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Committee on the Internal Market and Consumer Protection

2011/0439(COD)

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AMENDMENTS

136 - 424

Draft report

Marc Tarabella

(PE483.470v02-00)

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

Proposal for a directive

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



Amendment 136
Heide Rühle

Proposal for a directive
Citation 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 137
Ramon Tremosa i Balcells

Proposal for a directive
Recital 1 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 138
Heide Rühle

Proposal for a directive
Recital 2

Text proposed by the Commission

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

Amendment

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

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

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

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

Or. en

Justification

Adaption to the new provisions of the Lisbon Treaty

Amendment 139 Heide Rühle

Proposal for a directive Recital 3

Text proposed by the Commission

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

Amendment

deleted

principles of the Treaty apply.

Or. en

Justification

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

Amendment 140 **Heide Rühle**

Proposal for a directive **Recital 4**

Text proposed by the Commission

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

Amendment

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

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

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

Or. en

Justification

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

Amendment 141 Heide Rühle

Proposal for a directive Recital 5

Text proposed by the Commission

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

Amendment

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

for money for their contracts.

Or. en

Justification

Social considerations are not enough covered by the Commission proposal

Amendment 142

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Recital 5

Text proposed by the Commission

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

Amendment

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

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

Or. en

Amendment 143

Barbara Weiler

Proposal for a directive

Recital 5

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 144

Heide Rühle

Proposal for a directive
Recital 6

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 145
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Recital 10 a (new)

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

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

Amendment 146

András Gyürk, Ildikó Gáll-Pelcz

Proposal for a directive

Recital 10 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 147

Adam Bielan, Marek Siwiec

Proposal for a directive

Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) It is appropriate to exclude

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

Or. en

Justification

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

Amendment 148
Tiziano Motti

Proposal for a directive
Recital 10 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Justification

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

purely economic criteria.

Amendment 149

Lara Comi

Proposal for a directive

Recital 10 a (new)

Text proposed by the Commission

Amendment

(10 bis) È opportuno escludere gli appalti relativi ai servizi postali e agli altri servizi diversi dai servizi postali, in quanto è stato rilevato sistematicamente che tale settore è sottoposto ad una tale pressione competitiva da rendere superflua l'applicazione delle norme europee in materia di appalti.

Or. it

Amendment 150

Lara Comi

Proposal for a directive

Recital 12

Text proposed by the Commission

Amendment

(12) Anche se non implicano necessariamente comportamenti corrotti, i conflitti di interesse □ reali, potenziali o solo percepiti □ possono potenzialmente influenzare in modo sostanziale e indebito le decisioni in materia di appalti pubblici con il conseguente effetto di falsare la concorrenza e pregiudicare la parità di trattamento degli offerenti. È pertanto necessario istituire meccanismi efficaci per prevenire, individuare e risolvere i conflitti di interesse. Date le differenze nei processi decisionali delle imprese e delle amministrazioni aggiudicatrici, è opportuno limitare tali disposizioni agli appalti gestiti da queste ultime.

(12) Anche se non implicano necessariamente comportamenti corrotti, i conflitti di interesse □ reali, potenziali o solo percepiti □ possono potenzialmente influenzare in modo sostanziale e indebito le decisioni in materia di appalti pubblici con il conseguente effetto di falsare la concorrenza e pregiudicare la parità di trattamento degli offerenti. È pertanto necessario istituire meccanismi efficaci per prevenire, individuare e risolvere i conflitti di interesse. Date le differenze nei processi decisionali delle imprese e delle amministrazioni aggiudicatrici, è opportuno limitare tali disposizioni agli appalti gestiti da queste ultime.

Amendment 151
Vicente Miguel Garcés Ramón

Proposal for a directive
Recital 13

Text proposed by the Commission

(13) La conducta ilícita de los participantes en un procedimiento de contratación, como el intento de influir indebidamente en el proceso de toma de decisiones o de llegar a acuerdos con otros candidatos para manipular el resultado del procedimiento, puede dar lugar a infracciones de los principios básicos del Derecho de la Unión, así como a graves falseamientos de la competencia. Debe imponerse por tanto a los operadores económicos la obligación de presentar una declaración por su honor en la que declaren que no han llevado a cabo estas actividades ilícitas y se les debe excluir si se comprueba que esta declaración es falsa.

Amendment

(13) La conducta ilícita de los participantes en un procedimiento de contratación, como el intento de influir indebidamente en el proceso de toma de decisiones o de llegar a acuerdos con otros candidatos para manipular el resultado del procedimiento, ***así como cualquier acción que vulnere las normas laborales, medioambientales, sociales (especialmente en el ámbito de la integración de personas con discapacidad) y de salud pública,*** puede dar lugar a infracciones de los principios básicos del Derecho de la Unión, así como a graves falseamientos de la competencia. Debe imponerse por tanto a los operadores económicos la obligación de presentar una declaración por su honor en la que declaren que no han llevado a cabo estas actividades ilícitas y se les debe excluir si se comprueba que esta declaración es falsa.

Or. es

Amendment 152
Marc Tarabella

Proposal for a directive
Recital 14 a (new)

Text proposed by the Commission

Amendment

(14 bis) Les objectifs consistant à améliorer l'accès des opérateurs économiques de l'Union aux marchés publics de certains pays tiers protégés par

des mesures restrictives, et à assurer des conditions de concurrence égales dans le marché unique européen, nécessitent que le traitement des travaux, fournitures et services provenant de pays tiers et non couverts par les engagements internationaux de l'Union soit harmonisé sur tout le territoire de celle.

Or. fr

Amendment 153
Marc Tarabella

Proposal for a directive
Recital 14 ter (new)

Text proposed by the Commission

Amendment

(14 ter) Les entités adjudicatrices excluent des procédures d'attribution de marché les travaux, fournitures et services non couverts par les engagements internationaux de l'Union. Par souci de transparence, les entités adjudicatrices qui entendent faire usage de cette compétence, au titre de la présente directive, pour exclure des procédures d'attribution de marchés des offres comprenant des produits, travaux, fournitures et services originaires de l'extérieur de l'Union pour lesquels la valeur des produits, travaux, fournitures et services non couverts dépasse 50 % de la valeur totale de ces produits, travaux, fournitures et services, devraient en informer les opérateurs économiques.

Or. fr

Amendment 154
Malcolm Harbour

Proposal for a directive
Recital 15 a (new)

PE492.861v01-00

14/181

AM908716XM.doc

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

Or. en

**Amendment 155
Malcolm Harbour**

**Proposal for a directive
Recital 15 b (new)**

(15b) To ensure transparency, contracting entities intending to make use of their power to exclude tenders comprising supplies and/or services originating from outside the European Union, in which the value of the non-covered supplies or services exceeds 50 % of the total value of these supplies or services from procedures for the award of contracts, should inform economic operators thereof in the contract notice published in the Official Journal of the European Union. The Commission should approve the intended exclusion if the international agreement

concerning market access in the field of public procurement between the Union and the country where the supplies and/or services originate contains, for the supplies and/or services for which the exclusion is proposed, explicit market access reservations taken by the Union. Where such an agreement does not exist, the Commission should approve the exclusion where the third country maintains restrictive procurement measures leading to a lack of substantial reciprocity in market opening between the Union and the third country concerned for supplies, services and economic operators.

Or. en

Amendment 156
Heide Rühle

Proposal for a directive
Recital 16

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

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

Amendment 157
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 16

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 158
Frank Engel, Andreas Schwab

Proposal for a directive
Recital 16

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 159
Frank Engel, Andreas Schwab

Proposal for a directive
Recital 17

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

deleted

beforehand by the contracting entity, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

Or. en

Amendment 160

Heide Rühle

Proposal for a directive

Recital 17

Text proposed by the Commission

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

Amendment

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

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

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

Or. en

Amendment 161

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Recital 17

Text proposed by the Commission

(17) ***Other*** categories of services continue by their very nature to have a limited cross-border dimension, ***namely*** what are known as services to the person such as certain social, health and educational services. ***Those*** services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for contracts for ***those*** services, with a higher threshold of EUR 1 000 000. ***In the particular context of procurement in those***

Amendment

(17) ***The results of the Evaluation on the Impact and Effectiveness of EU Public Procurement Legislation demonstrated that the exclusion of certain services from the full application of the Directive should be reviewed. Some*** categories of services continue by their very nature to have a limited cross-border dimension, ***for example*** what are known as services to the person, such as certain social, health and educational services. ***These*** services are provided within a particular context that varies widely amongst Member States, due

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

to different cultural traditions. A specific regime should therefore be established for **public** contracts for **these** services, with a higher threshold of EUR 1 000 000.

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

Or. en

Justification

In line with the general approach of simplifying the Directives, it would not be appropriate, at

this time, to subject other categories of services to the full application of the Directives. These services should, however, be subject to the specific regime for social and other specific services and the results of the application of this regime should be reviewed (by the Commission) within three years of the date when this Directive is implemented by Member States.

Amendment 162

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Recital 18

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 163

Heide Rühle

Proposal for a directive

Recital 19

Text proposed by the Commission

(19) ***There is considerable legal***

Amendment

(19) The relevant case-law of the Court of

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

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

Or. en

Justification

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

Amendment 164

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Recital 19

Text proposed by the Commission

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

Amendment

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

[.../.../EU][on public procurement].

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

Or. en

Amendment 165
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Recital 19 a (new)

Text proposed by the Commission

Amendment

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

Amendment 166
Cristian Silviu Buşoi

Proposal for a directive
Recital 20

Text proposed by the Commission

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

Amendment

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

Amendment 167

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

Proposal for a directive

Recital 22

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 168

Lara Comi

Proposal for a directive

Recital 22

Text proposed by the Commission

(22) La presente direttiva non dovrebbe essere applicata agli appalti destinati a permettere la prestazione di una delle attività di cui agli articoli da 5 a 11, né ai concorsi di progettazione organizzati per esercitare tali attività se, nello Stato membro in cui tale attività è esercitata, essa

Amendment

(22) La presente direttiva non dovrebbe essere applicata agli appalti destinati a permettere la prestazione di una delle attività di cui agli articoli da 5 a 11, né ai concorsi di progettazione organizzati per esercitare tali attività se, nello Stato membro in cui tale attività è esercitata,

è direttamente esposta alla concorrenza su mercati liberamente accessibili. È dunque opportuno mantenere la procedura, applicabile a tutti i settori di cui alla presente direttiva, così da permettere di prendere in considerazione gli effetti di un'apertura, attuale o futura, alla concorrenza. Tale procedura dovrebbe offrire certezza del diritto agli enti interessati e un adeguato procedimento di formazione delle decisioni, assicurando in tempi brevi un'applicazione uniforme del diritto dell'Unione europea in materia.

essa, *in tutto o in parte, anche relativamente a singoli settori o segmenti*, è direttamente esposta alla concorrenza su mercati liberamente accessibili. È dunque opportuno mantenere la procedura, applicabile a tutti i settori di cui alla presente direttiva, così da permettere di prendere in considerazione gli effetti di un'apertura, attuale o futura, alla concorrenza. Tale procedura dovrebbe offrire certezza del diritto agli enti interessati e un adeguato procedimento di formazione delle decisioni, assicurando in tempi brevi un'applicazione uniforme del diritto dell'Unione europea in materia.

Or. it

Amendment 169

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

Proposal for a directive

Recital 23

Text proposed by the Commission

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

Amendment

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

Amendment 170**Lara Comi****Proposal for a directive****Recital 23***Text proposed by the Commission*

(23) L'esposizione diretta alla concorrenza dovrebbe essere valutata in base a criteri oggettivi, tenendo conto delle caratteristiche specifiche del settore interessato. Tale valutazione, tuttavia, è condizionata dall'obbligo di attenersi a una tempistica ravvicinata e dal doversi basare sulle informazioni a disposizione della Commissione □ provenienti sia da fonti già disponibili oppure ottenute nel contesto della richiesta ai sensi dell'articolo 28 □ che non possono essere integrate facendo ricorso a metodi che necessitano un notevole dispendio di tempo, incluso ad esempio il ricorso a inchieste pubbliche rivolte agli operatori economici interessati. La valutazione dell'esposizione diretta alla concorrenza svolta nel contesto della presente direttiva lascia impregiudicata l'applicazione in toto della normativa in materia di concorrenza.

Amendment

(23) L'esposizione diretta alla concorrenza dovrebbe essere valutata in base a criteri oggettivi, tenendo conto delle caratteristiche specifiche del settore interessato *o parte di esso*. Tale valutazione, tuttavia, è condizionata dall'obbligo di attenersi a una tempistica ravvicinata e dal doversi basare sulle informazioni a disposizione della Commissione □ provenienti sia da fonti già disponibili oppure ottenute nel contesto della richiesta ai sensi dell'articolo 28 □ che non possono essere integrate facendo ricorso a metodi che necessitano un notevole dispendio di tempo, incluso ad esempio il ricorso a inchieste pubbliche rivolte agli operatori economici interessati. La valutazione dell'esposizione diretta alla concorrenza svolta nel contesto della presente direttiva lascia impregiudicata l'applicazione in toto della normativa in materia di concorrenza.

Or. it

Amendment 171**Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski****Proposal for a directive****Recital 24***Text proposed by the Commission*

(24) The implementation and application of appropriate Union legislation opening a

Amendment

(24) The implementation and application of appropriate Union legislation opening a

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

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

Or. en

Amendment 172

Malcolm Harbour, Edvard Kožušník, Frank Engel

Proposal for a directive

Recital 25

Text proposed by the Commission

(25) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. **Contracting entities** should make the best strategic use of public procurement to **spur** innovation. Buying innovative goods and services plays a key role in improving the efficiency and quality of public services while addressing major societal challenges. It contributes to achieving best value for money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative

Amendment

(25) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. **Public authorities** should make the best strategic use of public procurement to **drive** innovation. Buying innovative goods and services plays a key role in improving the efficiency and quality of public services while addressing major societal challenges. It contributes to achieving best value for **public** money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative

products and services and *thus* promoting sustainable economic growth. This *directive* should contribute to facilitating procurement of innovation and help Member States in achieving the Innovation Union targets. *A* specific procurement procedure should *therefore be provided for which allows* contracting *entities* to establish *a long-term* innovation partnership for the development and subsequent purchase of *a* new, innovative *product, service* or works provided *it* can be delivered to agreed performance levels and costs. The partnership should be structured in such a way that it can provide the necessary '*market-pull*' incentivising the development of *an* innovative *solution* without foreclosing the market.

products and services and promoting sustainable economic growth. *An innovative procurement model is detailed in the Commission's communication on pre-commercial procurement*¹. This *model promotes the take up in the procurement of research and development services which do not fall within the scope of this Directive. This model, which has been written into this Directive, is recognised and will be available for all contracting authorities to consider. This Directive should however contribute to facilitating the public procurement of innovation more generally, and help Member States in achieving the Innovation Union targets. Where a need for the development of an innovative product, service or works and the subsequent purchase of the resulting output cannot be met by solutions already available on the market, contracting authorities should have access to a specific procurement procedure in respect of contracts falling within the scope of this Directive. This new procedure should allow contracting authorities to establish an innovation partnership for the development and subsequent purchase of new, innovative products, services or works, provided that these can be delivered to agreed performance levels and costs. The procedure should be based on the rules applying to the competitive procedure with negotiations and contracts should be awarded on the sole basis of the most economically advantageous tender, which is the most suited to comparing tenders for innovative solutions. Whether the innovation partnership concerns a very large project or a smaller project, it should be structured in such as a way that it can provide the necessary "market pull", incentivising the development of innovative solutions without foreclosing the market. Contracting authorities should therefore not misuse innovation partnerships to prevent, restrict or distort competition.*

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

Or. en

Justification

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

Amendment 173 **Marc Tarabella**

Proposal for a directive **Recital 25**

Text proposed by the Commission

(25) La recherche et l'innovation, y compris l'éco-innovation et l'innovation sociale, comptent parmi les principaux moteurs de la croissance future et constituent des priorités de la stratégie Europe 2020 pour une croissance intelligente, durable et inclusive. Les entités adjudicatrices devraient faire le meilleur usage stratégique des marchés publics pour stimuler l'innovation. L'acquisition de biens et services innovants joue un rôle essentiel dans l'amélioration de l'efficacité et de la qualité des services publics tout en permettant de faire face aux grands enjeux de société. Elle aide à obtenir le meilleur rapport qualité/prix ainsi qu'à dégager des avantages

Amendment

(25) La recherche et l'innovation, y compris l'éco-innovation et l'innovation sociale, comptent parmi les principaux moteurs de la croissance future et constituent des priorités de la stratégie Europe 2020 pour une croissance intelligente, durable et inclusive. Les entités adjudicatrices devraient faire le meilleur usage stratégique des marchés publics pour stimuler l'innovation. L'acquisition de biens et services innovants joue un rôle essentiel dans l'amélioration de l'efficacité et de la qualité des services publics tout en permettant de faire face aux grands enjeux de société. Elle aide à obtenir le meilleur rapport qualité/prix ainsi qu'à dégager des avantages

économiques, environnementaux et sociétaux au sens large à travers les nouvelles idées générées, leur concrétisation sous la forme de produits et services innovants et, partant, la promotion d'une croissance économique durable. La présente directive devrait contribuer à faciliter la passation de marchés à visée innovante et aider les États membres à atteindre les objectifs de l'Union de l'innovation. Il convient donc de prévoir une procédure spécifique de passation de marché permettant aux entités adjudicatrices ***d'établir un partenariat d'innovation à long terme en vue de développer et d'acquérir ensuite un produit, un service ou des travaux nouveaux et innovants, sous réserve qu'ils puissent être fournis aux niveaux de performance et au coût convenus. Ce partenariat devrait être structuré de manière à mettre en place le mécanisme d'incitation induite par la demande du marché qui est nécessaire au développement d'une solution innovante, sans verrouiller le marché.***

économiques, environnementaux et sociétaux au sens large à travers les nouvelles idées générées, leur concrétisation sous la forme de produits et services innovants et, partant, la promotion d'une croissance économique durable. La présente directive devrait contribuer à faciliter la passation de marchés à visée innovante et aider les États membres à atteindre les objectifs de l'Union de l'innovation. Il convient donc de prévoir une procédure spécifique de passation de marché permettant aux entités adjudicatrices de développer et d'acquérir ensuite un produit, un service ou des travaux nouveaux et innovants, sous réserve qu'ils puissent être fournis aux niveaux de performance et au coût convenus.

