



2012/0060(COD)

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AMENDMENTS

66 - 177

Draft report

Daniel Caspary

Access of third-country goods and services to the Union's internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries

Proposal for a regulation

(COM(2016)0034 – C8-0018/2016 – 2012/0060(COD))

Amendment 66
Emma McClarkin

Proposal for a regulation

–

Proposal for rejection

The European Parliament rejects the Commission proposal.

Or. en

Amendment 67
Christofer Fjellner

Proposal for a regulation

–

Proposal for rejection

The European Parliament rejects the Commission proposal.

Or. sv

Justification

Det reviderade förslaget innehåller några förbättringar jämfört med det ursprungliga förslaget: Upphandlingsmarknaden stängs inte helt från vissa tredjeländer och det decentraliserade förfarandet som skulle splittra den inre marknaden för upphandling finns inte längre med. Ändå kvarstår grundläggande problem. De potentiella ekonomiska fördelarna med att begränsa tillträdet till upphandlingsmarknaden har inte kunnat motiveras. Kostnaderna för skattebetalarna i form av dyrare upphandlade varor och tjänster har inte utretts. Den administrativa bördan för upphandlande myndigheter och företag som lämnar anbud skulle alljämt öka. Förordningen skulle uppfattas som ett protektionistiskt steg av EU:s handelspartners och försämra våra handelsrelationer med dessa länder.

Amendment 68
Tiziana Beghin

Proposal for a regulation
Citation 2 a (new)

Text proposed by the Commission

Amendment

*Having regard to the
directive 2014/24/EU of the European
Parliament and the Council of 26
February 2014 on public procurement
and in particular its Article 18*

Or. en

Amendment 69

Yannick Jadot

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 6 a (new)

Text proposed by the Commission

Amendment

(6 a) In the perspective of a more integrated European industrial policy, the EU should consider the proposal of a "Buy European Act" setting up the requirement that companies locate at least 50% of their production in the Union, with a view to establishing a level-playing field in international public procurement.

Or. en

Amendment 70

Viviane Reding

Proposal for a regulation

Recital 8

Text proposed by the Commission

Amendment

(8) Many third countries are reluctant to open their public procurement and their concessions markets to international competition, or to open those markets further than what they have already done. As a result, Union economic operators face restrictive procurement practices in many of the trading partner of the Union. Those restrictive procurement practices result in the loss of substantial trading opportunities.

(8) Many third countries are reluctant to open their public procurement and their concessions markets to international competition, or to open those markets further than what they have already done. As a result, Union economic operators face restrictive procurement practices in many of the trading partner of the Union. Those restrictive procurement practices result in the loss of substantial trading opportunities. ***With the view to leveling the***

playing field and to ensuring reciprocal market access, this reform seeks to allow the European Commission as well as Member States' contracting authorities to exclude non-Union companies from public procurement contracts in the Union, unless their home country opens up its public procurement markets to Union companies.

Or. en

Amendment 71

Tokia Saïfi

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) Directive **2014/25/EU** of the European Parliament and of the Council¹⁶ contains only a few provisions concerning the external dimension of the public procurement policy of the Union, in particular Articles 85 and 86 . ***These provisions have a limited scope and should be replaced.***

¹⁶ Directive 2014/25/EU of the European Parliament and of the Council, of February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors (OJ L 94, 28.3.2014, p. 243).

Amendment

(9) Directive **2004/25/EU** of the European Parliament and of the Council¹⁶ contains only a few provisions concerning the external dimension of the public procurement policy of the Union, in particular Articles 85 and 86. ***Once this Regulation has been adopted, the Commission should assess whether there is a need to keep Articles 85 and 86 of Directive 2014/25/EU in the light of this Regulation coming into force and the consequences thereof.***

¹⁶ Directive 2014/25/EU of the European Parliament and of the Council, of February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors (OJ L 94, 28.3.2014, p. 243).

Or. fr

Amendment 72

Patricia Lalonde

Proposal for a regulation

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Recital 9

Text proposed by the Commission

(9) Directive **2014/25/EU** of the European Parliament and of the Council¹⁶ contains only a few provisions concerning the external dimension of the public procurement policy of the Union, in particular Articles 85 and 86 . These provisions **have a** limited scope and should be replaced.

¹⁶ Directive 2014/25/EU of the European Parliament and of the Council, of February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors (OJ L 94, 28.3.2014, p. 243).

Amendment

(9) Directive **2004/25/EU** of the European Parliament and of the Council¹⁶ contains only a few provisions concerning the external dimension of the public procurement policy of the Union, in particular Articles 85 and 86. These provisions **have** limited scope and should be replaced **by a more effective instrument**.

¹⁶ Directive 2014/25/EU of the European Parliament and of the Council, of February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors (OJ L 94, 28.3.2014, p. 243).

Or. fr

Amendment 73 Daniel Caspary

Proposal for a regulation Recital 13

Text proposed by the Commission

(13) The origin of a good should be determined in accordance with **Article 22 to 26 of Council Regulation (EEC) No 2913/1992¹⁸** .

Amendment

(13) ***In order to allow the contracting authorities and entities to know whether certain goods and services are covered by the international commitments of the Union, it is necessary to establish the rules of origin that apply.*** The origin of a good should be determined in accordance with ***Articles 59 to 63 of Regulation (EU) No 952/2013 of the European Parliament and of the Council^{18a} including the additional provisions to be adopted under Article 65 thereof.*** ***The origin of a service should be determined on the basis of the origin of the natural or legal person providing it. The determination of the origin of a service should be made in line with the principles of the WTO General***

*Agreement on Trade in Services (GATS).
The provisions determining the rules of
origin of services should prevent the
circumvention of restrictions on access to
the Union public procurement market
through the establishment of 'letterbox'
companies.*

*¹⁸ Council Regulation (EEC) No
2913/1992 of 12 October 1992
establishing the Community Customs
Code (OJ L 302, 9.10.1992, p. 1)*

*^{18a} Regulation (EU) No 952/2013 of the
European Parliament and of the Council
of 9 October 2013 laying down the Union
Customs Code (OJ L 269, 10.10.2013, p.
31)*

Or. en

Justification

*In line with plenary amendment from 15 January 2014, however, there is no need to
paraphrase the regulation. The importance of preventing circumvention of market restrictions
through letterbox companies shall be stressed.*

Amendment 74
Yannick Jadot
on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 16

Text proposed by the Commission

Amendment

*(16) In the light of the overall policy
objective of the Union to support small
and medium-sized enterprises, this
Regulation should also not apply to
tenders submitted by SMEs established in
the Union and in engaged in substantive
business operations entailing a direct and
effective link with the economy of at least
one Member State.*

deleted

Or. en

Amendment 75

Yannick Jadot

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 17

Text proposed by the Commission

(17) When assessing whether restrictive and/or discriminatory procurement measures or practices exist in a third country, the Commission should examine to what degree laws on public procurement and concessions 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. In addition, it should examine to what degree individual contracting authorities or contracting entities maintain or adopt discriminatory practices against Union goods, services and economic operators.

Amendment

(17) When assessing whether restrictive and/or discriminatory procurement measures or practices exist in a third country, the Commission should examine to what degree laws on public procurement and concessions 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. In addition, it should examine to what degree individual contracting authorities or contracting entities maintain or adopt discriminatory practices against Union goods, services and economic operators, ***including in cases where the non-observance by a third country of obligations stemming from international social and environmental conventions listed in Annex X to Directive 2014/23/EU has led to Union economic operators encountering difficulties where they have tried to secure the award of contracts or concessions in that third country, where those difficulties have been reported to the Commission.***

Or. en

Amendment 76

Tiziana Beghin

Proposal for a regulation

Recital 17

Text proposed by the Commission

(17) When assessing whether restrictive and/or discriminatory procurement

Amendment

(17) When assessing whether restrictive and/or discriminatory procurement

measures or practices exist in a third country, the Commission should examine to what degree laws on public procurement and concessions 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. In addition, it should examine to what degree individual contracting authorities *or* contracting entities maintain or adopt discriminatory practices against Union goods, services and economic operators.

measures or practices exist in a third country, the Commission should examine to what degree laws on public procurement and concessions 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. In addition, it should examine to what degree individual contracting authorities *and/or* contracting entities maintain or adopt discriminatory practices against Union goods, services and economic operators *and/or to what degree public contracts economic operators of third countries comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X of the Directive 2014/24/EU*

Or. en

Amendment 77
Inmaculada Rodríguez-Piñero Fernández

Proposal for a regulation
Recital 17

Text proposed by the Commission

(17) When assessing whether restrictive and/or discriminatory procurement measures or practices exist in a third country, the Commission should examine to what degree laws on public procurement and concessions 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. In addition, it should examine to what degree individual contracting authorities or contracting entities maintain or adopt

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Amendment

(17) When assessing whether restrictive and/or discriminatory procurement measures or practices exist in a third country, the Commission should examine to what degree laws on public procurement and concessions 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. In addition, it should examine to what degree individual contracting authorities or contracting entities maintain or adopt

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discriminatory practices against Union goods, services and economic operators.

discriminatory practices against Union goods, services and economic operators.
The Commission should also examine to what degree public authorities of a third country concerned take relevant measures to ensure compliance with obligations in the fields of international environmental, social and labour law provisions listed in Annex X to the Directive 2014/24/EU.

