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*Committee on Employment and Social Affairs*

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**2011/0439(COD)**

4.10.2012

## **OPINION**

of the Committee on Employment and Social Affairs

for the Committee on the Internal Market and Consumer Protection

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

Rapporteur: Ramona Nicole Mănescu

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## SHORT JUSTIFICATION

The Commission proposal for a directive on procurement plays a key role in the 'Europe 2020' strategy for smart, sustainable, and inclusive growth (COM(2010)2020). It is one of the market-based instruments to be used to achieve the Europe 2020 objectives by improving the conditions for business to innovate and by encouraging the wider use of green procurement supporting the shift towards a resource efficient and low-carbon economy. At the same time, the Europe 2020 strategy stresses that public procurement policy must ensure the most efficient use of public funds and that procurement markets must be kept open Union-wide (all the more in times of financial crisis).

Public procurement is a key market-based instrument geared to the needs of society which, in addition to meeting other objectives, can play a role in fostering sustainable employment, working conditions, innovation particularly for businesses, above all SMEs, promoting social inclusion, and addressing the employment needs of vulnerable and disadvantaged social groups and can make an important contribution towards meeting the EU 2020 targets. The public procurement can also play an important role in promoting a European social model based on quality jobs, equal opportunities, non-discrimination and social inclusion.

The modernisation of the public procurement directives should strike a balance between simplifications of the rules, on the one hand, and, on the other, sound, effective procedures related to innovative, sustainable award criteria, while also securing a higher rate of SME participation and making wider use of e-procurement.

The aim should be to exploit the potential of public procurement to the full within the single market in order to foster sustainable growth, high employment level, and social inclusion. The successful revision and enforcement of public procurement rules would do much to revitalise investment in the real economy and overcome Europe's economic crisis.

The rapporteur for opinion welcomes the Commission's proposal, which put forward some interesting new principles and ideas. The legislative proposal should result in simpler and more flexible procurement procedures for contracting authorities and provide easier access for companies, especially SMEs.

Given that the money involved is public money, it should not be spent on short-term goals, but should, on the contrary, be viewed as a long-term investment in society; to that extent, the onus on the authorities is all the greater.

The public procurement, if used effectively, could be a real driver to promoting quality jobs, equality, developing skills, training, promoting environmental policies and providing incentives for research and innovation. Hence, the costs that companies incur in tendering for a public procurement contract should be minimised, with a view to making companies more competitive and boosting employment.

## AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following

amendments in its report:

## Amendment 1

### Proposal for a directive

#### Citation 1

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

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

##### *Amendment*

Having regard to the Treaty on the Functioning of the European Union, and in particular Article, **14, Article** 53(1) and Article 62 and Article 114 **as well as Protocol 26** thereof,

## Amendment 2

### Proposal for a directive

#### Recital 2

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

(2) In order to guarantee the opening up to competition of procurement by entities operating in the water, energy, transport and postal services sectors, provisions should be drawn up coordinating procurement procedures in respect of contracts above a certain value. Such coordination is needed to ensure the effect of the principles of the Treaty on the Functioning of the European Union and in particular the free movement of goods, the freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. In view of the nature of the sectors affected by such coordination, the latter should, while safeguarding the application of those principles, establish a framework for sound commercial practice and should allow maximum flexibility.

##### *Amendment*

(2) In order to guarantee the opening up to competition of procurement by entities operating in the water, energy, transport and postal services sectors, provisions should be drawn up coordinating procurement procedures in respect of contracts above a certain value. Such coordination is needed to ensure the effect of the principles of the Treaty on the Functioning of the European Union and in particular the free movement of goods, the freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. In view of the nature of the sectors affected by such coordination, the latter should, while safeguarding the application of those principles, establish a framework for sound commercial practice and should allow maximum flexibility.  
***Public procurement rules have to respect the distribution of competences as enshrined in Article 14 TFEU and***