Or. fr

Amendment 174
Sergio Gaetano Cofferati

Proposal for a directive
Recital 26

Text proposed by the Commission

(26) Tenuto conto degli effetti pregiudizievoli sulla concorrenza, le procedure negoziate senza indizione di gara devono essere utilizzate solo in circostanze assolutamente eccezionali. L'eccezionalità deve essere circoscritta ai casi nei quali la pubblicazione non sia possibile per cause di forza maggiore, conformemente alla giurisprudenza costante della Corte di giustizia dell'Unione europea, o se è chiaro fin dall'inizio che la

Amendment

(26) Tenuto conto degli effetti pregiudizievoli sulla concorrenza, le procedure negoziate senza indizione di gara devono essere utilizzate solo in circostanze assolutamente eccezionali. L'eccezionalità deve essere circoscritta ai casi nei quali la pubblicazione non sia possibile per cause di forza maggiore, conformemente alla giurisprudenza costante della Corte di giustizia dell'Unione europea, o se è chiaro fin dall'inizio che la

pubblicazione non genererebbe maggiore competitività, non da ultimo perché un solo operatore economico è oggettivamente in grado di eseguire l'appalto. Solo situazioni di reale esclusività possono giustificare l'utilizzazione della procedura negoziata senza indizione di gara, se la situazione di esclusività non è stata creata dallo stesso ente appaltante per la futura gara di appalto e se non esistono sostituti adeguati, la cui disponibilità dovrebbe essere valutata accuratamente.

pubblicazione non genererebbe maggiore competitività, non da ultimo perché un solo operatore economico è oggettivamente in grado di eseguire l'appalto. Solo situazioni di reale esclusività possono giustificare l'utilizzazione della procedura negoziata senza indizione di gara, se la situazione di esclusività non è stata creata dallo stesso ente appaltante per la futura gara di appalto e se non esistono sostituti adeguati, la cui disponibilità dovrebbe essere valutata accuratamente. ***E' opportuno che gli enti aggiudicatori, qualora ricorrano, nei casi definiti da questa Direttiva, ad una procedura negoziata senza pubblicazione preventiva, debbano mandare una relazione, in cui giustifichino la loro scelta, all'organo di vigilanza, che dovrebbe avere tra i suoi compiti anche quello di analizzare e valutare tali relazioni.***

Or. it

Amendment 175
Frank Engel

Proposal for a directive
Recital 28

Text proposed by the Commission

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

Amendment

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

preserve transparency and competition, as well as market access opportunities for small and medium-sized enterprises.

preserve transparency and competition, as well as market access opportunities for small and medium-sized enterprises. ***The Commission should provide guidance to Member States and contracting authorities on the required monitoring of aggregated and centralised purchases to avoid excessive concentration of purchasing power and collusion. Such guidance should be provided by way of implementing acts.***

Or. en

Amendment 176
Heide Rühle

Proposal for a directive
Recital 29

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 177
Cornelis de Jong

Proposal for a directive
Recital 31 a (new)

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

Or. en

Amendment 178
Cornelis de Jong

Proposal for a directive
Recital 32

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

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

central purchasing body. Where the latter has sole responsibility for the conduct of the procurement procedures, it should also be solely and directly responsible for the legality of the procedures. Where a contracting entity conducts certain parts of the procedure, for instance the reopening of competition under a framework agreement or the award of individual contracts based on a dynamic purchasing system, it should continue to be responsible for the stages it conducts.

in the case of remedies, among the central purchasing body and the contracting entities procuring from or through the central purchasing body. Where the latter has sole responsibility for the conduct of the procurement procedures, it should also be solely and directly responsible for the legality of the procedures. Where a contracting entity conducts certain parts of the procedure, for instance the reopening of competition under a framework agreement or the award of individual contracts based on a dynamic purchasing system, it should continue to be responsible for the stages it conducts.

Or. en

Amendment 179
Heide Rühle

Proposal for a directive
Recital 33

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

This timeframe is too tight.

Amendment 180

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Recital 33

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 181

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Recital 34

Text proposed by the Commission

(34) Joint awarding of contracts by contracting entities from different Member States currently encounters specific legal difficulties, with special reference to conflicts of national laws. Despite the fact that Directive 2004/17/EC

Amendment

deleted

implicitly allowed for cross-border joint public procurement, in practice several national legal systems have explicitly or implicitly rendered cross-border joint procurement legally uncertain or impossible. Contracting entities from different Member States may be interested in cooperating and in jointly awarding contracts in order to derive maximum benefit from the potential of the internal market in terms of economies of scale and risk-benefit sharing, not least for innovative projects involving a greater amount of risk than reasonably bearable by a single contracting entity. Therefore new rules on cross-border joint procurement designating the applicable law should be established in order to facilitate cooperation between contracting entities across the Single Market. In addition, contracting entities from different Member States may set up joint legal bodies established under national or Union law. Specific rules should be established for such form of joint procurement.

Or. en

Amendment 182

Heide Rühle

Proposal for a directive

Recital 35

Text proposed by the Commission

(35) The technical specifications drawn up by purchasers need to allow public procurement to be opened up to competition. To that end, it should be possible to submit tenders that reflect the diversity of technical solutions so as to obtain a sufficient level of competition. Consequently, technical specifications should be drafted in such a way to avoid artificially narrowing down competition

Amendment

(35) The technical specifications drawn up by purchasers need to allow public procurement to be opened up to competition. To that end, it should be possible to submit tenders that reflect the diversity of technical solutions so as to obtain a sufficient level of competition. Consequently, technical specifications should be drafted in such a way to avoid artificially narrowing down competition

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

through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications in terms of functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on other equivalent arrangements which meet the requirements of the contracting entities and are equivalent in terms of safety **should** be considered by the contracting entities. To demonstrate equivalence, tenderers can be required to provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits. ***In order not to discriminate those tenderers who invest time and money for certificates and test reports the burden for providing equivalence should be placed on the tenderer claiming equivalence.***

Or. en

Amendment 183
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 35

Text proposed by the Commission

(35) The technical specifications drawn up by purchasers need to allow public procurement to be opened up to competition. To that end, it **should** be possible to submit tenders that reflect the diversity of technical solutions so as to

Amendment

(35) The technical specifications drawn up by **public** purchasers need to allow public procurement to be opened up to competition. To that end, it **must** be possible to submit tenders that reflect the diversity of technical solutions, **standards**

obtain a sufficient level of competition. Consequently, technical specifications should be drafted in such a way to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications in terms of functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on *other* equivalent arrangements ***which meet the requirements of the contracting entities and are equivalent in terms of safety*** must be considered by *the* contracting ***entities***. To demonstrate equivalence, tenderers can be required to provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits.

and specifications in the marketplace so as to obtain a sufficient level of competition. Consequently, technical specifications should be drafted in such a way to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator, ***or that disadvantage economic operators on the basis of business or development model including with regard to standards or specifications implemented in a given solution or service***. Drawing up the technical specifications in terms of functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on equivalent arrangements must be considered ***equally*** by contracting ***authorities***. To demonstrate equivalence, tenderers can be required to provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits. ***Contracting authorities must be able to provide a reason for any decision that equivalence does not exist in a given case.***

Or. en

Justification

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

Amendment 184
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Recital 36

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 185
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Recital 36

Text proposed by the Commission

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

Amendment

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

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

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

Or. en

Amendment 186
Alexander Alvaro, Jürgen Creutzmann

Proposal for a directive
Recital 37 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 187
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 38

Text proposed by the Commission

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

Amendment

(38) *Public procurement should be adapted to the needs of SMEs. Contracting authorities should make use of the Code of Best Practice providing guidance on how they may apply the public procurement framework in a way that facilitates SME participation.* In order to *foster* the involvement of small and medium-sized enterprises (SMEs) in the *public* procurement market, *contracting authorities should in particular give consideration to dividing contracts into lots and ensure transparency in access to information on their reasons for doing so or choosing not to. Member States should introduce measures to promote the access of SMEs to public procurement, in particular through improved information and guidance on tendering and on the new opportunities offered by the modernised EU legal framework, and to foster the exchange of best practice and the organisation of training and events involving public procurers and SMEs.*

Or. en

Justification

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

Amendment 188
Heide Rühle

Proposal for a directive
Recital 40

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

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

Amendment 189

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Recital 40

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 190

Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 41

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Linguistic Amendment

Amendment 191
Heide Rühle

Proposal for a directive
Recital 43

Text proposed by the Commission

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

Amendment

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

technical specifications or contract performance conditions.

Or. en

Justification

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

Amendment 192

Marc Tarabella

Proposal for a directive

Recital 43

Text proposed by the Commission

(43) L'attribution du marché devrait se faire selon des critères objectifs qui assurent le respect des principes de transparence, de non-discrimination et d'égalité de traitement. Ces critères devraient garantir que l'appréciation des offres se déroule dans des conditions de concurrence effective, y compris lorsque la demande des entités adjudicatrices porte sur des travaux, des fournitures ou des services de très haute qualité répondant exactement à leurs besoins. Les entités adjudicatrices devraient donc pouvoir adopter comme critère d'attribution *soit* «l'offre économiquement la plus avantageuse» *soit* «**le prix le plus bas**», compte tenu du fait que dans ce dernier cas, elles sont libres de fixer des normes de qualité adéquates dans le cadre des spécifications techniques ou des conditions d'exécution du marché.

Amendment

(43) L'attribution du marché devrait se faire selon des critères objectifs qui assurent le respect des principes de transparence, de non-discrimination et d'égalité de traitement. Ces critères devraient garantir que l'appréciation des offres se déroule dans des conditions de concurrence effective, y compris lorsque la demande des entités adjudicatrices porte sur des travaux, des fournitures ou des services de très haute qualité répondant exactement à leurs besoins. Les entités adjudicatrices devraient donc pouvoir adopter comme critère d'attribution «l'offre économiquement la plus avantageuse», compte tenu du fait que dans ce dernier cas, elles sont libres de fixer des normes de qualité adéquates dans le cadre des spécifications techniques ou des conditions d'exécution du marché.

Or. fr

Amendment 193
Jürgen Creutzmann

Proposal for a directive
Recital 43

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 194
Frank Engel, Andreas Schwab

Proposal for a directive
Recital 44

Text proposed by the Commission

(44) Lorsque les entités adjudicatrices ***choisissent d'attribuer*** un marché à l'offre économiquement la plus avantageuse, elles doivent définir les critères d'attribution qu'elles appliqueront pour identifier celle des offres reçues qui présente le meilleur rapport qualité/prix. La définition de ces critères dépend de l'objet du marché, puisqu'ils sont censés permettre d'évaluer le niveau de performance de chaque offre

Amendment

(44) Lorsque les entités adjudicatrices ***attribuent*** un marché à l'offre économiquement la plus avantageuse, elles doivent définir les critères d'attribution qu'elles appliqueront pour identifier celle des offres reçues qui présente le meilleur rapport qualité/prix. La définition de ces critères dépend de l'objet du marché, puisqu'ils sont censés permettre d'évaluer le niveau de performance de chaque offre

par rapport à cet objet, tel qu'il est défini dans les spécifications techniques, et de mesurer le rapport qualité/prix de celle-ci. En outre, ces critères ne devraient pas conférer une liberté de choix illimitée à l'entité adjudicatrice, ils devraient garantir la possibilité d'une concurrence effective et être accompagnés d'exigences qui permettent de vérifier effectivement les informations fournies par les soumissionnaires.

par rapport à cet objet, tel qu'il est défini dans les spécifications techniques, et de mesurer le rapport qualité/prix de celle-ci. En outre, ces critères ne devraient pas conférer une liberté de choix illimitée à l'entité adjudicatrice, ils devraient garantir la possibilité d'une concurrence effective et être accompagnés d'exigences qui permettent de vérifier effectivement les informations fournies par les soumissionnaires.

Or. fr

Amendment 195
Cornelis de Jong

Proposal for a directive
Recital 44

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 196
Heide Rühle

Proposal for a directive
Recital 46

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 197

Frank Engel

Proposal for a directive

Recital 46

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 198

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

Proposal for a directive

Recital 46

Text proposed by the Commission

(46) Those sector-specific measures must

Amendment

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

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

Or. en

Amendment 199
Jürgen Creutzmann

Proposal for a directive
Recital 46

Text proposed by the Commission

(46) **Those** sector-specific measures must be complemented by an adaptation of the public procurement Directives empowering contracting **entities** to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting **entities** can determine the most economically advantageous tender **and the lowest cost**

Amendment

(46) **These** sector-specific measures must be complemented by an adaptation of the public procurement Directives empowering contracting **authorities** to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting **authorities** can determine the most economically advantageous tender using a life-cycle

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

costing approach, provided that the methodology to be used is established in an objective and non-discriminatory manner and accessible to all interested parties. The notion of life-cycle costing includes all ***internal*** costs over the *life cycle* of works, supplies or services (such as use, maintenance and end-of-life disposal costs).

Or. en

Justification

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

Amendment 200
Barbara Weiler

Proposal for a directive
Recital 47 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 201
Heide Rühle

Proposal for a directive
Recital 47

Text proposed by the Commission

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

Amendment

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

Agreements to which the Union is party.

social considerations (i.a. ILO core conventions) in the technical specifications when this is relevant and linked to the subject matter of the contract.

Or. en

Justification

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

Amendment 202

Vicente Miguel Garcés Ramón

Proposal for a directive

Recital 47

Text proposed by the Commission

(47) Por otra parte, debe admitirse que las entidades adjudicadoras hagan referencia, en las especificaciones técnicas y en los criterios de adjudicación, a un proceso de producción específico, a un determinado modo de prestación de servicios o a un proceso concreto correspondiente a cualquier otra fase del ciclo de vida de un producto o servicio, a condición de que estén relacionados con el objeto del contrato. A fin de integrar mejor las consideraciones sociales en la contratación pública, puede autorizarse también a los compradores a incluir, en el criterio de adjudicación de la oferta económicamente más ventajosa, características relacionadas con las condiciones de trabajo de las personas que participen directamente en el proceso de producción o la prestación de que se trate. Esas características solo podrán tener como objetivo proteger la salud del personal participante en el proceso de producción o favorecer la integración social de las personas

Amendment

(47) Por otra parte, debe admitirse que las entidades adjudicadoras hagan referencia, en las especificaciones técnicas y en los criterios de adjudicación, a un proceso de producción específico, a un determinado modo de prestación de servicios o a un proceso concreto correspondiente a cualquier otra fase del ciclo de vida de un producto o servicio, a condición de que estén relacionados con el objeto del contrato. A fin de integrar mejor las consideraciones sociales en la contratación pública, puede autorizarse también a los compradores a incluir, en el criterio de adjudicación de la oferta económicamente más ventajosa, características relacionadas con las condiciones de trabajo de las personas que participen directamente en el proceso de producción o la prestación de que se trate, ***como, entre otras, aquellas que puedan tener como objetivo proteger la salud del personal participante en el proceso de producción o favorecer la integración social de las personas***

desfavorecidas o los miembros de grupos vulnerables entre las personas encargadas de ejecutar el contrato, incluida la accesibilidad de las personas con discapacidad. En cualquier caso, todo criterio de adjudicación que incluya esas características debe quedar limitado a las que tengan repercusiones inmediatas para el personal en su entorno de trabajo. Deberían aplicarse de conformidad con la Directiva 96/71/CE del Parlamento Europeo y del Consejo, de 16 de diciembre de 1996, sobre el desplazamiento de trabajadores efectuado en el marco de una prestación de servicios³², y de una forma que no discrimine, directa o indirectamente, a los operadores económicos de otros Estados miembros o de terceros países que sean partes en el Acuerdo o en los Acuerdos de Libre Comercio en los que la Unión sea parte.

desfavorecidas o los miembros de grupos vulnerables entre las personas encargadas de ejecutar el contrato, incluida la accesibilidad de las personas con discapacidad. Esas características solo podrán tener como objetivo proteger la salud del personal participante en el proceso de producción o favorecer la integración social de las personas desfavorecidas o los miembros de grupos vulnerables entre las personas encargadas de ejecutar el contrato, incluida la accesibilidad de las personas con discapacidad. En cualquier caso, todo criterio de adjudicación que incluya esas características debe quedar limitado a las que tengan repercusiones inmediatas para el personal en su entorno de trabajo. Deberían aplicarse de conformidad con la Directiva 96/71/CE del Parlamento Europeo y del Consejo, de 16 de diciembre de 1996, sobre el desplazamiento de trabajadores efectuado en el marco de una prestación de servicios, y de una forma que no discrimine, directa o indirectamente, a los operadores económicos de otros Estados miembros o de terceros países que sean partes en el Acuerdo o en los Acuerdos de Libre Comercio en los que la Unión sea parte.

Or. es

Amendment 203

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Recital 47

Text proposed by the Commission

(47) Furthermore, in technical specifications and in award criteria, contracting *entities* should be allowed to refer to *a specific production process, a specific mode of provision of services, or a specific process for any other stage of the*

Amendment

(47) Furthermore, in technical specifications and in award criteria, contracting *authorities* should be allowed to refer to *the monetisation of the life cycle of the works, service or supply and accordingly to social and environmental*

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

sustainability, provided that *these characteristics* are linked to the subject-matter of the contract. ***The technical specifications and award criteria should be interpreted broadly. Contracting authorities may also use the technical specifications and award criteria to minimise damaging social or environmental effects or maximise positive social or environmental effects. As part of the award criteria, contracting authorities should be able to consider the existence of an embedded life-cycle approach aiming at minimising cost and maximising resource efficiency and which should be applied in the framework of the provision of works, services or supplies in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries which are parties to the WTO's Government Procurement Agreement, or from other third countries with whom the Union is party to a Free Trade Agreement. Contracting authorities should also be allowed to use as technical specifications and award criteria the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality and social sustainability of contract performance and, as a result, the identification of the tender which offers the best value for money. Contracting authorities should include these considerations in the award criterion of the most economically advantageous tender.***

Or. en

Justification

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

reference to this provision.

