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*Committee on the Internal Market and Consumer Protection*

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**2011/0437(COD)**

23.01.2013

# **COMPROMISE AMENDMENTS 1 - 115**

**Draft report**  
**Philippe Juvin**  
(PE492.699v01)

on the proposal for a directive of the European Parliament and of the Council  
on the award of concession contracts  
(COM(2011)0897 – C7-0004/2012 – 2011/0437(COD))

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**EN**

*United in diversity*

**EN**



## **Amendment 1**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing 380 Rühle, 384 Dorfmann, 389 Schwab, 481 Weiler, AM 387 Rühle, AM 40-41 Juvin, 393 Comi, 937 Rühle, 938 Schwab Mayer

### **Proposal for a directive**

#### **Recital 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***(2a) Subject to the provisions on the exclusion of activities which are directly exposed to competition as laid down in Article 14 of this Directive, the provisions of Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts and of Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sector should not apply to concessions as defined in Article 2 of this Directive. However, rules set by this Directive should not be used to circumvent the award procedure laid down in those Directives***

Or. en

## **Amendment 2**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing Juvin 2, Rühle 252, Gustafsson De Jong 254, Castex 255, Karas 253 is covered by CA on the freedom to define SGEI

### **Proposal for a directive**

#### **Recital 3**

*Text proposed by the Commission*

*Amendment*

(3) This Directive should not in any way affect the freedom of Member States ***or*** public authorities to ***decide on the direct***

(3) This Directive ***recognises and reaffirms the right of Member States and public authorities to decide the means of***

*provision of* works or services to the public or *on the outsourcing of* such provision to third parties. Member States or public authorities *should remain free* to define the characteristics of the *service* to be provided, including any conditions regarding the quality or price of the services, in order to pursue their public policy objectives.

*administration they judge to be most appropriate for performing works and providing services. This Directive* should not in any way affect the freedom of Member States *and* public authorities to *perform* works or *provide* services *directly* to the public or *to outsource* such provision *by delegating it* to third parties. Member States or public authorities *shall retain the right* to define *and specify* the characteristics of the *services* to be provided, including any conditions regarding the quality or price of the services, in order to pursue their public policy objectives

Or. en

### Amendment 3

EPP, S&D, ALDE, Greens, ECR

Compromise amendment replacing 269 Gebhardt, AM 271 Panzeri, AM 272 Weiler, AM 276 Mayer, Verheyen, Schwab, Schnieber-Jastram, Weisgerber, Rühle, Collin-Langen, partly covers AM 275 van de Camp & AM 281 de Jong, AM 280 Verheyen, Collin Langen, Weisgerber, Mayer, Schwab, 414 Rühle

### Proposal for a directive

#### Recital 6

*Text proposed by the Commission*

(6) Concessions are contracts for pecuniary interest *concluded between one or more economic operators and* one or more contracting authorities or entities *and having as their object the acquisition of* works or services where the consideration consists, *normally*, in the right to *exploit* the works or services *that* are the subject of the contract. The execution of these works or services *are* subject to specific binding obligations defined by the *contracting authority or entity* which are legally enforceable. By contrast, certain State acts such as authorisations or licences whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not *qualify* as

*Amendment*

(6) Concessions are contracts for pecuniary interest *through which* one or more contracting authorities or entities *(hereinafter referred to as ‘grantors’)* *awards the performance of* works or *the management of* services *-to one or more economic operators, and* where the consideration *for this award* consists *-either* in the right to *execute and manage* the works or *provide the* services *which* are the subject of the contract, *or in that right together with payment*. The execution of these works or services *shall be* subject to specific binding obligations defined by the *grantor* which are legally enforceable. By contrast, certain State acts such as authorisations, *permits* or licences

concessions. The same applies to certain agreements **having as their object the right of an economic operator** to exploit certain public domains or resources, such as land lease contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services.

**including those issued for limited periods**, whereby the State or a public authority establishes the conditions for the exercise of an economic activity should not **be regarded** as concessions. The same applies to certain agreements **through which the State or the contracting authority or entity awards an economic operator** the right to exploit certain public domains or resources, such as **public domain and private rental or land lease contracts, particularly in the maritime or inland ports sector, or grants rights of way** whereby the State or contracting authority or entity establishes only general conditions for their use without ~~acquiring~~ **becoming a recipient of** specific works or services **provided by the economic operator. The general conditions contained in both, public domain and private rental or land lease contracts include especially rules concerning the transfer of the rented property to the tenant, the use thereof (e.g. a description of the rented property, provisions on permissible uses of the rented property, provisions on the optimum use of the rented property such as performance indicators and environmental standards), the respective obligations of the landlord and the tenant with regard to the maintenance of the rented property, the duration of the lease and repossession by the landlord of the rented property, the rent and other costs borne by the tenant, including penalties.**

Or. en

#### **Amendment 4**

**EPP, S&D, ALDE, ECR**

Compromise amendment replacing **AM 5 Juvin, AM 285 Verheyen, Birgit Collin-Langen, Weisgerber, Mayer, Schwab, AM 286 Rühle, AM 289 Schwab, last sentence, AM 428 Rühle (in part), AM 429 Harbour, Kožušník (in part) , AM 430 Simon, AM 437, last sentence Verheyen, Collin-Langen, Weisgerber, Mayer**

**Proposal for a directive**  
**Recital 7**

*Text proposed by the Commission*

(7) Difficulties related to the interpretation of the **concepts** of concession **and public contract** have **been source of** continued legal uncertainty among stakeholders and have given rise to numerous judgments of the Court of Justice of the European Union on this subject. Therefore, the definition of concession should be clarified, in particular by referring to the concept of **substantial** operating risk. The main feature of a concession, the right to exploit the works or services, always implies the transfer to the concessionaire of an economic risk involving the possibility that it will not recoup the investments made and the costs incurred in operating the works or services awarded. The application of specific rules governing the award of concessions would not be justified if the **contracting authority or entity** relieved the **contractor** of any potential loss, by guaranteeing a minimal revenue, equal or higher to the costs that the contractor has to incur in relation with the performance of the contract. At the same time it should be made clear that certain arrangements which are fully paid by a contracting authority or a contracting entity should qualify as concessions where the *recouping* of the *investments* and costs incurred by the operator for execution the work or *providing* the service depends on the actual demand for or the availability of the service or asset.