Or. en

Amendment 78

Yannick Jadot

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 17 a (new)

Text proposed by the Commission

Amendment

(17 a) With a view to appropriately integrating environmental, social and labour requirements into public procurement and concession award procedures, it is of particular importance that Member States and contracting authorities take relevant measures to ensure compliance with the obligations in the field of environmental, social and labour law that apply at the place where the works are executed or the services are provided and that result from laws, regulations or administrative provisions at both Union and national level, as well as from collective agreements, provided that such rules, and their application, comply with Union law. In addition, obligations stemming from the international social and environmental conventions listed in Annex X to Directive 2014/23/EU should apply during contract performance. This is of importance since a number of third countries have not ratified or are not implementing some of the international conventions referred to in that Annex, while Union economic operators are bound by those conventions.

Amendment 79

Yannick Jadot

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 17 b (new)

Text proposed by the Commission

Amendment

(17 b) Climate change is a core policy of the Union and the implementation of the Paris Agreement has also become a prominent objective in the framework of Union trade policy. It is therefore necessary, for the sake of policy coherence, to consider limiting the access to the Union public procurement market for goods and services originating from third countries that do not abide by the commitments undertaken under the Paris Agreement. In addition, the extent to which the implementation by the Union of its commitments under the Paris Agreement has led to Union economic operators encountering difficulties when they have tried to secure the award of contracts or concessions in a given third country should be examined, where such difficulties have been reported to the Commission.

Or. en

Amendment 80

Tiziana Beghin

Proposal for a regulation

Recital 18

Text proposed by the Commission

Amendment

(18) In view of the fact that the access of third country goods and services to the public procurement market of the Union falls within the scope of the common

(18) In view of the fact that the access of third country goods and services to the public procurement market of the Union falls within the scope of the common

commercial policy, Member States and their contracting authorities and contracting entities should not be able to restrict the access of third country goods or services to their tendering procedures by any other measure than those provided for in this Regulation.

commercial policy, Member States and their contracting authorities and contracting entities should not be able to restrict the access of third country goods or services to their tendering procedures by any other measure than those provided for in this Regulation *or by relevant Union law, national law or collective agreements*.

Or. en

Amendment 81
Patricia Lalonde

Proposal for a regulation
Recital 19

Text proposed by the Commission

(19) The Commission should be able, on its own initiative or at the *application* of interested parties or a Member State, to initiate at any time an investigation into restrictive procurement measures or practices allegedly adopted or maintained by a third country. . Such investigative procedures should be without prejudice to Regulation (EU) *No 654/2014* of the European Parliament and of the Council .

Amendment

(19) The Commission should be able, on its own initiative or at the *request* of interested parties, *a contracting authority or a contracting entity of the EU* or a Member State, to initiate at any time an investigation into restrictive procurement measures or practices allegedly adopted or maintained by a third country. Such investigative procedures should be without prejudice to Regulation (EU) *No 654/2014* of the European Parliament and of the Council.

Or. fr

Amendment 82
Tiziana Beghin

Proposal for a regulation
Recital 19

Text proposed by the Commission

(19) The Commission should be able, on its own initiative or at *the application of* interested parties or a Member State, to initiate at any time an investigation into

Amendment

(19) The Commission should be able, on its own initiative or at *requests made by* interested parties, *relevant stakeholders, contracting authorities,*

restrictive procurement measures or practices allegedly adopted or maintained by a third country. . Such investigative procedures should be without prejudice to Regulation (EU) No 654/2014 of the European Parliament and of the Council .

entities or a Member State, to initiate at any time an investigation into restrictive procurement measures or practices allegedly adopted or maintained by a third country. Such investigative procedures should be without prejudice to Regulation (EU) No 654/2014 of the European Parliament and of the Council .

Or. en

Amendment 83
Tiziana Beghin

Proposal for a regulation
Recital 20

Text proposed by the Commission

(20) If the existence of *a restrictive and/or discriminatory procurement* measure or practice *in a third country* is confirmed, the Commission should invite the country concerned to enter into consultations with a view to improving the tendering opportunities for Union economic operators, goods and services in respect of public procurement in that country.

Amendment

(20) *Where the Commission has, on the basis of available information or after having consulted with relevant stakeholders, reasons to believe that a third county has adopted or maintains a restrictive procurement or concession practices, it should initiate an investigation.* If the existence of *such* measure or practice is confirmed, the Commission should invite the country concerned to enter into consultations with a view to improving the tendering opportunities for Union economic operators, goods and services in respect of public procurement in that country.

Or. en

Amendment 84
Emma McClarkin

Proposal for a regulation
Recital 21

Text proposed by the Commission

(21) It is of the utmost importance that the investigation is carried out in a

Amendment

(21) It is of the utmost importance that the investigation is carried out in a

transparent manner. A report on the main findings of the investigation should therefore be publicly available.

transparent manner. A report on the main findings of the investigation should therefore be publicly available, *whilst maintaining the appropriate level of commercial confidentiality*;

Or. en

Amendment 85
Tiziana Beghin

Proposal for a regulation
Recital 21

Text proposed by the Commission

(21) It is of the utmost importance that the investigation is carried out in a transparent manner. A report on the main findings of the investigation should therefore be publicly available.

Amendment

(21) It is of the utmost importance that the investigation is carried out in a transparent manner *and within reasonable timeframe*. A report on the main findings of the investigation should therefore be publicly available.

Or. en

Amendment 86
Viviane Reding

Proposal for a regulation
Recital 22

Text proposed by the Commission

(22) If the consultations with the country concerned do not lead to sufficient improvements to the tendering opportunities for Union economic operators, goods and services within a reasonable timeframe, the Commission should *be able to adopt, where appropriate, price adjustment measure applying to tenders submitted by economic operators originating in that country and/or including goods and services originating in that country*.

Amendment

(22) If the consultations with the country concerned do not lead to sufficient improvements to the tendering opportunities for Union economic operators, goods and services within a reasonable timeframe, the Commission should *take appropriate restrictive measures*.

Or. en

Amendment 87

Yannick Jadot

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 22

Text proposed by the Commission

(22) If the consultations with the country concerned do not lead to sufficient improvements to the tendering opportunities for Union economic operators, goods and services within a reasonable timeframe, the Commission should be able to adopt, where appropriate, **price adjustment measure** applying to tenders submitted by economic operators originating in that country and/or including goods and services originating in that country.

Amendment

(22) If the consultations with the country concerned do not lead to sufficient improvements to the tendering opportunities for Union economic operators, goods and services within a reasonable timeframe, the Commission should be able to adopt, where appropriate, **measures limiting the access to the Union public procurement market** applying to tenders submitted by economic operators originating in that country and/or including goods and services originating in that country.

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Or. en

Amendment 88

Tiziana Beghin

Proposal for a regulation

Recital 22

Text proposed by the Commission

(22) If the consultations with the country concerned do not lead to **sufficient** improvements to the tendering opportunities for Union economic operators, goods and services **within a reasonable timeframe**, the Commission should be able to adopt, **where appropriate, price adjustment measure** applying to tenders submitted by economic operators originating in that country and/or including goods and services originating in

Amendment

(22) If the consultations with the country concerned do not lead to **concrete** improvements to the tendering opportunities for Union economic operators, goods and services, the Commission should be able to adopt **restrictive measures** applying to tenders submitted by economic operators originating in that country and/or including goods and services originating in that

that country.

country.

