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*Committee on the Internal Market and Consumer Protection*

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**2011/0438(COD)**

12.7.2012

# **AMENDMENTS 1352 - 1593**

**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 1352**  
**Philippe Juvin**

**Proposal for a directive**  
**Article 72 – paragraph 2 – points -a and -a a (new)**

*Text proposed by the Commission*

*Amendment*

*(-a) elle modifie la nature du marché;*  
*(-a bis) elle implique le remplacement du*  
*partenaire contractuel;*

Or. fr

*Justification*

*Les dispositions relatives à la modification des marchés en cours doivent être complétées (la modification de la nature du marché est une modification substantielle en tous les cas) et clarifiées (le paragraphe 3 existant a été intégré dans le paragraphe 2 par souci de simplification, puisqu'il s'agit également d'un cas de modification substantielle).*

**Amendment 1353**  
**Pablo Arias Echeverría**

**Proposal for a directive**  
**Article 72 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

(b) que la modificación altere el equilibrio económico del contrato en beneficio del contratista;

(b) que la modificación altere el equilibrio económico del contrato en beneficio del contratista, *tal y como se definió en el momento de la adjudicación del contrato;*

Or. es

**Amendment 1354**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 72 – paragraph 2 – point c**

*Text proposed by the Commission*

*Amendment*

(c) elle modifie considérablement **le champ** d'application du marché de sorte qu'il englobe des fournitures, des services ou des travaux non couverts au départ.

(c) elle modifie considérablement **l'objet** d'application du marché de sorte qu'il englobe des fournitures, des services ou des travaux non couverts au départ.

Or. fr

**Amendment 1355**  
**Philippe Juvin**

**Proposal for a directive**  
**Article 72 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

**3. Le remplacement du partenaire contractuel est considéré comme une modification substantielle au sens du paragraphe 1.**

**supprimé**

Or. fr

*Justification*

*Suppression de ce paragraphe en conformité avec l'amendement déposé sur l'article 72 paragraphe 2 (nouveau paragraphe c ter). Clarification du texte initial.*

**Amendment 1356**  
**Heide Rühle**

**Proposal for a directive**  
**Article 72 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

However, the first subparagraph shall not apply in the event of universal or partial succession into the position of the initial contractor, following corporate restructuring operations or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially

However, the first subparagraph shall not apply in the event of universal or partial succession into the position of the initial contractor, following corporate restructuring operations or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially

established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive.

established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive *or in case of the take-over of the main contractors' signatory status by the contracting authority accordingly to the Member State provisions in line with Article 71.*

Or. en

#### *Justification*

*Paragraph 4 and 6 are not coherent in order not to create legal uncertainties. We should stick to the wording of 2004/18/EC which is similar to Paragraph 6 and delete 72 (4).*

#### **Amendment 1357**

**Philippe Juvin**

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

#### **Article 72 – paragraph 3 – subparagraph 2**

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

*Cependant, le premier alinéa ne s'applique pas en cas de succession universelle ou partielle du contractant initial, à la suite d'opérations de restructuration de société ou d'une faillite, assurée par un autre opérateur économique qui remplit les critères de sélection qualitative établis au départ, à condition que cela n'entraîne pas d'autres modifications substantielles du marché et ne vise pas à se soustraire à l'application de la présente directive.*

##### *Amendment*

*Le paragraphe 2, point (-a bis), ne s'applique pas en cas de succession universelle ou partielle du contractant initial, à la suite d'opérations de restructuration de société, **de transmission de patrimoine** ou d'**actifs entre entreprises, d'une reprise du partenaire contractuel après sa** faillite, assurée par un autre opérateur économique qui remplit les critères de sélection qualitative établis au départ, à condition que cela n'entraîne pas d'autres modifications substantielles du marché et ne vise pas à se soustraire à l'application de la présente directive.*

Or. fr

#### **Amendment 1358**

**Pablo Arias Echeverría**

**Proposal for a directive**  
**Article 72 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

No obstante, el párrafo primero no se aplicará en caso de sucesión total o parcial del contratista inicial, a raíz de operaciones de reestructuración empresarial o insolvencia, por otro operador económico que cumpla los criterios de selección cualitativa establecidos inicialmente, siempre que ello no implique otras modificaciones sustanciales del contrato ni tenga por objeto eludir la aplicación de la presente Directiva.

*Amendment*

No obstante, el párrafo primero no se aplicará en caso de sucesión total o parcial del contratista inicial, a raíz de operaciones de reestructuración empresarial o insolvencia, ***o sobre la base de una cláusula contractual***, por otro operador económico que cumpla los criterios de selección cualitativa establecidos inicialmente, siempre que ello no implique otras modificaciones sustanciales del contrato ni tenga por objeto eludir la aplicación de la presente Directiva.

Or. es

**Amendment 1359**

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

**Proposal for a directive**  
**Article 72 – paragraph 3 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***Unterabsatz 1 gilt ferner nicht für den Fall, dass ein Wechsel des öffentlichen Auftraggebers unter Fortbestand des Auftrages erfolgt.***

Or. de

*Justification*

*Bei länger laufenden Aufträgen kann sich für den öffentlichen Auftraggeber das Bedürfnis ergeben, den laufenden Auftrag mit Einverständnis des Auftragnehmers z. B. auf eine andere Körperschaft oder Tochtergesellschaft als neuer Auftraggeber zu übertragen. Dies sollte keine wesentliche Änderung im Sinne der Bestimmungen des öffentlichen Auftrags darstellen.*

**Amendment 1360**  
**Heide Rühle**

**Proposal for a directive**  
**Article 72 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 4 and where it is below 5 % of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.**

**deleted**

Or. en

*Justification*

*Paragraph 4 and 6 are not coherent in order not to create legal uncertainties we should stick to the wording of 2004/18/EC which is similar to Paragraph 6 and delete 72 (4).*

**Amendment 1361**

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

**Proposal for a directive**  
**Article 72 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. Kann der Wert einer Änderung in Geldwert ausgedrückt werden, ist eine Änderung nicht als wesentlich im Sinne von Absatz 1 anzusehen, wenn ihr Wert nicht die in Artikel 4 festgelegten Schwellenwerte überschreitet und weniger als 5 % des ursprünglichen Auftragspreises beträgt, vorausgesetzt, dass sich aufgrund der Änderung nicht der Gesamtcharakter des Auftrags verändert. Im Falle mehrerer

4. Kann der Wert einer Änderung in Geldwert ausgedrückt werden, ist eine Änderung **in jedem Falle** nicht als wesentlich im Sinne von Absatz 1 anzusehen, wenn ihr Wert nicht die in Artikel 4 festgelegten Schwellenwerte überschreitet und weniger als **10** % des ursprünglichen Auftragspreises beträgt, vorausgesetzt, dass sich aufgrund der Änderung nicht der Gesamtcharakter des

aufeinanderfolgender Änderungen wird deren Wert auf der Grundlage des kumulierten Werts der aufeinanderfolgenden Änderungen bestimmt.

Auftrags verändert. Im Falle mehrerer aufeinanderfolgender Änderungen wird deren Wert auf der Grundlage des kumulierten Werts der aufeinanderfolgenden Änderungen bestimmt.

Or. de

#### *Justification*

*Der Wert einer Auftragserhöhung von 5 % ist zu gering, da danach fast jede geringe Änderung als wesentliche Änderung eingestuft werden würde. Insbesondere bei öffentlichen Bauvorhaben würde dieser Wert zu einer unverhältnismäßigen Bürokratie führen. Ein Wert von 10 % erscheint in der Praxis wesentlich realistischer.*

#### **Amendment 1362**

**Frank Engel, Constance Le Grip**

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

#### **Article 72 – paragraph 4**

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

4. Lorsque la valeur d'une modification peut être exprimée en termes monétaires, celle-ci n'est pas considérée comme substantielle au sens du paragraphe 1 lorsque sa valeur ne dépasse pas les seuils fixés à l'article 4 et est inférieure à 5 % du prix du marché initial, à condition que la modification ne change pas la nature globale du marché. Lorsque plusieurs modifications successives sont effectuées, la valeur en question est la valeur cumulée des modifications successives.

##### *Amendment*

4. Lorsque la valeur d'une modification peut être exprimée en termes monétaires, celle-ci n'est pas considérée comme substantielle au sens du paragraphe 1 lorsque sa valeur ne dépasse pas les seuils fixés à l'article 4 et est inférieure à **15** % du prix du marché initial, à condition que la modification ne change pas la nature globale du marché. Lorsque plusieurs modifications successives sont effectuées, la valeur en question est la valeur cumulée des modifications successives.

Or. fr

#### **Amendment 1363**

**Marc Tarabella**

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

#### **Article 72 – paragraph 4**



*Text proposed by the Commission*

4. Lorsque la valeur d'une modification peut être exprimée en termes monétaires, celle-ci n'est pas considérée comme substantielle au sens du paragraphe 1 lorsque sa valeur ne dépasse pas les seuils fixés à l'article 4 *et* est inférieure à 5 % du prix du marché initial, à condition que la modification ne change pas la nature globale du marché. Lorsque plusieurs modifications successives sont effectuées, la valeur en question est la valeur cumulée des modifications successives.

*Amendment*

4. Lorsque la valeur d'une modification peut être exprimée en termes monétaires, celle-ci n'est pas considérée comme substantielle au sens du paragraphe 1 lorsque sa valeur ne dépasse pas les seuils fixés à l'article 4 *ou* est inférieure à 10% du prix du marché initial, à condition que la modification ne change pas la nature globale du marché. Lorsque plusieurs modifications successives sont effectuées, la valeur en question est la valeur cumulée des modifications successives.

Or. fr

**Amendment 1364**

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

**Proposal for a directive  
Article 72 – paragraph 4**

*Text proposed by the Commission*

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, *where its value does not exceed the thresholds set out in Article 4 and* where it is below 5 % of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

*Amendment*

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1 where it is below 20 % of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Or. en

**Amendment 1365  
Philippe Juvin**

**Proposal for a directive**  
**Article 72 – paragraph 4**

*Text proposed by the Commission*

4. Lorsque la valeur d'une modification peut être exprimée en termes monétaires, celle-ci n'est pas considérée comme substantielle au sens du paragraphe 1 lorsque sa valeur ne dépasse pas les seuils fixés à l'article 4 et est inférieure à 5 % du prix du marché initial, à condition que la modification ne change pas la nature globale du marché. Lorsque plusieurs modifications successives sont effectuées, la valeur en question est la valeur cumulée des modifications successives.

*Amendment*

4. Lorsque la valeur d'une modification peut être exprimée en termes monétaires, celle-ci n'est pas considérée comme substantielle au sens du paragraphe 1 lorsque sa valeur ne dépasse pas les seuils fixés à l'article 4 et est inférieure à 5 % du prix **actualisé** du marché initial, à condition que la modification ne change pas la nature globale du marché. Lorsque plusieurs modifications successives sont effectuées, la valeur en question est la valeur cumulée des modifications successives.

Or. fr

*Justification*

*Prise en compte du prix actualisé du contrat initial, qui paraît être une référence plus juste.*

**Amendment 1366**  
**Pablo Arias Echeverría**

**Proposal for a directive**  
**Article 72 – paragraph 4**

*Text proposed by the Commission*

4. Cuando el valor de una modificación pueda expresarse en términos monetarios, la modificación no se considerará sustancial a efectos del apartado 1 cuando su valor **no supere los umbrales fijados en el artículo 4** y sea inferior al 5 % del precio del contrato inicial, siempre que la modificación no altere la naturaleza global del contrato. Cuando se efectúen varias modificaciones sucesivas, el valor se calculará sobre la base del valor acumulado de las sucesivas modificaciones.

*Amendment*

4. Cuando el valor de una modificación pueda expresarse en términos monetarios, la modificación no se considerará sustancial a efectos del apartado 1 cuando su valor sea inferior al **10** % del precio del contrato inicial, siempre que la modificación no altere la naturaleza global del contrato. Cuando se efectúen varias modificaciones sucesivas, el valor se calculará sobre la base del valor acumulado de las sucesivas modificaciones.

**Amendment 1367**

Lara Comi

**Proposal for a directive****Article 72 – paragraph 4***Text proposed by the Commission*

4. Se il valore della modifica può essere espresso in termini monetari, la modifica non è considerata sostanziale ai sensi del paragrafo 1 quando il suo valore non supera **le soglie stabilite nell'articolo 4 ed è inferiore al 5%** del prezzo del contratto iniziale, sempre che la modifica non alteri la natura globale del contratto. In caso di numerose modifiche successive, il valore è accertato sulla base del valore complessivo delle successive modifiche.

*Amendment*

4. Se il valore della modifica può essere espresso in termini monetari, la modifica non è considerata sostanziale ai sensi del paragrafo 1 quando il suo valore non supera **il 20%** del prezzo del contratto iniziale, sempre che la modifica non alteri la natura globale del contratto. In caso di numerose modifiche successive, il valore è accertato sulla base del valore complessivo delle successive modifiche.

Or. it

**Amendment 1368**

Raffaele Baldassarre

**Proposal for a directive****Article 72 – paragraph 4***Text proposed by the Commission*

4. Se il valore della modifica può essere espresso in termini monetari, la modifica non è considerata sostanziale ai sensi del paragrafo 1 quando il suo valore non supera **le soglie stabilite nell'articolo 4 ed è inferiore al 5%** del prezzo del contratto iniziale, sempre che la modifica non alteri la natura globale del contratto. In caso di numerose modifiche successive, il valore è accertato sulla base del valore complessivo delle successive modifiche.

*Amendment*

4. Se il valore della modifica può essere espresso in termini monetari, la modifica non è considerata sostanziale ai sensi del paragrafo 1 quando il suo valore non supera **il 10 %** del prezzo del contratto iniziale, sempre che la modifica non alteri la natura globale del contratto. In caso di numerose modifiche successive, il valore è accertato sulla base del valore complessivo delle successive modifiche.

Or. it

**Amendment 1369**  
**Matteo Salvini, Francesco Enrico Speroni**

**Proposal for a directive**  
**Article 72 – paragraph 4**

*Text proposed by the Commission*

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 4 and where it is below 5 % of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

*Amendment*

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 4 and where it is below **15** % of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Or. en

*Justification*

*In 2000, the ECJ acknowledged that an increase of 10% did not require a new procurement procedure (5/10/2000, case C-337/98, Commission of the European Communities v French Republic). Setting the threshold at 5% would prevent any modification of contracts during their term. It would lead to problematic consequences in executing contracts. A 15% threshold takes up the solutions developed by national and European case law and aims at avoiding misuse in the application of the procurement rules.*

**Amendment 1370**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 72 – paragraph 4**

*Text proposed by the Commission*

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be

*Amendment*

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be

substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 4 and where it is below 5 % of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 4 and where it is below 15 % of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Or. en

### *Justification*

*The threshold should be amended to 15 % which is in line with today's case law in order to give the margins of manoeuvre to the contracting authority and the contractor allowing them to respond to changing circumstances.*

### **Amendment 1371**

**Marc Tarabella**

### **Proposal for a directive Article 72 – paragraph 5**

#### *Text proposed by the Commission*

5. Les modifications du marché ne sont pas considérées comme substantielles au sens du paragraphe 1 lorsqu'elles ont été prévues dans les documents de marché sous la forme de clauses de réexamen *ou* d'options claires, précises et univoques. Ces clauses indiquent le champ d'application et la nature des éventuelles modifications ou options ainsi que les conditions dans lesquelles il peut en être fait usage. Elles ne permettent pas de modifications ou d'options qui changeraient la nature globale du marché.

#### *Amendment*

5. Les modifications du marché ne sont pas considérées comme substantielles au sens du paragraphe 1 lorsqu'elles ont été prévues dans les documents de marché sous la forme de clauses de réexamen, d'options claires, précises et univoques, *ainsi que sous la forme de clause de révision de prix ou de clauses relatives aux modalités de fixation des prix*. Ces clauses indiquent le champ d'application et la nature des éventuelles modifications ou options ainsi que les conditions dans lesquelles il peut en être fait usage. Elles ne permettent pas de modifications ou d'options qui changeraient la nature globale du marché.

Or. fr

**Amendment 1372**  
**Pablo Arias Echeverría**

**Proposal for a directive**  
**Article 72 – paragraph 5**

*Text proposed by the Commission*

5. Las modificaciones de un contrato no se considerarán sustanciales a efectos del apartado 1 cuando hayan sido previstas en la documentación de la contratación, en opciones o cláusulas de revisión claras, precisas e inequívocas. En dichas cláusulas se indicará el alcance y la naturaleza de las posibles modificaciones u opciones, así como las condiciones en que podrán aplicarse. No establecerán modificaciones u opciones que puedan alterar la naturaleza global del contrato.

*Amendment*

5. Las modificaciones de un contrato no se considerarán sustanciales a efectos del apartado 1 cuando hayan sido previstas en la documentación de la contratación, en opciones o cláusulas de revisión claras, precisas e inequívocas, ***o se deriven de errores u omisiones en la documentación de la contratación facilitados por los poderes o entidades adjudicadores.*** En dichas cláusulas se indicará el alcance y la naturaleza de las posibles modificaciones u opciones, así como las condiciones en que podrán aplicarse. No establecerán modificaciones u opciones que puedan alterar la naturaleza global del contrato.

Or. es

**Amendment 1373**  
**Philippe Juvin**

**Proposal for a directive**  
**Article 72 – paragraph 6 – subparagraph 1 – point c**

*Text proposed by the Commission*

(c) une éventuelle augmentation de prix ne résulte pas en une valeur de marché supérieure de plus de 50 % ***au*** marché initial.

*Amendment*

(c) une éventuelle augmentation de prix ne résulte pas en une valeur de marché supérieure de plus de 50 % ***à la valeur actualisée du*** marché initial.

Or. fr

*Justification*

*Prise en compte du prix actualisé du contrat initial, qui paraît être une référence plus juste.*

**Amendment 1374**  
**Heide Rühle**

**Proposal for a directive**  
**Article 72 – paragraph 7**

*Text proposed by the Commission*

7. Contracting authorities shall not have recourse to modifications of the contract ***in the following cases:***

***(a) where the modification would aim at remedying deficiencies in the performance of the contractor or the consequences, which can be remedied through the enforcement of contractual obligations;***

***(b) where the modification would aim at compensating risks of price increases that have been hedged by the contractor.***

*Amendment*

7. Contracting authorities shall not have recourse to modifications of the contract where the modification would aim at compensating risks of price increases that have been hedged by the contractor.

Or. en

*Justification*

*Concerning the deletion of point a): Problematic - no contracting authority can easily dispense with claims arising from deficiencies in the performance of the contractor in order to avoid a new procurement procedure.*

**Amendment 1375**  
**Philippe Juvin**

**Proposal for a directive**  
**Article 72 – paragraph 7 – introductory part**

*Text proposed by the Commission*

7. Les pouvoirs adjudicateurs ne ***recourent*** pas à ***une*** modification du marché dans les cas suivants:

*Amendment*

7. Les pouvoirs adjudicateurs ne ***peuvent*** pas ***se prévaloir des dispositions du présent article en matière de*** modification du marché dans les cas suivants:

*Justification*

*Clarification de la formulation de la proposition de Directive qui est ambiguë.*

**Amendment 1376****Andreas Schwab****Proposal for a directive****Article 72 – paragraph 7 – point a***Text proposed by the Commission**Amendment*

***(a) wenn die Änderung den Zweck hat, Mängeln in der Leistungserbringung des Auftragnehmers oder deren Folgen abzuwenden, was sich im Wege der Durchsetzung der vertraglichen Verpflichtungen bewerkstelligen lässt;*** ***entfällt***

Or. de

*Justification*

*Bei komplexen Projekten würden pragmatische Auftragsänderungen zur Realisierung des Auftrags verhindert. Der Auftraggeber wäre gezwungen, die - im Einzelfall ggf. unzumutbaren oder sogar technische unmöglichen - vertraglichen Verpflichtungen des Auftragnehmers, die in der Regel allein der Auftraggeber als Mangel qualifiziert (und der Auftragnehmer bestreitet) auf dem Rechtswege durchzusetzen. Dies würde zu Rechtsunsicherheit und Verzögerung bei der Auftragsausführung führen.*

**Amendment 1377****Heide Rühle****Proposal for a directive****Article 73 – paragraph 1 – introductory part***Text proposed by the Commission**Amendment*

Member States shall ensure that contracting authorities have the possibility, under the conditions determined by the applicable national contract law, to

**I.** Member States shall ensure that contracting authorities have the possibility, under the conditions determined by the applicable national contract law, to



terminate a public contract during its term, where one of the following conditions is fulfilled:

terminate a public contract during its term, where one of the following conditions is fulfilled:

Or. en

#### **Amendment 1378**

**Sari Essayah**

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

#### **Article 73 – paragraph 1 – introductory part**

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

Member States shall ensure that contracting authorities *have* the possibility, under the conditions determined by the applicable national contract law, to terminate a public contract during its term, *where* one of the following conditions is fulfilled:

##### *Amendment*

Member States shall ensure that *the national contract law is followed when terminating a public procurement contract. Member States may, when giving* contracting authorities the possibility under the conditions determined by the applicable national contract law to terminate a public contract during its term, *require that* one of the following conditions is fulfilled:

Or. en

#### **Amendment 1379**

**Philippe Juvin**

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

#### **Article 73 – paragraph 1 – point a**

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

(a) les exceptions prévues à l'article 11 cessent de s'appliquer à la suite d'une participation privée dans la personne morale qui s'est vu attribuer le marché conformément à l'article 11, *paragraphe 4*;

##### *Amendment*

(a) les exceptions prévues à l'article 11 cessent de s'appliquer à la suite d'une participation privée dans la personne morale qui s'est vu attribuer le marché conformément à l'article 11;

Or. fr

*Justification*

*Il n'est pas justifié de limiter cette disposition relative à la résiliation des marchés publics aux seuls accords relatifs à la coopération horizontale (article 11.4). Elle devrait s'appliquer à tous les cas prévus à l'article 11 (in-house, in-house conjoint).*

**Amendment 1380**

**Pablo Arias Echeverría**

**Proposal for a directive**

**Article 73 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) que una modificación del contrato constituya una nueva adjudicación, a efectos de lo dispuesto en el artículo 72;*

*suprimido*

Or. es

**Amendment 1381**

**Heide Rühle**

**Proposal for a directive**

**Article 73 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

*(c) the Court of Justice of the European Union finds, in a procedure pursuant to Article 258 of the Treaty, that a Member State has failed to fulfil its obligations under the Treaties due to the fact that a contracting authority belonging to that Member State has awarded the contract in question without complying with its obligations under the Treaties and this Directive.*

*deleted*

Or. en

**Amendment 1382**

**Pablo Arias Echeverría**

**Proposal for a directive**  
**Article 73 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

*(c) que el Tribunal de Justicia de la Unión Europea resuelva, en un procedimiento con arreglo al artículo 258 del Tratado de Funcionamiento de la Unión Europea, que un Estado miembro ha incumplido las obligaciones que le incumben en virtud de los Tratados, debido al hecho de que un poder adjudicador perteneciente a dicho Estado miembro ha adjudicado el contrato en cuestión sin cumplir las obligaciones que le incumben en virtud de los Tratados y la presente Directiva.*

*suprimido*

Or. es

**Amendment 1383**  
**Andreas Schwab, Frank Engel, Jürgen Creutzmann**

**Proposal for a directive**  
**Article 73 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

(c) Der Gerichtshof der Europäischen Union entscheidet in einem Verfahren nach Artikel 258 des Vertrags, dass ein Mitgliedstaat gegen eine Verpflichtung aus den Verträgen dadurch verstoßen hat, dass ein öffentlicher Auftraggeber dieses Mitgliedstaates den in Frage stehenden Auftrag vergeben hat, ohne dabei seinen Verpflichtungen aus den Verträgen und aus dieser Richtlinie nachzukommen.