***Protocol No 26. The application of those rules should not interfere with the freedom of public authorities to decide how they carry out their public service tasks.***

### *Justification*

*Adaption to the new provisions of the Lisbon Treaty*

## **Amendment 3**

### **Proposal for a directive**

#### **Recital 4**

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

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

##### *Amendment*

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

*simplify Union public procurement rules, particularly with regard to the method to be used to attain the sustainability objectives, which should be included in public procurement policy, and to clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.*

#### **Amendment 4**

##### **Proposal for a directive Recital 5**

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

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

###### *Amendment*

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

###### *Justification*

*Social considerations are not sufficiently well covered by the Commission proposal.*

#### **Amendment 5**

##### **Proposal for a directive Recital 5 b (new)**

*Text proposed by the Commission*

*Amendment*

***(5b) This Directive should not prevent Member States from complying with ILO Convention 94 on labour clauses in public contracts, and encourages the inclusion of labour clauses in public procurement.***

## **Amendment 6**

### **Proposal for a directive Recital 7 a (new)**

*Text proposed by the Commission*

*Amendment*

***(7a) Under Article 14 of the TFEU in association with Protocol No 26 thereto, national, regional and local authorities enjoy wide discretion in decisions on procurement in the field of services of general interest.***

### *Justification*

*It is important to highlight these stipulations so that state decision makers are not pressured into privatisation solely on grounds of price, especially as competition in the form of under-bidding often results in wages being squeezed.*

## **Amendment 7**

### **Proposal for a directive Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

***(13a) International labour standards, ILO conventions and recommendations should be duly respected in all phases of the procurement process.***

## **Amendment 8**

### **Proposal for a directive Recital 14**

*Text proposed by the Commission*

(14) Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the Agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994)<sup>25</sup>, approved in particular the World Trade Organisation Agreement on Government Procurement, hereinafter referred to as the 'Agreement'. The aim of the Agreement is to establish **a** multilateral framework of balanced rights and obligations relating to public contracts with a view to **achieving** the **liberalisation and expansion of world trade**. For contracts covered by the Agreement, as well as by other relevant international agreements by which the Union is bound, contracting **entities** fulfil the obligations **under** those agreements by applying this Directive to economic operators of third countries that are signatories to the agreements.

*Amendment*

(14) Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the Agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994), approved in particular the World Trade Organisation Agreement on Government Procurement, hereinafter referred to as the "Agreement". The aim of the Agreement is to establish multilateral framework of balanced rights and obligations relating to public contracts **and Member States should endeavour to place Union and third country businesses on an equal footing on the single market** with a view to **facilitating** the **integration of small and medium-sized enterprises (SMEs) and stimulating employment and innovation within the Union**. For contracts covered by the Agreement, as well as by other relevant international agreements by which the Union is bound, contracting **authorities** fulfil the obligations **imposed by** those **various** agreements by applying this Directive to economic operators of third countries that are signatories to the agreements.

**Amendment 9**

**Proposal for a directive  
Recital 17**

*Text proposed by the Commission*

(17) Other categories of services continue by their very nature to have a limited cross-border dimension, namely what are known as services to the person such as certain social, health and educational services. Those services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. **A specific regime should *therefore* be established *for***

*Amendment*

(17) Other categories of services continue by their very nature to have a limited cross-border dimension, namely what are known as services to the person such as certain social, health and educational services. Those services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. ***For a better quality of those services in contracts, a specific***



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

regime should be established with a higher threshold of EUR 1 000 000. In the particular context of procurement in those sectors, services to the person with values below this threshold will typically not be of interest to providers from other Member States unless there are concrete indications to the contrary, such as Union financing for transborder projects. Contracts for services to the person above this threshold should be subject to Union-wide transparency. Given the importance of the cultural context and the sensitivity of those services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. ***The essential role and wide discretion of national, regional and local authorities in providing, commissioning and organising services of general interest is also in line with Protocol (No 26) on Services of general interest, Article 14 of the Treaty on the Functioning of the European Union and Article 36 of the Charter of Fundamental Rights.*** The rules of this directive take account of that imperative, imposing only observance of basic principles of transparency and equal treatment and making sure that contracting entities apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee. Member States and/or contracting entities remain free to provide those services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting entity, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of

transparency and non-discrimination.