Amendment 204

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

Proposal for a directive

Recital 47

Text proposed by the Commission

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

Amendment

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

States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party.

Or. en

Amendment 205

Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Recital 47

Text proposed by the Commission

(47) Darüber hinaus sollte es den **Vergabestellen** gestattet sein, in den technischen Spezifikationen und in den Zuschlagskriterien auf einen spezifischen Produktionsprozess, eine spezifische Art und Weise der Erbringung von Dienstleistungen oder einen spezifischen Prozess in einer anderen Lebenszyklusphase eines Produkts oder einer Dienstleistung Bezug zu nehmen, sofern diese einen unmittelbaren Bezug zum Auftragsgegenstand **aufweisen**. **Im** Hinblick auf eine stärkere Berücksichtigung sozialer Belange bei der öffentlichen Auftragsvergabe **kann es** den Beschaffern ferner gestattet werden, im Rahmen **des Zuschlagskriteriums des wirtschaftlich günstigsten Angebots** Aspekte einzubeziehen, die die Arbeitsbedingungen der unmittelbar am Produktionsprozess oder an der Leistungserbringung beteiligten Personen betreffen. Derartige Aspekte dürfen sich **ausschließlich** auf den Gesundheitsschutz der am Produktionsprozess beteiligten Mitarbeiter oder die Förderung der sozialen Integration – einschließlich Barrierefreiheit für Menschen mit Behinderungen – von für die Ausführung des Auftrags eingesetzten Angehörigen benachteiligter oder sozial schwacher **Gruppen** beziehen. Zuschlagskriterien, die auf derartige Aspekte abstellen, sollten in jedem Fall auf

Amendment

(47) Darüber hinaus sollte es den **öffentlichen Auftraggebern** gestattet sein, in den technischen Spezifikationen und in den Zuschlagskriterien auf **Lebenszyklusmerkmale, wie** einen spezifischen Produktionsprozess, **einschließlich z.B. sozialer und umweltbezogener Aspekte**, eine spezifische Art und Weise der Erbringung von Dienstleistungen, **funktionale** oder **ausführungsbezogene Anforderungen zur Minimierung oder Maximierung umweltbezogener oder sozialer Auswirkungen** oder einen spezifischen Prozess in einer anderen Lebenszyklusphase eines Produkts oder einer Dienstleistung Bezug zu nehmen, sofern diese einen unmittelbaren Bezug zum **Gegensatnd des öffentlichen Auftrags aufweisen**. **Die Regel, dass ein Bezug zum Auftragsgegenstand bestehen muss, sollte weit ausgelegt werden**. **Entsprechend kann es im** Hinblick auf eine stärkere Berücksichtigung sozialer Belange bei der öffentlichen Auftragsvergabe den Beschaffern ferner gestattet werden, im Rahmen **der technischen Spezifikationen und der Zuschlagskriterien** Aspekte einzubeziehen, die die Arbeitsbedingungen der unmittelbar am Produktionsprozess oder an der Leistungserbringung beteiligten Personen betreffen. Derartige

Merkmale beschränkt bleiben, die unmittelbare Auswirkungen auf die Mitarbeiter in ihrer Arbeitsumgebung haben. Sie sollten im Einklang mit der Richtlinie 96/71/EG des Europäischen Parlaments und des Rates vom 16. Dezember 1996 über die Entsendung von Arbeitnehmern im Rahmen der Erbringung von **Dienstleistungen³² und** in einer Weise angewandt werden, die Wirtschaftsteilnehmer aus anderen Mitgliedstaaten oder Drittländern, die Partei des Beschaffungsübereinkommens oder der Freihandelsabkommen sind, denen die Union beigetreten ist, weder unmittelbar noch mittelbar diskriminiert.

Aspekte dürfen sich *beispielsweise* auf den Gesundheitsschutz der am Produktionsprozess beteiligten Mitarbeiter, **die Gleichstellung der Geschlechter (z.B. gleiche Entlohnung, Vereinbarkeit von Arbeits- und Privatleben), den Zugang zu Maßnahmen der beruflichen Fortbildung, die Einbeziehung und Konsultation der Nutzer, die Erschwinglichkeit, die Menschenrechte, den ethisch ausgerichteten Handel** oder die Förderung der sozialen Integration – einschließlich Barrierefreiheit für Menschen mit Behinderungen – von für die Ausführung des Auftrags eingesetzten Angehörigen benachteiligter oder sozial schwacher **Personengruppen (wie Langzeitarbeitslose, Roma, Migranten oder jungen und ältere Arbeitnehmer)** beziehen. Zuschlagskriterien, die auf derartige Aspekte abstellen, sollten in jedem Fall auf Merkmale beschränkt bleiben, die unmittelbare Auswirkungen auf die Mitarbeiter in ihrer Arbeitsumgebung haben. Sie sollten im Einklang mit der Richtlinie 96/71/EG des Europäischen Parlaments und des Rates vom 16. Dezember 1996 über die Entsendung von Arbeitnehmern im Rahmen der Erbringung von **Dienstleistungen²²und** in einer Weise angewandt werden, die Wirtschaftsteilnehmer aus anderen Mitgliedstaaten oder Drittländern, die Partei des Beschaffungsübereinkommens oder der Freihandelsabkommen sind, denen die Union beigetreten ist, weder unmittelbar noch mittelbar diskriminiert. **Bei Dienstleistungsaufträgen und Aufträgen, die die Planung von Bauleistungen umfassen, sollte es öffentlichen Auftraggebern ferner gestattet sein, Organisation, Qualifikation und Erfahrung der Mitarbeiter, die für die Ausführung des betreffenden Auftrags eingesetzt werden, als technische Spezifikationen oder Zuschlagskriterien zugrunde zu legen, da es sich hier um einen Faktor handelt, der sich auf die**

Qualität und Nachhaltigkeit der Auftragsausführung und damit auf den wirtschaftlichen Wert des Angebots auswirkt. Die öffentlichen Auftraggeber dürfen auch soziale Belange im Zusammenhang mit den externen sozialen Kosten, die mit dem Lebenszyklus direkt in Verbindung stehen und zu denen beispielsweise die Auswirkungen der Produktion auf die Umgebung und die angrenzenden Gemeinschaften gehören, in die technischen Spezifikationen oder Zuschlagskriterien aufnehmen. Die öffentlichen Auftraggeber sollten in den technischen Spezifikationen Verpflichtungen in Bezug auf die sozialen Gegebenheiten und die Beschäftigungsbedingungen, die Gesundheit und Sicherheit am Arbeitsplatz, die soziale Sicherheit und die Arbeitsbedingungen festlegen, so wie sie in EU-Rechtsvorschriften, nationalen Gesetzen, Regelungen oder Verwaltungsvorschriften, Schiedssprüchen, Kollektivvereinbarungen und -verträgen sowie den in Anhang XIV genannten internationalen arbeitsrechtlichen Bestimmungen festgelegt sind, die am Ort der Leistungserbringung gelten; diese Verpflichtungen gelten auch in grenzüberschreitenden Situationen, in denen Arbeitnehmer eines Mitgliedstaats Dienstleistungen in einem anderen Mitgliedstaat erbringen.

Or. de

Amendment 206
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Recital 47

Text proposed by the Commission

Amendment

(47) Furthermore, in technical

(47) Furthermore, in technical

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

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

operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party.

Or. en

Justification

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

Amendment 207 **Jürgen Creutzmann**

Proposal for a directive **Recital 47**

Text proposed by the Commission

(47) Furthermore, in technical specifications ***and in award criteria***, contracting ***entities*** should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the ***life-cycle*** of a product or service, provided that they are linked to the subject-matter of the ***contract***. ***In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities.***

Amendment

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

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

Or. en

Justification

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

Amendment 208

Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Recital 49

Text proposed by the Commission

(49) Angebote, deren Preis im Verhältnis zu den angebotenen Bauleistungen, Lieferungen oder Dienstleistungen ungewöhnlich niedrig erscheint, können auf technisch, wirtschaftlich oder rechtlich fragwürdigen Annahmen oder Praktiken basieren. Um etwaige Probleme während der Auftragsausführung zu vermeiden, sollten **Vergabestellen** verpflichtet werden, eine Erläuterung des angesetzten Preises zu verlangen, wenn ein Angebot erheblich unter den von anderen Bietern verlangten

Amendment

(49) Angebote, deren Preis im Verhältnis zu den angebotenen Bauleistungen, Lieferungen oder Dienstleistungen ungewöhnlich niedrig erscheint, können auf technisch, wirtschaftlich oder rechtlich fragwürdigen Annahmen oder Praktiken basieren. Um etwaige Probleme während der Auftragsausführung zu vermeiden, sollten **öffentliche Auftraggeber** verpflichtet werden, eine Erläuterung des angesetzten Preises zu verlangen, wenn ein Angebot erheblich unter den von anderen

Preisen liegt. Kann der Bieter keine hinreichende Begründung geben, sollte **die Vergabestelle berechtigt sein**, das Angebot **abzulehnen**. Eine Ablehnung sollte obligatorisch sein in Fällen, in denen **die Vergabestelle** festgestellt hat, dass die ungewöhnlich niedrigen Preise aus der Nichtbeachtung **verbindlicher sozial-, arbeits- oder umweltrechtlicher** Vorschriften der Union oder **internationaler arbeitsrechtlicher Vorschriften** resultieren.

Bieter verlangten Preisen liegt. Kann der Bieter keine hinreichende Begründung geben, sollte **der öffentliche Auftraggeber** das Angebot **ablehnen**. Eine Ablehnung sollte obligatorisch sein in Fällen, in denen **der öffentliche Auftraggeber** festgestellt hat, dass die **angegebenen** ungewöhnlich niedrigen Preise aus der Nichtbeachtung **umweltrechtlicher** Vorschriften der Union oder **von Verpflichtungen in Bezug auf die sozialen Gegebenheiten und Beschäftigungsbedingungen, die Gesundheit und Sicherheit am Arbeitsplatz, die soziale Sicherheit und die Arbeitsbedingungen** resultieren, **so wie sie in EU-Rechtsvorschriften, nationalen Gesetzen, Regelungen oder Verwaltungsvorschriften, Schiedssprüchen, Kollektivvereinbarungen und -verträgen sowie den in Anhang XIV genannten internationalen arbeitsrechtlichen Bestimmungen festgelegt sind, die am Ort der Leistungserbringung gelten; diese Verpflichtungen gelten auch in grenzüberschreitenden Situationen, in denen Arbeitnehmer eines Mitgliedstaats Dienstleistungen in einem anderen Mitgliedstaat erbringen**.

Or. de

Amendment 209

Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Recital 50

Text proposed by the Commission

(50) Die Bedingungen für die Auftragsausführung sind mit dieser Richtlinie vereinbar, wenn sie nicht unmittelbar oder mittelbar eine Diskriminierung nach sich ziehen, wenn sie mit dem Auftragsgegenstand zusammenhängen und wenn sie in der als

Amendment

(50) Die Bedingungen für die Auftragsausführung sind mit dieser Richtlinie vereinbar, wenn sie nicht unmittelbar oder mittelbar eine Diskriminierung nach sich ziehen, wenn sie mit dem Auftragsgegenstand zusammenhängen und wenn sie in der

Aufruf zum Wettbewerb dienenden **Bekanntmachung** oder **in** den Auftragsunterlagen genannt werden. Sie können insbesondere dem Ziel dienen, die berufliche Ausbildung auf den Baustellen sowie die Beschäftigung von Personen zu fördern, deren Eingliederung besondere Schwierigkeiten bereitet, die Arbeitslosigkeit zu bekämpfen oder die Umwelt zu schützen. **So** können für den Zeitraum der Auftragsausführung geltende Anforderungen genannt werden bezüglich der Einstellung von Langzeitarbeitslosen oder der Durchführung von Schulungsmaßnahmen für Arbeitslose oder Jugendliche, der weitgehenden Einhaltung grundlegender Übereinkommen der Internationalen Arbeitsorganisation (IAO) – auch wenn diese nicht in innerstaatliches Recht umgesetzt wurden – oder der Beschäftigung einer höheren Zahl von Menschen mit Behinderungen als nach nationalem Recht vorgeschrieben.

Auftragsbekanntmachung, der als Aufruf zum Wettbewerb dienenden **Vorinformation** oder den Auftragsunterlagen genannt werden. Sie können insbesondere dem Ziel dienen, die berufliche Ausbildung auf den Baustellen sowie die Beschäftigung von Personen zu fördern, deren Eingliederung besondere Schwierigkeiten bereitet, die Arbeitslosigkeit zu bekämpfen oder die Umwelt zu schützen. **Unter anderem** können **beispielsweise** für den Zeitraum der Auftragsausführung geltende Anforderungen genannt werden bezüglich der Einstellung von Langzeitarbeitslosen oder der Durchführung von Schulungsmaßnahmen für Arbeitslose oder Jugendliche, der weitgehenden Einhaltung grundlegender Übereinkommen der Internationalen Arbeitsorganisation (IAO) – auch wenn diese nicht in innerstaatliches Recht umgesetzt wurden – oder der Beschäftigung einer höheren Zahl von Menschen mit Behinderungen als nach nationalem Recht vorgeschrieben. **Im Zusammenhang mit den Verpflichtungen in Bezug auf die sozialen Gegebenheiten und Beschäftigungsbedingungen, die Gesundheit und Sicherheit am Arbeitsplatz, die soziale Sicherheit und die Arbeitsbedingungen, so wie sie in EU-Rechtsvorschriften, nationalen Gesetzen, Regelungen oder Verwaltungsvorschriften, Schiedssprüchen, Kollektivvereinbarungen und -verträgen sowie den in Anhang XIV genannten internationalen arbeitsrechtlichen Bestimmungen festgelegt sind, die am Ort der Leistungserbringung gelten, sollten die öffentlichen Auftraggeber Bestimmungen festlegen, mit denen ein angemessenes Schutzniveau in den Klauseln zur Auftragsdurchführung festgesetzt wird.**

Or. de

Amendment 210
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Recital 50

Text proposed by the Commission

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

Amendment

(50) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked to the subject-matter of the contract and are indicated in the notice used to make the call for competition, or in the procurement documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment, protection of the environment or animal welfare. For example, mention may be made of the requirements applicable during the performance of the contract to recruit long-term job-seekers or to implement training measures for the unemployed or for young persons, to comply in substance with ***the working conditions along the supply chain as stated in national labour laws and regulations in which production processes take place and in international conventions as listed in Annex XIV, whatever the most favourable for workers. These provisions include: those defined by the eight ILO Core Conventions (freedom of association and collective bargaining, forced and compulsory labour, discrimination in respect of employment and occupation, child labour); occupational safety and health; working time; wages and social security.***

Or. en

Amendment 211
Jürgen Creutzmann

Proposal for a directive
Recital 50

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 212
Sergio Gaetano Cofferati, Marc Tarabella

Proposal for a directive
Recital 50 a (new)

(50 bis) E' necessario, per assicurare un corretto funzionamento degli appalti pubblici, che lo strumento del subappalto sia opportunamente regolato. L'ente aggiudicatore dovrebbe essere informato, nelle offerte presentate, delle eventuali parti del contratto che un offerente intenderebbe subappaltare, nonche' dei subappaltatori proposti. Ogni cambiamento nella catena di subappalto ad appalto in corso dovrebbe garantire una performance dell'appalto pari a quella definita nell'offerta presentata e dovrebbe essere convenuto dall'ente aggiudicatore. L'ente aggiudicatore dovrebbe provvedere, dove la natura del contratto lo consente, al pagamento diretto ai subappaltatori. E' infine necessario che sia stabilito un sistema di 'joint and several liability' nella catena del subappalto e che tale catena sia limitata al massimo a tre subappalti consecutivi verticali.

Or. it

Amendment 213
Vicente Miguel Garcés Ramón

Proposal for a directive
Recital 51

Text proposed by the Commission

(51) Las disposiciones legales y reglamentarias y los convenios colectivos, tanto nacionales como de la Unión, vigentes en materia de condiciones de trabajo y de seguridad en el trabajo, se aplicarán durante la ejecución de un contrato, siempre que dichas normas, así como su aplicación, se ajusten al Derecho de la Unión. Para las situaciones transfronterizas, en las que los trabajadores

Amendment

(51) Las disposiciones legales y reglamentarias y los convenios colectivos, tanto nacionales como de la Unión, vigentes en materia de condiciones de trabajo, **de integración laboral de las personas con discapacidad** y de seguridad en el trabajo, se aplicarán durante la ejecución de un contrato, siempre que dichas normas, así como su aplicación, se ajusten al Derecho de la Unión. Para las

de un Estado miembro prestan sus servicios en otro Estado miembro para la ejecución de un contrato, la Directiva 96/71/CE del Parlamento Europeo y del Consejo, de 16 de diciembre de 1996, sobre el desplazamiento de trabajadores efectuado en el marco de una prestación de servicios³³, enuncia las condiciones mínimas que han de respetarse en el país de acogida en relación con dichos trabajadores desplazados. Si el Derecho nacional contiene disposiciones a tal efecto, el incumplimiento de dichas obligaciones se podrá considerar una falta grave del operador económico, pudiendo acarrearle su exclusión del procedimiento de adjudicación de un contrato público.

situaciones transfronterizas, en las que los trabajadores de un Estado miembro prestan sus servicios en otro Estado miembro para la ejecución de un contrato, la Directiva 96/71/CE del Parlamento Europeo y del Consejo, de 16 de diciembre de 1996, sobre el desplazamiento de trabajadores efectuado en el marco de una prestación de servicios³³, enuncia las condiciones mínimas que han de respetarse en el país de acogida en relación con dichos trabajadores desplazados. Si el Derecho nacional contiene disposiciones a tal efecto, el incumplimiento de dichas obligaciones se podrá considerar una falta grave del operador económico, pudiendo acarrearle su exclusión del procedimiento de adjudicación de un contrato público.

