



EUROPEAN PARLIAMENT

2009 - 2014

Committee on the Internal Market and Consumer Protection

2011/0439(COD)

3.9.2012

AMENDMENTS

750 - 1004

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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PE492.870v02-00

EN

United in diversity

EN

Amendment 750

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

Proposal for a directive

Article 77 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 751

Jürgen Creutzmann

Proposal for a directive

Article 77 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

(a) costs relating to acquisition,

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

(ab) maintenance costs;

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

Or. en

Amendment 752
Jürgen Creutzmann

Proposal for a directive
Article 77 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

Or. en

Justification

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

Amendment 753
Heide Rühle

Proposal for a directive
Article 77 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 754
Pablo Arias Echeverría

Proposal for a directive
Article 77 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. es

Amendment 755
Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 77 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 756
Heide Rühle

Proposal for a directive
Article 77 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 757
Jürgen Creutzmann

Proposal for a directive
Article 77 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

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

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

(c) it is accessible to all interested parties.

Amendment

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

Or. en

Justification

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

Amendment 758 **Heide Rühle**

Proposal for a directive **Article 77 – paragraph 2 – subparagraph 1 – point a**

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 759 **Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski**

Proposal for a directive **Article 77 – paragraph 2 – subparagraph 1 – point a**

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 760 **Heide Rühle**

Proposal for a directive
Article 77 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

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

Or. en

Justification

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

Amendment 761
Heide Rühle

Proposal for a directive
Article 77 – paragraph 2 – subparagraph 1 – point c a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 762
Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 77 – paragraph 2 – subparagraph 1 – point c a (new)

Text proposed by the Commission

Amendment

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

Or. en

Justification

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

Amendment 763

Heide Rühle

Proposal for a directive

Article 77 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

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

Or. en

Amendment 764

Jürgen Creutzmann

Proposal for a directive

Article 77 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 765

Andreas Schwab, Birgit Collin-Langen, Sabine Verheyen

Proposal for a directive**Article 77 – paragraph 3**

Text proposed by the Commission

Amendment

3. Whenever a common methodology for the calculation of life-cycle costs is adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 76 (1). **deleted**

A list of such legislative and delegated acts is set out in Annex XV. The Commission, shall be empowered to adopt delegated acts in accordance with Article 98 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary.

Or. de

Justification

Provisions which encourage contracting authorities to use life-cycle costs as an award criterion are welcome. However, the legal requirement refers to a future calculation method which has still to be specified and should be rejected at this point, on grounds of unforeseeability.

Amendment 766
Jürgen Creutzmann

Proposal for a directive
Article 77 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

3. Whenever a common methodology for the calculation of life-cycle costs is adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 76 (1).

deleted

Or. en

Justification

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

Amendment 767
Heide Rühle

Proposal for a directive
Article 77 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

3. Whenever a common methodology for the calculation of life-cycle costs is adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 76 (1).

3. Any common methodology for the calculation of life-cycle costs adopted as part of a legislative act of the Union, pursuant to sector specific legislation, or as part of a European technical specification shall be deemed to meet the criteria as set out in Paragraph 2 and may be included in the award criteria referred to in Article 76 (1).

Justification

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

Amendment 768

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

Proposal for a directive**Article 77 – paragraph 3 – subparagraph 1***Text proposed by the Commission*

3. Whenever a common methodology for the calculation of life-cycle costs *is adopted as part of* a legislative act of the Union, *including by delegated acts pursuant to sector specific legislation*, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 76 (1).

Amendment

3. Whenever a common methodology for the calculation of life-cycle costs *covering among others environmental externalities has been made mandatory by* a legislative act of the Union, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 76(1).

Justification

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

Amendment 769

Jürgen Creutzmann

Proposal for a directive**Article 77 – paragraph 3 – subparagraph 2**

Text proposed by the Commission

Amendment

A list of such legislative and delegated acts is set out in Annex XV. The Commission, shall be empowered to adopt delegated acts in accordance with Article 98 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary.

deleted

Or. en

Justification

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

Amendment 770

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

Proposal for a directive

Article 77 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

A list of such legislative ***and delegated*** acts is set out in Annex XV. The Commission, shall be empowered to adopt delegated acts in accordance with Article 98 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary.

A list of such legislative acts is set out in Annex XV. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary.

Or. en

Justification

It is crucial that common method for the calculation of life cycle costs is adopted by a legislative act of the Union, and that the Commission may only update annex XV. It should be

clear from the wording of Article 67 (3) second subparagraph that it confers on the Commission only the right to adopt delegated acts with the objective to update Annex XV. Under no circumstances it shall constitute a basis for the Commission to adopt delegated acts making any LCC methodology mandatory.

Amendment 771

Marc Tarabella

Proposal for a directive

Article 78 – title

Text proposed by the Commission

Amendment

Impediments to award

Decision not to award the contract

Or. fr

Amendment 772

Marc Tarabella

Proposal for a directive

Article 78 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

Contracting entities shall not conclude the contract with a successful tenderer where one of the following conditions is fulfilled:

Contracting entities shall be free not to follow up a public procurement procedure. The decision not to award the contract shall state the relevant reasons and be communicated to all candidates and tenderers. Contracting entities shall not conclude the contract with a successful tenderer where one of the following conditions is fulfilled:

Or. fr

Amendment 773

Heide Rühle

Proposal for a directive

Article 78 a (new)

Article 78a

Abnormally low tenders

1. If, for a given contract, tenders appear to be abnormally low in relation to the goods, works or services, the contracting entity shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant. Those details may relate in particular to:

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

(b) the technical solutions chosen and/or any exceptionally favourable conditions available to the tenderer for the execution of the work, for the supply of the goods or services;

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

(d) compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed;

(e) the possibility of the tenderer to obtain State aid.

2. The contracting entity shall verify those constituent elements by consulting the tenderer, taking account of the evidence supplied.

3. Where tenders appear to be abnormally low for other reasons, contracting entities may also request such explanations.

4. Where a contracting entity establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender can be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting entity, that the aid in

question was granted legally. Where the contracting entity rejects a tender in these circumstances, it shall inform the Commission of that fact.

Or. en

Justification

This is the Article 57 from the current Directive 2004/17/EC - no need to change it

Amendment 774
Heide Rühle

Proposal for a directive
Article 78 b (new)

Text proposed by the Commission

Amendment

Article 78b

Tenders comprising products originating in third

1. This Article shall apply as long as no other legal provisions are in places and to tenders covering products originating in third countries with which the Union has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for Union undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Union or its Member States in respect of third countries.

2. Any tender submitted for the award of a supply contract may be rejected where the proportion of the products originating in third countries, as determined in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, exceeds 50 % of the total value of the products constituting the tender. For the purposes of this Article, software used in telecommunications network

equipment shall be regarded as products.

3. Subject to the second subparagraph, where two or more tenders are equivalent in the light of the contract award criteria defined in Article 72, preference shall be given to those tenders which may not be rejected pursuant to paragraph 2. The prices of those tenders shall be considered equivalent for the purposes of this Article, if the price difference does not exceed 3 %.

However, a tender shall not be preferred to another pursuant to the first subparagraph where its acceptance would oblige the contracting entity to acquire equipment having technical characteristics different from those of existing equipment, resulting in incompatibility, technical difficulties in operation and maintenance, or disproportionate costs.

4. For the purposes of this Article, those third countries to which the benefit of the provisions of this Directive has been extended by a Council Decision in accordance with paragraph 1 shall not be taken into account for determining the proportion, referred to in paragraph 2, of products originating in third countries.

5. The Commission shall submit an annual report to the European Parliament and to the Council, commencing in the second half of the first year following the entry into force of this Directive, on progress made in multilateral or bilateral negotiations regarding access for Union undertakings to the markets of third countries in the fields covered by this Directive, on any result which such negotiations may have achieved, and on the implementation in practice of all the agreements which have been concluded. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may amend the provisions of this Article in the light of such developments.

Justification

As long as there is no new provision in place it is necessary and justified to stick to the current regulation.

Amendment 775
Heide Rühle

Proposal for a directive
Article 78 c (new)

Text proposed by the Commission

Amendment

Article 78c

Relations with third countries as regards works, supplies and service contracts

- 1. This Article shall only apply as long as no other legal provision is in place. Member States shall inform the Commission of any general difficulties, in law or in fact, encountered and reported by their undertakings in securing the award of service contracts in third countries.***
- 2. The Commission shall report to the European Parliament and to the Council before 31 December 2014, and periodically thereafter, on the opening up of service contracts in third countries and on progress in negotiations with these countries on this subject, particularly within the framework of the WTO.***
- 3. The Commission shall endeavour, by approaching the third country concerned, to remedy any situation whereby it finds, on the basis either of the reports referred to in paragraph 2 or of other information, that, in the context of the award of service contracts, a third country:***
 - (a) does not grant Union undertakings effective access comparable to that granted by the Union to undertakings***

from that country; or

(b) does not grant Union undertakings national treatment or the same competitive opportunities as are available to national undertakings; or

(c) grants undertakings from other third countries more favourable treatment than Union undertakings.

4. Member States shall inform the Commission of any difficulties, in law or in fact, encountered and reported by their undertakings and which are due to the non-observance of the international social and environmental law provisions listed in Annex XIV when these undertakings have tried to secure the award of contracts in third countries.

5. In the circumstances referred to in paragraphs 3 and 4, the Commission may at any time propose that the Council decide to suspend or restrict, over a period to be laid down in the decision, the award of service contracts to:

(a) undertakings governed by the law of the third country in question;

(b) undertakings affiliated to the undertakings specified in point (a) and having their registered office in the Union but having no direct and effective link with the economy of a Member State;

(c) undertakings submitting tenders which have as their subject-matter services originating in the third country in question.

The Council shall act, by qualified majority, as soon as possible.

Or. en

Justification

As long as there is no new provision in place it is necessary and justified to stick to the current regulation.

Amendment 776
Heide Rühle

Proposal for a directive
Article 79

Text proposed by the Commission

Amendment

Article 79

deleted

Abnormally low tenders

1. The contracting entity shall request economic operators to explain the price or costs charged, where all of the following conditions are fulfilled:

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

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

(c) at least five tenders have been submitted.

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

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

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

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

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

(d) compliance, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XIV or,

where not applicable, with other provisions ensuring an equivalent level of protection;

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

4. The contracting entity shall verify the information provided by consulting the tenderer.

It may only reject the tender where the evidence does not justify the low level of price or costs charged, taking into account the elements referred to in paragraph 3.

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

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

6. Upon request, Member States shall make available to other Member States, in accordance with Article 97, any information relating to the evidence and documents produced in relation to details listed in paragraph 3.

Or. en

Amendment 777

Peter Simon

Proposal for a directive

Article 79 – paragraph 1

Text proposed by the Commission

Amendment

1. The contracting entity shall request economic operators to explain the price or costs charged, where all of the following conditions are fulfilled:

deleted

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

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

(c) at least five tenders have been submitted.

Or. de

Justification

Reinstatement of the wording of the current directive.

Amendment 778

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

Proposal for a directive

Article 79 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. The contracting entity shall request economic operators to explain the price or costs charged, **where all** of the following conditions are fulfilled:

1. The contracting entity shall request economic operators to explain the price or costs charged, **if at least one** of the following conditions are fulfilled:

Or. en

Justification

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

Amendment 779

Lara Comi

Proposal for a directive

Article 79 – paragraph 1 – introductory part

Text proposed by the Commission

1. The contracting entity shall request economic operators to explain the price or costs charged, where **all** of the following conditions **are** fulfilled:

Amendment

1. The contracting entity shall request economic operators to explain the price or costs charged, where **at least five tenders have been submitted and one** of the following conditions **is** fulfilled:

Or. it

Amendment 780

Marc Tarabella

Proposal for a directive

Article 79 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 781

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

Proposal for a directive

Article 79 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 782
Lara Comi

Proposal for a directive
Article 79 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Or. it

Amendment 783
Raffaele Baldassarre

Proposal for a directive
Article 79 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Or. it

Amendment 784
Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 79 – paragraph 1 – point a (new)

Text proposed by the Commission

Amendment

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

Or. en

Justification

It seems appropriate to an additional situation for the price to be considered abnormally low.

Amendment 785

Raffaele Baldassarre

Proposal for a directive

Article 79 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

deleted

Or. it

Amendment 786

Marc Tarabella

Proposal for a directive

Article 79 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

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

Or. fr

Amendment 787

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

Proposal for a directive

Article 79 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 788

Barbara Weiler

Proposal for a directive

Article 79 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the price charged is lower than statutory or agreed national minimum wages plus additional payments and social security contributions.

Or. de

Amendment 789

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

Proposal for a directive

Article 79 – paragraph 1 – point c

Text proposed by the Commission

(c) at least five tenders have been submitted.

Amendment

deleted

Or. en

Justification

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

Amendment 790

Marc Tarabella

Proposal for a directive

Article 79 – paragraph 1 – point c

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 791

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

Proposal for a directive

Article 79 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

It seems appropriate to allow contracting authorities to ask for explanation in order to establish whether a price is abnormally low also in other situations than those provided for in

paragraph 1. In addition, it is advisable to give some examples of such additional cases.

Amendment 792

Barbara Weiler

Proposal for a directive

Article 79 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Where tenders appear to be abnormally low for other reasons, contracting entities **shall also be required to** request such explanations.

Or. de

Amendment 793

Pablo Arias Echeverría

Proposal for a directive

Article 79 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Contracting authorities shall take into account compliance with labour law in procurement procedures for services which involve the substitution of staff and which are in economic sectors deemed labour intensive and to offer low added value; tenders for a price which involves labour costs which are lower than wages set out in collective bargaining agreements or the applicable legal minimum wage shall be considered abnormal and disproportionate.

Or. es

Amendment 794

Peter Simon

Proposal for a directive
Article 79 – paragraph 3 – introductory part

Text proposed by the Commission

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

Amendment

3. *If, for a given contract, tenders appear to be abnormally low in relation to the goods, works or services, the contracting authority shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant.*

The explanations *in question* may in particular relate to:

Or. de

Justification

Reinstatement of the wording of the current directive.

Amendment 795
Peter Simon

Proposal for a directive
Article 79 – paragraph 3 – point b

Text proposed by the Commission

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

Amendment

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

Or. de

Justification

Reinstatement of the wording of the current directive.

Amendment 796
Alexander Alvaro, Jürgen Creutzmann

Proposal for a directive
Article 79 – paragraph 3 – point d

Text proposed by the Commission

(d) compliance, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XIV or, where not applicable, with other provisions ensuring an equivalent level of protection;

Amendment

(d) compliance, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law, ***data protection law*** or environmental law or of the international social and environmental law provisions listed in Annex XIV or, where not applicable, with other provisions ensuring an equivalent level of protection;

Or. en

Amendment 797
Peter Simon

Proposal for a directive
Article 79 – paragraph 3 – point d

Text proposed by the Commission

(d) compliance, ***at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XIV or, where not applicable, with other provisions ensuring an equivalent level of protection;***

Amendment

(d) compliance ***with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed;***

Or. de

Justification

Reinstatement of the wording of the current directive.

