



EUROPEAN PARLIAMENT

2009 - 2014

Committee on the Internal Market and Consumer Protection

2011/0439(COD)

03.9.2012

AMENDMENTS

136 - 444

Draft report

Marc Tarabella

(PE483.470v02-00)

on the proposal for a directive of the European Parliament and of the Council
on procurement by entities operating in the water, energy, transport and postal
services sectors

Proposal for a directive

(COM(2011)0895 – C7-0007/2012 – 2011/0439(COD))

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PE492.861v02-00

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United in diversity

EN

Amendment 136
Heide Rühle

Proposal for a directive
Citation 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 137
Ramon Tremosa i Balcells

Proposal for a directive
Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) All the provisions of this Directive shall be applied respecting the internal distribution of competences inside Member States.

Or. en

Amendment 138
Heide Rühle

Proposal for a directive
Recital 2

Text proposed by the Commission

(2) In order to guarantee the opening up to competition of procurement by entities operating in the water, energy, transport and postal services sectors, provisions should be drawn up coordinating

Amendment

(2) In order to guarantee the opening up to competition of procurement by entities operating in the water, energy, transport and postal services sectors, provisions should be drawn up coordinating

procurement procedures in respect of contracts above a certain value. Such coordination is needed to ensure the effect of the principles of the Treaty on the Functioning of the European Union and in particular the free movement of goods, the freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. In view of the nature of the sectors affected by such coordination, the latter should, while safeguarding the application of those principles, establish a framework for sound commercial practice and should allow maximum flexibility.

procurement procedures in respect of contracts above a certain value. Such coordination is needed to ensure the effect of the principles of the Treaty on the Functioning of the European Union and in particular the free movement of goods, the freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. In view of the nature of the sectors affected by such coordination, the latter should, while safeguarding the application of those principles, establish a framework for sound commercial practice and should allow maximum flexibility.

Public procurement rules have to respect the distribution of competences as enshrined in Article 14 TFEU and the Protocol No 26. The application of those rules should not interfere with the freedom of public authorities to decide how they carry out their public service tasks.

Or. en

Justification

Adaption to the new provisions of the Lisbon Treaty

Amendment 139 **Heide Rühle**

Proposal for a directive **Recital 3**

Text proposed by the Commission

(3) For procurement the value of which is lower than the thresholds triggering the application of the provisions of Union coordination, it is advisable to recall the case-law developed by the Court of Justice according to which the rules and

Amendment

deleted

principles of the Treaty apply.

Or. en

Justification

Procurement below the threshold does not fall under the scope of this directive. Anyway the ECJ case-law is well known, so there is no need for this Recital.

Amendment 140

Heide Rühle

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) Public procurement plays a key role in the Europe 2020 strategy¹⁶ as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors¹⁷ and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts¹⁸ have to be revised and modernised in order to **increase** the efficiency of public spending, facilitating in particular the participation of small and medium-sized enterprises in public procurement and to enable procurers to make better use of public procurement in support of common societal goals. There is also a need to clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related

Amendment

(4) Public procurement plays a key role in the Europe 2020 strategy¹⁶ as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors¹⁷ and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts¹⁸ have to be revised and modernised in order to **enable procurer to make better use of public procurement in support of sustainable development and other common societal goals, thereby increasing** the efficiency of public spending, **ensuring best value for money and** facilitating in particular the participation of small and medium-sized enterprises in public procurement and to enable procurers to make better use of

well-established case-law of the Court of Justice of the European Union.

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

Or. en

Justification

There should be no ambiguity that contracting authorities are allowed to set demands that go beyond the current EU-legislation in specific areas.

Amendment 141 Heide Rühle

Proposal for a directive Recital 5

Text proposed by the Commission

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

Amendment

(5) Under Article ***9, 10 and*** 11 of the Treaty on the Functioning of the European Union, environmental protection requirements ***and social considerations*** must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development. This Directive clarifies how the contracting entities may contribute to the protection of the environment and the promotion of sustainable development ***and how they can use their discretionary power to select technical specifications and award criteria with the aim of achieving sustainable public procurement,*** whilst ensuring the ***link to the subject matter of the contract and obtaining the*** best value

for money for their contracts.

Or. en

Justification

Social considerations are not enough covered by the Commission proposal

Amendment 142

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Recital 5

Text proposed by the Commission

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

Amendment

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

recognises in particular the right of any Member State to ratify and comply with ILO Convention No. 94.

Or. en

Amendment 143

Barbara Weiler

Proposal for a directive

Recital 5

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 144

Heide Rühle

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) It is appropriate that the notion of procurement or the definition of what constitutes a single procurement are as close as possible to those applied pursuant to Directive [...] of the European Parliament and of the Council of [...] on public procurement¹⁹, having due regard for the specificities of the sectors covered by this Directive. The concept of single procurement encompasses all supplies, works and services needed to carry out a particular project, for instance a works project or an entirety of works, supplies and/or services. ***Indications for the existence of one single project can for instance consist in overall prior planning and conception by the contracting entity, the fact that the different elements purchased fulfil a single economic and technical function or that they are otherwise logically interlinked and carried out in a narrow time frame.***

Amendment

(6) It is appropriate that the notion of procurement or the definition of what constitutes a single procurement are as close as possible to those applied pursuant to Directive [...] of the European Parliament and of the Council of [...] on public procurement¹⁹, having due regard for the specificities of the sectors covered by this Directive. The concept of single procurement encompasses all supplies, works and services needed to carry out a particular project, for instance a works project or an entirety of works, supplies and/or services.

Or. en

Justification

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

Amendment 145
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) It is appropriate to exclude procurement made for postal services and other services than postal services as that

sector has consistently been found to be subject to such competitive pressure that the procurement discipline brought about by the EU procurement rules is no longer needed.

Or. en

Justification

As a result of the liberalisation process in the postal sector, the introduction of fully-fledged sector-specific regulation and the evolution of the market, it is no longer necessary to regulate purchases by entities operating in the postal sector. Therefore, the time is ripe to exclude postal services and all the more so “other services than postal services”, from the scope of the Directive and allow all entities operating in the sector to base their decisions on purely economic criteria.

Amendment 146

András Gyürk, Ildikó Gáll-Pelcz

Proposal for a directive

Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) It is appropriate to exclude procurement made for the purpose of providing postal services as the postal liberalisation process with full market opening in all Member States by 31 December 2012 shall introduce effective competition in this sector.

Or. en

Amendment 147

Adam Bielan, Marek Siwiec

Proposal for a directive

Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) It is appropriate to exclude

procurement made for postal services and other services than postal services as that sector has consistently been found to be subject to such competitive pressure that the procurement discipline brought about by the EU procurement rules is no longer needed.

Or. en

Justification

As a result of the liberalisation process in the postal sector, the introduction of fully-fledged sector-specific regulation and the evolution of the market, it is no longer necessary to regulate purchases by entities operating in the postal sector. Therefore, the time is ripe to exclude postal services and all the more so “other services than postal services”, from the scope of the Directive and allow all entities operating in the sector to base their decisions on purely economic criteria.

Amendment 148
Tiziano Motti

Proposal for a directive
Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) It is appropriate to exclude procurement made for postal services and other services than postal services as that sector has consistently been found to be subject to such competitive pressure that the procurement discipline brought about by the EU procurement rules is no longer needed.

Or. en

Justification

As a result of the liberalisation process in the postal sector, the introduction of fully-fledged sector-specific regulation and the evolution of the market, it is no longer necessary to regulate purchases by entities operating in the postal sector. Therefore, the time is ripe to exclude postal services and all the more so “other services than postal services”, from the scope of the Directive and allow all entities operating in the sector to base their decisions on

purely economic criteria.

Amendment 149

Lara Comi

Proposal for a directive

Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) It is appropriate to exclude procurement relating to postal services and other services than postal services since that sector has systematically been shown to be subject to such competitive pressure as to render superfluous the application of European procurement rules.

Or. it

Amendment 150

Lara Comi

Proposal for a directive

Recital 12

Text proposed by the Commission

Amendment

(12) Even if they do not necessarily lead to corrupt conduct, actual, potential or perceived conflicts of interest have a high potential to improperly influence public procurement decisions with the effect of distorting competition and jeopardising equal treatment of tenderers. Effective mechanisms should therefore be set up to prevent, identify and remedy conflicts of interest. Given the differences in the decision-making processes of respectively contracting authorities and undertakings, it is appropriate to limit such provisions to procurement carried out by the former. Effective mechanisms should therefore be set up to prevent, identify and remedy

(12) Even if they do not necessarily lead to corrupt conduct, actual, potential or perceived conflicts of interest have a high potential to improperly influence public procurement decisions with the effect of distorting competition and jeopardising equal treatment of tenderers. Effective mechanisms should therefore be set up to prevent, identify and remedy conflicts of interest. Given the differences in the decision-making processes of respectively contracting authorities and undertakings, it is appropriate to limit such provisions to procurement carried out by the former. Effective mechanisms should therefore be set up to prevent, identify and remedy

conflicts of interest. Given the differences in the decision-making processes of respectively contracting authorities and undertakings, it is appropriate to limit such provisions to procurement carried out by the former.

conflicts of interest. Given the differences in the decision-making processes of respectively contracting authorities and undertakings, it is appropriate to limit such provisions to procurement carried out by the former.

Or. it

Amendment 151
Vicente Miguel Garcés Ramón

Proposal for a directive
Recital 13

Text proposed by the Commission

(13) Illicit conduct by participants in a procurement procedure, such as attempts to unduly influence the decision-making process or to enter into agreements with other candidates to manipulate the outcome of the procedure can result in violations of the basic principles of Union law and in serious distortions of competition. Economic operators should therefore be required to submit a declaration on honour that they do not engage in such illicit activities and be excluded if this declaration proves to be false.

Amendment

(13) Illicit conduct by participants in a procurement procedure, such as attempts to unduly influence the decision-making process or to enter into agreements with other candidates to manipulate the outcome of the procedure, ***as well as any activity that fails to comply with labour, environmental, social (particularly regarding the integration of persons with disabilities) and public health standards,*** can result in violations of the basic principles of Union law and in serious distortions of competition. Economic operators should therefore be required to submit a declaration on honour that they do not engage in such illicit activities and be excluded if this declaration proves to be false.

Or. es

Amendment 152
Marc Tarabella

Proposal for a directive
Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) The objectives of improving the access of EU economic operators to the public procurement markets of certain third countries protected by restrictive procurement measures and preserving equal conditions of competition within the European Single Market require that the treatment of third-country works, supplies and services not covered by the international commitments of the Union be harmonised throughout the European Union.

Or. fr

Amendment 153
Marc Tarabella

Proposal for a directive
Recital 14 b (new)

Text proposed by the Commission

Amendment

(14b) Contracting entities should exclude from procedures for the award of contracts any works, supplies and services that are not covered by the international commitments of the Union. In the interests of transparency, contracting entities that intend to exercise this competence, in accordance with this Directive, to exclude from procedures for the award of contracts any tenders that include products, works, supplies and services originating from outside the EU and in respect of which the value of the products, works, supplies and services not covered exceeds 50 % of the total value of these products, works, supplies and services, should inform the economic operators of this intention.

Or. fr

Amendment 154
Malcolm Harbour

Proposal for a directive
Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) The objectives of improving the access of Union economic operators to the public procurement markets of certain third countries protected by restrictive procurement measures and preserving equal conditions of competition within the European Single Market require that the treatment of third-country supplies and services not covered by the international commitments of the Union be harmonised throughout the Union. The Commission should assess whether to approve that contracting entities exclude, for contracts with an estimated value equal or above EUR 5.000.000 from procedures for the award of contracts for supplies and services not covered by the international commitments to which the European Union is a party.

Or. en

Amendment 155
Malcolm Harbour

Proposal for a directive
Recital 15 b (new)

Text proposed by the Commission

Amendment

(15b) To ensure transparency, contracting entities intending to make use of their power to exclude tenders comprising supplies and/or services originating from outside the European Union, in which the value of the non-covered supplies or services exceeds 50 % of the total value of

these supplies or services from procedures for the award of contracts, should inform economic operators thereof in the contract notice published in the Official Journal of the European Union. The Commission should approve the intended exclusion if the international agreement concerning market access in the field of public procurement between the Union and the country where the supplies and/or services originate contains, for the supplies and/or services for which the exclusion is proposed, explicit market access reservations taken by the Union. Where such an agreement does not exist, the Commission should approve the exclusion where the third country maintains restrictive procurement measures leading to a lack of substantial reciprocity in market opening between the Union and the third country concerned for supplies, services and economic operators.

Or. en

Amendment 156
Heide Rühle

Proposal for a directive
Recital 16

Text proposed by the Commission

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

Amendment

deleted

Or. en

Justification

This statement does not take into account the position of the Parliament in his response to the Green Paper of the Commission.

Amendment 157

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Recital 16

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 158

Frank Engel, Andreas Schwab

Proposal for a directive

Recital 16

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 159

Frank Engel, Andreas Schwab

Proposal for a directive

Recital 17

Text proposed by the Commission

Amendment

(17) Other categories of services continue by their very nature to have a limited cross-border dimension, namely what are known as services to the person such as certain social, health and educational services. Those services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for contracts for those services, with a higher threshold of EUR 1 000 000. In the particular context of procurement in those sectors, services to the person with values below this threshold will typically not be of interest to providers from other Member States unless there are concrete indications to the contrary, such as Union financing for transborder projects. Contracts for services to the person above this threshold should be subject to Union-wide transparency. Given the importance of the cultural context and the sensitivity of those services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this directive take account of that imperative, imposing only observance of basic principles of transparency and equal treatment and making sure that contracting entities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee²⁶. Member States and/or contracting entities remain free to provide

deleted

those services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting entity, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

Or. en

Amendment 160
Heide Rühle

Proposal for a directive
Recital 17

Text proposed by the Commission

(17) **Other** categories of services continue by their very nature to have a limited cross-border dimension, namely what are known as services to the person such as certain social, health and educational services. Those services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for contracts for those services, with a higher threshold of EUR 1 000 000. In the particular context of procurement in those sectors, services to the person with values below this threshold will typically not be of interest to providers from other Member States unless there are concrete indications to the contrary, such as Union financing for transborder projects. Contracts for services to the person above this threshold should be subject to Union-wide transparency. Given the importance of the cultural context and the sensitivity of those

Amendment

(17) **Some** categories of services continue by their very nature to have a limited cross-border dimension, namely what are known as services to the person such as certain social, health and educational services. Those services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for contracts for those services, with a higher threshold of EUR 1 000 000. In the particular context of procurement in those sectors, services to the person with values below this threshold will typically not be of interest to providers from other Member States unless there are concrete indications to the contrary, such as Union financing for transborder projects. Contracts for services to the person above this threshold should be subject to Union-wide transparency. Given the importance of the cultural context and the sensitivity of those

services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this directive take account of that imperative, imposing only observance of basic principles of transparency and equal treatment and making sure that contracting entities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee²⁶. Member States and/or contracting entities remain free to provide those services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting entity, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this directive take account of that imperative, imposing only observance of basic principles of transparency and equal treatment and making sure that contracting entities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee²⁶. Member States and/or contracting entities remain free to provide those services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting entity, without any limits or quotas, ***or in giving legal rights of all sorts to economic operators for the provision of those services***, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

Or. en

Amendment 161

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Recital 17

Text proposed by the Commission

(17) ***Other*** categories of services continue by their very nature to have a limited cross-border dimension, ***namely*** what are known as services to the person such as certain social, health and educational services. ***Those*** services are provided within a

Amendment

(17) ***The results of the Evaluation on the Impact and Effectiveness of EU Public Procurement Legislation demonstrated that the exclusion of certain services from the full application of the Directive should be reviewed. Some*** categories of services

particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for contracts for *those* services, with a higher threshold of EUR 1 000 000. ***In the particular context of procurement in those sectors, services*** to the person with values below this threshold will typically not be of interest to providers from other Member States unless there are concrete indications to the contrary, such as Union financing for transborder projects. Contracts for services to the person above this threshold should be subject to Union-wide transparency. Given the importance of the cultural context and the sensitivity of *those* services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this directive take account of that imperative, imposing only observance of basic principles of transparency and equal treatment and making sure that contracting *entities* are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee. Member States and/or *contracting entities* remain free to provide *those* services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting *entity*, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

continue by their very nature to have a limited cross-border dimension, ***for example*** what are known as services to the person, such as certain social, health and educational services. ***These*** services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for ***public*** contracts for *these* services, with a higher threshold of EUR 1 000 000. ***Services*** to the person with values below this threshold will typically not be of interest to providers from other Member States, unless there are concrete indications to the contrary, such as Union financing for transborder projects. Contracts for services to the person above this threshold should be subject to Union-wide transparency. Given the importance of the cultural context and the sensitivity of *these* services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this directive take account of that imperative, imposing only observance of basic principles of transparency and equal treatment and making sure that contracting *authorities* are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee. Member States and/or ***public authorities*** remain free to provide *these* services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting *authority*, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-

discrimination.

Or. en

Justification

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

Amendment 162

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Recital 18

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 163
Heide Rühle

Proposal for a directive
Recital 19

Text proposed by the Commission

(19) ***There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by public procurement rules.*** The relevant case-law of the Court of Justice of the European Union is interpreted divergently between Member States and even between contracting authorities. As this jurisprudence would be equally applicable to public authorities when operating in the sectors covered by this directive, it is appropriate to ensure that the same rules apply in both this directive and Directive [.../.../EU][on public procurement].

Amendment

(19) The relevant case-law of the Court of Justice of the European Union ***on cooperation between public authorities*** is interpreted divergently between Member States and even between contracting authorities. As this jurisprudence would be equally applicable to public authorities when operating in the sectors covered by this directive, it is appropriate to ensure that the same rules apply in both this directive and Directive [.../.../EU][on public procurement]. ***Contracts awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities are not subject of the public procurement rules if the conditions set out in this directive are fulfilled.***

Or. en

Justification

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

Amendment 164
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Recital 19

Text proposed by the Commission

(19) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by public procurement rules. The relevant case-law

Amendment

(19) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by public procurement rules. The relevant case-law

of the Court of Justice of the European Union is interpreted divergently between Member States and even between contracting authorities. As this jurisprudence would be equally applicable to public authorities when operating in the sectors covered by this directive, it is appropriate to ensure that the same rules apply in both this directive and Directive [.../.../EU][on public procurement].