Or. es

Amendment 214

Sergio Gaetano Cofferati, Marc Tarabella

Proposal for a directive

Recital 56 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 215

Heide Rühle

Proposal for a directive

Recital 57

Text proposed by the Commission

Amendment

(57) The evaluation has shown that Member States do not consistently and

deleted

systematically monitor the implementation and the functioning of public procurement rules. This has a negative impact on the correct implementation of provisions stemming from those directives, which is a major source of cost and uncertainty. Several Member States have appointed a national central body dealing with public procurement issues, but the functions that such bodies are empowered with vary considerably across Member States. Clearer, more consistent and authoritative monitoring and control mechanisms would increase knowledge of the functioning of procurement rules, legal certainty for businesses and contracting entities, and contribute to establish a level playing field. Such mechanisms could serve as tools for detection and early resolution of problems, especially with regard to projects cofunded by the Union, and for the identification of structural deficiencies. There is in particular a strong need to coordinate those mechanisms to ensure consistent application, controls and monitoring of public procurement policy, as well as systematic assessment of the outcomes of procurement policy across the Union.

Or. en

Justification

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

Amendment 216

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Recital 57

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

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

Or. en

Justification

Alternative proposals on governance.

Amendment 217

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Recital 57

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 218
Heide Rühle

Proposal for a directive
Recital 58

Text proposed by the Commission

(58) Member States should designate a single national authority in charge of

Amendment

deleted

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

Or. en

Amendment 219
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 58

Text proposed by the Commission

Amendment

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

deleted

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

Or. en

Justification

Alternative proposals on governance.

Amendment 220
Cornelis de Jong

Proposal for a directive
Recital 58

Text proposed by the Commission

Amendment

(58) Member States should designate a single national authority in charge of monitoring, implementation and control of public procurement. Such a central body should have first hand and timely information particularly in relation to different problems affecting the implementation of public procurement law. It should be able to provide immediate feedback on the functioning of the policy, the potential weaknesses in national legislation and practice and contribute to the quick identification of solutions. In view of efficiently fighting corruption and fraud, this central body and the general public should also have the possibility to inspect the texts of concluded contracts. High-value contracts should hence be transmitted to the oversight body with a possibility of interested persons to have access to these

deleted

documents, to the extent that legitimate public or private interests are not jeopardized.

Or. en

Amendment 221
Jürgen Creutzmann

Proposal for a directive
Recital 58

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 222
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 59

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Simplification.

Amendment 223
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 60

Text proposed by the Commission

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

Amendment

(60) Traceability and transparency of decision-making in procurement procedures is essential for ensuring sound procedures, including effectively fighting corruption and fraud. Contracting authorities should keep copies of concluded contracts for high-value contracts to be able to provide access to these documents to interested parties in accordance with applicable rules on

access to documentation. Furthermore, the essential elements and decisions of individual procurement procedures should be documented in a procurement report. To limit administrative burdens, the procurement report should refer to information already contained in the relevant contract award notices. The electronic systems for publication of these notices, managed by the Commission, should also be improved in view of facilitating data entry while making it easier to extract reports and exchange data between systems.

Or. en

Justification

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

Amendment 224

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Recital 61

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

Alternative proposals on governance.

Amendment 225

Heide Rühle

Proposal for a directive

Recital 61

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 226

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Recital 61

Text proposed by the Commission

(61) Effective cooperation is necessary to

Amendment

(61) Effective cooperation is necessary to

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

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

Or. en

Amendment 227

Heide Rühle

Proposal for a directive

Recital 62

Text proposed by the Commission

(62) In order to adapt to rapid technical, economic and regulatory developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of a number of non-essential elements of this Directive. In fact, due to the need to comply with international agreements, the Commission should be empowered to modify the technical procedures for the calculation methods concerning thresholds as well as to periodically revise the thresholds themselves; references to the CPV nomenclature may undergo regulatory changes at EU level and it is necessary to reflect those changes into the text of this Directive; the technical details and characteristics of the devices for electronic receipt should be kept up to date with technological developments and administrative needs; it is also necessary to empower the Commission to make

Amendment

(62) In order to adapt to rapid technical, economic and regulatory developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of a number of non-essential elements of this Directive. In fact, due to the need to comply with international agreements, the Commission should be empowered to modify the technical procedures for the calculation methods concerning thresholds as well as to periodically revise the thresholds themselves; references to the CPV nomenclature may undergo regulatory changes at EU level and it is necessary to reflect those changes into the text of this Directive; the technical details and characteristics of the devices for electronic receipt should be kept up to date with technological developments and administrative needs; it is also necessary to empower the Commission to make

mandatory certain technical standards for electronic communication to ensure the interoperability of technical formats, processes and messaging in procurement procedures conducted using electronic means of communication taking into account technological developments and administrative needs; ***the Commission should also be empowered to adapt the mandatory content of the information to be included in notices to reflect administrative needs and regulatory changes at both national and EU level;*** the list of legislative acts of the Union establishing common methodologies for the calculation of life-cycle costs, referred to in article 77(3); the list of International Social and Environmental Conventions referred to in Articles 70 And 79 and the list of Union legislation referred to in article 27(3) whose implementation creates a presumption of free access to a given market as well as Annex II, referred to in Article 4(4), setting out a list of legislative acts to be taken into account when assessing the existence of special or exclusive rights should be quickly adapted to incorporate the measures adopted on a sectoral basis. In order to satisfy this need, the Commission should be empowered to keep the lists up-to date.

mandatory certain technical standards for electronic communication to ensure the interoperability of technical formats, processes and messaging in procurement procedures conducted using electronic means of communication taking into account technological developments and administrative needs; the list of legislative acts of the Union establishing common methodologies for the calculation of life-cycle costs, referred to in article 77(3); the list of International Social and Environmental Conventions referred to in Articles 70 And 79 and the list of Union legislation referred to in article 27(3) whose implementation creates a presumption of free access to a given market as well as Annex II, referred to in Article 4(4), setting out a list of legislative acts to be taken into account when assessing the existence of special or exclusive rights should be quickly adapted to incorporate the measures adopted on a sectoral basis. In order to satisfy this need, the Commission should be empowered to keep the lists up-to date.

Or. en

Amendment 228
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Recital 63

Text proposed by the Commission

(63) It is of particular importance that the Commission ***carry*** out appropriate consultations ***during its preparatory work***, including ***at expert level***. When preparing and drawing up delegated acts, the

Amendment

(63) It is of particular importance that the Commission ***carries*** out appropriate consultations ***with all stakeholders***, including ***SME-, environmental-, and consumer organisations and trade unions***.

Commission should ensure simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

When preparing and drawing up delegated acts, the Commission should ensure simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

Or. en

Amendment 229
Heide Rühle

Proposal for a directive
Recital 64

Text proposed by the Commission

(64) In order to ensure uniform conditions for the implementation of this Directive, as for the procedure for sending and publishing data referred to in Annex IX and the procedures for drawing up and transmitting notices, the standard forms for the publication of notices as well as of process and messaging standards ***and the common template to be used by the oversight bodies for drawing up the implementation and statistical report***, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No. 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers³⁵. The advisory procedure should be used for the adoption of those implementing acts, which do not have any impact either from the financial point of views or on the nature and scope of obligations stemming from this Directive. On the contrary, those acts are characterised by a mere administrative purpose and serve to facilitate the application of the rules set by this Directive. Furthermore, decisions to

Amendment

(64) In order to ensure uniform conditions for the implementation of this Directive, as for the procedure for sending and publishing data referred to in Annex IX and the procedures for drawing up and transmitting notices, the standard forms for the publication of notices as well as of process and messaging standards, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No. 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers³⁵. The advisory procedure should be used for the adoption of those implementing acts, which do not have any impact either from the financial point of views or on the nature and scope of obligations stemming from this Directive. On the contrary, those acts are characterised by a mere administrative purpose and serve to facilitate the application of the rules set by this Directive. Furthermore, decisions to establish whether a given activity is directly exposed to competition on markets to which access is free should be adopted

establish whether a given activity is directly exposed to competition on markets to which access is free should be adopted under conditions ensuring uniform conditions for implementing that provision. Implementing powers should therefore be conferred on the Commission also in respect of the detailed provisions for the implementation of the procedure, provided for under Article 28, for establishing whether Article 27 is applicable as well as the Decisions themselves. Those powers should be exercised in accordance with Regulation (EU) 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers. The advisory procedure should be used for the adoption of those implementing acts.

under conditions ensuring uniform conditions for implementing that provision. Implementing powers should therefore be conferred on the Commission also in respect of the detailed provisions for the implementation of the procedure, provided for under Article 28, for establishing whether Article 27 is applicable as well as the Decisions themselves. Those powers should be exercised in accordance with Regulation (EU) 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers. The advisory procedure should be used for the adoption of those implementing acts.

Or. en

Amendment 230
Heide Rühle

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

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 231

Peter Simon

Proposal for a directive

Article 1 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Auftragsvergabe im Sinne dieser Richtlinie bezeichnet den Kauf **oder andere Formen des Erwerbs** von Bauleistungen, Lieferungen oder Dienstleistungen durch eine oder mehrere Vergabestellen von Wirtschaftsteilnehmern, die von diesen Auftraggebern ausgewählt werden, sofern die Bauleistungen, Lieferungen oder Dienstleistungen für einen der in Artikel 5 bis 11 genannten Zwecke bestimmt sind.

Amendment

2. Auftragsvergabe im Sinne dieser Richtlinie bezeichnet den Kauf von Bauleistungen, Lieferungen oder Dienstleistungen **im Rahmen öffentlicher Aufträge** durch eine oder mehrere Vergabestellen von Wirtschaftsteilnehmern, die von diesen Auftraggebern ausgewählt werden, sofern die Bauleistungen, Lieferungen oder Dienstleistungen für einen der in Artikel 5 bis 11 genannten Zwecke bestimmt sind.

Or. de

Amendment 232

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

Proposal for a directive

Article 1 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

to in Articles 5 to 11.

5 to 11.

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

Or. en

Amendment 233
Evelyne Gebhardt

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

Text proposed by the Commission

2. Auftragsvergabe im Sinne dieser Richtlinie bezeichnet **den Kauf** oder andere Formen des Erwerbs von Bauleistungen, Lieferungen oder Dienstleistungen durch **eine** oder mehrere **Vergabestellen** von Wirtschaftsteilnehmern, die von diesen Auftraggebern ausgewählt werden, **sofern die** Bauleistungen, Lieferungen oder Dienstleistungen für einen **der in Artikel 5 bis 11 genannten Zwecke** bestimmt sind.

Amendment

2. Auftragsvergabe im Sinne dieser Richtlinie bezeichnet **die Beschaffung** oder andere Formen des Erwerbs von Bauleistungen, Lieferungen oder **der Erbringung von** Dienstleistungen **im Sinne dieser Richtlinie** durch **einen** oder mehrere **öffentliche Auftraggeber** von Wirtschaftsteilnehmern, die von diesen **öffentlichen** Auftraggebern ausgewählt werden, **unabhängig davon, ob diese** Bauleistungen, Lieferungen oder Dienstleistungen für einen **öffentlichen Zweck** bestimmt sind.

Or. de

Amendment 234
Heide Rühle

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

Text proposed by the Commission

An entirety of works, supplies and/or services, even if purchased through different contracts, constitutes a single

Amendment

deleted

procurement within the meaning of this Directive, if the contracts are part of one single project.

Or. en

Justification

This notion is too general and too vague.

Amendment 235

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

Proposal for a directive

Article 1 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

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

Or. en

Justification

This notion is too general and too vague.

Amendment 236

Cornelis de Jong

Proposal for a directive

Article 1 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

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

single project.

Or. en

Amendment 237

Peter Simon

Proposal for a directive

Article 1 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

Die Gesamtheit der Bauleistungen, Lieferungen und/ oder Dienstleistungen – auch wenn sie im Rahmen verschiedener Aufträge erworben werden – stellt eine einzige Auftragsvergabe im Sinne dieser Richtlinie dar, sofern die Aufträge Teil eines einzigen Projekts sind.

entfällt

Or. de

Amendment 238

Andreas Schwab, Jürgen Creutzmann

Proposal for a directive

Article 1 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

The wording of the Commission proposal which aims at preventing the circumvention of EU procurement rules through the artificial splitting up of contracts is too far reaching, for

instance in case of construction and architectural planning. Therefore, the proposed wording is based on paragraph 41 of the recent ECJ ruling C-574/10.

Amendment 239
Robert Rochefort

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

Text proposed by the Commission

Amendment

2 bis. Les services régis par le régime général de la présente directive sont ceux énumérés à l'annexe XVII bis, partie A. Les articles 84 à 86 de la présente directive s'appliquent aux marchés de services spécifiques énumérés à l'annexe XVII bis, partie B.

Or. fr

Amendment 240
Evelyne Gebhardt

Proposal for a directive
Article 1 a (new)

Text proposed by the Commission

Amendment

Article 1a

Diese Richtlinie berührt nicht das Arbeitsrecht, d.h. gesetzliche oder vertragliche Bestimmungen über Arbeits- und Beschäftigungsbedingungen, einschließlich des Gesundheitsschutzes und der Sicherheit am Arbeitsplatz und über die Beziehungen zwischen Arbeitgebern und Arbeitnehmern, die von den Mitgliedstaaten gemäß nationalem Recht unter Wahrung des Gemeinschaftsrechts angewandt werden. In gleicher Weise berührt die Richtlinie auch nicht die Rechtsvorschriften der Mitgliedstaaten über die soziale

Amendment 241
Evelyne Gebhardt

Proposal for a directive
Article 1 b (new)

Text proposed by the Commission

Amendment

Article 1b

Diese Richtlinie berührt nicht die Ausübung der in den Mitgliedstaaten und durch das Gemeinschaftsrecht anerkannten Grundrechte. Sie berührt auch nicht das Recht, gemäß nationalem Recht und nationalen Praktiken unter Wahrung des Gemeinschaftsrechts Tarifverträge auszuhandeln, abzuschließen und durchzusetzen sowie Arbeitskampfmaßnahmen zu ergreifen.

Amendment 242
Evelyne Gebhardt

Proposal for a directive
Article 1 c (new)

Text proposed by the Commission

Amendment

Article 1c

Diese Richtlinie berührt nicht das Recht der Mitgliedstaaten, im Einklang mit dem Gemeinschaftsrecht festzulegen, welche Leistungen sie als von allgemeinem wirtschaftlichem Interesse erachten, wie diese Dienstleistungen unter Beachtung der Vorschriften über staatliche Beihilfen organisiert und finanziert werden sollten und welchen spezifischen

Verpflichtungen sie unterliegen sollten.

Or. de

Amendment 243

Malcolm Harbour, Edvard Kožušník, Adam Bielan

Proposal for a directive

Article 2 – point 4 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 244

Heide Rühle

Proposal for a directive

Article 2 – point 4 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 245

Malcolm Harbour, Edvard Kožušník, Adam Bielan

Proposal for a directive

Article 2 – point 4 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Clarification and simplification of the definition of BGPL.

Amendment 246

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

Proposal for a directive

Article 2 – point 4 – point a

Text proposed by the Commission

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

Amendment

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

character;

having an industrial or commercial character;

Or. en

Justification

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

Amendment 247

Tiziano Motti

Proposal for a directive

Article 2 – point 4 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 248
Raffaele Baldassarre, Lara Comi

Proposal for a directive
Article 2 – point 4 – point a

Text proposed by the Commission

(a) è istituito con l'obiettivo specifico o ha l'obiettivo specifico di soddisfare esigenze di interesse generale aventi carattere non industriale o commerciale. A tal fine, un organismo che opera in condizioni normali di mercato, ***che mira a realizzare un profitto e che sostiene le perdite risultanti dall'esercizio delle sue*** attività, non ha l'obiettivo di rispondere a esigenze di interesse generale aventi carattere non industriale o commerciale;

Amendment

(a) è istituito con l'obiettivo specifico o ha l'obiettivo specifico di soddisfare esigenze di interesse generale aventi carattere non industriale o commerciale. A tal fine, un organismo che opera in condizioni normali di mercato e ***si impegna in*** attività ***economiche, offrendo beni e servizi sul mercato*** non ha l'obiettivo di rispondere a esigenze di interesse generale aventi carattere non industriale o commerciale

Or. it

Amendment 249
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Article 2 – point 4 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 250

Malcolm Harbour, Edvard Kožušník, Adam Bielan

Proposal for a directive

Article 2 – point 4 – point b

Text proposed by the Commission

Amendment

(b) *it has* legal personality;

(b) **having** legal personality;

Or. en

Amendment 251

Malcolm Harbour, Edvard Kožušník, Adam Bielan, Jürgen Creutzmann

Proposal for a directive

Article 2 – point 4 – point c

Text proposed by the Commission

Amendment

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

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

(i) the majority of the funding is from the State, regional or local authorities, or other bodies governed by public law;

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

public law;

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

Or. en

Justification

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

Amendment 252

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 2 – point 4 – point c

Text proposed by the Commission

(c) è finanziato per la maggior parte da autorità statali, regionali o locali o da altri organismi di diritto pubblico; o la sua gestione è posta sotto la vigilanza di tali organismi; o il suo organo di amministrazione, di direzione o di vigilanza è costituito da membri più della metà dei quali è designata dallo Stato, da enti locali o regionali o da altri organismi di diritto pubblico.

