*

**3. Dans le cadre de procédures ouvertes, les pouvoirs adjudicateurs peuvent décider d'examiner les offres avant de vérifier le respect des critères de sélection, à condition que les dispositions pertinentes de la présente section soient observées, y compris la règle selon laquelle le marché n'est pas attribué à un soumissionnaire qui aurait dû être exclu conformément à l'article 55 ou qui ne remplit pas les critères de sélection établis**

*Amendment*

**supprimé**

*par le pouvoir adjudicateur  
conformément à la sous-section 1 de la  
présente section.*

Or. fr

**Amendment 1038**

**Robert Rochefort**

**Proposal for a directive**

**Article 54 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

*3. Dans le cadre de procédures ouvertes, les pouvoirs adjudicateurs peuvent décider d'examiner les offres avant de vérifier le respect des critères de sélection, à condition que les dispositions pertinentes de la présente section soient observées, y compris la règle selon laquelle le marché n'est pas attribué à un soumissionnaire qui aurait dû être exclu conformément à l'article 55 ou qui ne remplit pas les critères de sélection établis par le pouvoir adjudicateur conformément à la sous-section 1 de la présente section.*

*supprimé*

Or. fr

**Amendment 1039**

**Heide Rühle**

**Proposal for a directive**

**Article 54 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. In open procedures, contracting authorities may decide to examine tenders before verifying the fulfilment of the selection criteria, provided that the relevant provisions of this section are observed, including the rule that the contract shall not

3. In open procedures, contracting authorities may decide to examine tenders before verifying the fulfilment of the selection criteria, provided that the relevant provisions of this section are observed, including the rule that the contract shall not

be awarded to a tenderer that should have been excluded pursuant to Article 55 or that does not meet the selection criteria set out by the contracting authority, in accordance with subsection *I* of this section.

be awarded to a tenderer that should have been excluded pursuant to Article 55 or that does not meet the selection criteria set out by the contracting authority, in accordance with subsection *I-2* of this section.

Or. en

**Amendment 1040**  
**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**  
**Article 54 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

***4. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend the list in Annex XI, where necessary due to the conclusion of new international agreements or modification of existing international agreements.***

***deleted***

Or. en

**Amendment 1041**  
**Heide Rühle**

**Proposal for a directive**  
**Article 55 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

The obligation to exclude a candidate or tenderer from participation in a public contract shall also apply where the conviction by final judgment has condemned company directors ***or any other any persons having powers of representation, decision or control in respect of the candidate or tenderer.***

The obligation to exclude a candidate or tenderer from participation in a public contract shall also apply where the conviction by final judgment has condemned company directors.

Or. en

*Justification*

*Without clear definition this opens the door to misuse and legal disputes*

**Amendment 1042**

**Salvatore Iacolino, Marc Tarabella**

**Proposal for a directive**

**Article 55 – paragraph 1 – subparagraph 2 bis (new)**

*Text proposed by the Commission*

*Amendment*

***Tali motivi di esclusione, qualora intervengano nel corso del procedimento di individuazione del terzo contraente, determinano allo stesso modo l'esclusione dell'impresa dall'aggiudicazione della procedura di pubblico appalto.***

Or. it

**Amendment 1043**

**Evelyne Gebhardt, Birgit Sippel**

**Proposal for a directive**

**Article 55 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Jeder Wirtschaftsteilnehmer ist von der Teilnahme an einem Auftrag ausgeschlossen, wenn ein öffentlicher Auftraggeber Kenntnis von einer endgültigen und rechtskräftigen gerichtlichen Entscheidung erlangt, derzufolge der Teilnehmer der Entrichtung seiner Steuern oder Sozialversicherungsbeiträge ***gemäß den Rechtsvorschriften des Landes seiner Niederlassung bzw. des Mitgliedstaats des öffentlichen Auftraggebers*** nicht nachgekommen ist.

2. Jeder Wirtschaftsteilnehmer ist von der Teilnahme an einem Auftrag ausgeschlossen, wenn ein öffentlicher Auftraggeber Kenntnis von einer endgültigen und rechtskräftigen gerichtlichen Entscheidung erlangt, derzufolge der Teilnehmer der Entrichtung seiner Steuern oder Sozialversicherungsbeiträge ***oder anderen Verpflichtungen in Bezug auf die sozialen Gegebenheiten und Beschäftigungsbedingungen, wie die Gesundheit und Sicherheit am Arbeitsplatz, die soziale Sicherheit und die Arbeitsbedingungen***, nicht nachgekommen ist, ***so wie sie in EU-Rechtsvorschriften,***