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

Or. en

Amendment 165
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Recital 19 a (new)

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

Or. en

Amendment 166
Cristian Silviu Buşoi

Proposal for a directive
Recital 20

Text proposed by the Commission

(20) It is appropriate to exclude certain service, supply and works contracts awarded to an affiliated undertaking having as its principal activity the provision of such services, supply or works to the group of which it is part, rather than offering them on the market. It is also appropriate to exclude certain service, supply and works contracts awarded by a contracting entity to a joint venture which is formed by a number of contracting entities for the purpose of carrying out activities covered by this Directive and of which that entity is part. However, it is appropriate to ensure that this exclusion does not give rise to distortions of competition to the benefit of the undertakings or joint ventures that are affiliated with the contracting entities; it is appropriate to provide a suitable set of rules, in particular as regards ***the maximum limits within which the undertakings may obtain a part of*** their

Amendment

(20) It is appropriate to exclude certain service, supply and works contracts awarded to an affiliated undertaking having as its principal activity the provision of such services, supply or works to the group of which it is part, rather than offering them on the market. It is also appropriate to exclude certain service, supply and works contracts awarded by a contracting entity to a joint venture which is formed by a number of contracting entities for the purpose of carrying out activities covered by this Directive and of which that entity is part. However, it is appropriate to ensure that this exclusion does not give rise to distortions of competition to the benefit of the undertakings or joint ventures that are affiliated with the contracting entities; it is appropriate to provide a suitable set of rules, in particular as regards ***restrictions for undertakings from obtaining*** their turnover from the market and ***without***

turnover from the market and *above* which they would lose the possibility of being awarded contracts without calls for competition, the composition of joint ventures and the stability of links between those joint ventures and the contracting entities of which they are composed.

which they would lose the possibility of being awarded contracts without calls for competition, the composition of joint ventures and the stability of links between those joint ventures and the contracting entities of which they are composed.

Or. en

Amendment 167

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

Proposal for a directive

Recital 22

Text proposed by the Commission

(22) This Directive should apply neither to contracts intended to permit the performance of an activity referred to in Articles 5 to 11 nor to design contests organised for the pursuit of such an activity if, in the Member State in which this activity is carried out, it is directly exposed to competition on markets to which access is not limited. It is therefore appropriate to maintain the procedure, applicable to all sectors covered by this Directive that will enable the effects of current or future opening up to competition to be taken into account. Such a procedure should provide legal certainty for the entities concerned, as well as an appropriate decision-making process, ensuring, within short time limits, uniform application of Union law in this area.

Amendment

(22) This Directive should apply neither to contracts intended to permit the performance of an activity referred to in Articles 5 to 11 nor to design contests organised for the pursuit of such an activity if, in the Member State in which this activity is carried out, ***in all or in part, even in relation to single sectors or segments of it, it*** is directly exposed to competition on markets to which access is not limited. It is therefore appropriate to maintain the procedure, applicable to all sectors covered by this Directive that will enable the effects of current or future opening up to competition to be taken into account. Such a procedure should provide legal certainty for the entities concerned, as well as an appropriate decision-making process, ensuring, within short time limits, uniform application of Union law in this area.

Or. en

Amendment 168

Lara Comi

Proposal for a directive
Recital 22

Text proposed by the Commission

(22) This Directive should apply neither to contracts intended to permit the performance of an activity referred to in Articles 5 to 11 nor to design contests organised for the pursuit of such an activity if, in the Member State in which this activity is carried out, it is directly exposed to competition on markets to which access is not limited. It is therefore appropriate to maintain the procedure, applicable to all sectors covered by this Directive that will enable the effects of current or future opening up to competition to be taken into account. Such a procedure should provide legal certainty for the entities concerned, as well as an appropriate decision-making process, ensuring, within short time limits, uniform application of Union law in this area.

Amendment

(22) This Directive should apply neither to contracts intended to permit the performance of an activity referred to in Articles 5 to 11 nor to design contests organised for the pursuit of such an activity if, in the Member State in which this activity is carried out, it is directly exposed, ***in whole or in part, including as regards individual sectors or segments,*** to competition on markets to which access is not limited. It is therefore appropriate to maintain the procedure, applicable to all sectors covered by this Directive that will enable the effects of current or future opening up to competition to be taken into account. Such a procedure should provide legal certainty for the entities concerned, as well as an appropriate decision-making process, ensuring, within short time limits, uniform application of Union law in this area.

Or. it

Amendment 169

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

Proposal for a directive
Recital 23

Text proposed by the Commission

(23) Direct exposure to competition should be assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned. This assessment is, however, limited by the applicable short deadlines and by having to be based on the information available to the Commission – either from already available sources or from the information obtained in the context of the application

Amendment

(23) Direct exposure to competition should be assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned ***or of a part of it.*** This assessment is, however, limited by the applicable short deadlines and by having to be based on the information available to the Commission – either from already available sources or from the information obtained in the

pursuant to Article 28 - which can not be supplemented by more time consuming methods, including notably public inquiries of economic operators concerned. The assessment of direct exposure to competition that can be carried out in the context of this directive is consequently without prejudice to the full-fledged application of competition law.

context of the application pursuant to Article 28 - which can not be supplemented by more time consuming methods, including notably public inquiries of economic operators concerned. The assessment of direct exposure to competition that can be carried out in the context of this directive is consequently without prejudice to the full-fledged application of competition law.

Or. en

Amendment 170
Lara Comi

Proposal for a directive
Recital 23

Text proposed by the Commission

(23) Direct exposure to competition should be assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned. This assessment is, however, limited by the applicable short deadlines and by having to be based on the information available to the Commission – either from already available sources or from the information obtained in the context of the application pursuant to Article 28 - which can not be supplemented by more time consuming methods, including notably public inquiries of economic operators concerned. The assessment of direct exposure to competition that can be carried out in the context of this directive is consequently without prejudice to the full-fledged application of competition law.

Amendment

(23) Direct exposure to competition should be assessed on the basis of objective criteria, taking account of the specific characteristics of the sector, ***or part of the sector, concerned***. This assessment is, however, limited by the applicable short deadlines and by having to be based on the information available to the Commission – either from already available sources or from the information obtained in the context of the application pursuant to Article 28 – which can not be supplemented by more time consuming methods, including notably public inquiries of economic operators concerned. The assessment of direct exposure to competition that can be carried out in the context of this directive is consequently without prejudice to the full-fledged application of competition law.

Or. it

Amendment 171

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

Proposal for a directive

Recital 24

Text proposed by the Commission

(24) The implementation and application of appropriate Union legislation opening a given sector, or a part of it, will be considered to provide sufficient grounds for assuming that there is free access to the market in question. Such appropriate legislation should be identified in an annex which can be updated by the Commission. It is appropriate that this annex should currently refer to Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC²⁷, Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC²⁸ **and** Directive 94/22/EC.

Amendment

(24) The implementation and application of appropriate Union legislation opening a given sector, or a part of it, will be considered to provide sufficient grounds for assuming that there is free access to the market in question. Such appropriate legislation should be identified in an annex which can be updated by the Commission. It is appropriate that this annex should currently refer to Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC²⁷, Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC²⁸, **Directive 94/22/EC and Directive 91/440/EC on the development of the Community's railways.**

Or. en

Amendment 172

Malcolm Harbour, Edvard Kožušník, Frank Engel

Proposal for a directive

Recital 25

Text proposed by the Commission

(25) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. **Contracting entities**

Amendment

(25) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. **Public authorities**

should make the best strategic use of public procurement to *spur* innovation. Buying innovative goods and services plays a key role in improving the efficiency and quality of public services while addressing major societal challenges. It contributes to achieving best value for money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative products and services and *thus* promoting sustainable economic growth. This *directive* should contribute to facilitating procurement of innovation and help Member States in achieving the Innovation Union targets. *A* specific procurement procedure should *therefore be provided for which allows* contracting *entities* to establish *a long-term* innovation partnership for the development and subsequent purchase of *a* new, innovative *product, service* or works provided *it* can be delivered to agreed performance levels and costs. The partnership should be structured in such a way that it can provide the necessary *'market-pull'* incentivising the development of *an* innovative *solution* without foreclosing the market.

should make the best strategic use of public procurement to *drive* innovation. Buying innovative goods and services plays a key role in improving the efficiency and quality of public services while addressing major societal challenges. It contributes to achieving best value for *public* money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative products and services and promoting sustainable economic growth. *An innovative procurement model is detailed in the Commission's communication on pre-commercial procurement¹. This model promotes the take up in the procurement of research and development services which do not fall within the scope of this Directive. This model, which has been written into this Directive, is recognised and will be available for all contracting authorities to consider. This Directive should however contribute to facilitating the public procurement of innovation more generally, and help Member States in achieving the Innovation Union targets. Where a need for the development of an innovative product, service or works and the subsequent purchase of the resulting output cannot be met by solutions already available on the market, contracting authorities should have access to a specific procurement procedure in respect of contracts falling within the scope of this Directive. This new procedure should allow contracting authorities to establish an innovation partnership for the development and subsequent purchase of new, innovative products, services or works, provided that these can be delivered to agreed performance levels and costs. The procedure should be based on the rules applying to the competitive procedure with negotiations and contracts should be awarded on the sole basis of the most economically advantageous tender, which is the most suited to comparing tenders for innovative solutions. Whether the innovation partnership concerns a very*

large project or a smaller project, it should be structured in such as a way that it can provide the necessary "market pull", incentivising the development of innovative solutions without foreclosing the market. Contracting authorities should therefore not misuse innovation partnerships to prevent, restrict or distort competition.

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

Or. en

Justification

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

Amendment 173 **Marc Tarabella**

Proposal for a directive **Recital 25**

Text proposed by the Commission

(25) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. Contracting entities should make the best strategic use of public

Amendment

(25) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. Contracting entities should make the best strategic use of public

procurement to spur innovation. Buying innovative goods and services plays a key role in improving the efficiency and quality of public services while addressing major societal challenges. It contributes to achieving best value for money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative products and services and thus promoting sustainable economic growth. This directive should contribute to facilitating procurement of innovation and help Member States in achieving the Innovation Union targets. A specific procurement procedure should therefore be provided for which allows contracting entities to ***establish a long-term innovation partnership for the development and subsequent purchase of*** a new, innovative product, service or works provided it can be delivered to agreed performance levels and costs. ***The partnership should be structured in such a way that it can provide the necessary 'market-pull' incentivising the development of an innovative solution without foreclosing the market.***

procurement to spur innovation. Buying innovative goods and services plays a key role in improving the efficiency and quality of public services while addressing major societal challenges. It contributes to achieving best value for money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative products and services and thus promoting sustainable economic growth. This directive should contribute to facilitating procurement of innovation and help Member States in achieving the Innovation Union targets. A specific procurement procedure should therefore be provided for which allows contracting entities to ***develop*** and ***then*** purchase a new, innovative product, service or works provided it can be delivered to agreed performance levels and costs.

Or. fr

Amendment 174
Sergio Gaetano Cofferati

Proposal for a directive
Recital 26

Text proposed by the Commission

(26) In view of the detrimental effects on competition, negotiated procedures without a call for competition should only be used in very exceptional circumstances. This exception should be limited to cases where publication is either not possible, for reasons of force majeure in line with the standing case-law of the Court of Justice of

Amendment

(26) In view of the detrimental effects on competition, negotiated procedures without a call for competition should only be used in very exceptional circumstances. This exception should be limited to cases where publication is either not possible, for reasons of force majeure in line with the standing case-law of the Court of Justice of

the European Union, or where it is clear from the outset that publication would not trigger more competition, not least because there is objectively only one economic operator that can perform the contract. Only situations of objective exclusivity can justify the use of the negotiated procedure without a call for competition, where the situation of exclusivity has not been created by the contracting entity itself with a view to the future procurement procedure, and where there are no adequate substitutes, the availability of which should be assessed thoroughly.

the European Union, or where it is clear from the outset that publication would not trigger more competition, not least because there is objectively only one economic operator that can perform the contract. Only situations of objective exclusivity can justify the use of the negotiated procedure without a call for competition, where the situation of exclusivity has not been created by the contracting entity itself with a view to the future procurement procedure, and where there are no adequate substitutes, the availability of which should be assessed thoroughly. ***It is appropriate that whenever contracting entities use, in the cases specified in this Directive, the negotiated procedure without publication, they send a report justifying their choice to the oversight body, whose tasks should include that of examining and assessing those reports.***

Or. it

Amendment 175
Philippe Juvin

Proposal for a directive
Recital 27

Text proposed by the Commission

(27) Electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency and transparency of procurement processes. They should become the standard means of communication and information exchange in procurement procedures. The use of electronic means also leads to time savings. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Union level. Moreover, electronic means of

Amendment

(27) Electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency and transparency of procurement processes ***covered by this Directive***. They should become the standard means of communication and information exchange in procurement procedures. The use of electronic means also leads to time savings. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Union level.

information and communication including adequate functionalities can enable contracting authorities to prevent, detect and correct errors that occur during procurement procedures.

Moreover, electronic means of information and communication including adequate functionalities can enable contracting authorities to prevent, detect and correct errors that occur during procurement procedures.

Or. fr

Justification

Provisions on publishing contract information by electronic means apply only to procurement procedures covered by this directive, and do not, therefore, apply to procurement procedures involving amounts below the thresholds set in this directive, which are covered by the applicable national legislation.

Amendment 176

Frank Engel

Proposal for a directive

Recital 28

Text proposed by the Commission

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

Amendment

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

avoid excessive concentration of purchasing power and collusion. Such guidance should be provided by way of implementing acts.

Or. en

Amendment 177
Heide Rühle

Proposal for a directive
Recital 29

Text proposed by the Commission

(29) The instrument of framework agreements can be an efficient procurement technique throughout Europe; however, there is a need to enhance competition by improving transparency of and access to procurement carried out by means *of framework agreements. It is therefore appropriate to revise the provisions applicable to those agreements, notably by providing for mini-competitions for the award of specific contracts based on the agreement and by limiting the duration* of framework agreements.

Amendment

(29) The instrument of framework agreements can be an efficient procurement technique throughout Europe; however, there is a need to enhance competition by improving transparency of and access to procurement carried out by means of framework agreements.

Or. en

Amendment 178
Cornelis de Jong

Proposal for a directive
Recital 31 a (new)

Text proposed by the Commission

(31a) The dynamic purchasing system and the instrument of electronic auction can be used for the purchase of goods that are generally available on the market and which have a more or less standardised quality. These instruments cannot be used

Amendment

Amendment 179
Cornelis de Jong

Proposal for a directive
Recital 32

Text proposed by the Commission

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

Amendment

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

on a dynamic purchasing system, it should continue to be responsible for the stages it conducts.

the procedure, for instance the reopening of competition under a framework agreement or the award of individual contracts based on a dynamic purchasing system, it should continue to be responsible for the stages it conducts.

Or. en

Amendment 180

Heide Rühle

Proposal for a directive

Recital 33

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

This timeframe is too tight.

Amendment 181

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Recital 33

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 182
Philippe Juvin

Proposal for a directive
Recital 33

Text proposed by the Commission

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

Amendment

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

years.

years. *So as to ensure continued legal certainty, these provisions shall not affect existing arrangements at national level for publishing information on public procurement contracts involving amounts below the thresholds set in this Directive.*

Or. fr

Justification

The overall obligation to use electronic means of communication in all public procurement procedures should not affect existing arrangements at national level for publishing information on public procurement contracts involving amounts below the thresholds set in this directive.

Amendment 183

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Recital 34

Text proposed by the Commission

Amendment

(34) Joint awarding of contracts by contracting entities from different Member States currently encounters specific legal difficulties, with special reference to conflicts of national laws. Despite the fact that Directive 2004/17/EC implicitly allowed for cross-border joint public procurement, in practice several national legal systems have explicitly or implicitly rendered cross-border joint procurement legally uncertain or impossible. Contracting entities from different Member States may be interested in cooperating and in jointly awarding contracts in order to derive maximum benefit from the potential of the internal market in terms of economies of scale and risk-benefit sharing, not least for innovative projects involving a greater amount of risk than reasonably bearable by a single contracting entity. Therefore new rules on cross-border joint

deleted

procurement designating the applicable law should be established in order to facilitate cooperation between contracting entities across the Single Market. In addition, contracting entities from different Member States may set up joint legal bodies established under national or Union law. Specific rules should be established for such form of joint procurement.

