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*Committee on the Internal Market and Consumer Protection*

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**2011/0438(COD)**

12.7.2012

# **AMENDMENTS 1062 - 1351**

**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 1062**

**Andreas Schwab, Jürgen Creutzmann**

**Proposal for a directive**

**Article 55 – paragraph 3 – subparagraph 1 – point d**

*Text proposed by the Commission*

(d) wenn der Wirtschaftsteilnehmer erhebliche oder dauernde Mängel bei der Ausführung einer grundlegenden Anforderung im Rahmen eines früheren Auftrags oder früherer Aufträge ähnlicher Art desselben öffentlichen Auftraggebers gezeigt hat.

*Amendment*

(d) wenn der Wirtschaftsteilnehmer ***vorsätzlich oder fahrlässig*** erhebliche oder dauernde Mängel bei der Ausführung einer grundlegenden Anforderung im Rahmen eines früheren Auftrags oder früherer Aufträge ähnlicher Art desselben öffentlichen Auftraggebers gezeigt hat.

Or. de

**Amendment 1063**

**Sergio Gaetano Cofferati**

**Proposal for a directive**

**Article 55 – paragraph 3 – subparagraph 1 – point d**

*Text proposed by the Commission*

(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.***

*Amendment*

(d) where the economic operator ***is inscribed in an official register of non-compliance, as set out in Article 73a.***

Or. en

**Amendment 1064**

**Anna Hedh**

**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***.

(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.

Or. en

*Justification*

*The deletion is necessary to avoid repeated cases of abuse in the member state and among local governments that all are a part of the public sector.*

**Amendment 1065**  
**Cristian Silviu Buşoi**

**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***.

(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.

Or. en

*Justification*

*There is a risk that an economic operator who has not fulfilled his contractual obligations with one contracting authority may do the same with another one. Contracting authorities should be able to avoid this should they be aware of such deficiencies.*

**Amendment 1066**  
**António Fernando Correia de Campos**

**Proposal for a directive**  
**Article 55 – paragraph 3 – subparagraph 1 – point d A (new)**

*Text proposed by the Commission*

*Amendment*

*(d A) Se operador económico tiver participado na elaboração de estudos, pareceres e consultas a que se refere o número 1 do artigo 39.*

Or. pt

**Amendment 1067**  
**Monica Luisa Macovei**

**Proposal for a directive**  
**Article 55 – paragraph 3 – subparagraph 1 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

*(da) where a conflict of interests could not have been effectively remedied as stipulated by Article 21(3);*

Or. en

**Amendment 1068**  
**Monica Luisa Macovei**

**Proposal for a directive**  
**Article 55 – paragraph 3 – subparagraph 1 – point d b (new)**

*Text proposed by the Commission*

*Amendment*

*(db) where the economic operator does not provide appropriate ownership information, including on its subcontractors.*

Or. en

**Amendment 1069**  
**Heide Rühle**

**Proposal for a directive**  
**Article 55 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*In order to apply the ground for exclusion referred to in point (d) of the first subparagraph, contracting authorities shall provide a method for the assessment of contractual performance that is based on objective and measurable criteria and applied in a systematic, consistent and transparent way. Any performance assessment shall be communicated to the contractor in question, which shall be given the opportunity to object to the findings and to obtain judicial protection.*

*deleted*

Or. en

*Justification*

*It is up to the Member States to provide such a method small contracting authorities are unable to do so.*

**Amendment 1070**  
**Peter Simon**

**Proposal for a directive**  
**Article 55 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*Um die in Unterabsatz 1 Buchstabe d genannten Ausschlussgründe anwenden zu können, nutzen die öffentlichen Auftraggeber eine Bewertungsmethode für die Auftragsausführung, die sich auf objektive und messbare Kriterien stützt und auf systematische, kohärente und transparente Art und Weise angewandt wird. Jede Leistungsbewertung ist dem betreffenden Auftragnehmer mitzuteilen, der Gelegenheit erhält, gegen die Ergebnisse Widerspruch einzulegen und*

*entfällt*

*Rechtsschutz in Anspruch zu nehmen.*

Or. de

**Amendment 1071**

**Sergio Gaetano Cofferati**

**Proposal for a directive**

**Article 55 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*In order to apply the ground for exclusion referred to in point (d) of the first subparagraph, contracting authorities shall provide a method for the assessment of contractual performance that is based on objective and measurable criteria and applied in a systematic, consistent and transparent way. Any performance assessment shall be communicated to the contractor in question, which shall be given the opportunity to object to the findings and to obtain judicial protection.*

*deleted*

Or. en

**Amendment 1072**

**Andreas Schwab, Jürgen Creutzmann**

**Proposal for a directive**

**Article 55 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

Um die in Unterabsatz 1 Buchstabe d genannten Ausschlussgründe anwenden zu können, *nutzen* die öffentlichen Auftraggeber eine *Bewertungsmethode für die Auftragsausführung, die sich auf objektive und messbare Kriterien stützt und auf systematische, kohärente und transparente Art und Weise angewandt wird. Jede Leistungsbewertung ist dem betreffenden Auftragnehmer mitzuteilen,*

Um die in Unterabsatz 1 Buchstabe d genannten Ausschlussgründe anwenden zu können, *müssen* die öffentlichen Auftraggeber *ein rechtskräftiges Gerichtsurteil gegen den Wirtschaftsteilnehmer wegen mangelhafter Ausführung oder eine Anerkennniserklärung des Wirtschaftsteilnehmers wegen mangelhafter Ausführung nachweisen*

***der Gelegenheit erhält, gegen die Ergebnisse Widerspruch einzulegen und Rechtsschutz in Anspruch zu nehmen. können.***

Or. de

*Justification*

*Die Regelung des Art. 55 Absatz 3 lit d) birgt das Risiko willkürlicher Entscheidungen und vermeidbarer Streitverfahren, sofern der Gesetzeswortlaut nicht bestimmte Nachweise fordert, die der Auftraggeber vor Ausschluss zu erbringen hat. Hier könnte beispielsweise verlangt werden, dass der Auftraggeber ein gegen den Auftragnehmer wegen Schlechtleistung ergangenes Urteil oder eine Anerkennniserklärung des Auftragnehmers vorzulegen hat. Auch müsste die Verfehlung schuldhaft begangen worden sein.*

**Amendment 1073**

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

**Proposal for a directive**

**Article 55 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

***1. Any candidate or tenderer that is in one of the situations referred to in paragraphs 1, 2 and 3 may provide the contracting authority with evidence demonstrating its reliability despite the existence of the relevant ground for exclusion. deleted***

Or. en

*Justification*

*Giving candidate or tenderer such a possibility may significantly prolong and complicate the procedure, as theoretically any decision of contracting authority with regard to selection of candidates may be challenged that way. What is more, such a self-cleaning procedure creates additional administrative burden for the contracting authority, as it is assigned an additional task to evaluate the measures taken by the candidates and tenderers taking into account the gravity and particular circumstances of the criminal offence or misconduct.*

**Amendment 1074**

**Lara Comi**



**Proposal for a directive**  
**Article 55 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

**1. Ogni candidato o offerente che si trova in una delle situazioni di cui ai paragrafi 1, 2 e 3 può fornire all'amministrazione aggiudicatrice la prova che dimostri la sua affidabilità nonostante l'esistenza di un motivo di esclusione.**

*Amendment*

**soppresso**

Or. it

**Amendment 1075**  
**Evelyne Gebhardt, Birgit Sippel**

**Proposal for a directive**  
**Article 55 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

1. Jeder Bewerber oder **Bieter**, der sich in einer der in den Absätzen 1, 2 und 3 genannten Situationen befindet, kann dem öffentlichen Auftraggeber Nachweise beibringen, in denen trotz der einschlägigen Ausschlussgründe seine Verlässlichkeit nachgewiesen wird.

*Amendment*

1. Jeder Bewerber, **Bieter** oder **Unterauftragnehmer**, der sich in einer der in den Absätzen 1, 2 und 3 genannten Situationen befindet, kann dem öffentlichen Auftraggeber Nachweise beibringen, in denen trotz der einschlägigen Ausschlussgründe seine Verlässlichkeit nachgewiesen wird.

Or. de

**Amendment 1076**  
**Salvatore Iacolino**

**Proposal for a directive**  
**Article 55 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

1. Ogni candidato o offerente che si trova in una delle situazioni di cui ai paragrafi **I**, 2 e 3 può fornire all'amministrazione aggiudicatrice la prova che dimostri la sua

*Amendment*

1. Ogni candidato o offerente che si trova in una delle situazioni di cui ai paragrafi 2 e 3 può fornire all'amministrazione aggiudicatrice la prova **documentata** che

affidabilità nonostante l'esistenza di un motivo di esclusione.

dimostri la sua affidabilità nonostante l'esistenza di un motivo di esclusione.

Or. it

**Amendment 1077**

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

**Proposal for a directive**

**Article 55 – paragraph 4 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*For this purpose, the candidate or tenderer shall prove that it has compensated any damage caused by the criminal offence or misconduct, clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities and taken concrete technical, organisational and personal measures that are appropriate to prevent further criminal offences or misconduct. Contracting authorities shall evaluate the measures taken by the candidates and tenderers taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the contracting authority considers the measures to be insufficient, it shall state the reasons for its decision.*

*deleted*

Or. en

**Amendment 1078**

**Lara Comi**

**Proposal for a directive**

**Article 55 – paragraph 4 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*A tal fine, il candidato o l'offerente dimostra che esso ha risarcito qualunque*

*soppresso*

*danno causato dal reato o dall'illecito, ha chiarito i fatti e le circostanze in modo globale collaborando attivamente con le autorità investigative e che ha adottato provvedimenti di carattere tecnico, organizzativo e personali idonei a prevenire ulteriori reati o illeciti. L'autorità aggiudicatrice valuta le misure adottate dai candidati e dagli offerenti considerando la gravità e le particolari circostanze del reato o dell'illecito. Se l'amministrazione aggiudicatrice ritiene che le misure sono insufficienti, essa motiva la sua decisione.*

Or. it

**Amendment 1079**  
**Evelyne Gebhardt, Birgit Sippel**

**Proposal for a directive**  
**Article 55 – paragraph 4 – subparagraph 2**

*Text proposed by the Commission*

Zu diesem Zweck weisen die Bewerber oder **Bieter** nach, dass sie jeglichen durch eine Straftat oder eine Verfehlung begangenen Schaden behoben haben, die Tatsachen und Umstände umfassend durch eine aktive Zusammenarbeit mit den Ermittlungsbehörden geklärt haben sowie konkrete technische, organisatorische und persönliche Maßnahmen ergriffen haben, die zweckmäßig sind, um weitere Straftaten oder Verfehlungen zu vermeiden. Die öffentlichen Auftraggeber bewerten die von den Bewerbern **und** Bietern ergriffenen Maßnahmen unter Berücksichtigung der Schwere und besonderen Umstände der Straftat oder des Fehlverhaltens. Sollte der öffentliche Auftraggeber die Maßnahmen für unzureichend befinden, nennt er die Gründe für seinen Beschluss.

*Amendment*

Zu diesem Zweck weisen die Bewerber, **Bieter** oder **Unterauftragnehmer** nach, dass sie jeglichen durch eine Straftat oder eine Verfehlung begangenen Schaden behoben haben, die Tatsachen und Umstände umfassend durch eine aktive Zusammenarbeit mit den Ermittlungsbehörden geklärt haben sowie konkrete technische, organisatorische und persönliche Maßnahmen ergriffen haben, die zweckmäßig sind, um weitere Straftaten oder Verfehlungen zu vermeiden. Die öffentlichen Auftraggeber bewerten die von den Bewerbern, Bietern **oder Unterauftragnehmern** ergriffenen Maßnahmen unter Berücksichtigung der Schwere und besonderen Umstände der Straftat oder des Fehlverhaltens. Sollte der öffentliche Auftraggeber die Maßnahmen für unzureichend befinden, nennt er die Gründe für seinen Beschluss.

**Amendment 1080**  
**Heide Rühle**

**Proposal for a directive**  
**Article 56 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

They are not obliged to impose all the conditions listed in paragraphs 2, 3 and 4, but they shall not provide requirements other than those listed.

*Amendment*

They are not obliged to impose all the conditions listed in paragraphs 2, 3 and 4, but they shall not provide requirements other than those listed, ***except in duly justified circumstances related to the special risks attached to the very nature of the works, services or supplies.***

Or. en

**Amendment 1081**  
**Frank Engel**

**Proposal for a directive**  
**Article 56 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

Les conditions de participation au marché prévues par les pouvoirs adjudicateurs visent uniquement à s'assurer qu'un candidat ou soumissionnaire dispose de la capacité juridique et financière ainsi que des compétences commerciales et techniques nécessaires pour exécuter le marché à attribuer. Toutes les exigences sont liées à l'objet du marché et strictement proportionnées à celui-ci, compte tenu de l'obligation d'assurer une concurrence réelle.

*Amendment*

Les conditions de participation au marché prévues par les pouvoirs adjudicateurs visent uniquement à s'assurer qu'un candidat ou soumissionnaire dispose de la capacité juridique et financière ainsi que des compétences commerciales et techniques nécessaires pour exécuter le marché à attribuer. ***En conséquence, ne peut en aucun cas être rejetée une offre au seul motif qu'elle ne comprend pas de référence à de précédents marchés. Ce dernier critère peut être utilisé à titre supplétif lors de son évaluation.***

Toutes les exigences sont liées à l'objet du marché et strictement proportionnées à celui-ci, compte tenu de l'obligation

d'assurer une concurrence réelle.

Or. fr

## Amendment 1082

Robert Rochefort

### Proposal for a directive

#### Article 56 – paragraph 1 – subparagraph 3

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

Les conditions de participation au marché prévues par les pouvoirs adjudicateurs visent uniquement à s'assurer qu'un candidat ou soumissionnaire dispose de la capacité juridique et financière ainsi que des compétences commerciales et techniques nécessaires pour exécuter le marché à attribuer. Toutes les exigences sont liées à l'objet du marché et strictement proportionnées à celui-ci, compte tenu de l'obligation d'assurer une concurrence réelle.

##### *Amendment*

Les conditions de participation au marché prévues par les pouvoirs adjudicateurs visent uniquement à s'assurer qu'un candidat ou soumissionnaire dispose de la capacité juridique et financière ainsi que des compétences commerciales et techniques nécessaires pour exécuter le marché à attribuer. ***En conséquence, ne peut en aucun cas être rejetée une offre au seul motif qu'elle ne comprend pas de référence à de précédents marchés.*** Toutes les exigences sont liées à l'objet du marché et strictement proportionnées à celui-ci, compte tenu de l'obligation d'assurer une concurrence réelle.

Or. fr

## Amendment 1083

Cornelis de Jong, Mikael Gustafsson

### Proposal for a directive

#### Article 56 – paragraph 3 – subparagraph 1

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

***1. With regard to sufficient economic and financial standing, contracting authorities may require economic operators to have adequate financial and economic capacity. For that purpose, they may require that economic operators have a certain minimum yearly turnover,***

##### *Amendment*

***1. Contracting authorities shall not*** require that economic operators have a certain minimum yearly turnover, ***except in duly justified circumstances relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate such***

*including a certain minimum turnover in the area covered by the contract and an adequate professional risk indemnity insurance.*

*exceptional circumstances in the procurement documents. In this case, the minimum yearly turnover shall not exceed two times the estimated contract.*

Or. en

**Amendment 1084**  
**Lara Comi**

**Proposal for a directive**  
**Article 56 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

1. Per quanto riguarda la capacità economica e finanziaria, le amministrazioni aggiudicatrici possono prevedere che gli operatori economici abbiano adeguata capacità economica e finanziaria. A tal fine essi possono esigere che gli operatori economici abbiano un determinato fatturato minimo annuo, compreso un determinato fatturato minimo nel settore di attività oggetto dell'appalto e un'adeguata assicurazione contro i rischi professionali.

*Amendment*

1. Per quanto riguarda la capacità economica e finanziaria, le amministrazioni aggiudicatrici possono prevedere che gli operatori economici abbiano adeguata capacità economica e finanziaria. A tal fine essi possono esigere che gli operatori economici abbiano un determinato fatturato minimo annuo, ***riferito almeno agli ultimi cinque anni***, compreso un determinato fatturato minimo nel settore di attività oggetto dell'appalto e un'adeguata assicurazione contro i rischi professionali.

Or. it

**Amendment 1085**  
**Cristian Silviu Buşoi**

**Proposal for a directive**  
**Article 56 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

1. With regard to sufficient economic and financial standing, contracting authorities may require economic operators to have adequate financial and economic capacity. For that purpose, they may require that economic operators have a certain

*Amendment*

1. With regard to sufficient economic and financial standing, contracting authorities may require economic operators to have adequate financial and economic capacity. For that purpose, they may require that economic operators have a certain

minimum yearly turnover, including a certain minimum turnover in the area covered by the contract and an adequate professional risk indemnity insurance.

minimum yearly turnover *for the last 3 years*, including a certain minimum turnover in the area covered by the contract and an adequate professional risk indemnity insurance.

Or. en

*Justification*

*It should be avoided that contracting authorities impose a minimum yearly turnover requirement for a too long period, which may limit the participation of economic operators.*

**Amendment 1086**

**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**

**Article 56 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*The minimum yearly turnover shall not exceed three times the estimated contract value, except in duly justified circumstances relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate such exceptional circumstances in the procurement documents.*

*deleted*

Or. en

**Amendment 1087**

**Frank Engel, András Gyürk, Ildikó Gáll-Pelcz**

**Proposal for a directive**

**Article 56 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

Le chiffre d'affaires annuel minimal ne dépasse pas *le triple de* la valeur estimée du marché, sauf dans des circonstances

Le chiffre d'affaires annuel minimal ne dépasse pas la valeur estimée du marché, sauf dans des circonstances dûment

dûment justifiées ayant trait aux risques particuliers inhérents à la nature des travaux, services ou fournitures. Le pouvoir adjudicateur précise ces circonstances exceptionnelles dans les documents de marché.

justifiées ayant trait aux risques particuliers inhérents à la nature des travaux, services ou fournitures. Le pouvoir adjudicateur précise ces circonstances exceptionnelles dans les documents de marché.

Or. fr

#### **Amendment 1088**

**Lara Comi**

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

#### **Article 56 – paragraph 3 – subparagraph 2**

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

Il fatturato minimo annuo non supera il triplo del valore stimato dell'appalto, salvo in circostanze debitamente motivate relative ai rischi specifici connessi alla natura dei lavori, servizi o forniture. L'amministrazione aggiudicatrice precisa tali circostanze eccezionali nei documenti di gara.

##### *Amendment*

Il *suddetto* fatturato minimo annuo non supera il triplo del valore stimato dell'appalto, salvo in circostanze debitamente motivate relative ai rischi specifici connessi alla natura dei lavori, servizi o forniture. L'amministrazione aggiudicatrice precisa tali circostanze eccezionali nei documenti di gara.

Or. it

#### **Amendment 1089**

**Cristian Silviu Buşoi**

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

#### **Article 56 – paragraph 3 – subparagraph 2**

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

The minimum yearly turnover shall not exceed *three* times the estimated contract value, except in duly justified circumstances relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate such exceptional circumstances in the procurement documents.

##### *Amendment*

The minimum yearly turnover shall not exceed *two* times the estimated contract value, except in duly justified circumstances relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate such exceptional circumstances in the procurement documents.



*Justification*

*The minimum level of turnover required should not be too high in order not to excessively limit the number of economic operators participating in the award procedure.*

**Amendment 1090**

**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**

**Article 56 – paragraph 3 – subparagraph 3**

*Text proposed by the Commission*

Where a contract is divided into lots this Article shall apply in relation to each individual lot. ***However, the contracting authority may set the minimum yearly turnover by reference to groups of lots for the event that the successful tenderer is awarded several lots to be executed at the same time.***

*Amendment*

Where a contract is divided into lots this Article shall apply in relation to each individual lot.

**Amendment 1091**

**Lara Comi**

**Proposal for a directive**

**Article 56 – paragraph 3 – subparagraph 3**

*Text proposed by the Commission*

Per gli appalti divisi in lotti il presente articolo si applica per ogni singolo lotto. Tuttavia, l'amministrazione aggiudicatrice può fissare il fatturato annuo minimo richiesto con riferimento a gruppi di lotti nel caso in cui all'aggiudicatario siano aggiudicati più lotti da eseguirsi contemporaneamente.

*Amendment*

Per gli appalti divisi in lotti il presente articolo si applica per ogni singolo lotto. Tuttavia, l'amministrazione aggiudicatrice può fissare il ***suddetto*** fatturato annuo minimo richiesto con riferimento a gruppi di lotti nel caso in cui all'aggiudicatario siano aggiudicati più lotti da eseguirsi contemporaneamente.

## Amendment 1092

Andreas Schwab

### Proposal for a directive

#### Article 56 – paragraph 4 – subparagraph 1

*Text proposed by the Commission*

4. Im Hinblick auf die technische und berufliche Eignung können die öffentlichen Auftraggeber von den Wirtschaftsteilnehmern verlangen, über die erforderlichen humanen und technischen Ressourcen sowie Erfahrungen mit der Ausführung des Auftrags zu einem angemessenen qualitativen Standard zu verfügen. ***Die öffentlichen Auftraggeber können zu dem Schluss kommen, dass Wirtschaftsteilnehmer den Auftrag nicht zu einem angemessenen qualitativen Standard ausführen, wenn der öffentliche Auftraggeber feststellt, dass kollidierende Interessen vorhanden sind, die die Auftragsausführung negativ beeinflussen können.***

*Amendment*

4. Im Hinblick auf die technische und berufliche Eignung können die öffentlichen Auftraggeber von den Wirtschaftsteilnehmern verlangen, über die erforderlichen humanen und technischen Ressourcen sowie Erfahrungen mit der Ausführung des Auftrags zu einem angemessenen qualitativen Standard zu verfügen.

Or. de

*Justification*

*Es ist nicht klar, inwiefern nicht näher bezeichnete "kollidierende Interessen" im Sinne des Satzes 2 eine Auftragsausführung negativ beeinflussen können. auch sollte die Einschätzung nicht allein bei dem öffentlichen Auftraggeber liegen.*

## Amendment 1093

Vicente Miguel Garcés Ramón

### Proposal for a directive

#### Article 57 – paragraph 1 – point a a (new)

*Text proposed by the Commission*

*Amendment*

***(a bis) cumplen las disposiciones aplicables en cada Estado miembro en materia de inserción laboral de las***

*personas con discapacidad;*

Or. es

**Amendment 1094**

**Pablo Arias Echeverría**

**Proposal for a directive**

**Article 57 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

1. Un poder adjudicador **podrá pedir** al candidato o licitador que presente la documentación exigida, o parte de ella, en cualquier momento del procedimiento en que resulte necesario para garantizar el buen desarrollo del mismo.

*Amendment*

1. Un poder adjudicador **deberá exigir** al candidato o licitador que presente la documentación exigida, o parte de ella, en cualquier momento del procedimiento en que resulte necesario para garantizar el buen desarrollo del mismo.