*nationalen Gesetzen, Regelungen oder  
Verwaltungsvorschriften,  
Schiedssprüchen,  
Kollektivvereinbarungen und -verträgen  
sowie den in Anhang XI genannten  
internationalen arbeitsrechtlichen  
Bestimmungen festgelegt sind, die am Ort  
der Leistungserbringung gelten; diese  
Verpflichtungen gelten auch in  
grenzüberschreitenden Situationen, in  
denen Arbeitnehmer eines Mitgliedstaats  
Dienstleistungen in einem anderen  
Mitgliedstaat erbringen.*

Or. de

**Amendment 1044**  
**Salvatore Iacolino, Marc Tarabella**

**Proposal for a directive**  
**Article 55 – paragraph 2**

*Text proposed by the Commission*

2. **Ogni operatore economico** è escluso dalla partecipazione *all'appalto se l'amministrazione aggiudicatrice è a conoscenza di una sentenza passata in giudicato che dichiara che detto* operatore economico non è in regola con gli obblighi relativi al pagamento di imposte o di contributi di sicurezza sociale conformemente alle disposizioni legislative del paese in cui esso è stabilito o di quelle dello Stato membro dell'amministrazione aggiudicatrice.

*Amendment*

2. **É** escluso dalla partecipazione *al pubblico* appalto l'operatore economico **che** non è in regola con gli obblighi relativi al pagamento di imposte o di contributi di sicurezza sociale conformemente alle disposizioni legislative del paese in cui esso è stabilito o di quelle dello Stato membro dell'amministrazione aggiudicatrice.

Or. it

**Amendment 1045**  
**Raffaele Baldassarre, Lara Comi**

**Proposal for a directive**  
**Article 55 – paragraph 2**



*Text proposed by the Commission*

2. Ogni operatore economico è escluso dalla partecipazione all'appalto se l'amministrazione aggiudicatrice è a conoscenza di una sentenza passata in giudicato che dichiara che detto operatore economico non è in regola con gli obblighi relativi al pagamento di imposte o di contributi di sicurezza sociale conformemente alle disposizioni legislative del paese in cui esso è stabilito o di quelle dello Stato membro dell'amministrazione aggiudicatrice.

*Amendment*

2. Ogni operatore economico è escluso dalla partecipazione all'appalto se:

*ha commesso violazioni gravi o reiterate, definitivamente accertate, alle norme in materia di contributi di sicurezza sociale conformemente alle disposizioni legislative del paese in cui esso è stabilito o di quelle dello Stato membro dell'amministrazione aggiudicatrice;*

*ha commesso violazioni gravi o reiterate, definitivamente accertate, rispetto agli obblighi relativi al pagamento delle imposte conformemente alle disposizioni legislative del paese in cui esso è stabilito o di quelle dello Stato membro dell'amministrazione aggiudicatrice.*

Or. it

**Amendment 1046**

**Frank Engel, Wim van de Camp, Anna Maria Corazza Bildt**

**Proposal for a directive**

**Article 55 – paragraph 3 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) where it is aware of any violation of obligations established by Union legislation in the field of social and labour law or environmental law or of the international *social and environmental* law provisions listed in Annex XI. *Compliance*

*Amendment*

(a) where it is aware of any *repeated* violation of obligations established *within* Union legislation in the field of social and labour law or environmental law or of the international *labour* law provisions listed in Annex XI, *but limited to the first tier of*

*with Union legislation or with international provisions also includes compliance in an equivalent manner.*

*suppliers.*

Or. en

#### **Amendment 1047**

**Malcolm Harbour, Edvard Kožušník**

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

**Article 55 – paragraph 3 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) where it is aware of any violation of obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

*Amendment*

(a) where it is aware of any violation of obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner. ***Only violations where the judgement has been administered by a judicial or competent authority in the Union or a signatory to the WTO GPA agreement can be used to exclude bids under this article.***

Or. en

#### **Amendment 1048**

**Andreas Schwab**

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

**Article 55 – paragraph 3 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) wenn er Kenntnis von einem Verstoß gegen die Unionsrechtsvorschriften auf dem Gebiet des Sozial- und Arbeitsrechts oder des Umweltrechts bzw. der in Anhang XI genannten internationalen Sozial- und Umweltsrechtsvorschriften hat. ***Die***

*Amendment*

(a) wenn er Kenntnis von einem Verstoß gegen die Unionsrechtsvorschriften auf dem Gebiet des Sozial- und Arbeitsrechts oder des Umweltrechts bzw. der in Anhang XI genannten internationalen Sozial- und Umweltsrechtsvorschriften hat und ***der***