Or. en

Amendment 184
Heide Rühle

Proposal for a directive
Recital 35

Text proposed by the Commission

(35) The technical specifications drawn up by purchasers need to allow public procurement to be opened up to competition. To that end, it should be possible to submit tenders that reflect the diversity of technical solutions so as to obtain a sufficient level of competition. Consequently, technical specifications should be drafted in such a way to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications in terms of functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on other equivalent arrangements which meet the requirements of the contracting entities and are equivalent in terms of safety **must** be considered by the contracting entities. To

Amendment

(35) The technical specifications drawn up by purchasers need to allow public procurement to be opened up to competition. To that end, it should be possible to submit tenders that reflect the diversity of technical solutions so as to obtain a sufficient level of competition. Consequently, technical specifications should be drafted in such a way to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications in terms of functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on other equivalent arrangements which meet the requirements of the contracting entities and are equivalent in terms of safety **should** be considered by the contracting entities. To

demonstrate equivalence, tenderers can be required to provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits.

demonstrate equivalence, tenderers can be required to provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits. ***In order not to discriminate those tenderers who invest time and money for certificates and test reports the burden for providing equivalence should be placed on the tenderer claiming equivalence.***

Or. en

Amendment 185

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Recital 35

Text proposed by the Commission

(35) The technical specifications drawn up by purchasers need to allow public procurement to be opened up to competition. To that end, it ***should*** be possible to submit tenders that reflect the diversity of technical solutions so as to obtain a sufficient level of competition. Consequently, technical specifications should be drafted in such a way to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications in terms of functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on ***other***

Amendment

(35) The technical specifications drawn up by ***public*** purchasers need to allow public procurement to be opened up to competition. To that end, it ***must*** be possible to submit tenders that reflect the diversity of technical solutions, ***standards and specifications in the marketplace*** so as to obtain a sufficient level of competition. Consequently, technical specifications should be drafted in such a way to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator, ***or that disadvantage economic operators on the basis of business or development model including with regard to standards or specifications implemented in a given solution or service.*** Drawing up the technical specifications in terms of

equivalent arrangements *which meet the requirements of the contracting entities and are equivalent in terms of safety* must be considered by *the* contracting *entities*. To demonstrate equivalence, tenderers can be required to provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits.

functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on equivalent arrangements must be considered *equally* by contracting *authorities*. To demonstrate equivalence, tenderers can be required to provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits. *Contracting authorities must be able to provide a reason for any decision that equivalence does not exist in a given case.*

Or. en

Justification

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

Amendment 186

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Recital 36

Text proposed by the Commission

(36) Contracting entities that wish to purchase works, supplies or services with specific environmental, social or other characteristics should be able to refer to particular labels, such as the European

Amendment

(36) Contracting entities that wish to purchase works, supplies or services with specific environmental, social or other characteristics should be able to refer to particular labels, such as the European

Eco-label, (multi-) national eco-labels or any other label provided that the requirements for the label are linked to the subject-matter of the contract, such as the description of the product and its presentation, including packaging requirements. It is furthermore essential that those requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and that the label is accessible and available to all interested parties.

Eco-label, (multi-) national eco-labels or any other label provided that the requirements for the label are linked to the subject-matter of the contract, such as the description of the product and its presentation, including packaging requirements **and the production process**. It is furthermore essential that those requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors, **trade unions** and environmental organisations can participate, and that the label is accessible and available to all interested parties.

Or. en

Amendment 187

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Recital 36

Text proposed by the Commission

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

Amendment

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

interested parties.

interested parties.

Or. en

Amendment 188
Alexander Alvaro, Jürgen Creutzmann

Proposal for a directive
Recital 37 a (new)

Text proposed by the Commission

Amendment

(37a) For all procurement it is necessary that contracting authorities ensure that the products, services and works subject to the contract meet the requirements of data protection law. In order to ensure and demonstrate the protection of the rights and freedoms of data subjects with regard to the processing of personal data, tenderers should adopt internal policies and implement appropriate technical and organisational measures at the time of the design of the processing of personal data (data protection by design).

Or. en

Amendment 189
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 38

Text proposed by the Commission

Amendment

(38) In order to ***encourage*** the involvement of small and medium-sized enterprises (SMEs) in the procurement market, ***it should be provided explicitly that contracts may be divided into lots, whether homogenous or heterogeneous. Where contracts are divided into lots, contracting entities may, for instance in order to preserve competition or to ensure security***

(38) Public procurement should be adapted to the needs of SMEs. Contracting authorities should make use of the Code of Best Practice providing guidance on how they may apply the public procurement framework in a way that facilitates SME participation. In order to ***foster*** the involvement of small and medium-sized enterprises (SMEs) in the

of *supply*, *limit* the *number* of *lots* for which an economic operator may tender; they may also *limit* the *number* of *lots* that may be awarded to any one tenderer.

public procurement market, *contracting authorities* should *in particular give consideration to dividing* contracts into lots *and ensure transparency in access to information on their reasons for doing so or choosing not to*. *Member States should introduce measures to promote the access of SMEs to public procurement, in particular through improved information and guidance on tendering and on the new opportunities offered by the modernised EU legal framework, and to foster the exchange of best practice and the organisation of training and events involving public procurers and SMEs.*

Or. en

Justification

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

Amendment 190 **Heide Rühle**

Proposal for a directive **Recital 40**

Text proposed by the Commission

(40) Public contracts should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Given that contracting entities, which are not contracting authorities,

Amendment

(40) Public contracts should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Given that contracting entities, which are not contracting authorities,

might not have access to indisputable proof on the matter, it is appropriate to leave the choice of whether or not to apply the exclusion criteria listed in Directive [2004/18] to such contracting entities. The obligation to apply Article 55(1) and (2) of Directive [2004/18] should therefore be limited to contracting entities that are contracting authorities. Furthermore, contracting entities should be given the possibility to exclude candidates or tenderers for violations of environmental or social obligations, including rules on accessibility for disabled persons or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights.

might not have access to indisputable proof on the matter, it is appropriate to leave the choice of whether or not to apply the exclusion criteria listed in Directive [2004/18] to such contracting entities. The obligation to apply Article 55(1) and (2) of Directive [2004/18] should therefore be limited to contracting entities that are contracting authorities. Furthermore, contracting entities should be given the possibility to exclude candidates or tenderers for violations of environmental, **labour** or social obligations, including rules on **working conditions, collective agreements and** accessibility for disabled persons or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights.

Or. en

Justification

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

Amendment 191

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Recital 40

Text proposed by the Commission

(40) Public contracts should not be awarded to economic operators that have participated in a criminal organisation or

Amendment

(40) Public contracts should not be awarded to economic operators that have participated in a criminal organisation or

have been found guilty of corruption, fraud to the detriment of the Union's financial interests or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Given that contracting entities, which are not contracting authorities, might not have access to indisputable proof on the matter, it is appropriate to leave the choice of whether or not to apply the exclusion criteria listed in Directive [2004/18] to such contracting entities. The obligation to apply Article 55(1) and (2) of Directive [2004/18] should therefore be limited to contracting entities that are contracting authorities. Furthermore, contracting entities should be given the possibility to exclude candidates or tenderers for violations of environmental or social obligations, including rules on accessibility for disabled persons or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights.

have been found guilty of corruption, fraud to the detriment of the Union's financial interests or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Given that contracting entities, which are not contracting authorities, might not have access to indisputable proof on the matter, it is appropriate to leave the choice of whether or not to apply the exclusion criteria listed in Directive [2004/18] to such contracting entities. The obligation to apply Article 55(1) and (2) of Directive [2004/18] should therefore be limited to contracting entities that are contracting authorities. Furthermore, contracting entities should be given the possibility to exclude candidates or tenderers for violations of environmental, **labour** or social obligations, including rules on **working conditions**, accessibility for disabled persons or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights.

Or. en

Amendment 192
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 41

Text proposed by the Commission

(41) Where contracting entities are obliged or choose to apply the **just mentioned** exclusion criteria, they should apply Directive [2004/18] concerning the possibility that economic operators adopt compliance measures aimed at remedying the consequences of any criminal offences or misconduct and at effectively preventing further occurrences of the misbehaviour.

Amendment

(41) Where contracting entities are obliged or choose to apply the exclusion criteria **mentioned above**, they should apply Directive [2004/18] concerning the possibility that economic operators adopt compliance measures aimed at remedying the consequences of any criminal offences or misconduct and at effectively preventing further occurrences of the misbehaviour.

*Justification**Linguistic Amendment***Amendment 193****Heide Rühle****Proposal for a directive****Recital 43***Text proposed by the Commission*

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

Amendment

(43) Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of transparency, non-discrimination and equal treatment. Those criteria should guarantee that tenders are assessed in conditions of effective competition, *while ensuring that* entities *may* require high-quality works, supplies and services that are optimally suited to their needs as *long as* they are *linked to the subject matter of the* contract.

Or. en

Justification

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

Amendment 194**Marc Tarabella**

Proposal for a directive
Recital 43

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 195
Jürgen Creutzmann

Proposal for a directive
Recital 43

Text proposed by the Commission

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

Amendment

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

lowest cost', taking into account that in the latter case they are free to set adequate quality standards by using technical specifications or contract performance conditions.

case of standardised goods, 'the lowest prize'.

Or. en

Amendment 196
Frank Engel, Andreas Schwab

Proposal for a directive
Recital 44

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 197
Cornelis de Jong

Proposal for a directive
Recital 44

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 198
Heide Rühle

Proposal for a directive
Recital 46

Text proposed by the Commission

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

Amendment

(46) Those sector-specific measures must be complemented by an adaptation of the public procurement Directives empowering contracting entities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting entities can determine the most economically advantageous tender using a life-cycle costing approach, provided that the methodology to be used is established in an objective and non-discriminatory manner

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

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

Or. en

Justification

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

Amendment 199 **Frank Engel**

Proposal for a directive **Recital 46**

Text proposed by the Commission

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

Amendment

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

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

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

Or. en

Amendment 200

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

Proposal for a directive

Recital 46

Text proposed by the Commission

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

Amendment

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

be developed at the level of the Union for the calculation of life-cycle costs for specific categories of supplies or services; whenever such a methodology is developed its use should be made compulsory.

developed at the level of the Union for the calculation of life-cycle costs for specific categories of supplies or services; ***adopted in close consultation with stakeholders, including industry***; whenever such a methodology is developed its use should be made compulsory.

Or. en

Amendment 201
Jürgen Creutzmann

Proposal for a directive
Recital 46

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 202

Barbara Weiler

Proposal for a directive

Recital 47 a (new)

Text proposed by the Commission

Amendment

(47a) Taking into account recent case law of the Court of Justice of the European Union, contracting authorities can choose an award criterion which refers to the fact that the product concerned is of fair trade origin, including the requirement to pay a minimum and price premium to producers.

Or. en

Amendment 203

Heide Rühle

Proposal for a directive

Recital 47

Text proposed by the Commission

Amendment

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

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

of the most economically advantageous tender characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may **only** concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event **remain limited to characteristics that have immediate consequences on staff members in their working environment**. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services³² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party.

criterion characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may **among others** concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event **be linked to the subject matter of the contract**. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services³² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. **Contracting authorities may include social considerations (i.a. ILO core conventions) in the technical specifications when this is relevant and linked to the subject matter of the contract.**

Or. en

Justification

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

Amendment 204
Vicente Miguel Garcés Ramón

Proposal for a directive
Recital 47

(47) Furthermore, in technical specifications and in award criteria, contracting entities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life-cycle of a product or service, provided that they are linked to the subject-matter of the contract. In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender, characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services³² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party.

(47) Furthermore, in technical specifications and in award criteria, contracting entities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life-cycle of a product or service, provided that they are linked to the subject-matter of the contract. In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender, characteristics related to the working conditions of the persons directly participating in the process of production or provision in question, ***such as, inter alia, those which may concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disability.*** Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services³² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the

Amendment 205

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Recital 47

Text proposed by the Commission

(47) Furthermore, in technical specifications and in award criteria, contracting *entities* should be allowed to refer to *a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life-cycle of a product or service*, provided that *they* are linked to the subject-matter of the contract. *In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of*

Amendment

(47) Furthermore, in technical specifications and in award criteria, contracting *authorities* should be allowed to refer to *the monetisation of the life cycle of the works, service or supply and accordingly to social and environmental sustainability*, provided that *these characteristics* are linked to the subject-matter of the contract. *The technical specifications and award criteria should be interpreted broadly. Contracting authorities may also use the technical specifications and award criteria to minimise damaging social or environmental effects or maximise positive social or environmental effects. As part of the award criteria, contracting authorities should be able to consider the existence of an embedded life-cycle approach aiming at minimising cost and maximising resource efficiency and which should be applied in the framework of the provision of works, services or supplies in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries which are parties to the WTO's Government Procurement Agreement, or from other third countries with whom the Union is party to a Free Trade Agreement. Contracting authorities should also be allowed to use as technical specifications and award criteria the organisation, qualification and experience of the staff*

workers in the framework of the provision of services³² *and* in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade *Agreements* to which the *Union is party*.

assigned to performing the contract in question, as this may affect the quality and social sustainability of contract performance and, as a result, the identification of the tender which offers the best value for money. Contracting authorities should include these considerations in the award criterion of the most economically advantageous tender.

Or. en

Justification

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

Amendment 206

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

Proposal for a directive

Recital 47

Text proposed by the Commission

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

Amendment

(47) In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons

or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services³² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party.

with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services³² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party.

Or. en

Amendment 207

Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Recital 47

Text proposed by the Commission

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

Amendment

(47) Furthermore, in technical specifications and in award criteria, contracting **authorities** should be allowed to refer to **life cycle characteristics, such as** a specific production process, **including, for example, social and environmental aspects**, a specific mode of provision of services, **functional or performance requirements aimed at minimising or maximising environmental or social impacts**, or a specific process for any other stage of the life cycle of a product or

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

service, provided that they are linked to the subject-matter of the *public* contract. ***The rule concerning the link to the subject-matter should be interpreted broadly.*** Accordingly, in order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the ***technical specifications and award criteria***, characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may, ***for example***, concern the protection of health of the staff involved in the production process, ***gender equality (e.g. equal pay, work-life balance), access to vocational training, user involvement and consultation, affordability, human rights, ethical trade*** or the favouring of social integration of disadvantaged persons or members of vulnerable groups (***such as long-term unemployed persons, Roma, migrants or young and older workers***) amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. ***For service contracts and for contracts involving the design of works, contracting authorities should also be free to use as technical specifications or award criteria the organisation, qualifications and experience of the staff assigned to***

performing the contract in question, as this may affect the quality and sustainability of contract performance and, as a result, the economic value of the tender. Contracting authorities may also integrate into technical specifications or award criteria social considerations relating to external social costs directly linked to the life cycle, such as the impact of production on the surrounding environment and adjacent communities. Contracting authorities should lay down in the technical specifications obligations relating to social and employment conditions, health and safety at the workplace, social security and working conditions, as laid down in EU and national laws, regulations or administrative provisions, arbitration rulings, collective agreements and contracts and the international labour law provisions listed in Annex XIV, which apply in the place where the work, service or supply is performed; these obligations should also apply in cross-border situations, where workers from one Member State provide services in another Member State.

Or. de

Amendment 208
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Recital 47

Text proposed by the Commission

(47) Furthermore, in technical specifications and in award criteria, contracting entities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life-cycle of a product or service, provided that they are linked to the subject-matter of

Amendment

(47) Furthermore, in technical specifications and in award criteria, contracting entities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life-cycle of a product or service, provided that they are linked to the subject-matter of

the contract. In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may *only* concern the ***protection of health of the staff involved in the production process*** or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members ***in their working environment***. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services³² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party.

the contract. In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. ***Those characteristics may concern the working conditions along the supply chain as stated in national labour laws and regulations in which production processes take place and in international conventions as listed in Annex XIV, whatever the most favourable for workers. These provisions include: those defined by the eight ILO Core Conventions (freedom of association and collective bargaining, forced and compulsory labour, discrimination in respect of employment and occupation, child labour); occupational safety and health; working time; wages; and social security.*** Those characteristics may also concern the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members working ***conditions***. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services³² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party.

Or. en

Justification

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

Amendment 209 **Jürgen Creutzmann**

Proposal for a directive **Recital 47**

Text proposed by the Commission

(47) Furthermore, in technical specifications **and in award criteria**, contracting **entities** should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the **life-cycle** of a product or service, provided that they are linked to the subject-matter of the **contract**. **In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16**

Amendment

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

December 1996 concerning the posting of workers in the framework of the provision of services³² and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party.

Or. en

Justification

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

Amendment 210

Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Recital 49

Text proposed by the Commission

(49) Tenders that appear abnormally low in relation to the works, supplies or services might be based on technically, economically or legally unsound assumptions or practices. In order to prevent possible disadvantages during contract performance, contracting ***entities*** should be obliged to ask for an explanation of the price charged where a tender significantly undercuts the prices demanded by other tenderers. Where the tenderer cannot provide a sufficient explanation, the contracting ***entity*** should ***be entitled to*** reject the tender. Rejection should be mandatory in cases where the contracting ***entity*** has established that the abnormally low price results from non-compliance with ***mandatory*** Union ***legislation in the fields of social, labour or environmental law or international labour***

Amendment

(49) Tenders that appear abnormally low in relation to the works, supplies or services might be based on technically, economically or legally unsound assumptions or practices. In order to prevent possible disadvantages during contract performance, contracting ***authorities*** should be obliged to ask for an explanation of the price charged where a tender significantly undercuts the prices demanded by other tenderers. Where the tenderer cannot provide a sufficient explanation, the contracting ***authority*** should reject the tender. Rejection should be mandatory in cases where the contracting ***authority*** has established that the abnormally low price ***indicated*** results from non-compliance with Union environmental law or ***with obligations relating to social and employment***

law provisions.

conditions, health and safety at the workplace, social security and working conditions, as laid down in EU and national laws, regulations or administrative provisions, arbitration rulings, collective agreements and contracts and the international labour law provisions listed in Annex XIV, which apply in the place where the work, service or supply is performed; these obligations should also apply in cross-border situations, where workers from one Member State provide services in another Member State.

Or. de

Amendment 211
Evelyne Gebhardt, Birgit Sippel

Proposal for a directive
Recital 50

Text proposed by the Commission

(50) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked to the subject-matter of the contract and are indicated in the notice used *to make the call* for competition, or in the procurement documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment, protection of the environment or animal welfare. For *example*, mention may be made of the requirements applicable during the performance of the contract to recruit long-term job-seekers or to implement training measures for the unemployed or for young persons, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, even

Amendment

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

where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation.