*Amendment*

(7) Difficulties related to the interpretation of the **concept** of concession **generated** continued legal uncertainty among stakeholders and have given rise to numerous judgments of the Court of Justice of the European Union on this subject. Therefore, the definition of concession should be clarified, in particular by referring to the concept of operating risk. The main feature of a concession, the right to exploit the works or services, always implies the transfer to the concessionaire of **a substantial part of the** economic risk involving the possibility that it will not recoup the investments made and the costs incurred in operating the works or services awarded **under normal operating conditions. The fact that the risk is very limited from the outset, in particular because of the detailed rules of public law governing the works or services which are the object of the concession, does not preclude the qualification of the contract as a concession.** The application of specific rules governing the award of concessions would not be justified if the **grantor** relieved the **concessionaire** of any potential loss, by guaranteeing a minimal revenue, equal or higher to the costs that the contractor has to incur in relation with the performance of the contract. At the same time it should be made clear that certain arrangements which are fully paid by a contracting authority or a contracting entity should qualify as concessions where the *recouping* of the *investments* and costs incurred by the operator for execution the work or *providing* the service depends on the actual demand for or the availability of the service or asset.

Or. en

**Amendment 5**  
**EPP, S&D, ALDE, Greens, ECR**  
Compromise amendment replacing

**Proposal for a directive**  
**Recital 8**

*Text proposed by the Commission*

(8) Where sector specific regulation provides for a guarantee to the concessionaire on breaking even on investments and costs incurred for operating the contract, such contract should not qualify as a concession within the meaning of this Directive.

*Amendment*

(8) Where sector specific regulation provides for a guarantee to the concessionaire on breaking even on investments and costs incurred for operating the contract, such contract should not qualify as a concession within the meaning of this Directive.

Or. en

**Amendment 6**  
**EPP, S&D, ALDE, Greens, ECR**  
Compromise amendment replacing **AM 288 Harbour Kozusnik, AM 289 Schwab,**

**Proposal for a directive**  
**Recital 8 a (new)**

*Text proposed by the Commission*

*Amendment*

***(8a) An operating risk must stem from the factors which are outside the control of the parties and thus can not result from inappropriate performance of the contract by any of the parties to the contract. It is defined as the risk of exposure to the vagaries of the market, which may consist in either a demand risk or a supply risk, or both a demand and supply risk. The operating risk may include for instance the risk that supply of the services will not match demand, the risk that those liable will be unable to pay for the services provided, or the risk that the costs of operating the services will not fully be met by revenue.***

**Amendment 7****EPP, S&D, ALDE, Greens, ECR**Compromise amendment replacing **AM 6 Juvin, AM 290 Ruhle****Proposal for a directive****Recital 9***Text proposed by the Commission*

(9) The notion of special or exclusive rights is central to the definition of the scope of this Directive, since entities which are neither contracting entities pursuant to Article 4 (1) (1) nor public undertakings are subject to *its* provisions only to the extent that they exercise one of the activities covered on the basis of such rights. ***It is therefore appropriate to clarify that rights which have been granted by means of a procedure based on objective criteria, notably pursuant to Union legislation, and for which adequate publicity has been ensured do not constitute special or exclusive rights for the purposes of this Directive. This legislation should include Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas<sup>1</sup>, Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, Directive 94/22/EC of the European Parliament and of the Council of 20 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of***

*Amendment*

(9) The notion of special or exclusive rights is central to the definition of the scope of this Directive, since entities which are neither contracting entities pursuant to Article 4 (1) (1) nor public undertakings are subject to ***these*** provisions only to the extent that they exercise one of the activities covered on the basis of such rights.

<sup>1</sup> OJ L 204, 21.7.1998, p. 1

*hydrocarbons and Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70. The increasingly diverse forms of public action made it necessary to define more clearly the notion of procurement itself. The Union rules on concessions refer to the acquisition of works or services for a consideration consisting in exploitation of those works or services. The notion of acquisition should be understood broadly in the sense of obtaining the benefits of the works or services in question not requiring in all cases a transfer of ownership to contracting authorities or contracting entities. Furthermore, the mere financing of an activity, which is frequently linked to the obligation to reimburse the amounts received where they are not used for the purposes intended, does not usually fall under this Directive.*

Or. en

#### **Amendment 8**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing AM 7 Juvin, AM 293 Weisgerber, Verheyen (in part), AM 294 Schwab, Mayer (in part), AM 295 Rühle (in part), AM 296 Harbour, Kozusnik

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

##### **Recital 10**

*Text proposed by the Commission*

*(10) It has also proven necessary to clarify what should be understood as a single procurement, with the effect that the aggregate value of all concessions concluded for the purpose of this procurement has to be taken into account with regard to the thresholds of this Directive, and that the procurement should be advertised as a whole, possibly*

*Amendment*

*(10) This Directive should only apply to concession contracts whose value is equal to or greater than a certain threshold, which should reflect the clear cross-border interest of concessions to economic operators located in other Member States. Consequently, the method of calculating the estimated value of a concession needs to be defined, and should be identical for*

*split into lots. The concept of single procurement encompasses all supplies, works and services needed to carry out a particular project.* Indications for the existence of one single project can for instance consist in overall prior planning and conception by the **contracting authority**, the fact that the different elements **purchased** fulfil a single economic and technical function **or** that they are otherwise logically interlinked.