Or. en

Amendment 89
Inmaculada Rodríguez-Piñero Fernández

Proposal for a regulation
Recital 22 a (new)

Text proposed by the Commission

Amendment

(22 a) If the consultations with the country concerned do not lead to sufficient improvements to the tendering opportunities for Union economic operators, goods and services within a reasonable timeframe, contracting authorities should be able to exclude tenders submitted by economic operators owned or controlled directly or indirectly by the government of the third country concerned, including through significant funding and subsidies.

Or. en

Amendment 90
Viviane Reding

Proposal for a regulation
Recital 23

Text proposed by the Commission

Amendment

(23) Such measures ***should be applied only for the purpose of the evaluation of tenders comprising*** goods or services originating in ***the*** country ***concerned***. To avoid circumvention of those measures, it may also be necessary to target certain foreign-controlled or owned legal persons that, although established in the European Union, are not engaged in substantive business operations that have a direct and effective link with the economy of at least one Member State . Appropriate measures

(23) Such measures ***may entail the mandatory exclusion of certain third-country goods and services from public procurement procedures in the European Union, or may subject*** tenders ***made up of*** goods or services originating in ***that*** country ***to a mandatory price***. To avoid circumvention of those measures, it may also be necessary to target certain foreign-controlled or owned legal persons that, although established in the European Union, are not engaged in substantive

should not be disproportionate to the restrictive procurement practices to which they respond.

business operations that have a direct and effective link with the economy of at least one Member State . Appropriate measures should not be disproportionate to the restrictive procurement practices to which they respond.

Or. en

Amendment 91
Tiziana Beghin

Proposal for a regulation
Recital 23

Text proposed by the Commission

(23) Such measures should be applied ***only for the purpose of the evaluation of*** tenders comprising goods or services originating in the country concerned. To avoid circumvention of those measures, it may also be necessary to target certain foreign-controlled or owned legal persons that, although established in the European Union, are not engaged in substantive business operations that have a direct and effective link with the economy of at least one Member State . Appropriate measures should not be disproportionate to the restrictive procurement practices to which they respond.

Amendment

(23) Such measures should be applied ***to exclude those*** tenders comprising goods or services originating in the country concerned. To avoid circumvention of those measures, it may also be necessary to target certain foreign-controlled or owned legal persons that, although established in the European Union, are not engaged in substantive business operations that have a direct and effective link with the economy of at least one Member State . Appropriate measures should not be disproportionate to the restrictive procurement practices to which they respond ***and should apply until sufficient improvements are registered.***

Or. en

Amendment 92
Yannick Jadot
on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 23

Text proposed by the Commission

(23) Such measures should ***be applied only for the purpose of the evaluation of tenders comprising*** goods ***or*** services

Amendment

(23) Such measures should ***entail the mandatory exclusion of certain third-country*** goods ***and*** services originating in

originating in the country concerned. To avoid circumvention of those measures, it may also be necessary to target certain foreign-controlled or owned legal persons that, although established in the European Union, are not engaged in substantive business operations that have a direct and effective link with the economy of at least one Member State . Appropriate measures should not be disproportionate to the restrictive procurement practices to which they respond.

the country concerned *from public procurement procedures in the Union*. To avoid circumvention of those measures, it may also be necessary to target certain foreign-controlled or owned legal persons that, although established in the European Union, are not engaged in substantive business operations that have a direct and effective link with the economy of at least one Member State . Appropriate measures should not be disproportionate to the restrictive procurement practices to which they respond.

Or. en

Amendment 93
Patricia Lalonde

Proposal for a regulation
Recital 24

Text proposed by the Commission

(24) Price adjustment measures should not have a negative impact on on-going trade negotiations with the country concerned. Therefore, where a country is engaging in substantive negotiations with the Union concerning market access in the field of public procurement, the Commission may suspend the measures during the negotiations.

Amendment

deleted

Or. fr

Amendment 94
Daniel Caspary

Proposal for a regulation
Recital 24

Text proposed by the Commission

(24) Price adjustment measures should not have a negative impact on on-going trade negotiations with the country

Amendment

(24) The Commission should be able to prevent the possible negative impact of an intended exclusion on on-going trade

concerned. Therefore, where a country is engaging in substantive negotiations with the Union concerning market access in the field of public procurement, the Commission *may suspend the measures during the negotiations.*

negotiations with the country concerned. Therefore, where a country is engaging in substantive negotiations with the Union concerning market access in the field of public procurement *or concessions, and the Commission considers that there is a reasonable prospect of removing the restrictive procurement or concessions practices in the near future*, the Commission *should be able to adopt an implementing act to withdraw the restrictive measure adopted or suspend its application for a period of time.*

Or. en

Justification

Amendment in order to be in line with Article 10(1).

Amendment 95

Yannick Jadot

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 24

Text proposed by the Commission

(24) *Price adjustment* measures should not have a negative impact on on-going trade negotiations with the country concerned. Therefore, where a country is engaging in substantive negotiations with the Union concerning market access in the field of public procurement, the Commission may suspend the measures during the negotiations.

Amendment

(24) Measures *limiting the access to the Union public procurement market* should not have a negative impact on on-going trade negotiations with the country concerned. Therefore, where a country is engaging in substantive negotiations with the Union concerning market access in the field of public procurement *or its commitments under the social and environmental conventions listed in Annex X to Directive 2014/23/EU or under the Paris Agreement*, the Commission may suspend the measures during the negotiations.

Or. en

Amendment 96

Tiziana Beghin

Proposal for a regulation

Recital 24

Text proposed by the Commission

(24) ***Price adjustment measures should not have a negative impact on on-going trade negotiations with the country concerned. Therefore,*** where a country is engaging in substantive negotiations with the Union concerning market access in the field of public procurement, the Commission may suspend the measures during the negotiations.

Amendment

(24) Where a country is engaging in substantive negotiations with the Union concerning market access in the field of public procurement, the Commission may suspend the measures during the negotiations.

Or. en

Amendment 97

Tiziana Beghin

Proposal for a regulation

Recital 25

Text proposed by the Commission

(25) In order to simplify the application of a ***price adjustment*** measure by contracting authorities or contracting entities, there should be a presumption that all economic operators originating in a targeted third country with which there is no agreement on procurement will be subject to the measure, unless they can demonstrate that less than 50% of the total value of their tender is made up of goods or services originating in the third country concerned.

Amendment

(25) In order to simplify the application of ***the restrictive*** measure by contracting authorities or contracting entities, there should be a presumption that all economic operators originating in a targeted third country with which there is no agreement on procurement will be subject to the measure, unless they can demonstrate that less than 50% of the total value of their tender is made up of goods or services originating in the third country concerned.

Or. en

Amendment 98

Tiziana Beghin

Proposal for a regulation

Recital 26

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Text proposed by the Commission

(26) Member States are best placed to identify the contracting authorities or contracting entities, ***or categories of contracting authorities or contracting entities***, which should apply the ***price adjustment*** measure. ***To ensure that an appropriate level of action is taken and that a fair distribution of the burden among Member States is achieved, the Commission should take the final decision, based on a list submitted by each Member State.*** Where necessary, the Commission may establish a list on its own initiative.

Amendment

(26) Member States are best placed to identify the contracting authorities or contracting entities which should apply the ***restrictive*** measure. Where necessary, the Commission may establish a list on its own initiative.

Or. en

Amendment 99
Inmaculada Rodríguez-Piñero Fernández

Proposal for a regulation
Recital 27

Text proposed by the Commission

(27) It is imperative that contracting authorities and contracting entities have access to a range of high-quality products meeting their purchasing requirements at a competitive price. Therefore contracting authorities and contracting entities should be able not to apply price adjustment measures limiting access of non-covered goods and services in case there are no Union and/or covered goods or services available which meet the requirements of the contracting authority or contracting entity to safeguard essential public needs, for example in the fields of health and public safety, ***or*** where the application of the measure would lead to a disproportionate increase in the price or costs of the contract.

Amendment

(27) It is imperative that contracting authorities and contracting entities have access to a range of high-quality products meeting their purchasing requirements at a competitive price. Therefore contracting authorities and contracting entities should be able not to apply price adjustment measures limiting access of non-covered goods and services in case there are no Union and/or covered goods or services available which meet the requirements of the contracting authority or contracting entity to safeguard essential public needs, for example in the fields of health and public safety, where the application of the measure would lead to a disproportionate increase in the price or costs of the contract, ***where the application of the measure would have negative effects due to the lack of effective competition for the execution of works, the supply of goods or***

the provision of services in a specific market or where the tender submitted by an economic operator originating in the third country concerned is the best tender in terms of qualitative criteria, as referred to in point (a) of the first paragraph of Article 67(2) of Directive 2014/24/EU.