Conventions, even where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation. *As regards obligations relating to social and employment conditions, health and safety at the workplace, social security and working conditions, as laid down in EU and national laws, regulations or administrative provisions, arbitration rulings, collective agreements and contracts and the international labour law provisions listed in Annex XIV, which apply in the place where the work, service or supply is performed, contracting authorities should lay down in the contract performance clauses provisions setting an appropriate level of protection.*

Or. de

Amendment 212

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Recital 50

Text proposed by the Commission

(50) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked to the subject-matter of the contract and are indicated in the notice used to make the call for competition, or in the procurement documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment, protection of the environment or animal welfare. For example, mention may be made of the requirements applicable during the performance of the contract to recruit long-

Amendment

(50) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked to the subject-matter of the contract and are indicated in the notice used to make the call for competition, or in the procurement documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment, protection of the environment or animal welfare. For example, mention may be made of the requirements applicable during the performance of the contract to recruit long-

term job-seekers or to implement training measures for the unemployed or for young persons, to comply in substance with ***fundamental International Labour Organisation (ILO) Conventions, even where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation.***

term job-seekers or to implement training measures for the unemployed or for young persons, to comply in substance with ***the working conditions along the supply chain as stated in national labour laws and regulations in which production processes take place and in international conventions as listed in Annex XIV, whatever the most favourable for workers. These provisions include: those defined by the eight ILO Core Conventions (freedom of association and collective bargaining, forced and compulsory labour, discrimination in respect of employment and occupation, child labour); occupational safety and health; working time; wages and social security.***

Or. en

Amendment 213 Jürgen Creutzmann

Proposal for a directive Recital 50

Text proposed by the Commission

(50) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked to the subject-matter of the contract and are indicated in the notice used to make the call for competition, or in the procurement documents. They may, in particular, be intended to favour on-site vocational training, ***the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment, protection of the environment or animal welfare.*** For example, mention may be made of the requirements applicable during the performance of the contract to ***recruit long-term job-seekers or to*** implement training measures for the unemployed or

Amendment

(50) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked to the subject-matter of the contract and are indicated in the notice used to make the call for competition, or in the procurement documents. They may, in particular, be intended to favour on-site vocational ***or professional*** training. For example, mention may be made of the requirements applicable during the performance of the contract to implement training measures for the unemployed or for young persons.

for young persons, *to comply in substance with fundamental International Labour Organisation (ILO) Conventions, even where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation.*

Or. en

Justification

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

Amendment 214

Sergio Gaetano Cofferati, Marc Tarabella

Proposal for a directive

Recital 50 a (new)

Text proposed by the Commission

Amendment

(50a) In order to ensure the correct functioning of public procurement, subcontracting must be appropriately regulated. The contracting entity must be informed, in the tender document, of the parts of a contract that the tenderer intends to subcontract, as well as of the proposed subcontractors. Any change in the subcontracting chain that may occur during performance of the contract should ensure that the contract is undertaken to the same standard as defined in the submitted tender and should be agreed by the contracting entity. Where allowed by the nature of the contract, the contracting entity should pay the subcontractors directly. Finally, a system of 'joint and several liability' should be established in the subcontracting chain and the chain should be limited to a maximum of three consecutive vertical subcontracts.

Or. it

Amendment 215
Vicente Miguel Garcés Ramón

Proposal for a directive
Recital 51

Text proposed by the Commission

(51) The laws, regulations and collective agreements, at both national and Union level, that are in force in the areas of employment conditions and safety at work apply during the performance of a contract, provided that such rules, and their application, comply with Union law. In cross-border situations where workers from one Member State provide services in another Member State for the purpose of performing a contract, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services³³ lays down the minimum conditions that must be observed by the host country in respect of such posted workers. Where national law contains provisions to this effect, non-compliance with those obligations may be considered to be grave misconduct on the part of the economic operator concerned, liable to lead to the exclusion of that economic operator from the procedure for the award of a public contract.

Amendment

(51) The laws, regulations and collective agreements, at both national and Union level, that are in force in the areas of employment conditions, ***integration of persons with disabilities into the labour market*** and safety at work apply during the performance of a contract, provided that such rules, and their application, comply with Union law. In cross-border situations where workers from one Member State provide services in another Member State for the purpose of performing a contract, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services³³ lays down the minimum conditions that must be observed by the host country in respect of such posted workers. Where national law contains provisions to this effect, non-compliance with those obligations may be considered to be grave misconduct on the part of the economic operator concerned, liable to lead to the exclusion of that economic operator from the procedure for the award of a public contract.

Or. es

Amendment 216
Sergio Gaetano Cofferati, Marc Tarabella

Proposal for a directive
Recital 56 a (new)

Text proposed by the Commission

Amendment

(56a) Contracting entities should respect the delay of payment as established in Directive 2011/7/EU.

Or. en

Amendment 217
Heide Rühle

Proposal for a directive
Recital 57

Text proposed by the Commission

Amendment

(57) The evaluation has shown that Member States do not consistently and systematically monitor the implementation and the functioning of public procurement rules. This has a negative impact on the correct implementation of provisions stemming from those directives, which is a major source of cost and uncertainty. Several Member States have appointed a national central body dealing with public procurement issues, but the functions that such bodies are empowered with vary considerably across Member States. Clearer, more consistent and authoritative monitoring and control mechanisms would increase knowledge of the functioning of procurement rules, legal certainty for businesses and contracting entities, and contribute to establish a level playing field. Such mechanisms could serve as tools for detection and early resolution of problems, especially with regard to projects cofunded by the Union, and for the identification of structural deficiencies. There is in particular a strong need to coordinate those mechanisms to ensure consistent application, controls and monitoring of public procurement policy, as well as

deleted

systematic assessment of the outcomes of procurement policy across the Union.

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 218

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Recital 57

Text proposed by the Commission

(57) The evaluation has shown that ***Member States do not consistently and systematically monitor the implementation and the functioning of public procurement rules. This has a negative impact on the correct implementation of provisions stemming from those directives, which is a major source of cost and uncertainty. Several Member States have appointed a national central body dealing with public procurement issues, but the functions that such bodies are empowered with vary considerably across Member States. Clearer, more consistent and authoritative monitoring and control mechanisms would increase knowledge of the functioning of procurement rules, legal certainty for businesses and contracting entities, and contribute to establish a level playing field. Such mechanisms could serve as tools for detection and early resolution of problems, especially with regard to projects cofunded by the Union, and for the identification of structural deficiencies. There is in particular a strong need to coordinate those***

Amendment

(57) The evaluation has shown that ***there is still considerable room for improvement in the application of the Union public procurement rules. In view of a more efficient and consistent application of the rules, it is on the one hand essential to get a good overview on possible structural problems and general patterns in national procurement policies, in order to address possible problems in a more targeted way. This overview should be gained through appropriate monitoring, the results of which should be regularly published, in order to allow an informed debate on possible improvements of procurement rules and practice. On the other hand, better guidance and assistance to contracting authorities and economic operators could also greatly contribute to enhancing the efficiency of public procurement, through better knowledge, increased legal certainty and professionalisation of procurement practices; such guidance should be made available to contracting authorities and economic operators wherever it appears***

mechanisms to ensure *consistent* application, *controls and monitoring* of *public procurement policy*, as well as *systematic assessment of the outcomes of procurement policy across the Union*.

necessary, to ensure *correct* application of the *rules*.

Or. en

Justification

Alternative proposals on governance.

Amendment 219

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Recital 57

Text proposed by the Commission

(57) The evaluation has shown that Member States do not consistently and systematically monitor the implementation and *the* functioning of public procurement rules. This has a negative impact on the correct implementation of provisions stemming from *those* directives, which is a major source of cost and uncertainty. *Several* Member States *have appointed a national central body dealing with public procurement issues, but the functions that such bodies are empowered with vary considerably across Member States. Clearer, more consistent and authoritative monitoring and control mechanisms would increase knowledge of the functioning of procurement rules, legal certainty for businesses and contracting entities, and contribute to establish a level playing field. Such mechanisms could serve as tools for detection and early resolution of problems, especially with regard to projects cofunded by the Union, and for the identification of structural deficiencies. There is in particular a strong need to coordinate those*

Amendment

(57) The evaluation has shown that Member States do not consistently and systematically monitor the implementation and functioning of public procurement rules. This has a negative impact on the correct implementation of provisions stemming from *these* directives, which is a major source of cost and uncertainty. Member States *should therefore step up their* monitoring *efforts* and *in the case of uncertainties they should not hesitate to ask the Commission for clarification. Moreover, the European Commission should report annually on the need for clarifications, on new jurisprudence of the European Court of Justice, and on frequently heard complaints concerning the implementation of this Directive.*

mechanisms to ensure consistent application, controls and monitoring of public procurement policy, as well as systematic assessment of the outcomes of procurement policy across the Union.

Or. en

Amendment 220
Heide Rühle

Proposal for a directive
Recital 58

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 221
Malcolm Harbour, Edvard Kožušník

**Proposal for a directive
Recital 58**

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

Alternative proposals on governance.

**Amendment 222
Cornelis de Jong**

**Proposal for a directive
Recital 58**

Text proposed by the Commission

Amendment

(58) Member States should designate a

deleted

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

Or. en

Amendment 223
Jürgen Creutzmann

Proposal for a directive
Recital 58

Text proposed by the Commission

Amendment

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

deleted

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

Or. en

Amendment 224
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 59

Text proposed by the Commission

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

Amendment

(59) Any stakeholder should be empowered to signal violations of this Directive to a competent authority or Court. Member States should be able to provide for recourse to monitoring authorities, sectoral oversight bodies, municipal, regional or national competition or auditing authorities, ombudsmen, and where these exist, national oversight authorities.

Or. en

Justification

Simplification.

Amendment 225
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 60

Text proposed by the Commission

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

Amendment

(60) *Traceability and transparency of decision-making in procurement procedures is essential for ensuring sound procedures, including effectively fighting corruption and fraud. Contracting authorities should keep copies of concluded contracts for high-value contracts to be able to provide access to these documents to interested parties in accordance with applicable rules on access to documentation. Furthermore, the essential elements and decisions of individual procurement procedures should be documented in a procurement report. To limit administrative burdens, the procurement report should refer to information already contained in the relevant contract award notices. The electronic systems for publication of these notices, managed by the Commission, should also be improved in view of facilitating data entry while making it easier to extract reports and exchange data between systems.*

Or. en

Justification

This follows the Council's approach on the Governance chapter.

Amendment 226
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 61

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

Alternative proposals on governance.

Amendment 227
Heide Rühle

Proposal for a directive
Recital 61

Text proposed by the Commission

Amendment

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

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

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 228**Cornelis de Jong, Mikael Gustafsson****Proposal for a directive****Recital 61***Text proposed by the Commission*

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

Amendment

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

Amendment 229**Heide Rühle****Proposal for a directive****Recital 62***Text proposed by the Commission*

(62) In order to adapt to rapid technical, economic and regulatory developments, the power to adopt acts in accordance with

Amendment

(62) In order to adapt to rapid technical, economic and regulatory developments, the power to adopt acts in accordance with

Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of a number of non-essential elements of this Directive. In fact, due to the need to comply with international agreements, the Commission should be empowered to modify the technical procedures for the calculation methods concerning thresholds as well as to periodically revise the thresholds themselves; references to the CPV nomenclature may undergo regulatory changes at EU level and it is necessary to reflect those changes into the text of this Directive; the technical details and characteristics of the devices for electronic receipt should be kept up to date with technological developments and administrative needs; it is also necessary to empower the Commission to make mandatory certain technical standards for electronic communication to ensure the interoperability of technical formats, processes and messaging in procurement procedures conducted using electronic means of communication taking into account technological developments and administrative needs; ***the Commission should also be empowered to adapt the mandatory content of the information to be included in notices to reflect administrative needs and regulatory changes at both national and EU level;*** the list of legislative acts of the Union establishing common methodologies for the calculation of life-cycle costs, referred to in article 77(3); the list of International Social and Environmental Conventions referred to in Articles 70 And 79 and the list of Union legislation referred to in article 27(3) whose implementation creates a presumption of free access to a given market as well as Annex II, referred to in Article 4(4), setting out a list of legislative acts to be taken into account when assessing the existence of special or exclusive rights should be quickly adapted to incorporate the measures adopted on a sectoral basis. In order to satisfy this need,

Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of a number of non-essential elements of this Directive. In fact, due to the need to comply with international agreements, the Commission should be empowered to modify the technical procedures for the calculation methods concerning thresholds as well as to periodically revise the thresholds themselves; references to the CPV nomenclature may undergo regulatory changes at EU level and it is necessary to reflect those changes into the text of this Directive; the technical details and characteristics of the devices for electronic receipt should be kept up to date with technological developments and administrative needs; it is also necessary to empower the Commission to make mandatory certain technical standards for electronic communication to ensure the interoperability of technical formats, processes and messaging in procurement procedures conducted using electronic means of communication taking into account technological developments and administrative needs; the list of legislative acts of the Union establishing common methodologies for the calculation of life-cycle costs, referred to in article 77(3); the list of International Social and Environmental Conventions referred to in Articles 70 And 79 and the list of Union legislation referred to in article 27(3) whose implementation creates a presumption of free access to a given market as well as Annex II, referred to in Article 4(4), setting out a list of legislative acts to be taken into account when assessing the existence of special or exclusive rights should be quickly adapted to incorporate the measures adopted on a sectoral basis. In order to satisfy this need, the Commission should be empowered to keep the lists up-to date.

the Commission should be empowered to keep the lists up-to date.

Or. en

Amendment 230

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Recital 63

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 231

Heide Rühle

Proposal for a directive

Recital 64

Text proposed by the Commission

(64) In order to ensure uniform conditions for the implementation of this Directive, as for the procedure for sending and publishing data referred to in Annex IX and the procedures for drawing up and transmitting notices, the standard forms for the publication of notices as well as of process and messaging standards *and the common template to be used by the oversight bodies for drawing up the implementation and statistical report*,

Amendment

(64) In order to ensure uniform conditions for the implementation of this Directive, as for the procedure for sending and publishing data referred to in Annex IX and the procedures for drawing up and transmitting notices, the standard forms for the publication of notices as well as of process and messaging standards, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation

implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No. 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers³⁵. The advisory procedure should be used for the adoption of those implementing acts, which do not have any impact either from the financial point of views or on the nature and scope of obligations stemming from this Directive. On the contrary, those acts are characterised by a mere administrative purpose and serve to facilitate the application of the rules set by this Directive. Furthermore, decisions to establish whether a given activity is directly exposed to competition on markets to which access is free should be adopted under conditions ensuring uniform conditions for implementing that provision. Implementing powers should therefore be conferred on the Commission also in respect of the detailed provisions for the implementation of the procedure, provided for under Article 28, for establishing whether Article 27 is applicable as well as the Decisions themselves. Those powers should be exercised in accordance with Regulation (EU) 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers. The advisory procedure should be used for the adoption of those implementing acts.

(EU) No. 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers³⁵. The advisory procedure should be used for the adoption of those implementing acts, which do not have any impact either from the financial point of views or on the nature and scope of obligations stemming from this Directive. On the contrary, those acts are characterised by a mere administrative purpose and serve to facilitate the application of the rules set by this Directive. Furthermore, decisions to establish whether a given activity is directly exposed to competition on markets to which access is free should be adopted under conditions ensuring uniform conditions for implementing that provision. Implementing powers should therefore be conferred on the Commission also in respect of the detailed provisions for the implementation of the procedure, provided for under Article 28, for establishing whether Article 27 is applicable as well as the Decisions themselves. Those powers should be exercised in accordance with Regulation (EU) 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers. The advisory procedure should be used for the adoption of those implementing acts.

Or. en

Amendment 232
Heide Rühle

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

Text proposed by the Commission

2. Procurement within the meaning of this Directive is the purchase *or other forms of acquisition of* works, supplies or services by one or more contracting entities from economic operators chosen by those contracting entities, provided that the works, supplies or services are intended for the pursuit of one of the activities referred to in Articles 5 to 11.

Amendment

2. Procurement within the meaning of this Directive is the purchase of works, supplies or services *via public contracts* by one or more contracting entities from economic operators chosen by those contracting entities, provided that the works, supplies or services are intended for the pursuit of one of the activities referred to in Articles 5 to 11. ***This directive does thus not cover procurement which is not connected to utility activities.***

Or. en

Justification

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

Amendment 233
Peter Simon

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

Text proposed by the Commission

2. Procurement within the meaning of this Directive is the purchase *or other forms of acquisition of* works, supplies or services by one or more contracting entities from economic operators chosen by those contracting entities, provided that the works, supplies or services are intended for the pursuit of one of the activities referred to in Articles 5 to 11.

Amendment

2. Procurement within the meaning of this Directive is the purchase of works, supplies or services ***in the context of public procurement*** by one or more contracting entities from economic operators chosen by those contracting entities, provided that the works, supplies or services are intended for the pursuit of one of the activities referred to in Articles 5 to 11.

Or. de

Amendment 234

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

Proposal for a directive

Article 1 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Procurement within the meaning of this Directive is the purchase **or other forms of acquisition of** works, supplies or services by one or more contracting entities from economic operators chosen by those contracting entities, provided that the works, supplies or services are intended for the pursuit of one of the activities referred to in Articles 5 to 11.

Amendment

2. Procurement within the meaning of this Directive is the purchase of works, supplies or services **via public contracts** by one or more contracting entities from economic operators chosen by those contracting entities, provided that the works, supplies or services are intended for the pursuit of one of the activities referred to in Articles 5 to 11.

Procurement within the meaning of this Directive is the acquisition of works, supplies or services by means of public contracts by one or more contracting entities from economic operators chosen by those contracting entities.

Or. en

Amendment 235

Evelyne Gebhardt

Proposal for a directive

Article 1 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Procurement within the meaning of this Directive is the purchase or other forms of acquisition of works, supplies or services by one or more contracting **entities** from economic operators chosen by those contracting **entities, provided that** the works, supplies or services are intended for **the pursuit of one of the activities referred to in Articles 5 to 11.**

Amendment

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

Amendment 236

Heide Rühle

Proposal for a directive

Article 1 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

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

Or. en

Justification

This notion is too general and too vague.

Amendment 237

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

Proposal for a directive

Article 1 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

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

Or. en

Justification

This notion is too general and too vague.