(c) Der Gerichtshof der Europäischen Union entscheidet in einem Verfahren nach Artikel 258 des Vertrags, dass ein Mitgliedstaat gegen eine Verpflichtung aus den Verträgen dadurch verstoßen hat, dass ein öffentlicher Auftraggeber dieses Mitgliedstaates den in Frage stehenden Auftrag vergeben hat, ohne dabei seinen Verpflichtungen aus den Verträgen und aus dieser Richtlinie nachzukommen. ***Ein Auftragnehmer, der keine Kenntnis von Rechtsverstoß des öffentlichen Auftraggebers hatte, kann Ersatz für den ihm durch die Kündigung entstandenen Schaden beanspruchen.***

Or. de

*Justification*

*Ein Auftragnehmer, der keine Kenntnis von dem Rechtsverstoß des Auftraggebers hatte, sollte Ersatz für im Vertrauen auf den Bestand des Vertrages getätigte Anwendungen bzw. ihm entstandenen Schaden beanspruchen können.*

**Amendment 1384**  
**Heide Rühle**

**Proposal for a directive**  
**Article 73 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Where successive modifications which are beyond the control of the tenderer render the public contract impossible to perform, except for the tying-up of disproportionate investments, Member States shall ensure that tenderers can, under the conditions determined by the applicable national contract law:***

***(a) ask for the compensation of any additional service necessary for the performance of the contract;***

***(b) claim for the termination of the contract.***

Or. en

**Amendment 1385**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 73 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. In the absence of fault of the contractual partner, Member States shall ensure a right to compensation, when a contracting authority decides or is required to terminate a public contract during its term.***

**Amendment 1386**  
**Evelyne Gebhardt, Birgit Sippel**

**Proposal for a directive**  
**Article 73 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 73a**

*Die Mitgliedstaaten verfügen über einen weiten Ermessensspielraum bei der organisatorischen Gestaltung der Auswahl der Dienstleistungserbringer in einer Weise, die ihnen am zweckmäßigsten erscheint; es steht ihnen frei, selbst soziale Dienstleistungen und andere spezifische Dienstleistungen zu erbringen oder ihre Erbringung auf eine andere Weise zu organisieren, die nicht mit dem Abschluss öffentlicher Aufträge einhergeht, sofern ein solches System die Einhaltung der Grundprinzipien der Transparenz und Nichtdiskriminierung gewährleistet.*

Or. de

**Amendment 1387**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 73 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 73a**

*In the case of violation of the content of the contract, and economic operator having not been able to fulfill the obligations as defined in the contract, public authorities are obliged to define and set sanctions in relation to the market*

*value of the contract to disincentive effectively the contract impeachments.*

Or. en

**Amendment 1388**  
**Sergio Gaetano Cofferati**

**Proposal for a directive**  
**Article 73 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 73a**

***Monitoring of contract performance and register of non-compliance***

***1. Contracting authorities may monitor the performance of the contractor awarded the contract and, at appropriate stages during the contract term, carry out an assessment of performance using a method 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 within a reasonable timeframe and to obtain judicial protection.***

***2. Where an assessment is carried out in accordance with paragraph 1 and an economic operator or a subcontractor appointed for that contract by the economic operator has been found to have shown significant or persistent deficiencies in the performance of any substantive requirement under the contract and the economic operator has not objected to the findings or the economic operator's objections have not been validated through seeking judicial protection, the contracting authority shall communicate the fact and the necessary detail of the such an assessment to the supervisory and administrative authorities***

*as referred to in Articles 84 and 88.*

*3. In that case the economic operator shall be inscribed in an official register of non-compliance, managed by the supervisory and administrative authorities as referred to in Articles 84 and 88.*

*4. Member States shall ensure that contracting authorities can easily consult the official registers of non-compliance and obtain information and assistance with regard to the application of this Article through the assistance provided by supervisory and administrative authorities as mentioned in Articles 84, 87 and 88.*

Or. en

**Amendment 1389**  
**Christel Schaldemose**

**Proposal for a directive**  
**Article 74**

*Text proposed by the Commission*

*Amendment*

**Article 74**

**udgår**

*Tildeling af kontrakter vedrørende sociale tjenesteydelser og andre specifikke tjenesteydelser*

*Kontrakter vedrørende sociale tjenesteydelser og andre specifikke tjenesteydelser, der er anført i bilag XVI, tildeles i overensstemmelse med dette kapitel, når kontrakternes værdi svarer til eller overstiger tærskelværdien i artikel 4, litra d).*

Or. da

**Amendment 1390**  
**Frank Engel, Andreas Schwab**

**Proposal for a directive**  
**Article 74**

*Text proposed by the Commission*

*Amendment*

**Article 74**

**deleted**

***Award of contracts for social and other specific services***

***Contracts for social and other specific services listed in Annex XVI shall be awarded in accordance with this Chapter, where the value of the contracts is equal to or greater than the threshold indicated in Article 4 (d).***

Or. en

*Justification*

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

**Amendment 1391**  
**Rosa Estaràs Ferragut**

**Proposal for a directive**  
**Article 74 – title**

*Text proposed by the Commission*

*Amendment*

***Adjudicación*** de contratos de servicios sociales y otros servicios específicos

***Participación y adjudicación*** de contratos de servicios sociales y otros servicios específicos

Or. es

**Amendment 1392**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 74**

*Text proposed by the Commission*

*Amendment*

***Contracts*** for social and other specific

***Public contracts*** for social and other



services listed in Annex XVI shall be awarded in accordance with this Chapter, where the value of the contracts is equal to or greater than the threshold indicated in Article 4 (d).

specific services listed in Annex XVI shall be awarded in accordance with this Chapter, where the value of the contracts is equal to or greater than the threshold indicated in Article 4 (d).

Or. en

*Justification*

*To be read in conjunction with AMs proposing a compromise on Social and other Services, to avoid reinstating Part B services and deleting this section.*

**Amendment 1393**  
**Robert Rochefort**

**Proposal for a directive**  
**Article 74**

*Text proposed by the Commission*

Les marchés pour les services sociaux et les autres services spécifiques énumérés à l'annexe **XVI** sont attribués conformément au présent chapitre lorsque la valeur des marchés égale ou dépasse le seuil défini à l'article 4, point d).

*Amendment*

Les marchés pour les services sociaux et les autres services spécifiques énumérés à l'annexe **XVI B** sont attribués conformément au présent chapitre lorsque la valeur des marchés égale ou dépasse le seuil défini à l'article 4, point d).

Or. fr

**Amendment 1394**  
**Marc Tarabella**

**Proposal for a directive**  
**Article 74**

*Text proposed by the Commission*

*Les marchés* pour les services sociaux et les autres services spécifiques énumérés à l'annexe XVI sont attribués conformément au présent chapitre lorsque la valeur des marchés égale ou dépasse le seuil défini à l'article 4, point d).

*Amendment*

*Sans préjudice de la liberté des États membres et/ou des pouvoirs adjudicateurs de fournir des services sociaux et autres services spécifiques ainsi que de les organiser sans avoir recours à une procédure de passation d'un marché*

*public, les contrats* pour les services sociaux et les autres services spécifiques énumérés à l'annexe XVI sont attribués conformément au présent chapitre lorsque la valeur des marchés égale ou dépasse le seuil défini à l'article 4, point d).

Or. fr

## **Amendment 1395**

**Cornelis de Jong**

### **Proposal for a directive**

#### **Article 74**

*Text proposed by the Commission*

**Contracts for** social and other specific services listed in Annex XVI shall be awarded in accordance with this Chapter, where the value of the contracts is equal to or greater than the threshold indicated in Article 4 (d).

*Amendment*

**Without prejudice to the freedom of Member States and/or public authorities to provide** social services and other specific services listed in Annex XVI **themselves or to organise them in a way that does not entail the conclusion of public contracts, contracts for social and other specific services listed in Annex XVI** shall be awarded in accordance with this Chapter, where the value of the contracts is equal to or greater than the threshold indicated in Article 4 (d).

Or. en

## **Amendment 1396**

**Rosa Estaràs Ferragut**

### **Proposal for a directive**

#### **Article 74 bis (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 74 bis**

**Los Estados miembros podrán reservar el derecho a participar en los procedimientos de contratación en servicios sociales a entidades sin ánimo de**

*lucro cuyo objeto principal sea la ejecución de programas en el ámbito del servicio social objeto de licitación, o cuyo objeto social sea la protección de los derechos de las personas de los colectivos vulnerables a los que vayan destinados los servicios sociales objeto de licitación.*

*Se entenderá por entidades sin ánimo de lucro aquellas que reinviertan un mínimo del 70% de los resultados positivos que obtengan en un ejercicio económico en la mejora de la actividad que desarrollan o de los servicios que prestan*

Or. es

**Amendment 1397**  
**Christel Schaldemose**

**Proposal for a directive**  
**Article 75**

*Text proposed by the Commission*

*Amendment*

**Article 75**

**udgår**

**Offentliggørelse af bekendtgørelser**

**1. Ordregivende myndigheder, som har til hensigt at tildele en offentlig kontrakt for tjenesteydelserne i artikel 74, tilkendegiver deres hensigt herom ved en udbudsbekendtgørelse.**

**2. Ordregivende myndigheder, der har tildelt en offentlig kontrakt for tjenesteydelserne i artikel 74, meddeler resultaterne af udbudsproceduren ved en bekendtgørelse om indgåede kontrakter.**

**3.**

**De bekendtgørelser, der er omtalt i stk. 1 og 2, skal indeholde de oplysninger, der er nævnt i bilag VI, del H og I, i overensstemmelse med standardformularerne.**

**Kommissionen opretter standardformularerne. De tilhørende**

*gennemførelsesretsakter vedtages i henhold til rådgivningsproceduren i artikel 91.*

*4. De bekendtgørelser, der er omtalt i stk. 1 og 2, offentliggøres i overensstemmelse med artikel 49.*

Or. da

**Amendment 1398**  
**Frank Engel, Andreas Schwab**

**Proposal for a directive**  
**Article 75**

*Text proposed by the Commission*

*Amendment*

*Article 75*

*deleted*

*Publication of notices*

*1. Contracting authorities intending to award a public contract for the services referred to in Article 74 shall make known their intention by means of a contract notice.*

*2. Contracting authorities that have awarded a public contract for the services referred to in Article 74 shall make known the results of the procurement procedure by means of a contract award notice.*

*3. The notices referred to in paragraphs 1 and 2 shall contain the information referred to in Annexes VI Part H and I, in accordance with the standard forms.*

*The Commission shall establish the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.*

*4. The notices referred to in paragraphs 1 and 2 shall be published in accordance with Article 49.*

Or. en

*Justification*

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

**Amendment 1399**

**Heide Rühle**

**Proposal for a directive**

**Article 75 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

***1. Contracting authorities intending to award a public contract for the services referred to in Article 74 shall make known their intention by means of a contract notice.***

***deleted***

Or. en

**Amendment 1400**

**Wim van de Camp**

**Proposal for a directive**

**Article 75 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

***1. Aanbestedende diensten die voornemens zijn om een overheidsopdracht te gunnen voor de in artikel 74 bedoelde diensten, maken hun voornemen hiertoe kenbaar via een aankondiging van opdracht.***

***Schrappen***

Or. nl

*Justification*

*Een vooraankondiging met verplichte bekendmaking is een verzwaring van de huidige verplichtingen. De verplichting veroorzaakt administratieve lasten, terwijl transparantie momenteel ook wordt bereikt door de huidige publicatieverplichtingen voor aanbestedingen.*

## **Amendment 1401**

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

### **Proposal for a directive**

#### **Article 75 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

**1. Öffentliche Auftraggeber, die einen öffentlichen Auftrag zur Erbringung von in Artikel 74 aufgeführten Dienstleistungen planen, teilen ihre Absicht in einer Auftragsbekanntmachung mit.** **entfällt**

Or. de

#### *Justification*

*Sozialdienste und andere besondere Dienstleistungen im Sinne von Artikel 74 sind rein lokal und können aufgrund ihrer Natur nicht einfach grenzüberschreitend angeboten werden. Neue Vorschriften zur Ex-ante-Bekanntmachung für soziale und andere besondere Dienste führen zu mehr bürokratischem Aufwand, der für diese Kategorie von Dienstleistungen nicht angemessen ist. Transparenz kann schon durch die derzeit geltende Ex-post-Bekanntmachung gesichert werden.*

## **Amendment 1402**

**Peter Simon**

### **Proposal for a directive**

#### **Article 75 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

**1. Öffentliche Auftraggeber, die einen öffentlichen Auftrag zur Erbringung von in Artikel 74 aufgeführten Dienstleistungen planen, teilen ihre Absicht in einer Auftragsbekanntmachung mit.** **entfällt**

Or. de

**Amendment 1403**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 75 – paragraph 1**

*Text proposed by the Commission*

1. Contracting authorities intending to award a public contract for the services referred to in Article 74 shall make known their intention by means of a contract notice.

*Amendment*

1. Contracting authorities intending to award a public contract for the services referred to in Article 74 shall make known their intention by **any of the following** means:

**(a) by means of a contract notice, which shall contain the information referred to in Annexes VI Part H, in accordance with the standard forms;**

**(b) by means of a prior information notice, which shall be published continuously according to Article 49 and contain the information set out in Annex VI part I. The prior information notice shall refer specifically to the services that will be the subject of the contracts to be awarded. It shall indicate that the contracts will be awarded without further publication and invite interested economic operators to express their interest in writing.**

Or. en

*Justification*

*Key AM proposing a compromise on social and other services to avoid reinstating Part B Services. To be read in conjunction with the rise in threshold proposed.*

**Amendment 1404**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 75 – paragraph 2**

*Text proposed by the Commission*

2. Aanbestedende diensten die een

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*Amendment*

2. Aanbestedende diensten die een

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overheidsopdracht hebben gegund voor de in artikel 84 bedoelde diensten, maken de resultaten hiervan bekend in een aankondiging van een gegunde opdracht.

overheidsopdracht hebben gegund voor de in artikel 74 bedoelde diensten, maken de resultaten hiervan bekend in een aankondiging van een gegunde opdracht.

Or. nl

**Amendment 1405**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 75 – paragraph 2**

*Text proposed by the Commission*

2. Contracting authorities that have awarded a public contract for the services referred to in Article 74 shall make known the results of the procurement procedure by means of a contract award notice.

*Amendment*

2. Contracting authorities that have awarded a public contract for the services referred to in Article 74 shall make known the results of the procurement procedure by means of a contract award notice, **which shall contain the information referred to in Annexes VI Part J, in accordance with the standard forms.**

Or. en

*Justification*

*Part of the proposed compromise on social services to avoid having to re-instate Part B services.*

**Amendment 1406**  
**Heide Rühle**

**Proposal for a directive**  
**Article 75 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

3. The notices referred to in **paragraphs 1 and 2** shall contain the information referred to in Annexes VI Part **H and I, in accordance with the standard forms.**

*Amendment*

3. The notices referred to in **paragraph 2** shall contain the information referred to in Annexes VI Part I.



**Amendment 1407**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 75 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

3. De in de *leden 1 en 2* bedoelde aankondigingen bevatten de in bijlage VI, delen H en I, omschreven informatie in overeenstemming met de standaardformulieren.

*Amendment*

3. De in de *lid 1* bedoelde aankondigingen bevatten de in bijlage VI, delen H en I, omschreven informatie in overeenstemming met de standaardformulieren.

Or. nl

**Amendment 1408**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 75 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

3. The *notices* referred to in paragraphs 1 and 2 shall *contain* the *information* referred to in *Annexes VI Part H and I, in accordance with the standard forms*.

*Amendment*

3. The *Commission shall establish the standard forms* referred to in paragraphs 1 and 2. *Those implementing acts shall be adopted in accordance with the advisory procedure* referred to in *Article 91*.

Or. en

*Justification*

*Part of the proposed compromise on social and other services.*

**Amendment 1409**  
**Cornelis de Jong**

**Proposal for a directive**  
**Article 75 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

3. The **notices** referred to in **paragraphs 1 and 2** shall contain the information referred to in **Annexes VI Part H and I**, in accordance with the standard **forms**.

3. The **notice** referred to in **paragraph 2** shall contain the information referred to in **Annex I**, in accordance with the standard **form**.

Or. en

#### **Amendment 1410**

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

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

#### **Article 75 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

3. Bekanntmachungen nach **den Absätzen 1 und 2** enthalten im Einklang mit den Standardformularen die in Anhang VI Teile H und I genannten Angaben.

3. Bekanntmachungen nach **Absatz 2** enthalten im Einklang mit den Standardformularen die in Anhang VI Teile H und I genannten Angaben.

Or. de

#### *Justification*

*Folgeänderungsantrag zum Änderungsantrag derselben Verfasser zu Artikel 75 Abs. 1.*

#### **Amendment 1411**

**Peter Simon**

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

#### **Article 75 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

3. Bekanntmachungen nach **den Absätzen 1 und 2** enthalten im Einklang mit den Standardformularen die in Anhang VI Teile H und I genannten Angaben.

3. Bekanntmachungen nach **Absatz 2** enthalten im Einklang mit den Standardformularen die in Anhang VI Teile H und I genannten Angaben.

Or. de

**Amendment 1412**

**Heide Rühle**

**Proposal for a directive**

**Article 75 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*The Commission shall establish the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.*

*deleted*

Or. en

**Amendment 1413**

**Wim van de Camp**

**Proposal for a directive**

**Article 75 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*De Commissie stelt de standaardformulieren vast. Deze uitvoeringshandelingen worden vastgesteld overeenkomstig de in artikel 91 bedoelde raadplegingsprocedure.*

*Schrappen*

Or. nl

**Amendment 1414**

**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**

**Article 75 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*The Commission shall establish the standard forms. Those implementing acts shall be adopted in accordance with the*

*deleted*

*advisory procedure referred to in Article 91.*

Or. en

**Amendment 1415**

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

**Proposal for a directive**

**Article 75 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*Die Kommission erstellt die Standardformulare. Die entsprechenden Durchführungsrechtsakte werden nach dem Beratungsverfahren gemäß Artikel 91 erlassen.*

*entfällt*

Or. de

*Justification*

*Sozialdienste und andere besondere Dienstleistungen sind rein lokal und können aufgrund ihrer Natur nicht einfach grenzüberschreitend angeboten werden. Öffentliche Behörden müssen die EU-Grundsätze der Transparenz und Gleichbehandlung respektieren, wenn sie solche Dienste innerhalb ihrer nationalen Systeme bereitstellen. Neue Vorschriften zur Ex-ante-Bekanntmachung für soziale Dienste führen zu mehr bürokratischem Aufwand, der für diese Kategorie von Dienstleistungen nicht angemessen ist.*

**Amendment 1416**

**Peter Simon**

**Proposal for a directive**

**Article 75 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*Die Kommission erstellt die Standardformulare. Die entsprechenden Durchführungsrechtsakte werden nach dem Beratungsverfahren gemäß Artikel 91 erlassen.*

*entfällt*

**Amendment 1417**

**Heide Rühle**

**Proposal for a directive**

**Article 75 – paragraph 4**

*Text proposed by the Commission*

4. The notices referred to in *paragraphs 1 and 2* shall be published in accordance with Article 49.

*Amendment*

4. The notices referred to in *paragraph 2* shall be published in accordance with Article 49.

Or. en

*Justification*

*A specific treatment of services is only justified insofar it applies to all services of the same character, legal services – underlying the same principles of confidentiality should not be discriminated.*

**Amendment 1418**

**Wim van de Camp**

**Proposal for a directive**

**Article 75 – paragraph 4**

*Text proposed by the Commission*

4. De in de *leden 1 en 2* bedoelde aankondigingen worden bekendgemaakt overeenkomstig artikel 49.

*Amendment*

4. De in de *lid 1* bedoelde aankondigingen worden bekendgemaakt overeenkomstig artikel 49.

Or. nl

**Amendment 1419**

**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**

**Article 75 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. The notices referred to in **paragraphs 1 and 2** shall be published in accordance with Article 49.

4. The notices referred to in **this Article** shall be published in accordance with Article 49.

Or. en

*Justification*

*Part of the proposed compromise solution on social and other services, which avoids having to reintroduce Part B services.*

**Amendment 1420**

**Cornelis de Jong**

**Proposal for a directive  
Article 75 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. The **notices** referred to in **paragraphs 1 and 2** shall be published in accordance with Article 49.

4. The **notice** referred to in **paragraph 2** shall be published in accordance with Article 49.

Or. en

**Amendment 1421**

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

**Proposal for a directive  
Article 75 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. Bekanntmachungen nach **den Absätzen 1 und 2** werden im Einklang mit Artikel 49 veröffentlicht.

4. Bekanntmachungen nach **Absatz 2** werden im Einklang mit Artikel 49 veröffentlicht.

Or. de

*Justification*

*Folgebänderungsantrag zum Antrag derselben Verfasser zu Artikel 75 Abs. 1.*

**Amendment 1422**

**Peter Simon, Evelyne Gebhardt**

**Proposal for a directive**

**Article 75 – paragraph 4**

*Text proposed by the Commission*

4. Bekanntmachungen nach *den Absätzen 1 und 2* werden im Einklang mit Artikel 49 veröffentlicht.

*Amendment*

4. Bekanntmachungen nach *Absatz 2* werden im Einklang mit Artikel 49 veröffentlicht.

Or. de

**Amendment 1423**

**Christel Schaldemose**

**Proposal for a directive**

**Article 76**

*Text proposed by the Commission*

**Article 76**

***Principper for tildeling af kontrakter***

***1. Medlemsstaterne indfører passende udbudsprocedurer for kontrakter, der er omfattet af dette kapitel, og sikrer samtidig fuld overholdelse af principperne om gennemsigtighed og ligebehandling af økonomiske aktører samt giver de ordregivende myndigheder mulighed for at tage hensyn til de pågældende tjenesteydelsers særlige karakter.***

***2. Medlemsstaterne sikrer, at de ordregivende myndigheder har mulighed for at tage hensyn til behovet for at sikre tjenesteydelsernes kvalitet og kontinuitet, og at der er adgang til dem, samt at de er alment tilgængelige, og de forskellige brugeres særlige behov, at brugerne***

*Amendment*

***udgår***

*inddrages og får indflydelse samt innovation. Medlemsstaterne kan også fastsætte, at valget af tjenesteyderen ikke sker udelukkende på grundlag af prisen for leveringen af tjenesteydelsen.*

Or. da

**Amendment 1424**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 76**

*Text proposed by the Commission*

*Amendment*

*Article 76*

*Schrappen*

*Beginnelsen van gunning van overheidsopdrachten*

*1. De lidstaten voeren voor de gunning van onder dit hoofdstuk vallende opdrachten passende procedures in waarbij wordt gezorgd voor volledige naleving van de beginselen van transparantie en gelijke behandeling van ondernemers en aanbestedende diensten rekening kunnen houden met de specifieke kenmerken van de betrokken diensten.*

*2. De lidstaten zorgen ervoor dat aanbestedende diensten rekening kunnen houden met de noodzaak de kwaliteit, continuïteit, toegankelijkheid, beschikbaarheid en volledigheid van de diensten, de specifieke behoeften van verschillende categorieën gebruikers, de betrokkenheid en inspraak van gebruikers en de innovatie te verzekeren. De lidstaten kunnen ook bepalen dat de keuze van de dienstenaanbieder niet alleen op de prijs voor de verrichting van de dienst wordt gebaseerd.*

Or. nl



*Justification*

*Sociale diensten worden vaak lokaal en zonder grensoverschrijdende effecten verleend. Nieuwe verplichtingen op EU en nationaal niveau leiden tot onnodige administratieve lasten voor aanbestedende diensten en dienstverleners.*

**Amendment 1425**

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

**Proposal for a directive**

**Article 76**

*Text proposed by the Commission*

*Amendment*

**Article 76**

**entfällt**

***Grundsätze für die Vergabe von Aufträgen***

- 1. Die Mitgliedstaaten führen geeignete Verfahren für die Vergabe von unter dieses Kapitel fallenden Aufträgen ein, wobei sie die volle Einhaltung der Grundsätze der Transparenz und der Gleichbehandlung der Wirtschaftsteilnehmer sicherstellen und es den öffentlichen Auftraggebern ermöglichen, der Spezifik der jeweiligen Dienstleistungen Rechnung zu tragen.***
- 2. Die Mitgliedstaaten gewährleisten, dass die öffentlichen Auftraggeber der Notwendigkeit, Qualität, Kontinuität, Zugänglichkeit, Verfügbarkeit und Vollständigkeit der Dienstleistungen sicherzustellen, sowie den spezifischen Bedürfnissen verschiedener Nutzerkategorien, der Einbeziehung und Ermächtigung der Nutzer und dem Aspekt der Innovation Rechnung tragen können. Die Mitgliedstaaten können auch vorsehen, dass die Auswahl der Dienstleister nicht allein auf der Grundlage des Preises für die Erbringung der Dienstleistungen getroffen wird.***

Or. de

*Justification*

*Sozialdienste sind lokal und können aufgrund ihrer Natur nicht einfach grenzüberschreitend angeboten werden. Insbesondere im Bereich der sozialen und anderen besonderen Dienste sollten Vereinfachung und Flexibilität an erster Stelle stehen und neue bürokratische Hürden vermieden werden. Die Ex-post-Bekanntmachung ist hier angemessen und ausreichend, um die Prinzipien der Transparenz und der Gleichbehandlung zu gewährleisten.*

**Amendment 1426**

**Frank Engel, Andreas Schwab**

**Proposal for a directive**

**Article 76**

*Text proposed by the Commission*

*Amendment*

**Article 76**

**deleted**

***Principles of awarding contracts***

***1. Member States shall put in place appropriate procedures for the award of contracts subject to this Chapter, ensuring full compliance with the principles of transparency and equal treatment of economic operators and allowing contracting authorities to take into account the specificities of the services in question.***

***2. Member States shall ensure that contracting authorities may take into account the need to ensure quality, continuity, accessibility, availability and comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment of users and innovation. Member States may also provide that the choice of the service provider shall not be made solely on the basis of the price for the provision of the service.***

Or. en

*Justification*

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

**Amendment 1427**

**Heide Rühle**

**Proposal for a directive**

**Article 76 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

***1. Member States shall put in place appropriate procedures for the award of contracts subject to this Chapter, ensuring full compliance with the principles of transparency and equal treatment of economic operators and allowing contracting authorities to take into account the specificities of the services in question.***

***deleted***

Or. en

**Amendment 1428**

**Peter Simon**

**Proposal for a directive**

**Article 76 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

***1. Die Mitgliedstaaten führen geeignete Verfahren für die Vergabe von unter dieses Kapitel fallenden Aufträgen ein, wobei sie die volle Einhaltung der Grundsätze der Transparenz und der Gleichbehandlung der Wirtschaftsteilnehmer sicherstellen und es den öffentlichen Auftraggebern ermöglichen, der Spezifik der jeweiligen Dienstleistungen Rechnung zu tragen.***

***entfällt***

Or. de

**Amendment 1429**

**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 76 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall put in place **appropriate procedures** for the award of contracts subject to this Chapter, **ensuring full compliance** with the principles of transparency and equal treatment of economic operators **and allowing** contracting authorities to take into account the specificities of the services in question.