Or. es

**Amendment 1095**

**Anja Weisgerber, Hans-Peter Mayer, Andreas Schwab**

**Proposal for a directive**

**Article 57 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. Erklärungen und Nachweise, die auf Anforderung der Auftraggeber bis zum Ablauf der Angebotsfrist nicht vorgelegt wurden, können bis zum Ablauf einer zu bestimmenden Nachfrist nachgefordert werden.**

Or. de

*Justification*

*Im formellen Verfahren sollten kleinere Änderungen oder Nachbesserungen möglich sein. Dem öffentlichen Auftraggeber wäre es so möglich, bei den Unternehmen fehlende Unterlagen nachzufordern. Ohne eine solche Regelung muss ein Auftraggeber selbst das wirtschaftlich günstigste Angebot von einem geeigneten und bekannten Unternehmen von*

*Amts wegen ausschließen, wenn nur eines der von der zuständigen Vergabestelle zum Nachweis der Eignung geforderte Dokument fehlt oder unvollständig ist.*

#### **Amendment 1096**

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

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

#### **Article 57 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*Candidates and tenderers shall not be required to re-submit a certificate or other documentary evidence that has already been submitted to the same contracting authority within the past four years in an earlier procedure and is still valid.*

*deleted*

Or. en

#### *Justification*

*Accepting self-declarations as a preliminary evidence in the procedure is a good way to facilitate acces of SMEs to public contracts. However, it should not obstruct a balance between obligations or rights of parties to the procedure. Public authorities should have a possibility to verify whether a candidate fulfills requirements. In particular, contracting authority shall have the right to ask tenderers or candidates to submit up-to-date certificates even in the case where they have submitted them to the same contracting authority in the past four years. It is essential for a contracting authority to have up-to-date information about qualifications of the candidate in question.*

#### **Amendment 1097**

**Heide Rühle**

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

#### **Article 57 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

Candidates and tenderers shall not be required to re-submit a certificate or other documentary evidence that has already been submitted to the same contracting authority within the past **four** years in an

Candidates and tenderers shall not be required to re-submit a certificate or other documentary evidence that has already been submitted to the same contracting authority within the past **two** years in an earlier procedure and is still valid. **The**

earlier procedure and is still valid.

*contracting authority is however entitled to demand more recent evidence in case of questionable validity during the procedure.*

Or. en

**Amendment 1098**  
**Heide Rühle**

**Proposal for a directive**  
**Article 58 – paragraph 2**

*Text proposed by the Commission*

2. Recourse to e-Certis shall become obligatory and contracting authorities shall be obliged to require only such of types of certificates or forms of documentary evidence that are available in e-Certis at the latest 2 years after the date provided for in Article 92(1).

*Amendment*

2. Recourse to e-Certis shall become obligatory and contracting authorities shall be obliged to require only such of types of certificates or forms of documentary evidence that are available in e-Certis at the latest 2 years after the date provided for in Article 92(1) *except in duly justified circumstances related to the special risks attached to the very nature of the works, services or supplies.*

Or. en

**Amendment 1099**

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

**Proposal for a directive**  
**Article 59**

*Text proposed by the Commission*

*Article 59*

*European Procurement Passport*

*1. National authorities shall issue, at the request of an economic operator established in the relevant Member State and fulfilling the necessary conditions, a European Procurement Passport. The European Procurement Passport shall*

*Amendment*

*deleted*

*contain the particulars set out in Annex XIII and shall be drawn up on the basis of a standard form.*

*The Commission shall be empowered to adopt delegated acts in accordance with Article 89 in order to modify Annex XIII due to technical progress or for administrative reasons. It shall also establish the standard form for the European Procurement Passport. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.*

*2. At the latest 2 years after the date provided for in Article 92(1), the passport shall be provided exclusively in electronic form.*

*3. The authority issuing the passport shall seek the relevant information directly from the competent authorities, except where prohibited by national rules on the protection of personal data.*

*4. The European Procurement Passport shall be recognised by all contracting authorities as proof of fulfilment of the conditions for participation covered by it and shall not be questioned without justification. Such justification may be related to the fact that the passport was issued more than six months earlier.*

*5. Member States shall make available to other Member States, upon request, any information relating to the authenticity and content of the European Procurement Passport. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 88.*

Or. en

#### *Justification*

*It would be enough to accept Passports issued by other Member States, just as it is now in the case of official lists of approved economic operators or their certification as provided for in Article 52 of Directive 2004/18. It is not clear why Passport should be mandatory, official*

*lists and certification being facultative. Added value of the provision is questionable: where contracting authorities are obliged to accept self-declaration as preliminary evidence that candidates fulfil selection criteria, it is pointless to introduce additional kind of documentation such as European Procurement Passport.*

## **Amendment 1100**

**Lara Comi**

### **Proposal for a directive**

#### **Article 59 – paragraph 2**

*Text proposed by the Commission*

2. Al più tardi entro **due** anni dalla data di cui all'articolo 92, paragrafo 1, il passaporto è fornito esclusivamente in forma elettronica.

*Amendment*

2. Al più tardi entro **quattro** anni dalla data di cui all'articolo 92, paragrafo 1, il passaporto è fornito esclusivamente in forma elettronica.

Or. it

## **Amendment 1101**

**Andreas Schwab, Birgit Collin-Langen, Sabine Verheyen, Sirpa Pietikäinen, Jürgen Creutzmann, Anna Maria Corazza Bildt**

### **Proposal for a directive**

#### **Article 59 – paragraph 3**

*Text proposed by the Commission*

3. The authority issuing the passport shall seek the relevant information directly from the competent authorities, except where prohibited by national rules on the protection of personal data.

*Amendment*

3. The authority issuing the passport shall seek the relevant information directly from the competent authorities, except where prohibited by national rules on the protection of personal data ***and except where the information can only be gathered from the economic operator itself. In these cases, the economic operator must deliver the information to the authority to obtain the Public Procurement Passport.***

Or. en

*Justification*

*A Public Procurement Passport will lower the transaction costs in public procurement procedures but should contain more information than what can be gathered by authorities themselves. They must ask the economic operator for information that cannot be gathered elsewhere.*

**Amendment 1102**  
**Morten Løkkegaard, Jens Rohde**

**Proposal for a directive**  
**Article 59 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3 a. The Procurement Passport shall include the information listed in Annex XIII and a declaration of honour that the economic operator has not undertaken and will not undertake to:***

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

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

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

***The Procurement Passport must be signed by the economic operator; hereby guaranteeing the validity of the information in the Procurement Passport.***

Or. en

**Amendment 1103**  
**Heide Rühle**

**Proposal for a directive**  
**Article 59 – paragraph 4**



*Text proposed by the Commission*

4. The European Procurement Passport shall be recognised by all contracting authorities as proof of fulfilment of the conditions for participation covered by it and shall not be questioned without justification. Such justification may be related to the fact that the passport was issued more than six months earlier.

*Amendment*

4. The European Procurement Passport shall be recognised by all contracting authorities as proof of fulfilment of the conditions for participation covered by it and shall not be questioned without justification. Such justification may be related to the ***very nature of the individual case or the*** fact that the passport was issued more than six months earlier. ***In such cases the Contracting Authority is entitled to demand more recent or divergent types of certificates.***

Or. en

**Amendment 1104**

**Andreas Schwab, Sirpa Pietikäinen, Anna Maria Corazza Bildt**

**Proposal for a directive**

**Article 59 – paragraph 4**

*Text proposed by the Commission*

4. The European Procurement Passport shall be recognised by all contracting authorities as proof of fulfilment of the conditions for participation covered by it and shall not be questioned without justification. Such justification may be related to the fact that the passport was issued more than ***six months*** earlier.

*Amendment*

4. The European Procurement Passport shall be recognised by all contracting authorities as proof of fulfilment of the conditions for participation covered by it and shall not be questioned without justification. Such justification may be related to the fact that the passport was issued more than ***one year*** earlier.

Or. en

*Justification*

*The Public Procurement Passport should be issued for one year. Economic information in the passport will reflect annual accounts of the company and avoid repetition of data every six months. With respect to the validity of the information provided in the passport, i.e. in relations to public sector debt, the economic operator has to provide a declaration of honour according to Article 22 (c) that it has not and will not undertake to deliberately provide misleading information.*

**Amendment 1105**

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

**Proposal for a directive**

**Article 59 – paragraph 4**

*Text proposed by the Commission*

4. The European Procurement Passport shall be recognised by all contracting authorities as proof of fulfilment of the conditions for participation covered by it and shall not be questioned without justification. Such justification may be related to the fact that the passport was issued more than *six months* earlier.

*Amendment*

4. The European Procurement Passport shall be recognised by all contracting authorities as proof of fulfilment of the conditions for participation covered by it and shall not be questioned without justification. Such justification may be related to the fact that the passport was issued more than *one year* earlier.

Or. en

**Amendment 1106**

**Sirpa Pietikäinen**

**Proposal for a directive**

**Article 59 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***5a. Tenderers may be excluded from the European Procurement Passport due to failures in paying social contributions, or where the economic operator has been convicted by a final judgement of any offence affecting his professional conduct or has been guilty of grave professional misconduct.***

Or. en

**Amendment 1107**

**Sirpa Pietikäinen**

**Proposal for a directive**

**Article 60 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

2. Proof of the economic operator's economic and financial standing may, as a general rule, be provided by one or more of the references listed in Annex XIV, part 1.

2. Proof of the economic operator's economic and financial standing ***as well as compliance with rules and standards in the field of animal welfare***, may, as a general rule, be provided by one or more of the references listed in Annex XIV, part 1.

Or. en

**Amendment 1108**  
**Heide Rühle**

**Proposal for a directive**  
**Article 60 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. A contracting authority shall request the tenderers or candidates to provide evidence that they have taken into account, when drawing up their tender, the obligations relating to employment protection provisions and the working conditions which are in force in the place where the works are to be carried out or the service is to be provided.***

Or. en

*Justification*

*Identical with the provisions in Article 27 (2) of the recent general procurement directive 2004/18/EC. No reason to delete this provision with its usefull clarification.*

**Amendment 1109**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 61 – title**

*Text proposed by the Commission*

Quality assurance standards and environmental management standards

*Amendment*

Quality assurance standards and *social, environmental and animal welfare* management standards

Or. en

**Amendment 1110**  
**Ivo Belet**

**Proposal for a directive**  
**Article 61 – paragraph 1**

*Text proposed by the Commission*

1. Where they require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, contracting authorities shall refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

*Amendment*

1. Where they require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, *social and solidarity economy and ethical trade requirements*, contracting authorities shall refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

Or. en

**Amendment 1111**  
**Catherine Stihler**

**Proposal for a directive**  
**Article 61 – paragraph 1**

*Text proposed by the Commission*

1. Where they require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, contracting authorities shall refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

*Amendment*

1. Where they require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, ***social and solidarity economy and ethical trade requirements***, contracting authorities shall refer to quality assurance systems based on the relevant European standards series certified by accredited bodies ***or multi-stakeholder third-party verified organisational assurance schemes***. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

Or. en

*Justification*

*It is entirely legitimate for a contracting authority to ask potential tenderers for information on how they intend to meet the aims of the contract which it has laid down. As already recognized by the Commission in its Communication on "The role of Fair Trade and non-governmental trade-related sustainability assurance schemes" (COM (2009) 215) private, multi-stakeholder, third-party verified organisational assurance schemes are robust enough and a useful tool to contracting authorities.*

**Amendment 1112**

**Heide Rühle**

**Proposal for a directive**

**Article 61 – paragraph 2**

*Text proposed by the Commission*

2. Where contracting authorities require the production of certificates drawn up by

*Amendment*

2. Where contracting authorities require the production of certificates drawn up by

independent bodies attesting that the economic operator complies with certain environmental management schemes or standards, they shall refer to the European Union Eco-Management and Audit Scheme (EMAS) or to other environmental management schemes as recognized in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council<sup>41</sup> or other environmental management standards based on the relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

independent bodies attesting that the economic operator complies with certain environmental management schemes or standards, they shall refer to the European Union Eco-Management and Audit Scheme (EMAS) or to other environmental management schemes as recognized in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council<sup>41</sup> or other environmental management standards based on the relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits. ***In order not to discriminate those tenderers who invest time and money for certificates or test reports, the burden for providing equivalence should be placed on the tenderer claiming equivalence.***

Or. en

**Amendment 1113**  
**Christel Schaldemose**

**Proposal for a directive**  
**Article 61 – paragraph 2**

*Text proposed by the Commission*

2. Where contracting authorities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management schemes or standards, they shall refer to the European Union Eco-Management and Audit Scheme (EMAS) or to other environmental management schemes as recognized in accordance with Article 45 of Regulation

*Amendment*

2. Where contracting authorities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management schemes or standards, they shall refer to the European Union Eco-Management and Audit Scheme (EMAS) or to other environmental management schemes as recognized in accordance with Article 45 of Regulation

(EC) No 1221/2009 of the European Parliament and of the Council<sup>41</sup> or other environmental management standards based on the relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

(EC) No 1221/2009 of the European Parliament and of the Council<sup>41</sup> or other environmental management standards based on the relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. ***For services this may be Ecolabel certificates which also include environmental management criteria.*** They shall also accept other evidence of equivalent environmental management measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

Or. en

**Amendment 1114**  
**Matteo Salvini, Francesco Enrico Speroni**

**Proposal for a directive**  
**Article 61 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Where contracting authorities require the production of certificates or corresponding evidence drawn up by independent bodies attesting that the economic operator complies with certain management schemes or standards concerning working conditions along the supply chain related to the International Labour Organization (ILO) Conventions listed in Annex XI, the contracting authorities shall refer to participation in multi-stakeholder initiatives in which businesses, trades unions and/or relevant nongovernmental organizations are represented. The multi-stakeholder initiatives shall have a system of independent verification of members to ensure compliance with the provisions of Annex XI.***

**Amendment 1115**  
**Heide Rühle**

**Proposal for a directive**  
**Article 61 – paragraph 3**

*Text proposed by the Commission*

3. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information relating to the documents produced as evidence of compliance with quality and environmental standards referred to in paragraphs 1 and 2 of this Article.

*Amendment*

3. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information relating to the documents produced as evidence of compliance with quality, **social** and environmental standards referred to in paragraphs 1 and 2 of this Article.

Or. en

**Amendment 1116**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 61 – paragraph 3**

*Text proposed by the Commission*

3. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information relating to the documents produced as evidence of compliance with quality and **environmental** standards referred to in paragraphs 1 and 2 of this Article.

*Amendment*

3. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information relating to the documents produced as evidence of compliance with quality, **social, environmental** and **animal welfare** standards referred to in paragraphs 1 and 2 of this Article.

Or. en

**Amendment 1117**  
**Lara Comi**



**Proposal for a directive**  
**Article 62 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. Nel caso di appalti di lavori, di contratti di prestazione di servizi e operazioni di posa in opera e installazione nel quadro di un contratto di fornitura, le amministrazioni aggiudicatrici possono esigere che taluni compiti essenziali siano direttamente svolti dall'offerente stesso o, nel caso di un'offerta presentata da un raggruppamento di operatori economici di cui all'articolo 6, da un partecipante al raggruppamento.**

**soppresso**

Or. it

**Amendment 1118**  
**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**  
**Article 63 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

**They shall inform the Commission and the other Member States of the address of the certification body or the body responsible for the official *lists, to which applications shall be sent.***

***Upon their request, they* shall inform the Commission and the other Member States of the address of the certification body or the body responsible for the official *list.***

Or. en

**Amendment 1119**  
**Monica Luisa Macovei**

**Proposal for a directive**  
**Article 63 – paragraph 1 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***Member States shall publish online and regularly update the list of economic***

*operators excluded for participation in a public contract on the grounds stipulated in Article 55(1), (2) and (3).*

Or. en

**Amendment 1120**

**Marc Tarabella**

**Proposal for a directive**

**Article 63 – paragraph 8 a (new)**

*Text proposed by the Commission*

*Amendment*

***8 bis. Le pouvoir adjudicateur peut réaliser la sélection qualitative en recourant à un système de notation et de classement de candidats, ceux-ci pouvant intervenir dans le classement final des offres.***

Or. fr

**Amendment 1121**

**Marc Tarabella**

**Proposal for a directive**

**Article 64 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

1. Dans les procédures restreintes, les procédures concurrentielles avec négociation, ***les dialogues compétitifs et les partenariats d'innovation***, les pouvoirs adjudicateurs peuvent limiter le nombre de candidats respectant les critères de sélection qu'ils inviteront à soumissionner ou à dialoguer, à condition qu'un nombre suffisant de candidats appropriés soit disponible.

1. Dans les procédures restreintes, les procédures concurrentielles avec négociation, les pouvoirs adjudicateurs peuvent limiter le nombre de candidats respectant les critères de sélection qu'ils inviteront à soumissionner ou à dialoguer, à condition qu'un nombre suffisant de candidats appropriés soit disponible.

Or. fr

## Amendment 1122

Marc Tarabella

### Proposal for a directive

#### Article 64 – paragraph 2 – subparagraph 1

*Text proposed by the Commission*

1. Dans la procédure restreinte, le nombre minimum de candidats est de cinq. Dans la procédure concurrentielle avec négociation, **le dialogue compétitif et le partenariat d'innovation**, le nombre minimum est de trois. En tout état de cause, le nombre de candidats invités doit être suffisant pour assurer une concurrence réelle.

*Amendment*

1. Dans la procédure restreinte, le nombre minimum de candidats est de cinq. Dans la procédure concurrentielle avec négociation, le nombre minimum est de trois. En tout état de cause, le nombre de candidats invités doit être suffisant pour assurer une concurrence réelle.

Or. fr

## Amendment 1123

Frank Engel, Philippe Juvin, Andreas Schwab, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski, Małgorzata Handzlik, Konstantinos Poupakis, Anna Maria Corazza Bildt

### Proposal for a directive

#### Article 66 – paragraph 1 – subparagraph 1 – introductory part

*Text proposed by the Commission*

1. Sans préjudice des dispositions législatives, réglementaires ou administratives nationales relatives à la rémunération de certains services, **les critères** sur **lesquels** les pouvoirs adjudicateurs se fondent pour attribuer les marchés publics **sont**:

*Amendment*

1. Sans préjudice des dispositions législatives, réglementaires ou administratives nationales relatives à la rémunération de certains services, **le critère** sur **lequel** les pouvoirs adjudicateurs se fondent pour attribuer les marchés publics **est l'offre économiquement la plus avantageuse**.

Or. fr

## Amendment 1124

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

**Proposal for a directive**

**Article 66 – paragraph 1 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

1. Die öffentlichen Auftraggeber **wenden** unbeschadet der für die Vergütung bestimmter Dienstleistungen geltenden einzelstaatlichen Rechts- und Verwaltungsvorschriften **bei der Erteilung des Zuschlags eines der folgenden Kriterien an:**

*Amendment*

1. Die öffentlichen Auftraggeber **erteilen** unbeschadet der für die Vergütung bestimmter Dienstleistungen geltenden einzelstaatlichen Rechts- und Verwaltungsvorschriften **dem wirtschaftliche günstigsten Angebot den Zuschlag.**

Or. de

*Justification*

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

**Amendment 1125**

**Evelyne Gebhardt, Birgit Sippel**

**Proposal for a directive**

**Article 66 – paragraph 1 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

1. Die öffentlichen Auftraggeber wenden unbeschadet der für die Vergütung bestimmter Dienstleistungen geltenden einzelstaatlichen Rechts- und Verwaltungsvorschriften bei der Erteilung des Zuschlags **eines der folgenden Kriterien an:**

*Amendment*

1. Die öffentlichen Auftraggeber wenden unbeschadet der für die Vergütung bestimmter Dienstleistungen geltenden einzelstaatlichen Rechts- und Verwaltungsvorschriften bei der Erteilung des Zuschlags **das Kriterium des wirtschaftlich günstigsten und nachhaltigsten Angebots an.**

Or. de

**Amendment 1126**

**Robert Rochefort**

## Proposal for a directive

### Article 66 – paragraph 1 – subparagraph 1 – introductory part

*Text proposed by the Commission*

1. Sans préjudice des dispositions législatives, réglementaires ou administratives nationales relatives à la rémunération de certains services, **les critères** sur **lesquels** les pouvoirs adjudicateurs se fondent pour attribuer les marchés publics **sont**:

*Amendment*

1. Sans préjudice des dispositions législatives, réglementaires ou administratives nationales relatives à la rémunération de certains services, **le critère** sur **lequel** les pouvoirs adjudicateurs se fondent pour attribuer les marchés publics **est celui de l'offre économiquement la plus avantageuse. Lorsque le marché public concerne la fourniture de biens, en particulier de biens standardisés, les pouvoirs adjudicateurs peuvent se fonder sur le critère du coût le plus bas pour attribuer le marché.**

Or. fr

## Amendment 1127

Marc Tarabella

## Proposal for a directive

### Article 66 – paragraph 1 – subparagraph 1 – introductory part

*Text proposed by the Commission*

1. Sans préjudice des dispositions législatives, réglementaires ou administratives nationales relatives à la rémunération de certains services, les critères sur lesquels les pouvoirs adjudicateurs se fondent pour attribuer les marchés publics sont:

*Amendment*

1. Sans préjudice des dispositions législatives, réglementaires ou administratives nationales relatives à la rémunération de certains services, les critères sur lesquels les pouvoirs adjudicateurs se fondent pour attribuer les marchés publics sont **basés sur des critères multiples qui déterminent l'offre économiquement la plus avantageuse.**

Or. fr

## Amendment 1128

Frank Engel, Philippe Juvin, Andreas Schwab, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski, Małgorzata Handzlik, Anna Maria Corazza Bildt

**Proposal for a directive**  
**Article 66 – paragraph 1 – subparagraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

*(a) soit l'offre économiquement la plus  
avantageuse;*                                 *supprimé*

Or. fr

**Amendment 1129**

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

**Proposal for a directive**  
**Article 66 – paragraph 1 – subparagraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

*(a) das wirtschaftlich günstigste Angebot;*                                 *entfällt*

Or. de

*Justification*

*Folgeänderungsantrag zum Änderungsantrag zu Art. 66 Abs. 1 derselben Verfasserin. Das Kriterium des wirtschaftlich günstigsten Angebots ist der Oberbegriff, unter den alle qualitativen, ökologischen und sozialen Kriterien sowie der Preis und die Kosten gefasst werden können.*

**Amendment 1130**

**Robert Rochefort**

**Proposal for a directive**  
**Article 66 – paragraph 1 – subparagraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

*(a) soit l'offre économiquement la plus  
avantageuse;*                                 *supprimé*

Or. fr

**Amendment 1131**

**Marc Tarabella**

**Proposal for a directive**

**Article 66 – paragraph 1 – subparagraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

*(a) soit l'offre économiquement la plus  
avantageuse;*

*supprimé*

Or. fr

**Amendment 1132**

**Sirpa Pietikäinen**

**Proposal for a directive**

**Article 66 – paragraph 1 – subparagraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

*(a) the most economically advantageous  
tender;*

*(a) the most economically, **socially and  
environmentally** advantageous tender;*

Or. en

**Amendment 1133**

**Anna Hedh**

**Proposal for a directive**

**Article 66 – paragraph 1 – subparagraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

*(a) the most economically advantageous  
tender;*

*(a) the most economically, **socially and  
environmentally** advantageous tender;*

Or. en

**Amendment 1134**

**Heide Rühle**

**Proposal for a directive**  
**Article 66 – paragraph 1 – subparagraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) the lowest cost.*

*deleted*

Or. en

**Amendment 1135**

**Frank Engel, Philippe Juvin, Andreas Schwab, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski, Małgorzata Handzlik, Anna Maria Corazza Bildt**

**Proposal for a directive**  
**Article 66 – paragraph 1 – subparagraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) soit le coût le plus bas.*

*supprimé*

Or. fr

**Amendment 1136**

**Barbara Weiler**

**Proposal for a directive**  
**Article 66 – paragraph 1 – subparagraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) die günstigsten Kosten.*

*entfällt*

Or. de

**Amendment 1137**

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

**Proposal for a directive**  
**Article 66 – paragraph 1 – subparagraph 1 – point b**



*Text proposed by the Commission*

*Amendment*

**(b) die günstigsten Kosten.**

**entfällt**

Or. de

*Justification*

*Folgeänderungsantrag zum Änderungsantrag zu Art. 66 Abs. 1 derselben Verfasserin. Das Kriterium des wirtschaftlich günstigsten Angebots ist der Oberbegriff, unter den alle qualitativen, ökologischen und sozialen Kriterien sowie der Preis und die Kosten gefasst werden können.*

**Amendment 1138**

**Marc Tarabella**

**Proposal for a directive**

**Article 66 – paragraph 1 – subparagraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) soit le coût le plus bas.**

**supprimé**

Or. fr

**Amendment 1139**

**Evelyne Gebhardt**

**Proposal for a directive**

**Article 66 – paragraph 1 – subparagraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) die günstigsten Kosten.**

**entfällt**

Or. de

**Amendment 1140**

**Robert Rochefort**

**Proposal for a directive**  
**Article 66 – paragraph 1 – subparagraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) soit le coût le plus bas.*

*supprimé*

Or. fr

**Amendment 1141**  
**Toine Manders**

**Proposal for a directive**  
**Article 66 – paragraph 1 – subparagraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) de laagste kostprijs.*

*Schrappen*

Or. nl

**Amendment 1142**  
**Morten Løkkegaard, Jens Rohde**

**Proposal for a directive**  
**Article 66 – paragraph 1 – subparagraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) the lowest **cost**.*

*(b) the lowest **price**.*

Or. en

**Amendment 1143**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 66 – paragraph 1 – subparagraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) the lowest **cost**.*

*(b) the lowest **price only where no other award criteria are available from an***

*objective point of view, in particular for standardised products, which do not differ significantly in their composition or characteristics.*

Or. en

*Justification*

*While the economically most advantageous tender should be the decisive award criterion in most cases, the lowest price criterion should be maintained for standardised products.*

**Amendment 1144**  
**Christel Schaldemose**

**Proposal for a directive**  
**Article 66 – paragraph 1 – subparagraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

b) *de* laveste *omkostninger*.

b) *den* laveste *pris*.