Amendment 798
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Article 79 – paragraph 3 – point d

Text proposed by the Commission

(d) compliance, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or *of* the international *social and environmental law provisions* listed in Annex XIV *or, where not applicable, with other provisions ensuring an equivalent level of protection;*

Amendment

(d) compliance, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or, *with the obligations regarding working conditions along the supply chain as stated in national labour laws and regulations in which production processes take place and in international conventions as listed in Annex XIV, whatever the most favourable of workers. These provisions include:*

(i) those defined by the eight ILO Core Conventions (freedom of association and collective bargaining, forced and compulsory labour, discrimination in respect of employment and occupation, child labour);

(ii) occupational safety and health

(iii) working time

(iv) wages

(v) social security

Or. en

Amendment 799
Evelyne Gebhardt, Birgit Sippel

Proposal for a directive
Article 79 – paragraph 3 – point d

Text proposed by the Commission

(d) compliance, *at least in an equivalent manner*, with obligations established by Union legislation in the field of *social and labour law or* environmental law *or* of the international *social and environmental law* provisions listed in Annex XIV or, where

Amendment

(d) compliance with obligations established by Union legislation in the field of environmental law *or with obligations relating to social and employment conditions, such as health and safety at the workplace, social security and*

not applicable, with other provisions ensuring an equivalent level of protection;

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 shall also apply in cross-border situations in which workers from one Member State provide services in another Member State)***, or, where not applicable, with other provisions ensuring an equivalent level of protection;

Or. de

Amendment 800
Peter Simon

Proposal for a directive
Article 79 – paragraph 4

Text proposed by the Commission

Amendment

4. The contracting entity shall verify the information provided by consulting the tenderer.

deleted

It may only reject the tender where the evidence does not justify the low level of price or costs charged, taking into account the elements referred to in paragraph 3.

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

Or. de

Justification

Reinstatement of the wording of the current directive.

Amendment 801

Alexander Alvaro, Jürgen Creutzmann

Proposal for a directive

Article 79 – paragraph 4 – subparagraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 802

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

Proposal for a directive

Article 79 – paragraph 4 – subparagraph 3

Text proposed by the Commission

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

Amendment

Contracting entities shall reject the tender, where they have established that the tender is abnormally low because ***the price or costs indicated in a tender does not cover costs of manufacturing a product, providing services or carrying out works which are subject matter of the public contract, taking into consideration economic conditions, and in particular if*** it does not comply with obligations established by Union legislation in the field of social and labour law or environmental law or by the international social and

environmental law provisions listed in Annex XIV.

Or. en

Justification

For the sake of legal certainty contracting authorities should be obliged to reject the tender where they establish that the price indicated therein does not cover costs borne by the economic operator. It is to be stressed that abnormally low tenders – in particular those that do not guarantee the recovery of costs of manufacturing products, providing services or carrying out works which are subject matter of the public contract – are one of the major factors that may jeopardise the execution of public contracts to the detriment of public interest.

Amendment 803

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Article 79 – paragraph 4 – subparagraph 3

Text proposed by the Commission

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

Amendment

Contracting entities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with obligations established by Union legislation in the field of social and labour law or environmental law or ***with the obligations regarding working conditions along the supply chain as stated in national labour laws and regulations in which production processes take place and in international conventions as listed in Annex XIV, whatever the most favourable of workers.***

These provisions include:

(a) those defined by the eight ILO Core Conventions (freedom of association and collective bargaining, forced and compulsory labour, discrimination in respect of employment and occupation, child labour);

(b) occupational safety and health

- (c) working time*
- (d) wages*
- (e) social security*

Or. en

Amendment 804
Peter Simon

Proposal for a directive
Article 79 – paragraph 5

Text proposed by the Commission

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

Amendment

5. Where a contracting entity establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender can be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting entity, that the aid in question was ***granted legally***. Where the contracting entity rejects a tender in those circumstances, it shall inform the Commission thereof.

Or. de

Justification

Reinstatement of the wording of the current directive.

Amendment 805
Philippe Juvin

Proposal for a directive
Article 79 – paragraph 5

Text proposed by the Commission

5. Where a contracting entity establishes that a tender is abnormally low because the

Amendment

5. When submitting a tender, tenderers must provide a declaration on their

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

honour attesting that they have not received for the purposes of their tender State aid which would be incompatible with Article 107 of the Treaty on the Functioning of the European Union, or which would be incompatible with the aforementioned Article if the State granting that aid were an EU Member State, and furnish any substantiating documents requested by the contracting entity.

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

If it is established that the selected tenderer has received unlawful State aid, the call-for-tender procedure shall be cancelled.

Or. fr

Justification

Given that European businesses are facing increased competition from third country businesses that obtain substantial levels of State aid, a fair competition environment must be created for all tenders submitted in the European Union, and contracting entities should be obliged to reject any tenders from tenderers who have received State aid which is incompatible with the Treaty.

Amendment 806
Lara Comi

Proposal for a directive
Article 79 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. The contracting authorities shall automatically exclude any tenders which quote a price more than 50% lower than the mean price quoted in all the tenders submitted.

Or. it

Amendment 807

Peter Simon

Proposal for a directive

Article 79 – paragraph 6

Text proposed by the Commission

Amendment

6. Upon request, Member States shall make available to other Member States, in accordance with Article 97, any information relating to the evidence and documents produced in relation to details listed in paragraph 3.

deleted

Or. de

Justification

Reinstatement of the wording of the current directive.

Amendment 808

Malcolm Harbour

Proposal for a directive

Article 79 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Where the contracting entity intends, after verifying the explanations of the tenderer, to accept an abnormally low tender comprising supplies and/or services originating from outside the

Union, in which the value of the non-covered supplies or services exceeds 50 % of the total value of the supplies or services constituting the tender, in accordance with Article 37a, it shall inform the other tenderers of this in writing, including the reasons for the abnormally low character of the price or costs charged.

A contracting entity may withhold any information if this would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between them.

Or. en

Amendment 809
Frank Engel, Constance Le Grip

Proposal for a directive
Article 79 a (new)

Text proposed by the Commission

Amendment

Article 79a

Tenders comprising products originating in third countries

1. This Article shall apply to tenders covering products originating in third countries with which the Union has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for Union undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Union or its Member States in respect of third countries.

2. Any tender submitted for the award of a supply contract may be rejected where the proportion of the products originating in

third countries, as determined in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code[1], exceeds 50 % of the total value of the products constituting the tender. For the purposes of this Article, software used in telecommunications network equipment shall be regarded as products.

3. Subject to the second subparagraph, where two or more tenders are equivalent in the light of the contract award criteria defined in Article 76, preference shall be given to those tenders which may not be rejected pursuant to paragraph 2. The prices of those tenders shall be considered equivalent for the purposes of this Article, if the price difference does not exceed 3 %.

However, a tender shall not be preferred to another pursuant to the first subparagraph where its acceptance would oblige the contracting entity to acquire equipment having technical characteristics different from those of existing equipment, resulting in incompatibility, technical difficulties in operation and maintenance, or disproportionate costs.

4. For the purposes of this Article, those third countries to which the benefit of the provisions of this Directive has been extended by a Council Decision in accordance with paragraph 1 shall not be taken into account for determining the proportion, referred to in paragraph 2, of products originating in third countries.

5. The Commission shall submit an annual report to the European Parliament and to the Council, commencing in the second half of the first year following the entry into force of this Directive, on progress made in multilateral or bilateral negotiations regarding access for Union undertakings to the markets of third countries in the fields covered by this Directive, on any result which such

negotiations may have achieved, and on the implementation in practice of all the agreements which have been concluded.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may amend the provisions of this Article in the light of such developments.

[1] OJ L 302, 19.10.1992, p. 1.

Or. en

Justification

Until regulation [COD 2012/0060] entry into force, former article 58 of Directive 2004/17/EC shall apply to avoid any legal gaps.

Amendment 810
Sergio Gaetano Coffferati

Proposal for a directive
Article 79 a (new)

Text proposed by the Commission

Amendment

Article 79a

Tenders comprising products originating in third countries

1. This Article shall apply to tenders covering products originating in third countries with which the Union has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for Union undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Union or its Member States in respect of third countries.

2. Contracting entities may require tenderers to provide information on the origin of the goods and services contained in the tender, and their value. Any tender submitted for the award of a supply

contract where the value of the products originating in third countries, as determined in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code¹, exceeds 50 % of the total value of the products or services constituting the tender may be rejected under the following conditions.

3. Upon request of contracting entities, the Commission shall assess whether to approve, for contracts of an estimated value equal or above EUR 5 000 000 exclusive of value-added tax (VAT) the exclusion from procedures for the award of contract tenders comprising goods or services originating outside the Union, if the value of goods or services originating in a country with which the Union has not concluded an international agreement in the field of public procurement including market access commitments or goods or services originating in a country with which the Union has concluded such an agreement, but in respect of which the agreement does not apply, exceeds 50% of the total value of the goods or services constituting the tender.

4. For contracts referred to in paragraph 3, the Commission shall adopt an implementing act concerning the approval of the intended exclusion. Those implementing acts shall be adopted according to the examination procedure.

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

(a) if the international agreement concerning market access in the field of public procurement between the Union and the country where the goods and/or services originate contains, for the goods and/or services for which the exclusion is proposed, explicit market access reservations taken by the Union;

(b) where an agreement referred to in point (a) does not exist and the third country maintains restrictive procurement measures leading to a lack of substantial reciprocity in market opening between the Union and the third country concerned.

For the purposes of point (b), a lack of substantial reciprocity is presumed where restrictive procurement measures result in serious and recurring discriminations of Union economic operators, goods and services.

When adopting implementing acts pursuant to paragraph 6, the Commission shall not approve an intended exclusion where it would violate market access commitments entered into by the Union in its international agreements.

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

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

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

7. Contracts concluded with an economic operator in violation of Commission implementing acts adopted pursuant to paragraph 4 upon intended exclusion notified by contracting authorities shall be declared ineffective within the meaning of Directive 2007/66/EC.

Or. en

Text proposed by the Commission

Amendment

Article 79a

***Tenders comprising products originating
in third countries***

1. This Article shall apply to tenders covering products or services originating in third countries with which the European Union has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for European Union undertakings to the markets of those third countries. It shall also apply to tenders containing products or services originating in third countries that are subject to a reservation concerning access to the European market under the terms of international agreements on public procurement concluded by the European Union (bilateral free-trade agreements or a multilateral agreement on public procurement). It shall be without prejudice to the obligations of the European Union or its Member States in respect of third countries.

2. Contracting entities shall ask tenderers to provide information on the origin of the goods and services in their tender, and their value. Statements on the tenderer's honour shall be accepted as a means of preliminary proof. A contracting body can ask, at any time in the procedure, for part or all of the documentation required. Any tender submitted for the award of a supply contract may be rejected where the value of the products originating in third countries, as determined in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, exceeds 50 % of the total value of

the products or services constituting the tender. For the purposes of this Article, software used in telecommunications network equipment shall be regarded as products.

3. Subject to the second subparagraph, where two or more tenders are equivalent in the light of the contract award criteria defined in Article 76, preference shall be given to those tenders which may not be rejected pursuant to paragraph 2. The prices of those tenders shall be considered equivalent for the purposes of this Article, if the price difference does not exceed 3 %.

However, a tender shall not be preferred to another pursuant to the first subparagraph where its acceptance would oblige the contracting entity to acquire equipment having technical characteristics different from those of existing equipment, resulting in incompatibility, technical difficulties in operation and maintenance, or disproportionate costs.

4. For the purposes of this Article, those third countries to which the benefit of the provisions of this Directive has been extended by a Council Decision in accordance with paragraph 1 shall not be taken into account for determining the products and services originating in third countries that are referred to in paragraph 2.

5. The Commission shall submit an annual report to the European Parliament and the Council, commencing in the second half of the first year following the entry into force of this Directive, on progress made in multilateral or bilateral negotiations regarding access for European Union undertakings to the markets of third countries in the fields covered by this Directive, on any result which such negotiations may have achieved, and on the implementation in practice of all the agreements which have

been concluded.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may in the light of these developments, amend the provisions of this article.

Or. fr

Justification

Pending the adoption of a regulation on reciprocity, it is appropriate to maintain the present public procurement legislation.

Amendment 812
Marc Tarabella

Proposal for a directive
Article 79 a (new)

Text proposed by the Commission

Amendment

Article 79a

Abnormally low tenders not originating in the European Union

When a contracting entity plans to accept an abnormally low tender including works, supplies or services not originating in the European Union, in which the value of the works, supplies or services not covered exceeds 50 % of the total value of the works, supplies or services that make up the tender, in accordance with Article 37a the contracting entity shall inform the other tenderers in writing, explaining why the price or costs proposed are abnormally low.

Tenders originating in third countries not bound by an international agreement shall automatically be rejected when the price or cost charged is more than 50 % lower than the average cost of the other tenders.

Amendment 813

Frank Engel, Konstantinos Poupakis, Constance Le Grip

Proposal for a directive

Article 79 b (new)

Text proposed by the Commission

Amendment

Article 79b

Relations with third countries as regards works, supplies and service contracts

1. Member States shall inform the Commission of any general difficulties, in law or in fact, encountered and reported by their undertakings in securing the award of service contracts in third countries.

2. The Commission shall report to the European Parliament and to the Council before 31 December 2014, and periodically thereafter, on the opening up of service contracts in third countries and on progress in negotiations with these countries on this subject, particularly within the framework of the WTO.

3. The Commission shall endeavour, by approaching the third country concerned, to remedy any situation whereby it finds, on the basis either of the reports referred to in paragraph 2 or of other information, that, in the context of the award of service contracts, a third country:

(a) does not grant Union undertakings effective access comparable to that granted by the Union to undertakings from that country; or

(b) does not grant Union undertakings national treatment or the same competitive opportunities as are available to national undertakings; or

(c) grants undertakings from other third countries more favourable treatment than

Union undertakings.

4. Member States shall inform the Commission of any difficulties, in law or in fact, encountered and reported by their undertakings and which are due to the non-observance of the international social and environmental law provisions listed in Annex XIV when these undertakings have tried to secure the award of contracts in third countries.

5. In the circumstances referred to in paragraphs 3 and 4, the Commission may at any time propose that the Council decide to suspend or restrict, over a period to be laid down in the decision, the award of service contracts to:

(a) undertakings governed by the law of the third country in question;

(b) undertakings affiliated to the undertakings specified in point (a) and having their registered office in the Union but having no direct and effective link with the economy of a Member State;

(c) undertakings submitting tenders which have as their subject-matter services originating in the third country in question.

The Council shall act, by qualified majority, as soon as possible.

The Commission may propose these measures on its own initiative or at the request of a Member State.

6. This Article shall be without prejudice to the commitments of the Union in relation to third countries ensuing from international agreements on public procurement, particularly within the framework of the WTO.

Or. en

Justification

Until regulation [COD 2012/0060] entry into force, former article 59 of Directive

2004/17/EC shall apply to avoid any legal gaps.

Amendment 814
Bernadette Vergnaud

Proposal for a directive
Article 79 b (new)

Text proposed by the Commission

Amendment

Article 79b

Relations with third countries as regards works, supplies and service contracts

1. Member States shall inform the Commission of any general difficulties, in law or in fact, encountered and reported by their undertakings in securing the award of works, supplies and service contracts in third countries.

2. The Commission shall periodically report to the European Parliament and the Council on the opening up of works, supplies and service contracts in third countries and on progress in negotiations with these countries in this connection, particularly within the framework of the WTO.

3. The Commission shall endeavour, by approaching the third country concerned, to remedy any situation whereby it finds, on the basis either of the reports referred to in paragraph 2 or of other information, that, in the context of the award of works, supplies and service contracts, a third country:

(a) does not grant European Union undertakings effective access comparable to that granted by the European Union to undertakings from that country; or

(b) does not grant European Union undertakings national treatment or the same competitive opportunities as are available to national undertakings; or

(c) grants undertakings from other third

countries more favourable treatment than European Union undertakings.

4. Member States shall inform the Commission of any difficulties, in law or in fact, encountered and reported by their undertakings and which are due to the non-observance of the international social and environmental provisions listed in Annex XIV when these undertakings have tried to secure the award of works, supplies and service contracts in third countries.