*works and services concessions, as most contracts are mixed. It should include taking into account the cumulative turnover of the concession concerned, excluding tax, over the duration of the contract estimated by the grantor. The value of a concession should take into account the value of all the works and/or services covered by the contract and forming part of the same concession project.* Indications for the existence of one single project can for instance consist in overall prior planning and conception by the **grantor**, the fact that the different elements **of the concession** fulfil a single economic and technical function, that they are otherwise logically interlinked, **or that they require the same types of investment by the concessionaire.**

Or. en

## **Amendment 9**

**EPP, S&D, ALDE, ECR**

Compromise amendment replacing AM 299 Castex, AM 300 Gustafsson de Jong, AM 297 Ruhle, 298 Simon, 301 Verheyen, Collin-Langen, Weisgerber, Mayer

## **Proposal for a directive**

### **Recital 11**

*Text proposed by the Commission*

(11) To ensure **a real opening up of** the market and a fair balance in the application of concession award rules in the water, energy, transport and postal services sectors it is necessary for the entities covered to be identified on a basis other than their legal status. **It should be ensured, therefore, that** the equal treatment of contracting entities operating in the public sector and those operating in the private sector **is not prejudiced**. It is also necessary to ensure, in *keeping* with Article 345 of the Treaty, that the rules governing the system of property ownership in Member States are not

*Amendment*

(11) To ensure real **access to** the market and a fair balance in the application of concession award rules in the water, energy, transport and postal services sectors it is necessary for the entities covered to be **clearly** identified on a basis other than their legal status. The equal treatment of contracting entities operating in the public sector and those operating in the private sector **should be ensured**. It is also necessary to ensure, in *accordance* with Article 345 of the Treaty *on the functioning of the European Union*, that the rules governing the system of property ownership in Member States are not

prejudiced.

prejudiced.

Or. en

### **Amendment 10**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing AM 9 Juvin AM 305 Juvin, AM 306 Gustafsson, AM 304 Rühle, AM 307 Paolo Bartolozzi, Lara Comi, AM 308 Erminia Mazzoni, Roberta Angelilli

### **Proposal for a directive**

#### **Recital 13**

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

(13) It is appropriate to exclude from the scope of this Directive certain services concessions awarded to an economic operator which *is itself a contracting authority or a contracting entity on the basis of* an exclusive right *which that operator enjoys* under published national law or administrative act and which has been granted in accordance with the Treaty and Union sectoral legislation *concerning the management of networks infrastructure related to the activities set out in annex III*, since such exclusive right makes it impossible to follow a competitive procedure for the award. By way of derogation and without prejudice to the legal consequences of the general exclusion from the scope of this Directive, concessions *as defined in article 8 (1)* should be subject to the obligation to publish a concession award notice in view of ensuring basic transparency unless the conditions of such transparency are provided for in sectoral legislation.

##### *Amendment*

(13) It is appropriate to exclude from the scope of this Directive certain services concessions *related to an activity set out in Annex III, including those services concessions concerning the management of network infrastructure related to such an activity, when those concessions are* awarded to an economic operator which *enjoys* an exclusive right under published national law, *regulation* or administrative act and which has been granted in accordance with the Treaty and Union sectoral legislation, since such exclusive right makes it impossible to follow a competitive procedure for the award. By way of derogation and without prejudice to the legal consequences of the general exclusion from the scope of this Directive, *such* concessions should be subject to the obligation to publish a concession award notice in view of ensuring basic transparency unless the conditions of such transparency are provided for in sectoral legislation. *In order to reinforce transparency, where a Member State grants an exclusive right to an economic operator for the exercise of one of the activities set out in Annex III, it should inform the Commission thereof.*

Or. en

**Amendment 11**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing AM 311 Juvin, AM 303 de Jong; AM 509 Correia de Campos, Bastos

**Proposal for a directive**

**Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

*(13a) It is appropriate to exclude from the scope of this Directive concessions relating to gambling activities involving a financial risk through investing a sum of money in games of chance (lotteries, betting), awarded to one or more bodies by one or more Member States on the basis of exclusive rights granted pursuant to applicable national laws, regulations or administrative provisions in accordance with the Treaties. That exclusion is justified by the granting of exclusive rights to one or more bodies at national level, making a competitive procedure inapplicable, as well as by the need to retain the possibility for Member States to regulate the gambling sector at national level in view of their obligations in terms of protecting public and social order.*

Or. en

**Amendment 12**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing AM 319 Schwab

**Proposal for a directive**

**Recital 13 b (new)**

*Text proposed by the Commission*

*Amendment*

*(13b) Service contracts in the fields of civil defense, civil protection, and danger prevention should be excluded from the scope of this Directive. These fields*

*include, in particular, emergency ambulance services, which should be defined as separate from patient transport ambulance services. In order to ensure successful civil protection and emergency response in the interests of the general public, it should be sufficient to apply the principles of primary law.*

Or. en

### **Amendment 13**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing AM 314 Juvin, 313 Busoi, 312 Rühle

### **Proposal for a directive**

#### **Recital 14**

*Text proposed by the Commission*

(14) It is appropriate to exclude certain service and works concessions awarded to **an** undertakings affiliated to contracting entities, having as **its** principal activity the provision of such services 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 and works concessions 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 concessions without calls for competition,

*Amendment*

(14) It is appropriate to exclude certain service and works concessions awarded to undertakings affiliated to contracting entities, **with or without private participation, and** having as **their** principal activity the provision of such services or works to the group of which **they are** part, rather than offering them on the market. It is also appropriate to exclude certain service and works concessions 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 concessions 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

the composition of joint ventures and the stability of links between those joint ventures and the contracting entities of which they are composed.