Or. en

Amendment 100
Emma McClarkin

Proposal for a regulation
Recital 27

Text proposed by the Commission

(27) It is imperative that contracting authorities and contracting entities have access to a range of high-quality products meeting their purchasing requirements at a competitive price. Therefore contracting authorities and contracting entities should be able not to apply price adjustment measures limiting access of non-covered goods and services in case there are no Union and/or covered goods or services available which meet the requirements of the contracting authority or contracting entity to safeguard essential public needs, for example in the fields of health and public safety, or where the application of the measure would lead to a disproportionate increase in the price or costs of the contract.

Amendment

(27) It is imperative that contracting authorities and contracting entities have access to a range of high-quality products meeting their purchasing requirements at a competitive price **and offering best value for money**. Therefore contracting authorities and contracting entities should be able not to apply price adjustment measures limiting access of non-covered goods and services in case there are no Union and/or covered goods or services available which meet the requirements of the contracting authority or contracting entity to safeguard essential public needs, for example in the fields of health and public safety, or where the application of the measure would lead to a disproportionate increase in the price or costs of the contract.

Or. en

Amendment 101
Tiziana Beghin

Proposal for a regulation
Recital 27

Text proposed by the Commission

(27) It is imperative that contracting authorities and contracting entities have access to a range of high-quality products meeting their purchasing requirements at a competitive price. Therefore contracting authorities and contracting entities should be able ***not to apply price adjustment*** measures limiting access of non-covered goods and services in case there are no Union and/or covered goods or services available which meet the requirements of the contracting authority or contracting entity to safeguard essential public needs, for example in the fields of health and public safety, or where the application of the measure would lead to a disproportionate increase in the price or costs of the contract.

Amendment

(27) It is imperative that contracting authorities and contracting entities have access to a range of high-quality products meeting their purchasing requirements at a competitive price. Therefore contracting authorities and contracting entities should be able ***to set aside*** measures limiting access of non-covered goods and services in case there are no Union and/or covered goods or services available which meet the requirements of the contracting authority or contracting entity to safeguard essential public needs, for example in the fields of ***water supply***, health and public safety, or where the application of the measure would lead to a disproportionate increase in the price or costs of the contract.

Or. en

Amendment 102
Emma McClarkin

Proposal for a regulation
Recital 29

Text proposed by the Commission

(29) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council²².

Amendment

(29) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council²². ***The Commission shall also ensure that all the Union institutions and agencies take into account the provisions of this Regulation and do the internal adjustments to reflect these changes.***

²² Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning

²² Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning

mechanisms for the control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

mechanisms for the control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

Or. en

Amendment 103
Viviane Reding

Proposal for a regulation
Recital 30

Text proposed by the Commission

(30) The examination procedure should be used for the adoption of implementing acts regarding the adoption, withdrawal, or suspension or reinstatement of a **the** price adjustment measure.

Amendment

(30) The examination procedure should be used for the adoption of implementing acts regarding the adoption, withdrawal, or suspension or reinstatement of a **market restriction or a** price adjustment measure.

Or. en

Amendment 104
Tiziana Beghin

Proposal for a regulation
Recital 32

Text proposed by the Commission

(32) Regular reporting by the Commission should make it possible to monitor the application **and** efficiency of the procedures established by this Regulation.

Amendment

(32) Regular reporting by the Commission should make it possible to monitor the application, **to underline sectors where reciprocity is achieved, to assess the** efficiency of the procedures established by this Regulation **and, where appropriate, to revise it.**

Or. en

Amendment 105
Tiziana Beghin

Proposal for a regulation

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Article 1 – paragraph 1 – subparagraph 2

Text proposed by the Commission

It provides for the possibility of applying **price adjustment** measures to certain tenders for contracts for the execution of works or a work, for the supply of goods and/or the provision of services and for concessions, on the basis of the origin of the economic operators, goods or services concerned. .

Amendment

It provides for the possibility of applying **restrictive** measures to certain tenders for contracts for the execution of works or a work, for the supply of goods and/or the provision of services and for concessions, on the basis of the origin of the economic operators, goods or services concerned. .

Or. en

Amendment 106

Yannick Jadot

on behalf of the Verts/ALE Group

Proposal for a regulation

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

Text proposed by the Commission

Amendment

This Regulation also provides for the possibility of applying measures limiting the access to the Union public procurement market to certain tenders of contracts for the execution of works or a work, for the supply of goods and/or the provision of services and for concessions, where the economic operators, the goods or the services concerned originate from a third country that does not abide by the commitments undertaken under the Paris Agreement.

Or. en

Amendment 107

Yannick Jadot

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 4

Text proposed by the Commission

4. This Regulation shall apply **only** with regard to restrictive and/or discriminatory procurement measures or practices implemented by a third country in respect of purchases of non-covered goods and services. The application of this Regulation shall be without prejudice to any international obligations of the Union.

Amendment

4. This Regulation shall apply with regard to restrictive and/or discriminatory procurement measures or practices implemented by a third country in respect of purchases of non-covered goods and services ***as well as with regard to a third country not abiding by the commitments undertaken under the Paris Agreement.*** The application of this Regulation shall be without prejudice to any international obligations of the Union.

Or. en

Amendment 108

Elsi Katainen, Nadja Hirsch

Proposal for a regulation

Article 1 – paragraph 5

Text proposed by the Commission

5. Member States and their contracting authorities and contracting entities shall not apply restrictive measures in respect of third country economic operators, goods and services beyond those provided for in this Regulation.

Amendment

5. Member States and their contracting authorities and contracting entities shall not apply restrictive measures in respect of third country economic operators, goods and services beyond those provided for in this Regulation ***except those provided in Directives 2014/23/EU, 2014/24/EU or 2014/25/EU.***

Or. en

Amendment 109

Tiziana Beghin

Proposal for a regulation

Article 1 – paragraph 5

Text proposed by the Commission

5. Member States and their contracting authorities and contracting entities shall not apply restrictive measures in respect of third country economic

Amendment

5. Member States and their contracting authorities and contracting entities shall not apply restrictive measures in respect of third country economic

operators, goods and services beyond those provided for in this Regulation.

operators, goods and services beyond those provided for in this Regulation **or by relevant Union law, national law or collective agreements.**

Or. en

Amendment 110
Viviane Reding

Proposal for a regulation
Article 2 – paragraph 1 – point d

Text proposed by the Commission

(d) ‘covered goods or services’ means goods or services originating in a country with which the Union has concluded an international agreement in the field of public procurement and/or concessions including market access commitments and in respect of which the relevant agreement applies;

Amendment

(d) ‘covered goods or services’ means goods or services originating in a country with which the Union has concluded an international agreement in the field of public procurement and/or concessions including market access commitments ***ensuring comparable and effective access for Union undertakings to the markets of those third countries*** and in respect of which the relevant agreement applies;

Or. en

Amendment 111
Yannick Jadot
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 2 – paragraph 1 – point f

Text proposed by the Commission

(f) ‘restrictive and/or discriminatory procurement measure or practice’ means any legislative, regulatory or administrative measure, procedure or practice, or combination thereof, adopted or maintained by public authorities or individual contracting authorities or contracting entities in a third country, that result in a serious and recurrent impairment of access of Union goods, services and/or

Amendment

(f) ‘restrictive and/or discriminatory procurement measure or practice’ means any legislative, regulatory or administrative measure, procedure or practice, or combination thereof, adopted or maintained by public authorities or individual contracting authorities or contracting entities in a third country, that result in a serious and recurrent impairment of access of Union goods, services and/or

economic operators to the public procurement or concession market of that country.

economic operators to the public procurement or concession market of that country. *Restrictive and/or discriminatory procurement measures or practices shall also be presumed to exist where the non-observance of international social and environmental conventions listed in Annex X to Directive 2014/23/EU by public authorities of third countries, or the implementation by the Union of its commitments under the Paris Agreement has led to Union economic operators encountering difficulties when they have tried to secure the award of contracts or concessions in the third countries concerned, and where such difficulties have been reported to the Commission. Restrictive and/or discriminatory procurement measures or practices shall not be presumed to exist where a third country applies local content requirements in its public procurement legislation that are compatible with its international commitments, when those requirements are aimed at pursuing legitimate public policy objectives and development goals.*

Or. en

Amendment 112

Inmaculada Rodríguez-Piñero Fernández

Proposal for a regulation

Article 2 – paragraph 1 – point f

Text proposed by the Commission

(f) ‘restrictive and/or discriminatory procurement measure or practice’ means any legislative, regulatory or administrative measure, procedure or practice, or combination thereof, adopted or maintained by public authorities or individual contracting authorities or contracting entities in a third country, that result in a serious and recurrent impairment of access of Union goods, services and/or economic operators to the public

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Amendment

(f) ‘restrictive and/or discriminatory procurement measure or practice’ means any legislative, regulatory or administrative measure, procedure or practice, or combination thereof, adopted or maintained by public authorities or individual contracting authorities or contracting entities in a third country, that result in a serious and recurrent impairment of access of Union goods, services and/or economic operators to the public

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procurement or concession market of that country.

procurement or concession market of that country.