Amendment

(c) è finanziato per la maggior parte da autorità statali, regionali o locali o da altri organismi di diritto pubblico; o la sua gestione è posta sotto la vigilanza di tali organismi; o il suo organo di amministrazione, di direzione o di vigilanza è costituito da membri più della metà dei quali è designata dallo Stato, da enti locali o regionali o da altri organismi di diritto pubblico. ***Ai fini della presente Direttiva, il concetto di organismo pubblico non comprende le società quotate in borsa e le società da queste direttamente o indirettamente controllate e/o collegate;***

Or. it

Amendment 253

Heide Rühle

Proposal for a directive

Article 2 – point 8 – point a (new)

Text proposed by the Commission

Amendment

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

Or. en

Justification

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

Amendment 254

Heide Rühle

Proposal for a directive

Article 2 – point 8 – point b

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 255

Heide Rühle

Proposal for a directive

Article 2 – point 8 – point c

Text proposed by the Commission

Amendment

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

deleted

Amendment 256

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 2 – point 10

Text proposed by the Commission

(10) Per «appalti di forniture» si intendono appalti aventi per oggetto l'acquisto, la locazione finanziaria, la locazione o l'acquisto a riscatto, con o senza opzione per l'acquisto, di prodotti. Un appalto di forniture può includere, a titolo accessorio, lavori di posa in opera e di installazione.

Amendment

(10) Per «appalti di forniture» si intendono appalti aventi per oggetto l'acquisto, la locazione finanziaria, la locazione o l'acquisto a riscatto, con o senza opzione per l'acquisto, di prodotti, **anche sotto forma di somministrazione**. Un appalto di forniture può includere, a titolo accessorio, lavori di posa in opera e di installazione.

Or. it

Amendment 257

Marc Tarabella

Proposal for a directive

Article 2 – point 12

Text proposed by the Commission

(12) «opérateur économique»: toute personne physique ou morale ou **entité adjudicatrice**, ou groupement de ces personnes et/ou entités, qui offre la réalisation de travaux et/ou d'ouvrages, la fourniture de produits ou la prestation de services sur le marché;

Amendment

(12) «opérateur économique»: toute personne physique ou morale **privée** ou **publique**, ou groupement de ces personnes, qui offre la réalisation de travaux et/ou d'ouvrages, la fourniture de produits ou la prestation de services sur le marché;

Or. fr

Amendment 258

Heide Rühle

Proposal for a directive
Article 2 – point 15

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 259
Frank Engel

Proposal for a directive
Article 2 – point 22

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 260
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 2 – point 22

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 261

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

Proposal for a directive
Article 2 – point 22

Text proposed by the Commission

(22) 'life cycle' means all consecutive and/or interlinked stages, including **production**, transport, use and maintenance, throughout the existence of a

Amendment

(22) 'life cycle' means all consecutive and/or interlinked stages, including **research, development**, transport, use and maintenance, throughout the existence of a

product or a works or the provision of a service, **from raw material acquisition or generation of resources to disposal, clearance and finalisation;**

product or a works or the provision of a service, **provided data in relation to these are measurable and can be collated in a meaningful manner.**

Or. en

Amendment 262
Jürgen Creutzmann

Proposal for a directive
Article 2 – point 22

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 263
Jürgen Creutzmann

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 264
Heide Rühle

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 265
Malcolm Harbour

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 266
Marc Tarabella

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

Text proposed by the Commission

Amendment

(23 bis) «produits, travaux, fournitures et

services non couverts», des produits, travaux, fournitures et services provenant d'un pays avec lequel l'Union n'a pas conclu d'accord international dans le domaine des marchés publics, y compris un engagement en matière d'accès au marché, ou des produits, travaux, fournitures et services provenant d'un pays avec lequel l'Union a conclu un tel accord international, mais auquel cet accord ne s'applique pas;

Or. fr

Amendment 267

Pablo Arias Echeverría

Proposal for a directive Article 3 – paragraph 3

Text proposed by the Commission

3. Si una de las actividades a que se destine el contrato está sujeta a la presente Directiva y la otra, a la Directiva [2004/18/CE], y si resulta imposible objetivamente establecer a qué actividad se destina principalmente el contrato, ***este se adjudicará con arreglo a la mencionada Directiva [2004/18/CE].***

Amendment

3. Si una de las actividades a que se destine el contrato está sujeta a la presente Directiva y la otra, a la Directiva [2004/18/CE], y si resulta imposible objetivamente establecer a qué actividad se destina principalmente el contrato, ***la aplicación de la presente Directiva se determinará sobre la base del objeto principal del contrato.***

Or. es

Amendment 268

Raffaele Baldassarre

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

Text proposed by the Commission

2. I diritti concessi in virtù di una procedura in base alla quale è stata assicurata una pubblicità adeguata, e in

Amendment

2. I diritti concessi in virtù di una procedura ***di gara***, in base alla quale è stata assicurata una pubblicità adeguata, e in

caso tale concessione si sia basata su criteri oggettivi, non costituiscono «diritti speciali o esclusivi» ai sensi dell'articolo 2, punto 6.

caso tale concessione si sia basata su criteri **di aggiudicazione** oggettivi **e non discriminatori**, non costituiscono «diritti speciali o esclusivi» ai sensi dell'articolo 2, punto 6.

Or. it

Amendment 269

Pablo Arias Echeverría

Proposal for a directive

Article 4 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

(a) los procedimientos de contratación con convocatoria de licitación previa de conformidad con la Directiva [2004/18/CE], [la Directiva ... (concesiones)] **o** la presente Directiva;

Amendment

(a) los procedimientos de contratación con convocatoria de licitación previa de conformidad con la Directiva [2004/18/CE], [la Directiva ... (concesiones)], la presente Directiva **u otros procedimientos de contratación de los Estados Miembros que hayan adoptado las Directivas antes mencionadas, incluso para la adjudicación de concesiones.**

Or. es

Amendment 270

Heide Rühle

Proposal for a directive

Article 4 – paragraph 3 – point a

Text proposed by the Commission

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

Amendment

(a) which are contracting authorities or public undertakings and which pursue one of the activities referred to in Articles 5 to 11 **except in cases where the activity is pursued on the basis of rights being granted according to paragraph 2 of this Article;**

Amendment 271

Lara Comi

Proposal for a directive

Article 4 – paragraph 3 – point a

Text proposed by the Commission

(a) che sono amministrazioni aggiudicatrici o imprese pubbliche che svolgono una delle attività di cui agli articoli da 5 a 11;

Amendment

(a) che sono amministrazioni aggiudicatrici o imprese pubbliche, **salvo le ipotesi di cui al paragrafo 4**, che svolgono una delle attività di cui agli articoli da 5 a 11;

Or. it

Amendment 272

Lara Comi

Proposal for a directive

Article 4 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 bis. La presente direttiva non si applica alle imprese pubbliche che esercitano le attività di cui agli articoli da 5 a 11 in virtù di diritti concessi in conformità con il paragrafo 2 del presente articolo.

Or. it

Amendment 273

Heide Rühle

Proposal for a directive

Article 5 – title

Text proposed by the Commission

Amendment

Gas and **heat**

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

Justification

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

Amendment 274

Heide Rühle

Proposal for a directive

Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 275

Christel Schaldemose

Proposal for a directive

Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 276

Heide Rühle

Proposal for a directive

Article 5 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 277
Christel Schaldemose

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 278
Heide Rühle

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 279
Christel Schaldemose

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 280
Heide Rühle

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 281
Christel Schaldemose

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 282
Heide Rühle

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 283
Christel Schaldemose

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 284
Lara Comi

Proposal for a directive
Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8 bis
Servizi postali

La presente direttiva non si applica agli appalti pubblici il cui obiettivo principale è consentire alle amministrazioni aggiudicatrici la prestazione di servizi postali e di altri servizi diversi dai servizi postali.

Ai fini del presente articolo, si intendono per:

(a) "servizi postali": servizi consistenti nella raccolta, smistamento, trasporto e distribuzione di invii postali. Tali servizi comprendono sia i servizi che rientrano nel campo di applicazione del servizio universale stabilito in conformità con la direttiva 97/67/CE, sia quelli che ne sono esclusi;

(b) "altri servizi diversi dai servizi postali": servizi forniti nei seguenti ambiti:

(i) servizi di gestione di servizi postali (servizi precedenti l'invio e servizi successivi all'invio, compresi i "mailroom management services");

(ii) servizi speciali connessi e effettuati interamente per via elettronica (compresa la trasmissione sicura per via elettronica di documenti codificati, i servizi di gestione degli indirizzi e la trasmissione della posta elettronica registrata);

(iii) servizi di spedizione diversi da quelli di cui all'articolo 10, paragrafo 2, lettera a) della direttiva settori quali la spedizione di invii pubblicitari, privi di indirizzo;

(iv) servizi finanziari, quali definiti nel CPV (vocabolario comune per gli appalti) con i numeri di riferimento da 66100000-1 a 66720000-3 e nell'articolo 19, lettera c), compresi in particolare i vaglia postali e i trasferimenti da conti correnti postali;

(v) servizi di filatelia;

(vi) servizi logistici (servizi che associano la consegna fisica e/o il deposito di merci ed altre funzioni non connesse ai servizi postali).

Amendment 285

Tiziano Motti

Proposal for a directive**Article 10***Text proposed by the Commission**Amendment***Articolo 10****soppresso****Servizi postali**

1. La presente direttiva si applica alle attività relative alla prestazione di:

(a) servizi postali;

(b) altri servizi diversi da quelli postali, a condizione che tali servizi siano prestati da un ente che fornisce anche servizi postali ai sensi del paragrafo 2, lettera b), e che le condizioni di cui all'articolo 27, paragrafo 1, non siano soddisfatte per quanto riguarda i servizi previsti dal paragrafo 2, lettera b).

2. Ai fini della presente direttiva e fatta salva la direttiva 97/67/CE, si intende per:

(a) "invio postale": un invio indirizzato nella forma definitiva al momento in cui viene preso in consegna, indipendentemente dal suo peso. Oltre agli invii di corrispondenza, si tratta ad esempio di libri, cataloghi, giornali, periodici e pacchi postali contenenti merci con o senza valore commerciale, indipendentemente dal loro peso;

(b) "servizi postali": servizi consistenti nella raccolta, smistamento, trasporto e distribuzione di invii postali. Includono sia i servizi che rientrano nel campo di applicazione del servizio universale stabilito in conformità con la direttiva 97/67/CE, sia quelli che ne sono esclusi;

(c) "altri servizi diversi dai servizi postali": servizi forniti nei seguenti

ambiti:

(i) servizi di gestione di servizi postali (servizi precedenti l'invio e servizi successivi all'invio, compresi i "mailroom management services");

(ii) servizi speciali connessi e effettuati interamente per via elettronica (compresa la trasmissione sicura per via elettronica di documenti codificati, i servizi di gestione degli indirizzi e la trasmissione della posta elettronica registrata);

(iii) servizi di spedizione diversi da quelli di cui alla lettera a) quali la spedizione di invii pubblicitari, privi di indirizzo;

(iv) servizi finanziari, quali definiti nel CPV (vocabolario comune per gli appalti) con i numeri di riferimento da 66100000-1 a 66720000-3 e nell'articolo 19, lettera c), compresi in particolare i vaglia postali e i trasferimenti da conti correnti postali;

(v) servizi di filatelia;

(vi) servizi logistici (servizi che associano la consegna fisica e/o il deposito di merci ed altre funzioni non connesse ai servizi postali).

Or. it

Justification

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

Amendment 286
Lara Comi

Proposal for a directive
Article 10

Text proposed by the Commission

Amendment

Articolo 10

soppresso

Servizi postali

1. La presente direttiva si applica alle attività relative alla prestazione di:

(a) servizi postali;

(b) altri servizi diversi da quelli postali, a condizione che tali servizi siano prestati da un ente che fornisce anche servizi postali ai sensi del paragrafo 2, lettera b), e che le condizioni di cui all'articolo 27, paragrafo 1, non siano soddisfatte per quanto riguarda i servizi previsti dal paragrafo 2, lettera b).

2. Ai fini della presente direttiva e fatta salva la direttiva 97/67/CE, si intende per:

(a) "invio postale": un invio indirizzato nella forma definitiva al momento in cui viene preso in consegna, indipendentemente dal suo peso. Oltre agli invii di corrispondenza, si tratta ad esempio di libri, cataloghi, giornali, periodici e pacchi postali contenenti merci con o senza valore commerciale, indipendentemente dal loro peso;

(b) "servizi postali": servizi consistenti nella raccolta, smistamento, trasporto e distribuzione di invii postali. Includono sia i servizi che rientrano nel campo di applicazione del servizio universale stabilito in conformità con la direttiva 97/67/CE, sia quelli che ne sono esclusi;

(c) "altri servizi diversi dai servizi postali": servizi forniti nei seguenti ambiti:

(i) servizi di gestione di servizi postali (servizi precedenti l'invio e servizi successivi all'invio, compresi i "mailroom management services");

(ii) servizi speciali connessi e effettuati interamente per via elettronica (compresa la trasmissione sicura per via elettronica di documenti codificati, i servizi di gestione degli indirizzi e la trasmissione della posta elettronica registrata);

(iii) servizi di spedizione diversi da quelli di cui alla lettera a) quali la spedizione di invii pubblicitari, privi di indirizzo;

(iv) servizi finanziari, quali definiti nel CPV (vocabolario comune per gli appalti) con i numeri di riferimento da 66100000-1 a 66720000-3 e nell'articolo 19, lettera c), compresi in particolare i vaglia postali e i trasferimenti da conti correnti postali;

(v) servizi di filatelia;

(vi) servizi logistici (servizi che associano la consegna fisica e/o il deposito di merci ed altre funzioni non connesse ai servizi postali).

Or. it

Amendment 287

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Article 10

Text proposed by the Commission

Amendment

Articolo 10

soppresso

Servizi postali

1. La presente direttiva si applica alle attività relative alla prestazione di:

(a) servizi postali;

(b) altri servizi diversi da quelli postali, a condizione che tali servizi siano prestati da un ente che fornisce anche servizi postali ai sensi del paragrafo 2, lettera b), e che le condizioni di cui all'articolo 27, paragrafo 1, non siano soddisfatte per

quanto riguarda i servizi previsti dal paragrafo 2, lettera b).

2. Ai fini della presente direttiva e fatta salva la direttiva 97/67/CE, si intende per:

(a) "invio postale": un invio indirizzato nella forma definitiva al momento in cui viene preso in consegna, indipendentemente dal suo peso. Oltre agli invii di corrispondenza, si tratta ad esempio di libri, cataloghi, giornali, periodici e pacchi postali contenenti merci con o senza valore commerciale, indipendentemente dal loro peso;

(b) "servizi postali": servizi consistenti nella raccolta, smistamento, trasporto e distribuzione di invii postali. Includono sia i servizi che rientrano nel campo di applicazione del servizio universale stabilito in conformità con la direttiva 97/67/CE, sia quelli che ne sono esclusi;

(c) "altri servizi diversi dai servizi postali": servizi forniti nei seguenti ambiti:

(i) servizi di gestione di servizi postali (servizi precedenti l'invio e servizi successivi all'invio, compresi i "mailroom management services");

(ii) servizi speciali connessi e effettuati interamente per via elettronica (compresa la trasmissione sicura per via elettronica di documenti codificati, i servizi di gestione degli indirizzi e la trasmissione della posta elettronica registrata);

(iii) servizi di spedizione diversi da quelli di cui alla lettera a) quali la spedizione di invii pubblicitari, privi di indirizzo;

(iv) servizi finanziari, quali definiti nel CPV (vocabolario comune per gli appalti) con i numeri di riferimento da 66100000-1 a 66720000-3 e nell'articolo 19, lettera c), compresi in particolare i vaglia postali e i trasferimenti da conti correnti postali;

(v) servizi di filatelia;

(vi) servizi logistici (servizi che associano la consegna fisica e/o il deposito di merci ed altre funzioni non connesse ai servizi postali).

Or. it

Justification

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

Amendment 288

Adam Bielan, Marek Siwiec

Proposal for a directive

Article 10

Text proposed by the Commission

Amendment

Article 10

deleted

Postal services

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

(a) postal services;

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

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

(a) "postal item": means an item addressed in the final form in which it is to be carried, irrespective of weight. In

addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight;

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

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

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

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

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

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

(v) philatelic services;

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

Or. en

Justification

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

Amendment 289 **Heide Rühle**

Proposal for a directive **Article 11 – title**

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 290 **Matteo Salvini, Francesco Enrico Speroni**

Proposal for a directive **Article 12 – point a**

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 291 **Matteo Salvini, Francesco Enrico Speroni**

Proposal for a directive **Article 12 – point b**

Text proposed by the Commission

Amendment

(b) EUR 5 000 000 for works contracts;

(b) EUR 7 500 000 for works contracts;

Or. en

Amendment 292

Frank Engel, Andreas Schwab

Proposal for a directive

Article 12 – point c

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

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

Amendment 293

Robert Rochefort

Proposal for a directive

Article 12 – c

Text proposed by the Commission

Amendment

(c) 1 000 000 EUR pour les marchés de services sociaux et d'autres services spécifiques énumérés à *l'annexe XVII*.

(c) 1 000 000 EUR pour les marchés de services sociaux et d'autres services spécifiques énumérés à *l'annexe XVII bis B*.

Or. fr

Amendment 294

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Article 12 – point c

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 295
Heide Rühle

Proposal for a directive
Article 13 – paragraph 9

Text proposed by the Commission

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

Amendment

deleted

Or. en

Justification

Far too bureaucratic.

Amendment 296
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 13 – paragraph 9

Text proposed by the Commission

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

Amendment

9. Contracting entities may award contracts for individual lots without applying the procedures provided for under this Directive, provided that the estimated value net of VAT of the lot concerned is less than **EUR 160 000** for supplies or services or **EUR 2 million** for works. However, the aggregate value of the lots thus awarded without applying this Directive shall not exceed 20 % of the aggregate value of all the lots into which the proposed work, the proposed acquisition of similar supplies or the proposed purchase of services has been divided.