Amendment 238
Cornelis de Jong

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 239
Peter Simon

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

Text proposed by the Commission

Amendment

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

Or. de

Amendment 240
Andreas Schwab, Jürgen Creutzmann

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

Text proposed by the Commission

Amendment

An entirety of works, supplies **and/or**

An entirety of works, supplies **or** services

services, even if purchased through different contracts, constitutes a single procurement within the meaning of this Directive, if the contracts are part of one single project.

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

Or. en

Justification

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

Amendment 241 **Robert Rochefort**

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

Text proposed by the Commission

Amendment

(2a) The services governed by the provisions of this Directive are listed in Annex XVIIa, Part A. Articles 84 to 86 of this Directive apply to the contracts for specific services listed in Annex XVIIb, Part B.

Or. fr

Amendment 242 **Evelyne Gebhardt**

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

Text proposed by the Commission

Amendment

Article 1a

This Directive shall not affect labour law, that is any legal or contractual provision

concerning employment conditions, working conditions, including health and safety at the workplace and relations between employers and employees which Member States apply in accordance with national law and in a manner consistent with Union law. This Directive shall likewise not affect Member States' social security laws.

Or. de

Amendment 243
Evelyne Gebhardt

Proposal for a directive
Article 1 b (new)

Text proposed by the Commission

Amendment

Article 1b

This Directive shall not affect the exercise of fundamental rights as recognised in the Member States and by Union law. It shall likewise not affect the right to negotiate, conclude and enforce collective agreements and to take industrial action, in accordance with national law and practices which are consistent with Union law.

Or. de

Amendment 244
Evelyne Gebhardt

Proposal for a directive
Article 1 c (new)

Text proposed by the Commission

Amendment

Article 1c

This Directive shall not affect the freedom of Member States to define, in conformity

with Union law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with State aid rules, and what specific obligations they should be subject to.

Or. de

Amendment 245

Malcolm Harbour, Edvard Kožušník, Adam Bielan

Proposal for a directive

Article 2 – point 4 – introductory part

Text proposed by the Commission

(4) a 'body governed by public law' means *any body that has all of the following characteristics:*

Amendment

(4) a 'body governed by public law' means *an entity:*

Or. en

Amendment 246

Heide Rühle

Proposal for a directive

Article 2 – point 4 – point a

Text proposed by the Commission

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

Amendment

(a) It is established for or has the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

Or. en

Justification

Going back to the current definition from Directive 2004/17/EC, Article 2.1 (a) this definition is approved and will avoid legal uncertainty

Amendment 247

Malcolm Harbour, Edvard Kožušník, Adam Bielan

Proposal for a directive

Article 2 – point 4 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Clarification and simplification of the definition of BGPL.

Amendment 248

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

Proposal for a directive

Article 2 – point 4 – point a

Text proposed by the Commission

(a) It is established for or has the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; for that purpose, a body which operates in normal market conditions, aims to make a profit, and bears

Amendment

(a) It is established for or has the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; for that purpose, a body which operates in normal market conditions ***and engages in economic***

the losses resulting from the exercise of its activity does not have the purpose of meeting needs in the general interest, not having an industrial or commercial character;

activities by offering goods and services on the market, aims to make a profit, and bears the losses resulting from the exercise of its activity does not have the purpose of meeting needs in the general interest, not having an industrial or commercial character;

Or. en

Justification

The current wording of the provision leads to legal uncertainty as it refers to notions that are vaguely mentioned and could trigger divergent interpretations and extensive litigation. The proposed amendment uses instead the definition of economic activities provided by the Commission in its Communication on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ C 8, 11.1.2012, p. 4), in line with the established case law of the European Court of Justice.

Amendment 249

Tiziano Motti

Proposal for a directive

Article 2 – point 4 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

The current wording of the provision leads to legal uncertainty as it refers to notions that are vaguely mentioned and could trigger divergent interpretations and extensive litigation. The

proposed amendment uses instead the definition of economic activities provided by the Commission in its Communication on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ C 8, 11.1.2012, p. 4), in line with the established case law of the European Court of Justice.

Amendment 250

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 2 – point 4 – point a

Text proposed by the Commission

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

Amendment

(a) It is established for or has the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; for that purpose, a body which operates in normal market conditions ***and involves itself in economic activity, providing goods and services on the market,*** does not have the purpose of meeting needs in the general interest, not having an industrial or commercial character;

Or. it

Amendment 251

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Article 2 – point 4 – point a

Text proposed by the Commission

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

Amendment

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

commercial character;

character;

Or. en

Justification

The current wording of the provision leads to legal uncertainty as it refers to notions that are vaguely mentioned and could trigger divergent interpretations and extensive litigation. The proposed amendment uses instead the definition of economic activities provided by the Commission in its Communication on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ C 8, 11.1.2012, p. 4), in line with the established case law of the European Court of Justice.

Amendment 252

Malcolm Harbour, Edvard Kožušník, Adam Bielan

Proposal for a directive

Article 2 – point 4 – point b

Text proposed by the Commission

Amendment

(b) *it has* legal personality;

(b) *having* legal personality;

Or. en

Amendment 253

Malcolm Harbour, Edvard Kožušník, Adam Bielan, Jürgen Creutzmann

Proposal for a directive

Article 2 – point 4 – point c

Text proposed by the Commission

Amendment

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

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

(i) *the majority of the funding is from the State, regional or local authorities, or other*

bodies governed by public law;

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

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

Or. en

Justification

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

Amendment 254

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 2 – point 4 – point c

Text proposed by the Commission

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

Amendment

(c) it is financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or has an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law;
For the purposes of this Directive, the definition of a ‘public body’ does not include companies listed on the stock market or companies which they control directly or indirectly or with which they are directly or indirectly linked;

Or. it

Amendment 255

Heide Rühle

Proposal for a directive

Article 2 – point 8 – point a a (new)

Text proposed by the Commission

Amendment

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

Or. en

Justification

Definition of 2004/17/EC is approved and has worked well.

Amendment 256

Heide Rühle

Proposal for a directive

Article 2 – point 8 – point b

Text proposed by the Commission

Amendment

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

Or. en

Amendment 257

Heide Rühle

Proposal for a directive

Article 2 – point 8 – point c

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 258

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 2 – point 10

Text proposed by the Commission

Amendment

(10) "supply contracts" means contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products. A supply contract may include, as an incidental matter, siting and installation operations;

(10) "supply contracts" means contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products, ***including via agencies***. A supply contract may include, as an incidental matter, siting and installation operations;

Or. it

Amendment 259

Marc Tarabella

Proposal for a directive

Article 2 – point 12

Text proposed by the Commission

Amendment

(12) 'economic operator' means any natural or legal person, or ***a contracting entity***, or a group of such persons ***and/or entities*** which offers the execution of works and/or a work, the supply of products or the provision of services on the market;

(12) 'economic operator' means any natural or legal person, ***private*** or ***public***, or a group of such persons which offers the execution of works and/or a work, the supply of products or the provision of services on the market;

Or. fr

Amendment 260
Heide Rühle

Proposal for a directive
Article 2 – point 15

Text proposed by the Commission

(15) ‘procurement documents’ means **all documents** produced or referred to by the contracting entity to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice or the notices on the existence of a qualification system where they are used a means of calling for competition, the technical specifications, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents;

Amendment

(15) ‘procurement documents’ means **any document** produced or referred to by the contracting entity to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice or the notices on the existence of a qualification system where they are used a means of calling for competition, the technical specifications, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents;

Or. en

Amendment 261
Frank Engel

Proposal for a directive
Article 2 – point 22

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 262
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 2 – point 22

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 263
Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 2 – point 22

Text proposed by the Commission

(22) 'life cycle' means all consecutive

Amendment

(22) 'life cycle' means all consecutive

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

and/or interlinked stages, including **research, development**, transport, use and maintenance, throughout the existence of a product or a works or the provision of a service, **provided data in relation to these are measurable and can be collated in a meaningful manner.**

Or. en

Amendment 264
Jürgen Creutzmann

Proposal for a directive
Article 2 – point 22

Text proposed by the Commission

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

Amendment

(22) 'life cycle' means all consecutive and/or interlinked stages of a product or a works or the provision of a service, from acquisition to **use, maintenance**, disposal, clearance and finalisation.

Or. en

Amendment 265
Jürgen Creutzmann

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

Text proposed by the Commission

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

Amendment

Or. en

Amendment 266
Heide Rühle

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 267
Malcolm Harbour

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 268
Marc Tarabella

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

Text proposed by the Commission

Amendment

(23a) 'products, works, supplies and services not covered' means products, works, supplies and services from a country with which the Union has not concluded an international agreement in the field of public procurement, and which includes a commitment concerning market access, or products, works, supplies and services from a country with which the EU has concluded an international agreement of this kind, but to which that agreement does not apply;

Or. fr

Amendment 269

Pablo Arias Echeverría

Proposal for a directive Article 3 – paragraph 3

Text proposed by the Commission

3. If one of the activities for which the contract is intended is subject to this Directive and the other to the abovementioned [2004/18] and if it is objectively impossible to determine for which activity the contract is principally intended, the ***contract shall be awarded in accordance with the abovementioned Directive [2004/18].***

Amendment

3. If one of the activities for which the contract is intended is subject to this Directive and the other to the abovementioned [2004/18] and if it is objectively impossible to determine for which activity the contract is principally intended, the ***applicability of this Directive shall be determined on the basis of the main subject-matter of the contract.***

Or. es

Amendment 270

Raffaele Baldassarre

Proposal for a directive Article 4 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute "special or exclusive rights" within the meaning of point 6 of Article 2.

Amendment

2. Rights which have been granted by means of a **tender** procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective **and non-discriminatory award** criteria shall not constitute "special or exclusive rights" within the meaning of point 6 of Article 2.

Or. it

Amendment 271

Pablo Arias Echeverría

Proposal for a directive

Article 4 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

(a) procurement procedures with a prior call for competition in conformity with Directive [2004/18/EC], [Directive ... (concessions)] **or** this Directive;

Amendment

(a) procurement procedures with a prior call for competition in conformity with Directive [2004/18/EC], [Directive ... (concessions)], this Directive **or other procurement procedures of Member States that have adopted the abovementioned directives, including for the awarding of concessions;**

Or. es

Amendment 272

Heide Rühle

Proposal for a directive

Article 4 – paragraph 3 – point a

Text proposed by the Commission

(a) which are contracting authorities or public undertakings and which pursue one of the activities referred to in Articles 5 to 11;

Amendment

(a) which are contracting authorities or public undertakings and which pursue one of the activities referred to in Articles 5 to 11 **except in cases where the activity is**

pursued on the basis of rights being granted according to paragraph 2 of this Article;

Or. en

Amendment 273

Lara Comi

Proposal for a directive

Article 4 – paragraph 3 – point a

Text proposed by the Commission

(a) which are contracting authorities or public undertakings and which pursue one of the activities referred to in Articles 5 to 11;

Amendment

(a) which are contracting authorities or public undertakings, ***except in the cases referred to in paragraph 4***, and which pursue one of the activities referred to in Articles 5 to 11;

Or. it

Amendment 274

Lara Comi

Proposal for a directive

Article 4 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. This Directive shall not apply to public undertakings carrying on the activities referred to in articles 5 to 11 by virtue of rights granted in accordance with paragraph 2 of this article.

Or. it

Amendment 275

Heide Rühle

Proposal for a directive

Article 5 – title

Text proposed by the Commission

Amendment

Gas and **heat**

Gas, **heat** and **cooling**

Or. en

Justification

In many Member States District Heating and Cooling operators are public entities. Under Article 5 of the proposed Utilities Directive (but also in the existing 2004/17/EC; under Art.3) the provision of heat is an activity falling under the scope of the Utilities Directive whether this includes cooling as well is not yet legally clarified.

Amendment 276

Heide Rühle

Proposal for a directive

Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. As far as gas and **heat** are concerned, this Directive shall apply to the following activities:

1. As far as gas, **heat** and **cooling** are concerned, this Directive shall apply to the following activities:

Or. en

Amendment 277

Christel Schaldemose

Proposal for a directive

Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. As far as gas and **heat** are concerned, this Directive shall apply to the following activities:

1. As far as gas, **heat** and **cooling** are concerned, this Directive shall apply to the following activities:

Or. en

Amendment 278
Heide Rühle

Proposal for a directive
Article 5 – paragraph 1 – point a

Text proposed by the Commission

(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or **heat**;

Amendment

(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas, **heat or cooling**;

Or. en

Amendment 279
Christel Schaldemose

Proposal for a directive
Article 5 – paragraph 1 – point a

Text proposed by the Commission

(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas **or heat**;

Amendment

(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas, heat **or cooling**;

Or. en

Amendment 280
Heide Rühle

Proposal for a directive
Article 5 – paragraph 1 – point b

Text proposed by the Commission

(b) the supply of gas or **heat** to such networks.

Amendment

(b) the supply of gas, **heat or cooling** to such networks.

Or. en

Amendment 281
Christel Schaldemose

Proposal for a directive
Article 5 – paragraph 1 – point b

Text proposed by the Commission

(b) the supply of gas *or* heat to such networks.

Amendment

(b) the supply of gas, heat *or cooling* to such networks.

Or. en

Amendment 282
Heide Rühle

Proposal for a directive
Article 5 – paragraph 2 – introductory part

Text proposed by the Commission

2. The supply of gas or *heat* to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:

Amendment

2. The supply of gas, *heat* or *cooling* to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:

Or. en

Amendment 283
Christel Schaldemose

Proposal for a directive
Article 5 – paragraph 2 – introductory part

Text proposed by the Commission

2. The supply of gas or *heat* to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant

Amendment

2. The supply of gas, *heat* or *cooling* to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be

activity within the meaning of paragraph 1 where all of the following conditions are met:

considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:

Or. en

Amendment 284
Heide Rühle

Proposal for a directive
Article 5 – paragraph 2 – point a

Text proposed by the Commission

(a) the production of gas or **heat** by the entity concerned is the unavoidable consequence of carrying out an activity other than those referred to in paragraph 1 or in Articles 6 to 8;

Amendment

(a) the production of gas, **heat** or **cooling** by the entity concerned is the unavoidable consequence of carrying out an activity other than those referred to in paragraph 1 or in Articles 6 to 8;

Or. en

Amendment 285
Christel Schaldemose

Proposal for a directive
Article 5 – paragraph 2 – point a

Text proposed by the Commission

(a) the production of gas or **heat** by the entity concerned is the unavoidable consequence of carrying out an activity other than those referred to in paragraph 1 or in Articles 6 to 8;

Amendment

(a) the production of gas, **heat** or **cooling** by the entity concerned is the unavoidable consequence of carrying out an activity other than those referred to in paragraph 1 or in Articles 6 to 8;

Or. en

Amendment 286
Lara Comi

Proposal for a directive
Article 8 a (new)

Article 8a

Postal services

This Directive shall not apply to public procurement whose main aim is to enable contracting authorities to ensure the provision of postal services and of other services than postal services.

For the purposes of this article, the following definitions shall apply:

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

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

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

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

(iii) services concerning postal items not referred to in Article 10(2)(a) of this Directive such as direct mail bearing no address;

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

(v) philatelic services;

(vi) logistics services (services combining

physical delivery and/or warehousing with other non-postal functions).

Or. it

Amendment 287

Tiziano Motti

Proposal for a directive

Article 10

Text proposed by the Commission

Amendment

Article 10

deleted

Postal services

1. This Directive shall apply to activities relating to the provision of:

(a) postal services;

(b) other services than postal services, on condition that such services are provided by an entity which also provides postal services within the meaning of point (b) of paragraph 2 and provided that the conditions set out in Article 27(1) are not satisfied in respect of the services falling within point (b) of paragraph 2.

2. For the purpose of this Directive and without prejudice to Directive 97/67/EC:

(a) "postal item": means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight;

(b) "postal services": means services consisting of the clearance, sorting, routing and delivery of postal items. This shall include both services falling within as well as services falling outside the scope of the universal service set up in

conformity with Directive 97/67/EC;

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

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

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

(iii) services concerning postal items not referred to in letter (a), such as direct advertising mail bearing no address;

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

(v) philatelic services;

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

Or. it

Justification

As a result of the liberalisation process in the postal sector, the introduction of fully-fledged sector-specific regulation and the evolution of the market, it is no longer necessary to regulate purchases by entities operating in the postal sector. Therefore, the time is ripe to exclude postal services and all the more so "other services than postal services", from the scope of the Directive and allow all entities operating in the sector to base their decisions on purely economic criteria. Since 1997, the postal sector has been increasingly subject to competitive pressure. Three milestones in the EU postal acquis are relevant in this respect: the first and the second Postal Directives (97/67/EC and 2002/39/EC respectively), which followed the 1992 Green Paper, set in motion the process of a controlled liberalisation and gradually opened the postal markets to competition.

Amendment 288

Lara Comi

Proposal for a directive

Article 10

Text proposed by the Commission

Amendment

Article 10

deleted

Postal services

1. This Directive shall apply to activities relating to the provision of:

(a) postal services;

(b) other services than postal services, on condition that such services are provided by an entity which also provides postal services within the meaning of point (b) of paragraph 2 and provided that the conditions set out in Article 27(1) are not satisfied in respect of the services falling within point (b) of paragraph 2.

2. For the purpose of this Directive and without prejudice to Directive 97/67/EC:

(a) "postal item": means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight;

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

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

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

management services");

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

(iii) services concerning postal items not referred to in letter (a), such as direct mail bearing no address;

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

(v) philatelic services;

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

Or. it

Amendment 289

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Article 10

Text proposed by the Commission

Amendment

Article 10

deleted

Postal services

1. This Directive shall apply to activities relating to the provision of:

(a) postal services;

(b) other services than postal services, on condition that such services are provided by an entity which also provides postal services within the meaning of point (b) of paragraph 2 and provided that the conditions set out in Article 27(1) are not satisfied in respect of the services falling

within point (b) of paragraph 2.