Or. da

**Amendment 1145**  
**Frank Engel, Philippe Juvin, Andreas Schwab, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski, Małgorzata Handzlik, Anna Maria Corazza Bildt**

**Proposal for a directive**  
**Article 66 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*Les coûts peuvent être évalués, au choix du pouvoir adjudicateur, soit uniquement sur la base du prix, soit selon une approche coût/efficacité telle que le calcul du coût du cycle de vie, dans les conditions établies à l'article 67.*

*supprimé*

Or. fr

**Amendment 1146**

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

**Proposal for a directive**

**Article 66 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

***Je nach Wahl des öffentlichen Auftraggebers können die Kosten entweder nur auf der Grundlage des Preises oder mittels des Kosten-Wirksamkeits-Ansatzes, wie des Lebenszyklus-Kostenansatzes gemäß der Bedingungen von Artikel 67 bewertet werden.*** ***entfällt***

Or. de

*Justification*

*Folgeänderungsantrag zum Änderungsantrag zu Art. 66 Abs. 1 derselben Verfasserin. Das Kriterium des wirtschaftlich günstigsten Angebots ist der Oberbegriff, unter den alle qualitativen, ökologischen und sozialen Kriterien sowie der Preis und die Kosten gefasst werden können.*

**Amendment 1147**

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

**Proposal for a directive**

**Article 66 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

***Costs may be assessed, on the choice of the contracting authority, on the basis of the price only or using a cost-effectiveness approach, such as a life-cycle costing approach, under the conditions set out in Article 67.*** ***deleted***

Or. en

**Amendment 1148**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 66 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Costs may be assessed, on the choice of the contracting authority, on the basis of the price only or using a cost-effectiveness approach, such as a life-cycle costing approach, under the conditions set out in Article 67.*

*Amendment*

*deleted*

Or. en

**Amendment 1149**  
**Heide Rühle**

**Proposal for a directive**  
**Article 66 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

Costs may be assessed, on the choice of the contracting authority, *on the basis of the price only or* using a cost-effectiveness approach, such as a life-cycle costing approach, under the conditions set out in Article 67.

*Amendment*

Costs may be assessed, on the choice of the contracting authority, using a cost-effectiveness approach, such as a life-cycle costing approach, under the conditions set out in Article 67.

Or. en

**Amendment 1150**  
**Evelyne Gebhardt, Birgit Sippel**

**Proposal for a directive**  
**Article 66 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Je nach Wahl des öffentlichen Auftraggebers können die Kosten entweder nur auf der Grundlage des*

*Amendment*

*Die Kosten werden* mittels des Kosten-Wirksamkeits-Ansatzes, wie des Lebenszyklus-Kostenansatzes gemäß der

*Preises oder* mittels des Kosten-Wirksamkeits-Ansatzes, wie des Lebenszyklus-Kostenansatzes gemäß der Bedingungen von Artikel 67 bewertet werden.

Bedingungen von Artikel 67 bewertet werden.

Or. de

**Amendment 1151**  
**Christel Schaldemose**

**Proposal for a directive**  
**Article 66 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. Det økonomisk mest fordelagtige tilbud, jf. stk. 1, litra a), set ud fra den ordregivende myndigheds synspunkt udvælges på grundlag af kriterier i forbindelse med genstanden for den pågældende offentlige kontrakt. Disse kriterier omfatter, ud over pris *eller omkostninger* som omhandlet i stk. 1, litra b), andre kriterier i forbindelse med genstanden for den pågældende offentlige kontrakt som f.eks.:

*Amendment*

2. Det økonomisk mest fordelagtige tilbud, jf. stk. 1, litra a), set ud fra den ordregivende myndigheds synspunkt udvælges på grundlag af kriterier i forbindelse med genstanden for den pågældende offentlige kontrakt. Disse kriterier omfatter, ud over pris som omhandlet i stk. 1, litra b), andre kriterier i forbindelse med genstanden for den pågældende offentlige kontrakt som f.eks.:

Or. da

**Amendment 1152**  
**Frank Engel, Philippe Juvin, Andreas Schwab, Konstantinos Poupakis, Anna Maria Corazza Bildt**

**Proposal for a directive**  
**Article 66 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. L'offre économiquement la plus avantageuse du point de vue du pouvoir adjudicateur, comme visée au paragraphe 1, *point a)*, est déterminée sur la base de critères liés à l'objet du marché public en question. Ces critères *incluent*, outre le

*Amendment*

2. L'offre économiquement la plus avantageuse du point de vue du pouvoir adjudicateur, comme visée au paragraphe 1 est déterminée sur la base de critères liés à l'objet du marché public en question. Ces critères *peuvent inclure*, outre le prix ou

prix ou les coûts, *visés au paragraphe 1, point b*), d'autres critères liés à l'objet du marché public en question, notamment:

les coûts, d'autres critères liés à l'objet du marché public en question.

*Les coûts sont évalués selon une approche coût/efficacité telle que le calcul du coût du cycle de vie, dans les conditions établies à l'article 67.*

*Pour les produits et services hautement standardisés le prix sera le critère d'attribution prépondérant.*

*Les autres critères peuvent inclure*  
notamment:

Or. fr

### **Amendment 1153**

**Heide Rühle**

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

#### **Article 66 – paragraph 2 – introductory part**

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

2. The most economically advantageous tender referred to in *point (a) of* paragraph 1 from the point of view of the contracting authority shall be identified on the basis of criteria linked to the subject-matter of the public contract in question. Those criteria shall include, in addition to the price or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter of the public contract in question, such as:

##### *Amendment*

2. The most economically advantageous tender referred to in paragraph 1 from the point of view of the contracting authority shall be identified on the basis of criteria linked to the subject-matter of the public contract in question. Those criteria shall include, in addition to the price or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter of the public contract in question, such as:

Or. en

### **Amendment 1154**

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

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

#### **Article 66 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. Das wirtschaftlich günstigste Angebot **gemäß Absatz 1 Buchstabe a** erfolgt aus Sicht des öffentlichen Auftraggebers aufgrund von Kriterien, die mit dem Auftragsgegenstand des besagten öffentlichen Auftrags in Verbindung stehen. Zu diesen Kriterien zählen - **zusätzlich zum in Absatz 1 Buchstabe b genannten** Preis oder **dort genannten** Kosten - weitere Kriterien, die mit dem Auftragsgegenstand des besagten öffentlichen Auftrags in Verbindung stehen, wie z. B.:

*Amendment*

2. Das wirtschaftlich günstigste Angebot erfolgt aus Sicht des öffentlichen Auftraggebers aufgrund von Kriterien, die mit dem Auftragsgegenstand des besagten öffentlichen Auftrags in Verbindung stehen. Zu diesen Kriterien zählen **der** Preis oder **die** Kosten **sowie** weitere **qualitative, ökologische und soziale** Kriterien, die mit dem Auftragsgegenstand des besagten öffentlichen Auftrags in Verbindung stehen, wie z. B.:

Or. de

*Justification*

*Folgeänderungsantrag zum Änderungsantrag zu Art. 66 Abs. 1 derselben Verfasserin. Das Kriterium des wirtschaftlich günstigsten Angebots ist der Oberbegriff, unter den alle qualitativen, ökologischen und sozialen Kriterien sowie der Preis und die Kosten gefasst werden können.*

**Amendment 1155**

**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**

**Article 66 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. The most economically advantageous tender referred to in point (a) of paragraph 1 from the point of view of the contracting authority shall be identified on the basis of criteria linked to the subject-matter of the public contract in question. Those criteria **shall** include, in addition to the price or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter of the public contract in question, such as:

*Amendment*

2. The most economically advantageous tender referred to in point (a) of paragraph 1 from the point of view of the contracting authority shall be identified on the basis of criteria linked to the subject-matter of the public contract in question **and, wherever possible, on the basis of the monetisation of the life cycle as defined in Article 2, point 22**. Those criteria **may** include, in addition to the price or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter of the public



contract in question, such as:

Or. en

## **Amendment 1156**

**Evelyne Gebhardt**

### **Proposal for a directive**

#### **Article 66 – paragraph 2 – introductory part**

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

2. Das wirtschaftlich günstigste Angebot gemäß Absatz 1 Buchstabe a erfolgt aus Sicht des öffentlichen Auftraggebers aufgrund von Kriterien, die mit dem Auftragsgegenstand des besagten öffentlichen Auftrags in Verbindung stehen. Zu diesen Kriterien zählen - **zusätzlich zum in Absatz 1 Buchstabe b genannten Preis oder dort genannten Kosten** - weitere Kriterien, die mit dem Auftragsgegenstand des besagten öffentlichen Auftrags in Verbindung stehen, wie z. B.:

##### *Amendment*

2. Das wirtschaftlich günstigste Angebot gemäß Absatz 1 Buchstabe a erfolgt aus Sicht des öffentlichen Auftraggebers aufgrund von Kriterien, die mit dem Auftragsgegenstand des besagten öffentlichen Auftrags in Verbindung stehen. Zu diesen Kriterien zählen weitere Kriterien, die mit dem Auftragsgegenstand des besagten öffentlichen Auftrags in Verbindung stehen, wie z. B.:

Or. de

## **Amendment 1157**

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

### **Proposal for a directive**

#### **Article 66 – paragraph 2 – introductory part**

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

2. The most economically advantageous tender referred to in point (a) of paragraph 1 from the point of view of the contracting authority shall be identified on the basis of criteria linked to the subject-matter of the public contract in question. Those criteria shall include, in addition to the price **or costs referred to in point (b) of paragraph 1**, other criteria linked to the subject-matter

##### *Amendment*

2. The most economically advantageous tender referred to in point (a) of paragraph 1 from the point of view of the contracting authority shall be identified on the basis of criteria linked to the subject-matter of the public contract in question. Those criteria shall include, in addition to the price, other criteria linked to the subject-matter of the public contract in question, such as:

of the public contract in question, such as:

Or. en

### **Amendment 1158**

**Sirpa Pietikäinen**

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

#### **Article 66 – paragraph 2 – introductory part**

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

2. The most economically advantageous tender referred to in point (a) of paragraph 1 from the point of view of the contracting authority shall be identified on the basis of criteria linked to the subject-matter of the public contract in question. Those criteria shall include, in addition to the price or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter of the public contract in question, such as:

##### *Amendment*

2. The most economically, ***socially and environmentally*** advantageous tender referred to in point (a) of paragraph 1 from the point of view of the contracting authority shall be identified on the basis of criteria linked to the subject-matter of the public contract in question. Those criteria shall include, in addition to the price or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter of the public contract in question, such as:

Or. en

### **Amendment 1159**

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

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

#### **Article 66 – paragraph 2 – introductory part**

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

2. L'offre économiquement la plus avantageuse du point de vue du pouvoir adjudicateur, comme visée au paragraphe 1, ***point a)***, est déterminée sur la base de critères liés à l'objet du marché public en question. Ces critères incluent, outre le prix ou les coûts, ***visés au paragraphe 1, point b)***, d'autres critères liés à l'objet du marché public en question, notamment:

##### *Amendment*

2. L'offre économiquement la plus avantageuse du point de vue du pouvoir adjudicateur, comme visée au paragraphe 1 est déterminée sur la base de critères liés à l'objet du marché public en question. Ces critères incluent, outre le prix ou les coûts, d'autres critères liés à l'objet du marché public en question.

***Les coûts sont évalués selon une approche coût/efficacité telle que le calcul du coût***

*du cycle de vie, dans les conditions établies à l'article 67. Pour les produits et services hautement standardisés le prix sera le critère d'attribution prépondérant. Les autres critères peuvent inclure notamment:*

Or. fr

## **Amendment 1160**

**Anna Hedh**

### **Proposal for a directive**

#### **Article 66 – paragraph 2 – introductory part**

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

2. The most economically advantageous tender referred to in point (a) of paragraph 1 from the point of view of the contracting authority shall be identified on the basis of criteria linked to the subject-matter of the public contract in question. Those criteria shall include, in addition to the price or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter of the public contract in question, such as:

##### *Amendment*

2. The most economically, ***socially and environmentally*** advantageous tender referred to in point (a) of paragraph 1 from the point of view of the contracting authority shall be identified on the basis of criteria linked to the subject-matter of the public contract in question. Those criteria shall include, in addition to the price or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter ***or the production*** of the ***subject-matter of the*** public contract in question, such as:

Or. en

## **Amendment 1161**

**Toine Manders**

### **Proposal for a directive**

#### **Article 66 – paragraph 2 – introductory part**

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

2. De in lid 1, onder a), bedoelde economisch meest voordelige inschrijving wordt uit het oogpunt van de aanbestedende dienst vastgesteld op basis van criteria die verband houden met het

##### *Amendment*

2. De in lid 1, onder a), bedoelde economisch meest voordelige inschrijving wordt uit het oogpunt van de aanbestedende dienst vastgesteld op basis van criteria die verband houden met het

voorwerp van de betrokken opdracht. Deze criteria **omvatten** naast de in lid 1, onder b), bedoelde prijs of kosten andere criteria die verband houden met het voorwerp van de betrokken opdracht, zoals:

voorwerp van de betrokken opdracht. Deze criteria **kunnen** naast de in lid 1, onder b), bedoelde prijs of kosten andere criteria **omvatten** die verband houden met het voorwerp van de betrokken opdracht, zoals:

Or. nl

**Amendment 1162**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 66 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. The most economically advantageous tender referred to in point (a) of paragraph 1 from the point of view of the contracting authority shall be identified on the basis of criteria linked to the subject-matter of the public contract in question. Those criteria shall include, in addition to the price **or costs referred to in point (b) of paragraph 1**, other criteria linked to the subject-matter of the public contract in question, such as:

*Amendment*

2. The most economically advantageous tender referred to in point (a) of paragraph 1 from the point of view of the contracting authority shall be identified on the basis of criteria linked to the subject-matter of the public contract in question. Those criteria shall include, in addition to the price, other criteria linked to the subject-matter of the public contract in question, such as:

Or. en

**Amendment 1163**  
**Sergio Gaetano Cofferati**

**Proposal for a directive**  
**Article 66 – paragraph 2 – point -a (new)**

*Text proposed by the Commission*

*Amendment*

***(-a) condizioni di lavoro dignitose, salute e sicurezza sul luogo di lavoro, rispetto della contrattazione collettiva;***

Or. it

**Amendment 1164**  
**Heide Rühle**

**Proposal for a directive**  
**Article 66 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental *characteristics* and innovative *character*;

*Amendment*

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental, *social* and innovative *characteristics*;

Or. en

**Amendment 1165**  
**Anna Maria Corazza Bildt**

**Proposal for a directive**  
**Article 66 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics, and innovative character;

*Amendment*

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, *innovative character, and environmental characteristics, including cost-effectiveness of short-distance procurement where relevant*;

Or. en

**Amendment 1166**  
**Herbert Dorfmann**

**Proposal for a directive**  
**Article 66 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) Qualität, einschließlich technischer Wert, Ästhetik, Zweckmäßigkeit,

*Amendment*

(a) Qualität, einschließlich technischer Wert, Ästhetik, Zweckmäßigkeit,

Zugänglichkeit, Konzeption für alle Benutzer, Umwelteigenschaften **und** innovativer Charakter;

Zugänglichkeit, Konzeption für alle Benutzer, Umwelteigenschaften, innovativer Charakter **und kurze Kreisläufe**;

Or. de

#### *Justification*

*Die Berücksichtigung dieses weiteren Kriteriums soll den Vergabestellen einenzusätzlichen qualitativen Mehrwert für bestimmte Produkte oder Dienstleistungen bieten. Dieser Mehrwert wird darin gesehen, dass durch kurze Kreisläufe Waren und Dienstleistungen in der Regel schneller zum Auftraggeber gelangen können, sowie rascher und flexibler auf dessen Bedürfnisse reagiert werden kann. Dabei können auch gleichzeitig Umweltstandards nachhaltig verbessert werden (kürzere Transportwege und Lagerungszeiten, weniger Emissionen)*

#### **Amendment 1167** **Sirpa Pietikäinen**

#### **Proposal for a directive** **Article 66 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) *quality*, including *technical merit*, *aesthetic* and *functional characteristics*, *accessibility*, *design for all users*, *environmental characteristics* and *innovative character*;

*Amendment*

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

Or. en

#### **Amendment 1168** **Morten Løkkegaard, Jens Rohde**

#### **Proposal for a directive** **Article 66 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) *quality*, including *technical merit*, *aesthetic* and *functional characteristics*, *accessibility*, *design for all users*,

*Amendment*

(a) *life-cycle cost and quality*, including *technical merit*, *aesthetic* and *functional characteristics*, *accessibility*, *design for all*

environmental characteristics and innovative character;

users, environmental characteristics and innovative character;

Or. en

#### **Amendment 1169**

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

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

#### **Article 66 – paragraph 2 – point a**

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

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative **character**;

##### *Amendment*

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative **aspects, after-sales service and technical assistance, delivery conditions (delivery date, delivery process and delivery period or period of completion)**;

Or. en

##### *Justification*

*The list of criteria – other than price or costs – which may be taken into account is not exhaustive but open and it should be clear from the wording of the Article.*

#### **Amendment 1170**

**Matteo Salvini, Francesco Enrico Speroni**

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

#### **Article 66 – paragraph 2 – point a**

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

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative character;

##### *Amendment*

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental, **social** characteristics and innovative character;

Or. en

## Amendment 1171

Toine Manders

### Proposal for a directive

#### Article 66 – paragraph 2 – point a

*Text proposed by the Commission*

(a) kwaliteit, waaronder technische waarde, esthetische en functionele kenmerken, toegankelijkheid, geschiktheid van het ontwerp voor alle gebruikers, ***milieukenmerken en innovatief karakter;***

*Amendment*

(a) kwaliteit, waaronder technische waarde, esthetische en functionele kenmerken, toegankelijkheid, geschiktheid van het ontwerp voor alle gebruikers en ***milieukenmerken;***

Or. nl

## Amendment 1172

Ian Hudghton

### Proposal for a directive

#### Article 66 – paragraph 2 – point a

*Text proposed by the Commission*

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative character;

*Amendment*

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative character, ***and where justified on public policy grounds in order to promote sustainable economic growth, socio-economic impact;***

Or. en

#### *Justification*

*Where justified on public policy grounds in order to promote sustainable economic growth, contracting authorities should be able to include criteria related to socio-economic impact in order to identify which tender offers overall best value for money for delivery of the requirement. Alongside existing provisions in the legislative proposal, this amendment would not afford an outright advantage to local tenderers, nor would it discriminate against others.*



**Amendment 1173**  
**Catherine Stihler**

**Proposal for a directive**  
**Article 66 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics **and** innovative character;

*Amendment*

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics innovative character **and where justified on public policy grounds in order to promote sustainable economic growth, socio-economic impact;**

Or. en

**Amendment 1174**  
**Louis Grech**

**Proposal for a directive**  
**Article 66 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative character;

*Amendment*

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative character, **support for local training, local support chain, social cohesion, and fair trade considerations, as well as commitment to recruit target groups, such as long term unemployed, young people and disabled people to complete the contract.**

Or. en

**Amendment 1175**  
**Anna Hedh**

**Proposal for a directive**  
**Article 66 – paragraph 2 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***(aa) life-cycle process criteria;***

Or. en

*Justification*

*This amendment aims to broaden the scope for contracting authorities to demand social and environmental concerns in award criteria.*

**Amendment 1176**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 66 – paragraph 2 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***(aa) costs over the life cycle in accordance with Article 67***

Or. en

*Justification*

*Life-cycle costing should be one of the options in order to determine the economically most advantageous tender rather than an alternative to it.*

**Amendment 1177**  
**Toine Manders**

**Proposal for a directive**  
**Article 66 – paragraph 2 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***(a bis) innovatieve kenmerken inclusief de best beschikbare technieken***