Or. en

Amendment 297
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Article 13 – paragraph 9

Text proposed by the Commission

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

Amendment

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

Amendment 298
Frank Engel, Andreas Schwab

Proposal for a directive
Article 14 a (new)

Text proposed by the Commission

Amendment

Article 14a

Arrangements for public service contracts

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

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

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

Or. en

Justification

reintroduction of the distinction between A and B services

Amendment 299
Jürgen Creutzmann

Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 300
Heide Rühle

Proposal for a directive
Article 16 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 301
Heide Rühle

Proposal for a directive
Article 16 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 302
Jürgen Creutzmann

Proposal for a directive
Article 16 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 303
Heide Rühle

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

Text proposed by the Commission

Amendment

(b) arbitration and conciliation services;

deleted

Or. en

Amendment 304
Cornelis de Jong, Mikael Gustafsson

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

Text proposed by the Commission

Amendment

(b) arbitration and conciliation services;

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

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

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

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

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

Or. en

Amendment 305
Marc Tarabella

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

Text proposed by the Commission

(b) concernant les services d'arbitrage et de conciliation;

Amendment

(b) concernant les services d'arbitrage et de conciliation ***ainsi que les services d'avocat consistant dans la représentation en justice;***

Or. fr

Amendment 306
Raffaele Baldassarre

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

Text proposed by the Commission

(b) concernenti i servizi d'arbitrato e di conciliazione;

Amendment

(b) concernenti i servizi d'arbitrato e di conciliazione ***e legali***

Or. it

Amendment 307
Peter Simon

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

Text proposed by the Commission

(b) Schiedsgerichts- und Schlichtungsleistungen;

Amendment

(b) Schiedsgerichts- und Schlichtungsleistungen,
Rechtsdienstleistungen sowie notarielle Dienstleistungen;

Or. de

Amendment 308
Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafał Trzaskowski

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

Text proposed by the Commission

b) usług arbitrażowych lub pojednawczych;

Amendment

b) usług arbitrażowych lub pojednawczych,
jak i czynności funkcjonariusza publicznego, który zobligowany jest do niezawisłości i bezstronności;

Or. pl

Amendment 309
Peter Simon

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

Text proposed by the Commission

Amendment

(b a) Zivilschutz, Katastrophenschutz und alltägliche Gefahrenabwehr;

Or. de

Amendment 310
Lara Comi

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

Text proposed by the Commission

Amendment

(b bis) concernenti i servizi legali;

Or. it

Amendment 311
Peter Simon

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

Text proposed by the Commission

Amendment

(b b) aufgrund im Einklang mit den EU-Verträgen stehender, besonderer oder ausschließlicher Rechte zu vergebende Verträge;

Or. de

Amendment 312
Frank Engel

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 313
Peter Simon

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

Text proposed by the Commission

(c) Finanzdienstleistungen im Zusammenhang mit der Ausgabe, dem Verkauf, dem Ankauf oder der Übertragung von Wertpapieren oder anderen Finanzinstrumenten im Sinne der Richtlinie 2004/39/EG des Europäischen

Amendment

(c) Finanzdienstleistungen im Zusammenhang mit der Ausgabe, dem Verkauf, dem Ankauf oder der Übertragung von Wertpapieren oder anderen Finanzinstrumenten im Sinne der Richtlinie 2004/39/EG des Europäischen

Parlaments und des Rates **und** mit der Europäischen Finanzstabilisierungsfazilität durchgeführte Transaktionen;

Parlaments und des Rates, mit der Europäischen Finanzstabilisierungsfazilität durchgeführte Transaktionen **sowie Geschäfte, die der Geld- oder Kapitalbeschaffung der öffentlichen Auftraggeber dienen**;

Or. de

Amendment 314
Barbara Weiler

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

Text proposed by the Commission

(c) Finanzdienstleistungen im Zusammenhang mit der Ausgabe, dem Verkauf, dem Ankauf oder der Übertragung von Wertpapieren oder anderen Finanzinstrumenten im Sinne der Richtlinie 2004/39/EG des Europäischen Parlaments und des Rates und mit der Europäischen Finanzstabilisierungsfazilität durchgeführte Transaktionen;

Amendment

(c) Finanzdienstleistungen im Zusammenhang mit der Ausgabe, dem Verkauf, dem Ankauf oder der Übertragung von Wertpapieren oder anderen Finanzinstrumenten im Sinne der Richtlinie 2004/39/EG des Europäischen Parlaments und des Rates, **Geschäfte die der Geld- oder Kapitalbeschaffung der öffentlichen Auftraggeber dienen** und mit der Europäischen Finanzstabilisierungsfazilität durchgeführte Transaktionen;

Or. de

Amendment 315
Jürgen Creutzmann

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

Text proposed by the Commission

(c) Finanzdienstleistungen im Zusammenhang mit der Ausgabe, dem Verkauf, dem Ankauf oder der Übertragung von Wertpapieren oder anderen Finanzinstrumenten im Sinne der

Amendment

(c) Finanzdienstleistungen im Zusammenhang mit der Ausgabe, dem Verkauf, dem Ankauf oder der Übertragung von Wertpapieren oder anderen Finanzinstrumenten im Sinne der

Richtlinie 2004/39/EG des Europäischen Parlaments und des Rates und mit der Europäischen Finanzstabilisierungsfazilität durchgeführte Transaktionen;

Richtlinie 2004/39/EG des Europäischen Parlaments und des Rates, ***Geschäfte, die der Geld- oder Kapitalbeschaffung der öffentlichen Auftraggeber dienen*** und mit der Europäischen Finanzstabilisierungsfazilität durchgeführte Transaktionen;

Or. de

Justification

Eine Ausschreibungspflicht für öffentliche Kredite mindert die Praktikabilität der Verfahren öffentlicher Finanzierungen und erhöht deren Kosten erheblich. Die Ausnahme von Finanzdienstleistungen sollte sich daher auch auf die Gledanlage und -beschaffung beziehen.

Amendment 316
Evelyne Gebhardt

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

Text proposed by the Commission

Amendment

(ca) Finanzgeschäfte, die der Geld- oder Kapitalbeschaffung, der Anlage oder der Finanzierung von Vergaben der öffentlichen Auftraggeber dienen;

Or. de

Amendment 317
Heide Rühle

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

Text proposed by the Commission

Amendment

(d) employment contracts;

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

Or. en

Amendment 318
Marc Tarabella

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

Text proposed by the Commission

(d) concernant les contrats d'emploi;

Amendment

(d) concernant les contrats d'emploi *et le régime de protection sociale obligatoire*;

Or. fr

Amendment 319
Heide Rühle

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 320
Heide Rühle

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 321

Heide Rühle

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 322

Malcolm Harbour, Edvard Kožušník, Adam Bielan, Jürgen Creutzmann

Proposal for a directive

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

Text proposed by the Commission

Amendment

(fa) any of the following legal services:

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

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

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

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

Or. en

Justification

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

Amendment 323

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 19 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

This Directive shall not apply to public service contracts awarded by a contracting authority to another contracting authority or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a published law, regulation or administrative provision which is compatible with the Treaty on the Functioning of the European Union.

Or. en

Amendment 324

Heide Rühle

Proposal for a directive

Article 19 – paragraph 2

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 325
Heide Rühle

Proposal for a directive
Article 19 a (new)

Text proposed by the Commission

Amendment

Article 19a

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

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

Or. en

Justification

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

Amendment 326
Heide Rühle

Proposal for a directive
Article 19 b (new)

Text proposed by the Commission

Amendment

Article 19b

Specific Regimes to deliver SGI

***This Directive shall not apply to tried and
tested Member State procedures that are
based on the user's free choice of service
providers (i.e. voucher system, free choice
model, triangular relationship) as well as***

the principle that all providers which are able to comply with the conditions previously laid down by law should, irrespective of their legal form, be permitted to provide services, provided that account is taken of the general principles of equal treatment, transparency and non-discrimination.

Or. en

Amendment 327
Heide Rühle

Proposal for a directive
Article 19 c (new)

Text proposed by the Commission

Amendment

Article 19 c

Service concessions

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

Or. en

Amendment 328
Heide Rühle

Proposal for a directive
Title 1 – chapter 3 – section 2 – subsection 2 – title

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 329

Marc Tarabella

Proposal for a directive

Article 21 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. Le choix de la mise en place d'une structure entièrement publique pour gérer des services d'intérêt économique général ou des services sociaux est une prérogative de puissance publique relevant de la compétence exclusive des États membres.

Or. fr

Amendment 330

Marc Tarabella

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) au moins 90 % des activités de cette personne morale sont exercées pour le pouvoir adjudicateur qui la contrôle ou pour d'autres personnes morales qu'il contrôle;

supprimé

Or. fr

Amendment 331

Heide Rühle

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) at least 90 % of the activities of that legal person are carried out for the controlling contracting authority or for

(b) at least 80 % of the activities of that legal person, *subject to the contract*, are carried out for the controlling contracting

other legal persons controlled by that contracting authority;

authority or for other legal persons controlled by that contracting authority;

Or. en

Amendment 332
Barbara Weiler

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

Text proposed by the Commission

Amendment

(b) mindestens **90 %** der Tätigkeiten der juristischen Person werden für den die Kontrolle ausübenden öffentlichen Auftraggeber oder für andere von diesem kontrollierte juristische Personen ausgeführt;

(b) mindestens **85 %** der Tätigkeiten der juristischen Person werden für den die Kontrolle ausübenden öffentlichen Auftraggeber oder für andere von diesem kontrollierte juristische Personen ausgeführt;

Or. de

Amendment 333
Andreas Schwab, Frank Engel, Jürgen Creutzmann

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

Text proposed by the Commission

Amendment

(b) **mindestens 90 % der Tätigkeiten der juristischen Person werden** für den die Kontrolle ausübenden öffentlichen Auftraggeber oder für andere von diesem kontrollierte juristische Personen **ausgeführt**;

(b) **die juristische Person ist im Wesentlichen für den die Kontrolle ausübenden öffentlichen Auftraggeber oder für andere von diesem kontrollierte juristische Personen tätig. Es wird vermutet, dass die juristische Person im Wesentlichen** für den die Kontrolle ausübenden öffentlichen Auftraggeber oder für andere von diesem kontrollierte juristische Personen **tätig ist, wenn sie mindestens 90 % ihrer Tätigkeit, die Gegenstand des Auftrags ist, für diese(n) ausführt**;

Or. de

Justification

Der Vorschlag kombiniert die Rechtsprechung des EuGH in der Rechtssache C-107/98 mit einer "safe-harbour-clause", mit der widerlegbar vermutet wird, wann eine Inhouse-Tätigkeit vorliegt.

Amendment 334

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 335

Cristian Silviu Buşoi

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 336
Peter Simon

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

Text proposed by the Commission

(b) mindestens **90** % der Tätigkeiten der juristischen Person werden für den die Kontrolle ausübenden öffentlichen Auftraggeber oder für andere von diesem kontrollierte juristische Personen ausgeführt;

Amendment

(b) mindestens **80** % der Tätigkeiten der juristischen Person, **die Auftragsgegenstand sind**, werden für den die Kontrolle ausübenden öffentlichen Auftraggeber oder für andere von diesem kontrollierte juristische Personen ausgeführt;

Or. de

Amendment 337
Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 338
Heide Rühle

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

Text proposed by the Commission

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

Amendment

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

participation.

Or. en

Justification

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

Amendment 339

Andreas Schwab, Frank Engel

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) es besteht keine private Beteiligung an der kontrollierten juristischen Person.

Amendment

(c) es besteht keine private Beteiligung an der kontrollierten juristischen Person, ***sofern diese nicht in den jeweiligen Mitgliedsstaaten gesetzlich vorgesehen ist.***

Or. de

Justification

In einigen Mitgliedsstaaten ist aufgrund bestehender historischer Entwicklungen und gewachsener Strukturen eine private Beteiligung per Gesetz vorgesehen. Diese Formen der Zusammenarbeit sollten weiterhin möglich sein, im Übrigen sollte jegliche private Beteiligung jedoch gemäß Rechtsprechung des EuGH ausgeschlossen sein.

Amendment 340

Jürgen Creutzmann

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 341

Pablo Arias Echeverría

Proposal for a directive

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

Text proposed by the Commission

Amendment

(c bis) que la persona jurídica controlada no persiga intereses distintos que los de los poderes públicos que influyen en ella;

Or. es

Amendment 342

Pablo Arias Echeverría

Proposal for a directive

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

Text proposed by the Commission

Amendment

(c ter) que la persona jurídica controlada no obtenga ningún beneficio que no sea el reembolso de los costes reales de los contratos públicos celebrados con los poderes adjudicadores.

Or. es

Amendment 343

Heide Rühle

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

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

Amendment 344
Peter Simon

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

Text proposed by the Commission

Amendment

Bei einem öffentlichen Auftraggeber wird davon ausgegangen, dass er über die betreffende juristische Person eine Kontrolle ausübt, die der gleichkommt, die er im Sinne von Buchstabe a über seine eigenen Dienststellen ausübt, wenn er einen maßgeblichen Einfluss sowohl auf die strategischen Ziele als auch auf die wesentlichen Entscheidungen der kontrollierten juristischen Person hat.

entfällt

Or. de

Amendment 345
Andreas Schwab, Jürgen Creutzmann

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

Text proposed by the Commission

Bei einem öffentlichen Auftraggeber wird davon ausgegangen, dass er über die betreffende juristische Person eine Kontrolle ausübt, die der gleichkommt, die er im Sinne von Buchstabe a über seine eigenen Dienststellen ausübt, wenn er einen **maßgeblichen** Einfluss sowohl auf die strategischen Ziele als auch auf die wesentlichen Entscheidungen der kontrollierten juristischen Person hat.

Amendment

Bei einem öffentlichen Auftraggeber wird davon ausgegangen, dass er über die betreffende juristische Person eine Kontrolle ausübt, die der gleichkommt, die er im Sinne von Buchstabe a über seine eigenen Dienststellen ausübt, wenn er einen **bestimmenden** Einfluss sowohl auf die strategischen Ziele als auch auf die wesentlichen Entscheidungen der kontrollierten juristischen Person hat.

Or. de

Justification

Orientierungsmaßstab für die Kontrolle des Auftraggebers über die beauftragte juristische Person sollte die Einflussmöglichkeit auf eine eigene Dienststelle des Auftraggebers sein, die vollständig der Aufsicht und den Weisungen ihrer Behördenleitung unterliegen. Eigene Dienststellen verfügen über keine oder allenfalls geringe Selbstständigkeit.

Amendment 346
Evelyne Gebhardt

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

Text proposed by the Commission

Bei einem öffentlichen Auftraggeber wird davon ausgegangen, dass er über die betreffende juristische Person eine Kontrolle ausübt, die der gleichkommt, die er im Sinne von Buchstabe a über seine eigenen Dienststellen ausübt, wenn er einen maßgeblichen Einfluss sowohl auf die strategischen Ziele als auch auf die wesentlichen Entscheidungen der kontrollierten juristischen Person hat.

Amendment

Bei einem öffentlichen Auftraggeber wird davon ausgegangen, dass er über die betreffende juristische Person eine Kontrolle ausübt, die der gleichkommt, die er im Sinne von Buchstabe a über seine eigenen Dienststellen ausübt, wenn er einen maßgeblichen Einfluss sowohl auf die strategischen Ziele als auch auf die wesentlichen Entscheidungen der kontrollierten juristischen Person hat. **Die vorstehend genannten Bedingungen sind entsprechend zu erfüllen, wenn ein öffentlicher Auftraggeber einen**

öffentlichen Auftrag an eine von ihm zusammen mit anderen öffentlichen Auftraggebern kontrollierte juristische Person vergibt.

Or. de

Amendment 347
Cristian Silviu Buşoi

Proposal for a directive
Article 21 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

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

Amendment 348
Heide Rühle

Proposal for a directive
Article 21 – paragraph 2

Text proposed by the Commission

Amendment

2. Paragraph 1 also applies where a controlled entity which is a contracting authority awards a contract to its controlling entity, or to another legal

2. Paragraph 1 also applies where a controlled entity which is a contracting authority awards a contract to its controlling entity *or entities*, or to another

person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract.

legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract *with the exception of legally enforced forms or private participation.*

Or. en

Amendment 349
Jürgen Creutzmann

Proposal for a directive
Article 21 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 350
Andreas Schwab

Proposal for a directive
Article 21 – paragraph 2

Text proposed by the Commission

45. Absatz 1 gilt auch, wenn eine kontrollierte Stelle, bei der es sich um einen öffentlichen Auftraggeber handelt, einen Auftrag an ihre kontrollierende **Stelle** oder eine andere von demselben Auftraggeber kontrollierte juristische Person vergibt, sofern keine private Beteiligung an der juristischen Person

Amendment

2. Absatz 1 gilt auch, wenn eine kontrollierte Stelle, bei der es sich um einen öffentlichen Auftraggeber handelt, einen Auftrag an ihre kontrollierende **Einheit** oder **kontrollierenden Einheiten** oder eine andere von demselben Auftraggeber kontrollierte juristische Person vergibt, sofern keine private

besteht, die den öffentlichen Auftrag erhalten soll.

Beteiligung an der juristischen Person besteht, die den öffentlichen Auftrag erhalten soll.

Or. de

Justification

Diese Änderung betrifft nur die deutsche Fassung.

Amendment 351

Peter Simon

Proposal for a directive

Article 21 – paragraph 2

Text proposed by the Commission

45. Absatz 1 gilt auch, wenn eine kontrollierte Stelle, bei der es sich um einen öffentlichen Auftraggeber handelt, einen Auftrag an ihre kontrollierende Stelle oder eine andere von demselben Auftraggeber kontrollierte juristische Person vergibt, sofern keine private Beteiligung an der juristischen Person besteht, die den öffentlichen Auftrag erhalten soll.

Amendment

2. Absatz 1 gilt auch, wenn eine kontrollierte Stelle, bei der es sich um einen öffentlichen Auftraggeber handelt, einen Auftrag an ihre kontrollierende Stelle oder **Stellen oder** eine andere von demselben Auftraggeber kontrollierte juristische Person vergibt, sofern keine private Beteiligung an der juristischen Person besteht, die den öffentlichen Auftrag erhalten soll.