2. For the purpose of this Directive and without prejudice to Directive 97/67/EC:

(a) "postal item": means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight;

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

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

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

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

(iii) services concerning postal items not referred to in letter (a), such as direct mail bearing no address;

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

(v) philatelic services;

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

other non-postal functions).

Or. it

Justification

As a result of the liberalisation process in the postal sector, the introduction of fully-fledged sector-specific regulation and the evolution of the market, it is no longer necessary to regulate purchases by entities operating in the postal sector. Therefore, the time is ripe to exclude postal services and all the more so “other services than postal services”, from the scope of the Directive and allow all entities operating in the sector to base their decisions on purely economic criteria.

Amendment 290

Adam Bielan, Marek Siwiec

Proposal for a directive

Article 10

Text proposed by the Commission

Amendment

Article 10

deleted

Postal services

1. This Directive shall apply to activities relating to the provision of:

(a) postal services;

(b) other services than postal services, on condition that such services are provided by an entity which also provides postal services within the meaning of point (b) of paragraph 2 and provided that the conditions set out in Article 27(1) are not satisfied in respect of the services falling within point (b) of paragraph 2.

2. For the purpose of this Directive and without prejudice to Directive 97/67/EC:

(a) "postal item": means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value,

irrespective of weight;

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

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

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

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

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

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

(v) philatelic services;

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

Or. en

Justification

As a result of the liberalisation process in the postal sector, the introduction of fully-fledged sector-specific regulation and the evolution of the market, it is no longer necessary to regulate purchases by entities operating in the postal sector. Therefore, the time is ripe to exclude postal services and all the more so "other services than postal services", from the scope of the Directive and allow all entities operating in the sector to base their decisions on

purely economic criteria.

Amendment 291

Heide Rühle

Proposal for a directive

Article 11 – title

Text proposed by the Commission

Extraction of oil and gas *and exploration for, or extraction of*, coal or other solid fuels

Amendment

Extraction *and exploration* of oil and gas, coal or other solid fuels

Or. en

Amendment 292

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Article 12 – point a

Text proposed by the Commission

(a) EUR **400 000** for supply and service contracts as well as for design contests;

Amendment

(a) EUR **600 000** for supply and service contracts as well as for design contests;

Or. en

Amendment 293

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Article 12 – point b

Text proposed by the Commission

(b) EUR **5 000 000** for works contracts;

Amendment

(b) EUR **7 500 000** for works contracts;

Or. en

Amendment 294
Frank Engel, Andreas Schwab

Proposal for a directive
Article 12 – point c

Text proposed by the Commission

Amendment

(c) EUR 1 000 000 for contracts for social and other specific services listed in Annex XVII.

deleted

Or. en

Justification

linked to the reintroduction of the distinction between A and B services

Amendment 295
Robert Rochefort

Proposal for a directive
Article 12 – c

Text proposed by the Commission

Amendment

(c) EUR 1 000 000 for contracts for social and other specific services listed in *Annex XVII*.

(c) EUR 1 000 000 for contracts for social and other specific services listed in *Annex XVIIa B*.

Or. fr

Amendment 296
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Article 12 – point c

Text proposed by the Commission

Amendment

(c) EUR 1 000 000 for contracts for social and other specific services listed in Annex XVII.

(c) EUR 1 500 000 for contracts for social and other specific services listed in Annex XVII.

Amendment 297

Heide Rühle

Proposal for a directive

Article 13 – paragraph 9

Text proposed by the Commission

Amendment

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

deleted

Justification

Far too bureaucratic.

Amendment 298

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 13 – paragraph 9

Text proposed by the Commission

Amendment

9. Contracting entities may award contracts for individual lots without applying the procedures provided for under this Directive, provided that the estimated value net of VAT of the lot concerned is

9. Contracting entities may award contracts for individual lots without applying the procedures provided for under this Directive, provided that the estimated value net of VAT of the lot concerned is

less than **EUR 80 000** for supplies or services or **EUR 1 million** for works. However, the aggregate value of the lots thus awarded without applying this Directive shall not exceed 20 % of the aggregate value of all the lots into which the proposed work, the proposed acquisition of similar supplies or the proposed purchase of services has been divided.

less than **EUR 160 000** for supplies or services or **EUR 2 million** for works. However, the aggregate value of the lots thus awarded without applying this Directive shall not exceed 20 % of the aggregate value of all the lots into which the proposed work, the proposed acquisition of similar supplies or the proposed purchase of services has been divided.

Or. en

Amendment 299

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Article 13 – paragraph 9

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 300

Frank Engel, Andreas Schwab

Proposal for a directive

Article 14 a (new)

Text proposed by the Commission

Amendment

Article 14a

Arrangements for public service contracts

Contracts which have as their object services listed in Annex XVIIa, part A, shall be awarded in accordance with Articles 38 to 79.

Contracts which have as their object services listed in Annex XVIIa, part B, shall be subject solely to Article 54 and Article 64(1).

Contracts which have as their object services listed both in Annex XVIIa, part A, and in Annex XVIIa, part B, shall be awarded in accordance with Articles 38 to 79 where the value of the services listed in Annex XVIIa, part A, is greater than the value of the services listed in Annex XVIIa, part B. In other cases, contracts shall be awarded in accordance with Article 54 and Article 64(1).

Or. en

Justification

reintroduction of the distinction between A and B services

Amendment 301
Jürgen Creutzmann

Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission

Amendment

2. The contracting entities shall notify the Commission ***or the national oversight body at their request*** of all the categories of products or activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the Official Journal of the European Union,

2. The contracting entities shall notify the Commission of all the categories of products or activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the Official Journal of the European Union, for information purposes, lists of the

for information purposes, lists of the categories of products and activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding information.

categories of products and activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding information.

Or. en

Amendment 302
Heide Rühle

Proposal for a directive
Article 16 – paragraph 1

Text proposed by the Commission

1. This Directive shall not apply to contracts which the contracting entities award for purposes other than the pursuit of their activities as described in Articles 5 to 11 or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Union nor shall it apply to design contests organised for such purposes.

Amendment

1. This Directive shall not apply to contracts which the contracting entities award for purposes other than the pursuit of their activities as described in Articles 5 to 11 **and are connected with utility activities**, or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Union nor shall it apply to design contests organised for such purposes.

Or. en

Amendment 303
Heide Rühle

Proposal for a directive
Article 16 – paragraph 2

Text proposed by the Commission

2. The contracting entities shall notify the Commission **or the national oversight body at their request** of any activities which they regard as excluded under paragraph 1. The Commission may

Amendment

2. The contracting entities shall notify the Commission **if so requested** of any activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the Official Journal

periodically publish in the Official Journal of the European Union for information purposes, lists of the categories of activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding this information.

of the European Union for information purposes, lists of the categories of activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding this information.

Or. en

Amendment 304
Jürgen Creutzmann

Proposal for a directive
Article 16 – paragraph 2

Text proposed by the Commission

2. The contracting entities shall notify the Commission **or the national oversight body** at their request of any activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the Official Journal of the European Union for information purposes, lists of the categories of activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding this information.

Amendment

2. The contracting entities shall notify the Commission at their request of any activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the Official Journal of the European Union for information purposes, lists of the categories of activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding this information.

Or. en

Amendment 305
Heide Rühle

Proposal for a directive
Article 19 – paragraph 1 – point b

Text proposed by the Commission

(b) arbitration and conciliation services;

Amendment

deleted

Amendment 306
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 19 – paragraph 1 – point b

Text proposed by the Commission

(b) arbitration and conciliation services;

Amendment

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

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

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

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

(iv) other legal services which in the Member State concerned are connected with the exercise of official authority.

Or. en

Amendment 307
Marc Tarabella

Proposal for a directive
Article 19 – paragraph 1 – point b

Text proposed by the Commission

(b) arbitration and conciliation services;

Amendment

(b) arbitration and conciliation services
and the services of lawyers in the form of legal representation;

Or. fr

Amendment 308
Raffaele Baldassarre

Proposal for a directive
Article 19 – paragraph 1 – point b

Text proposed by the Commission

(b) arbitration and conciliation services;

Amendment

(b) **legal and** arbitration and conciliation services;

Or. it

Amendment 309
Peter Simon

Proposal for a directive
Article 19 – paragraph 1 – point b

Text proposed by the Commission

(b) arbitration and conciliation services;

Amendment

(b) arbitration and conciliation services,
legal services and notarial services;

Or. de

Amendment 310
Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 19 – paragraph 1 – point b

Text proposed by the Commission

b) arbitration and conciliation services;

Amendment

b) arbitration and conciliation services, **or the actions of a public official who is obliged to be independent and impartial;**

Or. pl

Amendment 311

Peter Simon

Proposal for a directive

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

Text proposed by the Commission

Amendment

***(ba) civil protection, disaster protection
and day-to-day risk prevention;***

Or. de

Amendment 312

Lara Comi

Proposal for a directive

Article 19 – paragraph 1 – point b bis (new)

Text proposed by the Commission

Amendment

(ba) legal services;

Or. it

Amendment 313

Peter Simon

Proposal for a directive

Article 19 – paragraph 1 – point b b (new)

Text proposed by the Commission

Amendment

***(bb) contracts to be awarded on the basis
of special or exclusive rights compatible
with the EU Treaties;***

Or. de

Amendment 314

Frank Engel

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

Text proposed by the Commission

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

Amendment

(c) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council³, **central bank services** and operations conducted with the European Financial Stability Facility, **or transactions by the contracting authorities to raise money or capital**;

Or. en

Amendment 315
Peter Simon

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

Text proposed by the Commission

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

Amendment

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

Or. de

Amendment 316
Barbara Weiler

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

Text proposed by the Commission

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

Amendment

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

Or. de

Amendment 317
Jürgen Creutzmann

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

Text proposed by the Commission

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

Amendment

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

Or. de

Justification

If competitive tendering were to be mandatory for loans taken out by public authorities, public financing procedures would be less practicable and more costly. The derogation for financial services should therefore also cover investments and transactions designed to enable contracting authorities to raise money or capital.

Amendment 318
Evelyne Gebhardt

Proposal for a directive
Article 19 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) transactions to enable contracting authorities to raise money or capital, make investments or finance procurement;

Or. de

Amendment 319
Heide Rühle

Proposal for a directive
Article 19 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) employment contracts;

(d) employment contracts ***including the secondment of temporary personnel;***

Or. en

Amendment 320
Marc Tarabella

Proposal for a directive
Article 19 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) employment contracts;

(d) employment contracts ***and mandatory social protection arrangements;***

Or. fr

Amendment 321
Heide Rühle

Proposal for a directive
Article 19 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) civil protection, emergency preparedness and response and emergency medical services;

Or. en

Amendment 322
Heide Rühle

Proposal for a directive
Article 19 – paragraph 1 – point f

Text proposed by the Commission

Amendment

(f) contracts for *broadcasting time that are awarded to broadcasters.*

(f) contracts for *transmission and distribution of media service;*

Or. en

Amendment 323
Heide Rühle

Proposal for a directive
Article 19 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) contracts for the supply of goods or the provision services which are subject by law to a fixed price and in relation to which a public procurement procedure ipso facto holds no value.

Or. en

Amendment 324
Malcolm Harbour, Edvard Kožušník, Adam Bielan, Jürgen Creutzmann

Proposal for a directive
Article 19 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

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

Or. en

Justification

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

Amendment 325
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 19 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

This Directive shall not apply to public service contracts awarded by a contracting authority to another

contracting authority or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a published law, regulation or administrative provision which is compatible with the Treaty on the Functioning of the European Union.

Or. en

Amendment 326
Heide Rühle

Proposal for a directive
Article 19 – paragraph 2

Text proposed by the Commission

The ***broadcasting*** referred to in point (f) of the first paragraph shall include any transmission and distribution using any form of electronic network.

Amendment

The ***audiovisual media services*** referred to in point (f) of the first paragraph shall include any transmission and distribution using any form of electronic network.

Or. en

Amendment 327
Heide Rühle

Proposal for a directive
Article 19 a (new)

Text proposed by the Commission

Amendment

Article 19a

Service contracts awarded on the basis of exclusive rights

This Directive shall not apply to service contracts awarded to an entity which is itself a contracting authority within the meaning of Article 2(1) or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a published law, regulation or administrative provision

which is compatible with the Treaty.

Or. en

Justification

To reintroduce Article 25 from the current Directive 2004/17/EC. This Article is important for operations of services of general economic interest it excludes public service contracts that are based on an exclusive right enshrined in public law, regulations or administrative provision, compatible with the Treaty. The ECJ has applied this provision in C-360/96.

Amendment 328

Heide Rühle

Proposal for a directive

Article 19 b (new)

Text proposed by the Commission

Amendment

Article 19b

Specific Regimes to deliver SGI

This Directive shall not apply to tried and tested Member State procedures that are based on the user's free choice of service providers (i.e. voucher system, free choice model, triangular relationship) as well as the principle that all providers which are able to comply with the conditions previously laid down by law should, irrespective of their legal form, be permitted to provide services, provided that account is taken of the general principles of equal treatment, transparency and non-discrimination.

Or. en

Amendment 329

Heide Rühle

Proposal for a directive

Article 19 c (new)

Text proposed by the Commission

Amendment

Article 19 c

Service concessions

Without prejudice to the application of Article 19a, this Directive shall not apply to service concessions as defined in Article 2(23a).

Or. en

Amendment 330

Heide Rühle

Proposal for a directive

Title 1 – chapter 3 – section 2 – subsection 2 – title

Text proposed by the Commission

Amendment

Special ***relations*** (Controlled entities, cooperation, affiliated undertakings and joint ventures)

Special ***cooperation*** (Controlled entities, cooperation, affiliated undertakings and joint ventures)

Or. en

Amendment 331

Marc Tarabella

Proposal for a directive

Article 21 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. The establishment of a wholly public structure to manage services of general economic interest or social services shall be a public authority prerogative falling within the exclusive sphere of competence of Member States.

Or. fr

Amendment 332

Philippe Juvin

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;

Amendment

(a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments, *i.e. it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person. With a view to determining whether such control is being exercised, account may also be taken of factors such as the level of representation on administrative, management or supervisory bodies, specifications relating thereto in the articles of association or the ownership arrangements;*

Or. fr

Justification

Clarification of the criteria which are used to define 'in-house' contracts and which justify the exclusion of such contracts from the scope of the directive. (The rest of the justification does not apply to the English version.)

Amendment 333

Philippe Juvin

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) at least 90 % of the **average total turnover** of that legal person **is generated by means of activities** carried out for the controlling contracting authority or for other legal persons controlled by that contracting authority;

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) at least **85 %** of the activities of that legal person are carried out for the controlling contracting authority or for other legal persons controlled by that contracting authority;

Or. de

Amendment 337

Andreas Schwab, Frank Engel, Jürgen Creutzmann

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) that legal person **acts essentially for the controlling contracting authority or for other legal persons controlled by that contracting authority. That legal person shall be presumed to be acting essentially** for the controlling contracting authority or for other legal persons controlled by that contracting authority **if it carries out at least 90 % of its activities which are covered by the contract on behalf of that contracting authority or those legal persons;**

Or. de

Justification

The proposal combines the CJEU's relevant finding in its judgment in Case C-107/98 with a 'safe-harbour clause' which makes it possible to assume, on a falsifiable basis, that an in-house activity is involved.

Amendment 338
Malcolm Harbour, Edvard Kožušník

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 339
Cristian Silviu Buşoi

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

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

The in-house exception should be limited to a minimum in order to safeguard competition and to ensure legal certainty. In line with amendments on article 11 in the general directive.

Amendment 340
Peter Simon

Proposal for a directive
Article 21 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. de

Amendment 341

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

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 342

Heide Rühle

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 343

Andreas Schwab, Frank Engel

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

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

Amendment

(c) ***unless the laws of the Member States concerned provide otherwise***, there is no private participation in any of the contracting authorities involved.

Or. de

Justification

In some Member States, in response to historical developments and arrangements which have grown up organically, the law makes provision for private participation. These forms of cooperation should still be possible, but all other types of private participation should be ruled out, in keeping with the relevant CJEU judgments.

Amendment 344

Jürgen Creutzmann

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 345

Pablo Arias Echeverría

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 1 – point c a (new)

Text proposed by the Commission

Amendment

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

Or. es

Amendment 346

Pablo Arias Echeverría

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 1 – point c b (new)

Text proposed by the Commission

Amendment

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

Or. es

Amendment 347

Heide Rühle

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

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

Amendment 348

Peter Simon

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

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

deleted

Or. de

Amendment 349

Andreas Schwab, Jürgen Creutzmann

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

Does not affect English version.

Or. de

Amendment 350 Evelyne Gebhardt

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

The above conditions shall apply mutatis mutandis if a contracting authority awards a public contract to a legal person it controls jointly with other contracting authorities.

Or. de

Amendment 351

Philippe Juvin

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

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

deleted

Or. fr

Justification

Clarification of the article. See the amendment to Article 21(1)(a).

Amendment 352

Cristian Silviu Buşoi

Proposal for a directive

Article 21 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

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

Amendment 353
Heide Rühle

Proposal for a directive
Article 21 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 354
Jürgen Creutzmann

Proposal for a directive
Article 21 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 355
Andreas Schwab

Proposal for a directive
Article 21 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. de

Amendment 356
Peter Simon

Proposal for a directive
Article 21 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. de

Amendment 357
Evelyne Gebhardt

Proposal for a directive
Article 21 – paragraph 3

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

(a) the contracting authorities exercise jointly over the legal person a control which is similar to that which they exercise over their own departments;

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

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

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

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

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

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

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

deleted

Amendment 358
Heide Rühle

Proposal for a directive
Article 21 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 359
Philippe Juvin

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

Text proposed by the Commission

(a) the contracting authorities exercise jointly over the legal person a control which is similar to that which they exercise over their own departments;

Amendment

(a) the contracting authorities exercise jointly over the legal person a control which is similar to that which they exercise over their own departments, ***i.e. they exercise a decisive influence over both strategic objectives and significant decisions of the controlled legal person. With a view to determining whether such control is being exercised, account may also be taken of factors such as the level of representation on administrative, management or supervisory bodies, specifications relating thereto in the articles of association or the ownership arrangements;***

Or. fr

Justification

Clarification of the criteria which are used to define 'in-house' contracts and which justify the exclusion of such contracts from the scope of the directive. (The rest of the justification does not apply to the English version.)