5. In the circumstances referred to in paragraphs 3 and 4, the Commission may at any time propose that the Council decide to suspend or restrict, over a period to be laid down in the decision, the award of works, supplies and service contracts to:

(a) undertakings governed by the law of the third country in question;

(b) undertakings affiliated to the undertakings specified in point (a) and having their registered office in the European Union but having no direct and effective link with the economy of a Member State;

(c) undertakings submitting tenders which have as their subject-matter works, supplies and services originating in the third country in question.

The Council shall act, by qualified majority, as soon as possible.

The Commission may propose these measures on its own initiative or at the request of a Member State.

6. This Article shall be without prejudice to the commitments of the European Union in relation to third countries ensuing from international agreements on public procurement, particularly within the framework of the WTO.

Or. fr

Justification

Pending the adoption of a regulation on reciprocity, it is appropriate to maintain the present public procurement legislation.

Amendment 815
Robert Rochefort

Proposal for a directive
Title 2 – chapter 3 – section 3 – subsection 2 a (new)

Text proposed by the Commission

Amendment

Subsection 2a

Tenders comprising products originating in third countries and relations with those countries

Article 79a

Tenders comprising products originating in third countries

1. This Article shall apply to tenders covering products originating in third countries with which the European Union has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for European Union undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the European Union or its Member States in respect of third countries.

2. Any tender submitted for the award of a supply contract may be rejected where the proportion of the products originating in third countries, as determined in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, exceeds 50 % of the total value of the products constituting the tender. For the purposes of this Article, software used in telecommunications network equipment shall be regarded as products.

3. Subject to the second subparagraph, where two or more tenders are equivalent

in the light of the contract award criteria defined in Article 72, preference shall be given to those tenders which may not be rejected pursuant to paragraph 2. The prices of those tenders shall be considered equivalent for the purposes of this Article, if the price difference does not exceed 3 %.

However, a tender shall not be preferred to another pursuant to the first subparagraph where its acceptance would oblige the contracting entity to acquire equipment having technical characteristics different from those of existing equipment, resulting in incompatibility, technical difficulties in operation and maintenance, or disproportionate costs.

4. For the purposes of this Article, those third countries to which the benefit of the provisions of this Directive has been extended by a Council Decision in accordance with paragraph 1 shall not be taken into account for determining the products originating in third countries that are referred to in paragraph 2.

5. The Commission shall submit an annual report to the European Parliament and the Council, commencing in the second half of the first year following the entry into force of this Directive, on progress made in multilateral or bilateral negotiations regarding access for European Union undertakings to the markets of third countries in the fields covered by this Directive, on any result which such negotiations may have achieved, and on the implementation in practice of all the agreements which have been concluded.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may amend this article in the light of these developments.

Article 79b

Relations with third countries as regards works, supplies and service contracts

1. Member States shall inform the Commission of any general difficulties, in law or in fact, encountered and reported by their undertakings in securing the award of service contracts in third countries.

2. The Commission shall periodically report to the European Parliament and the Council on the opening up of service contracts in third countries and on progress in negotiations with these countries in this connection, particularly within the framework of the WTO.

3. The Commission shall endeavour, by approaching the third country concerned, to remedy any situation whereby it finds, on the basis either of the reports referred to in paragraph 2 or of other information, that, in the context of the award of service contracts, a third country:

(a) does not grant European Union undertakings effective access comparable to that granted by the European Union to undertakings from that country; or

(b) does not grant European Union undertakings national treatment or the same competitive opportunities as are available to national undertakings; or

(c) grants undertakings from other third countries more favourable treatment than European Union undertakings.

4. Member States shall inform the Commission of any difficulties, in law or in fact, encountered and reported by their undertakings and which are due to the non-observance of the international labour law provisions listed in Annex XIV when these undertakings have tried to secure the award of contracts in third countries.

5. In the circumstances referred to in paragraphs 3 and 4, the Commission may at any time propose that the Council

decide to suspend or restrict, over a period to be laid down in the decision, the award of service contracts to:

(a) undertakings governed by the law of the third country in question;

(b) undertakings affiliated to the undertakings specified in point (a) and having their registered office in the European Union but having no direct and effective link with the economy of a Member State;

(c) undertakings submitting tenders which have as their subject-matter services originating in the third country in question.

The Council shall act, by qualified majority, as soon as possible.

The Commission may propose these measures on its own initiative or at the request of a Member State.

6. This Article shall be without prejudice to the commitments of the European Union in relation to third countries ensuing from international agreements on public procurement, particularly within the framework of the WTO.

1 OJ L 302, 19.10.1992, p. 1.

Or. fr

Justification

The Commission deleted these provisions with a view to adoption of its reciprocity instrument. As this text has been delayed, these two articles have been reintroduced as a temporary measure, to avoid a legal vacuum. They will lapse on the coming into force of the regulation on the access of third-country goods and services to the European Union's internal market in public procurement and establishing procedures supporting negotiations on access of European Union goods and services to the public procurement markets of third countries.

Amendment 816
Andreas Schwab

Proposal for a directive
Article 80

Text proposed by the Commission

Amendment

Article 80

deleted

Conditions for performance of contracts

Contracting entities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

Or. de

Justification

Any non-procurement-related criteria employed in contract award procedures should be closely linked to the subject-matter of the contract. Allowing contracting authorities to set specific conditions governing the performance of a contract, in particular conditions relating to social and environmental considerations, could lead those authorities to depart from the provisions of Article 66 and the award criteria they lay down.

Amendment 817
Heide Rühle

Proposal for a directive
Article 80

Text proposed by the Commission

Amendment

Contracting entities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and

Contracting entities may lay down special conditions ***linked to the subject matter and*** relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular,

environmental considerations. *They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.*

concern social and environmental considerations.

Or. en

Amendment 818
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 80 – paragraph 1

Text proposed by the Commission

Contracting entities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, *in particular, concern social and environmental* considerations. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

Amendment

Contracting entities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may *include economic, innovative, environmental or* social considerations. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract. *However, none of those special conditions shall result in loosing the link to the subject matter of the contract.*

Or. en

Amendment 819
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 80

Text proposed by the Commission

Contracting entities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, ***in particular, concern*** social and environmental considerations. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

Amendment

Contracting entities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may ***include*** social and environmental considerations, ***and may also include social and employment protection and working conditions applying in the place where the work, service or supply is to be performed as set out by national legislation and/or collective agreements or international labour law provisions listed in Annex XIV***. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

Or. en

Amendment 820
Lara Comi

Proposal for a directive
Article 80

Text proposed by the Commission

Contracting entities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations. ***They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.***

Amendment

1. Contracting entities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations.

2. Member States may provide for forms of compensation for economic operators in the event of price increases which are impossible to foresee when the tender is submitted.

Or. it

Amendment 821
Evelyne Gebhardt, Birgit Sippel

Proposal for a directive
Article 80

Text proposed by the Commission

Contracting ***entities*** may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions ***may, in particular, concern social and environmental considerations***. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

Amendment

Contracting ***authorities*** may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions ***shall include compliance with obligations relating to social and employment conditions, such as 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 shall also apply in cross-border situations, where workers from one Member State provide services in another Member State.*** They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

Or. de

Amendment 822
Raffaele Baldassarre

Proposal for a directive
Article 80

Text proposed by the Commission

Contracting entities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations. They may also include the requirement that *economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging)* and that could substantially impact the performance of a contract.

Amendment

Contracting entities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations. They may also include the requirement that *Member States may provide for forms of compensation to cover risks of price increases which are impossible to foresee when the tender is submitted* and that could substantially impact the performance of a contract.

Or. it

Amendment 823
Jürgen Creutzmann

Proposal for a directive
Article 80

Text proposed by the Commission

Contracting entities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern *social and environmental considerations*. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

Amendment

Contracting entities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern *training measures for unemployed and young people*. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

Amendment 824

Heide Rühle

Proposal for a directive

Article 81 – paragraph 1

Text proposed by the Commission

1. In the procurement documents, the contracting entity may ask, ***or may be required by a Member State to ask***, the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.

Amendment

1. In the procurement documents, the contracting entity may ask the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors. ***When there is need of a special know-how and/or equipment, subcontractors should be named in the procurements contract by the main contractor.***

Or. en

Amendment 825

Sergio Gaetano Coffferati

Proposal for a directive

Article 81 – paragraph 1

Text proposed by the Commission

1. In the procurement documents, the contracting entity ***may ask, or may be required by a Member State to ask***, the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.

Amendment

1. In the procurement documents, the contracting entity ***shall*** ask the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors, ***providing information regarding the subcontractor including names, contact details and legal representatives.***

Any changes in the subcontracting chain shall be proposed by the economic operator and agreed by the contracting entity. In the case the proposed change regards also the involvement of a new

subcontractor, the main contractor shall indicate its name, contact details and legal representatives

Any operators in the subcontracting chain shall ensure the respect of the provisions of this Directive and of the conditions established in the procurement documents and shall guarantee a performance of the duties connected to the contract equivalent to the one defined in the tender.

Or. en

Amendment 826
Marc Tarabella

Proposal for a directive
Article 81 – paragraph 1

Text proposed by the Commission

1. In the procurement documents, the contracting entity *may ask, or may be required by a Member State to ask*, the tenderer to indicate in its tender *any* share of the contract it *may intend* to subcontract to third parties and any proposed subcontractors.

Amendment

1. In the procurement documents, the contracting entity *must ask* the tenderer to indicate in its tender *the* share of the contract it *wishes* to subcontract to third parties and any proposed subcontractors, *providing information regarding the subcontractor, including names, contact details and legal representatives. The contracting entity must be informed without delay of any change in the subcontracting chain.*

Or. fr

Amendment 827
Evelyne Gebhardt, Birgit Sippel

Proposal for a directive
Article 81 – paragraph 1

Text proposed by the Commission

1. In the procurement documents, the

Amendment

1. In the procurement documents, the

contracting **entity may** ask, or **may** be required by a Member State to ask, the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.

contracting **authority shall** ask, or **shall** be required by a Member State to ask, the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors **and to give information on the subcontractors, including their names, contact details and legal representatives. Any change in the subcontracting chain and details of any new subcontractors, including their names, contact details and legal representatives, shall be indicated without delay to the contracting authority.**

Or. de

Amendment 828
Sergio Gaetano Cofferati

Proposal for a directive
Article 81 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall limit the possibility for a tenderer to subcontract when executing a public contract to a maximum of three or less successive subcontractors. The contracting entities may establish further limitations to the use of subcontracting, with regard to the number of subcontractors or of successive subcontractors or to the possibility of changes in the subcontracting chain, or may establish that no parts of the contracts shall be subcontracted to third parties.

Or. en

Amendment 829
Evelyne Gebhardt, Birgit Sippel

Proposal for a directive
Article 81 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The reasons for using subcontractors shall be set out in the procurement documents; they should be based on technical considerations and not be designed to reduce labour costs.

Or. de

Amendment 830
Sergio Gaetano Cofferati

Proposal for a directive
Article 81 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. The reasons for the use of subcontractors shall be set out in the procurement documents, strictly motivated by technical considerations and not circumvent relevant legislation and obligations which apply where the provision of works, services and supplies takes place;

Or. en

Amendment 831
Heide Rühle

Proposal for a directive
Article 81 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States may provide that, at the request of the subcontractor and where the nature of the contract so allows, the contracting entity shall transfer due payments directly to the subcontractor for services, supplies or works provided to the main contractor. In such case, Member

deleted

States shall put in place appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment shall be set out in the procurement documents.

Or. en

Justification

The relationship between a contractor and a subcontractor is a fundamental element of contract law. The proposal will lead to situations where subcontractor try to get directly paid by the contracting authority and may deprive the authority from her right to withhold payments from the contractor for valid contract performment reasons

Amendment 832

Frank Engel, Andreas Schwab

Proposal for a directive

Article 81 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States may provide that, at the request of the subcontractor and where the nature of the contract so allows, the contracting entity shall transfer due payments directly to the subcontractor for services, supplies or works provided to the main contractor. In such case, Member States shall put in place appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment shall be set out in the procurement documents.

deleted

Or. fr

Amendment 833

Malcolm Harbour, Edvard Kožušník

**Proposal for a directive
Article 81 – paragraph 2**

Text proposed by the Commission

Amendment

2. Member States may provide that, at the request of the subcontractor and where the nature of the contract so allows, the contracting entity shall transfer due payments directly to the subcontractor for services, supplies or works provided to the main contractor. In such case, Member States shall put in place appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment shall be set out in the procurement documents.

deleted

Or. en

Justification

Direct payment by Contracting authorities to subcontractors breaches the legal principle of the freedom to contract and removes the leverage main suppliers have over their supply chain in terms of ensuring timely and quality delivery of the product or service outsourced to the subcontractor.

**Amendment 834
Peter Simon**

**Proposal for a directive
Article 81 – paragraph 2**

Text proposed by the Commission

Amendment

2. Member States may provide that, at the request of the subcontractor and where the nature of the contract so allows, the contracting entity shall transfer due payments directly to the subcontractor for services, supplies or works provided to the main contractor. In such case, Member States shall put in place appropriate mechanisms permitting the main contractor to object to undue payments.

deleted

The arrangements concerning that mode of payment shall be set out in the procurement documents.

Or. de

Amendment 835

Marc Tarabella

Proposal for a directive

Article 81 – paragraph 2

Text proposed by the Commission

2. Member States *may* provide that, at the request of the subcontractor and where the nature of the contract so allows, the contracting entity *shall* transfer due payments directly to the *subcontractor* for services, supplies or works provided to the main contractor. In such case, Member States shall put in place appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment *shall be set out* in the procurement documents.

Amendment

2. Member States *shall limit the possibility for a tenderer to subcontract when executing a public contract to a maximum of three or less successive subcontractors. Member States shall* provide that at the request of the subcontractor, and where the nature of the contract so allows, the contracting entity *must* transfer due payments directly to the *subcontractors* for services, supplies or works provided to the main contractor. In such case, Member States shall put in place appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment *must be determined* in the procurement documents.

Or. fr

Amendment 836

Raffaele Baldassarre

Proposal for a directive

Article 81 – paragraph 2

Text proposed by the Commission

2. Member States *may* provide that, at the request of the subcontractor and where the nature of the contract so allows, the

Amendment

2. Member States *shall* provide that, at the request of the subcontractor, *with the consent of the main contractor* and where

contracting entity shall transfer due payments directly to the subcontractor for services, supplies or works provided to the main contractor. In such case, Member States shall put in place appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment shall be set out in the procurement documents.

the nature of the contract so allows, the contracting entity shall transfer due payments directly to the subcontractor for services, supplies or works provided to the main contractor. In such case, Member States shall put in place appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment shall be set out in the procurement documents.

Or. it

Amendment 837
Evelyne Gebhardt

Proposal for a directive
Article 81 – paragraph 2

Text proposed by the Commission

2. Member States *may* provide that, at the request of the subcontractor and where the nature of the contract so allows, the contracting *entity* shall transfer due payments directly to the subcontractor for services, supplies or works provided to the main contractor. In such case, Member States shall put in place appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment shall be set out in the procurement documents.

Amendment

2. Member States *shall* provide that at the request of the subcontractor and where the nature of the contract so allows, the contracting *authority* shall transfer due payments directly to the subcontractor for services, supplies or works provided to the main contractor. In such case, Member States shall put in place appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment shall be set out in the procurement documents.

Or. de

Amendment 838
Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski

Proposal for a directive
Article 81 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States may decide that the contracting entity may exclude a subcontractor indicated by the tender if:

(i) the subcontractor does not fulfil criteria for selection envisaged for a tender

(ii) the subcontractor is not capable to properly fulfil its part of the contract

Terms of participation in a procedure and capacity of a subcontractor to properly fulfil its part of the contract are assessed proportionally to the part of the contract awarded to the subcontractor, on the basis of contract award criteria indicated in Article 76.