## Amendment 10

### Proposal for a directive Recital 27

#### *Text proposed by the Commission*

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

#### *Amendment*

(27) Electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency and transparency of procurement processes. **It is necessary that they** should become the standard means of communication and information exchange in procurement procedures. The use of electronic means also leads to time savings. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Union level. Moreover, electronic means of information and communication including adequate functionalities can enable contracting authorities to prevent, detect and correct errors that occur during procurement procedures.

## Amendment 11

### Proposal for a directive Recital 31

#### *Text proposed by the Commission*

(31) In addition, new electronic purchasing techniques are constantly being developed, such as electronic catalogues. They help to increase competition and streamline public purchasing, particularly in terms of savings in time and money. Certain rules should however be laid down to ensure that such use complies with the rules of this Directive and the principles of equal treatment, non-discrimination and

#### *Amendment*

(31) In addition, new electronic purchasing techniques are constantly being developed, such as electronic catalogues. They help to increase competition and streamline public purchasing, particularly in terms of savings in time and money. Certain rules should however be laid down to ensure that such use complies with the rules of this Directive and the principles of equal treatment, non-discrimination and

transparency. In particular where competition has been reopened under a framework agreement or where a dynamic purchasing system is being used and where sufficient guarantees are offered in respect of ensuring traceability, equal treatment and predictability, contracting entities should be allowed to generate tenders in relation to specific purchases on the basis of previously transmitted electronic catalogues. In line with the requirements of the rules for electronic means of communication, contracting entities should avoid unjustified obstacles to economic operators' access to procurement procedures in which tenders are to be presented in the form of electronic catalogues and which guarantee compliance with the general principles of non-discrimination and equal treatment.

transparency. In particular where competition has been reopened under a framework agreement or where a dynamic purchasing system is being used and where sufficient *social* guarantees are offered in respect of ensuring *accessibility*, traceability, equal treatment and predictability, contracting entities should be allowed to generate tenders in relation to specific purchases on the basis of previously transmitted electronic catalogues. In line with the requirements of the rules for electronic means of communication, contracting entities should avoid unjustified obstacles to economic operators' access to procurement procedures in which tenders are to be presented in the form of electronic catalogues and which guarantee compliance with the general principles of non-discrimination and equal treatment.

## Amendment 12

### Proposal for a directive Recital 35

#### *Text proposed by the Commission*

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

#### *Amendment*

(35) The technical specifications drawn up by purchasers need to allow public procurement to be opened up to competition. To that end, it should be possible to submit tenders that reflect the diversity of technical solutions so as to obtain a sufficient level of competition. Consequently, technical specifications should be drafted *and applied in conformity with the principles of transparency, non-discrimination and equality of opportunity* to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications in terms of functional and performance requirements generally allows

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

this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on other equivalent arrangements which meet the requirements of the contracting entities and are equivalent in terms of safety must be considered by the contracting entities. To demonstrate equivalence, tenderers can be required to provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits.