Amendment 360

Marc Tarabella

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

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

Or. fr

Amendment 361

Heide Rühle

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 362

Barbara Weiler

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

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

(b) at least **85** % of the activities of that legal person are carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;

Or. de

Amendment 363
Philippe Juvin

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

Text proposed by the Commission

Amendment

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

(b) at least 90 % of the *average total turnover* of that legal person *is generated by means of activities* carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;

Or. fr

Justification

Clarification of the criteria which are used to define ‘in-house’ contracts: the phrase ‘90 % of the activities’ clarifies one of the terms used in the case law of the CJEU (‘most of the activities’) but not the other, hence the proposal to include the phrase ‘90 % of the average total turnover’.

Amendment 364
Andreas Schwab, Frank Engel, Jürgen Creutzmann

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

Text proposed by the Commission

Amendment

(b) *at least 90 % of the activities of* that legal person *are carried out* for the

(b) that legal person *acts essentially* for the controlling contracting authority or *for*

controlling contracting authorities or other legal persons controlled by *the same contracting authorities*;

other legal persons controlled by *that contracting authority. That legal person shall be presumed to be acting essentially for the controlling contracting authority or for other legal persons controlled by that contracting authority if it carries out at least 90 % of its activities which are covered by the contract on behalf of that contracting authority or those legal persons*;

Or. de

Justification

The proposal combines the CJEU's relevant finding in its judgment in Case C-107/98 with a 'safe-harbour clause' which makes it possible to assume, on a falsifiable basis, that an in-house activity is involved.

Amendment 365

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 366

Cristian Silviu Buşoi

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

(b) **at least 90 % of** the activities of that

Amendment

(b) **all** the activities of that legal person are

legal person are carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;

carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;

Or. en

Justification

In line with previous amendments.

Amendment 367

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

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 368

Peter Simon

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

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

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

Or. de

Amendment 369

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

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 370

Raffaele Baldassarre

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) at least **100 %** of the activities of that legal person are carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;

Or. it

Amendment 371

Heide Rühle

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 1 – point c

Text proposed by the Commission

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

Amendment

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

participation.

Or. en

Amendment 372
Andreas Schwab, Frank Engel

Proposal for a directive
Article 21 – paragraph 3 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

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

(c) ***unless the laws of the Member States concerned provide otherwise***, there is no private participation in any of the contracting authorities involved.

Or. de

Justification

In some Member States, in response to historical developments and arrangements which have grown up organically, the law makes provision for private participation. These forms of cooperation should still be possible, but all other types of private participation should be ruled out, in keeping with the relevant CJEU judgments.

Amendment 373
Jürgen Creutzmann

Proposal for a directive
Article 21 – paragraph 3 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

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

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

Amendment 374
Heide Rühle

Proposal for a directive
Article 21 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

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

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

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

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

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

Or. en

Justification

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

Amendment 375
Peter Simon

Proposal for a directive
Article 21 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

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

deleted

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

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

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

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

Or. de

Amendment 376
Andreas Schwab, Jürgen Creutzmann

Proposal for a directive
Article 21 – paragraph 3 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

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

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

Or. de

Amendment 377

Marc Tarabella

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

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

Or. fr

Amendment 378

Frank Engel

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 379

Jürgen Creutzmann

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

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

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

Justification

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

Amendment 380
Heide Rühle

Proposal for a directive
Article 21 – paragraph 4 – introductory part

Text proposed by the Commission

4. An agreement concluded between two or more contracting authorities shall not be deemed to be a ‘works, supply or service contract’ within the meaning of point 7 of Article 2 of this Directive, where the following cumulative conditions are met:

Amendment

4. An agreement concluded between two or more contracting authorities shall not be deemed to be a ‘works, supply or service contract’ within the meaning of point 7 of Article 2 of this Directive ***and thus falls outside this Directive***, where the following cumulative conditions are met:

Or. en

Amendment 381
Peter Simon

Proposal for a directive
Article 21 – paragraph 4 – point a

Text proposed by the Commission

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

Amendment

deleted

Or. de

Amendment 382

Philippe Juvin

Proposal for a directive

Article 21 – paragraph 4 – point a

Text proposed by the Commission

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

Amendment

(Does not affect English version.)

Or. fr

Amendment 383

Heide Rühle

Proposal for a directive

Article 21 – paragraph 4 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 384

Andreas Schwab, Jürgen Creutzmann

Proposal for a directive

Article 21 – paragraph 4 – point a

Text proposed by the Commission

(a) the agreement establishes a genuine co-operation between the participating

Amendment

(a) the agreement establishes a genuine co-operation between the participating

contracting authorities aimed at carrying out jointly their public service tasks **and involving mutual rights and obligations of the parties**;

contracting authorities aimed at carrying out jointly their public service tasks;

Or. de

Amendment 385
Cristian Silviu Buşoi

Proposal for a directive
Article 21 – paragraph 4 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Clarification of the horizontal cooperation definition.

Amendment 386
Evelyne Gebhardt

Proposal for a directive
Article 21 – paragraph 4 – point a

Text proposed by the Commission

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

Amendment

(a) the agreement establishes a genuine co-operation between the participating contracting authorities aimed at carrying out jointly **or on each other's behalf** their public service tasks;

Or. de

Amendment 387

Philippe Juvin

Proposal for a directive

Article 21 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

(4a) This Directive shall not apply to agreements concluded between several contracting authorities or groupings of contracting authorities which make provision, in the context of the internal organisation of a Member State, for the transfer of powers between the parties with a view to the performance of a public service task.

There shall be no private participation in any of the contracting authorities involved.

Or. fr

Justification

The explicit exclusion of horizontal cooperation (Article 21(4)) sheds doubt as to the status of transfers of powers between public authorities ('intercommunality' under French law), which are not explicitly excluded from the directive. A new paragraph has therefore been proposed in order to exclude the transfer of powers between public authorities from the scope of this directive.

Amendment 388

Heide Rühle

Proposal for a directive

Article 21 – paragraph 4 – point b

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 389
Evelyne Gebhardt

Proposal for a directive
Article 21 – paragraph 4 – point b

Text proposed by the Commission

Amendment

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

deleted

Or. de

Amendment 390
Andreas Schwab, Jürgen Creutzmann

Proposal for a directive
Article 21 – paragraph 4 – point b

Text proposed by the Commission

Amendment

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

(b) the agreement is governed only by public interest considerations; this principle shall also apply to auxiliary services essential to the provision of services in the public interest;

Or. de

Justification

The restriction to services provided in the public interest, as derived from the CJEU judgment in Case C-480/06, should also cover in-house auxiliary services which a contracting authority draws on for operational and administrative purposes and in organising the performance of its statutory tasks and which are not provided to third parties.

Amendment 391
Cristian Silviu Buşoi

Proposal for a directive
Article 21 – paragraph 4 – point b

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

In line with previous amendments.

Amendment 392

Peter Simon

Proposal for a directive

Article 21 – paragraph 4 – point b

Text proposed by the Commission

Amendment

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

(b) the agreement is governed by considerations relating to the public interest ***and the services and requisite auxiliary services are linked to those considerations***;

Or. de

Amendment 393

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 21 – paragraph 4 – point c

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

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

Amendment 394

Marc Tarabella

Proposal for a directive

Article 21 – paragraph 4 – point c

Text proposed by the Commission

Amendment

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

Or. fr

Amendment 395

Peter Simon

Proposal for a directive

Article 21 – paragraph 4 – point c

Text proposed by the Commission

Amendment

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

Or. de

Amendment 396

Heide Rühle

Proposal for a directive

Article 21 – paragraph 4 – point c

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

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

Amendment 397
Barbara Weiler

Proposal for a directive
Article 21 – paragraph 4 – point c

Text proposed by the Commission

Amendment

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

(c) the participating public authorities do not perform on the open market more than **15 %** in terms of turnover of the activities which are relevant in the context of the agreement;

Or. de

Amendment 398
Cristian Silviu Buşoi

Proposal for a directive
Article 21 – paragraph 4 – point c

Text proposed by the Commission

Amendment

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

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

Justification

In line with previous amendments

Amendment 399
Heide Rühle

Proposal for a directive
Article 21 – paragraph 4 – point d

Text proposed by the Commission

Amendment

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

Or. en

Amendment 400
Peter Simon

Proposal for a directive
Article 21 – paragraph 4 – point d

Text proposed by the Commission

Amendment

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

Or. de

Amendment 401
Evelyne Gebhardt

Proposal for a directive
Article 21 – paragraph 4 – point d

Text proposed by the Commission

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

Amendment

deleted

Or. de

Amendment 402
Andreas Schwab, Jürgen Creutzmann

Proposal for a directive
Article 21 – paragraph 4 – point d

Text proposed by the Commission

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

Amendment

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

Or. de

Amendment 403
Heide Rühle

Proposal for a directive
Article 21 – paragraph 4 – point e

Text proposed by the Commission

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

Amendment

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

Amendment 404
Andreas Schwab, Frank Engel

Proposal for a directive
Article 21 – paragraph 4 – point e

Text proposed by the Commission

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

Amendment

(e) ***unless the laws of the Member States concerned provide otherwise***, there is no private participation in any of the contracting authorities involved.

Justification

In some Member States, in response to historical developments and arrangements which have grown up organically, the law makes provision for private participation. These forms of cooperation should still be possible, but all other types of private participation should be ruled out, in keeping with the relevant CJEU judgments.

Amendment 405
Jürgen Creutzmann

Proposal for a directive
Article 21 – paragraph 4 – point e

Text proposed by the Commission

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

Amendment

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

Amendment 406
Heide Rühle

Proposal for a directive
Article 21 – paragraph 5 – subparagraph 1

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 407
Cristian Silviu Buşoi

Proposal for a directive
Article 21 – paragraph 5 – subparagraph 1

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

All conditions should be verified at the time of the award of the contract.

Amendment 408
Heide Rühle

Proposal for a directive
Article 21 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Amendment

The exclusions provided for in paragraphs 1 to 4 shall cease to apply from the

The exclusions provided for in paragraphs 1 to 4 shall cease to apply from the

moment any private participation takes place, with the effect that ongoing contracts need to be opened to competition through regular procurement procedures.

moment any private participation takes place, with the effect that ongoing contracts need to be opened to competition through regular procurement procedures, ***unless the private participation is legally enforced and/or the private participation was not foreseeable at the time of the initial contracting.***

Or. en

Amendment 409
Andreas Schwab

Proposal for a directive
Article 21 – paragraph 5 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Or. de

Amendment 410
Pablo Arias Echeverría

Proposal for a directive
Article 21 – paragraph 5 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

results in it becoming an affiliated undertaking takes place through any of the procedures provided for in this Directive or in Directives (replacing 2004/17/EC and 2004/18/EC).

Or. es

Amendment 411
Cristian Silviu Buşoi

Proposal for a directive
Article 21 – paragraph 5 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 412
Heide Rühle

Proposal for a directive
Article 21 – paragraph 5 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 413
Philippe Juvin

Proposal for a directive
Article 22 – paragraph 1

Text proposed by the Commission

1. *For the purposes of this Article, "affiliated undertaking" means any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the Seventh Council Directive 83/349/EEC⁴⁰.*

Amendment

1. *Article 21 notwithstanding and provided that the conditions in paragraphs 2 and 4 are met, this Directive shall not apply to contracts awarded:*

(a) by a contracting entity to an affiliated undertaking, or

(b) by a joint venture, comprised exclusively of a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 5 to 11, to an undertaking which is affiliated with one of those contracting entities.

Or. fr

Justification

Reorganisation and clarification of the entire article with a view to stating unambiguously: (1) the subject of the article (the exclusion of certain contracts); (2) the definition of an affiliated undertaking (which was previously spread over two paragraphs (22(1) and 22(2)) whose relationship was unclear); and (3) the conditions governing these exclusions. The text of existing paragraph 1 has been incorporated into paragraph 2 (see the amendment to Article 22, paragraph 2).

Amendment 414
Heide Rühle

Proposal for a directive
Article 22 – paragraphs 1 and 2

Text proposed by the Commission

1. For the purposes of this Article, 'affiliated undertaking' means any

Amendment

1. For the purposes of this Article, 'affiliated undertaking' means:

undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the Seventh Council Directive 83/349/EEC.

2. In the case of entities not subject to that Directive, 'affiliated undertaking' shall mean any undertaking that:

(a) may be, directly or indirectly, subject to a dominant influence by the contracting entity within the meaning of point (5) of Article 2 and Article 4(1) of this Directive;

(b) may exercise a dominant influence over the contracting entity;

(c) in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.

(a) any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the Seventh Council Directive 83/349/EEC;

(b) any undertaking that:

(i) may be, directly or indirectly, subject to a dominant influence by the contracting entity within the meaning of point (5) of Article 2 and Article 4(1) of this Directive;

(ii) may exercise a dominant influence over the contracting entity;

(iii) in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.

Or. en

**Amendment 415
Philippe Juvin**

**Proposal for a directive
Article 22 – paragraph 2**

Text proposed by the Commission

2. In the case of entities not subject to that Directive, "affiliated undertaking" shall mean any undertaking that:

(a) may be, directly or indirectly, subject to a dominant influence by the contracting entity within the meaning of point (5) of Article 2 **and Article 4(1)** of this Directive;

Amendment

2. For the purposes of this Article, "affiliated undertaking" means:

(a) any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the Seventh Council

(b) may exercise a dominant influence over the contracting entity;

(c) in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.

Directive 83/349/EEC; or

(b) any undertaking that meets any of the following conditions:

(i) an undertaking which may be, directly or indirectly, subject to a dominant influence by the contracting entity within the meaning of point (5) of Article 2 of this Directive;

(ii) an undertaking which may exercise a dominant influence over the contracting entity;

(iii) an undertaking which, in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.

The notion of dominant influence is defined in Article 4(1) of this Directive.

Or. fr

Justification

Reorganisation and clarification of the entire article with a view to stating unambiguously: (1) the subject of the article (the exclusion of certain contracts); (2) the definition of an affiliated undertaking (which was previously spread over two paragraphs (22(1) and 22(2)) whose relationship was unclear); and (3) the conditions governing these exclusions. The inclusion of the words 'within the meaning of Article 4(1)' makes clear exactly what the reference is to (dominant influence, and not the contracting entity).

Amendment 416 Philippe Juvin

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

Text proposed by the Commission

Amendment

(a) may be, directly or indirectly, subject to a dominant influence by the contracting entity within the meaning of point (5) of Article 2 and Article 4(1) of this Directive;

deleted

Justification

Reorganisation and clarification of the entire article with a view to stating unambiguously: (1) the subject of the article (the exclusion of certain contracts); (2) the definition of an affiliated undertaking (which was previously spread over two paragraphs (22(1) and 22(2)) whose relationship was unclear); and (3) the conditions governing these exclusions. The inclusion of the words 'within the meaning of Article 4(1)' makes clear exactly what the reference is to (dominant influence, and not the contracting entity).

Amendment 417
Philippe Juvin

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

Text proposed by the Commission

Amendment

(b) may exercise a dominant influence over the contracting entity; ***deleted***

Justification

Reorganisation and clarification of the entire article with a view to stating unambiguously: (1) the subject of the article (the exclusion of certain contracts); (2) the definition of an affiliated undertaking (which was previously spread over two paragraphs (22(1) and 22(2)) whose relationship was unclear); and (3) the conditions governing these exclusions. The inclusion of the words 'within the meaning of Article 4(1)' makes clear exactly what the reference is to (dominant influence, and not the contracting entity).

Amendment 418
Philippe Juvin

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

Text proposed by the Commission

Amendment

(c) in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ***deleted***

ownership, financial participation, or the rules which govern it.

Or. fr

Justification

Reorganisation and clarification of the entire article with a view to stating unambiguously: (1) the subject of the article (the exclusion of certain contracts); (2) the definition of an affiliated undertaking (which was previously spread over two paragraphs (22(1) and 22(2)) whose relationship was unclear); and (3) the conditions governing these exclusions. The inclusion of the words 'within the meaning of Article 4(1)' makes clear exactly what the reference is to (dominant influence, and not the contracting entity).

Amendment 419
Philippe Juvin

Proposal for a directive
Article 22 – paragraph 3

Text proposed by the Commission

Amendment

3. Article 21 notwithstanding and provided that the conditions in paragraph 4 are met, this Directive shall not apply to contracts awarded:

deleted

(a) by a contracting entity to an affiliated undertaking, or

(b) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 5 to 11, to an undertaking which is affiliated with one of those contracting entities.

Or. fr

Justification

Reorganisation and clarification of the entire article with a view to stating unambiguously: (1) the subject of the article (the exclusion of certain contracts); (2) the definition of an affiliated undertaking (which was previously spread over two paragraphs (22(1) and 22(2)) whose relationship was unclear); and (3) the conditions governing these exclusions. This text has been reincorporated as paragraph 1 given that it concerns the subject of the article (exclusions) and should therefore be included first.

Amendment 420
Cristian Silviu Buşoi

Proposal for a directive
Article 22 – paragraph 3 – point a

Text proposed by the Commission

(a) by a contracting entity to an affiliated undertaking, or

Amendment

(a) by a contracting entity to an affiliated undertaking ***whose activity is confined to the provision of services, supply or works to the group of which it is part, rather than offering them on the market; or***

Or. en

Justification

Clarification of the exclusion of contracts awarded to affiliated undertakings in order to avoid any distortion of competition to the benefit of these undertakings.