Or. nl

**Amendment 1178**

**Anna Hedh**

**Proposal for a directive**

**Article 66 – paragraph 2 – point a b (new)**

*Text proposed by the Commission*

*Amendment*

***(ab) socially sustainable production process criteria, which may also involve the employment of disadvantaged individuals or members of vulnerable groups;***

Or. en

*Justification*

*This amendment aims to broaden the scope for contracting authorities to demand social and environmental concerns in award criteria.*

**Amendment 1179**

**Andreas Schwab, Birgit Collin-Langen, Sabine Verheyen, Anna Maria Corazza Bildt**

**Proposal for a directive**

**Article 66 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

***(b) bei Dienstleistungsaufträgen und Aufträgen für die Konzeption von Bauarbeiten können die Organisation, Qualifizierung und Erfahrung des mit der Auftragsausführung betrauten Personals berücksichtigt werden mit der Folge, dass dieses Personal nach dem Zuschlag nur mit Zustimmung des öffentlichen Auftraggebers ersetzt werden kann, der prüfen muss, dass mit einem Wechsel eine gleichwertige Organisation und Qualität gegeben sind;*** ***entfällt***

Or. de

### *Justification*

*Die Regelung, nach der das Personal des Auftragnehmers nach dem Zuschlag nur mit Zustimmung des Auftraggebers ersetzt werden darf und dieser prüfen muss, dass mit einem Wechsel eine gleichwertige Organisation und Qualität gegeben sind, würde zu hohem bürokratischem Aufwand, ggf. arbeitsrechtlichen Schwierigkeiten insbesondere für KMU führen. Zudem würde diese Regelung der Trennung von Eignungs- und Zuschlagskriterien zuwiderlaufen.*

#### **Amendment 1180** **Heide Rühle**

#### **Proposal for a directive** **Article 66 – paragraph 2 – point b**

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

(b) for service contracts and contracts involving the design of works, the organisation, qualification and experience of the staff assigned to performing the contract in question may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced with the consent of the contracting authority, which must verify that replacements ensure equivalent organisation and quality;

##### *Amendment*

(b) for service contracts and contracts involving ***works and especially*** the design of works, the organisation, qualification and experience of the staff assigned to performing the contract in question may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced with the consent of the contracting authority, which must verify that replacements ensure equivalent organisation and quality;

Or. en

### *Justification*

*This should be up to the contracting authority. For restoration of old buildings for example those criterias are as important as in the case of the design of works.*

#### **Amendment 1181** **Sirpa Pietikäinen**

#### **Proposal for a directive** **Article 66 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) for service contracts and contracts involving the design of works, the organisation, qualification and experience of the staff assigned to performing the contract in question *may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced with the consent of the contracting authority, which must verify that replacements ensure equivalent organisation and quality;***

**(b) life cycle characteristics;**

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

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

**(bc) 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.**

Or. en

## **Amendment 1182**

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

### **Proposal for a directive**

#### **Article 66 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) for service contracts and contracts involving the design of works, the**

**(b) wherever the quality of the staff is of crucial importance for the performance of**

organisation, qualification and experience of the staff assigned to performing the contract in question may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced with the consent of the contracting authority, **which must verify that replacements ensure equivalent organisation and quality**;

the **contract**, organisation, qualification and experience of the staff assigned to performing the contract in question may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced with the consent of the contracting authority;

Or. en

#### *Justification*

*Qualification and experience of the staff criterion should be taken into consideration only in regard to services of for instance intellectual nature, where qualification and experience of particular person are of a crucial importance for achieving a high quality of service. However, if it is envisaged for all types of services it should at least clarify that the criterion may be applied if qualification and experience of the staff are of a crucial importance for achieving a high quality of particular service.*

#### **Amendment 1183 Anna Hedh**

#### **Proposal for a directive Article 66 – paragraph 2 – point b**

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

(b) for service contracts and contracts involving the design of works, the organisation, qualification and experience of the staff assigned to performing the contract in question may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced with the consent of the contracting authority, which must verify that replacements ensure equivalent organisation and quality;

##### *Amendment*

(b) for service contracts and contracts involving the design of works, the organisation, qualification and experience of the staff assigned to performing the contract in question **as well as the capacities, abilities and professional conduct of any subcontractor** may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced **and further subcontracting will only be permitted** with the consent of the contracting authority, which must verify that replacements **or further subcontracting** ensure equivalent organisation and quality;

*Justification*

*This amendment aims at giving contracting authorities larger scope to take subcontracting into account.*

**Amendment 1184**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 66 – paragraph 2 – point b**

*Text proposed by the Commission*

(b) for service contracts and contracts involving the design of works, the **organisation**, qualification and experience of the staff assigned to performing the contract in question may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced with the consent of the contracting authority, which must verify that replacements ensure equivalent **organisation** and **quality**;

*Amendment*

(b) for service contracts and contracts involving the design of works, the qualification and experience of the staff assigned to performing the contract in question may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced with the consent of the contracting authority, which must verify that replacements ensure equivalent **qualification** and **experience**;

Or. en

**Amendment 1185**  
**Catherine Stihler**

**Proposal for a directive**  
**Article 66 – paragraph 2 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

**(ba) socially sustainable production process criteria, which may also involve the employment of disadvantaged individuals or members of vulnerable groups;**

Or. en

**Amendment 1186**

**Andreas Schwab**

**Proposal for a directive**

**Article 66 – paragraph 2 – point d**

*Text proposed by the Commission*

*Amendment*

***(d) der spezifische Produktionsprozess bzw. die spezifische Erbringung erbetener Bauleistungen, Lieferungen oder Dienstleistungen oder jedes sonstige in Artikel 2 Absatz 22 genannte Lebenszyklusstadium in dem Maße, wie diese Kriterien gemäß Absatz 4 spezifiziert sind und direkt in diese Prozesse einbezogene Faktoren betreffen und diese spezifische Produktionsprozess bzw. die spezifische Erbringung erbetener Bauleistungen, Lieferungen oder Dienstleistungen charakterisieren.*** ***entfällt***

Or. de

*Justification*

*Die Einbeziehung vergabefremder Kriterien bei der Auftragsvergabe soll unter engem Bezug zum Auftragsgegenstand erfolgen. Dem widerspricht die Berücksichtigung von Produktionsprozessen bei der Ermittlung des wirtschaftlich günstigsten Angebots.*

**Amendment 1187**

**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**

**Article 66 – paragraph 2 – point d**

*Text proposed by the Commission*

*Amendment*

***(d) 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, to the extent that those criteria are specified in accordance with paragraph 4 and they concern factors directly involved*** ***deleted***



*in these processes and characterise the specific process of production or provision of the requested works, supplies or services.*

Or. en

**Amendment 1188**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 66 – paragraph 2 – point d**

*Text proposed by the Commission*

*Amendment*

*(d) 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, to the extent that those criteria are specified in accordance with paragraph 4 and they concern factors directly involved in these processes and characterise the specific process of production or provision of the requested works, supplies or services.*

*deleted*

Or. en

**Amendment 1189**  
**Heide Rühle**

**Proposal for a directive**  
**Article 66 – paragraph 2 – point d**

*Text proposed by the Commission*

*Amendment*

(d) 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, *to the extent that those criteria are specified in accordance with paragraph 4 and they concern factors directly involved in these processes and characterise the*

(d) 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, specified in accordance with paragraph 4.

*specific process of production or provision of the requested works, supplies or services.*

Or. en

*Justification*

*Extremely complex wording - redundant*

**Amendment 1190**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 66 – paragraph 2 – point d – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*Those criteria may include criteria concerning human resources directly participating in the production process, such as decent conditions including pay, social protection, health and safety protection, equal opportunities and gender equality for the staff assigned to the production, employment for disadvantaged persons or members of vulnerable groups and training opportunities for the workers involved in the production process.*

Or. en

**Amendment 1191**  
**Heide Rühle**

**Proposal for a directive**  
**Article 66 – paragraph 2 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

*(da) The contracting authority may also include the necessary price element within the criterion of the economically most*

*advantageous tender by setting a fixed price or cost on the basis of which economic operators will compete on pure quality criteria.*

Or. en

**Amendment 1192**  
**Evelyne Gebhardt, Birgit Sippel**

**Proposal for a directive**  
**Article 66 – paragraph 2 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

*(da) soziale Kriterien wie die Beachtung menschenwürdiger Arbeitsbedingungen, Vorschriften über Gesundheit und Sicherheit, Tarifverhandlungen, Gleichstellung der Geschlechter (zum Beispiel gleiche Entlohnung, Vereinbarkeit von Berufs- und Familienleben), soziale Integration, einschließlich von Beschäftigungsmöglichkeiten für Menschen mit Behinderung, benachteiligte oder schutzbedürftige Arbeitnehmer und Arbeitnehmerinnen (z. B. Langzeitarbeitslose, Roma, Migranten oder Jüngere und Ältere), Zugang zu Maßnahmen der Berufsausbildung am Arbeitsplatz, Einbeziehung und Konsultation der Nutzer, Erschwinglichkeit, menschenrechtlich und ethisch ausgerichtetem Handel;*

Or. de

**Amendment 1193**  
**Vicente Miguel Garcés Ramón**

**Proposal for a directive**  
**Article 66 – paragraph 2 – point d bis (new)**

*Text proposed by the Commission*

*Amendment*

*(d bis) las características relacionadas con las condiciones de trabajo que tengan por objeto proteger la salud de los trabajadores o favorecer la integración social de las personas desfavorecidas o con discapacidad entre las personas encargadas de ejecutar el contrato.*

Or. es

**Amendment 1194**

**Sergio Gaetano Cofferati**

**Proposal for a directive**

**Article 66 – paragraph 2 – point d bis (new)**

*Text proposed by the Commission*

*Amendment*

*(d bis) criteri sociali come, ad esempio, equilibrio di genere, inclusione sociale, ivi comprese le opportunità di occupazione per i lavoratori disabili, svantaggiati o vulnerabili, accesso alla formazione professionale sul luogo di lavoro, consultazione e partecipazione degli utenti, accessibilità economica;*

Or. it

**Amendment 1195**

**Christel Schaldemose**

**Proposal for a directive**

**Article 66 – paragraph 2 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

*(da) sociale kriterier.*

Or. da

**Amendment 1196**

**Frank Engel, Philippe Juvin, Andreas Schwab, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, Malgorzata Handzlik**

**Proposal for a directive**

**Article 66 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. Les États membres peuvent imposer que l'attribution de certains types de marchés se fasse sur la base de l'offre économiquement la plus avantageuse comme visée au paragraphe 1, point a), et au paragraphe 2.**

**supprimé**

Or. fr

**Amendment 1197**

**Evelyne Gebhardt, Birgit Sippel**

**Proposal for a directive**

**Article 66 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. Die Mitgliedstaaten können vorschreiben, dass sich die Vergabe bestimmter Arten von Aufträgen auf das wirtschaftlich günstigste Angebot im Sinne von Absatz 1 Buchstabe a und Absatz 2 zu stützen hat.**

**entfällt**

Or. de

**Amendment 1198**

**Sirpa Pietikäinen**

**Proposal for a directive**

**Article 66 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. Member States may provide that the award of certain types of contracts shall be**

**3. Member States may provide that the award of certain types of contracts shall be**

based on the most economically advantageous tender as referred to in point (a) of paragraph 1 and in paragraph 2.

based on the most economically, *socially and environmentally* advantageous tender as referred to in point (a) of paragraph 1 and in paragraph 2.

Or. en

**Amendment 1199**  
**Anna Hedh**

**Proposal for a directive**  
**Article 66 – paragraph 3**

*Text proposed by the Commission*

3. Member States may provide that the award of certain types of contracts shall be based on the most economically advantageous tender as referred to in point (a) of paragraph 1 and in paragraph 2.

*Amendment*

3. Member States may provide that the award of certain types of contracts shall be based on the most economically, *socially and environmentally* advantageous tender as referred to in point (a) of paragraph 1 and in paragraph 2.

Or. en

**Amendment 1200**

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

**Proposal for a directive**  
**Article 66 – paragraph 4**

*Text proposed by the Commission*

***4. Die Zuschlagskriterien übertragen dem öffentlichen Auftraggeber keine uneingeschränkte Wahlfreiheit. Sie gewährleisten die Möglichkeit eines wirksamen Wettbewerbs und werden von Anforderungen begleitet, die eine effiziente Überprüfung der von den Bietern übermittelten Informationen gestatten. Auf der Grundlage der von den Bietern beigebrachten Informationen und Nachweise prüfen die öffentlichen Auftraggeber wirksam, ob die Angebote***

*Amendment*

***entfällt***

**den Zuschlagskriterien genügen.**

Or. de

*Justification*

*Artikel 66 Absatz 4 ist missverständlich und hat keinerlei zusätzliche rechtliche Aussagekraft. Es ist nicht ersichtlich, was die Kommission durch die beiden Sätze regeln möchte, da ihr Inhalt bereits durch das allgemeine Umgehungsgebot und den Grundsatz der Transparenz vollständig abgedeckt ist. Er ist daher zur Vereinfachung und Erhöhung der Rechtssicherheit zu streichen.*

**Amendment 1201**

**Heide Rühle**

**Proposal for a directive**

**Article 66 – paragraph 4**

*Text proposed by the Commission*

4. Award criteria shall ***not confer an unrestricted freedom of choice on the contracting authority. They shall ensure the possibility of effective competition and shall*** be accompanied by requirements that allow the information provided by the tenderers to be effectively verified. ***Contracting authorities shall verify effectively, on the basis of the information and proof provided by the tenderers, whether the tenders meet the award criteria.***

*Amendment*

4. Award criteria shall be accompanied by requirements that allow the information provided by the tenderers to be effectively verified.

Or. en

**Amendment 1202**

**Evelyne Gebhardt, Birgit Sippel**

**Proposal for a directive**

**Article 66 – paragraph 4**

*Text proposed by the Commission*

4. Die Zuschlagskriterien ***übertragen*** dem

*Amendment*

4. Die Zuschlagskriterien ***sind mit*** dem

*öffentlichen Auftraggeber keine uneingeschränkte Wahlfreiheit. Sie gewährleisten die Möglichkeit eines wirksamen Wettbewerbs und werden von Anforderungen begleitet, die eine effiziente Überprüfung der von den Bietern übermittelten Informationen gestatten. Auf der Grundlage der von den Bietern beigebrachten Informationen und Nachweise prüfen die öffentlichen Auftraggeber wirksam, ob die Angebote den Zuschlagskriterien genügen.*

*Vertragsgegenstand verknüpft (dies schließt unsichtbare Merkmale von Produkten oder Dienstleistungen wie Lebenszyklusmerkmale gemäß Absatz 22 a (neu) nicht aus; sie gewährleisten die Möglichkeit eines wirksamen und fairen Wettbewerbs und werden von Anforderungen begleitet, die eine effiziente Überprüfung der von den Bietern übermittelten Informationen gestatten. Auf der Grundlage der von den Bietern beigebrachten Informationen und Nachweise prüfen die öffentlichen Auftraggeber wirksam, ob die Angebote den Zuschlagskriterien genügen.*

Or. de

**Amendment 1203**  
**Ivo Belet**

**Proposal for a directive**  
**Article 66 – paragraph 4**

*Text proposed by the Commission*

4. Award criteria shall not confer an unrestricted freedom of choice on the contracting authority. ***They shall ensure the possibility of effective competition and shall be accompanied by requirements that allow the information provided by the tenderers to be effectively verified. Contracting authorities shall verify effectively, on the basis of the information and proof provided by the tenderers, whether the tenders meet the award criteria.***

*Amendment*

4. Award criteria shall not confer an unrestricted freedom of choice on the contracting authority. ***Award criteria used to identify the tender representing the best value for money must:***

***(a) be linked to the subject matter;***

***(b) ensure the possibility of effective competition; and***

***(c) be accompanied by requirements that allow the information provided by the tenderers to be effectively verified.***



**Amendment 1204**  
**Raffaele Baldassarre, Lara Comi**

**Proposal for a directive**  
**Article 66 – paragraph 4 bis (new)**

*Text proposed by the Commission*

*Amendment*

***4 bis. Per i servizi di natura intellettuale, l'aggiudicazione avviene di norma utilizzando il criterio di cui alla lettera a) del comma 1; il criterio del prezzo più basso può, con adeguata motivazione, essere utilizzato esclusivamente nel caso di prestazioni non complesse, di carattere ripetitivo e che non richiedano il contributo di un apporto multidisciplinare di competenze.***

Or. it

**Amendment 1205**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 66 – paragraph 5 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

5. In the case referred to in point (a) of paragraph 1 the contracting authority shall specify, in the contract notice, in the invitation to confirm interest, in the procurement documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.

5. In the case referred to in point (a) of paragraph 1 the contracting authority shall specify, in the contract notice, in the invitation to confirm interest, in the procurement documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically, ***socially and environmentally*** advantageous tender.

Or. en

**Amendment 1206**  
**Anna Hedh**

**Proposal for a directive**  
**Article 66 – paragraph 5 – subparagraph 1**

*Text proposed by the Commission*

5. In the case referred to in point (a) of paragraph 1 the contracting authority shall specify, in the contract notice, in the invitation to confirm interest, in the procurement documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.

*Amendment*

5. In the case referred to in point (a) of paragraph 1 the contracting authority shall specify, in the contract notice, in the invitation to confirm interest, in the procurement documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically, ***socially and environmentally*** advantageous tender.

Or. en

**Amendment 1207**  
**Ivo Belet**

**Proposal for a directive**  
**Article 66 – paragraph 5 – subparagraph 1**

*Text proposed by the Commission*

5. In the case referred to in point (a) of paragraph 1 the contracting authority shall specify, in the contract notice, in the invitation to confirm interest, in the procurement documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria ***chosen*** to ***determine the most economically advantageous*** tender.

*Amendment*

5. In the case referred to in point (a) of paragraph 1 the contracting authority shall specify, in the contract notice, in the invitation to confirm interest, in the procurement documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria ***used to identify*** the tender ***representing the best value for money***.

Or. en

**Amendment 1208**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 67 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Life-cycle costing shall to the extent relevant cover the following costs over the life cycle of a product, service or works as defined in point (22) of Article 2:

*Amendment*

1. Life-cycle costing shall to the extent relevant cover **parts or all of** the following costs **borne by the contracting authority or other users** over the life cycle of a product, service or works as defined in point (22) of Article 2:

Or. en

*Justification*

*Life-cycle costing should start at the point of purchase and be limited to internal costs. External costs are difficult to quantify and at the same time life-cycling costing should not lead to new barriers for the free movement of goods and services in the single market. External costs should therefore not be included in the life-cycle costing.*

**Amendment 1209**

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

**Proposal for a directive**  
**Article 67 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) internal costs, including costs relating to acquisition, **such as production** costs, use, such as energy consumption, maintenance costs, and end of life, such as collection and recycling costs and

*Amendment*

(a) internal costs, including costs relating to acquisition, costs **of** use, such as energy consumption **and use of other resources**, maintenance costs, and end of life, such as collection and recycling costs and

Or. en

*Justification*

*It should be noted that life cycle costing should be given particular attention. This criterion should not constitute a burden for SMEs, which may face costs and administrative burden in indicating life cycle costs of a product. Practically it may also constitute complications as there are different methodologies allowed to establish the cost.*

**Amendment 1210**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 67 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) internal costs, **including costs** relating to **acquisition**, such as **production** costs, **use, such as energy consumption, maintenance** costs, and **end of life**, such as **collection and recycling costs and**

*Amendment*

(a) internal costs relating to **use**, such as **maintenance and resource efficiency** costs (**including energy efficiency**), **end-of-life recycling and collection** costs, and **social impact costs where these relate to performance of the contract. Internal costs also include considerations of efficient design, planning and process costs** such as **the use of electronic means**.

Or. en

**Amendment 1211**  
**Riikka Manner**

**Proposal for a directive**  
**Article 67 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) internal costs, including costs relating to acquisition, such as production costs, use, such as energy consumption, maintenance costs, and end of life, such as collection and recycling costs **and**

*Amendment*

(a) internal costs, including costs relating to acquisition, such as production costs, use, such as energy consumption, maintenance costs, and end of life, such as collection and recycling costs

Or. en

**Amendment 1212**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 67 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) **internal** costs, **including costs** relating

*Amendment*

(a) costs relating to acquisition,

to acquisition, *such as production costs, use, such as energy consumption, maintenance costs, and end of life, such as collection and recycling costs and*

Or. en

**Amendment 1213**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 67 – paragraph 1 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

*(aa) costs of use, such as consumption of energy and other resources,*

Or. en

**Amendment 1214**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 67 – paragraph 1 – point a b (new)**

*Text proposed by the Commission*

*Amendment*

*(ab) maintenance costs,*

Or. en

**Amendment 1215**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 67 – paragraph 1 – point a c (new)**

*Text proposed by the Commission*

*Amendment*

*(ac) end of life costs, such as collection and recycling costs;*

**Amendment 1216**

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

**Proposal for a directive**

**Article 67 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) external environmental costs directly linked to the life cycle, provided their monetary value can be determined and verified, which may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.** **deleted**

Or. en

*Justification*

*External costs are difficult to quantify and at the same time life-cycling costing should not lead to new barriers for the free movement of goods and services in the single market. External costs should therefore not be included in the life-cycle costing.*

**Amendment 1217**

**Heide Rühle**

**Proposal for a directive**

**Article 67 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

(b) external environmental costs directly linked to the life cycle, provided their monetary value can be determined and verified, which may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

(b) external **costs such as social and/or** environmental costs, directly linked to the life cycle, provided their monetary value can be determined and verified, which may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

Or. en

## Amendment 1218

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

### Proposal for a directive

#### Article 67 – paragraph 1 – point b

*Text proposed by the Commission*

(b) external environmental costs directly linked to the life cycle, provided their monetary value can be determined and verified, ***which may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.***

*Amendment*

(b) external environmental costs directly linked to the life cycle ***of the product,*** provided their monetary value can be determined and verified.

Or. en

## Amendment 1219

Pablo Arias Echeverría

### Proposal for a directive

#### Article 67 – paragraph 1 – point b

*Text proposed by the Commission*

(b) los costes medioambientales externos directamente vinculados al ciclo de vida, a condición de que su valor monetario pueda determinarse y verificarse; podrán incluir los costes de las emisiones de gases de efecto invernadero y de otras emisiones contaminantes, así como otros costes de mitigación del cambio climático.

*Amendment*

(b) los costes medioambientales externos directamente vinculados al ciclo de vida, ***incluyendo los tributos,*** a condición de que su valor monetario pueda determinarse y verificarse; podrán incluir los costes de las emisiones de gases de efecto invernadero y de otras emisiones contaminantes, así como otros costes de mitigación del cambio climático.