'restrictive and/or discriminatory procurement measures or practices' shall also include the non observance of international environmental, social and labour law provisions listed in Annex X to the Directive 2014/24/EU.

Or. en

Amendment 113

Tiziana Beghin

Proposal for a regulation

Article 2 – paragraph 1 – point f

Text proposed by the Commission

(f) 'restrictive and/or discriminatory procurement measure or practice' means any legislative, regulatory or administrative measure, procedure or practice, or combination thereof, adopted or maintained by public authorities or individual contracting authorities or contracting entities in a third country, that result in a ***serious and recurrent impairment of*** access of Union goods, services and/or economic operators to the public procurement or concession market of that country.

Amendment

(f) 'restrictive and/or discriminatory procurement measure or practice' means any legislative, regulatory or administrative measure, procedure or practice, or combination thereof, adopted or maintained by public authorities or individual contracting authorities or contracting entities in a third country, that result in a ***lack of reciprocity in the*** access of Union goods, services and/or economic operators to the public procurement or concession market of that country.

Or. en

Amendment 114

Yannick Jadot

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 2 – paragraph 1 – point h a (new)

Text proposed by the Commission

Amendment

***(h a) 'interested party' means:
- a company or firm, formed in
accordance with the law of a Member***

State and having its registered office, central administration or principal place of business within the Union, which is directly concerned by the production of goods or the provision of services which are the subject of the restrictive procurement measures of third countries,
- a trade union representing the business and the sectors concerned by the restrictive procurement measures of third countries, or
- a civil society organization;

Or. en

Amendment 115
Tiziana Beghin

Proposal for a regulation
Article 2 – paragraph 1 – point h a (new)

Text proposed by the Commission

Amendment

(h a) "Interested parties" means relevant stakeholders, individual contracting authorities and entities excluding municipalities with less than 100.000 inhabitants

Or. en

Amendment 116
Emma McClarkin

Proposal for a regulation
Article 2 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. "Price adjustment" is a price penalty applied by the Member States, on the basis of a Commission decision, to the provision of goods and services from a third country in a Member State's procurement procedures, in response to a restrictive and/or discriminatory measure

applied by that third country against the EU in the field of public procurement, which raises the cost of provision of those goods and services.

Or. en

Amendment 117

Yannick Jadot

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 5

Text proposed by the Commission

Amendment

Article 5

deleted

Exemption for tenders submitted by SMEs

Tenders submitted by SMEs²⁸ established in the Union and engaged in substantive business operations entailing a direct and effective link with the economy of at least one Member State, shall be exempted from this Regulation.

²⁸ *As defined in the Commission recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).*

Or. en

Amendment 118

Inmaculada Rodríguez-Piñero Fernández

Proposal for a regulation

Chapter 3 – title

Text proposed by the Commission

Amendment

Investigations, consultations *and* price adjustment measures

Investigations, consultations, price adjustment measures *and measures limiting access of non-covered goods and services to the Union public procurement*

Amendment 119

Yannick Jadot

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 6 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Where the Commission *considers it to be in the interest of the Union*, it may at any time, on its own initiative or upon application of interested parties or a Member State, initiate an investigation into alleged restrictive and/or discriminatory procurement measures or *practices*.

Amendment

The Commission may at any time, on its own initiative or upon application of interested parties or a Member State, initiate an investigation into alleged restrictive and/or discriminatory procurement measures or *practices*. *In its decision to initiate such an investigation, the Commission shall take utmost account of the applications submitted by the Member States, contracting authorities or interested parties. In the event that the Commission declines to initiate an investigation, it shall provide justifications to the Member States, the contracting authorities or the interested parties that submitted the application.*

Amendment 120

Patricia Lalonde

Proposal for a regulation

Article 6 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Where the Commission considers it to be in the interest of the Union, it may at any time, on its own initiative or *upon application* of interested parties or a Member State, initiate an investigation into alleged restrictive and/or discriminatory procurement measures or

Amendment

Where the Commission considers it to be in the interest of the Union, it may at any time, on its own initiative or *at the request* of interested parties, *a contracting or awarding authority of the EU* or a Member State, initiate an investigation into alleged restrictive and/or discriminatory

practices.

procurement measures or *practices.*

Or. fr

Amendment 121

Tiziana Beghin

Proposal for a regulation

Article 6 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Where the Commission *considers it to be in the interest of the Union, it* may at any time, on its own initiative or upon application of interested parties or a Member State, initiate an investigation into alleged restrictive and/or discriminatory procurement measures or practices.

Amendment

The Commission may at any time, on its own initiative or upon application of interested parties, *relevant stakeholders, individual contracting authorities, contracting entities* or a Member State, initiate an investigation into alleged restrictive and/or discriminatory procurement measures or practices.

Or. en

Amendment 122

Tiziana Beghin

Proposal for a regulation

Article 6 – paragraph 1 – subparagraph 2

Text proposed by the Commission

If an investigation is initiated, the Commission shall publish a notice in the Official Journal of the European Union, inviting interested parties and Member States to provide all relevant information to the Commission within a specified period of time.

Amendment

If an investigation is initiated, the Commission shall publish a notice in the Official Journal of the European Union, inviting interested parties, *relevant stakeholders, individual contracting authorities, contracting entities* and Member States to provide all relevant information to the Commission within a specified period of time.

Or. en

Amendment 123

Tiziana Beghin

Proposal for a regulation
Article 6 – paragraph 2

Text proposed by the Commission

2. The assessment by the Commission of whether the alleged restrictive and/or discriminatory procurement measures or practices have been adopted or are maintained by the third country concerned shall be made on the basis of the information supplied by interested parties and Member States, of facts collected by the Commission during its investigation, or both. The assessment shall be concluded within a period of *eight* months after the initiation of the investigation. In duly justified cases, this period may be extended by four months.

Amendment

2. The assessment by the Commission of whether the alleged restrictive and/or discriminatory procurement measures or practices have been adopted or are maintained by the third country concerned shall be made on the basis of the information supplied by interested parties and Member States, of facts collected by the Commission during its investigation, or both. The assessment shall be *carried out in a transparent manner and* concluded within a period of *five* months after the initiation of the investigation. In duly justified cases, this period may be extended by four months.

Or. en

Amendment 124

Yannick Jadot

on behalf of the Verts/ALE Group

Proposal for a regulation
Article 6 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. The procedure outlined in paragraphs 1 to 4 of this Article applies, mutatis mutandis, to cases where a third country does not abide by the commitments undertaken under the Paris Agreement.

Or. en

Amendment 125

Yannick Jadot

on behalf of the Verts/ALE Group

Proposal for a regulation

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Article 7 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Where it is found as a result of an investigation that restrictive and/or discriminatory procurement measures or practices have been adopted or maintained by a third country **and the Commission considers it to be in the Union interest**, the Commission shall invite the country in question to enter into consultations. Those consultations shall aim at ensuring that Union economic operators, goods and services can participate in tendering procedures for the award of public procurement or concession contracts in that country on conditions no less favourable than those accorded to national economic operators, goods and services of that country and also with a view to ensuring the application of the principles of transparency and equal treatment.

Amendment

Where it is found as a result of an investigation that restrictive and/or discriminatory procurement measures or practices have been adopted or maintained by a third country, the Commission shall invite the country in question to enter into consultations. Those consultations shall aim at ensuring that Union economic operators, goods and services can participate in tendering procedures for the award of public procurement or concession contracts in that country on conditions no less favourable than those accorded to national economic operators, goods and services of that country and also with a view to ensuring the application of the principles of transparency and equal treatment.