## **Amendment 13**

### **Proposal for a directive Recital 36**

#### *Text proposed by the Commission*

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

#### *Amendment*

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

## Amendment 14

### Proposal for a directive Recital 38

*Text proposed by the Commission*

(38) In order to encourage the involvement of small and medium-sized enterprises (SMEs) in the procurement market, *it should be provided explicitly that* contracts *may be divided* into lots, whether homogenous or heterogeneous. *Where contracts are divided into lots, contracting entities may, for instance in order to preserve competition or to ensure security of supply, limit the number of lots for which an economic operator may tender; they may also limit the number of lots that may be awarded to any one tenderer.*

*Amendment*

(38) ***Public procurement should be adapted to the needs of SMEs. Contracting authorities should make use of the Code of Best Practice providing guidance on how they may apply the public procurement framework in a way that facilitates SME participation.*** In order to encourage the involvement of small and medium-sized enterprises (SMEs) in the procurement market, ***contracting authorities should in particular give consideration to dividing*** contracts into lots, whether homogenous or heterogeneous, ***and ensure transparency in access to information on their reasons for doing so or choosing not to do so.***

## Amendment 15

### Proposal for a directive Recital 39 a (new)

*Text proposed by the Commission*

*Amendment*

***(39a) Member States should introduce measures to promote the access of SMEs to public procurement, in particular through improved information and guidance on tendering and on the new opportunities offered by the modernized EU legal framework, and to foster the exchange of best practice and the organisation of training and events involving public procurers and SMEs.***

## Amendment 16

### Proposal for a directive Recital 40

#### *Text proposed by the Commission*

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

#### *Amendment*

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

#### *Justification*

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

*lead to the exclusion of that economic operator from the procedure for the award of a public contract.*

## **Amendment 17**

### **Proposal for a directive**

#### **Recital 43**

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

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

##### *Amendment*

(43) Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of transparency, non-discrimination and equal treatment. ***These*** criteria should guarantee that tenders are assessed in conditions of effective competition, ***at the same time ensuring that*** contracting ***authorities*** require high-quality works, supplies and services that are optimally suited to their needs ***and which include factors linked to socially sustainable production process criteria and decent jobs***. As a result, contracting entities should be allowed to adopt as award criteria either 'the most economically advantageous tender' or 'the lowest cost', taking into account that in the latter case they ***should refer*** to adequate quality standards by using technical specifications or contract performance conditions.

## **Amendment 18**

### **Proposal for a directive**

#### **Recital 43 a (new)**

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

##### *Amendment*

***(43a). It is important to stress that the principles of equal treatment and non-discrimination of economic operators, without bringing prejudice to fair competition, are crucial instruments for the prevention of corruption, notably bribery.***

## Amendment 19

### Proposal for a directive Recital 44

#### *Text proposed by the Commission*

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

#### *Amendment*

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

## Amendment 20

### Proposal for a directive Recital 50

#### *Text proposed by the Commission*

(50) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked to the subject-matter of the contract and are indicated in the notice used to make the call for competition, or in the procurement documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in

#### *Amendment*

(50) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked to the subject-matter of the contract and are indicated in the notice used to make the call for competition, or in the procurement documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in



achieving integration, the fight against unemployment, protection of the environment or animal welfare. For example, mention may be made of the requirements applicable during the performance of the contract to recruit long-term job-seekers or to implement training measures for the unemployed or for young persons, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, even where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation.

achieving integration, the fight against unemployment, protection of the environment or animal welfare. For example, mention may be made of the requirements applicable during the performance of the contract to recruit long-term job-seekers, ***unemployed young persons or persons with disabilities*** or to implement training measures for the unemployed or for young persons, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, even where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation.

## **Amendment 21**

### **Proposal for a directive Recital 55**

#### *Text proposed by the Commission*

(55) In line with the principles of equal treatment and transparency, the successful tenderer should not be replaced by another economic operator without reopening the contract to competition. However, the successful tenderer performing the contract may undergo certain structural changes during the performance of the contract, such as purely internal reorganisations, mergers and acquisitions or insolvency. Such structural changes should not automatically require new procurement procedures for all contracts performed by that undertaking.

## **Amendment 22**

### **Proposal for a directive Recital 59**

#### *Amendment*

(55) In line with the principles of equal treatment, ***objectivity, traceability*** and transparency, the successful tenderer should not be replaced by another economic operator without reopening the contract to competition. However, the successful tenderer performing the contract may undergo certain structural changes during the performance of the contract, such as purely internal reorganisations, mergers and acquisitions or insolvency. Such structural changes should not automatically require new procurement procedures for all contracts performed by that undertaking.