***Einhaltung der Unionsvorschriften und -bestimmungen beinhaltet auch eine Einhaltung auf angemessene Weise;***

***Verstoß von einem zuständigen Gericht rechtskräftig festgestellt wurde.***

Or. de

*Justification*

*Angesichts der gravierenden Rechtsfolge - auch im Rahmen der fakultativen Ausschlussgründe - sollte der Verstoß gegen Sozial- und Arbeits- oder Umweltrechtsvorschriften von einem Gericht rechtskräftig festgestellt werden, um Rechtsunsicherheit und willkürliche Entscheidungen zu vermeiden. Satz 2 ist unklar formuliert und sollte demnach zur Vermeidung von Rechtsunsicherheit gestrichen werden.*

**Amendment 1049**

**Alexander Alvaro, Jürgen Creutzmann**

**Proposal for a directive**

**Article 55 – paragraph 3 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) where it is aware of any violation of obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

*Amendment*

(a) where it is aware of any violation of obligations established by Union legislation in the field of social and labour law, ***data protection law*** or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

Or. en

**Amendment 1050**

**Peter Simon**

**Proposal for a directive**

**Article 55 – paragraph 3 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) wenn er Kenntnis von einem Verstoß

*Amendment*

(a) wenn er Kenntnis von einem Verstoß

gegen die Unionsrechtsvorschriften auf dem Gebiet des Sozial- und Arbeitsrechts **oder** des Umweltrechts bzw. der in Anhang XI genannten internationalen Sozial- und Umweltsrechtsvorschriften hat. Die Einhaltung der Unionsvorschriften und -bestimmungen beinhaltet auch eine Einhaltung auf angemessene Weise;

gegen die ***nationalen Rechtsvorschriften oder die*** Unionsrechtsvorschriften auf dem Gebiet des Sozial- und Arbeitsrechts, des Umweltrechts ***oder der Kollektivverträge wie z.B. Tarifverträge*** bzw. der in Anhang XI genannten internationalen Sozial- und Umweltsrechtsvorschriften hat. Die Einhaltung der Unionsvorschriften und -bestimmungen beinhaltet auch eine Einhaltung auf angemessene Weise;

Or. de

**Amendment 1051**  
**Anna Hedh**

**Proposal for a directive**  
**Article 55 – paragraph 3 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) where it is aware of any violation of obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

*Amendment*

(a) where it is aware of any violation of obligations established by Union legislation ***or national laws, regulations and other binding provisions*** in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

Or. en

*Justification*

*The reference to regulations in this article is limited to Union legislation in specific regulatory fields. This reference should be extended in such a way that national legislation and systems for regulating the labour market are taken into account.*

**Amendment 1052**  
**Sabine Verheyen, Birgit Collin-Langen**

**Proposal for a directive**  
**Article 55 – paragraph 3 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) wenn er Kenntnis von einem Verstoß gegen die **Unionsrechtsvorschriften** auf dem Gebiet des Sozial- und Arbeitsrechts oder des Umweltrechts bzw. der in Anhang XI genannten internationalen Sozial- und Umweltsrechtsvorschriften hat. Die Einhaltung der Unionsvorschriften und -bestimmungen beinhaltet auch eine Einhaltung auf angemessene Weise;

*Amendment*

(a) wenn er Kenntnis von einem Verstoß gegen die **Unions- und nationalen Rechtsvorschriften** auf dem Gebiet des Sozial- und Arbeitsrechts oder des Umweltrechts bzw. der in Anhang XI genannten internationalen Sozial- und Umweltsrechtsvorschriften hat. Die Einhaltung der Unionsvorschriften und -bestimmungen beinhaltet auch eine Einhaltung auf angemessene Weise;

Or. de

**Amendment 1053**  
**Matteo Salvini, Francesco Enrico Speroni**

**Proposal for a directive**  
**Article 55 – paragraph 3 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) where it is aware of any violation of obligations established by Union legislation in the field of social and labour law or environmental law or *of* the international **social and environmental law provisions** listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

*Amendment*

(a) where it is aware of any violation of obligations established by Union legislation in the field of social and labour law or environmental law or **with the obligations regarding working conditions along the supply chain as stated in national labour laws and regulations in which production processes take place and in international conventions as listed in Annex XI, whatever the most favourable of workers.**

***These provisions include:***

***(a) those defined by the eight ILO Core Conventions (freedom of association and collective bargaining, forced and compulsory labour, discrimination in respect of employment and occupation, child labour);***