Or. es

## Amendment 1220

Heide Rühle

### Proposal for a directive

#### Article 67 – paragraph 2 – subparagraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

2. Where contracting authorities assess the costs using a life-cycle costing approach, they shall indicate in the procurement documents the **methodology used for the calculation of** the life-cycle costs. The **methodology** used must fulfil all of the following conditions:

2. Where contracting authorities assess the costs using a life-cycle costing approach, they shall indicate in the procurement documents the **data to be provided by the tenderers and the method which the contracting authority will use to determine the** life-cycle costs. The **method used for the assessment of those life-cycle costs** must fulfil all of the following conditions:

Or. en

**Amendment 1221**

**Sari Essayah**

**Proposal for a directive**

**Article 67 – paragraph 2 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

2. Where contracting authorities assess the costs using a life-cycle costing approach, they shall indicate in the procurement documents the methodology used for the calculation of the life-cycle costs. The methodology used must fulfil all of the following conditions:

2. Where contracting authorities assess the costs using a life-cycle costing approach, they shall indicate in the procurement documents the methodology used for the calculation of the life-cycle costs **and provide the method for the calculation of life-cycle costs to any tenderer**. The methodology used must fulfil all of the following conditions:

Or. en

**Amendment 1222**

**Jürgen Creutzmann**

**Proposal for a directive**

**Article 67 – paragraph 2 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

2. Where contracting authorities **assess the**

2. Where contracting authorities **use** a life-



*costs using* a life-cycle costing approach, they shall indicate in the procurement documents the *methodology used for the calculation of* the life-cycle costs. *The methodology used must fulfil all of the following conditions:*

cycle costing approach, they shall indicate in the procurement documents the *data to be provided by the tenderers and the method which the contracting authority will use to determine the* life-cycle costs *on the basis of these data.*

Or. en

**Amendment 1223**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 67 – paragraph 2 – subparagraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

*(a) it has been drawn up on the basis of scientific information or is based on other objectively verifiable and non-discriminatory criteria;*

*deleted*

Or. en

*Justification*

*It would be disproportionate to set out detailed provisions on the methodology for the calculation of life-cycle costs in this directive if life-cycle costing is limited to internal costs starting at the point of purchase, as requested above. As internal costs can be measured relatively easily based on factual data, contracting authorities should be entrusted to use their own methodology (which still must be published).*

**Amendment 1224**  
**Heide Rühle**

**Proposal for a directive**  
**Article 67 – paragraph 2 – subparagraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

*(a) it has been drawn up on the basis of scientific information or is based on other objectively verifiable and non-discriminatory criteria;*

*(a) it is based on objectively verifiable and non-discriminatory criteria;*

**Amendment 1225**

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

**Proposal for a directive**

**Article 67 – paragraph 2 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) it has been drawn up on *the basis of* scientific information or is based on other objectively verifiable and non-discriminatory criteria;

*Amendment*

(a) it has been drawn up *in close consultation with stakeholders, including industry and is based* on scientific information or is based on other objectively verifiable and non-discriminatory criteria;

Or. en

**Amendment 1226**

**Heide Rühle**

**Proposal for a directive**

**Article 67 – paragraph 2 – subparagraph 1 – point b**

*Text proposed by the Commission*

*(b) it has been established for repeated or continuous application;*

*Amendment*

*deleted*

Or. en

*Justification*

*This provision would exclude the possibility of applying a bespoke methodology suitable for one particular contract, which is possible under the current directives.*

**Amendment 1227**

**Jürgen Creutzmann**

**Proposal for a directive**

**Article 67 – paragraph 2 – subparagraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

***(b) it has been established for repeated or continuous application;***      ***deleted***

Or. en

*Justification*

*It would be disproportionate to set out detailed provisions on the methodology for the calculation of life-cycle costs in this directive if life-cycle costing is limited to internal costs starting at the point of purchase, as requested above. As internal costs can be measured relatively easily based on factual data, contracting authorities should be entrusted to use their own methodology (which still must be published).*

**Amendment 1228**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 67 – paragraph 2 – subparagraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

***(c) it is accessible to all interested parties.***      ***deleted***

Or. en

*Justification*

*It would be disproportionate to set out detailed provisions on the methodology for the calculation of life-cycle costs in this directive if life-cycle costing is limited to internal costs starting at the point of purchase, as requested above. As internal costs can be measured relatively easily based on factual data, contracting authorities should be entrusted to use their own methodology (which still must be published).*

**Amendment 1229**  
**Heide Rühle**

**Proposal for a directive**  
**Article 67 – paragraph 2 – subparagraph 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

*(ca) the data required can be provided with reasonable effort by normally diligent economic operators, including operators from third countries.*

Or. en

**Amendment 1230**

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

**Proposal for a directive**

**Article 67 – paragraph 2 – subparagraph 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

*(ca) the data required can be provided with reasonable effort by normally diligent economic operators,*

Or. en

**Amendment 1231**

**Sirpa Pietikäinen**

**Proposal for a directive**

**Article 67 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*Contracting authorities shall allow economic operators, including economic operators from third countries, to apply a different methodology for establishing the life-cycle costs of their offer, provided that they prove that this methodology complies with the requirements set out in points a, b and c and is equivalent to the methodology indicated by the contracting authority.*

*deleted*

Or. en

**Amendment 1232**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 67 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

***Contracting authorities shall allow economic operators, including economic operators from third countries, to apply a different methodology for establishing the life-cycle costs of their offer, provided that they prove that this methodology complies with the requirements set out in points a, b and c and is equivalent to the methodology indicated by the contracting authority.***

***deleted***

Or. en

*Justification*

*It would be disproportionate to set out detailed provisions on the methodology for the calculation of life-cycle costs in this directive if life-cycle costing is limited to internal costs starting at the point of purchase, as requested above. As internal costs can be measured relatively easily based on factual data, contracting authorities should be entrusted to use their own methodology (which still must be published).*

**Amendment 1233**  
**Andreas Schwab, Birgit Collin-Langen, Sabine Verheyen, Anja Weisgerber**

**Proposal for a directive**  
**Article 67 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

***3. Für den Fall, dass eine gemeinsame Methode für die Berechnung der Lebenszykluskosten mit einem Rechtsakt der Union, einschließlich der delegierten Rechtsakte in dem spezifischen Sektor angenommen wird, findet sie Anwendung, wenn die Lebenszykluskostenberechnung in die in Artikel 66 Absatz 1 genannten***

***entfällt***

*Zuschlagskriterien einbezogen ist.*

*Ein Verzeichnis derartiger Rechtsakte und delegierter Rechtsakte ist Gegenstand von Anhang XV. Die Kommission wird befugt, delegierte Rechtsakte gemäß Artikel 89 zur Aktualisierung des Verzeichnisses zu erlassen, wenn aufgrund der Annahme neuer Rechtsvorschriften oder der Aufhebung oder Änderung dieser Bestimmungen Änderungen erforderlich werden.*

Or. de

*Justification*

*Die Ermunterung, die Lebenszykluskosten in die Auftragsvergabe einzubeziehen, ist zu begrüßen. Jedoch nimmt die rechtliche Verpflichtung Bezug auf eine in der Zukunft liegende, noch nicht feststehende Berechnungsmethode und ist aus Gründen der Unvorhersehbarkeit zu diesem Zeitpunkt abzulehnen.*

**Amendment 1234**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 67 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

**3. Ingeval als onderdeel van een wetgevingshandeling van de Unie, inclusief bij gedelegeerde handelingen uit hoofde van sectorspecifieke regelgeving, een gemeenschappelijke methodologie voor de berekening van levenscycluskosten wordt vastgesteld, is deze van toepassing wanneer de levenscycluskosten deel uitmaken van de in artikel 66, lid 1, bedoelde gunningscriteria.**

**Schrappen**

Or. nl

**Amendment 1235**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 67 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

**3. Whenever a common methodology for the calculation of life-cycle costs is adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 66(1).**

*deleted*

Or. en

*Justification*

*It would be disproportionate to set out detailed provisions on the methodology for the calculation of life-cycle costs in this directive if life-cycle costing is limited to internal costs starting at the point of purchase, as requested above. As internal costs can be measured relatively easily based on factual data, contracting authorities should be entrusted to use their own methodology (which still must be published).*

**Amendment 1236**  
**Heide Rühle**

**Proposal for a directive**  
**Article 67 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

**3. Whenever a common methodology for the calculation of life-cycle costs is adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 66(1).**

**3. Any common methodology for the calculation of life-cycle costs adopted as part of a legislative act of the Union, pursuant to sector specific legislation, or as part of a European technical specification shall be deemed to meet the criteria as set out in Paragraph 2. and may be included in the award criteria referred to in Article 66(1).**

Or. en

## Justification

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

### **Amendment 1237** **Sirpa Pietikäinen**

#### **Proposal for a directive** **Article 67 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

3. Whenever a common methodology for the calculation of life-cycle costs is adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 66(1).

*Amendment*

**3. *The Commission shall establish, either by means of delegated acts or in sector specific legislation, common methodologies for the calculation of life-cycle costs for products where the economic saving or the environmental improvement potential is high.*** Whenever a common methodology for the calculation of life-cycle costs is adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 66(1).

Or. en

### **Amendment 1238** **Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafał Trzaskowski**

#### **Proposal for a directive** **Article 67 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

3. Whenever a common methodology for the calculation of life-cycle costs *is adopted as part of* a legislative act of the Union, *including by delegated acts*

*Amendment*

3. Whenever a common methodology for the calculation of life-cycle costs ***covering among others environmental externalities has been made mandatory*** by a legislative



*pursuant to sector specific legislation*, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 66(1).

act of the Union, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 66(1).

Or. en

#### *Justification*

*It is crucial that common method for the calculation of life cycle costs is adopted by a legislative act of the Union, and that the Commission may only update annex XV. It should be clear from the wording of Article 67 (3) second subparagraph that it confers on the Commission only the right to adopt delegated acts with the objective to update Annex XV. Under no circumstances it shall constitute a basis for the Commission to adopt delegated acts making any LCC methodology mandatory.*

#### **Amendment 1239** **Wim van de Camp**

#### **Proposal for a directive** **Article 67 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*Een lijst van dergelijke wetgevings- en gedelegeerde handelingen is opgenomen in bijlage XV. De Commissie is bevoegd overeenkomstig artikel 89 gedelegeerde handelingen vast te stellen met betrekking tot de bijwerking van deze lijst wanneer wijzigingen noodzakelijk zijn ten gevolge van de vaststelling van nieuwe wetgeving of de intrekking of wijziging van deze wetgeving.*

*Schrappen*

Or. nl

#### **Amendment 1240** **Jürgen Creutzmann**

#### **Proposal for a directive** **Article 67 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

***A list of such legislative and delegated acts is set out in Annex XV. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary.***

***deleted***

Or. en

*Justification*

*It would be disproportionate to set out detailed provisions on the methodology for the calculation of life-cycle costs in this directive if life-cycle costing is limited to internal costs starting at the point of purchase, as requested above. As internal costs can be measured relatively easily based on factual data, contracting authorities should be entrusted to use their own methodology (which still must be published).*

#### **Amendment 1241**

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

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

#### **Article 67 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

A list of such legislative ***and delegated*** acts is set out in Annex XV. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary.

A list of such legislative acts is set out in Annex XV. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary.

Or. en

#### **Amendment 1242**

**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**  
**Article 67 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

A list of such legislative *and delegated* acts is set out in Annex XV. *The Commission shall be empowered to adopt delegated acts in accordance with Article 89 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary.*

*Amendment*

A list of such legislative acts is set out in Annex XV.

Or. en

**Amendment 1243**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 68 – title**

*Text proposed by the Commission*

*Éléments empêchant l'attribution*

*Amendment*

*Renonciation à la passation du marché*

Or. fr

**Amendment 1244**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 68 – paragraph 1 – introductory part**

*Text proposed by the Commission*

Les pouvoirs adjudicateurs *n'attribuent pas* le marché au soumissionnaire qui a présenté la meilleure offre dans les cas suivants:

*Amendment*

*Les pouvoirs adjudicateurs sont libres de ne pas donner suite à une procédure de passation de marchés publics. La décision de renoncer à passer le marché doit être motivée et communiqués à l'ensemble des candidats et des soumissionnaires.*

*En toute hypothèse*, les pouvoirs adjudicateurs **ne peuvent pas attribuer** le marché au soumissionnaire qui a présenté la meilleure offre dans les cas suivants:

Or. fr

**Amendment 1245**  
**Heide Rühle**

**Proposal for a directive**  
**Article 69**

*Text proposed by the Commission*

*Amendment*

*Article 69*

*deleted*

*Abnormally low tenders*

*1. Contracting authorities shall require economic operators to explain the price or costs charged, where all of the following conditions are fulfilled:*

*(a) the price or cost charged is more than 50 % lower than the average price or costs of the remaining tenders*

*(b) the price or cost charged is more than 20 % lower than the price or costs of the second lowest tender;*

*(c) at least five tenders have been submitted.*

*2. Where tenders appear to be abnormally low for other reasons, contracting authorities may also request such explanations.*

*3. The explanations referred to in paragraphs 1 and 2 may in particular relate to:*

*(a) the economics of the construction method, the manufacturing process or the services provided;*

*(b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the execution of the work or for the supply of the goods*

*or services;*

*(c) the originality of the work, supplies or services proposed by the tenderer;*

*(d) compliance, 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, where not applicable, with other provisions ensuring an equivalent level of protection;*

*(e) the possibility of the tenderer obtaining State aid.*

*4. The contracting authority shall verify the information provided by consulting the tenderer. It may only reject the tender where the evidence does not justify the low level of price or costs charged, taking into account the elements referred to in paragraph 3.*

*Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with obligations established by Union legislation in the field of social and labour law or environmental law or by the international social and environmental law provisions listed in Annex XI.*

*5. Where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was compatible with the internal market within the meaning of Article 107 of the Treaty. Where the contracting authority rejects a tender in those circumstances, it shall inform the Commission thereof.*

*6. Upon request, Member States shall make available to other Member States, in*

*accordance with Article 88, any information relating to the evidence and documents produced in relation to details listed in paragraph 3.*

Or. en

**Amendment 1246**  
**Peter Simon**

**Proposal for a directive**  
**Article 69 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

**1. Die öffentlichen Auftraggeber schreiben den Wirtschaftsteilnehmern vor, den berechneten Preis bzw. die berechneten Kosten zu erläutern, sofern alle nachfolgend genannten Bedingungen erfüllt sind:**

**entfällt**

**(a) der berechnete Preis bzw. die berechneten Kosten liegen mehr als 50 % unter dem Durchschnittspreis oder den Durchschnittskosten der übrigen Angebote;**

**(b) der berechnete Preis bzw. die berechneten Kosten liegen mehr als 20 % unter dem Preis oder den Kosten des zweitniedrigsten Angebots;**

**(c) es wurden mindestens fünf Angebote eingereicht.**

Or. de

*Justification*

*Wiederherstellung des Wortlauts der derzeit geltenden Richtlinie*

**Amendment 1247**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 69 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. *De* aanbestedende dienst *verzoekt ondernemers* om *toelichting* over de *gevraagde prijs of kosten wanneer aan alle volgende voorwaarden is voldaan*:

*Amendment*

1. *Wanneer voor een bepaalde opdracht inschrijvingen worden gedaan die in verhouding tot de te verlenen dienst abnormaal laag lijken, verzoekt, de aanbestedende dienst, voordat hij deze inschrijvingen kan afwijzen, schriftelijk om de door hem dienstig geachte preciseringen* over de *samenstelling van de desbetreffende inschrijving*.

*Deze preciseringen kunnen met name verband houden met:*

Or. nl

**Amendment 1248**

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

**Proposal for a directive**  
**Article 69 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Contracting authorities shall require economic operators to explain the price or costs charged, *where all* of the following conditions are fulfilled:

*Amendment*

1. Contracting authorities shall require economic operators to explain the price or costs charged, *if at least one* of the following conditions are fulfilled:

Or. en

*Justification*

*It seems to be not appropriate to require that all of the conditions must be met in order to establish that a price is abnormally low. It is often enough that just one of these situations occurs for the price to be abnormally low.*

**Amendment 1249**  
**Lara Comi**

**Proposal for a directive**  
**Article 69 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Le amministrazioni aggiudicatrici impongono agli operatori economici di fornire spiegazioni sul prezzo o sui costi applicati, se sono *soddisfatte tutte le seguenti condizioni*:

*Amendment*

1. Le amministrazioni aggiudicatrici impongono agli operatori economici di fornire spiegazioni sul prezzo o sui costi applicati, se sono *state presentate almeno cinque offerte e, alternativamente*:

Or. it

**Amendment 1250**  
**Anna Hedh**

**Proposal for a directive**  
**Article 69 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Contracting authorities shall require economic operators to explain the price or costs charged, where *all* of the following conditions *are* fulfilled:

*Amendment*

1. Contracting authorities shall require economic operators to explain the price or costs charged, where *one* of the following conditions *is* fulfilled:

Or. en

**Amendment 1251**  
**Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen**

**Proposal for a directive**  
**Article 69 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) der berechnete Preis bzw. die berechneten Kosten liegen mehr als **50** % unter dem Durchschnittspreis oder den Durchschnittskosten der übrigen Angebote;

*Amendment*

(a) der berechnete Preis bzw. die berechneten Kosten liegen mehr als **30** % unter dem Durchschnittspreis oder den Durchschnittskosten der übrigen Angebote;

Or. de



*Justification*

*Die genannte Unterschreitung der berechneten Kosten ist auf 30 Prozent vom Durchschnittspreis der übrigen Angebote abzusenken.*

**Amendment 1252**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 69 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) de *aangerekende prijs of kosten zijn meer dan 50% lager dan de gemiddelde prijs of kosten van de andere inschrijvingen*;

*Amendment*

(a) de *doelmatigheid van het bouwproces, van het productieproces van de producten of van de dienstverlening*;

Or. nl

**Amendment 1253**  
**Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski**

**Proposal for a directive**  
**Article 69 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) the price or cost *charged* is more than 50 % lower than the average price or costs of the remaining tenders

*Amendment*

(a) the price or cost *indicated in a tender* is more than 50 % lower than the average price or costs of the remaining tenders

Or. en

**Amendment 1254**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 69 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) le prix ou le coût facturé est inférieur de plus de **50** % au prix ou coût moyen des

*Amendment*

(a) le prix ou le coût facturé est inférieur de plus de **30** % au prix ou coût moyen des

autres offres;

autres offres;

Or. fr

**Amendment 1255**

**Lara Comi**

**Proposal for a directive**

**Article 69 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) il prezzo o il costo applicato è **di oltre il 50%** inferiore al prezzo medio o ai costi medi delle offerte restanti

*Amendment*

(a) il prezzo o il costo applicato è **del 30%** inferiore al prezzo medio o ai costi medi delle offerte restanti;

Or. it

**Amendment 1256**

**Raffaele Baldassarre**

**Proposal for a directive**

**Article 69 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) il prezzo o il costo applicato è di oltre il **50 %** inferiore al prezzo medio o ai costi medi delle offerte restanti

*Amendment*

(a) il prezzo o il costo applicato è di oltre il **30 %** inferiore al prezzo medio o ai costi medi delle offerte restanti

Or. it

**Amendment 1257**

**Anna Hedh**

**Proposal for a directive**

**Article 69 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) the price or cost charged is more than **50 %** lower than the average price or costs of the remaining tenders

*Amendment*

(a) the price or cost charged is more than **25 %** lower than the average price or costs of the remaining tenders

**Amendment 1258**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 69 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) the price or cost charged is more than **50** % lower than the average price or costs of the remaining tenders

*Amendment*

(a) the price or cost charged is more than **30** % lower than the average price or costs of the remaining tenders

Or. en

*Justification*

*Cases fulfilling these conditions are extremely rare. The conditions should be less restrictive, so that this Article can fulfil its purpose.*

**Amendment 1259**  
**Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski**

**Proposal for a directive**  
**Article 69 – paragraph 1 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***(aa) the price or cost indicated in a tender is at least 40 % lower than the price or cost estimated with due diligence, by a contracting authority, taking into consideration due taxes;***

Or. en

**Amendment 1260**  
**Raffaele Baldassarre**

**Proposal for a directive**  
**Article 69 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) il prezzo o il costo applicato è di oltre il 20% inferiore al prezzo o ai costi della seconda offerta più bassa;**

**soppresso**

Or. it

**Amendment 1261**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 69 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) de aangerekende prijzen of kosten zijn meer dan 20% lager dan de prijzen of kosten van de tweede laagste inschrijving;**

**(b) de gekozen technische oplossingen en/of uitzonderlijk gunstige omstandigheden waarvan de inschrijver bij de uitvoering van de werken, de levering van de producten of het verlenen van de diensten kan profiteren;**

Or. nl

**Amendment 1262**  
**Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski**

**Proposal for a directive**  
**Article 69 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) the price or cost *charged* is *more than* 20 % lower than the price or costs of the second lowest tender;**

**(b) the price or cost *indicated in a tender* is *at least* 20 % lower than the price or costs of the second lowest tender;**

Or. en

**Amendment 1263**  
**Anna Hedh**

**Proposal for a directive**  
**Article 69 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) the price or cost charged is more than **20** % lower than the price or costs of the second lowest tender;

*Amendment*

(b) the price or cost charged is more than **10** % lower than the price or costs of the second lowest tender;

Or. en

**Amendment 1264**

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

**Proposal for a directive**  
**Article 69 – paragraph 1 – point c**

*Text proposed by the Commission*

*(c) at least five tenders have been submitted.*

*Amendment*

*deleted*

Or. en

*Justification*

*It does not seem appropriate to require there be five tenders in order to establish that a price is abnormally low.*

**Amendment 1265**  
**Lara Comi**

**Proposal for a directive**  
**Article 69 – paragraph 1 – point c**

*Text proposed by the Commission*

*(c) sono state presentate almeno cinque offerte.*

*Amendment*

*soppresso*

Or. it

**Amendment 1266**

**Anna Hedh**

**Proposal for a directive**

**Article 69 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

*(c) at least five tenders have been submitted.*

*deleted*

Or. en

**Amendment 1267**

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

**Proposal for a directive**

**Article 69 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

(c) es wurden mindestens *fünf* Angebote eingereicht.

(c) es wurden mindestens *drei* Angebote eingereicht.

Or. de

*Justification*

*Eine Preiserläuterung sollte schon bei mindestens drei eingereichten Angeboten verlangt werden.*

**Amendment 1268**

**Wim van de Camp**

**Proposal for a directive**

**Article 69 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

*(c) er zijn ten minste vijf inschrijvingen ingediend.*

*(c) de originaliteit van het ontwerp van de inschrijver;*

Or. nl

**Amendment 1269**

**Marc Tarabella**

**Proposal for a directive**

**Article 69 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) au moins *cinq* offres ont été soumises.

*Amendment*

(c) au moins *trois* offres ont été soumises.

Or. fr

**Amendment 1270**

**Jürgen Creutzmann**

**Proposal for a directive**

**Article 69 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) at least *five* tenders have been submitted.

*Amendment*

(c) at least *three* tenders have been submitted.