Or. en

Justification

Contracting authorities should have more possibilities to exert influence on subcontracting by the successful tenderer. In particular they should be empowered to verify the suitability and qualification of proposed subcontractors. All requirements to that effect shall be in conformity with the principle of proportionality.

Amendment 839

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 81 – paragraph 3

Text proposed by the Commission

Amendment

3. Paragraphs 1 and 2 shall be without prejudice to the question of the principal economic operator's liability.

deleted

Or. en

Justification

This is unclear as to what it refers to.

Amendment 840

Peter Simon

**Proposal for a directive
Article 81 – paragraph 3**

Text proposed by the Commission

3. **Paragraphs 1 and 2** shall be without prejudice to the question of the principal economic operator's liability.

Amendment

3. **Paragraph 1** shall be without prejudice to the question of the principal economic operator's liability.

Or. de

Amendment 841

Evelyne Gebhardt, Birgit Sippel

**Proposal for a directive
Article 81 – paragraph 3**

Text proposed by the Commission

3. **Paragraphs 1 and 2 shall be without prejudice to the question of the principal economic operator's liability.**

Amendment

3. ***The main contractor and any intermediate subcontractor may, in addition to or in place of a subcontractor, be held directly liable as a guarantor by the employee and/or common funds or institutions of social partners for any liability which arises from the failure by a subcontractor to comply with provisions relating to social and employment conditions, such as 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***

shall also apply in cross-border situations, where workers from one Member State provide services in another Member State. This provision shall apply without being subject to any further conditions, and in particular without the employer being directly at fault.

Or. de

Amendment 842
Heide Rühle

Proposal for a directive
Article 81 – paragraph 3

Text proposed by the Commission

3. *Paragraphs 1 and 2* shall be without prejudice to the question of the principal economic operator's liability.

Amendment

3. *Paragraph 1* shall be without prejudice to the question of the principal economic operator's liability.

Or. en

Amendment 843
Frank Engel, Andreas Schwab

Proposal for a directive
Article 81 – paragraph 3

Text proposed by the Commission

3. *Paragraphs 1 and 2* shall be without prejudice to the question of the principal economic operator's liability.

Amendment

3. *Paragraph 1* shall be without prejudice to the question of the principal economic operator's liability.

Or. fr

Amendment 844
Marc Tarabella

Proposal for a directive
Article 81 – paragraph 3

Text proposed by the Commission

3. Paragraphs 1 and 2 shall be without prejudice to the question of the principal economic operator's liability.

Amendment

3. The reasons for using subcontractors must be set out in the contract documents and strictly justified by technical considerations. Subcontracting may not be used to circumvent the relevant legislation and the obligations relating to the supply of works, services and supplies.

Paragraphs 1 and 2 shall be without prejudice to the liability of the project manager and subcontractors.

Member States must provide for a system of joint and several liability in the subcontracting chain.

Or. fr

Amendment 845

Sergio Gaetano Cofferati, Raffaele Baldassarre

Proposal for a directive Article 81 – paragraph 3

Text proposed by the Commission

3. Paragraphs 1 and 2 shall be without prejudice to the question of the principal economic operator's liability.

Amendment

3. Paragraphs 1 and 2 shall be without prejudice to the question of the **main contractor's and subcontractors' liability**.

Member States shall provide for a system of joint and several liability down the subcontracting chain.

The principal economic operator and any subcontractor involved in doing work on a public contract shall be jointly and severally liable for any liability which arises from the failure by a subcontractor to comply with provisions relating to fundamental rights, health and safety requirements, social rules and standards, employment and working conditions, health and safety at workplace and social security, as set out by EU and national laws, regulations or administrative

provisions, collective agreement and contracts, and international labour law provisions listed in Annex XIV, that apply in the place where the work, service or supply is performed.

Member States may provide for more stringent liability rules under national law.

Or. en

Amendment 846
Evelyne Gebhardt, Birgit Sippel

Proposal for a directive
Article 81 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. A maximum of three undertakings may be involved successively in the performance of a public contract as subcontractors.

Or. de

Amendment 847
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 81 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Contracting entities shall ensure that successful tenderers are contractually obliged to comply in the course of performance of the contract with mandatory legal, regulatory or administrative provisions in force in the Member State of contract performance.

Furthermore, where the successful tenderer subcontracts a part of the works, supplies or services, and where, in the

course of performance of the contract, the provisions referred to in the first subparagraph have been breached by any subcontractor as established by a Court or other competent authority, the successful tenderer shall take effective, proportionate and dissuasive contractual sanctions against the subcontractor(s) concerned;

Where the successful tenderer has failed to comply with the obligations set out in the first and/or second subparagraphs within three months of the initial ruling of the Court or other competent authority, the contracting entity shall refer the matter to the Court or other competent authority for a decision on appropriate sanctions.

Or. en

Justification

This proposal seeks to take into account the rapporteur's concerns over applicable laws affecting the main contractor's obligations and those obligations throughout the supply chain, while ensuring these new rules remain compatible with the basic principles of freedom to contract, and are not misused.

Amendment 848
Marc Tarabella

Proposal for a directive
Article 81 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The main economic operator and any subcontractor involved in carrying out works in a public contract shall be jointly and severally liable for non-compliance by the subcontractor in relation to fundamental rights, health and safety requirements, social welfare rules and standards, requirements associated with employment and working conditions, health and safety in the workplace and social security, as well as failure to

comply with any relevant provision of European Union law, any national legislative, administrative or regulatory provision, collective agreements and contracts and the international conventions listed in Annex XIV that apply in the place where the work or service is carried out or supplies are provided.

These obligations shall also apply in cross-border situations, where workers from one Member State provide services in another Member State.

The contracting entity in its contract with the main contractor, and the main contractor and any intermediate subcontractor in their contracts with their subcontractors, shall stipulate that in the event that they have reasons to believe that their immediate subcontractor has violated the rules referred to in the first subparagraph, the immediate subcontractor must take immediate action to remedy the situation, and that, failing this, the contract concerned shall be terminated.

The Member States may provide for stricter liability rules under their national law.

Or. fr

Amendment 849
Pablo Arias Echeverría

Proposal for a directive
Article 82 – paragraph 2 – introductory part

Text proposed by the Commission

2. A modification of a contract during its term shall be considered substantial within the meaning of paragraph 1, where it renders the contract substantially different from the one initially concluded. ***In any case, without*** prejudice to paragraph 3 and

Amendment

2. A modification of a contract during its term shall be considered substantial within the meaning of paragraph 1, where it renders the contract substantially different from the one initially concluded. ***Without*** prejudice to paragraph 3 and 4, a

4, a modification shall be considered substantial where one of the following conditions is met:

modification shall be considered substantial where one of the following conditions is met:

Or. es

Amendment 850

Marc Tarabella

Proposal for a directive

Article 82 – paragraph 2 – introductory part

Text proposed by the Commission

2. A modification of a contract during its term shall be considered substantial within the meaning of paragraph 1, where it renders the contract substantially different from the one initially concluded.

In any case, without prejudice to paragraph 3 and 4, a modification shall be considered substantial where one of the following conditions is met:

Amendment

2. In any case, without prejudice to paragraph 3 and 4, a modification shall be considered substantial where one of the following conditions is met:

Or. fr

Amendment 851

Philippe Juvin

Proposal for a directive

Article 82 – paragraph 2 – introductory part and (-a) and (-aa) (new)

Text proposed by the Commission

2. A modification of a contract during its term shall be considered substantial within the meaning of paragraph 1, where it renders the contract substantially different from the one initially concluded. In any case, without prejudice to paragraph 3 and 4, a modification shall be considered substantial where one of the following conditions is met:

Amendment

2. A modification of a contract during its term shall be considered substantial within the meaning of paragraph 1, where it renders the contract substantially different from the one initially concluded. In any case, without prejudice to paragraph 3 and 4, a modification shall be considered substantial where one of the following conditions is met:

(-a) the modification changes the nature

of the contract;
(-aa) the modification entails the
replacement of the contractual partner;

Or. fr

Justification

The provisions concerning the modification of current contracts need to be supplemented (altering the nature of the contract is always a substantial modification) and clarified (the current paragraph 3 has been incorporated into paragraph 2 in the interests of simplification, given that it also concerns a substantial modification).

Amendment 852
Philippe Juvin

Proposal for a directive
Article 82 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the selection of other candidates than those initially selected or would have allowed for awarding the contract to another tenderer; *deleted*

Or. fr

Justification

Reorganisation of the article (see the amendment to Article 82, paragraph 2).

Amendment 853
Philippe Juvin

Proposal for a directive
Article 82 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) the modification changes the economic balance of the contract in favour of the contractor;

deleted

Or. fr

Justification

Reorganisation of the article (see the amendment to Article 82, paragraph 2).

Amendment 854

Pablo Arias Echeverría

Proposal for a directive

Article 82 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) the modification changes the economic balance of the contract in favour of the contractor;

(b) the modification changes the economic balance of the contract in favour of the contractor, ***as defined when the contract is awarded;***

Or. es

Amendment 855

Philippe Juvin

Proposal for a directive

Article 82 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) the modification extends the scope of the contract considerably to encompass supplies, services or works not initially covered.

deleted

Or. fr

Justification

Reorganisation of the article (see the amendment to Article 82, paragraph 2).

Amendment 856

Pablo Arias Echeverría

Proposal for a directive

Article 82 – paragraph 2 – point c

Text proposed by the Commission

(c) the modification extends the scope of the contract considerably to encompass supplies, services or works not initially covered.

Amendment

(c) the modification extends the scope of the contract considerably to encompass supplies, services or works not initially covered. ***However, the contract may also be extended, if an appropriate technical justification is provided beforehand, to cover supplies, services or works intimately linked to its original object.***

Or. es

Amendment 857

Marc Tarabella

Proposal for a directive

Article 82 – paragraph 2 – point c

Text proposed by the Commission

(c) the modification extends the ***scope*** of the contract considerably to encompass supplies, services or works not initially covered.

Amendment

(c) the modification extends the ***purpose*** of the contract considerably to encompass supplies, services or works not initially covered.

Or. fr

Amendment 858

Philippe Juvin

Proposal for a directive

Article 82 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

3. The replacement of the contractual partner shall be considered a substantial modification within the meaning of paragraph 1.

deleted

Or. fr

Justification

Reorganisation of the article (see the amendment to Article 82, paragraph 2).

Amendment 859

Philippe Juvin

Proposal for a directive

Article 82 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

However, the first subparagraph shall not apply in the event of universal or partial succession into the position of the initial contractor, following corporate restructuring operations or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive.

Paragraph 2(-aa) shall not apply in the event of universal or partial succession into the position of the initial contractor, following corporate restructuring operations, **transfer of capital or assets between undertakings** or **the taking-over of a contractual partner following** insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive.

Or. fr

Justification

Documents attesting to the non-substantial nature of the modification caused by a change of contractual partner should also cover the transfer of capital or assets between undertakings.

Amendment 860
Heide Rühle

Proposal for a directive
Article 82 – paragraph 3 – subparagraph 2

Text proposed by the Commission

However, the first subparagraph shall not apply in the event of universal or partial succession into the position of the initial contractor, following corporate restructuring operations or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive.

Amendment

However, the first subparagraph shall not apply in the event of universal or partial succession into the position of the initial contractor, following corporate restructuring operations or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive ***or in case of the take-over of the main contractors' signatory status by the contracting authority accordingly to the Member State provisions in line with Article 81.***

Or. en

Amendment 861
Pablo Arias Echeverría

Proposal for a directive
Article 82 – paragraph 3 – subparagraph 2

Text proposed by the Commission

However, the first subparagraph shall not apply in the event of universal or partial succession into the position of the initial contractor, following corporate restructuring operations or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive.

Amendment

However, the first subparagraph shall not apply in the event of universal or partial succession into the position of the initial contractor, following corporate restructuring operations, ***as a result of a contract clause,*** or insolvency of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive.

Amendment 862**Heide Rühle****Proposal for a directive****Article 82 – paragraph 4***Text proposed by the Commission*

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 12 and where it is below **5%** of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Amendment

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 12 and **should it be higher**, where it is below **20 %** of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Or. en

Amendment 863**Frank Engel, Constance Le Grip****Proposal for a directive****Article 82 – paragraph 4***Text proposed by the Commission*

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 12 and where it is below **5%** of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several

Amendment

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 12 and where it is below **15%** of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several

successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Or. fr

Amendment 864

Malcolm Harbour, Edvard Kožušník, Adam Bielan

Proposal for a directive

Article 82 – paragraph 4

Text proposed by the Commission

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 12 and where it is below **5%** of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Amendment

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 12 and where it is below **20 %** of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Or. en

Amendment 865

Bernadette Vergnaud

Proposal for a directive

Article 82 – paragraph 4

Text proposed by the Commission

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not

Amendment

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not

exceed the thresholds set out in Article 12 and where it is below 5% of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

exceed the thresholds set out in Article 12 and where it is below 5% of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications. *When the value of the modification does not exceed half of the thresholds laid down in Article 12 and is equal to or exceeds 5 % of the price of the initial contract, assessment of whether the modification is substantial or not shall be carried out in accordance with the provisions of paragraph 2.*

Or. fr

Amendment 866
Tiziano Motti

Proposal for a directive
Article 82 – paragraph 4

Text proposed by the Commission

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 12 and where it is below 5% of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Amendment

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 12 and where it is below **15** % of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Or. en

Justification

According to the proposal, a modification of a contract during its term shall be considered substantial when the value of the modification reaches 5% of the price of the initial contract. In the light of the case law and the doctrine, this threshold is far too low. In 2000, the European Court of Justice acknowledged that an increase of 10% did not require a new procurement procedure (see judgment, 5 October 2000, case C-337/98, Commission of the European Communities vs French Republic). Similarly, under French case law, a modification between 10 and 15% is usually not considered to be substantial and the French doctrine also considers a modification as a new award when it reaches 15%. Setting the threshold at 5% would prevent any modification of contracts during their term. It would lead to problematic consequences in executing contracts in so far as contracting entities have to deal with unforeseen circumstances requiring an adaptation of contracts during their term. They need pragmatic solutions instead. A 15% threshold, while providing flexibility to contracting entities to modify contracts during their term, takes up the solutions developed by national and European case law and aims at avoiding misuse in the application of the procurement rules.

Amendment 867

Pablo Arias Echeverría

Proposal for a directive

Article 82 – paragraph 4

Text proposed by the Commission

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value **does not exceed the thresholds set out in Article 12 and where it** is below 5% of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Amendment

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value is below **10%** of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Or. es

Amendment 868

Marc Tarabella

Proposal for a directive
Article 82 – paragraph 4

Text proposed by the Commission

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 12 **and** where it is below **5%** of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Amendment

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 12 **or** where it is below **10%** of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Or. fr

Amendment 869
Lara Comi

Proposal for a directive
Article 82 – paragraph 4

Text proposed by the Commission

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 12 **and** where it is below **5%** of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Amendment

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 12 **or, where it does exceed them,** where it is below **20%** of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Or. it

Amendment 870

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

Proposal for a directive

Article 82 – paragraph 4

Text proposed by the Commission

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 12 and where it is below 5% of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Amendment

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 12 and where it is below **15** % of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Or. en

Justification

In the light of the case law and the doctrine, this threshold is far too low. Supplementary services amounting to 5% to 10% of the price of the initial contract are common for works contracts in utilities procurement, the 5% threshold appears to be unreasonable.