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 23**

**Proposal for a directive**  
**Recital 59 a (new)**

*Text proposed by the Commission*

*Amendment*

***(59a) Citizens, concerned stakeholders, organised or not, and other persons or bodies which do not have access to review procedures pursuant to Council Directive 89/665/EEC do nevertheless have a legitimate interest as taxpayers in sound procurement procedures. They should therefore be given a possibility to signal possible violations of this Directive to a competent authority or structure. So as not to duplicate existing authorities or structures, Member States should be able to provide for recourse to general monitoring authorities or structures, sectoral oversight bodies, municipal oversight authorities, competition authorities, the ombudsman or national auditing authorities.***

## Amendment 24

### Proposal for a directive

#### Article 2 – point 22

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 25

### Proposal for a directive

#### Article 12 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. When awarding contracts which, on account of their value, are not covered by this Directive, national contracting entities shall be required to comply with the principles of equal treatment, non-discrimination and transparency.***

## Amendment 26

### Proposal for a directive

#### Article 19 a (new)

*Text proposed by the Commission*

*Amendment*

#### ***Article 19a***

***Service contracts awarded on the basis of exclusive rights***

***This Directive shall not apply to service contracts awarded to an entity which is itself a contracting authority within the meaning of Article 2 (1) or to an association of contracting authorities on the basis of an exclusive right which they***

*enjoy pursuant to a published law,  
regulation or administrative provision  
which is compatible with the Treaty.*

*Justification*

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

**Amendment 27**

**Proposal for a directive  
Article 19 b (new)**

*Text proposed by the Commission*

*Amendment*

**Article 19b**

***Specific Regimes to deliver SGI***

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

**Amendment 28**

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

*Text proposed by the Commission*

*Amendment*

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

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

## Amendment 29

### Proposal for a directive

#### Article 21 – paragraph 1 – subparagraph 1 – point c

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

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

##### *Amendment*

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

##### *Justification*

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

## Amendment 30

### Proposal for a directive

#### Article 21 – paragraph 2

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

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

##### *Amendment*

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

## Amendment 31

### Proposal for a directive

#### Article 21 – paragraph 3 – subparagraph 1 – introductory part

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

A contracting authority, which does not exercise over a legal person control within

##### *Amendment*

A contracting authority, which does not exercise over a legal person control within

the meaning of paragraph 1, may nevertheless award a contract ***without applying*** this Directive to a legal person which it controls jointly with other contracting authorities, where the following conditions are fulfilled:

the meaning of paragraph 1, may nevertheless award a contract ***outside the scope of*** this Directive to a legal person which it controls jointly with other contracting authorities, where the following conditions are fulfilled:

## Amendment 32

### Proposal for a directive

#### Article 21 – paragraph 3 – subparagraph 1 – point b

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

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

##### *Amendment*

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

## Amendment 33

### Proposal for a directive

#### Article 21 – paragraph 3 – subparagraph 1 – point c

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

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

##### *Amendment*

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

## Amendment 34

### Proposal for a directive

#### Article 21 – paragraph 4 – point c

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

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

##### *Amendment*

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

## *Justification*

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

### **Amendment 35**

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

#### **Article 21 – paragraph 4 – point e**

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

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

##### *Amendment*

(e) *the task* is *carried out solely by the public authorities concerned, with* no participation of *a private party with* the *exception of* contracting authorities *participating in the cooperation as a public law body in the sense of Article 2(4)*

### **Amendment 36**

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

#### **Article 21 – paragraph 5 – subparagraph 2**

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

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

##### *Amendment*

The exclusions provided for in paragraphs 1 to 4 shall cease to apply from the moment any private participation takes place, with the effect that ongoing contracts need to be opened to competition through regular procurement procedures, *unless the private participation is legally enforced and/or the private participation was not foreseeable at the time of the initial contracting.*

### **Amendment 37**

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

#### **Article 27 – paragraph 3 a (new)**

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

##### *Amendment*

*3a. The protection of the intellectual property of the tenderers shall be ensured.*

## Amendment 38

### Proposal for a directive

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

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

However, in the case of service and works contracts as well as supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the ***names and*** relevant professional qualifications of the staff responsible for the performance of the contract in question.