Or. en

Amendment 126 **Patricia Lalonde**

Proposal for a regulation **Article 7 – paragraph 1 – subparagraph 1**

Text proposed by the Commission

Where it is found as a result of an investigation that restrictive and/or discriminatory procurement measures or practices have been adopted or maintained by a third country and the Commission considers it to be in the Union interest, the Commission shall invite the country in question to enter into consultations. Those consultations shall aim **at ensuring** that Union economic operators, goods and services can participate in tendering procedures for the award of public procurement or concession contracts in that country on conditions **no less favourable than** those accorded to national economic

Amendment

Where it is found as a result of an investigation that restrictive and/or discriminatory procurement measures or practices have been adopted or maintained by a third country and the Commission considers it to be in the Union interest, the Commission shall invite the country in question to enter into consultations. Those consultations shall aim **at ensuring** that Union economic operators, goods and services can participate in tendering procedures for the award of public procurement or concession contracts in that country on conditions **which are as favourable as** those accorded to national

operators, goods and services of that country and also with a view to ensuring the application of the principles of transparency and equal treatment.

economic operators, goods and services of that country and also with a view to ensuring the application of the principles of transparency and equal treatment.

Or. fr

Amendment 127
Viviane Reding

Proposal for a regulation
Article 7 – paragraph 3 – point ii a (new)

Text proposed by the Commission

Amendment

(ii a) decide, by implementing act, to limit the access of goods and services originating in the third country concerned.

Or. en

Amendment 128
Patricia Lalonde

Proposal for a regulation
Article 7 – paragraph 4

Text proposed by the Commission

Amendment

4. Where, after the initiation of consultations, it appears that the most appropriate means to end a restrictive and/or discriminatory procurement measure or practice is the conclusion of an international agreement, negotiations shall be carried out in accordance with Articles 207 and 218 of the Treaty on the Functioning of the European Union.. ***While such negotiations are ongoing, the investigation may be suspended.***

4. Where, after the initiation of ***a*** consultations, it appears that the most appropriate means to end a restrictive and/or discriminatory procurement measure or practice is the conclusion of an international agreement, negotiations shall be carried out in accordance with Articles 207 and 218 of the Treaty on the Functioning of the European Union.

Or. fr

Amendment 129

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Tiziana Beghin

Proposal for a regulation

Article 7 – paragraph 5 – introductory part

Text proposed by the Commission

5. The Commission may terminate consultations if the country concerned undertakes international commitments agreed with the Union in any of the following frameworks:

Amendment

5. The Commission may terminate consultations if the country concerned undertakes international commitments ***or specific obligations in the fields of environmental, social and labour law*** agreed with the Union in any of the following frameworks:

Or. en

Amendment 130

Patricia Lalonde

Proposal for a regulation

Article 7 – paragraph 5 – point a

Text proposed by the Commission

(a) Accession to the WTO Agreement on Government Procurement;

Amendment

(a) Accession to the WTO Agreement on Government Procurement ***without substantial reservations***;

Or. fr

Amendment 131

Yannick Jadot

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 7 – paragraph 5 – point b a (new)

Text proposed by the Commission

Amendment

(b a) Ratification or the effective implementation of the international social and environmental conventions listed in Annex X to Directive 2014/23/EU; or

Or. en

Amendment 132
Viviane Reding

Proposal for a regulation
Article 7 – paragraph 6

Text proposed by the Commission

Amendment

6. *In the event that consultations with a third country do not lead to satisfactory results within 15 months from the day those consultations started, the Commission shall terminate the consultations and shall take appropriate action. In particular, the Commission may decide, by means of an implementing act, to impose a price adjustment measure, pursuant to Article 8. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 14(2).*

deleted

Or. en

Amendment 133
Yannick Jadot
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 7 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6 a. *The procedure outlined in paragraphs 1 to 6 of this Article applies, mutatis mutandis, to cases where a third country does not abide by the commitments undertaken under the Paris Agreement.*

Or. en

Amendment 134
Viviane Reding

Proposal for a regulation
Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7 a

Adoption of measures limiting access of non-covered goods and services to the EU public procurement market

1. Where it is found in an investigation pursuant to Article 6 that restrictive procurement measures adopted or maintained by that third country leads to a lack of substantial reciprocity in market opening between the Union and the third country, the Commission shall terminate the consultations and shall take appropriate action. In particular, the Commission may decide, by means of an implementing act, to temporarily limit the access of non-covered goods and services originating in a third country or to impose a price adjustment measure, pursuant to Article 8. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).

2. The measures adopted pursuant to paragraph 1 may take any of the following forms:

(a) the exclusion of tenders of which more than 50% of the total value is made up of non-covered goods or services originating in the country adopting or maintaining a restrictive procurement practice; and/or

(b) a mandatory price penalty on that part of the tender consisting of non-covered goods or services which originate in the country adopting or maintaining a restrictive procurement practice.

Or. en

Amendment 135
Yannick Jadot
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 8 – title

Text proposed by the Commission

Price adjustment measures

Amendment

Measures *limiting the access of non covered goods and services to the Union public procurement market*

Or. en

Amendment 136
Patricia Lalonde

Proposal for a regulation
Article 8 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Tenders more than 50 % of the total value of which is made of goods and/or services originating in a third country, may be subject to a price adjustment measure where the third country concerned adopts or maintains restrictive and/or discriminatory procurement measures or practices.

Amendment

Where it is found in an investigation pursuant to Article 6, and after following the procedure foreseen in Article 7, that discriminatory procurement measures or practices have been adopted or are maintained by the third country concerned, the Commission may adopt implementing acts to temporarily limit the access of tenders more than 50% of the total value of which is made of non-covered goods and/or services originating in the third country concerned for up to five years, which can be extended for another five years. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).

Or. fr

Amendment 137
Inmaculada Rodríguez-Piñero Fernández

Proposal for a regulation
Article 8 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

Tenders more than 50 % of the total value of which is made of goods and/or services originating in a third country, may be subject to a price adjustment measure where the third country concerned adopts or maintains restrictive and/or discriminatory procurement measures or practices.

Tenders more than 50 % of the total value of which is made of goods and/or services originating in a third country, may be subject to a price adjustment measure where the third country concerned adopts or maintains restrictive and/or discriminatory procurement measures or practices.

A price adjustment measure may also be applied when the third country concerned does not comply with obligations in the fields of environmental, social and labour law established by the international environmental, social and labour law provisions listed in Annex X to the Directive 2014/24/EU.

Or. en

Amendment 138

Yannick Jadot

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 8 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Tenders more than 50 % of the total value of which is made of goods and/or services originating in a third country, may be subject to a *price adjustment* measure where the third country concerned adopts or maintains restrictive and/or discriminatory procurement measures or practices.

Amendment

Tenders more than 50 % of the total value of which is made of goods and/or services originating in a third country, may be subject to a measure *limiting access to the Union public procurement market* where the third country concerned adopts or maintains restrictive and/or discriminatory procurement measures or practices *or where it does not abide by the commitments undertaken under the Paris Agreement. Such a measure shall provide for the exclusion of the tenders in question.*

Or. en

Amendment 139

Tiziana Beghin

Proposal for a regulation
Article 8 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Tenders more than 50 % of the total value of which is made of goods and/or services originating in a third country, may be subject to *a price adjustment* measure where the third country concerned adopts or maintains restrictive and/or discriminatory procurement measures or practices.

Amendment

Tenders more than 50 % of the total value of which is made of goods and/or services originating in a third country, may be subject to *restrictive* measure where the third country concerned adopts or maintains restrictive and/or discriminatory procurement measures or practices.

Or. en

Amendment 140
Inmaculada Rodríguez-Piñero Fernández

Proposal for a regulation
Article 8 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Price adjustment measures shall only apply to contracts with an estimated value equal to or above EUR 5.000.000 exclusive of value-added tax.

Amendment

Price adjustment measures shall only apply to contracts *for the supply of goods and/or the provision of services and for concessions* with an estimated value equal to or above EUR 5.000.000 exclusive of value-added tax *and to contracts for the execution of works with and estimated value equal to or above EUR 7.000.000 exclusive of value-added tax.*

Or. en

Amendment 141
Elsi Katainen, Nadja Hirsch

Proposal for a regulation
Article 8 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Price adjustment measures shall only apply to contracts with an estimated value equal to or above EUR 5.000.000 exclusive of

Amendment

Price adjustment measures shall only apply to contracts with an estimated value equal to or above EUR 5.000.000 exclusive of

value-added tax.

value-added tax, *except to works or concession contracts with an estimated value under EUR 15.000.000 exclusive of value-added tax.*

Or. en

Amendment 142
Tiziana Beghin

Proposal for a regulation
Article 8 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Price adjustment measures shall only apply to contracts with an estimated value equal to or above EUR 5.000.000 exclusive of value-added tax.