*Amendment*

1. Member States shall put in place **national rules** for the award of contracts subject to this Chapter **in order to ensure contracting authorities comply** with the principles of transparency and equal treatment of economic operators. **Member States are free to determine the procedural rules applicable as long as such rules allow** contracting authorities to take into account the specificities of the services in question.

Or. en

*Justification*

*To be read in conjunction with the other AMs proposing a compromise solution on social and other services, to avoid having to reintroduce Part B services.*

**Amendment 1430**

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

**Proposal for a directive**  
**Article 76 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall put in place **appropriate procedures** for the award of contracts subject to this Chapter, **ensuring full compliance with the** principles of transparency and equal treatment of economic operators **and allowing contracting authorities to** take into **account** the specificities of the services in question.

*Amendment*

1. Member States shall put in place **rules** for the award of contracts subject to this Chapter, **taking into account** principles of transparency and equal treatment of economic operators. **The rules shall** take into **consideration** the specificities of the services in question.

Or. en

*Justification*

*The wording of Article 76 of the Proposal needed clarification.*

**Amendment 1431**

**Marc Tarabella**

**Proposal for a directive**

**Article 76 – paragraph 1**

*Text proposed by the Commission*

1. Les États membres mettent en place, pour la passation des marchés dans le cadre du présent chapitre, des procédures adaptées qui assurent le respect total des principes de transparence et d'égalité de traitement des opérateurs économiques et qui permettent aux pouvoirs adjudicateurs de prendre en compte les spécificités des services en question.

*Amendment*

1. Les États membres mettent en place, pour la passation des marchés dans le cadre du présent chapitre, des procédures adaptées qui assurent le respect total des principes de transparence et d'égalité de traitement des opérateurs économiques et qui permettent aux pouvoirs adjudicateurs de prendre en compte les spécificités des services en question. ***Les États membres peuvent également prévoir que les pouvoirs adjudicateurs peuvent choisir de limiter la participation à une procédure d'appel d'offres pour la fourniture de services sociaux et de santé aux organismes sans but lucratif. L'avis de marché fait référence à cette disposition.***

Or. fr

**Amendment 1432**

**Heide Rühle**

**Proposal for a directive**

**Article 76 – paragraph 2**

*Text proposed by the Commission*

2. Member States shall ensure that contracting authorities may take into account the need to ensure quality, continuity, accessibility, availability and comprehensiveness of the services, the specific needs of different categories of

*Amendment*

2. Member States shall ensure that contracting authorities may take into account the need to ensure quality, continuity, accessibility, availability and comprehensiveness of the services, the specific needs of different categories of

users, the involvement and empowerment of users and innovation. **Member States may also provide that the choice of the service provider shall not be made solely on the basis of the price for the provision of the service.**

users, the involvement and empowerment of users and innovation.

Or. en

**Amendment 1433**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 76 – paragraph 2**

*Text proposed by the Commission*

2. Member States shall ensure that contracting authorities **may** take into account the need to ensure quality, continuity, accessibility, availability and comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment of users and innovation. Member States **may also** provide that the choice of the service provider shall not be made solely on the basis of the price for the provision of the service.

*Amendment*

2. Member States shall ensure that contracting authorities take into account the need to ensure **high** quality, continuity, accessibility, availability and comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment of users and innovation. Member States **shall** provide that the choice of the service provider shall not be made solely on the basis of the price for the provision of the service, **but take into account quality and sustainability criteria for social services as set out above. Contracting authorities may also refer to the criteria set out in the voluntary European Quality Framework for Social Services. Member States may also provide that contracting authorities can choose to limit the participation in a tender procedure for the provision of social and health services to non profit organisations if the specific need of each category of users so requires.**

Or. en

**Amendment 1434**  
**Evelyne Gebhardt, Birgit Sippel**

**Proposal for a directive**  
**Article 76 – paragraph 2**

*Text proposed by the Commission*

2. Die Mitgliedstaaten gewährleisten, dass die öffentlichen Auftraggeber der Notwendigkeit, Qualität, Kontinuität, Zugänglichkeit, Verfügbarkeit und Vollständigkeit der Dienstleistungen sicherzustellen, sowie den spezifischen Bedürfnissen verschiedener Nutzerkategorien, der Einbeziehung und Ermächtigung der Nutzer und dem Aspekt der Innovation Rechnung tragen können. Die Mitgliedstaaten **können auch vorsehen**, dass die Auswahl der Dienstleister nicht allein auf der Grundlage des Preises für die Erbringung der Dienstleistungen getroffen wird.

*Amendment*

2. Die Mitgliedstaaten gewährleisten, dass die öffentlichen Auftraggeber der Notwendigkeit, **eine hohe** Qualität, Kontinuität, Zugänglichkeit, **Erschwinglichkeit**, Verfügbarkeit und Vollständigkeit der Dienstleistungen sicherzustellen, sowie den spezifischen Bedürfnissen verschiedener Nutzerkategorien, **einschließlich benachteiligter und schutzbedürftiger Gruppen**, der Einbeziehung und Ermächtigung der Nutzer und dem Aspekt der Innovation Rechnung tragen können. Die Mitgliedstaaten **sehen vor**, dass die Auswahl der Dienstleister nicht allein auf der Grundlage des Preises für die Erbringung der Dienstleistungen getroffen wird, **sondern unter Berücksichtigung der oben erwähnten Qualitäts- und Nachhaltigkeitskriterien für soziale Dienstleistungen**.

Or. de

**Amendment 1435**  
**Rosa Estaràs Ferragut**

**Proposal for a directive**  
**Article 76 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2 bis. En orden a los principios de atención personalizada e integral, elección de la persona, continuidad en la atención y calidad, los estados miembros podrán establecer fórmulas que garanticen la continuidad en la prestación de dichos servicios por parte de las entidades que los venían prestando a las personas usuarias tanto con anterioridad**

*a la publicación de la presente Directiva,  
como con los que se adjudiquen a partir  
de la publicación de la misma.*

Or. es

**Amendment 1436**  
**Evelyne Gebhardt, Birgit Sippel**

**Proposal for a directive**  
**Article 76 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*2a. Die Mitgliedstaaten und/oder  
öffentlichen Auftraggeber gewährleisten,  
dass die Wirtschaftsteilnehmer die  
Verpflichtungen in Bezug auf die sozialen  
und beschäftigungsrelevanten  
Bedingungen, wie Gesundheit und  
Sicherheit am Arbeitsplatz, die soziale  
Sicherheit und die Arbeitsbedingungen  
einhalten, so wie sie in EU-  
Rechtsvorschriften, nationalen  
Rechtsvorschriften, Regelungen oder  
Verwaltungsvorschriften,  
Schiedssprüchen, Tarifvereinbarungen  
und -verträgen sowie 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 Mitgliedstaates  
Dienstleistungen in einem anderen  
Mitgliedstaat erbringen.*

Or. de

**Amendment 1437**  
**Anna Hedh**

**Proposal for a directive**  
**Article 76 – paragraph 2 a (new)**



*Text proposed by the Commission*

*Amendment*

***2a. Member States are free to prescribe that social and other specific services listed in Annex XVI are to be undertaken in a specific type of economic operator.***

Or. en

*Justification*

*To prevent that social services are undertaken in a type of company that only promotes profit and does not promote care for individuals Member States should be allowed to prescribe that social services are to be undertaken in a specific form of company.*

### **Amendment 1438**

**Matteo Salvini, Francesco Enrico Speroni**

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

**Article 76 – paragraph 2 bis (new)**

*Text proposed by the Commission*

*Amendment*

***2 bis. Gli Stati membri assicurano che le amministrazioni aggiudicatrici siano pienamente solvibili nei confronti degli operatori economici ed assicurano che le stesse amministrazioni costituiscano preventivamente un idoneo strumento di garanzia a tutela del credito dell'operatore.***

Or. it

*Justification*

*Non può più essere tollerato il prolungato stato di insolvenza delle pubbliche amministrazioni nei confronti delle imprese private per le opere e i servizi prestati. La costituzione di uno strumento di garanzia idoneo a tutelare il credito che l'operatore economico vanterebbe a seguito dell'esecuzione dell'opera potrebbe costituire uno strumento indispensabile al fine di garantirne l'effettiva retribuzione.*

**Amendment 1439**  
**Evelyne Gebhardt**

**Proposal for a directive**  
**Article 76 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. Die Mitgliedstaaten stellen sicher, dass die Vorschriften über die Abgabe von Unteraufträgen gemäß Artikel 71 eingehalten werden.***

Or. de

**Amendment 1440**  
**Anna Hedh**

**Proposal for a directive**  
**Article 76 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. In contracts for social and other specific services listed in Annex XVI, contracting authorities may require economic operators to re-invest in the specific operation any profit gained in the same operation or only allow non-profit entities as tenderers.***

Or. en

*Justification*

*To emphasize that contracting authorities have the right to impose demands that ensure that tax-payers money for social services is used for this purpose, also when they use public procurement and not only in in-house operations.*

**Amendment 1441**  
**Evelyne Gebhardt**

**Proposal for a directive**  
**Article 76 – paragraph 2 c (new)**

*Text proposed by the Commission*

*Amendment*

***2c. Die Mitgliedstaaten gewährleisten die Anwendung der in Artikel 55 dargelegten Ausschlussgründe.***

Or. de

**Amendment 1442**  
**Evelyne Gebhardt**

**Proposal for a directive**  
**Article 76 – paragraph 2 d (new)**

*Text proposed by the Commission*

*Amendment*

***2d. Bei der Auswahl des Dienstleistungserbringers können die Mitgliedstaaten in Erwägung ziehen, auf vorbehaltene Aufträge gemäß Artikel 17 zurückzugreifen.***

Or. de

**Amendment 1443**  
**Evelyne Gebhardt**

**Proposal for a directive**  
**Article 76 – paragraph 2 e (new)**

*Text proposed by the Commission*

*Amendment*

***e. Die öffentlichen Auftraggeber können spezifische Verträge für gemeinnützige Organisationen vorbehalten, die auf die Erbringung sozialer Dienstleistungen spezialisiert sind, wenn die Grundprinzipien der Transparenz und der Gleichbehandlung beachtet werden.***

Or. de

**Amendment 1444**  
**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**  
**Article 79 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Where the release of information on the outcome of the contest would impede law enforcement, be contrary to the public interest, or prejudice the legitimate commercial interests of a particular enterprise, whether public or private, or might prejudice fair competition between service providers, such information may be withheld from publication.*

*Amendment*

*The information on the outcome of the contest **will be released, unless the release** would impede law enforcement **or** be contrary to the public interest.*

Or. en

**Amendment 1445**  
**Andreas Schwab**

**Proposal for a directive**  
**Title 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**TITEL IIIa**  
**VORSCHRIFTEN IM BEREICH**  
**ÖFFENTLICHER**  
**BAUKONZESSIONEN**

*[Weitere spezifische Bestimmungen werden durch Kompromissanträge zu einem späteren Zeitpunkt hinzugefügt]*

Or. de

*Justification*

*Further specific provisions to be added at a later stage by means of compromise amendments*

**Amendment 1446**  
**Andreas Schwab**

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**Proposal for a directive**  
**Title 3 b (new)**

*Text proposed by the Commission*

*Amendment*

**TITEL IIIb**  
**VORSCHRIFTEN IM BEREICH**  
**ÖFFENTLICHER**  
**DIENSTLEISTUNGSKONZESSIONEN**

*Artikel (...)*

*Anwendbare Regelungen*

*Für Dienstleistungskonzessionen gelten die Regelungen dieser Richtlinie zu Baukonzessionen entsprechend.*

Or. de

*Justification*

*An dieser Stelle wird eine Diskussion geführt werden müssen, ob die Regelungen über die Bau- und Dienstleistungskonzessionen nicht in die Vergabekoordinierungsrichtlinie integriert werden sollten, um die Einheitlichkeit der Rechtsordnung sicherzustellen. Eine analoge Anwendung der Vorschriften über Baukonzessionen wird nicht an allen Stellen möglich sein, dies würde zu diskutieren sein.*

*Further specific provisions to be added at a later stage by means of compromise amendments.*

**Amendment 1447**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Title 4 – title**

*Text proposed by the Commission*

*Amendment*

**GOVERNANCE**

**ENFORCEMENT, REPORTING AND**  
**ADMINISTRATIVE COOPERATION**

Or. en

*Justification*

*Alternative proposals on governance.*

**Amendment 1448**  
**Evelyne Gebhardt, Birgit Sippel**

**Proposal for a directive**  
**Article 83 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*Haben sich bei einem  
Wirtschaftsteilnehmer oder einem  
Unterauftraggeber, der für einen Vertrag  
benannt worden ist, beträchtliche oder  
anhaltende Mängel bei der Erfüllung  
einer wesentlichen Auflage des Vertrags  
gezeigt, teilt der öffentliche Auftraggeber  
der Aufsichtsstelle und der  
Verwaltungsbehörde gemäß den Artikeln  
84 und 88 die Tatsachen und die  
notwendigen Einzelheiten mit.*

Or. de

**Amendment 1449**  
**Evelyne Gebhardt**

**Proposal for a directive**  
**Article 83 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

*Die Mitgliedstaaten stellen sicher, dass  
die öffentlichen Auftraggeber leicht  
Informationen und Hilfe in Bezug auf die  
Anwendung dieses Artikels über die in  
den Artikeln 84 und 88 vorgesehene  
Aufsichtsstelle und Verwaltungsbehörde  
erhalten können.*

Or. de

**Amendment 1450**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 83 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

***Overeenkomstig Richtlijn 89/665/EEG van de Raad zorgen de lidstaten voor een correcte tenuitvoerlegging van deze richtlijn door doeltreffende, beschikbare en transparante mechanismen ter aanvulling van het bestaande stelsel van beroepsmogelijkheden tegen beslissingen van aanbestedende diensten.***

***Schrappen***

Or. nl

*Justification*

*Het is overbodig om in een richtlijn op te nemen dat de richtlijn correct wordt toegepast.*

**Amendment 1451**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 83 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

***In conformity with Council Directive 89/665/EEC, Member States shall ensure correct application of this Directive by effective, available and transparent mechanisms which complement the system in place for the review of decisions taken by contracting authorities.***

***1. In order to effectively ensure correct and efficient implementation, Member States shall make sure that at least the tasks set out in this Article are performed by one or more authorities or structures. They shall indicate to the Commission all authorities or structures competent for these tasks.***

Or. en

*Justification*

*Alternative proposals on governance.*

**Amendment 1452**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 83 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Member States shall ensure that the application of public procurement rules is monitored including the implementation of projects co-financed by the Union with a view to detecting threats to the financial interests of the Union. This monitoring shall be used to prevent, detect and adequately report possible instances of procurement fraud, corruption, conflict of interest and other serious irregularities.***

***Where monitoring authorities or structures identify specific violations or systemic problems, they shall be empowered to refer those problems to national auditing authorities, courts or tribunals or other appropriate authorities or structures, such as the ombudsman, national Parliaments or committees thereof.***

Or. en

*Justification*

*Alternative proposals on governance.*

**Amendment 1453**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 83 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1b. The results of the monitoring activities pursuant to paragraph 2 shall be made available to the public through appropriate means of information. In***



*particular, Member States shall publish, at least biennially, an overview of the most frequent sources of wrong application or of legal uncertainty, including possible structural or recurring problems in the application of the rules, hereunder possible cases of fraud and other illegal behaviours.*

*Member States shall transmit to the Commission on a biennial basis, a general overview of their national sustainable procurement policies, describing the relevant national action plans and initiatives and, where known, their practical implementation. They shall also indicate the success rate of SMEs in public procurement; where it is lower than 50 % in terms of values of contracts awarded to SMEs, Member States shall indicate whether any initiatives are in place to increase this success rate.*

*On the basis of the data received, the Commission shall regularly issue a report on the implementation and best practices of such policies in the Internal Market.*

Or. en

#### *Justification*

*Alternative proposals on governance.*

**Amendment 1454**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 83 – paragraph 1 c (new)**

*Text proposed by the Commission*

*Amendment*

*Ic. Any person or body which does not have access to review procedures pursuant to Council Directive 89/665/EEC shall be given the possibility to indicate possible violations of this*

***Directive to a competent authority or structure which shall duly consider any sufficiently substantiated complaint and take appropriate measures subject to powers and competences provided for in national law.***

Or. en

*Justification*

*Alternative proposals on governance.*

**Amendment 1455**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 83 – paragraph 1 d (new)**

*Text proposed by the Commission*

*Amendment*

***1d. Member States shall ensure that guidance on the interpretation and application of the Union public procurement law is available free of charge to assist contracting authorities and economic operators in correctly applying the Union public procurement rules.***

Or. en

*Justification*

*Alternative proposals on governance.*

**Amendment 1456**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 83 – paragraph 1 e (new)**

*Text proposed by the Commission*

*Amendment*

***1e. Member States shall, without prejudice to the general procedures and working methods established by the Commission for its communications and contacts with Member States, designate a contact point for cooperation with the Commission as regards the application of Union law and the implementation of the budget from the Union on the basis of Article 17 of the Treaty on the European Union and Article 317 of the Treaty on the Functioning of the European Union.***

Or. en

*Justification*

*Alternative proposals on governance.*

**Amendment 1457**

**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**

**Article 83 – paragraph 1 f (new)**

*Text proposed by the Commission*

*Amendment*

***1f. Contracting authorities shall, at least for the duration of the contract, keep copies of all concluded contracts with a value equal to or greater than***

***(a) 1 000 000 EUR in the case of public supply contracts or public service contracts;***

***(b) 10 000 000 EUR in the case of public works contracts.***

***They shall grant access to these contracts in accordance with any applicable rules on access to documents and data protection.***

Or. en

*Justification*

*Alternative proposals on governance.*

**Amendment 1458**  
**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**  
**Article 83 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 83a**

**Register of non-compliance**

**1. If an economic operator violates the conditions set out in the contract, in particular regarding social and employment protection and working conditions and subcontracting, it shall be inscribed in a register of non-compliance of public procurement rules.**

**2. The register of non-compliance shall be processed and updated regularly by the supervisory and administrative authorities mentioned in Article 84 and 88. Contracting authorities shall have the right and the obligation to consult the register before awarding a public contract.**

Or. en

**Amendment 1459**  
**Evelyne Gebhardt, Birgit Sippel**

**Proposal for a directive**  
**Article 83 a (new)**

*Text proposed by the Commission*

*Amendment*

**Artikel 83a**

**Register der Nichteinhaltung**

**Verstößt ein Wirtschaftsteilnehmer gegen**

*die im Vertrag festgelegten Bedingungen, insbesondere in Bezug auf den sozialen Schutz und den Schutz der Beschäftigung, die Arbeitsbedingungen und die Vergabe von Unteraufträgen, wird er in ein Register der Nichteinhaltung eingetragen. Die Eintragung in einem Register der Nichteinhaltung ist ein Ausschlussgrund.*

Or. de

**Amendment 1460**  
**Heide Rühle**

**Proposal for a directive**  
**Article 84**

*Text proposed by the Commission*

*Amendment*

**Article 84**

**deleted**

**Public oversight**

***1. Member States shall appoint a single independent body responsible for the oversight and coordination of implementation activities (hereinafter 'the oversight body'). Member States shall inform the Commission of their designation.***

***All contracting authorities shall be subject to such oversight.***

***2. The competent authorities involved in the implementation activities shall be organised in such a manner that conflicts of interests are avoided. The system of public oversight shall be transparent. For this purpose, all guidance and opinion documents and an annual report illustrating the implementation and application of rules laid down in this Directive shall be published.***

***The annual report shall include the following:***

***(a) an indication of the success rate of***

*small and medium-sized enterprises (SMEs) in public procurement; where the percentage is lower than 50 % in terms of values of contracts awarded to SMEs, the report shall provide an analysis of the reasons therefore;*

*(b) a global overview of the implementation of sustainable procurement policies, including on procedures taking into account considerations linked to the protection of the environment, social inclusion including accessibility for persons with disabilities, or fostering innovation;*

*(c) information on the monitoring and follow-up of breaches to procurement rules affecting the budget of the Union in accordance with paragraphs 3 to 5 of the present article;*

*(d) centralized data about reported cases of fraud, corruption, conflict of interests and other serious irregularities in the field of public procurement, including those affecting projects cofinanced by the budget of the Union.*

**3. The oversight body shall be responsible for the following tasks:**

*(a) monitoring the application of public procurement rules and the related practice by contracting authorities and in particular by central purchasing bodies;*

*(b) providing legal advice to contracting authorities on the interpretation of public procurement rules and principles and on the application of public procurement rules in specific cases;*

*(c) issuing own-initiative opinions and guidance on questions of general interest pertaining to the interpretation and application of public procurement rules, on recurring questions and on systemic difficulties related to the application of public procurement rules, in the light of the provisions of this Directive and of the relevant case-law of the Court of Justice*

*of the European Union;*

*(d) establishing and applying comprehensive, actionable 'red flag' indicator systems to prevent, detect and adequately report instances of procurement fraud, corruption, conflict of interest and other serious irregularities;*

*(e) drawing the attention of the national competent institutions, including auditing authorities, to specific violations detected and to systemic problems;*

*(f) examining complaints from citizens and businesses on the application of public procurement rules in specific cases and transmitting the analysis to the competent contracting authorities, which shall have the obligation to take it into account in their decisions or, where the analysis is not followed, to explain the reasons for disregarding it;*

*(g) monitoring the decisions taken by national courts and authorities following a ruling given by the Court of Justice of the European Union on the basis of Article 267 of the Treaty or findings of the European Court of Auditors establishing violations of Union public procurement rules related to projects cofinanced by the Union; the oversight body shall report to the European Anti-Fraud Office any infringement to Union procurement procedures where these were related to contracts directly or indirectly funded by the European Union.*

*The tasks referred to in point (e) shall be without prejudice to the exercise of rights of appeal under national law or under the system established on the basis of Directive 89/665/EEC.*

*Member States shall empower the oversight body to seize the jurisdiction competent according to national law for the review of contracting authorities' decisions where it has detected a violation in the course of its monitoring and legal advising activity.*

***4. Without prejudice to the general procedures and working methods established by the Commission for its communications and contacts with Member States, the oversight body shall act as a specific contact point for the Commission when it monitors the application of Union law and the implementation of the budget from the Union on the basis of Article 17 of the Treaty on the European Union and Article 317 of the Treaty on the Functioning of the European Union. It shall report to the Commission any violation of this Directive in procurement procedures for the award of contracts directly or indirectly funded by the Union.***

***The Commission may in particular refer to the oversight body the treatment of individual cases where a contract is not yet concluded or a review procedure can still be carried out. It may also entrust the oversight body with the monitoring activities necessary to ensure the implementation of the measures to which Member States are committed in order to remedy a violation of Union public procurement rules and principles identified by the Commission.***

***The Commission may require the oversight body to analyse alleged breaches to Union public procurement rules affecting projects co-financed by the budget of the Union. The Commission may entrust the oversight body to follow-up certain cases and to ensure that the appropriate consequences of breaches to Union public procurement rules affecting projects co-financed are taken by the competent national authorities which will be obliged to follow its instructions.***