Or. en

*Justification*

*Cases fulfilling these conditions are extremely rare. The conditions should be less restrictive, so that this Article can fulfil its purpose.*

**Amendment 1271**

**Wim van de Camp**

**Proposal for a directive**

**Article 69 – paragraph 1 – points c a and c b (new)**

*Text proposed by the Commission*

*Amendment*

*(c bis) de naleving van de bepalingen inzake arbeidsbescherming en arbeidsvoorwaarden die gelden op de plaats waar de opdracht wordt uitgevoerd;*

*(c ter) de eventuele ontvangst van  
staatssteun door de inschrijver.*

Or. nl

**Amendment 1272**

**Barbara Weiler**

**Proposal for a directive**

**Article 69 – paragraph 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

*(ca) der berechnete Preis unterschreitet  
die einzelstaatlichen gesetzlichen oder  
tariflichen Mindestlöhne nebst  
Zuschlägen und  
Sozialversicherungsbeiträgen.*

Or. de

**Amendment 1273**

**Barbara Weiler**

**Proposal for a directive**

**Article 69 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Liegt das Angebot aus anderen Gründen  
ungewöhnlich niedrig, **können** die  
öffentlichen Auftraggeber ebenfalls  
Erklärungen verlangen.

2. Liegt das Angebot aus anderen Gründen  
ungewöhnlich niedrig, **sind** die  
öffentlichen Auftraggeber ebenfalls  
**verpflichtet**, Erklärungen **zu** verlangen.

Or. de

**Amendment 1274**

**Wim van de Camp**

**Proposal for a directive**

**Article 69 – paragraph 2**



*Text proposed by the Commission*

*Amendment*

2. **Wanneer inschrijvingen om andere redenen abnormaal laag lijken, kunnen aanbestedende diensten ook om toelichting verzoeken.**

2. **De aanbestedende dienst onderzoekt in overleg met de inschrijver de samenstelling aan de hand van de ontvangen toelichtingen.**

Or. nl

#### **Amendment 1275**

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

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

#### **Article 69 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. **Where tenders appear to be abnormally low for other reasons, contracting authorities may also request such explanations.**

2. **Contracting authorities may also request explanations concerning price or costs indicated in a tender when other conditions, than those indicated in paragraph 1, are fulfilled for instance if the price or cost indicated in a tender is significantly lower than prices or costs indicated in other tenders or than a price or costs estimated by the contracting authority, and the probability that the price or cost is abnormally low is very high.**

Or. en

#### *Justification*

*It seems appropriate to allow contracting authorities to ask for explanation in order to establish whether a price is abnormally low also in other situations than those provided for in paragraph 1. In addition, it is advisable to give some examples of such additional cases.*

#### **Amendment 1276**

**Pablo Arias Echeverría**

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

#### **Article 69 – paragraph 2 a (new)**

***2 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 a 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 1277**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 69 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

***3. De in de leden 1 en 2 bedoelde toelichting kan in het bijzonder betrekking hebben op:***

***3. Wanneer een aanbestedende dienst constateert dat een inschrijving abnormaal laag is doordat de inschrijver overheidssteun heeft gekregen, kan de inschrijving alleen op uitsluitend die grond worden afgewezen wanneer de inschrijver desgevraagd niet binnen een door de aanbestedende dienst bepaalde voldoende lange termijn kan aantonen dat de betrokken steun rechtmatig is toegekend. Wanneer de aanbestedende dienst in een dergelijke situatie een inschrijving afwijst, stelt hij daarvan de Commissie in kennis.***

***(a) de doelmatigheid van de bouwmethode, het fabricageproces of de geleverde diensten;***

*(b) de gekozen technische oplossingen of uitzonderlijk gunstige omstandigheden waarvan de inschrijver bij de levering van de producten, het verrichten van de diensten of de uitvoering van de werken kan profiteren;*

*(c) de originaliteit van de door de inschrijver voorgestelde werken, leveringen of diensten;*

*(d) naleving, tenminste op gelijkwaardige wijze, van verplichtingen uit hoofde van wetgeving van de Unie op het gebied van sociaal, arbeids- of milieurecht of met betrekking tot de in bijlage XI vermelde bepalingen van internationaal sociaal en milieurecht, of indien deze niet van toepassing zijn, uit hoofde van andere regelingen die een gelijkwaardig beschermingsniveau bieden;*

*(e) de eventuele ontvangst van staatssteun door de inschrijver.*

Or. nl

#### *Justification*

*De plicht tot verifiëren bij een abnormaal lage inschrijving leidt zowel voor aanbestedende diensten als ondernemers tot een toename van de lasten.*

#### **Amendment 1278**

**Peter Simon**

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

#### **Article 69 – paragraph 3 – introductory part**

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

**3. Die Erklärungen im Sinne der Absätze 1 und 2** können sich insbesondere auf Folgendes beziehen:

##### *Amendment*

**3. Erwecken im Fall eines bestimmten Auftrags Angebote den Eindruck, im Verhältnis zur Leistung ungewöhnlich niedrig zu sein, so muss der öffentliche Auftraggeber vor Ablehnung dieser Angebote schriftlich Aufklärung über die Einzelposten des Angebots verlangen, wo er dies für angezeigt hält.**

*Die betreffenden* Erklärungen können sich insbesondere auf Folgendes beziehen:

Or. de

*Justification*

*Wiederherstellung des Wortlauts der derzeit geltenden Richtlinie*

**Amendment 1279**

**Peter Simon**

**Proposal for a directive**

**Article 69 – paragraph 3 – point b**

*Text proposed by the Commission*

(b) die gewählten technischen Lösungen **oder** alle außergewöhnlich günstigen Bedingungen, über die der Bieter bei der Durchführung der Bauleistungen bzw. der Lieferung der Waren oder der Erbringung der Dienstleistung verfügt;

*Amendment*

(b) die gewählten technischen Lösungen **und/oder** alle außergewöhnlich günstigen Bedingungen, über die der Bieter bei der Durchführung der Bauleistungen bzw. der Lieferung der Waren oder der Erbringung der Dienstleistung verfügt;

Or. de

*Justification*

*Wiederherstellung des Wortlauts der derzeit geltenden Richtlinie*

**Amendment 1280**

**Evelyne Gebhardt, Birgit Sippel**

**Proposal for a directive**

**Article 69 – paragraph 3 – point d**

*Text proposed by the Commission*

(d) die **zumindest angemessene** Einhaltung der Anforderungen der Unionsrechtsvorschriften auf dem Gebiet des **Sozial- und Arbeitsrechts oder des Umweltrechts bzw.** der in Anhang XI **genannten** internationalen **Sozial- und**

*Amendment*

(d) die Einhaltung der Anforderungen der Unionsrechtsvorschriften auf dem Gebiet des Umweltrechts **oder der Anforderungen in Bezug auf die sozialen und beschäftigungsrelevanten Bedingungen, wie die Gesundheit und Sicherheit am**

*Umweltrechtsvorschriften* oder, falls nicht anwendbar, anderer Vorschriften zur Gewährleistung eines gleichwertigen Schutzniveaus;

*Arbeitsplatz, die soziale Sicherheit und die Arbeitsbedingungen, so wie sie in EU-Rechtsvorschriften, nationalen Gesetzen, Regelungen oder Verwaltungsvorschriften, Schiedssprüchen, Tarifvereinbarungen und -verträgen sowie den in Anhang XI aufgeführten 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),* oder, falls nicht anwendbar, anderer Vorschriften zur Gewährleistung eines gleichwertigen Schutzniveaus;

Or. de

**Amendment 1281**  
**Peter Simon**

**Proposal for a directive**  
**Article 69 – paragraph 3 – point d**

*Text proposed by the Commission*

(d) die *zumindest angemessene* Einhaltung der *Anforderungen der Unionsrechtsvorschriften auf dem Gebiet des Sozial- und Arbeitsrechts oder des Umweltrechts bzw. der in Anhang XI genannten internationalen Sozial- und Umweltrechtsvorschriften oder, falls nicht anwendbar, anderer Vorschriften zur Gewährleistung eines gleichwertigen Schutzniveaus*;

*Amendment*

(d) die Einhaltung der *Vorschriften über Arbeitsschutz und Arbeitsbedingungen, die am Ort der Leistungserbringung gelten*;

Or. de

*Justification*

*Wiederherstellung des Wortlauts der derzeit geltenden Richtlinie*

## Amendment 1282

Sirpa Pietikäinen

### Proposal for a directive

#### Article 69 – paragraph 3 – point d

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

(d) compliance, 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, where not applicable, with other provisions ensuring an equivalent level of protection;

##### *Amendment*

(d) compliance, at least in an equivalent manner, with obligations established by Union legislation in the field of ***animal welfare***, social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI or, where not applicable, with other provisions ensuring an equivalent level of protection;

Or. en

## Amendment 1283

Anna Hedh

### Proposal for a directive

#### Article 69 – paragraph 3 – point d

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

(d) compliance, ***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, where not applicable, with other provisions ensuring an equivalent level of protection;***

##### *Amendment*

(d) compliance with the ***provisions relating to employment protection and working conditions in force at the place where the work , service or supply is to be performed;***

Or. en

## Amendment 1284

Matteo Salvini, Francesco Enrico Speroni

**Proposal for a directive**  
**Article 69 – paragraph 3 – point d**

*Text proposed by the Commission*

(d) compliance, 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, where not applicable, with other provisions ensuring an equivalent level of protection;*

*Amendment*

(d) compliance, 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:*

*(i) 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);*

*(ii) occupational safety and health*

*(iii) working time*

*(iv) wages*

*(v) social security*

Or. en

**Amendment 1285**  
**Peter Simon**

**Proposal for a directive**  
**Article 69 – paragraph 4**

*Text proposed by the Commission*

*4. Der öffentliche Auftraggeber kann die beigebrachten Informationen mittels einer Rücksprache mit dem Bieter prüfen. Er kann das Angebot nur dann ablehnen, wenn die Nachweise das niedrige Niveau des berechneten Preises bzw. der berechneten Kosten unter*

*Amendment*

*entfällt*

***Berücksichtigung der in Absatz 3 genannten Faktoren nicht rechtfertigen.***

***Die öffentlichen Auftraggeber lehnen das Angebot ab, wenn sie festgestellt haben, dass das Angebot ungewöhnlich niedrig liegt, weil es den Anforderungen der Unionsrechtsvorschriften auf dem Gebiet des Sozial- und Arbeitsrechts oder des Umweltrechts bzw. der in Anhang XI genannten internationalen Sozial- und Umweltrechtsvorschriften nicht genügt.***

Or. de

*Justification*

*Wiederherstellung des Wortlauts der derzeit geltenden Richtlinie*

**Amendment 1286**

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

**Proposal for a directive**

**Article 69 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

4. The contracting authority shall verify the information provided by consulting the tenderer. ***It may only reject the tender where the evidence does not justify the low level of price or costs charged, taking into account the elements referred to in paragraph 3.***

*Amendment*

4. The contracting authority shall verify the information provided by consulting the tenderer.

Or. en

**Amendment 1287**

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

**Proposal for a directive**

**Article 69 – paragraph 4 – subparagraph 2**



*Text proposed by the Commission*

Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with obligations established by Union legislation in the field of social and labour law or environmental law or by the international social and environmental law provisions listed in Annex XI.

*Amendment*

Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because ***the price or costs indicated in a tender does not cover costs of manufacturing a product, providing services or carrying out works which are subject matter of the public contract, taking into consideration economic conditions, and in particular if*** it does not comply with obligations established by Union legislation in the field of social and labour law or environmental law or by the international social and environmental law provisions listed in Annex XI.

Or. en

*Justification*

*For the sake of legal certainty contracting authorities should be obliged to reject the tender where they establish that the price indicated therein does not cover costs borne by the economic operator. It is to be stressed that abnormally low tenders – in particular those that do not guarantee the recovery of costs of manufacturing products, providing services or carrying out works which are subject matter of the public contract – are one of the major factors that may jeopardise the execution of public contracts to the detriment of public interest.*

**Amendment 1288**

**Alexander Alvaro, Jürgen Creutzmann**

**Proposal for a directive**

**Article 69 – paragraph 4 – subparagraph 2**

*Text proposed by the Commission*

Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with obligations established by Union legislation in the field of social and labour law or environmental law or by the international social and environmental law

*Amendment*

Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with obligations established by Union legislation in the field of social and labour law, ***data protection law*** or environmental law or by the international

provisions listed in Annex XI.

social and environmental law provisions listed in Annex XI.

Or. en

#### **Amendment 1289**

**Anna Hedh**

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

#### **Article 69 – paragraph 4 – subparagraph 2**

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

Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with obligations established by Union legislation in the field of social and labour law or environmental law or by the international social and environmental law provisions listed in Annex XI.

##### *Amendment*

Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with 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 by the international social and environmental law provisions listed in Annex XI.

Or. en

#### **Amendment 1290**

**Matteo Salvini, Francesco Enrico Speroni**

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

#### **Article 69 – paragraph 4 – subparagraph 2**

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

Contracting *authorities* shall reject the tender, where they have established that the tender is abnormally low because it does not comply with obligations established by Union legislation in the field of social and labour law or environmental law or *by* the international *social and environmental law provisions* listed in Annex XI.

##### *Amendment*

Contracting *entities* shall reject the tender, where they have established that the tender is abnormally low because it does not comply 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;*

*(e) social security.*

Or. en

**Amendment 1291**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 69 – paragraph 4 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*Contracting authorities shall also reject the tender, where they have established that the price or costs charged is abnormally low in proportion to the costs that the tenderer has to cover, and the acceptance of the tender would strengthen the market position of the tenderer in a manner that would lead to distortion of competition in internal markets.*

Or. en

**Amendment 1292**  
**Peter Simon**

**Proposal for a directive**  
**Article 69 – paragraph 5**

*Text proposed by the Commission*

5. Stellt der öffentliche Auftraggeber fest, dass ein Angebot ungewöhnlich niedrig ist, weil der Bieter eine staatliche Beihilfe erhalten hat, so darf er das Angebot allein aus diesem Grund nur nach Rücksprache mit dem Bieter ablehnen, sofern dieser binnen einer von dem öffentlichen Auftraggeber festzulegenden ausreichenden Frist nicht nachweisen kann, dass die betreffende Beihilfe **mit dem Binnenmarkt im Sinne von Artikel 107 des Vertrags vereinbar war**. Lehnt der öffentliche Auftraggeber ein Angebot unter diesen Umständen ab, so teilt er dies der Kommission mit.

*Amendment*

5. Stellt der öffentliche Auftraggeber fest, dass ein Angebot ungewöhnlich niedrig ist, weil der Bieter eine staatliche Beihilfe erhalten hat, so darf er das Angebot allein aus diesem Grund nur nach Rücksprache mit dem Bieter ablehnen, sofern dieser binnen einer von dem öffentlichen Auftraggeber festzulegenden ausreichenden Frist nicht nachweisen kann, dass die betreffende Beihilfe **rechtmäßig gewährt wurde**. Lehnt der öffentliche Auftraggeber ein Angebot unter diesen Umständen ab, so teilt er dies der Kommission mit.

Or. de

*Justification*

*Wiederherstellung des Wortlauts der derzeit geltenden Richtlinie*

**Amendment 1293**

**Lara Comi**

**Proposal for a directive**

**Article 69 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***5 bis. Le amministrazioni aggiudicatrici procedono all'esclusione automatica delle offerte che presentano ribassi superiori al 50 % del prezzo medio delle offerte complessivamente presentate.***

Or. it

**Amendment 1294**

**Raffaele Baldassarre**

**Proposal for a directive**  
**Article 69 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

**5 bis. Le amministrazioni aggiudicatrici procedono all'esclusione automatica delle offerte che presentano ribassi superiori al 40 % del prezzo medio delle offerte complessivamente presentate.**

Or. it

**Amendment 1295**  
**Peter Simon**

**Proposal for a directive**  
**Article 69 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

**6. Die Mitgliedstaaten können den anderen Mitgliedstaaten auf Anfrage gemäß Artikel 88 alle Informationen über die Nachweise und Unterlagen übermitteln, die im Hinblick auf in Absatz 3 genannte Einzelheiten beigebracht wurden.**

**entfällt**

Or. de

*Justification*

*Wiederherstellung des Wortlauts der derzeit geltenden Richtlinie*

**Amendment 1296**  
**Malcolm Harbour**

**Proposal for a directive**  
**Article 69 – paragraph 6 a (new)**

*Text proposed by the Commission*

*Amendment*

**6a. Where the contracting authority intends, after verifying the explanations**

*of the tenderer, to accept an abnormally low tender comprising supplies and/or services originating from outside the Union, in which the value of the non-covered supplies or services exceeds 50 % of the total value of the supplies or services constituting the tender, it shall inform the other tenderers of this in writing, including the reasons for the abnormally low character of the price or costs charged.*

*A contracting authority may withhold any information if this would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between them.*

Or. en

**Amendment 1297**

**Heide Rühle**

**Proposal for a directive**

**Article 69 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 69a**

***Abnormally low tenders***

***1. If, for a given contract, tenders appear to be abnormally low in relation to the goods, works or services, the contracting authority shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it consider relevant. Those details may relate in particular to:***

***(a) the economics of the construction method, the manufacturing process or the services provided;***

***(b) the technical solutions chosen and/or any exceptionally favourable conditions***

*available to the tenderer for the execution of the work, for the supply of the goods or services;*

*(c) the originality of the work, supplies or services proposed by the tenderer;*

*(d) compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed;*

*(e) the possibility of the tenderer obtaining State aid.*

*2. The contracting authority shall verify those constituent elements by consulting the tenderer, taking account of the evidence supplied.*

*3. Where tenders appear to be abnormally low for other reasons, contracting authorities may also request such informations.*

*4. Where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender can be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was granted legally. Where the contracting authority rejects a tender in these circumstances, it shall inform the Commission of that fact.*

Or. en

#### *Justification*

*This is the the Article 55 from the current Directive 2004/18/EC - no need to change it. Point 3 derives from the proposed Directive COM(2011) 896 final (68(2)).*

**Amendment 1298**  
**Sergio Gaetano Cofferati**

**Proposal for a directive  
Article 69 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 69a**

***Tenders comprising products originating  
in third countries***

- 1. This Article shall apply to tenders covering products originating in third countries with which the Union has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for Community undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Union or its Member States in respect of third countries.***
- 2. Contracting authorities may require tenderers to provide information on the origin of the goods and services contained in the tender, and their value. Any tender submitted for the award of a supply contract where the value of the products originating in third countries, as determined in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code<sup>1</sup>, exceeds 50 % of the total value of the products or services constituting the tender may be rejected under the following conditions.***
- 3. Upon request of contracting authorities, the Commission shall assess whether to approve, for contracts of an estimated value equal or above EUR 5 000 000 exclusive of value-added tax (VAT) the exclusion from procedures for the award of contract tenders comprising goods or services originating outside the Union, if the value of goods or services originating in a country with which the Union has not concluded an international agreement in the field of public procurement including market access commitments or goods or services***



*originating in a country with which the Union has concluded such an agreement, but in respect of which the agreement does not apply, exceeds 50% of the total value of the goods or services constituting the tender.*

*4. For contracts referred to in paragraph 3, the Commission shall adopt an implementing act concerning the approval of the intended exclusion. Those implementing acts shall be adopted according to the examination procedure.*

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

*(a) if the international agreement concerning market access in the field of public procurement between the Union and the country where the goods and/or services originate contains, for the goods and/or services for which the exclusion is proposed, explicit market access reservations taken by the Union;*

*(b) where an agreement referred to in point (a) does not exist and the third country maintains restrictive procurement measures leading to a lack of substantial reciprocity in market opening between the Union and the third country concerned.*

*For the purposes of point (b), a lack of substantial reciprocity is presumed where restrictive procurement measures result in serious and recurring discriminations of Union economic operators, goods and services.*

*When adopting implementing acts pursuant to paragraph 6, the Commission shall not approve an intended exclusion where it would violate market access commitments entered into by the Union in its international agreements.*

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

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

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

*7. Contracts concluded with an economic operator in violation of Commission implementing acts adopted pursuant to paragraph 4 upon intended exclusion notified by contracting authorities shall be declared ineffective within the meaning of Directive 2007/66/EC.*

Or. en

**Amendment 1299**

**Frank Engel, Philippe Juvin, Wim van de Camp, Constance Le Grip**

**Proposal for a directive**

**Article 69 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 69 a*

*Tenders comprising products originating in third countries*

*1. This Article shall apply to tenders covering products originating in third countries with which the Union has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for Union undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Union or its Member States in respect of third countries.*

*2. Any tender submitted for the award of a supply contract may be rejected where the proportion of the products originating in third countries, as determined in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code[1], exceeds 50 % of the total value of the products constituting the tender. For the purposes of this Article, software used in telecommunications network equipment shall be regarded as products.*

*3. Subject to the second subparagraph, where two or more tenders are equivalent in the light of the contract award criteria defined in Article 66, preference shall be given to those tenders which may not be rejected pursuant to paragraph 2. The prices of those tenders shall be considered equivalent for the purposes of this Article, if the price difference does not exceed 3 %.*

*However, a tender shall not be preferred to another pursuant to the first subparagraph where its acceptance would oblige the contracting entity to acquire equipment having technical characteristics different from those of existing equipment, resulting in incompatibility, technical difficulties in operation and maintenance, or disproportionate costs.*

*4. For the purposes of this Article, those third countries to which the benefit of the provisions of this Directive has been extended by a Council Decision in accordance with paragraph 1 shall not be taken into account for determining the proportion, referred to in paragraph 2, of products originating in third countries.*

*5. The Commission shall submit an annual report to the European Parliament and to the Council, commencing in the second half of the first year following the entry into force of this Directive, on progress made in multilateral or bilateral negotiations regarding access for Union*

*undertakings to the markets of third countries in the fields covered by this Directive, on any result which such negotiations may have achieved, and on the implementation in practice of all the agreements which have been concluded.*

*The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may amend the provisions of this Article in the light of such developments.*

*[1] OJ L 302, 19.10.1992, p. 1.*

Or. en

**Amendment 1300**  
**Bernadette Vergnaud**

**Proposal for a directive**  
**Article 69 bis (new)**

*Text proposed by the Commission*

*Amendment*

*Article 69 bis*

*Offres contenant des produits originaires des pays tiers*

*1. Le présent article s'applique aux offres contenant des produits ou services originaires des pays tiers avec lesquels l'Union n'a pas conclu, dans un cadre multilatéral ou bilatéral, un accord assurant un accès comparable et effectif des entreprises de l'Union aux marchés de ces pays tiers. Il s'applique également aux offres contenant des produits ou services originaires des pays tiers faisant l'objet d'une réserve concernant l'accès au marché européen en vertu d'accords internationaux sur les marchés publics conclus par l'Union (accords bilatéraux de libre-échange ou Accord plurilatéral sur les Marchés Publics). Il est sans préjudice des obligations de l'Union ou de ses États membres à l'égard des pays tiers.*