Amendment

Restrictive measures shall only apply to contracts with an estimated value equal to or above EUR 5.000.000 exclusive of value-added tax.

Or. en

Amendment 143
Patricia Lalonde

Proposal for a regulation
Article 8 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Price adjustment measures shall only apply to contracts with an estimated value equal to or above EUR **5.000.000** exclusive of value-added tax.

Amendment

Such restrictive measures shall only apply to contracts with an estimated value equal to or above EUR **5 000 000** exclusive of value-added tax.

Or. fr

Amendment 144
Patricia Lalonde

Proposal for a regulation
Article 8 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

The restrictive measures adopted pursuant to the first subparagraph may consist of:

(a) the exclusion of tenders of which more than 50% of the total value is made up of non-covered goods or services originating in the country concerned; or

(b) a mandatory price penalty of no less than 30% on that part of the tender consisting of non-covered goods or services which originate in the country concerned.

Or. fr

Amendment 145
Tiziana Beghin

Proposal for a regulation
Article 8 – paragraph 2 – introductory part

Text proposed by the Commission

2. The *price adjustment* measure shall specify the penalty of up to 20% to be calculated on the price of the tenders concerned. It shall also specify any restrictions to the scope of application of the measure, such as those related to:

Amendment

2. The *restrictive* measure adopted pursuant to paragraph 1 may be limited to:

Or. en

Amendment 146
Yannick Jadot
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 8 – paragraph 2 – introductory part

Text proposed by the Commission

2. The *price adjustment* measure shall specify the penalty of up to 20% to be calculated on the price of the tenders concerned. It shall also specify any restrictions to the scope of application of

Amendment

2. The *measures limiting the access* to the *Union procurement market* may be related to:

the measure, such as those related to:

Or. en

Amendment 147

Inmaculada Rodríguez-Piñero Fernández

Proposal for a regulation

Article 8 – paragraph 2 – introductory part

Text proposed by the Commission

2. The price adjustment measure shall specify the penalty of up to **20%** to be calculated on the price of the tenders concerned. It shall also specify any restrictions to the scope of application of the measure, such as those related to:

Amendment

2. The price adjustment measure shall specify the penalty of up to **30%** to be calculated on the price of the tenders concerned. It shall also specify any restrictions to the scope of application of the measure, such as those related to:

Or. en

Amendment 148

Daniel Caspary

Proposal for a regulation

Article 8 – paragraph 3

Text proposed by the Commission

3. ***Contracting authorities and contracting entities on the list adopted pursuant to Article 9 shall apply the price adjustment measure to the following:***

(a) to tenders submitted by economic operators originating in the third country concerned, unless these economic operators can demonstrate that less than 50 % of the total value of their tender is made up of goods or services originating in the third country concerned; and

(b) to any tenders offering goods and services originating in the country concerned, where the value of these goods and services accounts for more than 50 % of the total value of the tender.

Amendment

deleted

*Justification**Same as Art. 11(1)***Amendment 149****Tiziana Beghin****Proposal for a regulation****Article 8 – paragraph 3 – introductory part***Text proposed by the Commission*

3. Contracting authorities and contracting entities on the list adopted pursuant to Article 9 shall apply the ***price adjustment measure*** to the following:

Amendment

3. Contracting authorities and contracting entities on the list adopted pursuant to Article 9 shall apply the ***restrictive measures*** to the following:

Or. en

Amendment 150**Inmaculada Rodríguez-Piñero Fernández****Proposal for a regulation****Article 8 a (new)***Text proposed by the Commission**Amendment****Article 8 a***

Measures limiting access of economic operators owned or controlled directly or indirectly by the government of the third country concerned to the Union public procurement market

The Contracting authority may also exclude the access of economic operators owned or controlled directly or indirectly by the government of the third country concerned, including through significant funding and subsidies. The exclusion may apply to tenders submitted by economic operators owned or controlled directly or indirectly by the government of the third country concerned, unless these economic operators can demonstrate that less than 50% of the total value of their tender is

made up of goods or services originating in that third country.

Or. en

Amendment 151
Inmaculada Rodríguez-Piñero Fernández

Proposal for a regulation
Article 9 – paragraph 1

Text proposed by the Commission

The Commission shall determine the contracting authorities or entities or categories of contracting authorities or entities, listed by Member State, whose procurement is concerned by the measure. To provide the basis for this determination, each Member State shall submit a list of appropriate contracting authorities or entities or categories of contracting authorities or entities. The Commission shall ensure that an appropriate level of action is taken and that a fair distribution of the burden among Member States is achieved.

Amendment

The Commission shall determine the contracting authorities or entities or categories of contracting authorities or entities, listed by Member State, whose procurement is concerned by the measure, ***with the exception of those from municipalities with less than 200.000 inhabitants***. To provide the basis for this determination, each Member State shall submit a list of appropriate contracting authorities or entities or categories of contracting authorities or entities. The Commission shall ensure that an appropriate level of action is taken and that a fair distribution of the burden among Member States is achieved.

Or. en

Amendment 152
Emma McClarkin

Proposal for a regulation
Article 9 – paragraph 1

Text proposed by the Commission

The Commission shall determine the contracting authorities or entities or categories of contracting authorities or entities, listed by Member State, whose procurement is concerned by the measure. To provide the basis for this determination, each Member State shall submit a list of

Amendment

The Commission shall determine the contracting authorities or entities or categories of contracting authorities or entities, listed by Member State, whose procurement is concerned by the measure. To provide the basis for this determination, each Member State shall submit a list of

appropriate contracting authorities or entities or categories of contracting authorities or entities. The Commission shall ensure that an appropriate level of action is taken and that a fair distribution of the burden among Member States is achieved.

appropriate contracting authorities or entities or categories of contracting authorities or entities. ***This list can be updated by Member States if needed.*** The Commission shall ensure that an appropriate level of action is taken and that a fair distribution of the burden among Member States is achieved.

Or. en

Amendment 153
Tiziana Beghin

Proposal for a regulation
Article 10 – title

Text proposed by the Commission

Withdrawal or suspension of ***price adjustment*** measures

Amendment

Withdrawal or suspension of ***restrictive*** measures

Or. en

Amendment 154
Tiziana Beghin

Proposal for a regulation
Article 10 – paragraph 1 – subparagraph 1

Text proposed by the Commission

The Commission may decide, ***by implementing*** act, to withdraw the ***price adjustment*** measure or suspend its application for a period of time if the country concerned takes ***satisfactory*** remedial or corrective actions.

Amendment

The Commission may decide, ***by implementing*** act, to withdraw the ***restrictive*** measure or suspend its application for a period of time if the country concerned takes ***sufficient*** remedial or corrective actions.

Or. en

Amendment 155
Tiziana Beghin

Proposal for a regulation

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Article 10 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Where the remedial or corrective actions taken by the third country concerned are rescinded, suspended or improperly implemented, the Commission may reinstate the application of *the price adjustment* measure, at any time, by means of an implementing act.

Amendment

Where the remedial or corrective actions taken by the third country concerned are rescinded, suspended or improperly implemented, the Commission may reinstate the application of *restrictive* measure, at any time, by means of an implementing act.

Or. en

Amendment 156

Tiziana Beghin

Proposal for a regulation

Article 11 – title

Text proposed by the Commission

Application of *price adjustment* measures

Amendment

Application of *restrictive* measures

Or. en

Amendment 157

Tiziana Beghin

Proposal for a regulation

Article 11 – paragraph 1 – introductory part

Text proposed by the Commission

1. Contracting authorities and contracting entities on the list adopted pursuant to Article 9 shall apply *price adjustment* measures to the following:

Amendment

1. Contracting authorities and contracting entities on the list adopted pursuant to Article 9 shall apply *restrictive* measures to the following:

Or. en

Amendment 158

Tiziana Beghin

Proposal for a regulation

Article 11 – paragraph 1 – point b – paragraph 2

Text proposed by the Commission

Contracting authorities and contracting entities shall not apply **price adjustment** measures to tenders referred to in point (a) where the tenderers can demonstrate that less than 50 % of the total value of their tender is made of goods and services originating in the third country concerned.