Or. en

#### **Amendment 14**

**EPP, S&D, ALDE, ECR**

Compromise amendment replacing **AM 317 Rühle, Juvin 11, 318 Tarabella**

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

##### **Recital 17**

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

(17) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by concession award rules. The relevant case-law of the Court of Justice of the European Union is interpreted differently between Member States *and even between contracting authorities or certain contracting entities*. It is therefore necessary to clarify *in what cases* concessions concluded between *such* authorities *are* not subject to the *application of public concession award* rules. Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. The sole fact that both parties to an agreement are themselves contracting authorities or contracting entities under Art. 4 (1) (1) does not as such rule out the application of concession award rules. *However*, the application of concession award rules *should* not interfere with the *freedom* of public authorities to decide how to organise the way they carry out their public service tasks. Concessions *awarded* to controlled entities *or cooperation for the joint execution of the public service tasks of the participating contracting authorities or entities* should therefore be exempted from the application of *the rules*

###### *Amendment*

(17) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by concession award rules. The relevant case-law of the Court of Justice of the European Union is interpreted differently between Member State. It is therefore necessary to clarify *in line with this case-law under which conditions the award of* concessions concluded between *public* authorities *is* not subject to the rules *laid down in this Directive*. Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. The sole fact that both parties to an agreement are themselves contracting authorities or contracting entities under Art. 4 (1) (1) does not as such rule out the application of concession award rules. The application of concession award rules *must* not interfere with the *right* of public authorities to decide *freely* how to organise the way they carry out their public service tasks. *The award of* concessions to controlled entities should therefore be exempted from the application of *this Directive* if the conditions are fulfilled. ~~and~~ The participation of a contracting authority as a tenderer in a procedure for the award of a *concession should not* cause any distortion

if the conditions *set out in this Directive* are fulfilled. *This Directive should aim to ensure that any exempted public-public cooperation does not cause a distortion of competition in relation to private economic operators. Neither should* the participation of a contracting authority as a tenderer in a procedure for the award of a *public contract* cause any distortion of competition.

of competition. *To achieve this, the conditions for the exclusion of contracts from the scope of this Directive should be subject to a strict interpretation. If any of the cumulative conditions for exclusion from the scope is no longer fulfilled during the term of a contract or cooperation that has been excluded from the scope of this Directive, that ongoing contract or cooperation must be opened to competition through regular concession award procedures.*

Or. en

### **Amendment 15**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing AM94 Juvin, AM 565, Simon, AM 566 Castex, AM 564 Verheyen, Collin-Langen, Weisgerber, Mayer, AM 589 Gebhardt, AM 590 Schwab Chatzimarkakis

### **Proposal for a directive Recital 17 a (new)**

*Text proposed by the Commission*

*Amendment*

*(17a) One condition for determining whether a concession awarded by a contracting authority or a contracting entity as referred to in Article 4, paragraph 1, subparagraph 1, to another legal person should fall outside the scope of the directive, is that such an authority or entity exercises over the legal person concerned a control which is similar to that which it exercises over its own departments. This means that it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person. With a view to determining whether such control is being exercised, account may also be taken of factors such as the level of representation on administrative, management or supervisory bodies, the relevant provisions of the articles of association or the ownership arrangements; it is not a*

*mandatory requirement that the controlled legal person be wholly owned by the contracting authority or entity. The above conditions should apply mutatis mutandis if a contracting authority awards a public contract to a legal person it controls jointly with other contracting authorities.*

Or. en

**Amendment 16**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing **Juvin 12 + Busoi 637 + + Rühle 309**

**Proposal for a directive**

**Recital 17 b (new)**

*Text proposed by the Commission*

*Amendment*

*(17b) Cooperation between local public authorities, or between local public authorities and groups composed exclusively of local public authorities, with a view to jointly ensuring the organisation of the same public service mission for a public interest purpose as part of the internal institutional and administrative organisation of Member States, should be exempted from the application of the rules laid down in this Directive. Union law does not require public authorities to use a particular legal form in order to jointly undertake a public service task. Similarly, transfers of powers relating to public service missions involving a global transfer of responsibility between local public authorities, or between local public authorities and groups composed exclusively of local public authorities, as part of the internal institutional and administrative organisation Member States and pursuant to applicable national law or regulation, should be exempted from the rules laid down in this Directive.*

**Amendment 17**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing AM 319 Schwab

**Proposal for a directive**

**Recital 17 c (new)**

*Text proposed by the Commission*

*Amendment*

***(17c) The duration of the concession should be limited so that market foreclosure is avoided and there is no prevention of competition.***

Or. en

**Amendment 18**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing AM 13 Juvin

**Proposal for a directive**

**Recital 18**

*Text proposed by the Commission*

*Amendment*

(18) In order to ensure adequate advertisement of works and services concessions above a certain ***value awarded by contracting entities and by the contracting authorities***, the award of such contracts should be preceded by the compulsory publication of a concession notice in the Official Journal of the European Union. ***The thresholds should reflect the clear cross-border interest of concessions to economic operators located in other Member States. To calculate the value of a services concession, account must be taken of the estimated value of all services to be provided by the concessionaire from the point of view of a potential tenderer.***

(18) In order to ensure adequate advertisement of works and services concessions ***equal to or*** above a certain ***threshold***, the award of such contracts should be preceded by the compulsory publication of a concession notice in the Official Journal of the European Union.

**Amendment 19****EPP, S&D, ALDE, ECR**Compromise amendment replacing **Am. 14 Juvin, AM 321 Rühle, AM 322 Harbour Kožušník****Proposal for a directive****Recital 19***Text proposed by the Commission*

(19) In view of the detrimental effects on competition, awarding concessions without prior publication should only be permitted in very exceptional circumstances. ***This exception should*** be limited to cases where it is clear from the outset that a publication would not trigger more competition, notably because there is objectively only one economic operator who can perform the concession. ***Only situations of objective exclusivity can justify the award of a concession without publication to an economic operator***, where the *situation of exclusivity has not been created by the contracting authority or contracting entity itself in view of the future award procedure, and where there are no adequate substitutes, the availability of which should be assessed thoroughly.*

*Amendment*

(19) In view of the detrimental effects on competition, awarding concessions without prior publication should only be permitted in very exceptional circumstances ***and*** be limited to cases where it is clear from the outset that a publication would not trigger more competition, notably because there is objectively only one economic operator who can perform the concession, ***or*** where the ***subject of the concession concerns social services or other specific services with a minimal cross-border impact.***

Or. en

**Amendment 20****EPP, S&D, ALDE, ECR**

Compromise amendment replacing AM 15 Juvin, AM 326 Gebhardt, AM 327 Rühle, AM 328 and 330 Weisgerber, Collin-Langn, Verheyen, Mayer, AM 329 Simon, AM 332 Harbour

**Proposal for a directive****Recital 20***Text proposed by the Commission*

(20) A review of so-called *prioritary* and *non-prioritary* services ('A' and 'B')

*Amendment*

(20) ***In the context of the reform of public contract rules***, a review of so-called

services) by the Commission has shown that it is not justified to restrict the full application of procurement law to a limited group of services. As a result, this Directive should apply to a number of services (*such as catering and water distribution services*), which *both* showed a potential for cross-border trade.