**2. Les pouvoirs adjudicateurs demandent aux soumissionnaires de fournir les informations relatives à l'origine des biens et services de leur offre, ainsi qu'à leur valeur. Les déclarations sur l'honneur sont acceptées comme moyen de preuve préliminaire. Une entité adjudicatrice peut demander, à tout moment de la procédure, partie ou l'ensemble de la documentation requise. Toute offre présentée pour l'attribution d'un marché de fournitures peut être rejetée lorsque la valeur des produits originaires des pays tiers, déterminés conformément au règlement (CEE) n° 2913/92 du Conseil du 12 octobre 1992 établissant le code des douanes communautaire, excède 50 % de la valeur totale des produits ou services composant cette offre. Aux fins du présent article, les logiciels utilisés dans les équipements de réseaux de télécommunications sont considérés comme des produits.**

**3. Sous réserve du deuxième alinéa, lorsque deux ou plusieurs offres sont équivalentes au regard des critères d'attribution définis à l'article 76, une préférence est accordée à celle des offres qui ne peut être rejetée en application du paragraphe 2. Le montant de ces offres est considéré comme équivalent, aux fins du présent article, si leur écart de prix n'excède pas 3 %.**

**Toutefois, une offre ne sera pas préférée à une autre en vertu du premier alinéa lorsque son acceptation obligerait l'entité adjudicatrice à acquérir un matériel présentant des caractéristiques techniques différentes de celles du matériel déjà existant, entraînant une incompatibilité ou des difficultés techniques d'utilisation ou d'entretien ou des coûts disproportionnés.**

**4. Aux fins du présent article, pour la détermination des produits et services originaires des pays tiers prévue au paragraphe 2, ne sont pas pris en compte les pays tiers auxquels le bénéfice des**

*dispositions de la présente directive a été étendu par une décision du Conseil conformément au paragraphe 1.*

*5. La Commission fait un rapport annuel au Parlement européen et au Conseil, pour la première fois au cours du second semestre de la première année après l'entrée en vigueur de la présente directive, sur les progrès réalisés dans les négociations multilatérales ou bilatérales concernant l'accès des entreprises de la l'Union aux marchés des pays tiers dans les domaines couverts par la présente directive, sur tout résultat que ces négociations ont permis d'atteindre, ainsi que sur l'application effective de tous les accords qui ont été conclus.*

*Le Parlement européen et le Conseil, statuant conformément à la procédure législative ordinaire, peuvent, à la lumière de ces développements, modifier les dispositions du présent article.*

Or. fr

*Justification*

*Dans l'attente de l'adoption d'un règlement sur la réciprocité, il convient de maintenir transitoirement les dispositions actuelles de la législation sur les marchés publics.*

**Amendment 1301**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 69 bis (new)**

*Text proposed by the Commission*

*Amendment*

**Article 69 bis**

*Lorsqu'un pouvoir adjudicateur prévoit d'accepter, une offre anormalement basse comprenant des travaux, fournitures ou services ne provenant pas de l'Union, dans laquelle la valeur des travaux, fournitures ou services non couverts*

*dépasse 50 % de la valeur totale des travaux, fournitures ou services qui constituent l'offre, conformément à l'article 22 bis, ce pouvoir adjudicateur en informe les autres soumissionnaires par écrit en expliquant pourquoi le prix ou les coûts proposés sont anormalement bas.*

*Une offre, provenant de pays tiers n'étant pas liés par un accord international, est automatiquement rejetée lorsque le prix ou le coût facturé est inférieur de plus de 30% du coût moyen des autres offres .*

Or. fr

**Amendment 1302**

**Frank Engel, Philippe Juvin, Wim van de Camp, Konstantinos Poupakis, Constance Le Grip**

**Proposal for a directive  
Article 69 b (new)**

*Text proposed by the Commission*

*Amendment*

**Article 69b**

*Relations with third countries as regards works, supplies and service contracts*

*1. Member States shall inform the Commission of any general difficulties, in law or in fact, encountered and reported by their undertakings in securing the award of service contracts in third countries.*

*2. The Commission shall report to the European Parliament and to the Council before 31 December 2014, and periodically thereafter, on the opening up of service contracts in third countries and on progress in negotiations with these countries on this subject, particularly within the framework of the WTO.*

*3. The Commission shall endeavour, by approaching the third country concerned, to remedy any situation whereby it finds, on the basis either of the reports referred*

*to in paragraph 2 or of other information, that, in the context of the award of service contracts, a third country:*

*(a) does not grant Union undertakings effective access comparable to that granted by the Union to undertakings from that country; or*

*(b) does not grant Union undertakings national treatment or the same competitive opportunities as are available to national undertakings; or*

*(c) grants undertakings from other third countries more favourable treatment than Union undertakings.*

*4. Member States shall inform the Commission of any difficulties, in law or in fact, encountered and reported by their undertakings and which are due to the non-observance of the international social and environmental law provisions listed in Annex XI when these undertakings have tried to secure the award of contracts in third countries.*

*5. In the circumstances referred to in paragraphs 3 and 4, the Commission may at any time propose that the Council decide to suspend or restrict, over a period to be laid down in the decision, the award of service contracts to:*

*(a) undertakings governed by the law of the third country in question;*

*(b) undertakings affiliated to the undertakings specified in point (a) and having their registered office in the Union but having no direct and effective link with the economy of a Member State;*

*(c) undertakings submitting tenders which have as their subject-matter services originating in the third country in question.*

*The Council shall act, by qualified majority, as soon as possible.*

*The Commission may propose these measures on its own initiative or at the*



*request of a Member State.*

*6. This Article shall be without prejudice to the commitments of the Union in relation to third countries ensuing from international agreements on public procurement, particularly within the framework of the WTO.*

Or. en

**Amendment 1303**  
**Bernadette Vergnaud**

**Proposal for a directive**  
**Article 69 ter (new)**

*Text proposed by the Commission*

*Amendment*

*Article 69 ter*

*Relations avec les pays tiers en matière de marchés de travaux, de fournitures et de services*

*1. Les États membres informent la Commission de toute difficulté d'ordre général rencontrée et signalée par leurs entreprises en fait ou en droit, lorsqu'elles ont cherché à remporter des marchés de travaux, de fournitures et services dans des pays tiers.*

*2. La Commission fait rapport au Parlement européen et au Conseil de manière périodique sur l'ouverture des marchés de travaux, de fournitures et services dans les pays tiers ainsi que sur l'état d'avancement des négociations à ce sujet avec ces pays, notamment dans le cadre de l'OMC.*

*3. La Commission s'efforce, en intervenant auprès du pays tiers concerné, de remédier à une situation dans laquelle elle constate, soit sur la base des rapports visés au paragraphe 2, soit sur la base d'autres informations, qu'un pays tiers, en ce qui concerne l'attribution de marchés*

*de travaux, de fournitures et services:*

*a) n'accorde pas aux entreprises de l'Union un accès effectif comparable à celui qu'accorde l'Union aux entreprises de ces pays tiers;*

*b) n'accorde pas aux entreprises de l'Union le bénéfice du traitement national ou les mêmes possibilités de concurrence que celles offertes aux entreprises nationales, ou*

*c) accorde aux entreprises d'autres pays tiers un traitement plus favorable qu'aux entreprises de l'Union.*

*4. Les États membres informent la Commission de toute difficulté d'ordre général rencontrée et signalée par leurs entreprises en fait ou en droit, et résultant du non-respect des dispositions internationales en matière de droit du travail visées à l'annexe XI, lorsqu'elles ont cherché à remporter des marchés de travaux, de fournitures et services dans des pays tiers.*

*5. Dans les conditions indiquées aux paragraphes 3 et 4, la Commission peut, à tout moment, proposer au Conseil de décider de suspendre ou de restreindre, pendant une période à déterminer dans la décision, l'attribution de marchés de travaux, de fournitures et services:*

*a) aux entreprises soumises à la législation du pays tiers concerné;*

*b) aux entreprises liées aux entreprises visées au point a) dont le siège social se trouve dans l'Union, mais qui n'ont pas un lien direct et effectif avec l'économie d'un État membre ;*

*c) aux entreprises présentant des offres ayant pour objet des travaux, de fournitures et services originaires du pays tiers concerné.*

*Le Conseil statue à la majorité qualifiée dans les meilleurs délais.*

*La Commission peut proposer ces*

*mesures de sa propre initiative ou à la demande d'un État membre.*

*6. Le présent article est sans préjudice des obligations de l'Union à l'égard des pays tiers découlant des conventions internationales sur les marchés publics, en particulier dans le cadre de l'OMC.*

Or. fr

*Justification*

*Dans l'attente de l'adoption d'un règlement sur la réciprocité, il convient de maintenir transitoirement les dispositions actuelles de la législation sur les marchés publics.*

**Amendment 1304**  
**Andreas Schwab**

**Proposal for a directive**  
**Article 70**

*Text proposed by the Commission*

*Amendment*

**Article 70**

**entfällt**

***Bedingungen für die Auftragsausführung***  
***Öffentliche Auftraggeber können besondere Bedingungen für die Ausführung eines Auftrags festlegen, sofern diese im Aufruf zum Wettbewerb oder in den Spezifikationen angegeben werden. Diese Bedingungen können insbesondere Sozial- und Umweltbelange betreffen. Sie können auch die Auflage enthalten, dass Wirtschaftsteilnehmer einen Ausgleich für das Risiko von Preiserhöhungen infolge von Preisschwankungen (Hedging) vorsehen, die die Auftragsausführung wesentlich beeinträchtigen können.***

Or. de

## Justification

*Die Einbeziehung vergabefremder Kriterien bei der Auftragsvergabe sollte stets eng mit dem Auftragsgegenstand verbunden sein. Die Möglichkeit, besondere Bedingungen für die Ausführung eines Auftrags festzulegen, die insbesondere Sozial- und Umweltbelange betreffen können, könnte dazu führen, dass der Auftraggeber über die Festlegung bestimmter sozial- oder umweltbezogener Bedingungen von Artikel 66 und den dort genannten Zuschlagskriterien abweicht.*

### **Amendment 1305** **Heide Rühle**

#### **Proposal for a directive** **Article 70**

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

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations. ***They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.***

##### *Amendment*

Contracting authorities may lay down special conditions ***linked to the subject matter and*** relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations.

Or. en

### **Amendment 1306** **Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen**

#### **Proposal for a directive** **Article 70**

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

Öffentliche Auftraggeber können besondere Bedingungen für die Ausführung eines Auftrags festlegen,

##### *Amendment*

Öffentliche Auftraggeber können besondere Bedingungen für die Ausführung eines Auftrags festlegen,

sofern diese im Aufruf zum Wettbewerb oder in den Spezifikationen angegeben werden. Diese Bedingungen können insbesondere Sozial- und Umweltbelange betreffen. **Sie können auch die Auflage enthalten, dass Wirtschaftsteilnehmer einen Ausgleich für das Risiko von Preiserhöhungen infolge von Preisschwankungen (Hedging) vorsehen, die die Auftragsausführung wesentlich beeinträchtigen können.**

sofern diese im Aufruf zum Wettbewerb oder in den Spezifikationen angegeben werden. Diese Bedingungen können insbesondere Sozial- und Umweltbelange betreffen.

Or. de

#### *Justification*

*Es ist eine Selbstverständlichkeit, dass Unternehmen das Risiko einer Preiserhöhung tragen. Durch Artikel 70 Satz 3 entsteht der Eindruck, dass sie dieses Risiko nur tragen müssen, wenn dies vom öffentlichen Auftraggeber in den besonderen Bedingungen für die Ausführung eines Auftrags festgelegt wurde. Dies hat zur Folge, dass in jeder Ausschreibung ein entsprechender Vermerk mit aufzunehmen wäre.*

#### **Amendment 1307**

**Malcolm Harbour, Edvard Kožušník**

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

#### **Article 70**

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

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, ***in particular, concern social and environmental*** considerations. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

##### *Amendment*

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may ***include economic, innovative, environmental or*** social considerations. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract. ***However, none of those special conditions shall result in losing the link to the subject matter of the contract.***

**Amendment 1308**  
**Evelyne Gebhardt, Birgit Sippel**

**Proposal for a directive**  
**Article 70**

*Text proposed by the Commission*

Öffentliche Auftraggeber können besondere Bedingungen für die Ausführung eines Auftrags festlegen, sofern diese im Aufruf zum Wettbewerb oder in den Spezifikationen angegeben werden. Diese Bedingungen **können insbesondere Sozial- und Umweltbelange betreffen**. Sie können auch die Auflage enthalten, dass Wirtschaftsteilnehmer einen Ausgleich für das Risiko von Preiserhöhungen infolge von Preisschwankungen (Hedging) vorsehen, die die Auftragsausführung wesentlich beeinträchtigen können.

*Amendment*

Öffentliche Auftraggeber können besondere Bedingungen für die Ausführung eines Auftrags festlegen, sofern diese im Aufruf zum Wettbewerb oder in den Spezifikationen angegeben werden. Diese Bedingungen **beinhalten die Einhaltung der Verpflichtungen in Bezug auf die sozialen und beschäftigungsrelevanten Bedingungen, die Gesundheit und Sicherheit am Arbeitsplatz, die soziale Sicherheit und die Arbeitsbedingungen, so wie sie in EU-Rechtsvorschriften, nationalen Rechtsvorschriften, Regelungen oder Verwaltungsvorschriften, Schiedssprüchen, Tarifvereinbarungen und -verträgen sowie den in Anhang XI aufgeführten internationalen arbeitsrechtlichen Bestimmungen festgelegt sind, die am Ort der Leistungserbringung gelten. Diese Verpflichtungen gelten auch in grenzüberschreitenden Situationen, in denen Arbeitnehmer und Arbeitnehmerinnen eines Mitgliedstaates Dienstleistungen in einem anderen Mitgliedstaat erbringen**. Sie können auch die Auflage enthalten, dass Wirtschaftsteilnehmer einen Ausgleich für das Risiko von Preiserhöhungen infolge von Preisschwankungen (Hedging) vorsehen, die die Auftragsausführung wesentlich beeinträchtigen können.

**Amendment 1309**  
**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**  
**Article 70**

*Text proposed by the Commission*

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, *in particular, concern* social and environmental considerations. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

*Amendment*

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may *include* social and environmental considerations, *and may also include social and employment protection and working conditions applying in the place where the work, service or supply is to be performed as set out by national legislation and/or collective agreements or international labour law provisions listed in Annex XI.* They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

Or. en

**Amendment 1310**  
**Morten Løkkegaard, Jens Rohde**

**Proposal for a directive**  
**Article 70**

*Text proposed by the Commission*

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions *may, in particular, concern social and environmental considerations.* They may also include the

*Amendment*

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications *and are of direct relevance to the contract's works, goods, or services.* Those conditions may include the requirement

requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

Or. en

## **Amendment 1311**

**Lara Comi**

### **Proposal for a directive**

#### **Article 70**

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

Le amministrazioni aggiudicatrici possono esigere condizioni particolari in merito all'esecuzione del contratto, purché esse siano indicate nell'avviso di indizione di una gara o nel capitolato d'onori. Dette condizioni possono, in particolare, fare riferimento a questioni in materia di previdenza sociale e di ambiente *e* possono ***inoltre comprendere il requisito che l'operatore economico preveda dei meccanismi di compensazione a fronte del rischio di aumento di prezzi (hedging) - derivante dalla fluttuazione degli stessi - che potrebbe incidere significativamente sull'esecuzione del contratto.***

##### *Amendment*

**1.** Le amministrazioni aggiudicatrici possono esigere condizioni particolari in merito all'esecuzione del contratto, purché esse siano indicate nell'avviso di indizione di una gara o nel capitolato d'onori.

**2.** Dette condizioni possono, in particolare, fare riferimento a questioni in materia di previdenza sociale e di ambiente.

**3.** Gli Stati membri possono ***prevedere forme di compensazione degli operatori economici in caso di aumenti di prezzi imprevedibili all'atto della presentazione dell'offerta.***

Or. it



## Amendment 1312

Sari Essayah

### Proposal for a directive

#### Article 70

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

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

##### *Amendment*

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (*using different hedging strategies including using price adoption formulas*) and that could substantially impact the performance of a contract.

Or. en

## Amendment 1313

Jürgen Creutzmann

### Proposal for a directive

#### Article 70

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

Contracting *authorities* may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern *social* and *environmental considerations*. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a

##### *Amendment*

Contracting *entities* may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern *training measures for unemployed and young people*. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

contract.

Or. en

## **Amendment 1314**

**Ádám Kósa**

### **Proposal for a directive**

#### **Article 70**

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

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

##### *Amendment*

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations, *as referred to in Recital 41*. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

Or. en

## **Amendment 1315**

**Mitro Repo**

### **Proposal for a directive**

#### **Article 70 – paragraph 1 a (new)**

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

##### *Amendment*

***Hankintaviranomaiset voivat edellyttää hankintasopimukseen otettavaksi sellaisia työehtoja ja -oloja koskevia vaatimuksia, jotka sisältyvät ILO:n yleissopimukseen 94.***

Or. fi

**Amendment 1316**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 70 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Hankintaviranomainen voi myös edellyttää, että hankintasopimukseen sisältyy Kansainvälisen Työjärjestön I.L.O:n yleissopimuksen nro 94 tarkoittamia työlausekkeita.***

Or. fi

**Amendment 1317**  
**Anna Hedh**

**Proposal for a directive**  
**Article 70 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 70a***

***Obligations relating to taxes, environmental protection, employment protection provisions and working conditions***

***1. A contracting authority may state in the contract documents, or be obliged by a Member State so to state, the body or bodies from which a candidate or tenderer may obtain the appropriate information on the obligations relating to taxes, to environmental protection, to the employment protection provisions and to the working conditions which are normally applied in the place where the works are to be carried out or services are to be provided and which shall be applicable to the works carried out on site or to the services provided during the performance of the contract.***

*2. A contracting authority which supplies the information referred to in paragraph 1 shall request the tenderers or candidates in the contract award procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to employment protection provisions and the working conditions which are normally applied in the place where the works are to be carried out or the service is to be provided.*

*3. Member States that have whistle-blower protection for public employee (within the public sector) may request that an equivalent protection is giving to employee employed by the economic operator, if the economic operator performs public funded services.*

Or. en

#### *Justification*

*Reintroduces, with some minor changes, article 27 from the present directive on public procurement (EC 2004/18). This important article should not be deleted. The protection for whistleblowers in Member states that have or want to have such rights and regulations need to be respected*

#### **Amendment 1318**

**Sabine Verheyen, Birgit Collin-Langen**

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

#### **Article 71**

*Text proposed by the Commission*

*Amendment*

#### **Article 71**

**entfällt**

#### **Vergabe von Unteraufträgen**

***1. In den Auftragsunterlagen kann der öffentliche Auftraggeber den Bieter auffordern oder von einem Mitgliedstaat verpflichtet werden, den Bieter aufzufordern, in seinem Angebot den Teil des Auftrags, den er gegebenenfalls im Wege von Unteraufträgen an Dritte zu***

*vergeben gedenkt, sowie die gegebenenfalls vorgeschlagenen Unterauftragnehmer anzugeben.*

*2. Die Mitgliedstaaten können vorsehen, dass der öffentliche Auftraggeber auf Wunsch des Unterauftragnehmers und sofern die Art des Auftrags es erlaubt, fällige Zahlungen im Zusammenhang mit den für den Hauptauftraggeber erbrachten Dienstleistungen, Lieferungen oder Bauleistungen direkt an den Unterauftragnehmer leistet. In diesem Fall führen die Mitgliedstaaten geeignete Mechanismen ein, die es dem Hauptauftragnehmer ermöglichen, Einwände gegen ungerechtfertigte Zahlungen zu erheben. Die Modalitäten dieser Zahlungsregelung werden in den Auftragsunterlagen dargelegt.*

*3. Die Frage der Haftung des hauptverantwortlichen Wirtschaftsteilnehmers bleibt von den Absätzen 1 und 2 unberührt.*

Or. de

#### *Justification*

*Das Verhältnis zwischen dem Bieter und dem Unterauftragnehmer fällt unter das einzelstaatliche Vertragsrecht, welches unangetastet bleiben sollte. Diese Bestimmung verursacht eine unklare rechtliche Situation, da ein Unterauftragnehmer, der entgeltlich für den öffentlichen Auftraggeber arbeitet, dadurch nicht mehr Unterauftragnehmer ist, sondern zum Auftragnehmer wird. Die Bestimmung könnte dem öffentlichen Auftraggeber die Möglichkeit nehmen, eine Zahlung in Erwartung der nicht ordnungsgemäßen Ausführung des Auftrags zurückzuhalten*

**Amendment 1319**  
**Riikka Manner**

**Proposal for a directive**  
**Article 71**

*Text proposed by the Commission*

*Amendment*

*Article 71*

*deleted*

### *Subcontracting*

*1. In the procurement documents, the contracting authority may ask or may be required by a Member State to ask the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.*

*2. Member States may provide that at the request of the subcontractor and where the nature of the contract so allows, the contracting authority shall transfer due payments directly to the subcontractor for services, supplies or works provided to the main contractor. In such case, Member States shall put in place appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment shall be set out in the procurement documents.*

*3. Paragraphs 1 and 2 shall be without prejudice to the question of the principal economic operator's liability.*

Or. en

### *Justification*

*As the main contractor is always liable for fulfilling all its obligations towards the contracting unit, the contracting unit has no reason to ask the tenderer to indicate the share of the contract it may intend to subcontract. The proposition is totally impossible to apply in practice.. The contracting unit is not able to define the price of the relevant services, supplies or works of the subcontractor, as it is a business secret of the main contractor.*

### **Amendment 1320** **Heide Rühle**

#### **Proposal for a directive** **Article 71 – paragraph 1**

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

1. In the procurement documents, the contracting authority may ask *or may be*

##### *Amendment*

1. In the procurement documents, the contracting authority may ask the tenderer

*required by a Member State to ask* the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.

to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors. *When there is need of a special know-how and/or equipment, subcontractors should be named in the procurements contract by the main contractor.*

Or. en

**Amendment 1321**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 71 – paragraph 1**

*Text proposed by the Commission*

1. Dans les documents de *marché*, le pouvoir adjudicateur *peut demander ou peut être obligé par un État membre de demander* au soumissionnaire d'indiquer, dans son offre, la part *éventuelle* du *marché* qu'il *a l'intention de* sous-traiter à des tiers ainsi que les sous-traitants proposés.

*Amendment*

1. Dans les documents de *passation des marchés*, le pouvoir adjudicateur *demande* au soumissionnaire d'indiquer dans son offre, la part du *contrat*, qu'il *veut* sous-traiter à des tiers ainsi que les sous-traitants proposés, *en fournissant des informations sur le sous-traitant, y compris les noms, les coordonnées et les représentants légaux. Toute modification dans la chaîne de sous-traitance doit être indiquée sans délai au pouvoir adjudicateur.*

*Si une modification est proposée, y compris si un nouveau sous-traitant participe à la chaîne de sous-traitance, l'entrepreneur principal doit indiquer son nom, les coordonnées et les représentants légaux. Les opérateurs de la chaîne de sous-traitance respectent les dispositions de la présente directive et les conditions fixées dans les documents d'approvisionnement et garantissent une exécution des tâches liées au contrat équivalente à celui défini dans l'appel d'offres.*

Or. fr

**Amendment 1322**  
**Sergio Gaetano Cofferati**

**Proposal for a directive**  
**Article 71 – paragraph 1**

*Text proposed by the Commission*

1. In the procurement documents, the contracting authority *may ask or may be required by a Member State to ask* the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.