Amendment 871

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Article 82 – paragraph 4

Text proposed by the Commission

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 12

Amendment

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 12

and where it is below **5%** of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

and where it is below **15 %** of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Or. en

Justification

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

Amendment 872 **Jürgen Creutzmann**

Proposal for a directive **Article 82 – paragraph 4**

Text proposed by the Commission

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 12 and where it is below **5%** of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Amendment

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 12 and where it is below **15 %** of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Or. en

Justification

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

Amendment 873 **Philippe Juvin**

Proposal for a directive **Article 82 – paragraph 4**

Text proposed by the Commission

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 12 and where it is below 5% of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Amendment

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 12 and where it is below 5 % of the **updated** price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Or. fr

Justification

This takes into account the updated price of the original contract, which seems a more correct point of reference.

Amendment 874 **Malcolm Harbour, Edvard Kožušník**

Proposal for a directive **Article 82 – paragraph 4 a (new)**

4a. Furthermore, where the scope of the contract might evolve pursuant to:

- significant innovations or technological change;

- a technical difficulty in operation or maintenance requiring the intervention of the initial contractor;

- the necessary implementation of emergency and unforeseeable works, services or supplies which cannot be technically or economically separated from the main contract without causing major disruption to the contracting entity; the modification shall not be considered substantial within the meaning of paragraph 1.

Or. en

Amendment 875
Pablo Arias Echeverría

Proposal for a directive
Article 82 – paragraph 5

Text proposed by the Commission

Amendment

5. Contract modifications shall not be considered substantial within the meaning of paragraph 1 where they have been provided for in the procurement documents in clear, precise and unequivocal review clauses or options. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the contract.

5. Contract modifications shall not be considered substantial within the meaning of paragraph 1 where they have been provided for in the procurement documents in clear, precise and unequivocal review clauses or options, **or where they are a result of errors or omissions in the procurement documents provided by the contracting authorities or entities**. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the contract.

Amendment 876**Marc Tarabella****Proposal for a directive****Article 82 – paragraph 5***Text proposed by the Commission*

5. Contract modifications shall not be considered substantial within the meaning of paragraph 1 where they have been provided for in the procurement documents in clear, precise and unequivocal review clauses or options. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the contract.

Amendment

5. Contract modifications shall not be considered substantial within the meaning of paragraph 1 where they have been provided for in the procurement documents in clear, precise and unequivocal review clauses or options, ***as well as in the form of price revision clauses or pricing clauses***. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the contract.

Or. fr

Amendment 877**Heide Rühle****Proposal for a directive****Article 82 – paragraph 6 – subparagraph 2***Text proposed by the Commission*

Contracting entities shall publish in the Official Journal of the European Union a notice on such modifications. Such notices shall contain the information set out in Annex XVI and be published in accordance with Article 65.

*Amendment****deleted***

Or. en

Amendment 878
Heide Rühle

Proposal for a directive
Article 82 – paragraph 7 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 879
Philippe Juvin

Proposal for a directive
Article 82 – paragraph 7 – introductory part

Text proposed by the Commission

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

Amendment

7. Contracting entities **may not invoke the provisions of this article concerning** modifications of the contract in the following cases:

Or. fr

Justification

Clarification of the ambiguous wording used in the proposal for a directive.

Amendment 880
Heide Rühle

Proposal for a directive
Article 82 – paragraph 7 – point a

Text proposed by the Commission

(a) where the modification would aim at remedying deficiencies in the

Amendment

deleted

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 883

Pablo Arias Echeverría

Proposal for a directive

Article 82 – paragraph 7 – point b

Text proposed by the Commission

Amendment

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

(b) where the modification would aim at compensating risks of price increases that have been hedged by the contractor ***without prejudice to cases where, irrespective of the provisions of this Article, it restores the economic balance of the contract.***

Or. es

Amendment 884

Malgorzata Handzlik

Proposal for a directive

Article 83

Text proposed by the Commission

Amendment

Article 83

deleted

Termination of contracts

Member States shall ensure that contracting entities have the possibility, under the conditions determined by the applicable national contract law, to terminate a works, supply or service contract during its term, where one of the following conditions is fulfilled:

(a) the exceptions provided for in Article 21 cease to apply following a private participation in the legal person awarded the contract pursuant to Article 21 (4);

(b) a modification of the contract constitutes a new award within the meaning of Article 82;

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

Or. en

Justification

Such provision is not necessary in the EU legislation on public procurement. It can be sufficiently regulated by national legislation.

Amendment 885
Philippe Juvin

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

Text proposed by the Commission

(a) the exceptions provided for in Article 21 cease to apply following a private participation in the legal person awarded the contract pursuant to Article 21(4);

Amendment

(a) the exceptions provided for in Article 21 cease to apply following a private participation in the legal person awarded the contract pursuant to Article 21;

Or. fr

Justification

There is no reason to restrict this provision concerning the termination of public contracts to agreements on horizontal cooperation (Article 21(4)). It should apply to all the cases referred to in Article 21 (in-house, joint in-house).

Amendment 886
Pablo Arias Echeverría

Proposal for a directive
Article 83 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) a modification of the contract constitutes a new award within the meaning of Article 82;

deleted

Or. es

Amendment 887
Heide Rühle

Proposal for a directive
Article 83 – paragraph 1 – point c

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 888
Pablo Arias Echeverría

Proposal for a directive
Article 83 – paragraph 1 – point c

Text proposed by the Commission

Amendment

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

deleted

Or. es

Amendment 889

Andreas Schwab, Frank Engel, Jürgen Creutzmann

Proposal for a directive

Article 83 – paragraph 1 – point c

Text proposed by the Commission

Amendment

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

(c) the Court of Justice of the European Union finds, in a procedure under Article 258 of the Treaty, that a Member State has failed to fulfil its obligations under the Treaties due to the fact that a contracting entity belonging to that Member State has awarded the contract in question without complying with its obligations under the Treaties and this Directive. ***A contractor who was unaware of the contracting authority's breach of the law may claim compensation for the losses suffered as a result of the termination of the contract.***

Or. de

Justification

A contractor who was unaware of the contracting authority's breach of the law should be able to claim compensation for any costs incurred in the belief that the contract would be honoured and/or any losses suffered.

Amendment 890
Heide Rühle

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

Text proposed by the Commission

Amendment

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

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

(b) claim for the termination of the contract.

Or. en

Amendment 891
Evelyne Gebhardt, Birgit Sippel

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

Text proposed by the Commission

Amendment

Member States shall enjoy a broad measure of discretion when it comes to organising the selection of service providers in the manner they regard as most appropriate; they shall be free to provide social or other specific services themselves or to organise their provision in another way which does not involve the conclusion of public contracts, provided that the arrangements are consistent with the basic principles of transparency and non-discrimination.

Amendment 892
Sergio Gaetano Cofferati

Proposal for a directive
Article 83 a (new)

Text proposed by the Commission

Amendment

Article 83a

Monitoring of contract performance and register of non-compliance

- 1. Contracting entities may monitor the performance of the contractor awarded the contract and, at appropriate stages during the contract term, carry out an assessment of performance using a method that is based on objective and measurable criteria and applied in a systematic, consistent and transparent way. Any performance assessment shall be communicated to the contractor in question, which shall be given the opportunity to object to the findings within a reasonable timeframe and to obtain judicial protection.***
- 2. Where an assessment is carried out in accordance with paragraph 1 and an economic operator or a subcontractor appointed for that contract by the economic operator has been found to have shown significant or persistent deficiencies in the performance of any substantive requirement under the contract and the economic operator has not objected to the findings or the economic operator's objections have not been validated through seeking judicial protection, the contracting entity shall communicate the fact and the necessary detail of the such an assessment to the supervisory and administrative authorities as referred to in Articles 93 and 97.***
- 3. In that case the economic operator***

shall be inscribed in an official register of non-compliance, managed by the supervisory and administrative authorities as referred to in Articles 93 and 97.

4. Member States shall ensure that contracting entities can easily consult the official registers of non-compliance and obtain information and assistance with regard to the application of this Article through the assistance provided by supervisory and administrative authorities as mentioned in Articles 93, 96 and 97.

Or. en

Amendment 893
Frank Engel, Andreas Schwab

Proposal for a directive
Article 84

Text proposed by the Commission

Amendment

Article 84

deleted

Award of contracts for social and other specific services

Contracts for social and other specific services listed in Annex XVII shall be awarded in accordance with this Chapter where the value of the contracts is equal to or greater than the threshold indicated in Article 12(c).

Or. en

Justification

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

Amendment 894
Robert Rochefort

Proposal for a directive
Article 84 – paragraph 1

Text proposed by the Commission

Contracts for social and other specific services listed in Annex **XVII** shall be awarded in accordance with this Chapter where the value of the contracts is equal to or greater than the threshold indicated in Article 12(c).

Amendment

Contracts for social and other specific services listed in Annex **XVIIa(B)** shall be awarded in accordance with this Chapter where the value of the contracts is equal to or greater than the threshold indicated in Article 12(c).

Or. fr

Amendment 895
Marc Tarabella

Proposal for a directive
Article 84 – paragraph 1

Text proposed by the Commission

Contracts for social and other specific services listed in Annex XVII shall be awarded in accordance with this Chapter where the value of the contracts is equal to or greater than the threshold indicated in Article 12(c).

Amendment

Without prejudice to the freedom of the Member States and/or the contracting entities to provide social services and other specific services and to organise these in a way not involving the award of a public contract, contracts for social and other specific services listed in Annex XVII shall be awarded in accordance with this Chapter where the value of the contracts is equal to or greater than the threshold indicated in Article 12(c).

Or. fr

Amendment 896
Frank Engel, Andreas Schwab

Proposal for a directive
Article 85

Text proposed by the Commission

Article 85

Amendment

deleted

Publication of notices

- 1. Contracting entities intending to award a contract for the services referred to in Article 84 shall make known their intention by means of a contract notice.**
- 2. Contracting entities that have awarded a contract for the services referred to in Article 84 shall make known the results by means of contract award notice.**
- 3. The notices referred to in paragraphs 1 and 2 shall contain the information referred to in Annex XVIII in accordance with the standard model notices. The Commission shall establish the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100.**
- 4. The notices referred to in paragraphs 1 and 2 shall be published in accordance with Article 65.**

Or. en

Justification

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

Amendment 897
Heide Rühle

Proposal for a directive
Article 85 – paragraph 1

Text proposed by the Commission

Amendment

1. Contracting entities intending to award a contract for the services referred to in Article 84 shall make known their intention by means of a contract notice. *deleted*

Or. en

Justification

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

Amendment 898

Peter Simon

Proposal for a directive

Article 85 – paragraph 1

Text proposed by the Commission

Amendment

1. Contracting entities intending to award a contract for the services referred to in Article 84 shall make known their intention by means of a contract notice. **deleted**

Or. de

Amendment 899

Heide Rühle

Proposal for a directive

Article 85 – paragraph 3

Text proposed by the Commission

Amendment

3. The notices referred to in paragraphs 1 and 2 shall contain the information referred to in Annex XVIII in accordance with the standard model notices. The Commission shall establish the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100. **deleted**

Or. en

Amendment 900

Peter Simon

Proposal for a directive
Article 85 – paragraph 3

Text proposed by the Commission

3. The notices referred to in **paragraphs 1 and 2** shall contain the information referred to in Annex XVIII in accordance with the standard model notices. **The Commission shall establish the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100.**

Amendment

3. The notices referred to in **paragraph 2** shall contain the information referred to in Annex XVIII in accordance with the standard model notices.

Or. de

Amendment 901
Cornelis de Jong

Proposal for a directive
Article 85 – paragraph 3

Text proposed by the Commission

3. The **notices referred to in paragraphs 1 and 2** shall contain the information referred to in Annex XVIII in accordance with the standard model notices. The Commission shall establish the standard **forms**. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100.

Amendment

3. The **notice referred to in paragraph 2** shall contain the information referred to in Annex XVIII in accordance with the standard model notices. The Commission shall establish the standard **form**. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100.

Or. en

Amendment 902
Peter Simon

Proposal for a directive
Article 85 – paragraph 4

Text proposed by the Commission

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

Amendment

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

with Article 65.

Article 65.

Or. de

Amendment 903
Heide Rühle

Proposal for a directive
Article 85 – paragraph 4

Text proposed by the Commission

4. The notices referred to in *paragraphs 1 and 2* shall be published in accordance with Article 65.

Amendment

4. The notices referred to in *paragraph 1* shall be published in accordance with Article 65.

Or. en

Amendment 904
Cornelis de Jong

Proposal for a directive
Article 85 – paragraph 4

Text proposed by the Commission

4. The *notices* referred to in *paragraphs 1 and 2* shall be published in accordance with Article 65.

Amendment

4. The *notice* referred to in *paragraph 2* shall be published in accordance with Article 65.

Or. en

Amendment 905
Frank Engel, Andreas Schwab

Proposal for a directive
Article 86

Text proposed by the Commission

Article 86
Principles of awarding contracts

Amendment

deleted

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

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

Or. en

Justification

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

**Amendment 906
Heide Rühle**

**Proposal for a directive
Article 86 – paragraph 1**

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 907

Peter Simon

Proposal for a directive

Article 86 – paragraph 1

Text proposed by the Commission

Amendment

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

deleted

Or. de

Amendment 908

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

Proposal for a directive

Article 86 – paragraph 1

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 909

Heide Rühle

Proposal for a directive

Article 86 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 910

Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Article 86 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Member States shall ensure that **contracting** authorities take into account the need to ensure **high** quality, continuity, accessibility, **affordability**, availability and comprehensiveness of the services, the specific needs of different categories of users, **including disadvantaged and vulnerable groups**, the involvement and empowerment of users and innovation. Member States **shall** provide that the choice of the service provider shall not be made solely on the basis of the price for the provision of the service, **but shall take into account the quality and sustainability criteria for social services set out above.**

Or. de

Amendment 911
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Article 86 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall ensure that contracting authorities are fully solvent in their dealings with economic operators and that these authorities establish in advance a suitable guarantee instrument to secure the operator's credit.

Or. it

Justification

The protracted state of insolvency of public authorities in relation to private undertakings which have performed works and services for them can no longer be tolerated. The establishment of a suitable guarantee instrument to secure the debt which would be owed to the economic operator following the completion of the work could represent an indispensable tool to ensure that it was paid.

Amendment 912
Evelyne Gebhardt, Birgit Sippel

Proposal for a directive
Article 86 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States and/or contracting authorities shall ensure that economic operators comply with obligations relating to social and employment conditions, such as 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 shall also apply in cross-border situations, where workers from one Member State provide services in another Member State.

Or. de

Amendment 913
Evelyne Gebhardt

Proposal for a directive
Article 86 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Member States shall ensure that the provisions on subcontracting, as set out in Article 81, are observed.

Or. de

Amendment 914
Evelyne Gebhardt

Proposal for a directive
Article 86 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2c. When choosing the service provider, Member States may consider using reserved contracts in accordance with Article 31.

Or. de

Amendment 915
Evelyne Gebhardt

Proposal for a directive
Article 86 – paragraph 2 d (new)

Text proposed by the Commission

Amendment

2d. Contracting authorities may reserve specific contracts for non-profit-making organisations which specialise in providing social services, provided that the basic principles of transparency and equal treatment are observed.

Or. de

Amendment 916
Evelyne Gebhardt

Proposal for a directive
Article 86 – paragraph 2 e (new)

Text proposed by the Commission

Amendment

2e. Member States shall ensure that the grounds for exclusion set out in Article 55 of Directive 2004/18/EC are applied.

Or. de

Amendment 917
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 89 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Amendment

Where release of information on the outcome of the contest would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, including the interests of the economic operator to whom the contract has been awarded, or might prejudice fair competition between economic operators, such information may be withheld from

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

publication.