*priority and non-priority* services ('A' and 'B' services) by the Commission has shown that it is not justified to restrict the full application of procurement law to a limited group of services. As a result, this Directive should apply to a number of services, which showed a potential for cross-border trade.

Or. en

## **Amendment 21**

### **EPP, S&D, ALDE, ECR**

Compromise amendment replacing AM 16 Juvin, 334 Rühle, 333 Weiler, 335 Weiler, 336 Juvin, 337 Simon, 338 Harbour Kozusnik, 339 Gustafsson

## **Proposal for a directive**

### **Recital 21**

#### *Text proposed by the Commission*

(21) In the light of the results of the evaluation conducted by the Commission on the reform of public procurement rules it is appropriate to exclude from the full application of this Directive only those services which have a limited cross-border dimension, namely the so-called services to the person such as certain social, health and educational services. These services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A *specific* regime should therefore be established for concession for these services which takes into account the fact that they are newly regulated. An obligation to publish a *a prior information notice and* a concession award notice *of* any concession with a value equal to or greater than *thresholds* established in this Directive is an adequate way to *provide information on business opportunities to potential tenderers as well as on the number and type of contracts awarded to all interested parties. Furthermore, Member States should put in place*

#### *Amendment*

(21) In the light of the results of the evaluation conducted by the Commission on the reform of public procurement rules it is appropriate to exclude from the full application of this Directive only those services which have a limited cross-border dimension, namely the so-called services to the person such as certain social, health and educational services. These services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A *lighter* regime should therefore be established for concession for these services which takes into account the fact that they are newly regulated. An obligation to publish a concession award notice *for* any concession with a value equal to or greater than *the threshold* established in this Directive is an adequate way to *ensure* compliance with the *principle* of transparency while allowing *the grantor* to take into account the specificities of the services in question. Member States should ensure that *the grantor* may take into account the need to

*appropriate measures with reference to the award of concession contracts for these services aimed at ensuring compliance with the principles of transparency and equal treatment of economic operators while allowing contracting authorities and contracting entities to take into account the specificities of the services in question. Member States should ensure that contracting authorities and contracting entities may take into account the need to ensure quality, continuity, accessibility, availability and comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment of users and innovation.*

*ensure innovation and, in accordance with Article 14 of the Treaty on the Functioning of the European Union and Protocol 26 annexed to that Treaty, a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of users' rights.*

Or. en

#### **Amendment 22**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing AM 340 Juvin, AM 256 Panzeri

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

#### **Recital 21 a (new)**

*Text proposed by the Commission*

*Amendment*

*(21a) This Directive is without prejudice to the freedom of national, regional and local authorities to define, in conformity with Union law, services of general economic interest, their scope and the characteristics of the service to be provided, including any conditions regarding the quality of the service, in order to pursue its public policy objectives. It is also without prejudice to the power of national, regional and local authorities to provide, commission and finance services of general economic interest in accordance with Article 14 of the Treaty on the Functioning of the European Union and Protocol 26 annexed to that Treaty. In addition, this Directive does not deal with the funding*

*of services of general economic interest or with systems of aids granted by Member States, in particular in the social field, in accordance with Union rules on competition.*

Or. en

### **Amendment 23**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing 17 Juvin, 341 Rühle , 343 Castex, 344 Pietikainen

### **Proposal for a directive**

#### **Recital 22**

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

(22) 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 do not prevent Member States 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 concessions, 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 or contracting entity, without any limits or quotas, provided such system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

##### *Amendment*

(22) Given the importance of the cultural context and the sensitivity of these services, Member States *should have* wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this Directive do not prevent Member States 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 *them* in a way that does not entail the conclusion of concessions, 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 or contracting entity, without any limits or quotas, provided such system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

Or. en

**Amendment 24**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing AM 125 Juvin, 723 Panzeri

**Proposal for a directive**

**Recital 22 -a (new)**

*Text proposed by the Commission*

*Amendment*

***(22-a) In order to ensure confidentiality during the procedure, grantors should not disclose information that has been forwarded to them by economic operators which they have designated as confidential. Non-compliance with this obligation should render the grantor liable if harm can be clearly demonstrated by the economic operator. Similarly, economic operators should not disclose information that has been designated as confidential. Non-compliance with this obligation shall make the economic operators liable.***

Or. en

**Amendment 25**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing **Am. 345 Juvin (AM 18 withdrawn)**

**Proposal for a directive**

**Recital 22 a (new)**

*Text proposed by the Commission*

*Amendment*

***(22a) The procedure for awarding concession contracts should comprise several stages, including the publication of a concession notice allowing the grantor wishing to award a concession to make known its intention; the presentation by interested economic operators of their application in response to that notice; verification of the conditions of participation for candidates;***