*Amendment*

1. In the procurement documents, the contracting authority *shall* ask the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors, *providing information regarding the subcontractor including names, contact details and legal representatives.*

*Any changes in the subcontracting chain shall be proposed by the economic operator and agreed by the contracting authority. In the case the proposed change regards also the involvement of a new subcontractor, the main contractor shall indicate its name, contact details and legal representatives*

*Any operators in the subcontracting chain shall ensure the respect of the provisions of this Directive and of the conditions established in the procurement documents and shall guarantee a performance of the duties connected to the contract equivalent to the one defined in the tender.*

Or. en

**Amendment 1323**  
**Evelyne Gebhardt, Birgit Sippel**

**Proposal for a directive**  
**Article 71 – paragraph 1**



*Text proposed by the Commission*

1. In den Auftragsunterlagen **kann** der öffentliche Auftraggeber den Bieter **auffordern** oder von einem Mitgliedstaat verpflichtet werden, den Bieter aufzufordern, in seinem Angebot den Teil des Auftrags, den er gegebenenfalls im Wege von Unteraufträgen an Dritte zu vergeben gedenkt, sowie die gegebenenfalls vorgeschlagenen Unterauftragnehmer anzugeben.

*Amendment*

1. In den Auftragsunterlagen **fordert** der öffentliche Auftraggeber den Bieter **auf** oder **wird** von einem Mitgliedstaat verpflichtet werden, den Bieter aufzufordern, in seinem Angebot den Teil des Auftrags, den er gegebenenfalls im Wege von Unteraufträgen an Dritte zu vergeben gedenkt, sowie die gegebenenfalls vorgeschlagenen Unterauftragnehmer anzugeben **und Informationen über die Unterauftragnehmer einschließlich ihrer Namen, Anschrift und Rechtsvertreter zu liefern. Jede Änderung in der Kette der Unterauftragsvergabe und jeder neue Unterauftragnehmer sind dem öffentlichen Auftraggeber unter Angabe ihrer Namen, ihrer Anschrift und ihrer Rechtsvertreter mitzuteilen.**

Or. de

**Amendment 1324**  
**Phil Prendergast**

**Proposal for a directive**  
**Article 71 – paragraph 1**

*Text proposed by the Commission*

1. In the procurement documents, the contracting authority may ask or may be required by a Member State to ask the **tenderer** to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.

*Amendment*

1. In the procurement documents, the contracting authority may ask or may be required by a Member State to ask the **tendered** to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors. **Contracting authorities may refuse subcontractors that don't bring added value or that represent a technical, legal or financial risk. Contracting authorities may indicate in the tender document the part which may not be subcontracted. Procurement documents will stipulate the reasons for**

*this restriction.*

Or. en

**Amendment 1325**  
**Sergio Gaetano Cofferati**

**Proposal for a directive**  
**Article 71 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Member States shall limit the possibility for a tenderer to subcontract when executing a public contract to a maximum of three or less successive subcontractors. The contracting authorities may establish further limitations to the use of subcontracting, with regard to the number of subcontractors or of successive subcontractors or to the possibility of changes in the subcontracting chain, or may establish that no parts of the contracts shall be subcontracted to third parties.***

Or. en

**Amendment 1326**  
**Evelyne Gebhardt, Birgit Sippel**

**Proposal for a directive**  
**Article 71 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Die Gründe für den Einsatz von Unterauftragnehmern sind in den Auftragsunterlagen darzulegen; sie sollten auf technischen Überlegungen beruhen und nicht darauf abzielen, die Arbeitskosten zu senken.***

Or. de

**Amendment 1327**  
**Sergio Gaetano Cofferati**

**Proposal for a directive**  
**Article 71 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1b. The reasons for the use of subcontractors shall be set out in the procurement documents, strictly motivated by technical considerations and not circumvent relevant legislation and obligations which apply where the provision of works, services and supplies takes place;***

Or. en

**Amendment 1328**  
**Frank Engel, Andreas Schwab**

**Proposal for a directive**  
**Article 71 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. Les États membres peuvent prévoir que, à la demande du sous-traitant et si la nature du marché le permet, le pouvoir adjudicateur effectue directement au sous-traitant les paiements dus pour les services, fournitures ou travaux qu'il a fournis au contractant principal. Dans ce cas, les États membres mettent en place des mécanismes appropriés permettant au contractant principal de s'opposer à des paiements indus. Les dispositions relatives à ce mode de paiement sont exposées dans les documents de marché.***

***supprimé***

Or. fr

**Amendment 1329**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 71 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. Member States may provide that at the request of the subcontractor and where the nature of the contract so allows, the contracting authority shall transfer due payments directly to the subcontractor for services, supplies or works provided to the main contractor. In such case, Member States shall put in place appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment shall be set out in the procurement documents.** *deleted*

Or. en

*Justification*

*Direct payment by Contracting authorities to subcontractors breaches the legal principle of the freedom to contract and removes the leverage main suppliers have over their supply chain in terms of ensuring timely and quality delivery of the product or service outsourced to the subcontractor.*

**Amendment 1330**  
**Heide Rühle**

**Proposal for a directive**  
**Article 71 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. Member States may provide that at the request of the subcontractor and where the nature of the contract so allows, the contracting authority shall transfer due payments directly to the subcontractor for services, supplies or works provided to the main contractor. In such case, Member** *deleted*

*States shall put in place appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment shall be set out in the procurement documents.*

Or. en

*Justification*

*The relationship between contractor and a subcontractor is a fundamental element of contract law. The proposal will lead to situations where subcontractors try to get directly paid by the contracting authority and deprive the authority from its right to withhold payments from the contractor for valid contract performance reasons.*

**Amendment 1331**  
**Peter Simon**

**Proposal for a directive**  
**Article 71 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. Die Mitgliedstaaten können vorsehen, dass der öffentliche Auftraggeber auf Wunsch des Unterauftragnehmers und sofern die Art des Auftrags es erlaubt, fällige Zahlungen im Zusammenhang mit den für den Hauptauftraggeber erbrachten Dienstleistungen, Lieferungen oder Bauleistungen direkt an den Unterauftragnehmer leistet. In diesem Fall führen die Mitgliedstaaten geeignete Mechanismen ein, die es dem Hauptauftragnehmer ermöglichen, Einwände gegen ungerechtfertigte Zahlungen zu erheben. Die Modalitäten dieser Zahlungsregelung werden in den Auftragsunterlagen dargelegt.***

***entfällt***

Or. de

## Amendment 1332

Marc Tarabella

### Proposal for a directive Article 71 – paragraph 2

*Text proposed by the Commission*

2. Les États membres **peuvent prévoir** que, à la demande du sous-traitant et **si** la nature du **marché** le permet, le pouvoir adjudicateur **effectue directement au sous-traitant** les paiements dus pour les services, fournitures ou travaux **qu'il a fournis au contractant** principal. Dans **ce** cas, les États membres mettent en place des mécanismes appropriés permettant **au contractant** principal de s'opposer à des paiements indus. Les dispositions relatives à ce mode de paiement **sont exposées** dans les documents de **marché**.

*Amendment*

2. **Les États membres limitent la possibilité pour un soumissionnaire de sous-traiter lors de l'exécution d'un marché public à un maximum de trois ou moins sous-traitants successifs.**

Les États membres prévoient que, à la demande du sous-traitant et **lorsque** la nature du **contrat** le permet, le pouvoir adjudicateur **doit transférer** les paiements dus **directement à la sous-traitance** pour les services, fournitures ou travaux **fournis à l'entrepreneur** principal. Dans **un tel** cas, les États membres mettent en place des mécanismes appropriés permettant **à l'entrepreneur** principal de s'opposer à des paiements indus. Les dispositions relatives à ce mode de paiement **doivent être réglées** dans les documents de **passation des marchés**.

Or. fr

## Amendment 1333

Evelyne Gebhardt

### Proposal for a directive Article 71 – paragraph 2

*Text proposed by the Commission*

2. Die Mitgliedstaaten **können vorsehen**,

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*Amendment*

2. Die Mitgliedstaaten **sehen vor**, dass der

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dass der öffentliche Auftraggeber auf Wunsch des Unterauftragnehmers und sofern die Art des Auftrags es erlaubt, fällige Zahlungen im Zusammenhang mit den für den Hauptauftraggeber erbrachten Dienstleistungen, Lieferungen oder Bauleistungen direkt an den Unterauftragnehmer leistet. In diesem Fall führen die Mitgliedstaaten geeignete Mechanismen ein, die es dem Hauptauftragnehmer ermöglichen, Einwände gegen ungerechtfertigte Zahlungen zu erheben. Die Modalitäten dieser Zahlungsregelung werden in den Auftragsunterlagen dargelegt.

öffentliche Auftraggeber auf Wunsch des Unterauftragnehmers und sofern die Art des Auftrags es erlaubt, fällige Zahlungen im Zusammenhang mit den für den Hauptauftraggeber erbrachten Dienstleistungen, Lieferungen oder Bauleistungen direkt an den Unterauftragnehmer leistet. In diesem Fall führen die Mitgliedstaaten geeignete Mechanismen ein, die es dem Hauptauftragnehmer ermöglichen, Einwände gegen ungerechtfertigte Zahlungen zu erheben. Die Modalitäten dieser Zahlungsregelung werden in den Auftragsunterlagen dargelegt.

Or. de

**Amendment 1334**  
**Lara Comi**

**Proposal for a directive**  
**Article 71 – paragraph 2**

*Text proposed by the Commission*

2. Gli Stati membri **possono prevedere** che, su richiesta del subappaltatore e se la natura del contratto lo consente, l'autorità aggiudicatrice trasferisca i pagamenti dovuti direttamente al subappaltatore per i servizi, le forniture o i lavori forniti al contraente principale. In tal caso, gli Stati membri mettono in atto idonei meccanismi che consentano al contraente principale di opporsi a pagamenti indebiti. Gli accordi su questa modalità di pagamento sono indicati nei documenti di gara.

*Amendment*

2. Gli Stati membri **prevedono nel proprio ordinamento la possibilità** che, su richiesta del subappaltatore e se la natura del contratto lo consente, l'autorità aggiudicatrice trasferisca i pagamenti dovuti direttamente al subappaltatore per i servizi, le forniture o i lavori forniti al contraente principale. In tal caso, gli Stati membri mettono in atto idonei meccanismi che consentano al contraente principale di opporsi a pagamenti indebiti. Gli accordi su questa modalità di pagamento sono indicati nei documenti di gara.

Or. it

**Amendment 1335**  
**Raffaele Baldassarre**

**Proposal for a directive**  
**Article 71 – paragraph 2**

*Text proposed by the Commission*

2. Gli Stati membri **possono prevedere** che, su richiesta del subappaltatore e se la natura del contratto lo consente, l'autorità aggiudicatrice trasferisca i pagamenti dovuti direttamente al subappaltatore per i servizi, le forniture o i lavori forniti al contraente principale. In tal caso, gli Stati membri mettono in atto idonei meccanismi che consentano al contraente principale di opporsi a pagamenti indebiti. Gli accordi su questa modalità di pagamento sono indicati nei documenti di gara.

*Amendment*

2. Gli Stati membri **prevedono nel proprio ordinamento la possibilità** che, su richiesta del subappaltatore e se la natura del contratto lo consente, l'autorità aggiudicatrice trasferisca i pagamenti dovuti direttamente al subappaltatore per i servizi, le forniture o i lavori forniti al contraente principale. In tal caso, gli Stati membri mettono in atto idonei meccanismi che consentano al contraente principale di opporsi a pagamenti indebiti. Gli accordi su questa modalità di pagamento sono indicati nei documenti di gara.

Or. it

**Amendment 1336**  
**Herbert Dorfmann**

**Proposal for a directive**  
**Article 71 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. Die Mitgliedsstaaten sind aufgefordert, sollte die Bezahlung der Subunternehmer nicht direkt erfolgen, Mechanismen einzuführen die garantieren, dass der Hauptauftragnehmer den Unterauftragnehmer keine ungünstigeren Konditionen einräumen darf, wie sie zwischen dem öffentlichen Auftraggeber und dem Hauptauftragnehmer vereinbart wurden.**

Or. de

**Amendment 1337**  
**Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski**



**Proposal for a directive**  
**Article 71 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Member States may decide that the contracting authority may exclude a subcontractor indicated by the tender if:***

***(i) subcontractor does not fulfil criteria for selection envisaged for a tender***

***(ii) subcontractor is not capable to properly fulfil its part of the contract***

***Terms of participation in a procedure and capacity of a subcontractor to properly fulfil its part of the contract are assessed proportionally to the part of the contract awarded to the subcontractor, on the basis of criteria for qualitative selection indicated in Articles 55 and 56***

Or. en

*Justification*

*Contracting authorities should have more possibilities to exert influence on subcontracting by the successful tenderer. In particular they should be empowered to verify the suitability and qualification of proposed subcontractors. All requirements to that effect shall be in conformity with the principle of proportionality.*

**Amendment 1338**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 71 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

***3. Paragraphs 1 and 2 shall be without prejudice to the question of the principal economic operator's liability.***

***deleted***

Or. en

*Unclear.*

**Amendment 1339**

**Frank Engel, Andreas Schwab**

**Proposal for a directive**

**Article 71 – paragraph 3**

*Text proposed by the Commission*

3. *Les paragraphes 1 et 2 ne préjugent* pas la question de la responsabilité de l'opérateur économique principal.

*Amendment*

3. *Le paragraphe 1 ne préjuge* pas la question de la responsabilité de l'opérateur économique principal.

Or. fr

**Amendment 1340**

**Heide Rühle**

**Proposal for a directive**

**Article 71 – paragraph 3**

*Text proposed by the Commission*

3. *Paragraphs 1 and 2* shall be without prejudice to the question of the principal economic operator's liability.

*Amendment*

3. *Paragraph 1* shall be without prejudice to the question of the principal economic operator's liability.

Or. en

**Amendment 1341**

**Sirpa Pietikäinen**

**Proposal for a directive**

**Article 71 – paragraph 3**

*Text proposed by the Commission*

3. Paragraphs 1 and 2 shall be without prejudice to the question of the principal economic operator's liability.

*Amendment*

3. Paragraphs 1 and 2 shall be without prejudice to the question of the principal economic operator's liability. *The contracting authority may be required to*

*ask that the subcontractor complies with obligations established by Union legislation in the field of social and labour law or environmental law or by the international social and environmental law provisions listed in Annex XI.*

Or. en

**Amendment 1342**

**Marc Tarabella**

**Proposal for a directive**

**Article 71 – paragraph 3**

*Text proposed by the Commission*

3. Les paragraphes 1 et 2 *ne préjugent pas* la *question* de la responsabilité de l'*opérateur économique principal*.

*Amendment*

3. Les *raisons de l'utilisation des sous-traitants doivent être énoncées dans les documents de passation des marchés, et sont strictement motivée par des considérations techniques. Le recours à la sous-traitance ne peut avoir pour but de contourner la législation pertinente et les obligations qui s'appliquent lors de la fourniture de travaux, de services et de fournitures.*

Les paragraphes 1 et 2 *sont sans préjudice de la responsabilité du maître d'œuvre et des sous-traitants.*

*Les États membres doivent prévoir un système de responsabilité conjointe et solidaire dans la chaîne de sous-traitance.*

Or. fr

**Amendment 1343**

**Evelyne Gebhardt, Birgit Sippel**

**Proposal for a directive**

**Article 71 – paragraph 3**

**3. Die Frage der Haftung des hauptverantwortlichen Wirtschaftsteilnehmers bleibt von den Absätzen 1 und 2 unberührt.**

**3. Der Hauptauftragnehmer und etwaige zwischengestaltete Unterauftragnehmer können zusätzlich oder anstelle eines Unterauftragnehmers direkt als Garant von dem Arbeitnehmer oder der Arbeitnehmerin und /oder gemeinsamen Fonds oder Einrichtungen der Sozialpartner für jeden Haftungsfall haftbar gemacht werden, der sich daraus ergibt, dass ein Unterauftragnehmer es versäumt, die Vorschriften in Bezug auf die sozialen und beschäftigungsrelevanten Bedingungen, wie die Gesundheit und Sicherheit am Arbeitsplatz, die soziale Sicherheit und die Arbeitsbedingungen einzuhalten, so wie sie in EU-Rechtsvorschriften, nationalen Rechtsvorschriften, Regelungen oder Verwaltungsvorschriften, Schiedsprüchen, Tarifvereinbarungen und -verträgen sowie den in Anhang XI aufgeführten internationalen arbeitsrechtlichen Bestimmungen festgelegt sind, die am Ort der Leistungserbringung gelten; diese Verpflichtungen gelten auch in grenzüberschreitenden Situationen, in denen Arbeitnehmer und Arbeitnehmerinnen eines Mitgliedstaates Dienstleistungen in einem anderen Mitgliedstaat erbringen. Dies findet ohne weitere Bedingungen Anwendung, insbesondere für den Fall, dass der Arbeitgeber nicht direkt einen Fehler begangen hat.**

Or. de

**Amendment 1344  
Peter Simon**

**Proposal for a directive  
Article 71 – paragraph 3**

*Text proposed by the Commission*

3. Die Frage der Haftung des hauptverantwortlichen Wirtschaftsteilnehmers bleibt von *den Absätzen 1 und 2* unberührt.

*Amendment*

3. Die Frage der Haftung des hauptverantwortlichen Wirtschaftsteilnehmers bleibt von **Absatz 1** unberührt.

Or. de

**Amendment 1345**

**Sergio Gaetano Cofferati, Raffaele Baldassarre**

**Proposal for a directive**

**Article 71 – paragraph 3**

*Text proposed by the Commission*

3. Paragraphs 1 and 2 shall be without prejudice to the question of the *principal economic operator's* liability.

*Amendment*

3. Paragraphs 1 and 2 shall be without prejudice to the question of the *main contractor's and subcontractors'* liability.

*Member states shall provide for a system of joint and several liability down the sub-contracting chain.*

*The principal economic operator and any subcontractor involved in doing work on a public contract shall be jointly and severally liable for any liability which arises from the failure by a subcontractor to comply with provisions relating to fundamental rights, health and safety requirements, social rules and standards, employment and working conditions, health and safety at workplace and social security, as set out by EU and national laws, regulations or administrative provisions, collective agreement and contracts, and international labour law provisions listed in Annex XI, that apply in the place where the work, service or supply is performed.*

*Member States may provide for more stringent liability rules under national law.*

**Amendment 1346**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 71 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3 bis. Le principal opérateur économique et tout sous-traitant impliqué dans l'accomplissement des travaux sur un marché public sont conjointement et solidairement responsables du non-respect par le sous-traitant des droits fondamentaux, des exigences de santé et de sécurité, des règles et des normes sociales, des exigences liées à l'emploi et aux conditions de travail, à la santé et la sécurité du lieu de travail, à la sécurité sociale ainsi que du non-respect de toute disposition pertinente du droit de l'Union, de toute disposition législative, administrative ou réglementaire nationale, des conventions collectives et des contrats, et des conventions internationales énumérées à l'annexe XI, qui s'appliquent à l'endroit où le travail, le service ou la fourniture est effectuée.***

***Ces obligations s'appliquent également dans les situations transfrontalières, où des travailleurs d'un État membre fournissent des services dans un autre État membre.***

***Le pouvoir adjudicateur dans son contrat avec l'entrepreneur principal, et le contractant principal et tout sous-traitant intermédiaire dans leurs contrats avec leurs sous-traitants, stipulent que, dans le cas où ils ont des raisons de croire que leur sous-traitant immédiat a violé les règles visées au premier alinéa, le sous-traitant doit immédiatement prendre des mesures immédiates pour remédier à la situation, et que, à défaut, le contrat***

*concerné prend fin.*

*Les États membres peuvent prévoir des règles plus strictes de responsabilité en vertu du droit national.*

Or. fr

**Amendment 1347**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 71 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

*3 a. Contracting authorities shall ensure that successful tenderers are contractually obliged to comply in the course of performance of the contract with mandatory legal, regulatory or administrative provisions in force in the Member State of contract performance.*

*Furthermore, where the successful tenderer subcontracts a part of the works, supplies or services, and where, in the course of performance of the contract, the provisions referred to in the first subparagraph have been breached by any subcontractor as established by a Court or other competent authority, the successful tenderer shall take effective, proportionate and dissuasive contractual sanctions against the subcontractor(s) concerned;*

*Where the successful tenderer has failed to comply with the obligations set out in the first and/or second subparagraphs within three months of the initial ruling of the Court or other competent authority, the contracting authority shall refer the matter to the Court or other competent authority for a decision on appropriate sanctions.*

Or. en

*Justification*

*This proposal seeks to take into account the Rapporteur's concerns over applicable laws affecting the main contractor's obligations and those obligations throughout the supply chain, while ensuring these new rules remain compatible with the basic principles of freedom to contract, and are not abused.*

**Amendment 1348**

**Evelyne Gebhardt, Birgit Sippel**

**Proposal for a directive**

**Article 71 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. Die Zahl der als Unterauftragnehmer an der Ausführung eines öffentlichen Auftrags beteiligten Unternehmen wird auf eine Höchstzahl von drei aufeinanderfolgenden Unterauftragnehmern begrenzt.***

Or. de

**Amendment 1349**

**Sirpa Pietikäinen**

**Proposal for a directive**

**Article 72 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. A modification of a contract during its term shall not be considered substantial when the development of goods and services and promotion of innovations requires flexible cooperation between the contracting parties.***

Or. en

**Amendment 1350**

**Marc Tarabella**



**Proposal for a directive**  
**Article 72 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. *Une modification d'un marché en cours est considérée comme substantielle au sens du paragraphe 1 lorsqu'elle rend le marché substantiellement différent de celui conclu au départ.* Dans tous les cas, sans préjudice des paragraphes 3 et 4, une modification est considérée comme substantielle lorsqu'une des conditions suivantes est remplie:

*Amendment*

2. Dans tous les cas, sans préjudice des paragraphes 3 et 4, une modification est considérée comme substantielle lorsqu'une des conditions suivantes est remplie:

Or. fr

**Amendment 1351**  
**Pablo Arias Echeverría**

**Proposal for a directive**  
**Article 72 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. Una modificación de un contrato durante su período de vigencia se considerará sustancial a efectos del apartado 1 cuando tenga como resultado un contrato sustancialmente diferente del celebrado en un principio. *En cualquier caso, sin* perjuicio de lo dispuesto en los apartados 3 y 4, una modificación se considerará sustancial cuando se cumpla una de las condiciones siguientes:

*Amendment*

2. Una modificación de un contrato durante su período de vigencia se considerará sustancial a efectos del apartado 1 cuando tenga como resultado un contrato sustancialmente diferente del celebrado en un principio. *Sin* perjuicio de lo dispuesto en los apartados 3 y 4, una modificación se considerará sustancial cuando se cumpla una de las condiciones siguientes:

Or. es