Or. en

Amendment 918
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Title 4 – title

Text proposed by the Commission

GOVERNANCE

Amendment

**ENFORCEMENT, REPORTING AND
ADMINISTRATIVE COOPERATION**

Or. en

Amendment 919
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 92 – paragraph 1

Text proposed by the Commission

In conformity with Council Directive 92/13/EEC, Member States shall ensure correct application of this Directive by effective, available and transparent mechanisms which complement the system in place for the review of decisions taken by contracting entities.

Amendment

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

Or. en

Amendment 920
Evelyne Gebhardt

Proposal for a directive
Article 92 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall ensure that contracting authorities can easily obtain information and assistance with regard to the application of this Article through the supervisory and administrative authorities provided for in Article 93 and 97.

Or. de

Amendment 921

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 92 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 922

Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 92 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

3. The results of the monitoring activities pursuant to paragraph 2 shall be made available to the public through appropriate means of information. In particular, Member States shall publish, at least biennially, an overview of the most frequent sources of wrong application or of legal uncertainty, including possible structural or recurring problems in the application of the rules, hereunder possible cases of fraud and other illegal behaviours.

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

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

Or. en

Amendment 923
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 92 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

4. Any person or body which does not

have access to review procedures pursuant to Council Directive 92/13/EEC shall be given the possibility to indicate possible violations of this Directive to a competent authority or structure which shall duly consider any sufficiently substantiated complaint and take appropriate measures subject to powers and competences provided for in national law.

Or. en

Amendment 924
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 92 – paragraph 1 d (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 925
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 92 – paragraph 1 e (new)

Text proposed by the Commission

Amendment

6. Member States shall, without prejudice to the general procedures and working methods established by the Commission for its communications and contacts with Member States, designate a contact point

for cooperation with the Commission as regards the application of Union law and the implementation of the budget from the Union on the basis of Article 17 of the Treaty on the European Union and Article 317 of the Treaty on the Functioning of the European Union.

Or. en

Amendment 926
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 92 – paragraph 1 f (new)

Text proposed by the Commission

Amendment

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

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

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

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

Or. en

Amendment 927
Evelyne Gebhardt, Birgit Sippel

Proposal for a directive
Article 92 a (new)

Text proposed by the Commission

Amendment

Article 92a

Where an economic operator or a subcontractor appointed for a contract has been found to have shown significant or persistent deficiencies in the performance of any substantive requirement under the contract, the contracting authority shall communicate the facts and the necessary details to the supervisory and to the administrative authorities referred to in Articles 93 and 97.

Or. de

Amendment 928
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 92 a (new)

Text proposed by the Commission

Amendment

Article 92a

Register of non-compliance

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

2. The register of non-compliance shall be processed and updated regularly by the supervisory and administrative authorities mentioned in Article 93. Contracting entities shall have the right and the obligation to consult the register before awarding a public contract.

Or. en

Amendment 929
Evelyne Gebhardt, Birgit Sippel

Proposal for a directive
Article 92 b (new)

Text proposed by the Commission

Amendment

Article 92b

Non-compliance register

If an economic operator breaches the conditions set out in the contract, in particular regarding social and employment protection, working conditions and subcontracting, its name shall be entered in a non-compliance register. Inclusion in a non-compliance register shall be a ground for exclusion.

Or. de

Amendment 930
Proposal for a directive
Article 93

Text proposed by the Commission

Amendment

Article 93

Article deleted

Or. nl

Amendment 931
Heide Rühle

Proposal for a directive
Article 93

Text proposed by the Commission

Amendment

Article 93

deleted

Public oversight

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

designation.

All contracting entities shall be subject to such oversight.

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

The annual report shall include the following:

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

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

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

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

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

(b) providing legal advice to contracting entities on the interpretation of public procurement rules and principles and on

the application of public procurement rules in specific cases;

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

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

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

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

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

The tasks referred to in point (e) shall be

without prejudice to the exercise of rights of appeal under national law or under the system established on the basis of directive 92/13/EEC.

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

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

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

The Commission may require the oversight body to analyse alleged breaches to Union public procurement rules affecting projects co-financed by the budget of the Union. The Commission may entrust the oversight body to follow-up certain cases and to ensure that the

appropriate consequences of breaches to Union public procurement rules affecting projects co-financed are taken by the competent national authorities which will be obliged to follow its instructions.

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

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

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

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

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

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

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

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

Or. en

Amendment 932
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 93

Text proposed by the Commission

Amendment

Article 93

deleted

Public oversight

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

All contracting entities shall be subject to such oversight.

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

The annual report shall include the

following:

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

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

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

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

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

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

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

(d) establishing and applying comprehensive, actionable 'red flag'

indicator systems to prevent, detect and adequately report instances of procurement fraud, corruption, conflict of interest and other serious irregularities;

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

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

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

The tasks referred to in point (e) shall be without prejudice to the exercise of rights of appeal under national law or under the system established on the basis of directive 92/13/EEC.

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

4. Without prejudice to the general procedures and working methods established by the Commission for its

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

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

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

5. The investigation and enforcement activities carried out by the oversight body to ensure that contracting entities' decisions comply with this Directive and the general principles of the Treaty on the Functioning of the European Union shall not replace or prejudge the institutional role of the Commission as guardian of the Treaty. When the Commission decides to refer the treatment of an individual case,

it shall also retain the right to intervene in accordance with the powers conferred to it by the Treaty.

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

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

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

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

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

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

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

Or. en

Justification

In line with the alternative proposals regarding governance tabled in separate amendments. This amendment deletes Article 93 on Public Oversight entirely. Mandating one single national oversight body in each Member State would breach the principle of subsidiarity and would be impossible to implement for those Member States with devolved administrations or federal structures.

Amendment 933

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

Proposal for a directive

Article 93

Text proposed by the Commission

Amendment

Article 93

deleted

Public oversight

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

All contracting entities shall be subject to such oversight.

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

The annual report shall include the following:

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

reasons therefore;

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

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

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

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

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

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

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

(e) drawing the attention of the national competent institutions, including auditing authorities, to specific violations detected

and to systemic problems;

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

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

The tasks referred to in point (e) shall be without prejudice to the exercise of rights of appeal under national law or under the system established on the basis of directive 92/13/EEC.

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

4. Without prejudice to the general procedures and working methods established by the Commission for its communications and contacts with Member States, the oversight body shall act as a specific contact point for the Commission when it monitors the application of Union law and the implementation of the budget from the Union on the basis of Article 17 of the Treaty on the European Union and

Article 317 of the Treaty on the Functioning of the European Union. It shall report to the Commission any violation of this Directive in procurement procedures for the award of contracts directly or indirectly funded by the Union.

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

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

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

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

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

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

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

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

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

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

Or. en

Justification

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

Amendment 934
Peter Simon

Proposal for a directive
Article 93

Text proposed by the Commission

Amendment

Article 93

Article deleted

Or. de

Amendment 935
Jürgen Creutzmann

Proposal for a directive
Article 93

Text proposed by the Commission

Amendment

Article 93

deleted

Public oversight

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

All contracting entities shall be subject to such oversight.

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

The annual report shall include the following:

(a) an indication of the success rate of

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

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

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

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

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

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

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

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

interest and other serious irregularities;

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

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

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

The tasks referred to in point (e) shall be without prejudice to the exercise of rights of appeal under national law or under the system established on the basis of directive 92/13/EEC.

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

4. Without prejudice to the general procedures and working methods established by the Commission for its communications and contacts with Member States, the oversight body shall act as a specific contact point for the

Commission when it monitors the application of Union law and the implementation of the budget from the Union on the basis of Article 17 of the Treaty on the European Union and Article 317 of the Treaty on the Functioning of the European Union. It shall report to the Commission any violation of this Directive in procurement procedures for the award of contracts directly or indirectly funded by the Union.

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

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

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

it by the Treaty.

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

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

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

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

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

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

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

Or. en

Amendment 936
Frank Engel, Philippe Juvin, Andreas Schwab

Proposal for a directive
Article 93 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

1. Member States shall ***ensure*** the oversight and coordination of implementation activities.

Or. fr

Amendment 937
Frank Engel, Philippe Juvin, Andreas Schwab

Proposal for a directive
Article 93 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

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

Amendment

3. The ***competent authorities*** shall be responsible for the following tasks:

Or. fr

Amendment 938
Evelyne Gebhardt, Birgit Sippel

Proposal for a directive
Article 93 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

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

Amendment

(a) monitoring the correct application of public procurement rules and ***of the rules on social and employment protection and working conditions by the economic operator awarded the contract and by its subcontractors, including*** the related

practice by contracting *authorities* and in particular by central purchasing bodies;

Or. de

Amendment 939

Sergio Gaetano Cofferati

Proposal for a directive

Article 93 – paragraph 3 – subparagraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) examining the reports sent to them by the contracting entities that intend to resort to a negotiated procedure without publication;

Or. it

Amendment 940

Sergio Gaetano Cofferati

Proposal for a directive

Article 93 – paragraph 3 – subparagraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) management of the official register of non-compliance as laid down in Article 83a.

Or. en

Amendment 941

Sergio Gaetano Cofferati

Proposal for a directive

Article 93 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Amendment

Member States shall empower the

deleted

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

Or. it

Amendment 942

Frank Engel, Philippe Juvin, Andreas Schwab

Proposal for a directive

Article 93 – paragraph 3 – subparagraph 3

Text proposed by the Commission

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

Amendment

The competent authorities may seize the jurisdiction competent according to national law for the review of contracting entities' decisions where it has detected a violation in the course of its monitoring and legal advising activity.

Or. fr

Amendment 943

Frank Engel, Philippe Juvin, Andreas Schwab

Proposal for a directive

Article 93 – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. Without prejudice to the general procedures and working methods established by the Commission for its communications and contacts with Member States, the *oversight body* shall act as a specific contact point for the Commission when it monitors the application of Union law and the implementation of the budget from the Union on the basis of Article 17 of the

Amendment

4. Without prejudice to the general procedures and working methods established by the Commission for its communications and contacts with Member States, the *competent authorities* shall act as a specific contact point for the Commission when it monitors the application of Union law and the implementation of the budget from the Union on the basis of Article 17 of the

Treaty on the European Union and Article 317 of the Treaty on the Functioning of the European Union. It shall report to the Commission any violation of this Directive in procurement procedures for the award of contracts directly or indirectly funded by the Union.

Treaty on the European Union and Article 317 of the Treaty on the Functioning of the European Union. It shall report to the Commission any violation of this Directive in procurement procedures for the award of contracts directly or indirectly funded by the Union.

Or. fr

Amendment 944

Frank Engel, Philippe Juvin, Andreas Schwab

Proposal for a directive

Article 93 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Amendment

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

deleted

Or. fr

Amendment 945

Frank Engel, Philippe Juvin, Andreas Schwab

Proposal for a directive

Article 93 – paragraph 4 – subparagraph 3

Text proposed by the Commission

Amendment

The Commission may require the oversight body to analyse alleged breaches to Union public procurement rules affecting projects co-financed by the

deleted

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

Or. fr

Amendment 946

Frank Engel, Philippe Juvin, Andreas Schwab

Proposal for a directive

Article 93 – paragraph 5

Text proposed by the Commission

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

Amendment

5. The investigation and enforcement activities carried out by the ***competent authorities*** to ensure that contracting entities' decisions comply with this Directive and the general principles of the Treaty on the Functioning of the European Union shall not replace or prejudice the institutional role of the Commission as guardian of the Treaty. When the Commission decides to refer the treatment of an individual case, it shall also retain the right to intervene in accordance with the powers conferred to it by the Treaty.

Or. fr

Amendment 947

Andreas Schwab, Frank Engel

Proposal for a directive

Article 93 – paragraph 6

Text proposed by the Commission

6. Contracting authorities shall transmit to the national oversight body the full text

Amendment

deleted

of all concluded contracts with a value equal to or greater than

(h) 1 000 000 EUR in the case of supply contracts or service contracts;

(i) 10 000 000 EUR in the case of works contracts.

Or. de

Justification

A comprehensive publication requirement would lead to the disclosure of even the most minor commercial details of certain contracts, with the result that the know-how such contracts contain in the form of trade secrets would be made available to third parties, in some cases in breach of the rules on confidentiality. However, such a requirement would not make for greater transparency, since the contract award decision ends the procurement procedure.

Amendment 948

Frank Engel, Philippe Juvin

Proposal for a directive

Article 93 – paragraph 6 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 949

Andreas Schwab, Frank Engel

Proposal for a directive

Article 93 – paragraph 7

Text proposed by the Commission

7. Without prejudice to the national law concerning access to information, and in accordance with national and EU legislation on data protection, the

deleted

Amendment

oversight body shall, upon written request, give unrestricted and full direct access, free of charge, to the concluded contracts referred to in paragraph 6. Access to certain parts of the contracts may be refused where their disclosure would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

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

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

Or. de

Justification

Existing rights of access to documents in the context of disputes concerning the award of contracts and the additional rights enjoyed by individuals under the already very comprehensive laws on freedom of information are more than sufficient.

Amendment 950

Frank Engel, Philippe Juvin

Proposal for a directive

Article 93 – paragraph 7 – subparagraph 1

Text proposed by the Commission

7. Without prejudice to the national law concerning access to information, and in accordance with national and EU legislation on data protection, the **oversight body** shall, upon written request, give unrestricted and full direct access, free of

Amendment

7. Without prejudice to the national law concerning access to information, and in accordance with national and EU legislation on data protection, the **competent authorities** shall, upon written request, give unrestricted and full direct

charge, to the concluded contracts referred to in paragraph 6. Access to certain parts of the contracts may be refused where their disclosure would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

access, free of charge, to the concluded contracts referred to in paragraph 6. Access to certain parts of the contracts may be refused where their disclosure would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

Or. fr

Amendment 951

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 94 – title

Text proposed by the Commission

Individual *reports on procedures for the award of contracts*

Amendment

Individual **Reporting**

Or. en

Amendment 952

Heide Rühle

Proposal for a directive

Article 94 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

1. Contracting entities shall keep appropriate information on each contract, framework agreement **and** each time a dynamic purchasing system is established. This information shall be sufficient to permit them at a later date to justify decisions taken in connection with:

Amendment

1. Contracting entities shall keep appropriate information on each **above threshold** contract, framework agreement **or** each time a dynamic purchasing system is established. This information shall be sufficient to permit them at a later date to justify decisions taken in connection with:

Or. en

Amendment 953

Heide Rühle

Proposal for a directive

Article 94 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

Contracting entities shall **take appropriate steps to** document the procurement procedures, whether or not the procedures are conducted by electronic means.

Or. en

Amendment 954

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 94 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 955
Evelyne Gebhardt

Proposal for a directive
Article 94 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

Contracting entities shall document the progress of all procurement procedures, whether or not the procedures are conducted by electronic means. To that end, they shall document all stages in the procurement procedure, including all communications with economic operators and internal deliberations, preparation of the tenders, dialogue or negotiation if any, selection and award of the contract, ***the name of the successful tenderer and the reasons for choosing its tender and - if known - the proportion of the contract or of the framework agreement which the successful tenderer plans to subcontract, and information concerning the subcontractors, including their names, addresses and legal representatives.***

Or. de

Amendment 956
Jürgen Creutzmann

Proposal for a directive
Article 94 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Justification

The requirement to document "all internal deliberations" is unnecessary and disproportionate. The provision also creates legal uncertainty, since the term "internal deliberations" is not defined in the directive.