***5. The investigation and enforcement activities carried out by the oversight body to ensure that contracting authorities' decisions comply with this Directive and the principles of the Treaty shall not replace or prejudge the institutional role of the Commission as guardian of the***



*Treaty. When the Commission decides to refer the treatment of an individual case pursuant to paragraph 4, it shall also retain the right to intervene in accordance with the powers conferred to it by the Treaty.*

*6. Contracting authorities shall transmit to the national oversight body the full text of all concluded contracts with a value equal to or greater than*

*(a) 1 000 000 EUR in the case of public supply contracts or public service contracts;*

*(b) 10 000 000 EUR in the case of public works contracts.*

*7. Without prejudice to the national law concerning access to information, and in accordance with national and EU legislation on data protection, the oversight body shall, upon written request, give unrestricted and full direct access, free of charge, to the concluded contracts referred to in paragraph 6. Access to certain parts of the contracts may be refused where their disclosure would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.*

*Access to the parts that may be released shall be given within a reasonable delay and no later than 45 days from the date of the request.*

*The applicants filing a request for access to a contract shall not need to show any direct or indirect interest related to that particular contract. The recipient of information should be allowed to make it public.*

*8. A summary of all the activities carried out by the oversight body in accordance with paragraphs 1 to 7 shall be included in the annual report referred to in*

*paragraph 2.*

Or. en

*Justification*

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

**Amendment 1461**

**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**

**Article 84**

*Text proposed by the Commission*

*Amendment*

**Article 84**

**deleted**

**Public oversight**

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*Member States shall empower the oversight body to seize the jurisdiction competent according to national law for the review of contracting authorities' decisions where it has detected a violation in the course of its monitoring and legal advising activity.*

*4. Without prejudice to the general*

*procedures and working methods established by the Commission for its communications and contacts with Member States, the oversight body shall act as a specific contact point for the Commission when it monitors the application of Union law and the implementation of the budget from the Union on the basis of Article 17 of the Treaty on the European Union and Article 317 of the Treaty on the Functioning of the European Union. It shall report to the Commission any violation of this Directive in procurement procedures for the award of contracts directly or indirectly funded by the Union.*

*The Commission may in particular refer to the oversight body the treatment of individual cases where a contract is not yet concluded or a review procedure can still be carried out. It may also entrust the oversight body with the monitoring activities necessary to ensure the implementation of the measures to which Member States are committed in order to remedy a violation of Union public procurement rules and principles identified by the Commission.*

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*5. The investigation and enforcement activities carried out by the oversight body to ensure that contracting authorities' decisions comply with this Directive and the principles of the Treaty shall not replace or prejudge the institutional role of the Commission as guardian of the Treaty. When the Commission decides to*

*refer the treatment of an individual case pursuant to paragraph 4, it shall also retain the right to intervene in accordance with the powers conferred to it by the Treaty.*

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*8. A summary of all the activities carried out by the oversight body in accordance with paragraphs 1 to 7 shall be included in the annual report referred to in paragraph 2.*

*Justification*

*Alternative proposals on governance. This AM deletes Article 84 on Public Oversight entirely. Mandating one single national oversight body in each Member State would breach the principle of subsidiarity and would be impossible to implement for those Member States with devolved administrations or federal structures.*

**Amendment 1462**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 84**

*Text proposed by the Commission*

*Amendment*

*1. De lidstaten wijzen één onafhankelijke instantie aan die belast is met toezicht op en coördinatie van uitvoeringsactiviteiten (hierna "de toezichtsinstantie"). De lidstaten stellen de Commissie op de hoogte van de aangewezen instantie.*

*Schrappen*

*Alle aanbestedende diensten zijn onderworpen aan dit toezicht.*

*2. De bevoegde instanties die bij de uitvoeringsactiviteiten betrokken zijn, worden zo georganiseerd dat bevoegdheidsconflicten worden vermeden. Het stelsel van overheidstoezicht is transparant. Met dat doel worden richtsnoeren en adviezen alsmede een jaarverslag over de tenuitvoerlegging en toepassing van de in deze richtlijn vastgestelde regels bekendgemaakt.*

*Het jaarverslag bevat de volgende informatie:*

*(a) een vermelding over de slaagkansen van kleine en middelgrote ondernemingen (kmo's) in aanbestedingen; wanneer het slaagpercentage lager is dan 50% wat de waarde van aan kmo's gegunde opdrachten betreft, wordt in het verslag*

*onderzocht wat hiervoor de redenen zijn;*

*(b) een algemeen overzicht over de tenuitvoerlegging van het beleid inzake duurzame aanbestedingen, met inbegrip van procedures waarin rekening wordt gehouden met overwegingen inzake milieubescherming, sociale integratie, waaronder de toegankelijkheid voor personen met een handicap of bevordering van innovatie;*

*(c) informatie over het toezicht en de voortgangsbegeleiding, overeenkomstig de leden 3 tot en met 5 van dit artikel, van inbreuken op aanbestedingsregels die de begroting van de Unie raken;*

*(d) gecentraliseerde gegevens over gemelde gevallen van fraude, omkoping, belangenconflicten en andere ernstige onregelmatigheden op het gebied van overheidsaanbestedingen, met inbegrip van de gevallen die zich voordoen in door de begroting van de Unie medegefinancierde projecten.*

*3. De toezichtsinstantie is belast met de volgende taken:*

*(a) toezicht op de toepassing van de aanbestedingsregels en de daaraan verbonden praktijk van aanbestedende diensten en in het bijzonder van aankoopcentrales;*

*(b) juridisch advies aan aanbestedende diensten over de interpretatie van aanbestedingsregels en -beginselen en over de toepassing van aanbestedingsregels in specifieke gevallen;*

*(c) verstrekking van initiatiefadviezen en richtsnoeren over aangelegenheden van algemeen belang met betrekking tot de interpretatie en toepassing van aanbestedingsregels, vaak terugkerende vragen en systeemgebonden moeilijkheden betreffende de toepassing*



*van aanbestedingsregels, op basis van de bepalingen van deze richtlijn en de desbetreffende rechtspraak van het Hof van Justitie van de Europese Unie;*

*(d) invoering en toepassing van algemene, werkbare, 'red flag' indicatorsystemen om gevallen van fraude, corruptie, belangenconflicten en andere ernstige onregelmatigheden te voorkomen, op te sporen en op passende wijze te melden;*

*(e) bewustmaking van de bevoegde nationale instanties, waaronder de auditinstanties, met betrekking tot vastgestelde specifieke schendingen en systeemgebonden problemen;*

*(f) onderzoek van klachten van burgers en ondernemingen over de toepassing van aanbestedingsregels in specifieke gevallen en doorzending van de onderzoeksresultaten aan de bevoegde aanbestedende diensten, die verplicht zijn in hun beslissingen daarmee rekening te houden, of wanneer de onderzoeksresultaten niet worden gevolgd, de redenen voor de afwijzing daarvan toe te lichten;*

*(g) toezicht op de beslissingen van nationale gerechtelijke instanties en autoriteiten naar aanleiding van een uitspraak van het Hof van Justitie van de Europese Unie op basis van artikel 267 van het Verdrag of bevindingen van de Europese Rekenkamer waarin schendingen van de Europese aanbestedingsregels met betrekking tot door de Unie medegefinancierde projecten zijn vastgesteld; de toezichtsinstantie meldt elke inbreuk op aanbestedingsprocedures van de Unie aan het Europees Bureau voor fraudebestrijding wanneer deze betrekking heeft op opdrachten die direct of indirect door de Europese Unie worden gefinancierd.*

*De onder e) bedoelde taken laten de uitoefening van het recht van hoger beroep overeenkomstig nationaal recht of*

*overeenkomstig de bij Richtlijn 89/665/EEG ingevoerde regeling onverlet.*

*De lidstaten machtigen de toezichtsinstantie om in beroepsprocedures tegen beslissingen van aanbestedende diensten krachtens nationaal recht bevoegde gerechtelijke instanties aan te zoeken wanneer deze een schending heeft vastgesteld tijdens haar activiteiten van toezicht en juridisch advies.*

*4. Onverminderd de algemene procedures en werkmethoden die de Commissie heeft vastgesteld voor haar mededelingen aan en contacten met de lidstaten, treedt de toezichtsinstantie op als specifiek contactpunt voor de Commissie wanneer deze overeenkomstig artikel 17 van het Verdrag betreffende de Europese Unie en artikel 317 van het Verdrag betreffende de werking van de Europese Unie toeziet op de toepassing van het Europese recht en op de uitvoering van de begroting van de Unie. Zij brengt aan de Commissie verslag uit over elke schending van deze richtlijn in procedures voor de gunning van direct of indirect door de Unie gefinancierde opdrachten.*

*De Commissie kan de toezichtsinstantie in het bijzonder aanzoeken voor de behandeling van individuele gevallen wanneer de opdracht nog niet is gegund of het nog mogelijk is een beroepsprocedure in te stellen. Zij kan deze instantie ook belasten met de controleactiviteiten die noodzakelijk zijn ter uitvoering van de maatregelen waartoe lidstaten zich hebben verbonden om door de Commissie aangewezen schendingen van Europese aanbestedingsregels en beginselen te verhelpen.*

*De Commissie kan de toezichtsinstantie verzoeken beweerde inbreuken op de aanbestedingsregels van de Unie te onderzoeken met betrekking tot door de begroting van de Unie medegefinancierde projecten. Zij kan de toezichtsinstantie*

*belasten met de begeleiding van bepaalde gevallen om ervoor te zorgen dat ten aanzien van inbreuken op de aanbestedingsregels van de Unie met betrekking tot medegefinancierde projecten passende maatregelen worden genomen door de bevoegde nationale autoriteiten, die verplicht zijn de instructies van de toezichtsinstantie te volgen*

*5. De onderzoeks- en handhavingsactiviteiten die de toezichtsinstantie verricht om te verzekeren dat de beslissingen van de aanbestedende diensten voldoen aan deze richtlijn en de algemene beginselen van het Verdrag betreffende de werking van de Europese Unie, komen niet in de plaats van en doen niet af aan de institutionele rol van de Commissie als behoeder van het Verdrag. Wanneer de Commissie een individueel geval voor behandeling verwijst, behoudt zij voorts het recht om op te treden in overeenstemming met de haar krachtens het Verdrag verleende bevoegdheden.*

*6. De aanbestedende diensten verstrekken de nationale toezichtsinstantie de volledige tekst van alle gegunde opdrachten met een waarde die gelijk is aan of hoger dan:*

*(a) 1 000 000 euro in het geval van opdrachten voor leveringen of diensten;*

*(b) 10 000 000 euro in het geval van opdrachten voor werken*

*7. Onverminderd nationale wetgeving betreffende toegang tot informatie en in overeenstemming met nationale en EU-wetgeving betreffende gegevensbescherming geeft de toezichtsinstantie op schriftelijk verzoek kosteloze, onbeperkte, volledige en rechtstreekse toegang tot de in lid 6 bedoelde opdrachten. Toegang tot bepaalde delen van de opdrachten kan worden geweigerd wanneer de vrijgeving daarvan de handhaving van de wet in de*

*weg zou staan of anderszins in strijd zou zijn met het openbare belang, schade zou berokkenen aan de rechtmatige commerciële belangen van bepaalde publieke of particulier ondernemers of afbreuk zou kunnen doen aan de eerlijke mededinging tussen ondernemers.*

*Toegang tot de onderdelen die voor vrijgeving in aanmerking komen, wordt binnen een redelijke termijn verleend en niet later dan 45 dagen vanaf de datum van het verzoek.*

*De verzoekers die om toegang vragen, hoeven geen direct of indirect belang met betrekking tot de desbetreffende opdracht aan te tonen. De ontvanger van de informatie mag deze publiek maken.*

*8. Het in lid 2 genoemde verslag bevat eveneens een overzicht van alle activiteiten die de toezichtsinstantie overeenkomstig de leden 1 tot en met 6 uitoefent.*

Or. nl

#### *Justification*

*De eis om nationale toezichtsinstanties op te richten en deze instanties de tekst van alle gegunde opdrachten te vertrekken is duidelijk in strijd met het subsidiariteitsbeginsel. Er moet meer vertrouwen zijn in democratische controle op aanbestedende diensten. Bovendien leiden deze regels tot meer administratieve lasten voor de aanbestedende diensten.*

#### **Amendment 1463**

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

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

#### **Article 84**

*Text proposed by the Commission*

*Amendment*

*Article 84*

*deleted*

#### *Public oversight*

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*oversight and coordination of implementation activities (hereinafter 'the oversight body'). Member States shall inform the Commission of their designation.*

*All contracting authorities shall be subject to such oversight.*

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*(b) a global overview of the implementation of sustainable procurement policies, including on procedures taking into account considerations linked to the protection of the environment, social inclusion including accessibility for persons with disabilities, or fostering innovation;*

*(c) information on the monitoring and follow-up of breaches to procurement rules affecting the budget of the Union in accordance with paragraphs 3 to 5 of the present article;*

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***(c) issuing own-initiative opinions and guidance on questions of general interest pertaining to the interpretation and application of public procurement rules, on recurring questions and on systemic difficulties related to the application of public procurement rules, in the light of the provisions of this Directive and of the relevant case-law of the Court of Justice of the European Union;***

***(d) establishing and applying comprehensive, actionable 'red flag' indicator systems to prevent, detect and adequately report instances of procurement fraud, corruption, conflict of interest and other serious irregularities;***

***(e) drawing the attention of the national competent institutions, including auditing authorities, to specific violations detected and to systemic problems;***

***(f) examining complaints from citizens and businesses on the application of public procurement rules in specific cases and transmitting the analysis to the competent contracting authorities, which shall have the obligation to take it into account in their decisions or, where the analysis is not followed, to explain the reasons for disregarding it;***

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*4. Without prejudice to the general procedures and working methods established by the Commission for its communications and contacts with Member States, the oversight body shall act as a specific contact point for the Commission when it monitors the application of Union law and the implementation of the budget from the Union on the basis of Article 17 of the Treaty on the European Union and Article 317 of the Treaty on the Functioning of the European Union. It shall report to the Commission any violation of this Directive in procurement procedures for the award of contracts directly or indirectly funded by the Union.*

*The Commission may in particular refer to the oversight body the treatment of individual cases where a contract is not yet concluded or a review procedure can still be carried out. It may also entrust the oversight body with the monitoring activities necessary to ensure the implementation of the measures to which Member States are committed in order to remedy a violation of Union public*

*procurement rules and principles identified by the Commission.*

*The Commission may require the oversight body to analyse alleged breaches to Union public procurement rules affecting projects co-financed by the budget of the Union. The Commission may entrust the oversight body to follow-up certain cases and to ensure that the appropriate consequences of breaches to Union public procurement rules affecting projects co-financed are taken by the competent national authorities which will be obliged to follow its instructions.*

*5. The investigation and enforcement activities carried out by the oversight body to ensure that contracting authorities' decisions comply with this Directive and the principles of the Treaty shall not replace or prejudge the institutional role of the Commission as guardian of the Treaty. When the Commission decides to refer the treatment of an individual case pursuant to paragraph 4, it shall also retain the right to intervene in accordance with the powers conferred to it by the Treaty.*

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*impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.*

*Access to the parts that may be released shall be given within a reasonable delay and no later than 45 days from the date of the request.*

*The applicants filing a request for access to a contract shall not need to show any direct or indirect interest related to that particular contract. The recipient of information should be allowed to make it public.*

*8. A summary of all the activities carried out by the oversight body in accordance with paragraphs 1 to 7 shall be included in the annual report referred to in paragraph 2.*

Or. en

#### *Justification*

*Proposed regulation will significantly raise administrative burden on the side of Member States. Moreover, it will influence internal organisation of administration in Member States. Decisions with regard of activities to be undertaken in order to ensure correct application of the directive and responsible institutions should be left to the discretion of Member States.*

#### **Amendment 1464 Peter Simon**

#### **Proposal for a directive Article 84**

*Text proposed by the Commission*

*Amendment*

*1. Die Mitgliedstaaten benennen eine einzige unabhängige Stelle, die für die Beaufsichtigung und Koordinierung der Durchführungstätigkeiten verantwortlich ist (im Folgenden „die Aufsichtsstelle“). Die Mitgliedstaaten unterrichten die*

*entfällt*

***Kommission von dieser Benennung.***

***Alle öffentlichen Auftraggeber unterliegen einer solchen Aufsicht.***

***2. Die an den Durchführungstätigkeiten beteiligten öffentlichen Auftraggeber organisieren sich so, dass Interessenkonflikte vermeiden werden. Das System der öffentlichen Aufsicht muss transparent sein. Zu diesem Zweck werden alle Orientierungsdokumente und Stellungnahmen sowie ein Jahresbericht über die Durchführung und Anwendung der in dieser Richtlinie niedergelegten Vorschriften veröffentlicht.***

***Der Jahresbericht enthält Folgendes:***

***(a) Angaben zur Erfolgsquote kleiner und mittlerer Unternehmen (KMU) bei Beschaffungsverfahren; eine Analyse der Gründe, falls der Wert der an KMU vergebenen Aufträge unter 50 % liegt;***

***(b) einen Gesamtüberblick über die Durchführung einer nachhaltigen Beschaffungspolitik, worunter auch Verfahren fallen, die die Aspekte Umweltschutz, soziale Eingliederung, unter anderem Barrierefreiheit für Menschen mit Behinderungen, oder Innovationsförderung berücksichtigen;***

***(c) Informationen zu Überwachung und Follow-up von Verstößen gegen Vergabevorschriften, die sich auf den Haushalt der Union auswirken, im Einklang mit den Absätzen 3 bis 5 dieses Artikels;***

***(d) zentralisierte Daten über berichtete Fälle von Betrug, Korruption, Interessenkonflikten und anderen schwerwiegenden Unregelmäßigkeiten im Bereich des öffentlichen Auftragswesens, auch zu Projekten, die aus dem Haushalt der Union kofinanziert werden.***

***3. Die Aufsichtsstelle nimmt folgende Aufgaben wahr:***

***(a) Überwachung der Anwendung der***

*Vorschriften für das öffentliche Auftragswesen und der entsprechenden Praxis aufseiten der öffentlichen Auftraggeber, insbesondere der zentralen Beschaffungsstellen;*

*(b) Rechtsberatung für öffentliche Auftraggeber in Fragen der Auslegung der Vorschriften und Grundsätze für die öffentliche Auftragsvergabe und zur Anwendung der Vorschriften in spezifischen Fällen;*

*(c) Formulierung – im Lichte der Bestimmungen dieser Richtlinie und der einschlägigen Rechtsprechung des Gerichtshofs der Europäischen Union – von Initiativstellungen und Orientierungen zu Fragen von allgemeinem Interesse, die die Auslegung und Anwendung der Vorschriften für die öffentliche Auftragsvergabe betreffen, zu wiederkehrenden Fragen und zu systembedingten Schwierigkeiten im Zusammenhang mit der Anwendung der Vorschriften;*

*(d) Festlegung und Anwendung umfassender und praktikabler „Red-Flag“-Indikatorsysteme zur Vermeidung bzw. Aufdeckung von Fällen von Betrug, Korruption, Interessenkonflikten und sonstiger schwerwiegender Unregelmäßigkeiten im Bereich des öffentlichen Auftragswesens sowie zur angemessenen Berichterstattung über derartige Fälle;*

*(e) Aufmerksammachen der zuständigen nationalen Einrichtungen, einschließlich Prüfbehörden, auf bestimmte aufgedeckte Verstöße und systembedingte Probleme;*

*(f) Prüfung der Beschwerden von Bürgern und Unternehmen über die Anwendung der Vorschriften für die öffentliche Auftragsvergabe in spezifischen Fällen und Übermittlung der Analyse an die zuständigen öffentlichen Auftraggeber, die diese bei ihren Entscheidungen berücksichtigen oder,*

*wenn sie der Analyse nicht Rechnung tragen, die Gründe hierfür erläutern;*

*(g) Überwachung der Entscheidungen nationaler Gerichte und Behörden im Anschluss an Entscheidungen des Gerichtshofs der Europäischen Union gemäß Artikel 267 des Vertrags oder an Feststellungen des Europäischen Rechnungshofs zu Verstößen gegen Unionsvorschriften für die öffentliche Auftragsvergabe im Zusammenhang mit von der Union kofinanzierten Projekten; die Aufsichtsstelle berichtet dem Europäischen Amt für Betrugsbekämpfung jede Verletzung von Verfahren der öffentlichen Auftragsvergabe in der Union, sofern sie sich auf Aufträge bezieht, die mittelbar oder unmittelbar von der Europäischen Union finanziert werden.*

*Die unter Buchstabe e genannten Aufgaben lassen die Ausübung der Rechte auf Einlegung von Rechtsmitteln nach nationalem Recht oder nach dem auf der Grundlage der Richtlinie 89/665/EWG errichteten System unberührt.*

*Die Mitgliedstaaten ermächtigen die Aufsichtsstellen, die nach nationalem Recht für die Überprüfung von Entscheidungen öffentlicher Auftraggeber zuständige Gerichtsbarkeit mit Verstößen zu befassen, die sie im Zuge ihrer Überwachungs- und Rechtsberatungstätigkeit aufdecken.*

*5. Unbeschadet der von der Kommission für die Kommunikation und die Kontakte mit den Mitgliedstaaten festgelegten allgemeinen Verfahren und Arbeitsmethoden fungiert die Aufsichtsstelle als spezielle Kontaktstelle für die Kommission im Kontext der Überwachung der Anwendung des Unionsrechts und der Ausführung des Haushaltsplans der Union auf der Grundlage von Artikel 17 des Vertrags über die Europäische Union und*

**Artikel 317 des Vertrags über die Arbeitsweise der Europäischen Union. Sie erstattet der Kommission Bericht über sämtliche Verstöße gegen diese Richtlinie im Zusammenhang mit Verfahren zur Vergabe von Aufträgen, die direkt oder indirekt von der Union finanziert werden.**

**Die Kommission kann die Aufsichtsstellen insbesondere mit der Behandlung von Einzelfällen befassen, in denen noch kein Vertrag geschlossen wurde oder ein Nachprüfungsverfahren noch durchgeführt werden kann. Sie kann die Aufsichtsstellen des Weiteren mit Überwachungstätigkeiten betrauen, die erforderlich sind, um die Durchführung der Maßnahmen zu gewährleisten, zu denen die Mitgliedstaaten verpflichtet sind, um im Falle eines von der Kommission festgestellten Verstoßes gegen die Vorschriften und Grundsätze für die öffentliche Auftragsvergabe Abhilfe zu schaffen.**

**Die Kommission kann die Aufsichtsstelle auffordern, angebliche Verletzungen der Unionsvorschriften für die öffentliche Auftragsvergabe im Zusammenhang mit Projekten zu untersuchen, die aus dem Haushalt der Union kofinanziert werden. Die Kommission kann die Aufsichtsstelle mit der Weiterverfolgung bestimmter Fälle beauftragen, um zu gewährleisten, dass die zuständigen nationalen Behörden, die zur Befolgung ihrer Anweisungen verpflichtet sind, die angemessenen Konsequenzen aus der Verletzung der Unionsvorschriften für die öffentliche Auftragsvergabe im Zusammenhang mit kofinanzierten Projekten ziehen.**

**6. Untersuchungs- und Durchsetzungstätigkeiten, die die Aufsichtsstelle durchführt, um sicherzustellen, dass die Entscheidungen öffentlicher Auftraggeber im Einklang mit dieser Richtlinie und den Grundsätzen des Vertrags stehen, treten weder an die Stelle der Tätigkeiten, die die Kommission**

*in ihrer institutionellen Rolle als Hüterin der Verträge ausübt, noch greift sie diesen vor. Beschließt die Kommission gemäß Artikel 4, die Behandlung eines individuellen Falls an die Aufsichtsstelle zu verweisen, behält sie im Einklang mit den ihr durch den Vertrag übertragenen Befugnissen ihr Interventionsrecht.*

*6. Öffentliche Auftraggeber übermitteln der nationalen Aufsichtsstelle den vollständigen Wortlaut aller vergebenen Aufträge, die mindestens den folgenden Auftragswert haben:*