Amendment 421
Philippe Juvin

Proposal for a directive
Article 22 – paragraph 4 – introductory part

Text proposed by the Commission

4. Paragraph 3 shall apply:

Amendment

4. Paragraph 1 shall apply:

Or. fr

Justification

This is in line with the amendments tabled to this article. Given that the current paragraph 3 has now become paragraph 1 in order to clarify and simplify the article, the reference in paragraph 4 has been changed.

Amendment 422
Heide Rühle

Proposal for a directive
Article 22 – paragraph 4

Text proposed by the Commission

4. Paragraph 3 shall apply:

(a) *to service contracts provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to services in general for the preceding three years derives from the provision of services to undertakings with which it is affiliated;*

(b) *to supply contracts provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to supplies in general for the preceding three years derives from the provision of supplies to undertakings with which it is affiliated;*

(c) *to works contracts provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to works in general for the preceding three years derives from the provision of works to undertakings with which it is affiliated.*

Amendment

4. Paragraph 2 shall apply ***if the affiliated undertaking:***

(a) ***is itself a contracting authority;***

(b) ***when it is not a contracting authority has, at least, as one of their activities any of the activities referred to in Articles 5 to 11, or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of a Member State.***

Or. en

Amendment 423
Philippe Juvin

Proposal for a directive
Article 22 – paragraph 4 – point a

Text proposed by the Commission

(a) to service contracts provided that at least 80% of the average total turnover of the affiliated undertaking ***with respect to services in general*** for the preceding three years derives from the provision of services to ***undertakings*** with which it is affiliated;

Amendment

(a) to service contracts provided that at least 80% of the average total turnover of the affiliated undertaking, ***taking into account all services provided by that undertaking***, for the preceding three years derives from the provision of services to ***the contracting entity*** with which it is affiliated, ***or to the contracting entity***

which is itself subject to the dominant influence of another undertaking with which the contractual partner is affiliated;

Or. fr

Justification

All services provided by the affiliated undertaking must be taken into account when calculating the figure which represents 80% of the turnover (services provided to the contracting entity and other services). A link must also be established between this figure of 80% of the affiliated undertaking's turnover and the contracting entity that awarded the contract to the affiliated undertaking, regardless of whether it is actually affiliated or subject to the dominant influence of another undertaking with which the contractual partner is affiliated.

Amendment 424
Cristian Silviu Buşoi

Proposal for a directive
Article 22 – paragraph 4 – point a

Text proposed by the Commission

(a) to service contracts provided that **at least 80 % of the average** total turnover of the affiliated undertaking with respect to services in general for the preceding three years derives from the provision of services to undertakings with which it is affiliated;

Amendment

(a) to service contracts provided that the total turnover of the affiliated undertaking with respect to services in general for the preceding three years derives from the provision of services to undertakings with which it is affiliated;

Or. en

Justification

This amendment aims at limiting the exemption to avoid competition distortions in favour of affiliated undertakings which are also active on the market with respect to the activities they provide for the contracting entity.

Amendment 425
Philippe Juvin

Proposal for a directive
Article 22 – paragraph 4 – point b

Text proposed by the Commission

(b) to supply contracts provided that at least 80% of the average total turnover of the affiliated undertaking **with respect to** supplies **in general** for the preceding three years derives from the provision of supplies to **undertakings** with which it is affiliated;

Amendment

(b) to supply contracts provided that at least 80% of the average total turnover of the affiliated undertaking, **taking into account all** supplies **provided by that undertaking**, for the preceding three years derives from the provision of **those** supplies to **the contracting entity** with which it is affiliated, **or to the contracting entity which is itself subject to the dominant influence of another undertaking with which the contractual partner is affiliated**;

Or. fr

Justification

All supplies provided by the affiliated undertaking must be taken into account when calculating the figure which represents 80% of the turnover (supplies provided to the contracting entity and other supplies). A link must also be established between this figure of 80% of the affiliated undertaking's turnover and the contracting entity that awarded the contract to the affiliated undertaking, regardless of whether it is actually affiliated or subject to the dominant influence of another undertaking with which the contractual partner is affiliated.

Amendment 426
Cristian Silviu Buşoi

Proposal for a directive
Article 22 – paragraph 4 – point b

Text proposed by the Commission

(b) to supply contracts provided that **at least 80 % of the average** total turnover of the affiliated undertaking with respect to supplies in general for the preceding three years derives from the provision of supplies to undertakings with which it is affiliated;

Amendment

(b) to supply contracts provided that the total turnover of the affiliated undertaking with respect to supplies in general for the preceding three years derives from the provision of supplies to undertakings with which it is affiliated;

Justification

This amendment aims at limiting the exemption to avoid competition distortions in favour of affiliated undertakings which are also active on the market with respect to the activities they provide for the contracting entity.

Amendment 427**Philippe Juvin****Proposal for a directive****Article 22 – paragraph 4 – point c***Text proposed by the Commission*

(c) to works contracts provided that at least 80% of the average total turnover of the affiliated undertaking **with respect to** works **in general** for the preceding three years derives from the provision of works to **undertakings** with which it is affiliated.

Amendment

(c) to works contracts provided that at least 80% of the average total turnover of the affiliated undertaking, **taking into account all works provided by that undertaking**, for the preceding three years derives from the provision of works to **the contracting entity** with which it is affiliated, **or to the contracting entity which is itself subject to the dominant influence of another undertaking with which the contractual partner is affiliated.**

Or. fr

Justification

All works provided by the affiliated undertaking must be taken into account when calculating the figure which represents 80% of the turnover (works provided to the contracting entity and other works). A link must also be established between this figure of 80% of the affiliated undertaking's turnover and the contracting entity that awarded the contract to the affiliated undertaking, regardless of whether it is actually affiliated or subject to the dominant influence of another undertaking with which the contractual partner is affiliated.

Amendment 428**Cristian Silviu Buşoi****Proposal for a directive****Article 22 – paragraph 4 – point c**

Text proposed by the Commission

Amendment

(c) to works contracts provided that **at least 80 % of the average** total turnover of the affiliated undertaking with respect to works in general for the preceding three years derives from the provision of works to undertakings with which it is affiliated.

(c) to works contracts provided that the total turnover of the affiliated undertaking with respect to works in general for the preceding three years derives from the provision of works to undertakings with which it is affiliated.

Or. en

Justification

This amendment aims at limiting the exemption to avoid competition distortions in favour of affiliated undertakings which are also active on the market with respect to the activities they provide for the contracting entity.

Amendment 429
Philippe Juvin

Proposal for a directive
Article 22 – paragraph 5 – subparagraph 1

Text proposed by the Commission

Amendment

5. When, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it will be sufficient for that undertaking to show that the turnover referred to in points (a), (b) or (c) of paragraph 4 is credible, particularly by means of business projections.

deleted

Or. fr

Justification

The reference to business projections and the 'credible' nature of the turnover is vague and could lead to the misuse of this exclusion criterion.

Amendment 430
Jürgen Creutzmann

Proposal for a directive
Article 24 – introductory part

Text proposed by the Commission

Contracting entities shall notify to the Commission **or the national oversight body, at their request**, the following information regarding the application of Article 22, paragraphs 2, 3 and Article 23:

Amendment

Contracting entities shall notify to the Commission the following information regarding the application of Article 22, paragraphs 2, 3 and Article 23:

Or. en

Amendment 431
Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 27 – paragraph 1

Text proposed by the Commission

1. Contracts intended to enable an activity mentioned in Articles 5 to 11 to be carried out shall not be subject to this Directive if the Member State or the contracting entities having introduced the request pursuant to Article 28 can demonstrate that, in the Member State in which it is performed, the activity is directly exposed to competition on markets to which access is not restricted; nor shall design contests that are organised for the pursuit of such an activity in that geographic area be subject to this Directive. Such competition assessment, which will be made in the light of the information available to the Commission and for the purposes of this Directive, is without prejudice to the application of competition law.

Amendment

1. Contracts intended to enable an activity mentioned in Articles 5 to 11 to be carried out shall not be subject to this Directive if the Member State or the contracting entities having introduced the request pursuant to Article 28 can demonstrate that, in the Member State in which it is performed, **or in the related specific sectors or segments** the activity is directly exposed to competition on markets to which access is not restricted; nor shall design contests that are organised for the pursuit of such an activity in that geographic area be subject to this Directive. Such competition assessment, which will be made in the light of the information available to the Commission and for the purposes of this Directive, is without prejudice to the application of competition law.

Or. en

Amendment 432

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 27 – paragraph 1

Text proposed by the Commission

1. Contracts intended to enable an activity mentioned in Articles 5 to 11 to be carried out shall not be subject to this Directive if the Member State or the contracting entities having introduced the request pursuant to Article 28 can demonstrate that, in the Member State in which it is performed, the activity is directly exposed to competition on markets to which access is not restricted; nor shall design contests that are organised for the pursuit of such an activity in that geographic area be subject to this Directive. Such competition assessment, which will be made in the light of the information available to the Commission and for the purposes of this Directive, is without prejudice to the application of competition law.

Amendment

1. Contracts intended to enable an activity mentioned in Articles 5 to 11 to be carried out shall not be subject to this Directive if the Member State or the contracting entities having introduced the request pursuant to Article 28 can demonstrate that, in the Member State ***or relevant sectors or segments*** in which it is performed, the activity is directly exposed to competition on markets to which access is not restricted; nor shall design contests that are organised for the pursuit of such an activity in that geographic area be subject to this Directive. Such competition assessment, which will be made in the light of the information available to the Commission and for the purposes of this Directive, is without prejudice to the application of competition law.

Or. it

Amendment 433

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

Proposal for a directive

Article 27 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. For the purposes of paragraph 1, the question of whether an activity is directly exposed to competition shall be decided on the basis of criteria that are in conformity with the provisions on competition of the Treaty; those may include the characteristics of the goods or services

Amendment

2. For the purposes of paragraph 1, the question of whether an activity is directly exposed to competition ***the relevant market, both in its product and geographic dimension, has to be defined. Definition of the relevant market*** shall be decided on the basis of criteria that are in

concerned, the existence of alternative goods or services, the prices and the actual or potential presence of more than one supplier of the goods or provider of the services in question.

conformity with the provisions on competition of the Treaty; those may include the characteristics of the goods or services concerned ***which are regarded as substitutable both on the demand and the supply side – for instance as far as inter-modality in the transport sector is concerned-***, the existence of alternative goods or services, the prices and the actual or potential presence of more than one supplier of the goods or provider of the services in question.

Or. en

Amendment 434

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 27 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. For the purposes of paragraph 1, the question of whether an activity is directly exposed to competition shall be decided on the basis of criteria that are in conformity with the provisions on competition of the Treaty; those may include the characteristics of the goods or services concerned, the existence of alternative goods or services, the prices and the actual or potential presence of more than one supplier of the goods or provider of the services in question.

Amendment

2. For the purposes of paragraph 1 the question of whether an activity is directly exposed to competition ***requires that the relevant product market and the relevant geographic market be defined. The relevant product market*** shall be decided on the basis of criteria that are in conformity with the provisions on competition of the Treaty; those may include the characteristics of the goods or services concerned, the existence of alternative goods or services ***considered to be substitutable on the supply side or demand side***, the prices and the actual or potential presence of more than one supplier of the goods or provider of the services in question. ***The relevant geographic market, on the basis of which exposure to competition is assessed, shall consist of the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous***

and which can be distinguished from neighbouring areas because, in particular, conditions of competition are appreciably different in those areas.. This assessment shall take account in particular of the nature and characteristics of the products or services concerned, of the existence of entry barriers or of consumer preferences, of appreciable differences of the undertakings' market shares between the area concerned and neighbouring areas or of substantial price differences.

Or. it

Amendment 435

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

Proposal for a directive

Article 27 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. For the purposes of paragraph 1, access to a market shall be deemed not to be restricted if the Member State has implemented and applied the Union legislation listed in Annex III.

Amendment

3. For the purposes of paragraph 1, access to a market shall be deemed not to be restricted if the Member State has implemented and applied the Union legislation listed in Annex III, *or if the Member State has extended to the concerned market the application of principles established by the mentioned legislation. If free access to a given market cannot be presumed on the basis of the first subparagraph, it must be demonstrated that access to the market in question is free de facto and de jure.*

Or. en

Amendment 436

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

Proposal for a directive

Article 28 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Where a Member State or, where the legislation of the Member State concerned provides for it, a contracting entity considers that, on the basis of the criteria set out in Article 27(2) and (3), a given activity is directly exposed to competition on markets to which access is not restricted, it may submit a request to establish that this Directive does not apply to the award of contracts or the organisation of design contests for the pursuit of that activity.

Amendment

1. Where a Member State or, where the legislation of the Member State concerned provides for it, a contracting entity considers that, on the basis of the criteria set out in Article 27(2) and (3), a given activity is ***completely or partially, even with regard to single sectors or segments of it***, directly exposed to competition on markets to which access is not restricted, it may submit a request to establish that this Directive does not apply to the award of contracts or the organisation of design contests for the pursuit of that activity ***or of a single sector or segment of it***.

Or. en

Amendment 437

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 28 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Where a Member State or, where the legislation of the Member State concerned provides for it, a contracting entity considers that, on the basis of the criteria set out in Article 27(2) and (3), a given activity is directly exposed to competition on markets to which access is not restricted, it may submit a request to establish that this Directive does not apply to the award of contracts or the organisation of *design* contests for the pursuit of that activity.

Amendment

1. Where a Member State or, where the legislation of the Member State concerned provides for it, a contracting entity considers that, on the basis of the criteria set out in Article 27(2) and (3), a given activity is directly exposed, ***in whole or in part, including as regards individual sectors or segments***, to competition on markets to which access is not restricted, it may submit a request to establish that this Directive does not apply to the award of contracts or the organisation of *design* contests for the pursuit of that activity, ***or the individual sector or segment thereof***.

Or. it

Amendment 438

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

Proposal for a directive

Article 28 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Requests shall be accompanied by a reasoned and substantiated position adopted by an independent national authority that is competent in relation to the activity concerned. ***This position shall thoroughly analyse the conditions for the possible applicability of Article 27(1) to the activity concerned in accordance with its paragraphs 2 and 3.***

Amendment

Requests shall be accompanied by a reasoned and substantiated position adopted by an independent national authority that is competent in relation to the activity concerned ***or of a single sector or segment of it.***

Or. en

Amendment 439

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 28 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Requests shall be accompanied by a reasoned and substantiated position adopted by an independent national authority that is competent in relation to the activity concerned. This position shall thoroughly analyse the conditions for the possible applicability of Article 27(1) to the activity concerned in accordance with its paragraphs 2 and 3.

Amendment

Requests shall be accompanied by a reasoned and substantiated position adopted by an independent national authority that is competent in relation to the activity concerned, ***or the individual sector or segment thereof.*** This position shall thoroughly analyse the conditions for the possible applicability of Article 27(1) to the activity concerned in accordance with its paragraphs 2 and 3.

Or.

Amendment 440

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

Proposal for a directive
Article 28 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Upon request submitted in accordance with paragraph 1 of this Article, the Commission may, by way of an implementing decision adopted within the periods set out in paragraph 4 of this Article, establish whether an activity referred to in Articles 5 to 11 is directly exposed to competition on the basis of the criteria set out in Article 27. Those implementing decisions shall be adopted in accordance with the advisory procedure referred to in Article 100(2) .

Amendment

Upon request submitted in accordance with paragraph 1 of this Article, the Commission may, by way of an implementing decision adopted within the periods set out in paragraph 4 of this Article, establish whether an activity, ***or of a single sector or segment of it***, referred to in Articles 5 to 11 is directly exposed to competition on the basis of the criteria set out in Article 27. Those implementing decisions shall be adopted in accordance with the advisory procedure referred to in Article 100(2) .

Or. en

Amendment 441
Raffaele Baldassarre, Lara Comi

Proposal for a directive
Article 28 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Upon request submitted in accordance with paragraph 1 of this Article, the Commission may, by way of an implementing decision adopted within the periods set out in paragraph 4 of this Article, establish whether an activity referred to in Articles 5 to 11 is directly exposed to competition on the basis of the criteria set out in Article 27. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100(2).

Amendment

Upon request submitted in accordance with paragraph 1 of this Article, the Commission may, by way of an implementing decision adopted within the periods set out in paragraph 4 of this Article, establish whether an activity referred to in Articles 5 to 11, ***or the individual sector or segment thereof***, is directly exposed to competition on the basis of the criteria set out in Article 27. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100(2).

Or. it

Amendment 442

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

Proposal for a directive

Article 28 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

Contracts intended to enable the activity concerned to be carried out and design contests that are organised for the pursuit of such an activity shall cease to be subject to this Directive in any of the following cases:

Amendment

Contracts intended to enable the activity concerned, ***or of a single sector or segment of it***, to be carried out and design contests that are organised for the pursuit of such an activity, ***or of a single sector or segment of it***, shall cease to be subject to this Directive in any of the following cases:

Or. en

Amendment 443

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 28 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

Contracts intended to enable the activity concerned to be carried out and design contests that are organised for the pursuit of such an activity shall cease to be subject to this Directive in any of the following cases:

Amendment

Contracts intended to enable the activity concerned, ***or the individual sector or segment thereof***, to be carried out and design contests that are organised for the pursuit of such an activity, ***or the individual sector or segment***, shall cease to be subject to this Directive in any of the following cases:

Or. it

Amendment 444

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 28 – paragraph 4

Text proposed by the Commission

4. Where an activity in a given Member State is already the subject of a procedure under paragraphs 1, 2 and 3, further requests concerning the same activity in the same Member State before the expiry of the period opened in respect of the first request shall not be considered as new procedures and shall be treated in the context of the first request.

Amendment

4. Where an activity, ***or an individual sector or segment thereof***, in a given Member State is already the subject of a procedure under paragraphs 1, 2 and 3, further requests concerning the same activity, ***or individual sector or segment thereof***, in the same Member State before the expiry of the period opened in respect of the first request shall not be considered as new procedures and shall be treated in the context of the first request.

Or. it