Amendment 957
Heide Rühle

Proposal for a directive
Article 94 – paragraph 2

Text proposed by the Commission

2. The information shall be kept for at least four years from the date of award of the contract so that the contracting entity will be able, during that period, to provide the necessary information to the Commission **or the national oversight body where they so request it.**

Amendment

2. The information shall be kept for at least four years from the date of award of the contract so that the contracting entity will be able, during that period, to provide the necessary information to the Commission **if it so requests.**

Amendment 958
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 94 – paragraph 2

Text proposed by the Commission

2. The information shall be kept for at least four years from the date of award of the contract so that the contracting entity will be able, during that period, to provide the necessary information to the Commission or the national **oversight body** where they so request **it.**

Amendment

2. The information shall be kept for at least four years from the date of award of the contract so that the contracting entity will be able, during that period, to provide the necessary information to the Commission or **to the national authorities or structures referred to in Article 92** where they so request.

Amendment 959

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

Proposal for a directive

Article 95

Text proposed by the Commission

Amendment

Article 95

Article deleted

Or. en

Justification

Gathering statistical data through reports by Member States is unreliable and leads to bureaucracy and costs. The objective of Article 95 is to cross-check the data gathered through the TED database on the basis of Article 64 of the proposal. Both TED data and national reporting data are however very often incomplete. Instead of cross-checking, the TED pillar of statistical data gathering should be further strengthened, the national reporting pillar should be completely abandoned.

Amendment 960

Heide Rühle

Proposal for a directive

Article 95 – paragraph 1

Text proposed by the Commission

Amendment

1. *The bodies established or appointed in accordance with Article 93 shall forward to the Commission an implementation and statistical report on each year, based on a standard form, not later than 31 October of the following year.*

1. *Member States shall ensure that the Commission receives every year an implementation and statistical report on each year, not later than 31 October of the following year.*

Or. en

Amendment 961

Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 95 – paragraph 1

Text proposed by the Commission

1. **The bodies established or appointed in accordance with Article 93** shall forward to the Commission **an implementation and** statistical report on each year, based on a standard form, not later than 31 October of the following year.

Amendment

1. **Member States** shall forward to the Commission **a** statistical report on each year, based on a standard form, not later than 31 October of the following year.

Or. en

Amendment 962
Heide Rühle

Proposal for a directive
Article 95 – paragraph 2

Text proposed by the Commission

2. **The report referred to in paragraph 1 shall contain at least the total value, broken down by category of activity to which Articles 5 to 11 refer, of the contracts awarded below the thresholds set out in Article 12 but which would be covered by this Directive if their value exceeded the threshold.**

Amendment

deleted

Or. en

Amendment 963
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 95 – paragraph 2

Text proposed by the Commission

2. The report referred to in paragraph 1 shall contain **at least the total value, broken down by category of activity to which Articles 5 to 11 refer, of the**

Amendment

2. The report referred to in paragraph 1 shall contain, **for** contracts awarded below the thresholds set out in Article 12 **of this Directive**, but which would be covered by

contracts awarded below the thresholds set out in Article 12 but which would be covered by this Directive if *their* value exceeded the threshold.

this Directive if *its* value exceeded the threshold, ***an estimation of the aggregated total value of the procurement during the year concerned. This estimation may in particular be based on data available under national publication requirements.***

Or. en

Amendment 964
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 95 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that this report contains ***at least*** the number and value of contracts awarded, broken down by categories of activity to which Articles 5 to 11 refer and any other information required to verify the proper application of the Agreement. This shall include the number and value of contracts awarded pursuant to a negotiated procedure without a call for competition, ***broken down according to the circumstances referred to in Article 44 and by categories of activity to which Articles 5 to 11 refer. It shall also specify the Member State or third country of the successful contractor.***

Amendment

3. ***For all contracts above the thresholds of this Directive,*** Member States shall ensure that this report contains the ***estimated*** number and value of contracts awarded ***during the year concerned,*** broken down by categories of activity to which Articles 5 to 11 refer and any other information required to verify the proper application of the ***WTO Government Procurement*** Agreement. This shall include the ***estimated*** number and value of contracts awarded pursuant to a negotiated procedure without a call for competition.

Or. en

Amendment 965
Heide Rühle

Proposal for a directive
Article 95 – paragraph 3 – point a (new)

Text proposed by the Commission

Amendment

(a) in the interests of administrative simplification, the statistical data may be

*collected on the basis of sampling,
provided that its representativeness is not
jeopardised;*

Or. en

Amendment 966

Heide Rühle

Proposal for a directive

Article 95 – paragraph 3 – point b (new)

Text proposed by the Commission

Amendment

*(b) the confidential nature of the
information provided is respected.*

Or. en

Amendment 967

Heide Rühle

Proposal for a directive

Article 95 – paragraph 5

Text proposed by the Commission

Amendment

*5. The Commission shall establish the
standard form for the drawing-up of the
annual implementation and statistical
report referred to in paragraph 1. Those
implementing acts shall be adopted in
accordance with the advisory procedure
referred to in Article 100.*

deleted

Or. en

Amendment 968

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 95 – paragraph 5

Text proposed by the Commission

Amendment

5. The Commission shall establish the standard form for ***the drawing-up of*** the annual ***implementation and*** statistical report referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100.

5. The Commission shall establish the standard form for the annual statistical report referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100.

Or. en

Amendment 969
Heide Rühle

Proposal for a directive
Article 95 – paragraph 6

Text proposed by the Commission

Amendment

6. The acts referred to under paragraph 5 shall ensure that:

deleted

(a) in the interests of administrative simplification, the statistical data may be collected on the basis of sampling, provided that its representativeness is not jeopardised;

(b) the confidential nature of the information provided is respected.

Or. en

Amendment 970
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 96

Text proposed by the Commission

Amendment

Article 96

Article deleted

Or. en

Justification

As part of alternative proposals in relation to governance (assistance to contracting entities and businesses), this amendment deletes Article 97. The Commission's proposals would need to be supported by a clear case demonstrating cost-effectiveness, and these detailed proposals would also breach principles of subsidiarity and proportionality. However, there is a clear need for Member States to take ownership of SME/Think Small First principles in public procurement, as proposed in a Recital.

Amendment 971

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

Proposal for a directive

Article 96

Text proposed by the Commission

Amendment

Article 96

Article deleted

Or. en

Justification

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

Amendment 972

Heide Rühle

Proposal for a directive

Article 96 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall make available technical support structures in order to provide legal and economic **advice**, guidance and assistance to contracting entities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting entity can obtain competent assistance and

1. Member States shall make available technical support structures in order to provide legal and economic **information**, guidance and assistance to contracting entities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting entity can obtain competent assistance and

advice on individual questions.

information on individual questions.

Or. en

Justification

Clarification, the wording could be interpreted as legal advice but it's not up the Member States to provide legal advice on European regulations.

Amendment 973

Heide Rühle

Proposal for a directive

Article 96 – paragraph 4

Text proposed by the Commission

Amendment

4. For the purposes of paragraphs 1, 2 and 3, Member States may appoint a single body or several bodies or administrative structures. Member States shall ensure case due coordination between those bodies and structures. **deleted**

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 974

Sergio Gaetano Cofferati

Proposal for a directive

Article 97 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall provide mutual assistance to each other, and shall put in place measures for effective cooperation

1. Member States shall provide mutual assistance to each other, and shall put in place measures for effective cooperation

with one another, in order to ensure exchange of information on issues referred to in Articles 56, 75 and **79**. They shall ensure the confidentiality of the information which they exchange.

with one another, in order to ensure exchange of information on issues referred to in Articles 56, 75, **79** and **83a**. They shall ensure the confidentiality of the information which they exchange.

Or. en

Amendment 975
Heide Rühle

Proposal for a directive
Article 97 – paragraph 3

Text proposed by the Commission

Amendment

3. For the purposes of this Article, Member States shall designate one or more liaison points, the contact details of which shall be communicated to the other Member States, the oversight bodies and the Commission. Member States shall publish and regularly update the list of liaison points. The oversight body shall be in charge of the coordination of such liaison points.

deleted

Or. en

Justification

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 976
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 97 – paragraph 3

Text proposed by the Commission

Amendment

**3. For the purposes of this Article, *deleted*
Member States shall designate one or
more liaison points, the contact details of
which shall be communicated to the other
Member States, the oversight bodies and
the Commission. Member States shall
publish and regularly update the list of
liaison points. The oversight body shall be
in charge of the coordination of such
liaison points.**

Or. en

Amendment 977

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

**Proposal for a directive
Article 97 – paragraph 3**

Text proposed by the Commission

Amendment

**3. For the purposes of this Article, *deleted*
Member States shall designate one or
more liaison points, the contact details of
which shall be communicated to the other
Member States, the oversight bodies and
the Commission. Member States shall
publish and regularly update the list of
liaison points. The oversight body shall be
in charge of the coordination of such
liaison points.**

Or. en

Justification

It is not a proportional measure to impose on Member States obligation to create additional bodies. Moreover, various competences assigned to such a body, as for example oversight, coordination, reporting may create conflict of interests.

Amendment 978
Jürgen Creutzmann

Proposal for a directive
Article 97 – paragraph 3

Text proposed by the Commission

3. For the purposes of this Article, Member States shall designate one or more liaison points, the contact details of which shall be communicated to the other Member States, **the oversight bodies** and the Commission. Member States shall publish and regularly update the list **of liaison points. The oversight body shall be in charge of the coordination** of such liaison points.

Amendment

3. For the purposes of this Article, Member States shall designate one or more liaison points, the contact details of which shall be communicated to the other Member States and the Commission. Member States shall publish and regularly update the list of liaison points.

Or. en

Amendment 979
Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski

Proposal for a directive
Article 97 – paragraph 4

Text proposed by the Commission

4. The exchange of information shall take place via the Internal Market Information system established pursuant to Regulation (EU) N° XXX/XXXX of the European Parliament and Council⁵² [proposal for a Regulation of the European Parliament and Council on the administrative cooperation through the Internal Market Information System ('the IMI Regulation') COM(2011)522]. Member States shall supply information requested by other Member States within the shortest possible period of time.

Amendment

deleted

Or. en

Justification

It is not a proportional measure to impose on Member States obligation to create additional bodies. Moreover, various competences assigned to such a body, as for example oversight, coordination, reporting may create conflict of interests.

Amendment 980

Heide Rühle

Proposal for a directive

Article 98 – paragraph 2

Text proposed by the Commission

2. The delegation of power referred to in Articles 4, 35, 33, 38, 25, 65, 70, **77, 85 and 95** shall be conferred on the Commission for an indeterminate period of time from the [date of entry into force of this Directive].

Amendment

2. The delegation of power referred to in Articles 4, 35, 33, 38, 25, 65, 70 shall be conferred on the Commission for an indeterminate period of time from the [date of entry into force of this Directive].

Or. en

Amendment 981

Heide Rühle

Proposal for a directive

Article 98 – paragraph 3

Text proposed by the Commission

3. The delegation of power referred to in Articles 4, 35, 33, 38, 25, 65, 70, **77, 85 and 95** may be revoked at any time by the European Parliament or by the Council. A revocation decision shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment

3. The delegation of power referred to in Articles 4, 35, 33, 38, 25, 65, 70 may be revoked at any time by the European Parliament or by the Council. A revocation decision shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Or. en

Amendment 982
Malcolm Harbour

Proposal for a directive
Article 100 – paragraph 1

Text proposed by the Commission

1. The Commission shall be assisted by the Advisory Committee for Public Contracts established by Council Decision 71/306/EEC⁵³. ***That committee*** shall be a ***committee*** within the meaning of Regulation (EU) No 182/2011.

Amendment

1. The Commission shall be assisted by the Advisory Committee for Public Contracts established by Council Decision 71/306/EEC⁵³ ***and by the Committee set up by Article 7 of Council Regulation (EC) No 3286/94 (Trade Barriers Regulation)***⁵⁴. ***These committees*** shall be ***committees*** within the meaning of ***Article 3 of Regulation (EU) No 182/2011.***

⁵⁴ *OJ L 349, 31.12.1994, p. 71*

Or. en

Amendment 983
Malcolm Harbour

Proposal for a directive
Article 100 – paragraph 2

Text proposed by the Commission

2. Where reference is made to this ***Article***, Article 4 of Regulation (EU) No 182/2011 shall apply.

Amendment

2. Where reference is made to this ***article***, Article 4 of Regulation (EU) No 182/2011 shall apply ***and the competent committee shall be the Committee established by Council Decision 71/306/EEC.***

Or. en

Amendment 984
Malcolm Harbour

Proposal for a directive
Article 100 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply and the competent committee shall be the Committee set up by the Trade Barriers regulation.

Or. en

Amendment 985

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

Proposal for a directive
Annex 2 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) the procedures to allocate railway infrastructure capacity, railway licences or safety certifications in accordance with the Directives 95/18/EC, 2001/14/EC and 2004/49/EC.

Or. en

Justification

Adding this paragraph will ensure legal certainty and strengthen Article 4(2).

Amendment 986

Lara Comi

Proposal for a directive
Annex 2 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) procedures for the award of railway infrastructure capacity, railway licences or safety certification as referred to in

Or. it

Amendment 987

Frank Engel

Proposal for a directive

Annex 3 – point D – paragraph 1

Text proposed by the Commission

Amendment

Rail **Freight** transport

Rail transport

Or. en

Amendment 988

Lara Comi

Proposal for a directive

Annex 3 – point D – paragraph 1

Text proposed by the Commission

Amendment

Rail **Freight** transport

Rail transport

Or. it

Amendment 989

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

Proposal for a directive

Annex 3 – point D – paragraph 1

Text proposed by the Commission

Amendment

Rail **Freight** transport

Rail transport

Or. en

Amendment 990

Frank Engel

Proposal for a directive

Annex 3 – point D – paragraph 3

Text proposed by the Commission

Amendment

Rail passenger transport

deleted

None

Or. en

Amendment 991

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

Proposal for a directive

Annex 3 – point D – paragraph 3

Text proposed by the Commission

Amendment

Rail passenger transport

deleted

None

Or. en

Amendment 992

Alexander Alvaro, Jürgen Creutzmann

Proposal for a directive

Annex 8 – paragraph 1 – point 1 – point a

Text proposed by the Commission

Amendment

(e) in the case of service or supply contracts a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements

(a) in the case of service or supply contracts a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements

relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods at any stage of the life cycle of the supply or service and conformity assessment procedures;

relevant to the product as regards the name under which the product is sold, terminology, ***rules relating to design (including data protection by design)***, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods at any stage of the life cycle of the supply or service and conformity assessment procedures;

Or. en

Amendment 993

Alexander Alvaro, Jürgen Creutzmann

Proposal for a directive

Annex 8 – paragraph 1 – point 1 – point b

Text proposed by the Commission

(b) in the case of works contracts, the totality of the technical prescriptions contained in particular in the procurement documents, defining the characteristics required of a material, product or supply, which permits a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting entity; those characteristics include levels of environmental and climate performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, and production processes and methods at any stage of the life cycle of the works; those characteristics also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the

Amendment

(b) in the case of works contracts, the totality of the technical prescriptions contained in particular in the procurement documents, defining the characteristics required of a material, product or supply, which permits a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting entity; those characteristics include levels of environmental and climate performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, and production processes and methods at any stage of the life cycle of the works; those characteristics also include rules relating to design (***including data protection by design***) and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and

contracting entity is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;

all other technical conditions which the contracting entity is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;

Or. en

Amendment 994
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Annex 14 – indent 8 a (new)

Text proposed by the Commission

Amendment

- Convention 155 on Occupational Safety and Health

Or. en

Amendment 995
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Annex 14 – indent 8 b (new)

Text proposed by the Commission

Amendment

- Convention 1 on Hours of Work (Industry)

Or. en

Amendment 996
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Annex 14 – indent 8 c (new)

Text proposed by the Commission

Amendment

**- Convention 131 on Minimum Wage
Fixing**

Or. en

Amendment 997

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Annex 14 – indent 8 d (new)

Text proposed by the Commission

Amendment

**- Convention 102 on Social Security
(Minimum Standard)**

Or. en

Amendment 998

Frank Engel, Andreas Schwab

Proposal for a directive

Annex 17

Text proposed by the Commission

Amendment

Annex XVII

Annex deleted.