*(a) 1 000 000 EUR im Falle von Liefer- oder Dienstleistungsaufträgen;*

*(b) 10 000 000 EUR im Falle von Bauleistungsaufträgen.*

*7. Unbeschadet des einzelstaatlichen Rechts bezüglich des Zugangs zu Informationen und gemäß den datenschutzrechtlichen Bestimmungen der Mitgliedstaaten und auf EU-Ebene gewährt die Aufsichtsstelle auf schriftlichen Antrag unbeschränkten, vollständigen, unmittelbaren und unentgeltlichen Zugang zu den gemäß Absatz 6 genannten vergebenen Aufträgen. Der Zugang zu bestimmten Teilen der Aufträge kann abgelehnt werden, wenn die Offenlegung dieser Angaben den Gesetzesvollzug behindern, dem öffentlichen Interesse anderweitig zuwiderlaufen, die berechtigten geschäftlichen Interessen von öffentlichen oder privaten Wirtschaftsteilnehmern schädigen oder den lautereren Wettbewerb zwischen Wirtschaftsteilnehmern beeinträchtigen würde.*

*Der Zugang zu den Teilen, die offengelegt werden können, ist innerhalb einer angemessenen Frist, spätestens jedoch 45 Tage nach dem Datum des Antrags zu gewähren.*

*Antragsteller, die um den Zugang zu einem Auftrag ersuchen, müssen kein*

*unmittelbares oder mittelbares Interesse an diesem bestimmten Auftrag nachweisen. Der Empfänger der Informationen muss diese veröffentlichen dürfen.*

*8. Der nach Absatz 2 vorzulegende Jahresbericht enthält eine zusammenfassende Darstellung sämtlicher Tätigkeiten, die die Aufsichtsstelle gemäß den Absätzen 1 bis 7 durchgeführt hat.*

Or. de

**Amendment 1465**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 84**

*Text proposed by the Commission*

*Amendment*

*Article 84*

*deleted*

*Public oversight*

*1. Member States shall appoint a single independent body responsible for the oversight and coordination of implementation activities (hereinafter 'the oversight body'). Member States shall inform the Commission of their designation.*

*All contracting authorities shall be subject to such oversight.*

*2. The competent authorities involved in the implementation activities shall be organised in such a manner that conflicts of interests are avoided. The system of public oversight shall be transparent. For this purpose, all guidance and opinion documents and an annual report illustrating the implementation and application of rules laid down in this Directive shall be published.*

*The annual report shall include the*

*following:*

*(a) an indication of the success rate of small and medium-sized enterprises (SMEs) in public procurement; where the percentage is lower than 50 % in terms of values of contracts awarded to SMEs, the report shall provide an analysis of the reasons therefore;*

*(b) a global overview of the implementation of sustainable procurement policies, including on procedures taking into account considerations linked to the protection of the environment, social inclusion including accessibility for persons with disabilities, or fostering innovation;*

*(c) information on the monitoring and follow-up of breaches to procurement rules affecting the budget of the Union in accordance with paragraphs 3 to 5 of the present article;*

*(d) centralized data about reported cases of fraud, corruption, conflict of interests and other serious irregularities in the field of public procurement, including those affecting projects cofinanced by the budget of the Union.*

**3. The oversight body shall be responsible for the following tasks:**

*(a) monitoring the application of public procurement rules and the related practice by contracting authorities and in particular by central purchasing bodies;*

*(b) providing legal advice to contracting authorities on the interpretation of public procurement rules and principles and on the application of public procurement rules in specific cases;*

*(c) issuing own-initiative opinions and guidance on questions of general interest pertaining to the interpretation and application of public procurement rules, on recurring questions and on systemic difficulties related to the application of public procurement rules, in the light of*



*the provisions of this Directive and of the relevant case-law of the Court of Justice of the European Union;*

*(d) establishing and applying comprehensive, actionable 'red flag' indicator systems to prevent, detect and adequately report instances of procurement fraud, corruption, conflict of interest and other serious irregularities;*

*(e) drawing the attention of the national competent institutions, including auditing authorities, to specific violations detected and to systemic problems;*

*(f) examining complaints from citizens and businesses on the application of public procurement rules in specific cases and transmitting the analysis to the competent contracting authorities, which shall have the obligation to take it into account in their decisions or, where the analysis is not followed, to explain the reasons for disregarding it;*

*(g) monitoring the decisions taken by national courts and authorities following a ruling given by the Court of Justice of the European Union on the basis of Article 267 of the Treaty or findings of the European Court of Auditors establishing violations of Union public procurement rules related to projects cofinanced by the Union; the oversight body shall report to the European Anti-Fraud Office any infringement to Union procurement procedures where these were related to contracts directly or indirectly funded by the European Union.*

*The tasks referred to in point (e) shall be without prejudice to the exercise of rights of appeal under national law or under the system established on the basis of Directive 89/665/EEC.*

*Member States shall empower the oversight body to seize the jurisdiction competent according to national law for the review of contracting authorities' decisions where it has detected a violation*

*in the course of its monitoring and legal advising activity.*

*4. Without prejudice to the general procedures and working methods established by the Commission for its communications and contacts with Member States, the oversight body shall act as a specific contact point for the Commission when it monitors the application of Union law and the implementation of the budget from the Union on the basis of Article 17 of the Treaty on the European Union and Article 317 of the Treaty on the Functioning of the European Union. It shall report to the Commission any violation of this Directive in procurement procedures for the award of contracts directly or indirectly funded by the Union.*

*The Commission may in particular refer to the oversight body the treatment of individual cases where a contract is not yet concluded or a review procedure can still be carried out. It may also entrust the oversight body with the monitoring activities necessary to ensure the implementation of the measures to which Member States are committed in order to remedy a violation of Union public procurement rules and principles identified by the Commission.*

*The Commission may require the oversight body to analyse alleged breaches to Union public procurement rules affecting projects co-financed by the budget of the Union. The Commission may entrust the oversight body to follow-up certain cases and to ensure that the appropriate consequences of breaches to Union public procurement rules affecting projects co-financed are taken by the competent national authorities which will be obliged to follow its instructions.*

*5. The investigation and enforcement activities carried out by the oversight body to ensure that contracting authorities' decisions comply with this Directive and*

*the principles of the Treaty shall not replace or prejudge the institutional role of the Commission as guardian of the Treaty. When the Commission decides to refer the treatment of an individual case pursuant to paragraph 4, it shall also retain the right to intervene in accordance with the powers conferred to it by the Treaty.*

*6. Contracting authorities shall transmit to the national oversight body the full text of all concluded contracts with a value equal to or greater than*

*(a) 1 000 000 EUR in the case of public supply contracts or public service contracts;*

*(b) 10 000 000 EUR in the case of public works contracts.*

*7. Without prejudice to the national law concerning access to information, and in accordance with national and EU legislation on data protection, the oversight body shall, upon written request, give unrestricted and full direct access, free of charge, to the concluded contracts referred to in paragraph 6. Access to certain parts of the contracts may be refused where their disclosure would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.*

*Access to the parts that may be released shall be given within a reasonable delay and no later than 45 days from the date of the request.*

*The applicants filing a request for access to a contract shall not need to show any direct or indirect interest related to that particular contract. The recipient of information should be allowed to make it public.*

*8. A summary of all the activities carried out by the oversight body in accordance*

*with paragraphs 1 to 7 shall be included in the annual report referred to in paragraph 2.*

Or. en

*Justification*

*Mandating one single national oversight body in each Member State would breach the principle of subsidiarity and would be impossible to implement for those Member States with devolved administrations or federal structures.*

**Amendment 1466**

**Frank Engel, Philippe Juvin, András Gyürk, Andreas Schwab, Ildikó Gáll-Pelcz, Anna Maria Corazza Bildt**

**Proposal for a directive**

**Article 84 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

1. Les États membres **désignent un organe indépendant unique, chargé du** contrôle et de la coordination des activités de mise en œuvre (ci-après, l'«organe de contrôle»). **Les États membres en informent la Commission.**

*Amendment*

1. Les États membres **assurent le** contrôle et la coordination des activités de mise en œuvre.

Or. fr

**Amendment 1467**

**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**

**Article 84 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

1. Member States shall appoint a single independent body **responsible** for the oversight and coordination of **implementation** activities (hereinafter ‘the oversight body’). Member States shall **inform the Commission of their**

*Amendment*

1. Member States shall **ensure the correct implementation and democratic, accounting and legal oversight over the implementation of this Directive. Member States are free to decide whether they want to** appoint a single independent body

*designation.*

for the oversight and coordination activities, *or whether they want to leave the oversight to existing oversight bodies that already exercise democratic, accounting and legal control over the contracting authorities.*

*If a Member State decides not to appoint a single independent oversight body, Member States shall ensure that:*

*(a) city councils, regional parliaments and national parliaments, are fully equipped to supervise and exercise democratic control over the contracting authorities.*

*(b) auditors, responsible for auditing local, regional and national authorities are fully equipped to supervise and audit the contracting authorities.*

*(c) the judiciary is fully equipped to exercise legal control over the contracting authorities.*

Or. en

#### **Amendment 1468**

**Sabine Verheyen, Birgit Collin-Langen**

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

#### **Article 84 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

1. Die Mitgliedstaaten benennen eine *einzig*e unabhängige Stelle, die für die Beaufsichtigung und Koordinierung der Durchführungstätigkeiten verantwortlich ist (im Folgenden „die Aufsichtsstelle“). Die Mitgliedstaaten unterrichten die Kommission von dieser Benennung.

*Amendment*

1. Die Mitgliedstaaten benennen eine unabhängige Stelle, die für die Beaufsichtigung und Koordinierung der Durchführungstätigkeiten verantwortlich ist (im Folgenden „die Aufsichtsstelle“). Die Mitgliedstaaten unterrichten die Kommission von dieser Benennung.

Or. de

#### **Amendment 1469**

**Toine Manders**

**Proposal for a directive**  
**Article 84 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

1. De lidstaten wijzen één onafhankelijke instantie aan die belast is met toezicht op en coördinatie van uitvoeringsactiviteiten (hierna „de toezichtsinstantie”). De lidstaten stellen de Commissie op de hoogte van de aangewezen instantie.

*Amendment*

1. De lidstaten wijzen één onafhankelijke instantie aan die belast is met toezicht op en coördinatie van uitvoeringsactiviteiten (hierna „de toezichtsinstantie”), **voor zover deze onafhankelijke instantie nog niet bestaat**. De lidstaten stellen de Commissie op de hoogte van de aangewezen instantie.

Or. nl

**Amendment 1470**  
**Pablo Arias Echeverría**

**Proposal for a directive**  
**Article 84 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

1. Los Estados miembros **designarán a un único organismo independiente, responsable de** la supervisión y coordinación de las actividades de ejecución (**denominado en lo sucesivo «el organismo de supervisión»**). Los Estados miembros **informarán a la Comisión de su designación**.

*Amendment*

1. Los Estados miembros **asegurarán la existencia de mecanismos de** supervisión y coordinación de las actividades de ejecución. **En todo caso se respetará la estructura competencial de aquellos Estados Miembros con una estructura administrativa compuesta o descentralizada**. Los Estados Miembros **designarán aquellos organismos que mejor se adapten a su estructura estatal**.

Or. es

**Amendment 1471**  
**Monica Luisa Macovei**

**Proposal for a directive**  
**Article 84 – paragraph 2 – subparagraph 2 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

*(ca) statistics and overview on the use of negotiated procedure without prior publication stipulated in Article 30, including list of economic operators who were granted public contracts following this procedure and the grounds on which the procedure was used;*

Or. en

**Amendment 1472**

**Monica Luisa Macovei**

**Proposal for a directive**

**Article 84 – paragraph 2 – subparagraph 2 – point d**

*Text proposed by the Commission*

*Amendment*

(d) centralized data about reported cases of fraud, corruption, conflict of interests and other serious irregularities in the field of public procurement, including those affecting projects cofinanced by the budget of the Union.

(d) centralized data about reported cases of fraud, corruption, conflict of interests and other serious irregularities in the field of public procurement, including those affecting projects cofinanced by the budget of the Union, *as well as, when possible, on outcome of referral to competent administrative, law enforcement or judicial authorities.*

Or. en

**Amendment 1473**

**Phil Prendergast**

**Proposal for a directive**

**Article 84 – paragraph 2 – subparagraph 2 – point d**

*Text proposed by the Commission*

*Amendment*

(d) centralized data about reported cases of fraud, corruption, conflict of interests and other serious irregularities in the field of public procurement, including those

(d) centralized data about reported cases of fraud, corruption, conflict of interests and other serious irregularities in the field of public procurement, including those

affecting projects cofinanced by the budget of the Union.

affecting projects cofinanced by the budget of the Union. *These data shall be collated according to a common set of variables and methodology, so as to enable unified procurement databases and statistics at EU level, thus allowing for scientific comparisons between public procurement practices between different Union Member States.*

Or. en

#### **Amendment 1474**

**Frank Engel, Philippe Juvin, András Gyürk, Andreas Schwab, Ildikó Gáll-Pelcz, Anna Maria Corazza Bildt**

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

#### **Article 84 – paragraph 3 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

**3. L'organe de contrôle est chargé:**

**3. Les autorités compétentes sont chargées:**

Or. fr

#### **Amendment 1475**

**Pablo Arias Echeverría**

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

#### **Article 84 – paragraph 3 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

**3. El organismo de supervisión será responsable de las tareas siguientes:**

**3. Los mecanismos de supervisión deberán garantizar el cumplimiento de las tareas siguientes:**

Or. es

#### **Amendment 1476**

**Evelyne Gebhardt, Birgit Sippel**



**Proposal for a directive**  
**Article 84 – paragraph 3 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) Überwachung der Anwendung der Vorschriften für das öffentliche Auftragswesen und der entsprechenden Praxis aufseiten der öffentlichen Auftraggeber, insbesondere der zentralen Beschaffungsstellen;

*Amendment*

(a) Überwachung der Anwendung der Vorschriften für das öffentliche Auftragswesen und der ***Vorschriften über den sozialen Schutz sowie den Schutz der Beschäftigung und der Arbeitsbedingungen durch den Wirtschaftsteilnehmer, an den der Auftrag vergeben worden ist, und durch seine Unterauftragnehmer, einschließlich der*** entsprechenden Praxis aufseiten der öffentlichen Auftraggeber, insbesondere der zentralen Beschaffungsstellen;

Or. de

**Amendment 1477**  
**Monica Luisa Macovei**

**Proposal for a directive**  
**Article 84 – paragraph 3 – subparagraph 1 – point d**

*Text proposed by the Commission*

(d) establishing and applying comprehensive, actionable ‘red flag’ indicator systems to prevent, detect and adequately report instances of procurement fraud, corruption, conflict of interest and other serious irregularities;

*Amendment*

(d) establishing and applying, ***in cooperation with law enforcement bodies,*** comprehensive, actionable ‘red flag’ indicator systems to prevent, detect and adequately report instances of procurement fraud, corruption, conflict of interest and other serious irregularities. ***This shall also include a mapping of risks that identifies vulnerable positions in contracting authorities, as well as internal and external control bodies, activities in the public procurement procedures where risks where identified and vulnerable sectors and/or projects. The red flag indicators and the mapping of risks shall be updated on regular basis;***

Or. en

**Amendment 1478**  
**Monica Luisa Macovei**

**Proposal for a directive**  
**Article 84 – paragraph 3 – subparagraph 1 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

*(da) establishing procedures for reporting serious irregularities that also ensure protection of anonymity of the informant;*

Or. en

**Amendment 1479**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 84 – paragraph 3 – subparagraph 1 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

*(da) establishing and applying comprehensive, actionable 'red flag' indicator systems to:*

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

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

*(iii) prevent the exclusion of the end users' right to have a choice and to be heard;*

Or. en

**Amendment 1480**  
**Monica Luisa Macovei**

**Proposal for a directive**  
**Article 84 – paragraph 3 – subparagraph 1 – point d b (new)**

*Text proposed by the Commission*

*Amendment*

*(db) centralizing data on reported cases of fraud, corruption, conflict of interests and other serious irregularities, as well as, when possible, on their follow-up by the competent administrative, law enforcement or judicial authorities;*

Or. en

**Amendment 1481**  
**Monica Luisa Macovei**

**Proposal for a directive**  
**Article 84 – paragraph 3 – subparagraph 1 – point d c (new)**

*Text proposed by the Commission*

*Amendment*

*(dc) ensuring, in cooperation with law enforcement bodies, specialized training of contracting authorities and officials of the internal control bodies on detection of fraud, corruption, conflict of interests and other serious irregularities,*

Or. en

**Amendment 1482**  
**Monica Luisa Macovei**

**Proposal for a directive**  
**Article 84 – paragraph 3 – subparagraph 1 – point d d (new)**

*Text proposed by the Commission*

*Amendment*

*(dd) ensuring publication of regularly updated lists of economic operators excluded from participation in a public contract on the grounds stipulated in Article 55 (1), (2) and (3);*

**Amendment 1483**  
**Sirpa Pietikäinen**

**Proposal for a directive**  
**Article 84 – paragraph 3 – subparagraph 1 – point e a (new)**

*Text proposed by the Commission*

*Amendment*

*(ea) granting a right for civil society organisations to supervise and report on behalf of people with limited legal or other capacity, that the quality of the services and the goods provided to the people with limited legal or other capacity is in accordance with the EU fundamental rights and the technical specifications and award criteria as defined in the contract and according to requirements relating to meeting the specific need of each category of user.*

Or. en

**Amendment 1484**  
**Sergio Gaetano Cofferati**

**Proposal for a directive**  
**Article 84 – paragraph 3 – subparagraph 1 – point f bis (new)**

*Text proposed by the Commission*

*Amendment*

*(f bis) esaminare le relazioni inviatele dalla amministrazioni aggiudicatrici che intendono ricorrere ad una procedura negoziata senza pubblicazione;*

Or. it

**Amendment 1485**  
**Sergio Gaetano Cofferati**

**Proposal for a directive**  
**Article 84 – paragraph 3 – subparagraph 1 – point g a (new)**

*Text proposed by the Commission*

*Amendment*

*(ga) management of the official register of non-compliance as laid down in Article 73a.*

Or. en

**Amendment 1486**  
**Phil Prendergast**

**Proposal for a directive**  
**Article 84 – paragraph 3 – subparagraph 1 – point g a (new)**

*Text proposed by the Commission*

*Amendment*

*(ga) assist procurement agencies and authorities to have in place internal whistleblowing procedures for staff to ensure that:*

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

*- the confidentiality of whistleblowers is maintained unless explicitly waived by them*

*- adequate mechanisms are made available for disclosures to be made, such as helplines and online forms*

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

*- disclosures are properly investigated and corrective action taken (if appropriate), and that whistleblowers have the option to*

- participate in these procedures*
- *managers must prove that any actions taken against a whistleblower were motivated by reasons other than the whistleblowing*
  - *inaccurate disclosures, if made in good faith, are protected; disclosures shown to be made in bad faith are not protected*
  - *management and staff should be adequately trained in whistleblower rights, policies and procedures*
  - *whistleblower policies should be monitored and evaluated at regular intervals by independent bodies*
  - *external whistleblowing to elected officials, NGOs, the media and other appropriate parties is protected if internal channels do not function or do not exist*

Or. en

**Amendment 1487**  
**Sergio Gaetano Cofferati**

**Proposal for a directive**  
**Article 84 – paragraph 3 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

*Gli Stati membri abilitano l'organo di vigilanza ad adire la giurisdizione competente, ai sensi della legislazione nazionale, per il riesame delle decisioni delle amministrazioni aggiudicatrici su una violazione constatata durante la sua attività di monitoraggio e di consulenza giuridica.*

*soppresso*

Or. it

**Amendment 1488**  
**Frank Engel, Philippe Juvin, András Gyürk, Andreas Schwab, Ildikó Gáll-Pelcz, Anna Maria Corazza Bildt**

**Proposal for a directive**  
**Article 84 – paragraph 3 – subparagraph 3**

*Text proposed by the Commission*

Les *États membres autorisent l'organe de contrôle* à saisir la juridiction compétente d'un recours, conformément au droit national, contre les décisions prises par les pouvoirs adjudicateurs, dès lors qu'il a décelé une infraction dans le cadre de ses activités de surveillance et de conseil juridique.

*Amendment*

Les *autorités compétentes peuvent* saisir la juridiction compétente d'un recours, conformément au droit national, contre les décisions prises par les pouvoirs adjudicateurs, dès lors qu'il a décelé une infraction dans le cadre de ses activités de surveillance et de conseil juridique.

Or. fr

**Amendment 1489**  
**Pablo Arias Echeverría**

**Proposal for a directive**  
**Article 84 – paragraph 3 – subparagraph 3**

*Text proposed by the Commission*

Los Estados miembros facultarán *al organismo* de supervisión *para* recurrir a la jurisdicción competente con arreglo al Derecho nacional e interponer un recurso contra las decisiones de los poderes adjudicadores cuando haya detectado una infracción durante su labor de control y asesoramiento jurídico.

*Amendment*

Los Estados miembros facultarán *a los organismos* de supervisión recurrir a la jurisdicción competente con arreglo al Derecho nacional e interponer un recurso contra las decisiones de los poderes adjudicadores cuando haya detectado una infracción durante su labor de control y asesoramiento jurídico.

Or. es

**Amendment 1490**  
**Frank Engel, Philippe Juvin, András Gyürk, Andreas Schwab, Ildikó Gáll-Pelcz, Anna Maria Corazza Bildt**

**Proposal for a directive**  
**Article 84 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

4. Sans préjudice des procédures générales et des méthodes de travail mises en place par la Commission pour ses communications et contacts avec les États membres, ***l'organe de contrôle exerce*** la fonction de point de contact spécifique pour la Commission lorsqu'elle contrôle la mise en œuvre du droit de l'Union et l'exécution de son budget sur la base de l'article 17 du traité sur l'Union européenne et de l'article 317 du traité sur le fonctionnement de l'Union européenne. Il informe la Commission de toute violation de la présente directive détectée dans les procédures d'attribution de marchés directement ou indirectement financés par l'Union.

*Amendment*

4. Sans préjudice des procédures générales et des méthodes de travail mises en place par la Commission pour ses communications et contacts avec les États membres, ***les autorités compétentes exercent*** la fonction de point de contact spécifique pour la Commission lorsqu'elle contrôle la mise en œuvre du droit de l'Union et l'exécution de son budget sur la base de l'article 17 du traité sur l'Union européenne et de l'article 317 du traité sur le fonctionnement de l'Union européenne. Il informe la Commission de toute violation de la présente directive détectée dans les procédures d'attribution de marchés directement ou indirectement financés par l'Union.

Or. fr

**Amendment 1491**

**Frank Engel, Philippe Juvin, András Gyürk, Andreas Schwab, Ildikó Gáll-Pelcz**

**Proposal for a directive**

**Article 84 – paragraph 4 – subparagraph 2**

*Text proposed by the Commission*

***La Commission peut notamment s'adresser à l'organe de contrôle afin que celui-ci traite les cas particuliers où le marché n'est pas encore conclu ou une procédure de recours peut encore être introduite. Elle peut également confier à l'organe de contrôle les activités de surveillance nécessaires pour garantir la mise en œuvre des mesures que les États membres se sont engagés à respecter afin de remédier à une violation des règles et principes de l'Union relatifs aux marchés publics, recensée par la Commission.***

*Amendment*

***supprimé***

Or. fr



## Amendment 1492

Frank Engel, Philippe Juvin, András Gyürk, Andreas Schwab, Ildikó Gáll-Pelcz

### Proposal for a directive

#### Article 84 – paragraph 4 – subparagraph 3

*Text proposed by the Commission*

*La Commission peut exiger de l'organe de contrôle qu'il analyse les infractions présumées aux règles de l'Union en matière de marchés publics ayant une incidence sur les projets cofinancés par le budget de l'Union. Elle peut charger l'organe de contrôle d'assurer le suivi de certains cas et de veiller à ce que les infractions aux règles de l'Union en matière de marchés publics ayant une incidence sur les projets cofinancés fassent l'objet de mesures appropriées que les autorités nationales compétentes auront l'obligation de mettre en œuvre.*

*Amendment*

*supprimé*

Or. fr

## Amendment 1493

Frank Engel, Philippe Juvin, András Gyürk, Andreas Schwab, Ildikó Gáll-Pelcz, Anna Maria Corazza Bildt

### Proposal for a directive

#### Article 84 – paragraph 5

*Text proposed by the Commission*

5. Les activités d'enquête et de contrôle de l'application exercées par *l'organe de contrôle* afin de garantir que les décisions des pouvoirs adjudicateurs sont conformes à la présente directive et aux principes du traité ne se substituent pas au rôle institutionnel de la Commission de gardienne des traités, ni n'en préjugent. Lorsque la Commission décide de renvoyer le traitement d'un cas spécifique en vertu du paragraphe 4, elle conserve également

*Amendment*

5. Les activités d'enquête et de contrôle de l'application exercées par *les autorités compétentes* afin de garantir que les décisions des pouvoirs adjudicateurs sont conformes à la présente directive et aux principes du traité ne se substituent pas au rôle institutionnel de la Commission de gardienne des traités, ni n'en préjugent. Lorsque la Commission décide de renvoyer le traitement d'un cas spécifique en vertu du paragraphe 4, elle conserve également

le droit d'intervenir conformément aux pouvoirs qui lui sont conférés en vertu du traité.

le droit d'intervenir conformément aux pouvoirs qui lui sont conférés en vertu du traité.