***(b) occupational safety and health;***

*(c) working time;*

*(d) wages and*

*(e) social security.*

Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

Or. en

#### **Amendment 1054**

**Catherine Stihler**

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

#### **Article 55 – paragraph 3 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) where it is aware of any violation of obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

*Amendment*

(a) where it is aware of any violation of obligations established by Union legislation *or national laws, regulations and other binding provisions* in the field of *gender*, social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

Or. en

#### **Amendment 1055**

**Evelyne Gebhardt, Birgit Sippel**

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

#### **Article 55 – paragraph 3 – subparagraph 1 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

*(aa) Der öffentliche Auftraggeber schließt jeden Wirtschaftsteilnehmer von der Teilnahme an einem Verfahren zur Vergabe öffentlicher Aufträge aus, wenn eine der Bedingungen in den Absätzen 1,*

*2 und 2a (neu) und in Absatz 3 Buchstabe c oder d im Zusammenhang mit einem Unterauftragnehmer, der von dem Wirtschaftsteilnehmer gemäß Artikel 71 vorgeschlagen wurde, erfüllt sind.*

Or. de

**Amendment 1056**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 55 – paragraph 3 – subparagraph 1 – point b**

*Text proposed by the Commission*

(b) where the economic operator is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, ***where it has entered into an arrangement with creditors***, where it has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;

*Amendment*

(b) where the economic operator is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;

Or. en

*Justification*

*The common situation where an economic operator has entered into an arrangement with creditors must not be considered as a ground for exclusion by itself.*

**Amendment 1057**  
**Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski**

**Proposal for a directive**  
**Article 55 – paragraph 3 – subparagraph 1 – point c**

*Text proposed by the Commission*

***(c) where the contracting authority can demonstrate by any means that the***

*Amendment*

***deleted***

*economic operator is guilty of other grave professional misconduct;*

Or. en

**Amendment 1058**

**Andreas Schwab, Jürgen Creutzmann**

**Proposal for a directive**

**Article 55 – paragraph 3 – subparagraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

*(c) wenn der öffentliche Auftraggeber mit jeglichen Mitteln nachweisen kann, dass der Wirtschaftsteilnehmer eine sonstige schwere Verfehlung begangen hat;*      *entfällt*

Or. de

*Justification*

*Angesichts der schwerwiegenden Rechtsfolge des Ausschlusses von einer Vergabe - auch im Rahmen der fakultativen Ausschlussgründe - ist die Formulierung zu unbestimmt. Dies gilt umso mehr, als der Nachweis nach dem Kommissionsentwurf "mit jeglichen Mitteln" erbracht werden kann. The concept of "grave professional misconduct" is not defined objectively in the directive, while any decision to exclude an economic operator from a procurement procedure should be based on objective and measurable criteria and the discretion of the contracting authority should be limited.*

*Justification*

**Amendment 1059**

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

**Proposal for a directive**

**Article 55 – paragraph 3 – subparagraph 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

*(ca) where the contracting authority can demonstrate by any means that the*



*economic operator is guilty of grave professional misconduct other than indicated in point (a), for instance where the economic operator has shown significant or persistent deficiencies in the performance of any substantive requirement under a prior contract or contracts of a similar nature with the same contracting authority.*

Or. en

#### *Justification*

*Two separate grounds for exclusion in points (c) and (d) could suggest that cases referred to in point (d) do not constitute cases of grave professional misconduct referred to in point (c). For the sake of clarity it is proposed to join grounds for exclusion provided for in points (c) and (d) as a new point (c).*

#### **Amendment 1060**

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

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

**Article 55 – paragraph 3 – subparagraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

*(d) where the economic operator has shown significant or persistent deficiencies in the performance of any substantive requirement under a prior contract or contracts of a similar nature with the same contracting authority.*

*deleted*

Or. en

#### **Amendment 1061**

**Marc Tarabella**

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

**Article 55 – paragraph 3 – subparagraph 1 – point d**

*Text proposed by the Commission*

(d) l'opérateur économique a omis de satisfaire, de manière grave ou persistante, aux obligations de fond qui lui incombent dans le cadre de l'exécution d'un ou de plusieurs marchés antérieurs de même nature conclus avec le même pouvoir adjudicateur.

*Amendment*

(d) l'opérateur économique a omis de satisfaire, de manière grave ou persistante, aux obligations de fond qui lui incombent dans le cadre de l'exécution d'un ou de plusieurs marchés antérieurs de même nature conclus avec le même pouvoir adjudicateur *ou avec d'autres*.

Or. fr