Or. fr

Amendment 999

Robert Rochefort

Proposal for a directive

Annex 17

Text proposed by the Commission

Amendment

Annex XVII

Annex deleted.

Amendment 1000
Malcolm Harbour

Proposal for a directive
Annex 17

Text proposed by the Commission

CPV Code	Description
79611000-0; from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2); 75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80100000-5 to 80660000-8 (except 80533000-9, 80533100-0, 80533200-1); from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9, 92232000-6) 75300000-9	Health, social services Administrative educational, healthcare and cultural services
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1 98000000-3	Compulsory social security services Benefit services Other community, social and personal services
98120000-0	Services furnished by trade unions
98131000-0	Religious services

Amendment

CPV Code	Description
79611000-0; 75200000-8; 75231200-6; 75231240-8; from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2); 98133100-5 and 98200000-5	Health, social and related services

75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80100000-5 to 80660000-8 (except 80533000-9, 80533100-0, 80533200-1); from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9, 92232000-6) 75300000-9	Administrative educational, healthcare and cultural services
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1 98000000-3; 55521100-9	Compulsory social security services Benefit services
98120000-0 98131000-0	Other community, social and personal services
<i>from 61000000-5 to 61530000-9; from 63370000-3 to 63372000-7</i>	Services furnished by trade unions Religious services
<i>62400000-6, 62440000-8, 62441000-5, 62450000-1; from 63000000-9 to 63600000-5 (except 63370000-3, 63371000-0, 63372000-7); 74322000-2, 93610000-7</i>	<i>Transport by water</i>
<i>from 74500000-4 to 74540000-6 (except 74511000-4); from 95000000-2 to 95140000-5</i>	<i>Supporting and auxiliary transport services</i>
<i>from 74600000-5 to 74620000-1</i>	<i>Personnel placement and supply services</i>
<i>from 74875000-3 to 74875200-5, and from 92000000-1 to 92622000-7 (except 92230000-2)</i>	<i>Investigation and security services, other than armoured car services</i> <i>Recreational, cultural and sporting services</i>

Or. en

Amendment 1001
Tiziano Motti

Proposal for a directive
Annex 17 – table – row 7 a (new)

Text proposed by the Commission

Amendment

- Legal services.

Or. en

Justification

Directive 2004/17/CE makes a distinction between so called “A services” (Annex XVII A), subject to the full procedures of the Directives, and “B-services” (Annex XVII B), subject to the provisions on technical specifications and transmission of a notice of the results of the award procedure. The intention of the EU legislator was to exempt from the full application of the Directive some specific service contracts which have limited cross-border dimension, including the procurement of legal services. The Commission's proposal removes the distinction between "A services" and "B services" applying full regime to all "B services" (with the exception of contracts for social services and other specific services); thus the full procurement regime will apply to legal services. However, this change is unnecessary and takes no account of the specific nature of the profession of lawyers. Indeed, legal services, having a nature of personal choice (intuitu personae), are not eligible to be assigned on the base of the full application of the procurement regime. In addition, they are provided in a legal environment that varies considerably from one Member State to another so that the demand of such services is inevitably limited to operators having specific competences in the relevant national law.

Amendment 1002
Heide Rühle

Proposal for a directive
Annex 17 – table – rows 7 a to 7 l (new)

Text proposed by the Commission

Amendment

79112000-2 Legal representation services

79100000-5 Legal services

**79110000-8 Legal advisory and
representation services**

79111000-5 Legal advisory services

**79112100-3 Stakeholders representation
services**

79120000-1 Patent and copyright

consultancy services

79121000-8 Copyright consultancy services

79121100-9 Software copyright consultancy services

79130000-4 Legal documentation and certification services

79131000-1 Documentation services

79132000-8 Certification services

79140000-7 Legal advisory and information services

Or. en

Justification

A specific treatment of services is only justified insofar it applies to all services of the same.

Amendment 1003
Robert Rochefort

Proposal for a directive
Annex 17 a (new)

Text proposed by the Commission

Amendment

Annex XVIIa

Annex XVIIa – part A

Services referred to in Article 1

<i>1</i>	<i>Maintenance and repair services</i>	<i>6112, 6122, 633, 886</i>	<i>From 50100000-6 to 50884000-5 (except for 50310000-1 to 50324200-4 and 50116510-9, 50190000-3, 50229000-6, 50243000-0), and from 51000000-9 to 51900000-1</i>
<i>2</i>	<i>Land transport services (1), including armoured car services, and courier services, excluding transport of mail</i>	<i>712 (except 71235), 7512, 87304</i>	<i>From 60100000-9 to 60183000-4 (except 60160000-7, 60161000-4, 60220000-6), and from 64120000-3 to 64121200-2</i>
<i>3</i>	<i>Air transport services: passengers and freight,</i>	<i>73 (except 7321)</i>	<i>From 60410000-5 to 60424120-3 (except 60411000-2, 60421000-5),</i>

	<i>excluding transport of mail</i>		<i>and 60500000-3 from 60440000-4 to 60445000-9</i>
4	<i>Transport of mail by land (2) and by air</i>	<i>71235, 7321</i>	<i>60160000-7, 60161000-4 60411000-2, 60421000-5</i>
5	<i>Telecommunications services</i>	<i>752</i>	<i>From 64200000-8 to 64228200-2 72318000-7, and from 72700000-7 to 72720000-3</i>
6	<i>Financial services: (a) Insurances services (b) Banking and investment services (3)</i>	<i>ex 81, 812, 814</i>	<i>From 66100000-1 to 66720000-3</i>
7	<i>Computer and related services</i>	<i>84</i>	<i>From 50310000-1 to 50324200-4, from 72000000-5 to 72920000-5 (except 72318000-7 and from 72700000-7 to 72720000-3), 9342410-4</i>
8	<i>R&D services (4)</i>	<i>85</i>	<i>From 73000000-2 to 73436000-7 (except 73200000-4, 73210000-7, 73220000-0)</i>
9	<i>Accounting, auditing and bookkeeping services</i>	<i>862</i>	<i>From 79210000-9 to 79223000-3</i>
10	<i>Market research and public opinion polling services</i>	<i>864</i>	<i>From 79300000-7 to 79330000-6, and 79342310-9, 79342311-6</i>
11	<i>Management consultant services (5) and related services</i>	<i>865, 866</i>	<i>From 73200000-4 to 73220000-0 from 79400000-8 to 79421200-3 and 79342000-3, 79342100-4 79342300-6, 79342320-2 79342321-9, 79910000-6, 79991000-7 98362000-8</i>
12	<i>Architectural services; engineering services and integrated engineering services; urban planning and landscape engineering services; related scientific and technical consulting services; technical testing and analysis services</i>	<i>867</i>	<i>From 71000000-8 to 71900000-7 (except 71550000-8) and 79994000-8</i>
13	<i>Advertising services</i>	<i>871</i>	<i>From 79341000-6 to 79342200-5 (except 79342000-3 and 79342100-4)</i>
14	<i>Building-cleaning services and property management services</i>	<i>874, 82201 to 82206</i>	<i>From 70300000-4 to 70340000-6, and from 90900000-6 to 90924000-0</i>
15	<i>Publishing and printing services on a fee or</i>	<i>88442</i>	<i>From 79800000-2 to 79824000-6, and from 79970000-6 to 79980000-7</i>

	<i>contract basis</i>		
16	<i>Sewage and refuse disposal services; sanitation and similar services</i>	94	<i>From 90400000-1 to 90743200-9 (except 90712200-3 from 90910000-9 to 90920000-2 and 50190000-3, 50229000-6 50243000-0)</i>

- (1) *Except for rail transport services covered by Category 18.*
- (2) *Except for rail transport services covered by Category 18.*
- (3) *Except contracts for financial services in connection with the issue, purchase, sale or transfer of securities or other financial instruments, and central bank services. Also excluded are services for the acquisition or rental, by whatever financial means, of land, existing buildings, or other immovable property or concerning rights in respect thereof; nevertheless, financial services supplied at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive.*
- (4) *Excluding research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority.*
- (5) *Except arbitration and conciliation services.*

Annex XVII a – part B

Services referred to in Article 12(c) and Article 84

<i>Categories</i>	<i>Subject</i>	<i>CPC Reference No</i>	<i>CPV Reference No</i>
17	<i>Hotel and restaurant services</i>	64	<i>From 55100000-1 to 55524000-9, and from 98340000-8 to 98341100-6</i>
18	<i>Rail Transport Services</i>	711	<i>From 60200000-0 to 60220000-6</i>
19	<i>Water transport services</i>	72	<i>From 60600000-4 to 60653000-0, and from 63727000-1 to 63727200-3</i>
20	<i>Supporting and auxiliary transport services</i>	74	<i>From 63000000-9 to 63734000-3 (except 63711200-8, 63712700-0, 63712710-3, and from 63727000-1, to 63727200-3), and 98361000-1</i>
21	<i>Legal services</i>	861	<i>From 79100000-5 to 79140000-7</i>
22	<i>Personnel placement and supply services (1)</i>	872	<i>From 79600000-0 to 79635000-4 (except 79611000-0, 79632000-3, 79633000-0), and from 98500000-8 to 98514000-9</i>
23	<i>Investigation and security services, except armoured car services</i>	873 (except 87304)	<i>From 79700000-1 to 79723000-8</i>
24	<i>Education and vocational education services</i>	92	<i>From 80100000-5 to 80660000-8 (except 80533000-9, 80533100-0, 80533200-1);</i>
25	<i>Health and social services</i>	93	<i>79611000-0, and from 85000000-9 to 85323000-9 (except 85321000-5 and</i>

			85322000-2)
26	Recreational, cultural and sporting services	96	From 79995000-5 to 79995200-7, and from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9, 92232000-6)
27	Other services		

(1) Except employment contracts.

Or. fr

Amendment 1004
Frank Engel, Andreas Schwab

Proposal for a regulation
Annex 17 a (new)

Text proposed by the Commission

Amendment

Annex XVIIa

Annex XVIIa - part A

Services referred to in Article 14a

<i>Category N°</i>	<i>Subject</i>	<i>CPC Reference No (1)</i>	<i>CPV Reference N°</i>
<i>1</i>	<i>Maintenance and repair services</i>	<i>6112, 6122, 633, 886</i>	<i>From 50100000-6 to 50884000-5 (except for 50310000-1 to 50324200-4 and 50116510-9, 50190000-3, 50229000-6, 50243000-0), and from 51000000-9 to 51900000-1</i>
<i>2</i>	<i>Land transport services (2), including armoured car services, and courier services, except transport of mail</i>	<i>712 (except 71235), 7512, 87304</i>	<i>From 60100000-9 to 60183000-4 (except 60160000-7, 60161000-4, 60220000-6), and from 64120000-3 to 64121200-2</i>
<i>3</i>	<i>Air transport services of passengers and freight, except transport of mail</i>	<i>73 (except 7321)</i>	<i>From 60410000-5 to 60424120-3 (except 60411000-2, 60421000-5), and 60500000-3,</i>

4	<i>Transport of mail by land (3) and by air</i>	71235, 7321	<i>and from 60440000-4 to 60445000-9 60160000-7, 60161000-4 60411000-2, 60421000-5</i>
5	<i>Telecommunications services</i>	752	<i>From 64200000-8 to 64228200-2 72318000-7, and from 72700000-7 to 72720000-3</i>
6	<i>Financial services: (a) Insurance services (b) Banking and investment services (4)</i>	<i>ex 81, 812, 814</i>	<i>From 66100000-1 to 66720000-3</i>
7	<i>Computer and related services</i>	84	<i>From 50310000-1 to 50324200-4 from 72000000-5 to 72920000-5 (except 72318000-7 and from 72700000-7 to 72720000-3), 79342410-4</i>
8	<i>Research and development services (5)</i>	85	<i>From 73000000-2 to 73436000-7 (except 73200000-4, 73210000-7, 73220000-0</i>
9	<i>Accounting, auditing and bookkeeping services</i>	862	<i>From 79210000-9 to 79223000-3</i>
10	<i>Market research and public opinion polling services</i>	864	<i>From 79300000-7 to 79330000-6, and 79342310-9, 79342311-6</i>
11	<i>Management consulting services (6) and related services</i>	865, 866	<i>From 73200000-4 to 73220000-0 from 79400000-8 to 79421200-3 and 79342000-3, 79342100-4 79342300-6, 79342320-2 79342321-9, 79910000-6, 79991000-7 98362000-8</i>
12	<i>Architectural services; engineering services and integrated engineering services;</i>	867	<i>From 71000000-8 to 71900000-7 (except 71550000-8) and 79994000-8</i>

*urban planning and
landscape engineering
services; related
scientific and technical
consulting services;
technical testing and
analysis services*

13	<i>Advertising services</i>	871	<i>From 79341000-6 to 79342200-5 (except 79342000-3 and 79342100-4)</i>
14	<i>Building-cleaning services and property management services</i>	874, 82201 to 82206	<i>From 70300000-4 to 70340000-6, and from 90900000-6 to 90924000-0</i>
15	<i>Publishing and printing services on a fee or contract basis</i>	88442	<i>From 79800000-2 to 79824000-6, and from 79970000-6 to 79980000-7</i>
16	<i>Sewage and refuse disposal services; sanitation and similar services</i>	94	<i>From 90400000-1 to 90743200-9 (except 90712200-3), from 90910000-9 to 90920000-2 and 50190000-3, 50229000-6 50243000-0</i>

(1) Except employment contracts.

(2) Except contracts for the acquisition, development, production or co-production of programmes by broadcasting organisations and contracts for broadcasting time.

Annex XVIIa - Part B

Services referred to in Article 14a

<i>Category N°</i>	<i>Subject</i>	<i>CPC Reference No (1)</i>	<i>CPV Reference N°</i>
17	<i>Hotel and restaurant services</i>	64	<i>From 55100000-1 to 55524000-9, and from 98340000-8 to 98341100-6</i>
18	<i>Rail transport services</i>	711	<i>From 60200000-0 to 60220000-6</i>
19	<i>Water transport services</i>	72	<i>From 60600000-4 to 60653000-0, and from</i>

20	<i>Supporting and auxiliary transport services</i>	74	63727000-1 to 63727200-3 From 63000000-9 to 63734000-3 (except 63711200-8, 63712700-0, 63712710-3, and from 63727000-1, to 63727200-3), and 98361000-1
21	<i>Legal services</i>	861	From 79100000-5 to 79140000-7
22	<i>Personnel placement and supply services (1)</i>	872	From 79600000-0 to 79635000-4 (except 79611000-0, 79632000-3, 79633000-0), and from 98500000-8 to 98514000-9)
23	<i>Investigation and security services, except armoured car services</i>	873 (except 87304)	From 79700000-1 to 79723000-8
24	<i>Education and vocational education services</i>	92	From 80100000-5 to 80660000-8 (except 80533000-9, 80533100-0, 80533200-1)
25	<i>Health and social services</i>	93	79611000-0, and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2)
26	<i>Recreational, cultural and sporting services</i>	96	From 79995000-5 to 79995200-7, and from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9, 92232000-6)
27	<i>Other services (2)</i>		

(1) Except employment contracts.

(2) Except contracts for the acquisition, development, production or co-production of programmes by broadcasting organisations and contracts for broadcasting time.

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