Or. fr

**Amendment 1494**

**Andreas Schwab, Frank Engel**

**Proposal for a directive**

**Article 84 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

**6. Öffentliche Auftraggeber übermitteln der nationalen Aufsichtsstelle den vollständigen Wortlaut aller vergebenen Aufträge, die mindestens den folgenden Auftragswert haben:**

**entfällt**

**(a) 1 000 000 EUR im Falle von Liefer- oder Dienstleistungsaufträgen;**

**(b) 10 000 000 EUR im Falle von Bauleistungsaufträgen.**

Or. de

*Justification*

*Eine umfassende Veröffentlichungspflicht würde dazu führen, dass bestimmte Verträge bis in das letzte geschäftliche Detail bekannt gegeben werden und damit das darin enthaltene "Knowhow", d.h. Geschäftsgeheimnisse ggf. sogar unter Missachtung von Geheimhaltungsbestimmungen Dritten zur Verfügung gestellt werden müssten. Dies würde jedoch nicht mehr der Transparenz dienen, da das Vergabeverahren mit Zuschlagserteilung abgeschlossen ist.*

**Amendment 1495**

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

**Proposal for a directive**

**Article 84 – paragraph 6 – introductory part**

*Text proposed by the Commission*

*Amendment*

6. Les pouvoirs adjudicateurs

6. Les pouvoirs adjudicateurs

communiquent *à l'organe national de contrôle* le texte intégral de tous les marchés passés dont la valeur est supérieure ou égale à:

communiquent *aux autorités compétentes* le texte intégral de tous les marchés passés dont la valeur est supérieure ou égale à:

Or. fr

**Amendment 1496**  
**Monica Luisa Macovei**

**Proposal for a directive**  
**Article 84 – paragraph 6 – point a**

*Text proposed by the Commission*

(a) **1 000 000** EUR in the case of public supply contracts or public service contracts;

*Amendment*

(a) **800 000** EUR in the case of public supply contracts or public service contracts;

Or. en

**Amendment 1497**  
**Phil Prendergast**

**Proposal for a directive**  
**Article 84 – paragraph 6 – point a**

*Text proposed by the Commission*

(a) **1 000 000** EUR in the case of public supply contracts or public service contracts;

*Amendment*

(a) **250 000** EUR in the case of public supply contracts or public service contracts;

Or. en

**Amendment 1498**  
**Monica Luisa Macovei**

**Proposal for a directive**  
**Article 84 – paragraph 6 – point b**

*Text proposed by the Commission*

*Amendment*

(b) **10 000 000** EUR in the case of public works contracts.

(b) **5 000 000** EUR in the case of public works contracts.

Or. en

**Amendment 1499**  
**Phil Prendergast**

**Proposal for a directive**  
**Article 84 – paragraph 6 – point b**

*Text proposed by the Commission*

*Amendment*

(b) **10 000 000** EUR in the case of public works contracts.

(b) **1 000 000** EUR in the case of public works contracts.

Or. en

**Amendment 1500**  
**Andreas Schwab, Frank Engel**

**Proposal for a directive**  
**Article 84 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

***7. Unbeschadet des einzelstaatlichen Rechts bezüglich des Zugangs zu Informationen und gemäß den datenschutzrechtlichen Bestimmungen der Mitgliedstaaten und auf EU-Ebene gewährt die Aufsichtsstelle auf schriftlichen Antrag unbeschränkten, vollständigen, unmittelbaren und unentgeltlichen Zugang zu den gemäß Absatz 6 genannten vergebenen Aufträgen. Der Zugang zu bestimmten Teilen der Aufträge kann abgelehnt werden, wenn die Offenlegung dieser Angaben den Gesetzesvollzug behindern, dem öffentlichen Interesse anderweitig zuwiderlaufen, die berechtigten***

***entfällt***

*geschäftlichen Interessen von öffentlichen oder privaten Wirtschaftsteilnehmern schädigen oder den lautereren Wettbewerb zwischen Wirtschaftsteilnehmern beeinträchtigen würde.*

*Der Zugang zu den Teilen, die offengelegt werden können, ist innerhalb einer angemessenen Frist, spätestens jedoch 45 Tage nach dem Datum des Antrags zu gewähren.*

*Antragsteller, die um den Zugang zu einem Auftrag ersuchen, müssen kein unmittelbares oder mittelbares Interesse an diesem bestimmten Auftrag nachweisen. Der Empfänger der Informationen muss diese veröffentlichen dürfen.*

Or. de

#### *Justification*

*Vorhandene Akteneinsichtsrechte in Vergabestreitverfahren und zusätzlich bestehende Ansprüche nach den bereits sehr weit gehenden Informationsfreiheitsgesetzen sind völlig ausreichend.*

#### **Amendment 1501 Monica Luisa Macovei**

#### **Proposal for a directive Article 84 – paragraph 7 – subparagraph 1**

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

7. Without prejudice to the national law concerning access to information, and in accordance with national and EU legislation on data protection, the oversight body shall, upon **written** request, give unrestricted and full direct access, free of charge, to the concluded contracts referred to in paragraph 6. Access to certain parts of the contracts may be refused **where** their disclosure would impede law enforcement

##### *Amendment*

7. Without prejudice to the national law concerning access to information, and in accordance with national and EU legislation on data protection, the oversight body shall, upon request, give unrestricted and full direct access, free of charge, to the concluded contracts referred to in paragraph 6. Access to certain parts of the contracts may be refused **only when** their disclosure would impede law enforcement

or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.  
***Decisions to deny access to certain parts of the public contracts on these grounds should be duly motivated and published.***

Or. en

#### **Amendment 1502**

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

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

#### **Article 84 – paragraph 7 – subparagraph 1**

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

7. Sans préjudice des dispositions de droit interne relatives à l'accès à l'information, et conformément à la législation nationale et de l'Union en matière de protection des données, ***l'organe nationale de contrôle donne***, sur demande écrite, un accès sans restriction, complet et gratuit aux marchés passés visés au paragraphe 6. L'accès à certaines parties des marchés passés peut être refusé au cas où leur divulgation ferait obstacle à l'application des lois, serait contraire à l'intérêt public ou porterait préjudice aux intérêts commerciaux légitimes d'opérateurs économiques publics ou privés, ou pourrait nuire à une concurrence loyale entre ceux-ci.

##### *Amendment*

7. Sans préjudice des dispositions de droit interne relatives à l'accès à l'information, et conformément à la législation nationale et de l'Union en matière de protection des données, ***les autorités compétentes donnent***, sur demande écrite, un accès sans restriction, complet et gratuit aux marchés passés visés au paragraphe 6. L'accès à certaines parties des marchés passés peut être refusé au cas où leur divulgation ferait obstacle à l'application des lois, serait contraire à l'intérêt public ou porterait préjudice aux intérêts commerciaux légitimes d'opérateurs économiques publics ou privés, ou pourrait nuire à une concurrence loyale entre ceux-ci.

Or. fr

#### **Amendment 1503**

**Phil Prendergast**

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

#### **Article 84 – paragraph 7 – subparagraph 1**

*Text proposed by the Commission*

7. Without prejudice to the national law concerning access to information, and in accordance with national and EU legislation on data protection, the oversight body shall, **upon written request, give** unrestricted and full direct access, free of charge, to **the** concluded contracts **referred to in paragraph 6**. Access to certain parts of **the contracts** may be **refused** where their disclosure would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

*Amendment*

7. Without prejudice to the national law concerning access to information, and in accordance with national and EU legislation on data protection, the oversight body shall **collect and publicly provide** unrestricted and full direct access, free of charge, to **all documentation pertaining to any tendering processes. Specific procedural documents such as contracts, contract amendments and audits pertaining to all** concluded contracts **shall also be made public**. Access to certain parts of **such information** may be **withheld** where their disclosure would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

Or. en

**Amendment 1504**

**Frank Engel, Philippe Juvin, András Gyürk, Andreas Schwab, Ildikó Gáll-Pelcz**

**Proposal for a directive  
Article 84 – paragraph 8**

*Text proposed by the Commission*

8. Le rapport annuel mentionné au paragraphe 2 contient un résumé de toutes les activités menées par **l'organe de contrôle** en vertu des paragraphes 1 à 7.

*Amendment*

8. Le rapport annuel mentionné au paragraphe 2 contient un résumé de toutes les activités menées par **les autorités compétentes** en vertu des paragraphes 1 à 7.

Or. fr

**Amendment 1505**

**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 85 – title**

*Text proposed by the Commission*

*Amendment*

Individual *reports on procedures for the award of contracts*

Individual **Reporting**

Or. en

*Justification*

*Alternative proposals on governance (reporting).*

**Amendment 1506**  
**Heide Rühle**

**Proposal for a directive**  
**Article 85 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

For every contract or framework agreement, **and** every time a dynamic purchasing system is established, contracting authorities shall draw up a written report which shall include at least the following:

For every **above threshold procurement be it a** contract or framework agreement **or** every time a dynamic purchasing system is established, contracting authorities shall draw up a written report which shall include at least the following:

Or. en

**Amendment 1507**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 85 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

(b) the names of the **successful** candidates or tenderers and the reasons for their selection;

(b) **where applicable, the results of the qualitative selection and/or reduction of numbers pursuant to Article 64 and 65, namely:**

(i) the names of the **selected** candidates or



tenderers and the reasons for their selection;

*(ii) the names of the candidates or tenderers rejected and the reasons for their rejection;*

Or. en

*Justification*

*Alternative proposals on governance (reporting).*

**Amendment 1508**

**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**

**Article 85 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

*(c) the names of the candidates or tenderers rejected and the reasons for their rejection;*

*deleted*

Or. en

*Justification*

*Alternative proposals on governance (reporting). The text of this sub-paragraph has been moved to sub-paragraph (b).*

**Amendment 1509**

**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**

**Article 85 – paragraph 1 – point e**

*Text proposed by the Commission*

*Amendment*

*(e) the name of the successful tenderer and the reasons why its tender was selected and, where known, the share of the contract or framework agreement which*

*(e) the name of the successful tenderer and the reasons why its tender was selected;*

*the successful tenderer intends to subcontract to third parties;*

Or. en

*Justification*

*Alternative proposals on governance (reporting). The requirement proposed by the Commission in original subparagraph (d) regarding information on the percentage value of subcontracting would add unnecessary administrative burdens, and would be often difficult to know for the main supplier/tenderer up front (and therefore difficult to share with the contracting authority).*

**Amendment 1510**

**Evelyne Gebhardt, Birgit Sippel**

**Proposal for a directive**

**Article 85 – paragraph 1 – point e**

*Text proposed by the Commission*

(e) den Namen des erfolgreichen Bieters und die Gründe für die Auswahl seines Angebots sowie – falls bekannt – den Anteil am Auftrag oder an der Rahmenvereinbarung, den der Zuschlagsempfänger an Dritte weiterzugeben beabsichtigt;

*Amendment*

(e) den Namen des erfolgreichen Bieters und die Gründe für die Auswahl seines Angebots sowie – falls bekannt – den Anteil am Auftrag oder an der Rahmenvereinbarung, den der Zuschlagsempfänger an Dritte weiterzugeben beabsichtigt, ***und Informationen über ihre Unterauftragnehmer einschließlich ihrer Namen, Anschrift und Rechtsvertreter;***

Or. de

**Amendment 1511**

**Heide Rühle**

**Proposal for a directive**

**Article 85 – paragraph 1 – point f a (new)**

*Text proposed by the Commission*

*Amendment*

***(fa) as far as the competitive dialogue is concerned, the circumstances as laid***

*down in Article XX justifying the use of  
this procedure;*

Or. en

**Amendment 1512**

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

**Proposal for a directive**

**Article 85 – paragraph 1 – point h**

*Text proposed by the Commission*

*Amendment*

*(h) where applicable, conflicts of interests  
detected and subsequent measures taken.*

*deleted*

Or. en

**Amendment 1513**

**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**

**Article 85 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*To the extent that the contract award  
notice drawn up pursuant to Article 48  
contains the information required in this  
paragraph, contracting authorities may  
refer to that notice.*

Or. en

*Justification*

*Alternative proposals on governance (reporting).*

**Amendment 1514**

**Heide Rühle**

**Proposal for a directive  
Article 85 – paragraph 2**

*Text proposed by the Commission*

The contracting authorities shall document the progress of ***all procurement*** procedures, ***whether or not those are*** conducted by electronic means. ***To that end, they shall document all stages in the procurement procedure, including all communications with economic operators and internal deliberations, preparation of the tenders, dialogue or negotiation if any, selection and award of the contract.***

*Amendment*

The contracting authorities shall ***take appropriate steps to*** document the progress of ***award*** procedures conducted by electronic means.

Or. en

**Amendment 1515  
Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive  
Article 85 – paragraph 2**

*Text proposed by the Commission*

The contracting authorities shall document the progress of all procurement procedures, whether or not those are conducted by electronic means. To that end, they shall ***document*** all stages ***in*** the procurement procedure, ***including all*** communications with economic operators and internal deliberations, preparation of the tenders, dialogue or negotiation if any, selection and award of the contract.

*Amendment*

The contracting authorities shall document the progress of all procurement procedures, whether or not those are conducted by electronic means. To that end, they shall ***ensure that they dispose of sufficient documentation to justify decisions taken in*** all stages ***of*** the procurement procedure, ***such as documentation on*** communications with economic operators and internal deliberations, preparation of the tenders, dialogue or negotiation if any, selection and award of the contract.

Or. en

*Justification*

*Alternative proposals on governance (reporting).*

**Amendment 1516**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 85 – paragraph 2**

*Text proposed by the Commission*

De aanbestedende diensten **documenteren** het verloop van **alle** gunningsprocedures, **ongeacht of deze al dan niet** elektronisch worden verricht. **Hiertoe bewaren zij documenten voor alle stadia in de aanbestedingsprocedure, met inbegrip van de communicatie met ondernemers en interne beraadslaging, de voorbereiding van de inschrijvingen, eventuele dialoog of onderhandeling, selectie en gunning van de opdracht.**

*Amendment*

De aanbestedende diensten **nemen passende maatregelen om** het verloop van **de** gunningsprocedures **die** elektronisch worden verricht **te documenteren**.

Or. nl

*Justification*

*Het systeem met processen-verbaal, zoals omschreven in artikel 43 van Richtlijn 2004/18/EG, verdient de voorkeur boven de hier voorgestelde regeling. Bovendien leiden de nieuwe bepalingen tot een toename van de administratieve lasten.*

**Amendment 1517**

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

**Proposal for a directive**  
**Article 85 – paragraph 2**

*Text proposed by the Commission*

The contracting authorities shall document the progress of all procurement procedures, whether or not those are conducted by electronic means. To that end, they shall document all stages in the procurement procedure, including all communications with economic operators **and internal deliberations**, preparation of the tenders, dialogue or negotiation if any, selection and award of the contract.

*Amendment*

The contracting authorities shall document the progress of all procurement procedures, whether or not those are conducted by electronic means. To that end, they shall document all stages in the procurement procedure, including all communications with economic operators, preparation of the tenders, dialogue or negotiation if any, selection and award of the contract.

**Amendment 1518**  
**Jürgen Creutzmann**

**Proposal for a directive**  
**Article 85 – paragraph 2**

*Text proposed by the Commission*

The contracting authorities shall document the progress of all procurement procedures, whether or not those are conducted by electronic means. To that end, they shall document all stages in the procurement procedure, including all communications with economic operators **and internal deliberations**, preparation of the tenders, dialogue or negotiation if any, selection and award of the contract.

*Amendment*

The contracting authorities shall document the progress of all procurement procedures, whether or not those are conducted by electronic means. To that end, they shall document all stages in the procurement procedure, including all communications with economic operators, preparation of the tenders, dialogue or negotiation if any, selection and award of the contract.

Or. en

**Amendment 1519**  
**Heide Rühle**

**Proposal for a directive**  
**Article 85 – paragraph 3**

*Text proposed by the Commission*

The report, or its main elements, shall be communicated to the Commission **or to the national oversight body** where they so request.

*Amendment*

The report, or its main elements, shall be communicated to the Commission where they so request.

Or. en

**Amendment 1520**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 85 – paragraph 3**

*Text proposed by the Commission*

The report, or its main elements, shall be communicated to the Commission or **to** the national **oversight body** where they so request.

*Amendment*

The report, or its main elements, shall be communicated to the Commission or the national **authorities or structures referred to in Article 83** where they so request.

Or. en

*Justification*

*Alternative proposals on governance (reporting).*

**Amendment 1521**

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

**Proposal for a directive  
Article 85 – paragraph 3**

*Text proposed by the Commission*

The report, or its main elements, shall be communicated to the Commission or to the national **oversight** body where they so request.

*Amendment*

The report, or its main elements, shall be communicated to the Commission or to the **competent** national body where they so request.

Or. en

**Amendment 1522**

**Jürgen Creutzmann**

**Proposal for a directive  
Article 85 – paragraph 3**

*Text proposed by the Commission*

The report, or its main elements, shall be communicated to the Commission **or to the national oversight body** where they so request.

*Amendment*

The report, or its main elements, shall be communicated to the Commission where they so request.

Or. en

**Amendment 1523**

**Heide Rühle**

**Proposal for a directive**

**Article 86**

*Text proposed by the Commission*

*Amendment*

[...]

*deleted*

Or. en

**Amendment 1524**

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

**Proposal for a directive**

**Article 86**

*Text proposed by the Commission*

*Amendment*

[...]

*deleted*

Or. en

*Justification*

*Gathering statistical data through reports by Member States is unreliable and leads to bureaucracy and costs. The objective of Article 86 is to cross-check the data gathered through the TED database on the basis of Article 48 of the proposal. Both TED data and national reporting data are however very often incomplete. Instead of cross-checking, the TED pillar of statistical data gathering should be further strengthened, the national reporting pillar should be completely abandoned.*

**Amendment 1525**

**Wim van de Camp**

**Proposal for a directive**

**Article 86**



*Text proposed by the Commission*

*Amendment*

[...]

**Schrappen**

Or. nl

*Justification*

*De voorgestelde bepaling dient te worden geschrapt. Deze bepaling leidt tot onnodige administratieve lastenverzwaring.*

**Amendment 1526**  
**Sabine Verheyen**

**Proposal for a directive**  
**Article 86**

*Text proposed by the Commission*

*Amendment*

[...]

**entfällt**

Or. de

**Amendment 1527**  
**Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive**  
**Article 86**

*Text proposed by the Commission*

*Amendment*

[...]

**deleted**

Or. en

**Amendment 1528**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 86 – title**

*Text proposed by the Commission*

*Amendment*

National reporting **and lists of contracting authorities**

National reporting

Or. en

*Justification*

*Alternative proposals on governance (reporting).*

### **Amendment 1529**

**Malcolm Harbour, Edvard Kožušník**

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

#### **Article 86 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. **The bodies established or appointed in accordance with Article 84** shall forward to the Commission **an implementation and** statistical report on each year, based on a standard form, not later than 31 October of the following year.

1. **Member States** shall forward to the Commission **a** statistical report on each year, based on a standard form, not later than 31 October of the following year.

Or. en

*Justification*

*Alternative proposals on governance (reporting).*

### **Amendment 1530**

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

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

#### **Article 86 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. The bodies **established or appointed in accordance with Article 84** shall forward to the Commission an implementation and

1. The **competent** bodies in **Member States** shall forward to the Commission an implementation and statistical report on

statistical report on each year, based on a standard form, not later than 31 October of the following year.

each year, based on a standard form, not later than 31 October of the following year.

Or. en

#### *Justification*

*The proposal imposes excessive obligations on the Member States. In particular providing the Commission with complete list of all contracting authorities in the Member State will not be possible. In practice the number of contracting authorities is significant (in some countries it can be thousands) and changes each year, depending on the structural changes in administration.*

#### **Amendment 1531**

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

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

#### **Article 86 – paragraph 2 – point a**

*Text proposed by the Commission*

*Amendment*

***(a) a complete and up-to-date list of all central government authorities, sub-central contracting authorities and bodies governed by public law, including sub-central authorities and associations of contracting authorities awarding public contracts or framework agreements, indicating for each authority the unique identification number where such number is provided for in national legislation; this list shall be grouped by type of authority;***

***deleted***

Or. en

#### *Justification*

*The proposal imposes excessive obligations on the Member States. In particular providing the Commission with complete list of all contracting authorities in the Member State will not be possible. In practice the number of contracting authorities is significant (in some countries it can be thousands) and changes each year, depending on the structural changes in administration.*

**Amendment 1532**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 86 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) a ***complete and up-to-date*** list of all central government authorities, sub-central contracting authorities and bodies governed by public law, ***including sub-central authorities and associations of contracting authorities awarding*** public contracts or framework agreements, indicating for each authority the unique identification number where such number is provided for in national legislation; this list shall be grouped by type of authority;

*Amendment*

(a) a list of all central government authorities, sub-central contracting authorities and bodies governed by public law, ***which have awarded*** public contracts or ***concluded*** framework agreements ***during the year concerned***, indicating for each authority the unique identification number where such number is provided for in national legislation; this list shall be grouped by type of authority;

Or. en

*Justification*

*Alternative proposals on governance (reporting).*

**Amendment 1533**  
**Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski**

**Proposal for a directive**  
**Article 86 – paragraph 2 – point b**

*Text proposed by the Commission*

(b) a ***complete and up-to-date list of all central purchasing bodies***;

*Amendment*

***deleted***

Or. en

*Justification*

*The proposal imposes excessive obligations on the Member States. In particular providing the Commission with complete list of all contracting authorities in the Member State will not be possible. In practice the number of contracting authorities is significant (in some countries it can be thousands) and changes each year, depending on the structural changes in administration.*

**Amendment 1534**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 86 – paragraph 2 – point b**

*Text proposed by the Commission*

(b) a ***complete and up-to-date*** list of all central purchasing bodies;

*Amendment*

(b) a list of all central purchasing bodies ***which have awarded public contracts or concluded framework agreements during the year concerned;***

Or. en

*Justification*

*Alternative proposals on governance (reporting).*

**Amendment 1535**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 86 – paragraph 2 – point c – introductory part**

*Text proposed by the Commission*

(c) for all contracts above the thresholds laid down in Article 4 of this Directive:

*Amendment*

(c) for all contracts above the thresholds laid down in Article 4 of this Directive, ***the estimated number and value of contracts awarded during the year concerned, broken down for each type of authority by procedure and by works, supplies and services.***

Or. en

*Justification*

*Alternative proposals on governance (reporting).*

**Amendment 1536**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 86 – paragraph 2 – point c – point i**

*Text proposed by the Commission*

*Amendment*

*(i) the number and value of contracts awarded broken down for each type of authority by procedure and by works, supplies and services identified by division of the CPV nomenclature;* **deleted**

Or. en

*Justification*

*Alternative proposals on governance (reporting).*

**Amendment 1537**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 86 – paragraph 2 – point c – point ii**

*Text proposed by the Commission*

*Amendment*

*(ii) where the contracts have been concluded under the negotiated procedure without prior publication, the data referred to in point (i) shall also be broken down according to the circumstances referred to in Article 30 and shall specify the number and value of contracts awarded, by Member State and third country of the successful contractor;* **deleted**

Or. en

*Justification*

*Alternative proposals on governance (reporting).*

**Amendment 1538**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 86 – paragraph 2 – point d**

*Text proposed by the Commission*

(d) for ***all contracts which fall*** below the thresholds laid down in Article 4 of this Directive, but would be covered by this Directive if ***their*** value exceeded the threshold, the ***number and*** value of ***contracts awarded broken down by each type of authority.***

*Amendment*

(d) for ***procurement*** below the thresholds laid down in Article 4 of this Directive, but ***which*** would be covered by this Directive if ***its*** value exceeded the threshold, ***an estimation of the aggregated total*** value of ***the procurement during the year concerned. This estimation may in particular be based on data available under national publication requirements.***

Or. en

*Justification*

*Alternative proposals on governance (reporting).*

**Amendment 1539**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Article 86 – paragraph 4**

*Text proposed by the Commission*

***4. Member States shall make available to the Commission information on their institutional organisation related to the implementation, monitoring and enforcement of this Directive, as well as on national initiatives taken to provide guidance on or assist in implementation of Union rules on public procurement, or to respond to challenges confronting the implementation of those rules.***

*Amendment*

***deleted***

Or. en

*Justification*

*Alternative proposals on governance (reporting).*

**Amendment 1540**

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

**Proposal for a directive**

**Article 86 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. Member States shall make available to the Commission information on their institutional organisation related to the implementation, monitoring and enforcement of this Directive, as well as on national initiatives taken to provide guidance on or assist in implementation of Union rules on public procurement, or to respond to challenges confronting the implementation of those rules.** *deleted*

Or. en

*Justification*

*Paragraph 4 seems not to be necessary.*

**Amendment 1541**

**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**

**Article 86 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

5. The Commission shall establish the standard form for the annual **implementation and** statistical report referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.