Or. de

Amendment 352

Evelyne Gebhardt

Proposal for a directive

Article 21 – paragraph 3

Text proposed by the Commission

46. Ein öffentlicher Auftraggeber, der keine Kontrolle über eine juristische Person im Sinne von Absatz 1 ausübt, kann einen Auftrag auch ohne Anwendung dieser Richtlinie an eine von

Amendment

entfällt

ihm zusammen mit anderen öffentlichen Auftraggebern kontrollierte juristische Person vergeben, wenn die folgenden Bedingungen erfüllt sind:

(a) die öffentlichen Auftraggeber üben gemeinsam über die betreffende juristische Person eine Kontrolle aus, die der gleichkommt, die sie über ihre eigenen Dienststellen ausüben;

(b) mindestens 90 % der Tätigkeiten der juristischen Person werden für die die Kontrolle ausübenden öffentlichen Auftraggeber oder andere von denselben öffentlichen Auftraggebern kontrollierten juristischen Personen getätigt;

(c) es besteht keine private Beteiligung an der kontrollierten juristischen Person.

Für die Zwecke von Buchstabe a wird davon ausgegangen, dass öffentliche Auftraggeber gemeinsam eine juristische Person kontrollieren, wenn sämtliche der nachfolgend genannten Bedingungen erfüllt sind:

(a) die Beschlussfassungsgremien der kontrollierten juristischen Person setzen sich aus Vertretern sämtlicher beteiligter öffentlicher Auftraggeber zusammen;

(b) diese öffentlichen Auftraggeber können gemeinsam einen entscheidenden Einfluss auf die strategischen Ziele und wesentlichen Entscheidungen der kontrollierten juristischen Person ausüben;

(c) die kontrollierte juristische Person verfolgt keine Interessen, die sich von denen der mit ihr verbundenen öffentlichen Behörden unterscheiden;

(d) die kontrollierte juristische Person erwirtschaftet keine sonstigen Einnahmen als diejenigen, die sich aus der Rückzahlung der tatsächlich entstandenen Kosten im Zusammenhang mit den von den öffentlichen Auftraggebern vergebenen öffentlichen Aufträgen ergeben.

Amendment 353

Heide Rühle

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 354

Marc Tarabella

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

(b) au moins 90 % des activités de cette personne morale sont exercées pour les pouvoirs adjudicateurs qui la contrôlent ou pour d'autres personnes morales qu'ils contrôlent;

Amendment

supprimé

Or. fr

Amendment 355

Heide Rühle

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 356

Barbara Weiler

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) mindestens **90** % der Tätigkeiten der juristischen Person werden für die die Kontrolle ausübenden öffentlichen Auftraggeber oder andere von denselben öffentlichen Auftraggebern kontrollierten juristischen Personen getätigt;

(b) mindestens **85** % der Tätigkeiten der juristischen Person werden für die die Kontrolle ausübenden öffentlichen Auftraggeber oder andere von denselben öffentlichen Auftraggebern kontrollierten juristischen Personen getätigt;

Or. de

Amendment 357

Andreas Schwab, Frank Engel, Jürgen Creutzmann

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) ***mindestens 90 % der Tätigkeiten der juristischen Person werden*** für die ***die*** Kontrolle ausübenden öffentlichen Auftraggeber oder andere von ***denselben*** öffentlichen ***Auftraggebern kontrollierten*** ***juristischen*** Personen ***getätigt***;

(b) ***die juristische Person ist im Wesentlichen*** für ***den*** die Kontrolle ausübenden öffentlichen Auftraggeber oder ***für*** andere von ***diesem kontrollierte juristische Personen tätig. Es wird vermutet, dass die juristische Person im Wesentlichen für den die Kontrolle ausübenden*** öffentlichen ***Auftraggeber*** oder ***für andere von diesem kontrollierte***

juristische Personen tätig ist, wenn sie mindestens 90 % ihrer Tätigkeit, die Gegenstand des Auftrags ist, für diese(n) ausführt;

Or. de

Justification

Der Vorschlag kombiniert die Rechtsprechung des EuGH in der Rechtssache C-107/98 mit einer "safe-harbour-clause", mit der widerlegbar vermutet wird, wann eine Inhouse-Tätigkeit vorliegt.

Amendment 358

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 359

Cristian Silviu Buşoi

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

In line with previous amendments.

Amendment 360

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

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 361

Peter Simon

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

(b) mindestens **90 %** der Tätigkeiten der juristischen Person werden für die die Kontrolle ausübenden öffentlichen Auftraggeber oder andere von denselben öffentlichen Auftraggebern kontrollierten juristischen Personen getätigt;

Amendment

(b) mindestens **80 %** der Tätigkeiten der juristischen Person, **die Auftragsgegenstand sind**, werden für die die Kontrolle ausübenden öffentlichen Auftraggeber oder andere von denselben öffentlichen Auftraggebern kontrollierten juristischen Personen getätigt;

Or. de

Amendment 362

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

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 363

Raffaele Baldassarre

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) almeno il **90 %** delle attività della persona giuridica in oggetto viene svolto per le amministrazioni aggiudicatrici controllanti o per altre persone giuridiche controllate dalle stesse amministrazione aggiudicatrici;

(b) almeno il **100 %** delle attività della persona giuridica in oggetto viene svolto per le amministrazioni aggiudicatrici controllanti o per altre persone giuridiche controllate dalle stesse amministrazione aggiudicatrici;

Or. it

Amendment 364

Heide Rühle

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 365
Andreas Schwab, Frank Engel

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

Text proposed by the Commission

(c) es besteht keine private Beteiligung an der kontrollierten juristischen Person.

Amendment

(c) es besteht keine private Beteiligung an der kontrollierten juristischen Person, ***sofern diese nicht in den jeweiligen Mitgliedsstaaten gesetzlich vorgesehen ist.***

Or. de

Justification

In einigen Mitgliedsstaaten ist aufgrund bestehender historischer Entwicklungen und gewachsener Strukturen eine private Beteiligung per Gesetz vorgesehen. Diese Formen der Zusammenarbeit sollten weiterhin möglich sein, im Übrigen sollte jegliche private Beteiligung jedoch gemäß Rechtsprechung des EuGH ausgeschlossen sein

Amendment 366
Jürgen Creutzmann

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

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 367
Heide Rühle

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

Text proposed by the Commission

Amendment

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

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

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

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

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

Or. en

Justification

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

Amendment 368
Peter Simon

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

Text proposed by the Commission

Amendment

Für die Zwecke von Buchstabe a wird davon ausgegangen, dass öffentliche Auftraggeber gemeinsam eine juristische Person kontrollieren, wenn sämtliche der nachfolgend genannten Bedingungen erfüllt sind:

entfällt

(a) die Beschlussfassungsgremien der kontrollierten juristischen Person setzen sich aus Vertretern sämtlicher beteiligter öffentlicher Auftraggeber zusammen;

(b) diese öffentlichen Auftraggeber können gemeinsam einen entscheidenden Einfluss auf die strategischen Ziele und wesentlichen Entscheidungen der kontrollierten juristischen Person ausüben;

(c) die kontrollierte juristische Person verfolgt keine Interessen, die sich von denen der mit ihr verbundenen öffentlichen Behörden unterscheiden;

(d) die kontrollierte juristische Person erwirtschaftet keine sonstigen Einnahmen als diejenigen, die sich aus der Rückzahlung der tatsächlich entstandenen Kosten im Zusammenhang mit den von den öffentlichen Auftraggebern vergebenen öffentlichen Aufträgen ergeben.

Or. de

Amendment 369

Andreas Schwab, Jürgen Creutzmann

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) die Beschlussfassungsgremien der kontrollierten juristischen Person setzen sich aus Vertretern **sämtlicher beteiligter**

(a) die Beschlussfassungsgremien der kontrollierten juristischen Person setzen sich aus Vertretern **der beteiligten**

öffentlicher Auftraggeber zusammen;

öffentlichen Auftraggeber zusammen;

Or. de

Amendment 370

Marc Tarabella

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

(c) la personne morale contrôlée ne poursuit pas d'intérêts distincts de ceux des pouvoirs publics auxquels elle est liée;

supprimé

Or. fr

Amendment 371

Frank Engel

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 372

Jürgen Creutzmann

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

(c) the controlled legal person does not pursue any interests which are *distinct*

(c) the controlled legal person does not pursue any interests which are *contrary to*

from that of the public authorities affiliated to it;

that of the public authorities affiliated to it;

Or. en

Justification

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

Amendment 373
Heide Rühle

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 374
Peter Simon

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

Text proposed by the Commission

(a) die Vereinbarung begründet eine echte Zusammenarbeit zwischen den beteiligten öffentlichen Auftraggebern mit dem Ziel, ihre öffentlichen Aufgaben gemeinsam wahrzunehmen, und umfasst wechselseitige Rechte und Pflichten der Parteien;

Amendment

entfällt

Amendment 375

Heide Rühle

Proposal for a directive

Article 21 – paragraph 4 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 376

Andreas Schwab, Jürgen Creutzmann

Proposal for a directive

Article 21 – paragraph 4 – point a

Text proposed by the Commission

(a) die Vereinbarung begründet eine echte Zusammenarbeit zwischen den beteiligten öffentlichen Auftraggebern mit dem Ziel, ihre öffentlichen Aufgaben gemeinsam wahrzunehmen, *und umfasst wechselseitige Rechte und Pflichten der Parteien;*

Amendment

(a) die Vereinbarung begründet eine echte Zusammenarbeit zwischen den beteiligten öffentlichen Auftraggebern mit dem Ziel, ihre öffentlichen Aufgaben gemeinsam wahrzunehmen;

Or. de

Amendment 377

Cristian Silviu Buşoi

Proposal for a directive

Article 21 – paragraph 4 – point a

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

Clarification of the horizontal cooperation definition.

Amendment 378
Evelyne Gebhardt

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

Text proposed by the Commission

Amendment

(a) die Vereinbarung begründet eine echte Zusammenarbeit zwischen den beteiligten öffentlichen Auftraggebern mit dem Ziel, ihre öffentlichen Aufgaben gemeinsam wahrzunehmen, ***und umfasst wechselseitige Rechte und Pflichten der Parteien;***

(a) die Vereinbarung begründet eine echte Zusammenarbeit zwischen den beteiligten öffentlichen Auftraggebern mit dem Ziel, ihre öffentlichen Aufgaben gemeinsam ***oder füreinander*** wahrzunehmen;

Or. de

Amendment 379
Heide Rühle

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

Text proposed by the Commission

Amendment

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

deleted

interest;

Or. en

Amendment 380
Evelyne Gebhardt

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

Text proposed by the Commission

Amendment

(b) die Vereinbarung wird nur durch Überlegungen im Zusammenhang mit dem öffentlichen Interesse bestimmt;

entfällt

Or. de

Amendment 381
Andreas Schwab, Jürgen Creutzmann

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

Text proposed by the Commission

Amendment

*(b) die Vereinbarung wird nur durch Überlegungen im **Zusammenhang mit dem** öffentlichen Interesse bestimmt;*

*(b) die Vereinbarung wird nur durch Überlegungen im öffentlichen Interesse bestimmt; **darunter fallen auch untergeordnete Hilfsdienstleistungen, die erforderlich sind, um die im öffentlichen Interesse liegenden Dienstleistungen durchzuführen;***

Or. de

Justification

Die Beschränkung auf im öffentlichen Interesse liegende Dienstleistungen aus der EuGH-Rechtsprechung in der Rechtssache C-480/06 sollte auch interne Hilfsdienstleistungen, derer sich ein öffentlicher Auftraggeber zur Funktionsfähigkeit seiner Dienste und eigenen Verwaltungsstrukturen sowie zur organisatorischen Durchführung der gesetzlichen Aufgaben bedient und die nicht gegenüber Dritten erbracht werden, erfassen.

Amendment 382
Cristian Silviu Buşoi

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

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

In line with previous amendments.

Amendment 383
Peter Simon

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

Text proposed by the Commission

(b) die Vereinbarung wird ***nur*** durch Überlegungen im Zusammenhang mit dem öffentlichen Interesse bestimmt;

Amendment

(b) die Vereinbarung wird durch Überlegungen im Zusammenhang mit dem öffentlichen Interesse bestimmt ***und die Dienstleistungen sowie die dafür notwendigen Hilfsdienstleistungen beziehen sich hierauf***;

Or. de

Amendment 384
Malcolm Harbour, Edvard Kožušník

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

Text proposed by the Commission

Amendment

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

Or. en

Justification

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

Amendment 385
Marc Tarabella

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

Text proposed by the Commission

Amendment

(c) les pouvoirs adjudicateurs participants ne réalisent pas, sur le marché libre, plus de 10%, de leurs activités pertinentes dans le cadre de l'accord, en termes de chiffre d'affaires; *supprimé*

Or. fr

Amendment 386
Peter Simon

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

Text proposed by the Commission

Amendment

(c) die beteiligten öffentlichen Auftraggeber üben, gemessen am Umsatz, nicht mehr als 10 % ihrer Tätigkeiten, die im Zusammenhang mit der Vereinbarung *entfällt*

relevant sind, auf dem offenen Markt aus;

Or. de

Amendment 387

Heide Rühle

Proposal for a directive

Article 21 – paragraph 4 – point c

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 388

Barbara Weiler

Proposal for a directive

Article 21 – paragraph 4 – point c

Text proposed by the Commission

(c) die beteiligten öffentlichen Auftraggeber üben, gemessen am Umsatz, nicht mehr als **10** % ihrer Tätigkeiten, die im Zusammenhang mit der Vereinbarung relevant sind, auf dem offenen Markt aus;

Amendment

(c) die beteiligten öffentlichen Auftraggeber üben, gemessen am Umsatz, nicht mehr als **15** % ihrer Tätigkeiten, die im Zusammenhang mit der Vereinbarung relevant sind, auf dem offenen Markt aus;

Or. de

Amendment 389

Cristian Silviu Buşoi

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

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

In line with previous amendments

Amendment 390
Heide Rühle

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

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 391
Peter Simon

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

Text proposed by the Commission

(d) die Vereinbarung betrifft keine anderen Finanztransfers zwischen den

Amendment

entfällt

beteiligten öffentlichen Auftraggebern als jene, die die Rückzahlung der tatsächlichen Kosten der Bauarbeiten, Dienstleistungen oder Lieferungen betreffen;

Or. de

Amendment 392
Evelyne Gebhardt

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

Text proposed by the Commission

Amendment

(d) die Vereinbarung betrifft keine anderen Finanztransfers zwischen den beteiligten öffentlichen Auftraggebern als jene, die die Rückzahlung der tatsächlichen Kosten der Bauarbeiten, Dienstleistungen oder Lieferungen betreffen;

entfällt

Or. de

Amendment 393
Andreas Schwab, Jürgen Creutzmann

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

Text proposed by the Commission

Amendment

(d) die Vereinbarung betrifft keine anderen Finanztransfers zwischen den beteiligten öffentlichen Auftraggebern als jene, die die Rückzahlung der tatsächlichen Kosten der Bauarbeiten, Dienstleistungen oder Lieferungen betreffen;

(d) die Vereinbarung betrifft **im Wesentlichen** keine anderen Finanztransfers zwischen den beteiligten öffentlichen Auftraggebern als jene, die die Rückzahlung der tatsächlichen Kosten der Bauarbeiten, Dienstleistungen oder Lieferungen betreffen;

Or. de

Amendment 394
Heide Rühle

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 395
Andreas Schwab, Frank Engel

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

Text proposed by the Commission

(e) es besteht keine private Beteiligung an den involvierten öffentlichen Auftraggebern.

Amendment

(e) es besteht keine private Beteiligung an den involvierten öffentlichen Auftraggebern, *sofern diese nicht in den jeweiligen Mitgliedsstaaten gesetzlich vorgesehen ist*.

Or. de

Justification

In einigen Mitgliedsstaaten ist aufgrund bestehender historischer Entwicklungen und gewachsener Strukturen eine private Beteiligung per Gesetz vorgesehen. Diese Formen der Zusammenarbeit sollten weiterhin möglich sein, im Übrigen sollte jegliche private Beteiligung jedoch gemäß Rechtsprechung des EuGH ausgeschlossen sein

Amendment 396
Jürgen Creutzmann

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 397
Heide Rühle

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

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 398
Cristian Silviu Buşoi

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

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 399

Heide Rühle

Proposal for a directive

Article 21 – paragraph 5 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 400

Andreas Schwab

Proposal for a directive

Article 21 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Die in den Absätzen 1 bis 4 vorgesehenen Ausschlüsse finden ab dem Zeitpunkt des Eingehens einer privaten Beteiligung keine Anwendung mehr, so dass laufende Aufträge für den Wettbewerb im Rahmen der üblichen Vergabeverfahren geöffnet werden müssen.

Amendment

Die in den Absätzen 1 bis 4 vorgesehenen Ausschlüsse finden ***nach Inkrafttreten der Richtlinie*** ab dem Zeitpunkt des Eingehens einer privaten Beteiligung keine Anwendung mehr, so dass laufende Aufträge für den Wettbewerb im Rahmen der üblichen Vergabeverfahren geöffnet werden müssen.

Or. de

Amendment 401
Pablo Arias Echeverría

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

Text proposed by the Commission

Las exclusiones previstas en los apartados 1 a 4 dejarán de aplicarse a partir del momento en que se efectúe cualquier participación privada, con la consecuencia de que deberá convocarse una licitación para la adjudicación de los contratos vigentes a través de los procedimientos de contratación normales.