*the submission of a tender by the candidates; the grantor's right to negotiate with the tenderer on the basis of objective award criteria; the decision on the award by the grantor of the concession contract to the concessionaire and the publication of an award notice. Intermediate stages should be possible, including the selection of certain candidates authorised to submit a tender and the sending of an invitation to tender to the candidates thus selected. The grantor should also be able to approach economic operators who have not responded to the concession notice. In addition, and subject to compliance with the principles of transparency and non-discrimination, it should be possible to reverse the order of certain stages, including, for example, analysing submitted tenders before verifying compliance with the selection criteria. Subject to compliance with the provisions of this Directive, the grantor should be allowed considerable flexibility to define the procedure leading to the choice of concessionaire, the only two mandatory stages being the publication of a concession notice at the beginning of the procedure, except where this is not required under this Directive, and the publication of an award notice at the end of the procedure. This freedom should be balanced against a requirement for transparency and equal treatment of candidates and tenderers.*

Or. en

**Amendment 26**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing Am768 Panzeri

**Proposal for a directive**

**Recital 22 b (new)**

*Text proposed by the Commission*

*Amendment*

***(22b) In order to combat fraud, favouritism and corruption and prevent conflicts of interest, Member States should adopt rules to ensure the transparency of the award procedure and the equal treatment of all candidates and tenderers. The measures adopted should establish and apply a comprehensive, actionable indicator and monitoring systems to prevent, detect and eliminate report instances of concessions fraud, corruption, conflict of interest and other serious irregularities.***

Or. en

**Amendment 27**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing **Am. 19 Juvin, AM 346 Castex**

**Proposal for a directive**

**Recital 23**

*Text proposed by the Commission*

*Amendment*

(23) In order to make it possible for all interested operators to submit applications ***and tenders, contracting authorities and contracting entities*** should be obliged to respect a minimum time limit for the receipt of such applications.

(23) In order to make it possible for all interested operators to submit applications ***or tenders, the grantor*** should be obliged to respect a minimum time limit for the receipt of such applications ***or tenders***.

Or. en

**Amendment 28**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing **Am. 20 Juvin AM 349 de Jong Gustafsson**

**Proposal for a directive**

**Recital 24**

*Text proposed by the Commission*

(24) The choice and application of proportional, non-discriminatory and fair selection criteria to economic operators is crucial for their effective access to the economic opportunities related to concessions. In particular, the possibility for a candidate to rely on the capacities of other entities can be decisive to enable the participation of small and medium sized enterprises. Therefore, it is appropriate to provide that the selection criteria should relate **exclusively** to the technical, financial **and economic capacity of operators**, should be announced in the concession notice and cannot preclude **an economic operator** from relying on the capacities of other entities, regardless of the legal nature of its links with those entities, if the latter proves to the **contracting authority or entity** that it will have at its disposal the necessary resources.

*Amendment*

(24) The choice and application of proportional, non-discriminatory and fair selection criteria to economic operators is crucial for their effective access to the economic opportunities related to concessions. In particular, the possibility for a candidate to rely on the capacities of other entities can be decisive to enable the participation of small and medium sized enterprises. Therefore, it is appropriate to provide that the selection criteria should **be clearly defined, should** relate to the **professional, technical and financial capacities of candidates and be linked to the subject-matter of the contract**, should be announced in the concession notice and cannot preclude **a candidate** from relying on the capacities of other entities, regardless of the legal nature of its links with those entities, if the latter proves to the **grantor** that it will have at its disposal the necessary resources.

Or. en

**Amendment 29**

**EPP, S&D, ALDE, Greens, [ECR]**

Compromise amendment replacing **Am. 21 Juvin, AM 350 Rühle**

**Proposal for a directive**

**Recital 25**

*Text proposed by the Commission*

(25) In order to ensure transparency and equal treatment, criteria for the award of concessions should always comply with some general standards. These should be disclosed in advance to all **potential** tenderers, be **related** to the subject matter of the contract **and should not offer to the contracting authority or contracting entity an unrestricted freedom of choice**. They should ensure the possibility of effective

*Amendment*

(25) In order to ensure transparency and equal treatment, criteria for the award of concessions should always comply with some general standards. These should be disclosed in advance to all **candidates or** tenderers **and be linked** to the subject matter of the contract. They should ensure the possibility of effective competition and be accompanied by **minimum** requirements that allow the information provided by the

competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified. *In order to comply with these standards while improving legal certainty, Member States may provide for the use of the criterion of the most economically advantageous tender.*

*candidates or* tenderers to be effectively verified *by the grantor.*

Or. en

### **Amendment 30**

**EPP, S&D, ALDE, Greens**

Compromise amendment replacing **Am. 22 Juvin, AM 353 Gustafsson, de Jong, AM 352 Gustafsson Bastos**

**Proposal for a directive**

**Recital 25 a (new)**

*Text proposed by the Commission*

*Amendment*

*(25a) In order to better integrate social considerations in the award of concessions, the grantor should also be able to include characteristics relating to working conditions among the award criteria. Those characteristics should aim to protect the health of the staff involved in the production process or to promote the social integration of disadvantaged persons or members of vulnerable groups among the persons responsible for performing the contract, including accessibility for persons with disabilities. The grantor should also be allowed to use as award criteria the organisation, qualifications and experience of the staff assigned to the performance of the concession contract, as they may affect the quality of provision and, as a result, the economic value of the tender. In order to ensure that women and men have equal access to the labour market, the grantor should also be able to include characteristics relating to promoting gender equality among the award criteria.*

**Amendment 31**  
**EPP, S&D, ALDE, Greens, ECR**  
Compromise amendment replacing **Am. 23 Juvin**

**Proposal for a directive**  
**Recital 25 b (new)**

*Text proposed by the Commission*

*Amendment*

***(25b) The technical and/or functional requirements should define the characteristics required of works and/or services covered by the concession, including requirements concerning accessibility for people with disabilities or environmental performance levels. Those technical and/or functional requirements should be included in the concession documents and should comply with the principles of equal treatment and transparency. They should not be designed to artificially limit competition.***

**Amendment 32**  
**EPP, S&D, ALDE, Greens, ECR**  
Compromise amendment replacing **Am. 24 Juvin; 354 Rühle**

**Proposal for a directive**  
**Recital 26**

*Text proposed by the Commission*

*Amendment*

***(26) Where contracting authorities and contracting entities choose to award a concession to the most economically advantageous tender, they should determine the economic and quality criteria on the basis of which they assess the tenders in order to identify which one***