Amendment

Contracting authorities and contracting entities shall not apply **restrictive** measures to tenders referred to in point (a) where the tenderers can demonstrate that less than 50 % of the total value of their tender is made of goods and services originating in the third country concerned.

Or. en

Amendment 159

Tiziana Beghin

Proposal for a regulation

Article 11 – paragraph 1 – point b – paragraph 3

Text proposed by the Commission

The price adjustment measure shall apply only for the purpose of the evaluation and ranking of the price component of the tenders. It shall not affect the price due to be paid under the contract which will be concluded with the successful tenderer.

deleted

Amendment

Or. en

Amendment 160

Yannick Jadot

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 11 – paragraph 1 – point b – paragraph 3

Text proposed by the Commission

The price adjustment measure shall apply only for the purpose of the evaluation and ranking of the price component of the tenders. It shall not affect the price due to be paid under the contract which will be concluded with the successful tenderer.

deleted

Amendment

Amendment 161

Tiziana Beghin

Proposal for a regulation

Article 11 – paragraph 2

Text proposed by the Commission

Amendment

2. When contracting authorities and contracting entities conduct a procurement or a concession procedure that is subject to a price adjustment measure they shall include that information in the contract notice they publish pursuant to Article 49 of Directive 2014/24/EU or Article 69 of Directive 2014/25/EU or in the concession notice they publish pursuant to Article 31 of Directive 2014/23/EU. The Commission may adopt implementing acts in accordance with the advisory procedure referred to in Article 14(3) adapting the standard forms for contract or concession notices adopted under Directives 2014/23/EU, 2014/24/EU, and 2014/25/EU. *deleted*

Or. en

Amendment 162

Tiziana Beghin

Proposal for a regulation

Article 11 – paragraph 3

Text proposed by the Commission

Amendment

3. Contracting authorities and contracting entities shall inform unsuccessful tenderers of the award of a contract or a concession based on the application of a price adjustment measure adopted or reinstated pursuant to this Regulation. *deleted*

Amendment 163

Tiziana Beghin

Proposal for a regulation

Article 11 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Where a ***price adjustment*** measure is applied, contracting authorities and contracting entities shall require tenderers to provide information on the origin of the goods and/or services contained in the tender, and on the value of the goods and services originating in the third country concerned as a percentage of the total value of the tender. They shall accept self-declarations from tenderers.

Amendment

Where a ***restrictive*** measure is applied, contracting authorities and contracting entities shall require tenderers to provide information on the origin of the goods and/or services contained in the tender, and on the value of the goods and services originating in the third country concerned as a percentage of the total value of the tender. They shall accept self-declarations from tenderers.

Or. en

Amendment 164

Inmaculada Rodríguez-Piñero Fernández

Proposal for a regulation

Article 11 – paragraph 4 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

In the case of reasonable doubts regarding circumvention of the application of this Regulation, the contracting authority shall request the tenderer to provide explanation and relevant evidence within a reasonable period of time.

The contracting authority shall assess the information provided by the tenderer and shall reject the tender when this information does not allay the reasonable doubts of circumvention.

Or. en

Amendment 165
Tiziana Beghin

Proposal for a regulation
Article 12

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Amendment 166
Inmaculada Rodríguez-Piñero Fernández

Proposal for a regulation
Article 12 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(b a) The application of the measure would have negative effects due to the lack of effective competition for the execution of works, the supply of goods or the provision of services in a specific market.

Or. en

Amendment 167
Emma McClarkin

Proposal for a regulation
Article 12 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(b a) they conclude that not applying the price adjustment measure would be in their best interest;

Or. en

Amendment 168
Inmaculada Rodríguez-Piñero Fernández

Proposal for a regulation
Article 12 – paragraph 1 – point b b (new)

Text proposed by the Commission

Amendment

(b b) The tender submitted by an economic operator originating in the third country concerned is the best tender in terms of qualitative criteria, as referred to in point (a) of the first paragraph of article 67(2) of Directive 2014/24/EU.

Or. en

Amendment 169
Inmaculada Rodríguez-Piñero Fernández

Proposal for a regulation
Article 12 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. These exceptions shall not apply when the economic operator is owned or controlled directly or indirectly by the government of a third country, including through significant funding and subsidies.

Or. en

Amendment 170
Yannick Jadot
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 16 – title

Text proposed by the Commission

Amendment

Reporting

Reporting ***and review***

Or. en

Amendment 171
Patricia Lalonde

Proposal for a regulation
Article 16 – paragraph 1

Text proposed by the Commission

By 31 December 2018 and at least every three years **thereafter** , the Commission shall submit a report to the European Parliament and the Council on the application of this Regulation and on progress made in international negotiations regarding access for Union economic operators to public contract or concession award procedures in third countries undertaken under this Regulation. To this effect, Member States shall upon request provide the Commission with appropriate information.

Amendment

At least every three years **after the entry into force of this Regulation**, the Commission shall submit a report to the European Parliament and the Council on the application of this Regulation and on progress made in international negotiations regarding access for Union economic operators to public contract or concession award procedures in third countries undertaken under this Regulation. To this effect, Member States shall upon request provide the Commission with appropriate information. **When the Commission submits its second report, it shall also submit to the European Parliament and to the Council a legislative proposal to amend this Regulation or set out the reasons why, in its view, no changes are necessary. Should the Commission not comply with its obligations, this Regulation shall cease to apply at the end of the second year following the submission of the second report.**

Or. fr

Amendment 172
Tiziana Beghin

Proposal for a regulation
Article 16 – paragraph 1

Text proposed by the Commission

By 31 December 2018 and at least every three years **thereafter** , **the** Commission shall submit a report to the European Parliament and the Council on the application of this Regulation and on progress made in international negotiations regarding access for Union economic

Amendment

At least every three years **after its entry into force**, Commission shall submit a report to the European Parliament and the Council on the application of this Regulation and on progress made in international negotiations regarding access for Union economic operators to public

operators to public contract or concession award procedures in third countries undertaken under this Regulation. To this effect, Member States shall upon request provide the Commission with appropriate information.

contract or concession award procedures in third countries undertaken under this Regulation. To this effect, Member States shall upon request provide the Commission with appropriate information.

Or. en

Amendment 173
Emma McClarkin

Proposal for a regulation
Article 16 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall ensure that the application of this Regulation is monitored with a view to detecting threats to the financial interests of the Union and its Member States, to the unity of the single market and/or to the rights of the consumers. This monitoring shall be used to prevent, detect, and adequately report possible instances of procurement fraud, corruption, conflict of interests 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 174
Yannick Jadot
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 16 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

On the occasion of the second review of the present Regulation, the Commission shall consider making a proposal on a "Buy European Act" setting up the requirement that companies locate at least 50% of their production in the Union, with a view to levelling the playing field on the international public procurement market.

Or. en

Amendment 175

Viviane Reding

Proposal for a regulation

Article 17

Text proposed by the Commission

Amendment

Article 17

deleted

Amendment of Directive 2014/25/EU

Articles 85 and 86 of Directive 2014/25/EU shall be deleted with effect from the entry into force of this Regulation.

Or. en

Amendment 176

Patricia Lalonde

Proposal for a regulation

Article 17 – paragraph 1

Text proposed by the Commission

Amendment

Articles 85 and 86 of Directive 2014/25/EU shall be deleted with effect from the entry into force of this Regulation.

On the basis of the results of its second report on the implementation of this Regulation and no less than 6 years from its entry into force, the Commission may propose that Articles 85 and 86 of Directive 2014/25/EU be repealed if it decides, after consulting the European

Parliament and the Council, that the provisions of this Regulation are more effective or are at least as effective.

Or. fr

Amendment 177

Tokia Saïfi

Proposal for a regulation

Article 17 – paragraph 1

Text proposed by the Commission

Articles 85 and 86 of Directive 2014/25/EU *shall be deleted with effect from the entry into force of this Regulation.*

Amendment

Following the adoption of this Regulation, the Commission shall assess whether there is a need to keep Articles 85 and 86 of Directive 2014/25/EU in the light of this Regulation coming into force and the consequences thereof. In the light of the conclusions of this evaluation, the Commission shall decide whether Articles 85 and 86 of Directive 2014/25/EU should be kept or repealed.

Or. fr