5. The Commission shall establish the standard form for the annual statistical report referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.



*Justification*

*Alternative proposals on governance (reporting).*

**Amendment 1542**  
**Heide Rühle**

**Proposal for a directive**  
**Article 86 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 86 a**

***Statistical obligations and Content of  
statistical report***

***1. Member States shall make available to the Commission information on their institutional organisation related to the implementation, monitoring and enforcement of this Directive, as well as on national initiatives taken to provide guidance on or assist in implementation of Union rules on public procurement, or to respond to challenges confronting the implementation of those rules.***

***2. The report referred to in paragraph 1 shall contain at least the following information for all contracts above the thresholds laid down in Article 4 of this Directive:***

***(i) the number and value of contracts awarded broken down for each type of authority by procedure and by works, supplies and services identified by division of the CPV nomenclature;***

***(ii) where the contracts have been concluded under the negotiated procedure without prior publication, the data referred to in point (i) shall also be broken down according to the circumstances referred to in Article 30 and shall specify the number and value of***

*contracts awarded, by Member State and third country of the successful contractor;*

*As far as possible, the data referred to in point (a) of the first subparagraph shall be broken down by:*

*(a) the contract award procedures used; and*

*(b) for each of these procedures, works as given in Annex II and products and services as given in Annex XVI identified by category of the CPV nomenclature;*

*(c) the nationality of the economic operator to which the contract was awarded.*

*Where the contracts have been concluded according to the negotiated procedure, the data referred to in point (a) of the first subparagraph shall also be broken down according to the circumstances referred to in Articles 27 and 30 and shall specify the number and value of contracts awarded, by Member State and third country of the successful contractor.*

*3. For each category of contracting authority which is not given in Annex I, the statistical report shall detail at least:*

*(a) the number and value of the contracts awarded, broken down in accordance with the second subparagraph of paragraph 1;*

*(b) the total value of contracts awarded pursuant to derogations to the Agreement.*

*4. The statistical report shall set out any other statistical information which is required under the Agreement. The information referred to in the first subparagraph shall be determined pursuant to the procedure under Article 91(2).*

Or. en

**Amendment 1543**  
**Monica Luisa Macovei**

**Proposal for a directive  
Article 86 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 86 a**

**Redress and sanctions**

***Member States shall put in place mechanisms for effective and timely redress, and effective, dissuasive and proportionate sanctions in case of fraud, corruption, conflict of interests or other serious irregularities. Redress and sanctions applied in these cases shall include annulment of the respective public contracts and liability for damages.***

Or. en

**Amendment 1544  
Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive  
Article 87**

*Text proposed by the Commission*

*Amendment*

**Article 87**

***deleted***

***Assistance to contracting authorities and businesses***

***1. Member States shall make available technical support structures in order to provide legal and economic advice, guidance and assistance to contracting authorities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting authority can obtain competent assistance and advice on individual questions.***

***2. With a view to improving access to public procurement for economic operators, in particular SMEs, and in order to facilitate correct understanding of the provisions of this Directive,***

*Member States shall ensure that appropriate assistance can be obtained, including by electronic means or using existing networks dedicated to business assistance.*

*3. Specific administrative assistance shall be available to economic operators intending to participate in a procurement procedure in another Member State. Such assistance shall at least cover administrative requirements in the Member State concerned, as well as possible obligations related to electronic procurement.*

*Member States shall ensure that interested economic operators have easy access to appropriate information on the obligations relating to taxes, environmental protection, and to social and labour law obligations, which are in force in the Member State, in the region or locality where the works are to be carried out or the services are to be provided and which will be applicable to the works carried out on site or to the services provided during the performance of the contract.*

*4. For the purposes of paragraphs 1, 2 and 3, Member States may appoint a single body or several bodies or administrative structures. Member States shall ensure due coordination between those bodies and structures.*

Or. en

#### *Justification*

*Alternative proposals on governance (assistance to contracting authorities and businesses), proposing to delete Article 87. The Commission's proposals would need to be supported by a clear case demonstrating cost-effectiveness, and these detailed proposals would also breach principles of subsidiarity and proportionality. However, there is a clear need for Member States to take ownership of SME/Think Small First principles in public procurement. This is proposed in a Recital.*

**Amendment 1545**  
**Wim van de Camp**

**Proposal for a directive**  
**Article 87**

*Text proposed by the Commission*

*Amendment*

[...]

**Schrappen**

Or. nl

*Justification*

*De organisatie van bijstand voor aanbestedende diensten op nationaal niveau is een zaak van de lidstaten zelf. Als de regelgeving eenvoudiger zou zijn, dan zou de behoefte aan uitleg van de aanbestedingsregels waarschijnlijk ook kleiner zijn.*

**Amendment 1546**

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

**Proposal for a directive**  
**Article 87**

*Text proposed by the Commission*

*Amendment*

**Article 87**

**deleted**

***Assistance to contracting authorities and businesses***

***1. Member States shall make available technical support structures in order to provide legal and economic advice, guidance and assistance to contracting authorities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting authority can obtain competent assistance and advice on individual questions.***

***2. With a view to improving access to public procurement for economic operators, in particular SMEs, and in order to facilitate correct understanding of the provisions of this Directive, Member States shall ensure that appropriate assistance can be obtained,***

*including by electronic means or using existing networks dedicated to business assistance.*

*3. Specific administrative assistance shall be available to economic operators intending to participate in a procurement procedure in another Member State. Such assistance shall at least cover administrative requirements in the Member State concerned, as well as possible obligations related to electronic procurement.*

*Member States shall ensure that interested economic operators have easy access to appropriate information on the obligations relating to taxes, environmental protection, and to social and labour law obligations, which are in force in the Member State, in the region or locality where the works are to be carried out or the services are to be provided and which will be applicable to the works carried out on site or to the services provided during the performance of the contract.*

*4. For the purposes of paragraphs 1, 2 and 3, Member States may appoint a single body or several bodies or administrative structures. Member States shall ensure due coordination between those bodies and structures.*

Or. en

**Amendment 1547**  
**Heide Rühle**

**Proposal for a directive**  
**Article 87 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall make available technical support structures in order to provide legal and economic *advice*, guidance and assistance to contracting

*Amendment*

1. Member States shall make available technical support structures in order to provide legal and economic *information*, guidance and assistance to contracting

authorities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting authority can obtain competent assistance and *advice* on individual questions.

authorities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting authority can obtain competent assistance and *information* on individual questions.

Or. en

*Justification*

*Clarification, the wording could be interpreted as legal advice but it's not up the Member States to provide legal advice on European regulations.*

**Amendment 1548**  
**Phil Prendergast**

**Proposal for a directive**  
**Article 87 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall make available *technical* support structures in order to provide legal and economic advice, guidance and assistance to contracting authorities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting authority can obtain competent assistance and advice on individual questions.

*Amendment*

1. Member States shall make available support structures in order to provide legal and economic advice, guidance and assistance to contracting authorities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting authority can obtain competent assistance and advice on individual questions. *Member States may also use external consultancy services to complement their programme and project management skills and competences.*

Or. en

**Amendment 1549**  
**Heide Rühle**

**Proposal for a directive**  
**Article 87 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. For the purposes of paragraphs 1, 2 and 3, Member States may appoint a single body or several bodies or administrative structures. Member States shall ensure due coordination between those bodies and structures.**

**deleted**

Or. en

*Justification*

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

#### **Amendment 1550**

**Sergio Gaetano Cofferati**

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

**Article 88 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall provide mutual assistance to each other, and shall put in place measures for effective cooperation with one another, in order to ensure exchange of information on issues referred to in Articles 40, 41, 42, 55, 57, 59, 60, 61, 63 and **69**. They shall ensure the confidentiality of the information which they exchange.

1. Member States shall provide mutual assistance to each other, and shall put in place measures for effective cooperation with one another, in order to ensure exchange of information on issues referred to in Articles 40, 41, 42, 55, 57, 59, 60, 61, 63, **69** and **73a**. They shall ensure the confidentiality of the information which they exchange.

Or. en

#### **Amendment 1551**

**Heide Rühle**

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

**Article 88 – paragraph 3**



*Text proposed by the Commission*

*Amendment*

**3. For the purposes of this Article, Member States shall designate one or more liaison points, the contact details of which shall be communicated to the other Member States, the oversight bodies and the Commission. Member States shall publish and regularly update the list of liaison points. The oversight body shall be in charge of the coordination of such liaison points.** *deleted*

Or. en

*Justification*

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

#### **Amendment 1552**

**Malcolm Harbour, Edvard Kožušník**

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

**Article 88 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. For the purposes of this Article, Member States shall designate one or more liaison points, the contact details of which shall be communicated to the other Member States, the oversight bodies and the Commission. Member States shall publish and regularly update the list of liaison points. The oversight body shall be in charge of the coordination of such liaison points.** *deleted*

Or. en

*Justification*

*Alternative proposals on governance (administrative cooperation).*

**Amendment 1553**

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

**Proposal for a directive**

**Article 88 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. For the purposes of this Article, Member States shall designate one or more liaison points, the contact details of which shall be communicated to the other Member States, the oversight bodies and the Commission. Member States shall publish and regularly update the list of liaison points. The oversight body shall be in charge of the coordination of such liaison points.**

*deleted*

Or. en

*Justification*

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

**Amendment 1554**

**Jürgen Creutzmann**

**Proposal for a directive**

**Article 88 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. For the purposes of this Article, Member States shall designate one or more liaison points, the contact details of which shall be communicated to the other Member States, **the oversight bodies** and the Commission. Member States shall publish and regularly

3. For the purposes of this Article, Member States shall designate one or more liaison points, the contact details of which shall be communicated to the other Member States and the Commission. Member States shall publish and regularly update the list of

update the list of *liaison points*. *The oversight body shall be in charge of the coordination* of such liaison points.

liaison points.

Or. en

*(See deletion of Article 86)*

#### **Amendment 1555**

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

#### **Proposal for a directive Article 88 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. The exchange of information shall take place via the Internal Market Information system established pursuant to Regulation (EU) N° XXX/XXXX of the European Parliament and Council<sup>44</sup> [proposal for a Regulation of the European Parliament and Council on the administrative cooperation through the Internal Market Information System ('the IMI Regulation') COM(2011) 522]. Member States shall supply information requested by other Member States within the shortest possible period of time.** **deleted**

Or. en

#### *Justification*

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

#### **Amendment 1556**

**Heide Rühle**

#### **Proposal for a directive Article 89 – paragraph 3**

*Text proposed by the Commission*

3. The delegation of power referred to in Articles 6, 13, 19, 20, 23, **54, 59, 67 and 86** may be revoked at any time by the European Parliament or by the Council. A revocation decision shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

*Amendment*

3. The delegation of power referred to in Articles 6, 13, 19, 20, 23 **and 59** may be revoked at any time by the European Parliament or by the Council. A revocation decision shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Or. en

**Amendment 1557**  
**Malcolm Harbour**

**Proposal for a directive**  
**Article 91 – paragraph 1**

*Text proposed by the Commission*

1. The Commission shall be assisted by the Advisory Committee for Public Contracts established by Council Decision 71/306/EEC<sup>45</sup>. ***That committee*** shall be ***a committee*** within the meaning of Regulation (EU) No 182/2011.

*Amendment*

1. The Commission shall be assisted by the Advisory Committee for Public Contracts established by Council Decision 71/306/EEC<sup>45</sup> ***and by the Committee set up by Article 7 of Council Regulation (EC) No 3286/94 (Trade Barriers Regulation)***<sup>46</sup>. ***These committees*** shall be ***committees*** within the meaning of ***Article 3 of Regulation (EU) No 182/2011.***

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<sup>46</sup> ***1 OJ L 349, 31.12.1994, p. 71***

Or. en

**Amendment 1558**  
**Malcolm Harbour**

**Proposal for a directive**  
**Article 91 – paragraph 2**

*Text proposed by the Commission*

2. Where reference is made to this **Article**, Article 4 of Regulation (EU) No 182/2011 shall apply.

*Amendment*

2. Where reference is made to this **article**, Article 4 of Regulation (EU) No 182/2011 shall apply **and the competent committee shall be the Committee established by Council Decision 71/306/EEC.**

Or. en

**Amendment 1559**  
**Malcolm Harbour**

**Proposal for a directive**  
**Article 91 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2 a. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply and the competent committee shall be the Committee set up by the Trade Barriers regulation.**

Or. en

**Amendment 1560**  
**Heide Rühle**

**Proposal for a directive**  
**Annex 6 – part H**

*Text proposed by the Commission*

*Amendment*

**Part H**

**deleted**

**INFORMATION TO BE INCLUDED IN  
CONTRACT NOTICES CONCERNING  
CONTRACTS FOR SOCIAL AND  
OTHER SPECIFIC SERVICES**

**(as referred to in Article 75(1))**

***1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.***

***2. Where appropriate, email or internet address at which the specifications and any supporting documents will be available.***

***3. Type of contracting authority and main activity exercised.***

***4. Where appropriate, indication whether the contracting authority is a central purchasing body or that any other form of joint procurement is involved.***

***5. CPV Nomenclature reference No(s); where the contract is divided into lots, this information shall be provided for each lot.***

***6. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in case of supplies and services***

***7. Description of the services and where applicable, incidental works and supplies to be procured***

***8. Estimated total value of contract(s); where the contract is divided into lots, this information shall be provided for each lot.***

***9. Conditions for participation, including***

***a) where appropriate, indication whether the contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,***

***b) where appropriate, indication whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.***

***10. Time limit(s) for contacting the contracting authority in view of***

*participation.*

**11. Brief description of the main features of the award procedure to be applied.**

**12. Any other relevant information.**

Or. en

**Amendment 1561**  
**Frank Engel, Andreas Schwab**

**Proposal for a directive**  
**Annex 6 – section 8**

*Text proposed by the Commission*

*Amendment*

**Part H**

**deleted**

**INFORMATION TO BE INCLUDED IN  
CONTRACT NOTICES CONCERNING  
CONTRACTS FOR SOCIAL AND  
OTHER SPECIFIC SERVICES**

*(as referred to in Article 75(1))*

**1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.**

**2. Where appropriate, email or internet address at which the specifications and any supporting documents will be available.**

**3. Type of contracting authority and main activity exercised.**

**4. Where appropriate, indication whether the contracting authority is a central purchasing body or that any other form of joint procurement is involved.**

**5. CPV Nomenclature reference No(s); where the contract is divided into lots, this information shall be provided for each lot.**

*6. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in case of supplies and services*

*7. Description of the services and where applicable, incidental works and supplies to be procured*

*8. Estimated total value of contract(s); where the contract is divided into lots, this information shall be provided for each lot.*

*9. Conditions for participation, including*

*a) where appropriate, indication whether the contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,*

*b) where appropriate, indication whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.*

*10. Time limit(s) for contacting the contracting authority in view of participation.*

*11. Brief description of the main features of the award procedure to be applied.*

*12. Any other relevant information.*

Or. en

*Justification*

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

**Amendment 1562**

**Alexander Alvaro, Jürgen Creutzmann**

**Proposal for a directive**

**Annex 8 – paragraph 1 – point 1 – point a**



*Text proposed by the Commission*

(a) in the case of public works contracts the totality of the technical prescriptions contained in particular in the procurement documents, defining the characteristics required of a material, product or supply, so that it fulfils the use for which it is intended by the contracting authority; those characteristics include levels of environmental and climate performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions and production processes and methods at any stage of the life cycle of the works; those characteristics also include 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;

*Amendment*

(a) in the case of public works contracts the totality of the technical prescriptions contained in particular in the procurement documents, defining the characteristics required of a material, product or supply, so that it fulfils the use for which it is intended by the contracting authority; those characteristics include levels of environmental and climate performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions and production processes and methods at any stage of the life cycle of the works; those characteristics also include rules relating to design ***(including data protection by 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 1563**  
**Matteo Salvini, Francesco Enrico Speroni**

**Proposal for a directive**  
**Annex 8 – paragraph 1 – point 1 – point a**

*Text proposed by the Commission*

(a) in the case of public works contracts the totality of the technical prescriptions contained in particular in the procurement documents, defining the characteristics

*Amendment*

(a) in the case of public works contracts the totality of the technical prescriptions contained in particular in the procurement documents, defining the characteristics

required of a material, product or supply, so that it fulfils the use for which it is intended by the contracting authority; those characteristics include levels of environmental and climate performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions *and* production processes and methods at any stage of the life cycle of the works; those characteristics also include 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;

required of a material, product or supply, so that it fulfils the use for which it is intended by the contracting authority; those characteristics include levels of environmental and climate performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods *and working conditions* at any stage of the life cycle of the works; those characteristics also include 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 1564**  
**Alexander Alvaro, Jürgen Creutzmann**

**Proposal for a directive**  
**Annex 8 – paragraph 1 – point 1 – point b**

*Text proposed by the Commission*

(b) in the case of public supply or service contracts a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name

*Amendment*

(b) in the case of public supply or service contracts a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name

under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods at any stage of the life cycle of the supply or service and conformity assessment procedures;

under which the product is sold, terminology, **rules relating to design (including data protection by design)**, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods at any stage of the life cycle of the supply or service and conformity assessment procedures;

Or. en

#### **Amendment 1565**

**Matteo Salvini, Francesco Enrico Speroni**

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

**Annex 8 – paragraph 1 – point 1 – point b**

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

(b) in the case of public supply or service contracts a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods at any stage of the life cycle of the supply or service and conformity assessment procedures;

##### *Amendment*

(b) in the case of public supply or service contracts a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods **and working conditions** at any stage of the life cycle of the supply or service and conformity assessment procedures;

Or. en

#### **Amendment 1566**

**Heide Rühle**

**Proposal for a directive**  
**Annex 8 – paragraph 1 – point 2 – introductory part**

*Text proposed by the Commission*

(2) ‘standard’ means a technical specification approved by a recognised **standardising body** for repeated or continuous **application, compliance** with which is not compulsory and which falls into one of the following categories:

*Amendment*

(2) "standard" means a technical specification **established by consensus and approved by a recognised standardisation organisation** for repeated or continuous **use**, with which **compliance** is not compulsory and which falls into one of the following categories:

Or. en

**Amendment 1567**  
**Heide Rühle**

**Proposal for a directive**  
**Annex 8 – paragraph 1 – point 4**

*Text proposed by the Commission*

(4) ‘Common technical specification’ means a technical specification laid down in accordance with a procedure recognised by the Member States or in accordance with Articles 9 and 10 of Parliament and Council Regulation [XXX] on European standardisation [and amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/105/EC and 2009/23/EC of the European Parliament and the Council] which has been published in the Official Journal of the European Union;

*Amendment*

(4) ‘Common technical specification’ means a technical specification laid down in accordance with a procedure recognised by the Member States or, **in the field of information and communication technologies, in** accordance with Articles 9 and 10 of Parliament and Council Regulation [XXX] on European standardisation [and amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/105/EC and 2009/23/EC of the European Parliament and the Council] which has been published in the Official Journal of the European Union;

Or. en

*Justification*

*CEN/CENELEC proposal – bringing in line with the definitions of the Directive 98/34/EC*

## Amendment 1568

Sari Essayah

### Proposal for a directive

#### Annex 8 – paragraph 1 – point 4

*Text proposed by the Commission*

(4) ‘Common technical specification’ means a technical specification laid down in accordance with a procedure recognised by the Member States or in accordance with Articles 9 and 10 of Parliament and Council Regulation [XXX] on European standardisation [and amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/105/EC and 2009/23/EC of the European Parliament and the Council] which has been published in the Official Journal of the European Union;

*Amendment*

(4) ‘Common technical specification’ means a technical specification laid down in accordance with a procedure recognised by the Member States or, ***in the field of information and communication technologies, in*** accordance with Articles 9 and 10 of Parliament and Council Regulation [XXX] on European standardisation [and amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/105/EC and 2009/23/EC of the European Parliament and the Council] which has been published in the Official Journal of the European Union;

Or. en

## Amendment 1569

Matteo Salvini, Francesco Enrico Speroni

### Proposal for a directive

#### Annex 11 – indent 8 a (new)

*Text proposed by the Commission*

*Amendment*

***- Convention 155 on Occupational Safety and Health***

Or. en

## Amendment 1570

Matteo Salvini, Francesco Enrico Speroni

**Proposal for a directive  
Annex 11 – indent 8 b (new)**

*Text proposed by the Commission*

*Amendment*

**- Convention 1 on Hours of Work  
(Industry)**

Or. en

**Amendment 1571  
Matteo Salvini, Francesco Enrico Speroni**

**Proposal for a directive  
Annex 11 – indent 8 c (new)**

*Text proposed by the Commission*

*Amendment*

**- Convention 131 on Minimum Wage  
Fixing**

Or. en

**Amendment 1572  
Matteo Salvini, Francesco Enrico Speroni**

**Proposal for a directive  
Annex 11 – indent 8 d (new)**

*Text proposed by the Commission*

*Amendment*

**- Convention 102 on Social Security  
(Minimum Standard)**

Or. en

**Amendment 1573  
Andreas Schwab, Frank Engel, Birgit Collin-Langen, Sabine Verheyen, Konstantinos  
Poupakis, Jürgen Creutzmann**

**Proposal for a directive  
Annex 13 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) Identification of the economic operator;

(a) Identification of the economic operator;  
*company registration number, name,  
address, bank;*

Or. en

**Amendment 1574**

**Andreas Schwab, Frank Engel, Sirpa Pietikäinen, Jürgen Creutzmann**

**Proposal for a directive**

**Annex 13 – paragraph 1 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

*(aa) Description of the company, in  
particular year of establishment,  
corporate form, owner(s) of the company,  
members of the board, industry code,  
short description of the main services  
and/or production of the company;*

Or. en

**Amendment 1575**

**Andreas Schwab, Frank Engel, Konstantinos Poupakis, Sirpa Pietikäinen, Jürgen  
Creutzmann**

**Proposal for a directive**

**Annex 13 – paragraph 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

*(ca) Certification that the economic  
operator has fulfilled its obligations in  
relation to payment of taxes or social  
security systems according to individual  
Member States laws;*

Or. en

**Amendment 1576**

**Andreas Schwab, Frank Engel, Sirpa Pietikäinen, Jürgen Creutzmann**

**Proposal for a directive**

**Annex 13 – paragraph 1 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

*(da) Key economic indicators of the economic operator for the last three accounting years: gross sales, EBIT and solvency ratio; compliance to da) for start-up companies is when information from start-up until the present date is adopted into their Public Procurement Passport;*

Or. en

**Amendment 1577**

**Andreas Schwab, Frank Engel, Sirpa Pietikäinen, Jürgen Creutzmann**

**Proposal for a directive**

**Annex 13 – paragraph 1 – point d b (new)**

*Text proposed by the Commission*

*Amendment*

*(db) Key organisational indicators of the economic operator: average number of employees during the last three years and number of employees by the end of the last year; compliance to db) for start-up companies is when information from start-up until the present date is adopted into their Public Procurement Passport;*

Or. en

**Amendment 1578**

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

**Proposal for a directive**

**Annex 13 – paragraph 1 – point f**



*Text proposed by the Commission*

*Amendment*

(f) Indication of the period of validity of the Passport, which shall be not less than **6 months**.

(f) Indication of the period of validity of the Passport, which shall be not less than **one year**.

Or. en

**Amendment 1579**

**Morten Lökkegaard, Jürgen Creutzmann, Jens Rohde**

**Proposal for a directive**

**Annex 13 – paragraph 1 – point f**

*Text proposed by the Commission*

*Amendment*

(f) Indication of the period of validity of the Passport, which shall be not less than **6 months**.

(f) Indication of the period of validity of the Passport, which shall be not less than **12 months**.