***deleted***

*offers the best value for money. The determination of those criteria depends on the object of the concession since they should allow the level of performance offered by each tender to be assessed in the light of the subject-matter of the concession, as defined in the technical specifications and the value for money of each tender to be measured.*

Or. en

### Amendment 33

EPP, S&D, ALDE, Greens, ECR

Compromise amendment replacing Am. 25 Juvin

### Proposal for a directive

#### Recital 27

*Text proposed by the Commission*

(27) Concessions are usually **long term**, complex arrangements where the **contractor** assumes responsibilities and risks traditionally **born** by the **contracting authorities** and normally falling within **their** remit **and contracting entities**. For this reason, **contracting authorities or entities** should maintain a margin of flexibility in organising the awarding process, **involving also a possibility to negotiate** the content of the contract with the candidates. **However, in order to ensure** equal treatment and transparency throughout the **awarding** procedure, **it is appropriate to provide for certain requirements as to the structure of the awarding process, including negotiations, the dissemination of information and the availability of written records. It is also necessary to provide that the initial terms of the concession notice should not be deviated from, in order to prevent unfair treatment of any potential candidates.**

*Amendment*

(27) Concessions are usually **long-term**, complex arrangements where the **concessionaire** assumes **the** responsibilities and risks traditionally **borne** by the **grantor** and normally falling within **its** remit. For this reason, **the grantor** should maintain a **real** margin of flexibility in organising the awarding process **and negotiating** the content of the contract with the candidates **and tenderers, while ensuring respect for the principles of equal treatment and transparency throughout the procedure.**

Or. en

**Amendment 34**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing **Am. 26 Juvin, 355 Rühle, AM 356 Tarabella**

**Proposal for a directive**

**Recital 28**

*Text proposed by the Commission*

*Amendment*

**(28) The technical specifications drawn up by contracting authorities and contracting entities need to allow concession award to be opened up to competition. To that end, it must 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 equivalent arrangements should be considered by contracting authorities or 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.** *deleted*

Or. en

## Amendment 35

EPP, S&D, ALDE, Greens, ECR

Compromise amendment replacing Am. 27 Juvin, 357 Rühle

### Proposal for a directive

#### Recital 29

*Text proposed by the Commission*

*Amendment*

***(29) In technical specifications and in award criteria, contracting authorities and 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 concession. In order to better integrate social considerations in the award of concessions, procurers may also be allowed to include, in the award criteria, characteristics related to the working conditions. However, where the contracting authorities or contracting entities use the most economically advantageous tender, such criteria may only relate 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. In this case, any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16***

*December 1996 concerning the posting of workers in the framework of the provision of services<sup>1</sup> 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 and contracting entities should, also where they use the criterion of the most economically advantageous tender, be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the concession in question, as this may affect the quality of concession performance and, as a result, the economic value of the tender.*

Or. en

#### **Amendment 36**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing **Am. 28 Juvín, 360 Rühle in part**

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

#### **Recital 30**

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

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

##### *Amendment*

(30) Electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency, *speed* and transparency of concession award processes. They should become the standard means of communication and information exchange in concession award procedures. *It should also be made obligatory to send a concession notice and an award notice and to make the concession documents available electronically.*

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<sup>1</sup> OJ L 18, 21.1.1997, p.1.

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

Or. en

### **Amendment 37**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing **Am. 29 Juvin, AM 361 Rühle**

### **Proposal for a directive**

#### **Recital 31**

*Text proposed by the Commission*

*Amendment*

*(31) Contracting authorities and contracting entities from different Member States may be interested in cooperating and in awarding jointly public concessions in order to take the best benefit of internal market potential in terms of economies of scale and risk-benefit sharing, notably for innovative projects involving a greater amount of risk than reasonably supportable by a single contracting authority or contracting entity. Therefore new rules on cross-border joint concession award designating the applicable law should be established in order to facilitate setting up cross-border joint public concession award. In addition, contracting authorities and 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 concession award.*

*deleted*

Or. en

## Amendment 38

EPP, S&D, ALDE, Greens, ECR

Compromise amendment replacing Am. 30 Juvin, Am. Busoi 365, Am. 363 Juvin, Am. 364 Gustafsson, De Jong

### Proposal for a directive

#### Recital 33

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

(33) Concessions 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. Furthermore, ***contracting authorities and contracting entities*** should be given the possibility to exclude candidates or tenderers for serious violations of Union or national law aimed at the protection of public interests compatible with the Treaty ***or*** where the economic operator has shown significant or persistent deficiencies in the performance of a prior concession or concessions of a similar nature with the same ***contracting authority or contracting entity***.

##### *Amendment*

(33) Concessions 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. Furthermore, ***grantors*** should be given the possibility to exclude candidates or tenderers for serious violations of Union or national law aimed at the protection of public interests compatible with the Treaty ***if such violation has been established by a competent body***, where the economic operator has shown significant or persistent deficiencies in the performance of a prior concession or concessions of a similar nature with the same ***grantor, for serious or repeated violation of social, environmental or labour law***.

Or. en

## Amendment 39

EPP, S&D, ALDE, Greens, ECR

Compromise amendment replacing Am. 366 Juvin, AM 367 Castex, AM 368 Busoi, AM 369 Busoi

### Proposal for a directive

#### Recital 34

*Text proposed by the Commission*

(34) It is necessary to clarify the conditions under which modifications of a concession during its execution require a new award procedure, taking into account the relevant case-law of the Court of Justice of the European Union. A new award procedure is required in case of material changes to the initial concession, demonstrating the intention of the parties to renegotiate essential terms or conditions of that concession. This is notably the case if the amended conditions would have had an influence on the outcome of the procedure, had they been part of the initial procedure. An exceptional and temporary extension of the term of the concession strictly aimed at ensuring the continuity of the provision of the service pending the award of a new concession should not normally qualify as a material change to the initial concession.