##### *Amendment*

However, in the case of service and works contracts as well as supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the relevant professional qualifications of the staff responsible for the performance of the contract in question.

## Amendment 39

### Proposal for a directive

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

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

Groups of economic operators may submit tenders or put themselves forward as candidates. Contracting entities shall not establish specific conditions for participation of such groups in procurement procedures which are ***not*** imposed on individual candidates. In order to submit a tender or a request to participate, those groups shall not be required by the contracting entities to assume a specific legal form.

##### *Amendment*

Groups of economic operators may submit tenders or put themselves forward as candidates. ***Groups of economic operators, particularly small and medium-sized enterprises (SMEs), may take the form of a consortium of enterprises.*** Contracting entities shall not establish specific conditions for participation of such groups in procurement procedures which are ***additional or different to those conditions*** imposed on individual candidates. In order to submit a tender or a request to participate, those groups shall not be required by the contracting entities to assume a specific legal form.

## Amendment 40

### Proposal for a directive

#### Article 31 – paragraph 1



*Text proposed by the Commission*

Member States may reserve the right to participate in procurement procedures to *sheltered workshops and economic operators whose main aim is the social and professional integration of disabled and disadvantaged workers or provide for such contracts to be performed in the context of sheltered employment programmes, provided that more than 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.*

*Amendment*

Member States may reserve the right to participate in **public** procurement procedures to **the following**:

*(a) sheltered workshops or social enterprises, or may provide for such contracts to be performed in the context of sheltered employment programmes, provided that the majority of the employees concerned are disabled persons who, by reason of the nature or the seriousness of their disabilities, cannot carry on occupations under normal conditions or easily find employment on the ordinary market;*

*(b) sheltered workshops or social enterprises and programmes whose main aim is the social and professional integration of disadvantaged workers, such as long-term unemployed, women, young people, migrants, disadvantaged minorities, provided that more than 30 % of the employees of those economic operators or programmes are disabled or disadvantaged workers.*

**Amendment 41**

**Proposal for a directive**

**Article 31 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Member States shall safeguard the implementation of adequate training and***

*social standards within the employment programmes or workshops designed for disabled or disadvantaged workers.*

## **Amendment 42**

### **Proposal for a directive**

#### **Article 31 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. The protection of the intellectual property of the tenderers shall be ensured.***

## **Amendment 43**

### **Proposal for a directive**

#### **Article 32 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. The contracting entity shall not use in other competitive procedures the information forwarded to it by economic operators during an earlier competitive procedure.***

## **Amendment 44**

### **Proposal for a directive**

#### **Article 43 – paragraph 3 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

Only those economic operators invited by the contracting entity following its assessment of the requested information may submit research and innovation projects, aimed at meeting the needs identified by the contracting entity that cannot be met by existing solutions. The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 76 (1)(a).

Only those economic operators invited by the contracting entity following its assessment of the requested information may submit research and innovation projects, aimed at meeting the needs identified by the contracting entity that cannot be met by existing solutions. The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 76 (1)(a) ***and***

## Amendment 45

### Proposal for a directive

#### Article 54 – paragraph 1 – subparagraph 4

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

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

##### *Amendment*

For all procurement, the subject of which is intended for use by persons, whether general public or staff of the contracting entity, those technical specifications shall be drawn up so as to take into account accessibility criteria for people with disabilities or design for all users ***other than, by way of exception, in duly justified cases, which shall be stated in the call for competition and the tender documents.***