Amendment

Las exclusiones previstas en los apartados 1 a 4 dejarán de aplicarse a partir del momento en que se efectúe cualquier participación privada, con la consecuencia de que deberá convocarse una licitación para la adjudicación de los contratos vigentes a través de los procedimientos de contratación normales, ***salvo que la participación privada en la persona jurídica que la convierte en una empresa asociada se adquiera a través de cualquiera de los procedimientos previstos en la presente Directiva o en las Directivas (sustitución de 2004/17/CE y 2004/18/CE).***

Or. es

Amendment 402
Cristian Silviu Buşoi

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 403
Heide Rühle

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 404
Heide Rühle

Proposal for a directive
Article 22 – paragraphs 1 and 2

Text proposed by the Commission

Amendment

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

1. For the purposes of this Article, 'affiliated undertaking' means:

(a) any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the Seventh Council Directive 83/349/EEC;

(b) any undertaking that:

2. In the case of entities not subject to that Directive, 'affiliated undertaking' shall mean any undertaking that:

(a) may be, directly or indirectly, subject to a dominant influence by the contracting entity within the meaning of point (5) of Article 2 and Article 4(1) of this Directive;

(b) may exercise a dominant influence over

(i) may be, directly or indirectly, subject to a dominant influence by the contracting entity within the meaning of point (5) of Article 2 and Article 4(1) of this Directive;

(ii) may exercise a dominant influence over

the contracting entity;
(c) in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.

the contracting entity;
(iii) in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.

Or. en

Amendment 405
Cristian Silviu Buşoi

Proposal for a directive
Article 22 – paragraph 3 – point a

Text proposed by the Commission

Amendment

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

(a) by a contracting entity to an affiliated undertaking ***whose activity is confined to the provision of services, supply or works to the group of which it is part, rather than offering them on the market; or***

Or. en

Justification

Clarification of the exclusion of contracts awarded to affiliated undertakings in order to avoid any distortion of competition to the benefit of these undertakings.

Amendment 406
Heide Rühle

Proposal for a directive
Article 22 – paragraph 4

Text proposed by the Commission

Amendment

4. Paragraph 3 shall apply:

4. Paragraph 2 shall apply ***if the affiliated undertaking:***

(a) ***to service contracts provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to services in general for the preceding three***

(a) ***is itself a contracting authority;***

years derives from the provision of services to undertakings with which it is affiliated;

(b) to supply contracts provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to supplies in general for the preceding three years derives from the provision of supplies to undertakings with which it is affiliated;

(c) to works contracts provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to works in general for the preceding three years derives from the provision of works to undertakings with which it is affiliated.

(b) when it is not a contracting authority has, at least, as one of their activities any of the activities referred to in Articles 5 to 11, or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of a Member State.

Or. en

Amendment 407
Cristian Silviu Buşoi

Proposal for a directive
Article 22 – paragraph 4 – point a

Text proposed by the Commission

(a) to service contracts provided that **at least 80 % of the average** total turnover of the affiliated undertaking with respect to services in general for the preceding three years derives from the provision of services to undertakings with which it is affiliated;

Amendment

(a) to service contracts provided that the total turnover of the affiliated undertaking with respect to services in general for the preceding three years derives from the provision of services to undertakings with which it is affiliated;

Or. en

Justification

This amendment aims at limiting the exemption to avoid competition distortions in favour of affiliated undertakings which are also active on the market with respect to the activities they provide for the contracting entity.

Amendment 408
Cristian Silviu Buşoi

Proposal for a directive
Article 22 – paragraph 4 – point b

Text proposed by the Commission

(b) to supply contracts provided that **at least 80 % of the average** total turnover of the affiliated undertaking with respect to supplies in general for the preceding three years derives from the provision of supplies to undertakings with which it is affiliated;

Amendment

(b) to supply contracts provided that the total turnover of the affiliated undertaking with respect to supplies in general for the preceding three years derives from the provision of supplies to undertakings with which it is affiliated;

Or. en

Justification

This amendment aims at limiting the exemption to avoid competition distortions in favour of affiliated undertakings which are also active on the market with respect to the activities they provide for the contracting entity.

Amendment 409
Cristian Silviu Buşoi

Proposal for a directive
Article 22 – paragraph 4 – point c

Text proposed by the Commission

(c) to works contracts provided that **at least 80 % of the average** total turnover of the affiliated undertaking with respect to works in general for the preceding three years derives from the provision of works to undertakings with which it is affiliated.

Amendment

(c) to works contracts provided that the total turnover of the affiliated undertaking with respect to works in general for the preceding three years derives from the provision of works to undertakings with which it is affiliated.

Or. en

Justification

This amendment aims at limiting the exemption to avoid competition distortions in favour of affiliated undertakings which are also active on the market with respect to the activities they provide for the contracting entity.

Amendment 410
Jürgen Creutzmann

Proposal for a directive
Article 24 – introductory part

Text proposed by the Commission

Contracting entities shall notify to the Commission **or the national oversight body, at their request**, the following information regarding the application of Article 22, paragraphs 2, 3 and Article 23:

Amendment

Contracting entities shall notify to the Commission the following information regarding the application of Article 22, paragraphs 2, 3 and Article 23:

Or. en

Amendment 411
Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 27 – paragraph 1

Text proposed by the Commission

1. Contracts intended to enable an activity mentioned in Articles 5 to 11 to be carried out shall not be subject to this Directive if the Member State or the contracting entities having introduced the request pursuant to Article 28 can demonstrate that, in the Member State in which it is performed, the activity is directly exposed to competition on markets to which access is not restricted; nor shall design contests that are organised for the pursuit of such an activity in that geographic area be subject to this Directive. Such competition assessment, which will be made in the light of the information available to the Commission and for the purposes of this Directive, is without prejudice to the application of competition law.

Amendment

1. Contracts intended to enable an activity mentioned in Articles 5 to 11 to be carried out shall not be subject to this Directive if the Member State or the contracting entities having introduced the request pursuant to Article 28 can demonstrate that, in the Member State in which it is performed, **or in the related specific sectors or segments** the activity is directly exposed to competition on markets to which access is not restricted; nor shall design contests that are organised for the pursuit of such an activity in that geographic area be subject to this Directive. Such competition assessment, which will be made in the light of the information available to the Commission and for the purposes of this Directive, is without prejudice to the application of competition law.

Amendment 412**Raffaele Baldassarre, Lara Comi****Proposal for a directive****Article 27 – paragraph 1***Text proposed by the Commission*

1. Gli appalti destinati a permettere la prestazione di un'attività di cui agli articoli da 5 a 11 non sono soggetti alla presente direttiva se lo Stato membro o gli enti aggiudicatori che hanno introdotto la domanda ai sensi dell'articolo 28 possono dimostrare che nello Stato membro in cui è esercitata l'attività, questa è direttamente esposta alla concorrenza su mercati liberamente accessibili. Inoltre, alla presente direttiva non sono soggetti i concorsi di progettazione organizzati per l'esercizio di tale attività nella zona geografica in questione. Tale valutazione della concorrenza, che sarà effettuata alla luce delle informazioni disponibili alla Commissione e ai fini della presente direttiva, lascia impregiudicata l'applicazione della normativa in materia di concorrenza.

Amendment

1. Gli appalti destinati a permettere la prestazione di un'attività di cui agli articoli da 5 a 11 non sono soggetti alla presente direttiva se lo Stato membro o gli enti aggiudicatori che hanno introdotto la domanda ai sensi dell'articolo 28 possono dimostrare che nello Stato membro in cui è esercitata l'attività ***o nei relativi specifici settori o segmenti***, questa è direttamente esposta alla concorrenza su mercati liberamente accessibili. Inoltre, alla presente direttiva non sono soggetti i concorsi di progettazione organizzati per l'esercizio di tale attività nella zona geografica in questione. Tale valutazione della concorrenza, che sarà effettuata alla luce delle informazioni disponibili alla Commissione e ai fini della presente direttiva, lascia impregiudicata l'applicazione della normativa in materia di concorrenza.

Or. it

Amendment 413**Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski****Proposal for a directive****Article 27 – paragraph 2 – subparagraph 1***Text proposed by the Commission*

2. For the purposes of paragraph 1, the question of whether an activity is directly exposed to competition shall be decided on

Amendment

2. For the purposes of paragraph 1, the question of whether an activity is directly exposed to competition ***the relevant***

the basis of criteria that are in conformity with the provisions on competition of the Treaty; those may include the characteristics of the goods or services concerned, the existence of alternative goods or services, the prices and the actual or potential presence of more than one supplier of the goods or provider of the services in question.

market, both in its product and geographic dimension, has to be defined. Definition of the relevant market shall be decided on the basis of criteria that are in conformity with the provisions on competition of the Treaty; those may include the characteristics of the goods or services concerned ***which are regarded as substitutable both on the demand and the supply side – for instance as far as inter-modality in the transport sector is concerned-***, the existence of alternative goods or services, the prices and the actual or potential presence of more than one supplier of the goods or provider of the services in question.

Or. en

Amendment 414
Raffaele Baldassarre, Lara Comi

Proposal for a directive
Article 27 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Ai fini del paragrafo 1, per determinare se un'attività è direttamente esposta alla concorrenza, si ricorre a criteri conformi alle disposizioni del trattato in materia di concorrenza, tra i quali possono figurare le caratteristiche dei beni o servizi interessati, l'esistenza di beni o servizi alternativi, i prezzi e la presenza, effettiva o potenziale, di più fornitori dei beni o servizi in questione

Amendment

2. Ai fini del paragrafo 1 per determinare se un'attività è direttamente esposta alla concorrenza, ***occorre definire il mercato rilevante del prodotto ed il mercato geografico rilevante. Per definire il mercato rilevante del prodotto***, si ricorre a criteri conformi alle disposizioni del trattato in materia di concorrenza, tra i quali possono figurare le caratteristiche dei beni o servizi interessati, l'esistenza di beni o servizi alternativi ***considerati come sostituibili sul versante della domanda o dell'offerta***, i prezzi e la presenza, effettiva o potenziale, di più fornitori dei beni o servizi in questione ***Il mercato geografico di riferimento, sulla base del quale viene valutata l'esposizione alla concorrenza, è costituito dal territorio nel quale le imprese interessate intervengono nell'offerta e nella domanda di beni e di***

servizi, nel quale le condizioni di concorrenza sono sufficientemente omogenee e che può essere distinto dai territori vicini, in particolare a motivo di condizioni di concorrenza sensibilmente diverse da quelle che prevalgono in quei territori. Questa valutazione tiene conto segnatamente della natura e delle caratteristiche dei prodotti o servizi in questione, dell'esistenza di ostacoli all'entrata o di preferenze dei consumatori, nonché dell'esistenza, tra il territorio in oggetto e quelli vicini, di differenze notevoli sotto il profilo delle quote di mercato delle imprese o di differenze sostanziali a livello di prezzi.

Or. it

Amendment 415

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

Proposal for a directive

Article 27 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. For the purposes of paragraph 1, access to a market shall be deemed not to be restricted if the Member State has implemented and applied the Union legislation listed in Annex III.

Amendment

3. For the purposes of paragraph 1, access to a market shall be deemed not to be restricted if the Member State has implemented and applied the Union legislation listed in Annex III, *or if the Member State has extended to the concerned market the application of principles established by the mentioned legislation. If free access to a given market cannot be presumed on the basis of the first subparagraph, it must be demonstrated that access to the market in question is free de facto and de jure.*

Or. en

Amendment 416

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

Proposal for a directive
Article 28 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Where a Member State or, where the legislation of the Member State concerned provides for it, a contracting entity considers that, on the basis of the criteria set out in Article 27(2) and (3), a given activity is directly exposed to competition on markets to which access is not restricted, it may submit a request to establish that this Directive does not apply to the award of contracts or the organisation of desing contests for the pursuit of that activity.

Amendment

1. Where a Member State or, where the legislation of the Member State concerned provides for it, a contracting entity considers that, on the basis of the criteria set out in Article 27(2) and (3), a given activity is ***completely or partially, even with regard to single sectors or segments of it***, directly exposed to competition on markets to which access is not restricted, it may submit a request to establish that this Directive does not apply to the award of contracts or the organisation of desing contests for the pursuit of that activity ***or of a single sector or segment of it***.

Or. en

Amendment 417
Raffaele Baldassarre, Lara Comi

Proposal for a directive
Article 28 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Quando uno Stato membro o, se la legislazione dello Stato membro interessato lo prevede, un ente aggiudicatore ritiene che, sulla base dei criteri di cui all'articolo 27, paragrafi 2 e 3, una determinata attività sia direttamente esposta alla concorrenza su mercati liberamente accessibili, esso può richiedere che venga stabilito che la presente direttiva non si applichi all'aggiudicazione di appalti o all'organizzazione di concorsi di progettazione per la realizzazione dell'attività in questione.

Amendment

1. Quando uno Stato membro o, se la legislazione dello Stato membro interessato lo prevede, un ente aggiudicatore ritiene che, sulla base dei criteri di cui all'articolo 27, paragrafi 2 e 3, una determinata attività sia ***in tutto o in parte, anche relativamente a singoli settori o segmenti di essa***, direttamente esposta alla concorrenza su mercati liberamente accessibili, esso può richiedere che venga stabilito che la presente direttiva non si applichi all'aggiudicazione di appalti o all'organizzazione di concorsi di progettazione per la realizzazione dell'attività in questione ***o il singolo settore o segmento di essa***.

Amendment 418

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

Proposal for a directive

Article 28 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Requests shall be accompanied by a reasoned and substantiated position adopted by an independent national authority that is competent in relation to the activity concerned. ***This position shall thoroughly analyse the conditions for the possible applicability of Article 27(1) to the activity concerned in accordance with its paragraphs 2 and 3.***

Amendment

Requests shall be accompanied by a reasoned and substantiated position adopted by an independent national authority that is competent in relation to the activity concerned ***or of a single sector or segment of it.***

Or. en

Amendment 419

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 28 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Le domande sono accompagnate da una posizione motivata e giustificata, adottata da un'amministrazione nazionale indipendente competente per l'attività in questione. Detta posizione analizza in modo approfondito le condizioni per l'eventuale applicabilità all'attività in questione dell'articolo 27, paragrafo 1, conformemente ai paragrafi 2 e 3 dello stesso.

Amendment

Le domande sono accompagnate da una posizione motivata e giustificata, adottata da un'amministrazione nazionale indipendente competente per l'attività in questione ***o il singolo settore o segmento di essa.*** Detta posizione analizza in modo approfondito le condizioni per l'eventuale applicabilità all'attività in questione dell'articolo 27, paragrafo 1, conformemente ai paragrafi 2 e 3 dello stesso...

Or.

Amendment 420

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

Proposal for a directive

Article 28 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Upon request submitted in accordance with paragraph 1 of this Article, the Commission may, by way of an implementing decision adopted within the periods set out in paragraph 4 of this Article, establish whether an activity referred to in Articles 5 to 11 is directly exposed to competition on the basis of the criteria set out in Article 27. Those implementing decisions shall be adopted in accordance with the advisory procedure referred to in Article 100(2) .

Amendment

Upon request submitted in accordance with paragraph 1 of this Article, the Commission may, by way of an implementing decision adopted within the periods set out in paragraph 4 of this Article, establish whether an activity, ***or of a single sector or segment of it***, referred to in Articles 5 to 11 is directly exposed to competition on the basis of the criteria set out in Article 27. Those implementing decisions shall be adopted in accordance with the advisory procedure referred to in Article 100(2) .

Or. en

Amendment 421

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 28 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Su richiesta presentata in conformità al paragrafo 1 del presente articolo, la Commissione può, mediante una decisione di esecuzione adottata entro i termini di cui al paragrafo 4 del presente articolo, stabilire se un'attività di cui agli articoli da 5 a 11 sia direttamente esposta alla concorrenza sulla base dei criteri stabiliti all'articolo 27. Gli atti di esecuzione sono adottati secondo la procedura consultiva di cui all'articolo 100, paragrafo 2.

Amendment

Su richiesta presentata in conformità al paragrafo 1 del presente articolo, la Commissione può, mediante una decisione di esecuzione adottata entro i termini di cui al paragrafo 4 del presente articolo, stabilire se un'attività di cui agli articoli da 5 a 11. ***o il singolo settore o segmento di essa***, sia direttamente esposta alla concorrenza sulla base dei criteri stabiliti all'articolo 27. Gli atti di esecuzione sono adottati secondo la procedura consultiva di cui all'articolo 100, paragrafo 2.

Or. it

Amendment 422

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

Proposal for a directive

Article 28 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

Contracts intended to enable the activity concerned to be carried out and design contests that are organised for the pursuit of such an activity shall cease to be subject to this Directive in any of the following cases:

Amendment

Contracts intended to enable the activity concerned, ***or of a single sector or segment of it***, to be carried out and design contests that are organised for the pursuit of such an activity, ***or of a single sector or segment of it***, shall cease to be subject to this Directive in any of the following cases:

Or. en

Amendment 423

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 28 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

Gli appalti destinati a permettere la prestazione dell'attività di cui trattasi e i concorsi di progettazione organizzati per l'esercizio di tale attività non sono più soggetti alla presente direttiva se la Commissione:

Amendment

Gli appalti destinati a permettere la prestazione dell'attività di cui trattasi, ***o il singolo settore o segmento di essa***, e i concorsi di progettazione organizzati per l'esercizio di tale attività ***o singolo settore o segmento*** non sono più soggetti alla presente direttiva se la Commissione:

Or. it

Amendment 424

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 28 – paragraph 4

Text proposed by the Commission

4. Se un'attività in un dato Stato membro è già oggetto di una procedura ai sensi dei paragrafi 1, 2 e 3 del presente articolo, le ulteriori domande riguardanti la stessa attività nello stesso Stato membro pervenute prima della scadenza del termine previsto per la prima domanda non sono considerate come nuove procedure e sono esaminate nel quadro della prima domanda.

Amendment

4. Se un'attività ***o singolo settore o segmento di essa*** in un dato Stato membro è già oggetto di una procedura ai sensi dei paragrafi 1, 2 e 3 del presente articolo, le ulteriori domande riguardanti la stessa attività ***o singolo settore o segmento*** nello stesso Stato membro pervenute prima della scadenza del termine previsto per la prima domanda non sono considerate come nuove procedure e sono esaminate nel quadro della prima domanda

Or. it