Or. en

**Amendment 1580**

**Marian Harkin**

**Proposal for a directive**

**Annex 14 – part 2 – paragraph 1 – point a – point ii**

*Text proposed by the Commission*

*Amendment*

(ii) a list of the principal deliveries effected or the main services provided over at the most the past three years, with the sums, dates and recipients, whether public or private, involved. Where necessary in order to ensure an adequate level of competition, contracting authorities may indicate that evidence of relevant supplies or services delivered or performed more than **three** years before will be taken into account;

(ii) a list of the principal deliveries effected or the main services provided over at the most the past three years, with the sums, dates and recipients, whether public or private, involved. Where necessary in order to ensure an adequate level of competition, contracting authorities may indicate that evidence of relevant supplies or services delivered or performed more than **five** years before will be taken into account;

Or. en

*Justification*

*Engineering consultancy competences are the sum of methodology, skills and resources that are not necessarily reflected/demonstrated in the past three years in a specialised field.*

**Amendment 1581**

**Phil Prendergast**

**Proposal for a directive**

**Annex 14 – part 2 – paragraph 1 – point a – point ii**

*Text proposed by the Commission*

(ii) a list of the principal deliveries effected or the main services provided over at the most the past **three** years, with the sums, dates and recipients, whether public or private, involved. Where necessary in order to ensure an adequate level of competition, contracting authorities may indicate that evidence of relevant supplies or services delivered or performed more than **three** years before will be taken into account;

*Amendment*

(ii) a list of the principal deliveries effected or the main services provided over at the most the past **five** years, with the sums, dates and recipients, whether public or private, involved. Where necessary in order to ensure an adequate level of competition, contracting authorities may indicate that evidence of relevant supplies or services delivered or performed more than **five** years before will be taken into account;

Or. en

**Amendment 1582**

**Sirpa Pietikäinen**

**Proposal for a directive**

**Annex 14 – part 2 – paragraph 1 – point f**

*Text proposed by the Commission*

(f) an indication of the environmental management measures that the economic operator will be able to apply when performing the contract;

*Amendment*

(f) an indication of the environmental **and social** management measures that the economic operator will be able to apply when performing the contract;

Or. en

**Amendment 1583**

**Ivo Belet**

**Proposal for a directive**  
**Annex 14 – part 2 – paragraph 1 – point f**

*Text proposed by the Commission*

(f) an indication of the *environmental* management measures that the economic operator will be able to apply when performing the contract;

*Amendment*

(f) an indication of the *sustainable development* management measures that the economic operator will be able to apply when performing the contract;

Or. en

**Amendment 1584**  
**Frank Engel, Andreas Schwab**

**Proposal for a directive**  
**Annex 16**

*Text proposed by the Commission*

*Annexe XVI*

*Amendment*

*This annex is deleted*

Or. en

*Justification*

*This Annex has been replaced by Annex 16A and 16B.*

**Amendment 1585**  
**Robert Rochefort**

**Proposal for a directive**  
**Annex 16**

*Text proposed by the Commission*

*Annexe XVI*

*Amendment*

*Cette annexe est supprimée*

Or. fr

*Justification*

*Cette annexe est remplacée par les annexes XVIA et XVIB.*

**Amendment 1586**  
**Malcolm Harbour, Edvard Kožušník**

**Proposal for a directive**  
**Annex 16**

*Text proposed by the Commission*

CPV Code	Description
79611000-0; from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2); 75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80100000-5 to 80660000-8 (except 80533000-9, 80533100-0, 80533200-1); from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9, 92232000-6) 75300000-9	Health, social services  Administrative educational, healthcare and cultural services  Compulsory social security services
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1 98000000-3;	Benefit services  Other community, social and personal services
98120000-0	Services furnished by trade unions
98131000-0	Religious services

*Amendment*

CPV Code	Description
79611000-0; <b>75200000-8; 75231200-6;</b> <b>75231240-8;</b> from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2); <b>98133100-5 and 98200000-5</b> 75121000-0, 75122000-7, 75124000-1;	Health, social <i>and related</i> services  Administrative educational, healthcare and

from 79995000-5 to 79995200-7; from 80100000-5 to 80660000-8 (except 80533000-9, 80533100-0, 80533200-1); from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9, 92232000-6) 75300000-9	cultural services
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1 98000000-3; <b>55521100-9</b>	Compulsory social security services Benefit services
98120000-0	Other community, social and personal services
98131000-0	Services furnished by trade unions
<b>from 61000000-5 to 61530000-9; from 63370000-3 to 63372000-7</b>	Religious services <b>Transport by water</b>
<b>62400000-6, 62440000-8, 62441000-5, 62450000-1; from 63000000-9 to 63600000-5 (except 63370000-3, 63371000-0, 63372000-7); 74322000-2, 93610000-7</b>	<b>Supporting and auxiliary transport services</b>
<b>from 74500000-4 to 74540000-6 (except 74511000-4); from 95000000-2 to 95140000-5</b>	<b>Personnel placement and supply services</b>
<b>from 74600000-5 to 74620000-1</b>	<b>Investigation and security services, other than armoured car services</b>
<b>from 74875000-3 to 74875200-5, and from 92000000-1 to 92622000-7 (except 92230000-2)</b>	<b>Recreational, cultural and sporting services</b>

Or. en

#### *Justification*

*As a Single Online Point of contact on business and citizens rights, the Your Europe Portal needs to significantly increase its visibility among consumers.*

**Amendment 1587**  
**Jens Rohde, Morten Løkkegaard**

**Proposal for a directive**  
**Annex 16 - column 1 - row 1**

*Text proposed by the Commission*

79611000-0 and  
from 85000000-9 to 85323000-9  
(except 85321000-5 **and** 85322000-2)

*Amendment*

79611000-0 and  
from 85000000-9 to 85323000-9  
(except 85321000-5, 85322000-2 **and**  
**85143000-3**)

Or. en

*Justification*

*Albeit there is a rationale in having a special regime for certain social services, the new regime should not limit the scope for public procurement in sectors where this has already been successfully done for years. This is especially the case for emergency ambulance services where European standards for building and furnishing of emergency ambulances and patient transport vehicles have existed for a number of years, hereby facilitating and encouraging cross border competition within these services to the benefit of contracting authorities, patients' satisfaction as well as economic operators.*

*The list of CPV codes under 'Health and social services' should be amended to include the CPV code 85143000-3 in the exceptions in the brackets so it would read '(except 85321000-5, 85322000-2 and 85143000-3)*

**Amendment 1588**  
**Anna Hedh**

**Proposal for a directive**  
**Annex 16 - row 6**

*Text proposed by the Commission*

**98120000-0 / Services furnished by trade unions**

*Amendment*

**deleted**

Or. en

*Justification*

*Trade unions are autonomous private entities which should not be covered by public procurement. It is not clear what the effect is if trade unions are included, and it should be deleted if no reasonable argument for inclusion can be presented.*

**Amendment 1589**

**Matteo Salvini**

**Proposal for a directive**

**Annex 16 - row 7a (new)**

*Text proposed by the Commission*

*Amendment*

***Da 79100000-5 a 79140000-7 / Servizi legali***

Or. en

*Justification*

*Legal services having a nature of personal choice are not eligible to be assigned on the basis of the full application of the procurement regime. In addition, they are provided in a legal environment that varies considerably from one Member State to another so that the demand of such services is inevitably limited to operators having specific competences in the relevant national law.*

**Amendment 1590**

**Heide Rühle**

**Proposal for a directive**

**Annex 16 – rows 7 a to 7 l (new)**

*Text proposed by the Commission*

*Amendment*

***79112000-2 Legal representation services***

***79100000-5 Legal services***

***79110000-8 Legal advisory and representation services***

***79111000-5 Legal advisory services***

***79112100-3 Stakeholders representation services***

***79120000-1 Patent and copyright***

*consultancy services*

*79121000-8 Copyright consultancy services*

*79121100-90 Software copyright consultancy services*

*79130000-4 Legal documentation and certification services*

*79131000-1 Documentation services*

*79132000-8 Certification services*

*79140000-7 Legal advisory and information services*

Or. en

*Justification*

*A specific treatment of services is only justified insofar it applies to all services of the same character, legal services – underlying the same principles of confidentiality should not be discriminated.*

**Amendment 1591**

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

**Proposal for a directive**

**Annex 16 - column 2**

*Text proposed by the Commission*

*Amendment*

Dienstleistungen im Gesundheits- und Sozialwesen

Dienstleistungen im Gesundheits-, **Veterinär-** und Sozialwesen

Administrative Dienstleistungen im Bildungs-, Gesundheits- und kulturellen Bereich

Administrative Dienstleistungen im Bildungs-, Gesundheits- und kulturellen Bereich

Dienstleistungen der gesetzlichen Sozialversicherung

Dienstleistungen der gesetzlichen Sozialversicherung

Beihilfen, Unterstützungsleistungen und Zuwendungen

Beihilfen, persönliche Unterstützungsleistungen und Zuwendungen

Sonstige öffentliche und persönliche Dienstleistungen

Sonstige öffentliche und persönliche Dienstleistungen

Dienstleistungen von

Dienstleistungen von



Arbeitnehmervereinigungen  
Dienstleistungen von religiösen  
Vereinigungen

Arbeitnehmervereinigungen  
Dienstleistungen von religiösen  
Vereinigungen  
*Gaststätten und Beherbergungsgewerbe*  
*Eisenbahnen*  
*Schifffahrt*  
*Neben- und Hilfstätigkeiten des Verkehrs*  
*Arbeits- und Arbeitskräftevermittlung, mit*  
*Ausnahme von Arbeitsverträgen*  
*Auskunfts- und Schutzdienste, ohne*  
*Geldtransport*  
*Unterrichtswesen und Berufsausbildung*  
*Erholung, Kultur und Sport, mit*  
*Ausnahme von Aufträgen über Erwerb,*  
*Entwicklung, Produktion oder*  
*Koproduktion von Programmen durch*  
*Sendeunternehmen und Verträgen über*  
*Sendezeit*  
*Sonstige Dienstleistungen mit Ausnahme*  
*von Arbeitsverträgen und mit Ausnahme*  
*von Aufträgen über Erwerb, Entwicklung,*  
*Produktion oder Koproduktion von*  
*Programmen durch Sendeeunternehmen*  
*und Verträgen über Sendezeit*

Or. de

#### *Justification*

*Die bestehende Unterscheidung zwischen A- und B-Dienstleistungen sollte dem Grunde nach aufrechterhalten werden, da B-Dienstleistungen nur von geringer bis keiner Binnenmarktrelevanz sind. Insbesondere das Herausfallen der Dienstleistungen in den Bereichen Kultur, Sport und Erholung wäre unverständlich und würde zu erheblichen Problemen und Verwaltungsmehraufwand in der Praxis führen. Die Bedeutung des Begriffs „administrative Dienstleistungen“ ist hier zu unklar und greift zu kurz.*

**Amendment 1592**  
**Robert Rochefort**

**Proposal for a directive**  
**Annex 16 a (new)**

Text proposed by the Commission

Amendment

Annexe XVI bis

Annexe XVI bis - Partie A

Services visés à l'article premier

<i>Catégories</i>	<i>Désignation des services</i>	<i>Numéros de référence CPC (1)</i>	<i>Numéros de référence CPV</i>
<i>1</i>	<i>Services d'entretien et de réparation</i>	<i>6112, 6122, 633, 886</i>	<i>De 50100000-6 à 50884000-5 (sauf pour 50310000-1 à 50324200-4 et 50116510-9, 50190000-3, 50229000-6, 50243000-0) et de 51000000-9 à 51900000-1</i>
<i>2</i>	<i>Services de transports terrestres, y compris les services de véhicules blindés et les services de courrier, à l'exclusion des transports de courrier</i>	<i>712 (sauf 71235), 7512, 87304</i>	<i>De 60100000-9 à 60183000-4 (sauf 60160000-7, 60161000-4, 60220000-6), et de 64120000-3 à 64121200-2</i>
<i>3</i>	<i>Services de transports aériens: transports de voyageurs et de marchandises, à l'exclusion des transports de courrier</i>	<i>73 (sauf 7321)</i>	<i>De 60410000-5 à 60424120-3 (sauf 60411000-2, 60421000-5), et 60500000-3 De 60440000-4 à 60445000-9</i>
<i>4</i>	<i>Transports de courrier par transport terrestre (2) et par air</i>	<i>71235, 7321</i>	<i>60160000-7, 60161000-4 60411000-2, 60421000-5</i>
<i>5</i>	<i>Services de télécommunications</i>	<i>752</i>	<i>De 64200000-8 à 64228200-2 72318000-7, et de 72700000-7 à 72720000-3</i>
<i>6</i>	<i>Services financiers:</i> <i>a) services d'assurances</i>  <i>b) services bancaires et d'investissement (3)</i>	<i>ex 81, 812, 814</i>	<i>De 66100000-1 à 66720000-3</i>
<i>7</i>	<i>Services informatiques et services connexes</i>	<i>84</i>	<i>De 50310000-1 à 50324200-4 De 72000000-5 à 72920000-5 (sauf 72318000-7 et de 72700000-7 à 72720000-3), 9342410-4</i>
<i>8</i>	<i>Services de recherche et</i>	<i>85</i>	<i>De 73000000-2 à 73436000-7 (sauf</i>

	<i>de développement (4)</i>		<i>73200000-4, 73210000-7, 73220000-0</i>
<b>9</b>	<i>Services comptables, d'audit et de tenue de livres</i>	<b>862</b>	<i>De 79210000-9 à 79223000-3</i>
<b>10</b>	<i>Services d'études de marché et de sondages</i>	<b>864</b>	<i>De 79300000-7 à 79330000-6, et 79342310-9, 79342311-6</i>
<b>11</b>	<i>Services de conseil en gestion (5) et services connexes</i>	<b>865, 866</b>	<i>De 73200000-4 à 73220000-0 de 79400000-8 à 79421200-3 et 79342000-3, 79342100-4 79342300-6, 79342320-2 79342321-9, 79910000-6, 79991000-7 98362000-8</i>
<b>12</b>	<i>Services d'architecture; services d'ingénierie et services intégrés d'ingénierie; services d'aménagement urbain et d'architecture paysagère; services connexes de consultations scientifiques et techniques; services d'essais et d'analyses techniques</i>	<b>867</b>	<i>De 71000000-8 à 71900000-7 (sauf 71550000-8) et 79994000-8</i>
<b>13</b>	<i>Services de publicité</i>	<b>871</b>	<i>De 79341000-6 à 79342200-5 (sauf 79342000-3 et 79342100-4)</i>
<b>14</b>	<i>Services de nettoyage de bâtiments et services de gestion de propriétés</i>	<b>874, 82201 à 82206</b>	<i>De 70300000-4 à 70340000-6, et de 90900000-6 à 90924000-0</i>
<b>15</b>	<i>Services de publication et d'impression sur la base d'une redevance ou sur une base contractuelle</i>	<b>88442</b>	<i>De 79800000-2 à 79824000-6 De 79970000-6 à 79980000-7</i>
<b>16</b>	<i>Services de voirie et d'enlèvement des ordures: services d'assainissement et services analogues</i>	<b>94</b>	<i>De 90400000-1 à 90743200-9 (sauf 90712200-3 De 90910000-9 à 90920000-2 et 50190000-3, 50229000-6 50243000-0</i>

*(1) Nomenclature CPC (version provisoire), utilisée pour définir le champ d'application de la directive 92/50/CEE.*

*(2) À l'exclusion des services de transports ferroviaires couverts par la catégorie 18.*

*(3) À l'exclusion des services financiers relatifs à l'émission, à l'achat, à la vente et au transfert de titres ou d'autres instruments financiers, ainsi que des services fournis par des banques centrales. Sont également exclus les services consistant en l'acquisition ou en la location, quelles qu'en soient les modalités financières, de terrains, de bâtiments existants ou d'autres biens immeubles ou qui concernent des droits sur ces biens; toutefois, les services financiers fournis parallèlement, préalablement ou consécutivement au contrat d'acquisition ou de location, sous quelque forme que ce soit, sont soumis à la présente*

directive.

(4) À l'exclusion des services de recherche et de développement autres que ceux dont les fruits appartiennent exclusivement au pouvoir adjudicateur et/ou à l'entité adjudicatrice pour son usage dans l'exercice de sa propre activité pour autant que la prestation du service soit entièrement rémunérée par le pouvoir adjudicateur.

(5) À l'exclusion des services d'arbitrage et de conciliation.

#### Annexe XVI bis - Partie B

##### Services visés à l'article 4-d et à l'article 74

<i>Catégories</i>	<i>Désignation des services</i>	<i>Numéros de référence CPC (1)</i>	<i>Numéros de référence CPV</i>
17	<i>Services d'hôtellerie et de restauration</i>	64	<i>De 55100000-1 à 55524000-9, et de 98340000-8 à 98341100-6</i>
18	<i>Services de transports ferroviaires</i>	711	<i>De 60200000-0 à 60220000-6</i>
19	<i>Services de transport par eau</i>	72	<i>De 60600000-4 à 60653000-0, et de 63727000-1 à 63727200-3</i>
20	<i>Services annexes et auxiliaires des transports</i>	74	<i>De 63000000-9 à 63734000-3 (sauf 63711200-8, 63712700-0, 63712710-3, et De 63727000-1, à 63727200-3), et 98361000-1</i>
21	<i>Services juridiques</i>	861	<i>De 79100000-5 à 79140000-7</i>
22	<i>Services de placement et de fourniture de personnel (2)</i>	872	<i>De 79600000-0 à 79635000-4 (sauf 79611000-0, 79632000-3, 79633000-0), et de 98500000-8 à 98514000-9)</i>
23	<i>Services d'enquête et de sécurité, à l'exclusion des services des véhicules blindés</i>	873 (sauf 87304)	<i>De 80100000-5 à 80660000-8 (sauf 80533000-9, 80533100-0, 80533200-1)</i>
24	<i>Services d'éducation et de formation professionnelle</i>	92	<i>De 80100000-5 à 80660000-8 (sauf 80533000-9, 80533100-0, 80533200-1)</i>
25	<i>Services sociaux et sanitaires</i>	93	<i>79611000-0, et de 85000000-9 à 85323000-9 (sauf 85321000-5 et 85322000-2)</i>
26	<i>Services récréatifs, culturels et sportifs (3)</i>	96	<i>De 79995000-5 à 79995200-7, et de 92000000-1 à 92700000-8 (sauf</i>

			92230000-2, 92231000-9, 92232000-6)
27	Autres services		

(1) *Nomenclature CPC (version provisoire), utilisée pour définir le champ d'application de la directive 92/50/CEE.*

(2) *À l'exception des contrats d'emploi.*

(3) *À l'exception des contrats d'acquisition, de développement, de production ou de coproduction de programmes par des organismes de radiodiffusion et des contrats concernant les temps de diffusion.*

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**Amendment 1593**  
**Frank Engel, Andreas Schwab**

**Proposal for a regulation**  
**Annex 16 a (new)**

*Text proposed by the Commission*

*Amendment*

*Annex XVIa*

*Annexe XVIa - Part A*

*Services referred to in Article 6a*

<i>Category N°</i>	<i>Subject</i>	<i>CPC Reference No (1)</i>	<i>CPV Reference N°</i>
<i>1</i>	<i>Maintenance and repair services</i>	<i>6112, 6122, 633, 886</i>	<i>From 50100000-6 to 50884000-5 (except for 50310000-1 to 50324200-4 and 50116510-9, 50190000-3, 50229000-6, 50243000-0), and from 51000000-9 to 51900000-1</i>
<i>2</i>	<i>Land transport services (2), including armoured car services, and courier services, except transport of mail</i>	<i>712 (except 71235), 7512, 87304</i>	<i>From 60100000-9 to 60183000-4 (except 60160000- 7, 60161000-4, 60220000-6), and from 64120000-3 to 64121200-2</i>
<i>3</i>	<i>Air transport services of passengers and freight,</i>	<i>73 (except 7321)</i>	<i>From 60410000-5 to 60424120-3 (except</i>

	<i>except transport of mail</i>		<i>60411000-2, 60421000-5), and 60500000-3, and from 60440000-4 to 60445000-9</i>
4	<i>Transport of mail by land (3) and by air</i>	<i>71235, 7321</i>	<i>60160000-7, 60161000-4 60411000-2, 60421000-5</i>
5	<i>Telecommunications services</i>	<i>752</i>	<i>From 64200000-8 to 64228200-2 72318000-7, and from 72700000-7 to 72720000-3</i>
6	<i>Financial services: (a) Insurance services (b) Banking and investment services (4)</i>	<i>ex 81, 812, 814</i>	<i>From 66100000-1 to 66720000-3 (4)</i>
7	<i>Computer and related services</i>	<i>84</i>	<i>From 50310000-1 to 50324200-4 from 72000000-5 to 72920000-5 (except 72318000-7 and from 72700000-7 to 72720000-3), 79342410-4</i>
8	<i>Research and development services (5)</i>	<i>85</i>	<i>From 73000000-2 to 73436000-7 (except 73200000-4, 73210000-7, 73220000-0 )</i>
9	<i>Accounting, auditing and bookkeeping services</i>	<i>862</i>	<i>From 79210000-9 to 79223000-3</i>
10	<i>Market research and public opinion polling services</i>	<i>864</i>	<i>From 79300000-7 to 79330000-6, and 79342310-9, 79342311-6</i>
11	<i>Management consulting services (6) and related services</i>	<i>865, 866</i>	<i>From 73200000-4 to 73220000-0 from 79400000-8 to 79421200-3 and 79342000-3, 79342100-4 79342300-6, 79342320-2 79342321-9, 79910000-6, 79991000-7 98362000-8</i>
12	<i>Architectural services; engineering services and integrated</i>	<i>867</i>	<i>From 71000000-8 to 71900000-7 (except</i>

	<i>engineering services; urban planning and landscape engineering services; related scientific and technical consulting services; technical testing and analysis services</i>		71550000- 8) and 79994000-8
13	<i>Advertising services</i>	871	<i>From 79341000-6 to 79342200-5 (except 79342000-3 and 79342100-4)</i>
14	<i>Building-cleaning services and property management services</i>	874, 82201 to 82206	<i>From 70300000-4 to 70340000-6, and from 90900000-6 to 90924000-0</i>
15	<i>Publishing and printing services on a fee or contract basis</i>	88442	<i>From 79800000-2 to 79824000-6, and from 79970000-6 to 79980000-7</i>
16	<i>Sewage and refuse disposal services; sanitation and similar services</i>	94	<i>From 90400000-1 to 90743200-9 (except 90712200- 3), from 90910000-9 to 90920000-2 and 50190000-3, 50229000-6 50243000-0</i>

(1) *Except employment contracts.*

(2) *Except contracts for the acquisition, development, production or co-production of programmes by broadcasting organisations and contracts for broadcasting time.*

(3) *Except for rail transport services covered by category 18.*

(4) *Except financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services.*

*Also excluded: services involving the acquisition or rental, by whatever financial procedures, of land, existing buildings, or other immovable property or concerning rights thereon; nevertheless, financial services supplied at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive.*

(5) *Except research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs on condition that the service provided is wholly remunerated by the contracting authority.*

(6) *Except arbitration and conciliation services*

#### *Annex XVIa - Part B*

##### *Services referred to in Article 6a*

<i>Category</i>	<i>Subject</i>	<i>CPC</i>	<i>CPV Reference N°</i>
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<i>N°</i>		<i>Reference No (1)</i>	
17	<i>Hotel and restaurant services</i>	64	<i>From 55100000-1 to 55524000-9, and from 98340000-8 to 98341100-6</i>
18	<i>Rail transport services</i>	711	<i>From 60200000-0 to 60220000-6</i>
19	<i>Water transport services</i>	72	<i>From 60600000-4 to 60653000-0, and from 63727000-1 to 63727200-3</i>
20	<i>Supporting and auxiliary transport services</i>	74	<i>From 63000000-9 to 63734000-3 (except 63711200-8, 63712700-0, 63712710-3, and from 63727000-1, to 63727200-3), and 98361000-1</i>
21	<i>Legal services</i>	861	<i>From 79100000-5 to 79140000-7</i>
22	<i>Personnel placement and supply services (1)</i>	872	<i>From 79600000-0 to 79635000-4 (except 79611000-0, 79632000-3, 79633000-0), and from 98500000-8 to 98514000-9</i>
23	<i>Investigation and security services, except armoured car services</i>	873 (except 87304)	<i>From 79700000-1 to 79723000-8</i>
24	<i>Education and vocational education services</i>	92	<i>From 80100000-5 to 80660000-8 (except 80533000- 9, 80533100-0, 80533200-1)</i>
25	<i>Health and social services</i>	93	<i>79611000-0, and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2)</i>
26	<i>Recreational, cultural and sporting services</i>	96	<i>From 79995000-5 to 79995200-7, and from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9, 92232000-6 )</i>
27	<i>Other services (2)</i>		

*(1) Except employment contracts.*

*(2) Except contracts for the acquisition, development, production or co-production of*



*programmes by broadcasting organisations and contracts for broadcasting time.*

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