## Amendment 46

### Proposal for a directive

#### Article 54 – paragraph 3 – point d a (new)

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

##### *Amendment*

***da. the organisation, qualification and experience of the staff assigned to performing the contract in question.***

## Amendment 47

### Proposal for a directive

#### Article 55 – paragraph 1 – subparagraph 1 – point c

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

##### *Amendment*

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

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

## Amendment 48

## Proposal for a directive

### Article 55 – paragraph 1 – subparagraph 1 – point e

*Text proposed by the Commission*

(e) the *criteria of* the label are set by a third party which is independent from the economic operator applying for the label.

*Amendment*

(e) the *requirements to be met in order to obtain* the label are set by a third party which is independent from the economic operator applying for the label.

## Amendment 49

### Proposal for a directive

#### Article 58 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

Contracting entities *may* take account of variants which are submitted by a tenderer and meet the minimum requirements specified by the contracting entities.

*Amendment*

Contracting entities *shall* take account of variants which are submitted by a tenderer and meet the minimum requirements specified by the contracting entities.

## Amendment 50

### Proposal for a directive

#### Article 58 – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

Contracting entities shall indicate in the specifications *whether or not they authorise variants and, if so*, the minimum requirements to be met by the variants and any specific requirements for their presentation. *Where variants are authorised*, they shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

*Amendment*

Contracting entities shall indicate in the specifications the minimum requirements to be met by the variants, any specific requirements for their presentation *and* they shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

## Amendment 51

### Proposal for a directive

#### Article 58 – paragraph 1 – subparagraph 2 a (new)

***Contracting entities may indicate in the specifications that the variants are not authorised and the related specific reason for such prohibition.***

## **Amendment 52**

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

*Text proposed by the Commission*

2. In procedures for awarding supply or service contracts, contracting entities ***that have authorised variants*** shall not reject a variant on the sole ground that it would, where successful, lead either to a service contract rather than a supply contract or to a supply contract rather than a service contract.

*Amendment*

2. In procedures for awarding supply or service contracts, contracting entities shall not reject a variant on the sole ground that it would, where successful, lead either to a service contract rather than a supply contract or to a supply contract rather than a service contract.

## **Amendment 53**

### **Proposal for a directive Article 70 – paragraph 5**

*Text proposed by the Commission*

5. Contracting entities ***may decide not to*** award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, ***at least in an equivalent manner***, with obligations ***established by Union legislation*** in the field of social and labour law or environmental law or ***of the international social and environmental law provisions*** listed in Annex XIV.

*Amendment*

5. Contracting entities ***shall*** not award a contract to the tenderer submitting the best tender where they have established that the tender does not comply with obligations in the field of social and labour law or environmental law established by Union or ***national*** legislation ***or by collective agreements according to Member States practices and traditions, or with obligations in the field of intellectual property law or by the international social and environmental law provisions*** listed in Annex XIV.

## **Amendment 54**

**Proposal for a directive**

**Article 76 – paragraph 1 – subparagraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) the lowest cost.*

*deleted*

**Amendment 55**

**Proposal for a directive**

**Article 76 – paragraph 2 – subparagraph 2 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

*(aa) a socially sustainable production process;*

**Amendment 56**

**Proposal for a directive**

**Article 76 – paragraph 2 – subparagraph 2 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

*(da) the application of wage agreements and arbitration awards at national, local, sector and company level and of statutory provisions on health and safety and working conditions at national, European Union and international level.*

**Amendment 57**

**Proposal for a directive**

**Article 76 – paragraph 2 – subparagraph 2 – point d b (new)**

*Text proposed by the Commission*

*Amendment*

*(db) If, in the event of a change of contractor, the new contractor takes over workers from the former contractor, the workers shall be covered by the relevant legal effects of Directive 2001/23/EC.*

**Amendment 58**

**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 ***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.

**Amendment 59**

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

*Text proposed by the Commission*

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*

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:

**Amendment 60**

**Proposal for a directive**  
**Article 79 – paragraph 1 – introductory part**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 61**

**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.

**Amendment 62**

**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 ***national, European Union and international*** 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 63**

**Proposal for a directive**

**Article 79 – paragraph 3 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***(da) compliance with rules and standards in the field of health and safety, social law, and labour law.***

**Amendment 64**

**Proposal for a directive**

**Article 79 – paragraph 4 – subparagraph 2**

*Text proposed by the Commission*

It may only reject the tender where the evidence does not justify the low level of price or costs charged, taking into account

*Amendment*

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, ***or***



the elements referred to in paragraph 3.

*when the received justification is not sufficient.*

## Amendment 65

### 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 ***national and European Union*** obligations established by social and labour law or environmental law or by the international social and environmental law provisions listed in Annex XIV.

## Amendment 66

### 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 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 any new subcontractor shall be indicated without delay to the contracting authority, including the subcontractors' names, contact details and legal representatives.***

## Amendment 67

### Proposal for a directive

#### Article 86 – paragraph 1

*Text proposed by the Commission*

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

*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, ***non-discrimination*** and equal treatment of economic operators and allowing contracting entities to take into account the specificities of the services in question.

**Amendment 68**

**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 ***a high level of*** quality, ***safety***, continuity, accessibility, ***affordability***, availability and comprehensiveness of the services, the specific needs of different categories of users, ***including disadvantaged and vulnerable groups, the necessity to promote the participation of SMEs***, 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 69**

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

*Text proposed by the Commission*

(f) examining complaints from citizens and businesses on the application of public procurement rules in specific cases and

*Amendment*

(f) examining complaints from citizens and businesses ***and from professional associations or similar bodies*** on the

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;

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;

## **Amendment 70**

### **Proposal for a directive**

#### **Article 93 – paragraph 8 a (new)**

*Text proposed by the Commission*

*Amendment*

***8a. The annual report shall also include an annual comparison between the prices submitted and the actual cost of contracts that have already been performed and the potential influence over the number of staff employed by suppliers.***

## PROCEDURE

<b>Title</b>	Procurement by entities operating in the water, energy, transport and postal services sectors		
<b>References</b>	COM(2011)0895 – C7-0007/2012 – 2011/0439(COD)		
<b>Committee responsible</b> Date announced in plenary	IMCO 19.1.2012		
<b>Opinion by</b> Date announced in plenary	EMPL 19.1.2012		
<b>Rapporteur</b> Date appointed	Ramona Nicole Mănescu 16.2.2012		
<b>Discussed in committee</b>	20.6.2012	6.9.2012	17.9.2012
<b>Date adopted</b>	18.9.2012		
<b>Result of final vote</b>	+: 38 -: 0 0: 4		
<b>Members present for the final vote</b>	Regina Bastos, Edit Bauer, Heinz K. Becker, Pervenche Berès, Vilija Blinkevičiūtė, Philippe Boulland, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Marije Cornelissen, Emer Costello, Andrea Cozzolino, Frédéric Daerden, Sari Essayah, Thomas Händel, Marian Harkin, Nadja Hirsch, Stephen Hughes, Danuta Jazłowiecka, Ádám Kósa, Jean Lambert, Veronica Lope Fontagné, Olle Ludvigsson, Thomas Mann, Elisabeth Morin-Chartier, Csaba Óry, Siiri Oviir, Licia Ronzulli, Elisabeth Schroedter, Jutta Steinruck, Traian Ungureanu, Inês Cristina Zuber		
<b>Substitute(s) present for the final vote</b>	Cornelia Ernst, Kinga Göncz, Jelko Kacin, Tunne Kelam, Jan Kozłowski, Svetoslav Hristov Malinov, Anthea McIntyre, Antigoni Papadopoulou, Birgit Sippel, Csaba Sógor		