*Amendment*

(34) It is necessary to clarify the conditions under which modifications of a concession during its execution require a new award procedure, taking into account the relevant case-law of the Court of Justice of the European Union. ***Any concession in force may be modified by means of a supplementary agreement, subject to the provisions of this Directive.*** A new award procedure is required, ***however, in the*** case of material changes to the initial concession, demonstrating the intention of the parties to renegotiate essential terms or conditions of that concession. This is notably the case if the amended conditions would have had an influence on the outcome of the procedure, had they been part of the initial procedure. An exceptional and temporary extension of the term of the concession strictly aimed at ensuring the continuity of the provision of the service pending the award of a new concession should not normally qualify as a material change to the initial concession. ***Nevertheless, where a contract has reached its term the grantor and the concessionaire shall refrain from extensions for purposes of investments not essential to the performance of the concession and which would be implemented solely with a view to extending the duration thereof.***

Or. en

**Amendment 40**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing **Am. 32 Juvin, AM 370 Castex**

**Proposal for a directive**

**Recital 35**

*Text proposed by the Commission*

(35) **Contracting authorities and contracting entities** can be faced with external circumstances that they could not foresee when they awarded the concession. In this case, a certain degree of flexibility is needed to adapt the concession to these circumstances without a new award procedure. The notion of circumstances that a diligent **contracting authority or contracting entity** could not foresee refers to those circumstances which could not be predicted despite reasonably diligent preparation of the initial award by the **contracting authority or contracting entity**, taking into account its available means, the nature and characteristics of the specific project, good practice in the field in question and the need to ensure an appropriate relationship between the resources spent in preparing the award and its foreseeable value. However, this cannot apply in cases where a modification results in an alteration of the nature of the overall **procurement**, for instance by replacing the works, **supplies** or services **to be procured** by something different or by **fundamentally changing the type of procurement since, in such a situation, a hypothetical** influence on the outcome may be assumed.

*Amendment*

(35) **Grantors** can be faced with external circumstances that they could not foresee when they awarded the concession. In this case, a certain degree of flexibility is needed to adapt the concession to these circumstances without a new award procedure. The notion of circumstances that a diligent **grantor** could not foresee refers to those circumstances which could not be predicted despite reasonably diligent preparation of the initial award by the **grantor**, taking into account its available means, the nature and characteristics of the specific project, good practice in the field in question and the need to ensure an appropriate relationship between the resources spent in preparing the award and its foreseeable value. However, this cannot apply in cases where a modification results in an alteration of the nature of the overall **concession**, for instance by replacing the works or services **for which the contract is to be awarded** by something different or by **introducing conditions such that an** influence on the outcome may be assumed.

Or. en

#### **Amendment 41**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing **Am. 33 Juvin, AM 371 Rühle**

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

#### **Recital 36**

*Text proposed by the Commission*

(36) In line with the principles of equal treatment and transparency, the successful

*Amendment*

(36) In line with the principles of equal treatment and transparency, the successful

tenderer should not be replaced by another economic operator without reopening the concession to competition. However, the successful tenderer performing the concession may undergo certain structural changes during the performance of the concession, such as purely internal reorganisations, mergers and acquisitions or insolvency or be substituted on the basis of a contractual clause known to all tenderers and in line with the principles of equal treatment and transparency. Such structural changes should not **automatically** require new award procedures for all concessions performed by that undertaking.

tenderer should not be replaced by another economic operator without reopening the concession to competition. However, the successful tenderer performing the concession may undergo certain structural changes during the performance of the concession, such as purely internal reorganisations, mergers and acquisitions, **transfer of property or assets between companies** or insolvency or be substituted on the basis of a contractual clause known to all tenderers and in line with the principles of equal treatment and transparency. Such structural changes should not require new award procedures for all concessions performed by that undertaking.

Or. en

#### **Amendment 42**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing **Am. 33 Juvin, AM 371 Rühle, AM 373 covered by CA on Art 49**

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

##### **Recital 37**

*Text proposed by the Commission*

(37) **Contracting authorities or contracting entities** should have the possibility to provide for modifications to a concession in the concession contract itself, by way of review clauses which should not give them unlimited discretion. This Directive should therefore set out to what extent modifications may be provided for in the initial concession.

*Amendment*

(37) **Grantors** should have the possibility to provide for modifications to a concession in the concession contract itself, by way of review clauses which should not give them unlimited discretion. This Directive should therefore set out to what extent modifications may be provided for in the initial concession.

Or. en

#### **Amendment 43**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing **Am. 36 Juvin, AM 378 Rühle 9**

**Proposal for a directive**  
**Recital 41**

*Text proposed by the Commission*

*Amendment*

**(41) The law of the Union on public procurement requires Member States to consistently and systematically monitor the implementation and functioning of those rules in order to ensure the efficient and uniform application of Union law. Hence, where Member States designate a single national authority in charge of monitoring, implementation and control of public procurement, that authority may have the same responsibilities regarding concessions. A single body with overarching tasks should ensure an overview of main difficulties in implementation and suggest appropriate remedies to more structural problems. That body may also provide immediate feedback on the functioning of policy and potential weaknesses in national legislation and practice, thus contributing to the quick identification of solutions and the improvement of concession award procedures.**

**deleted**

Or. en

**Amendment 44**

**EPP, S&D, ALDE, Greens, ECR**

**Compromise amendment replacing AM 40, 41 Juvin, 380 Rühle, also covers AM 386 Panzeri under Art -26**

**Proposal for a directive**  
**Article 1**

*Text proposed by the Commission*

*Amendment*

Article 1

Article 1

Subject-matter and scope

Subject-matter and scope

1. This Directive establishes rules **on the procedures for procurement by contracting authorities and by contracting**

1. This Directive establishes rules **which are applicable to the procedures for the award of works or services concession**

*entities with respect to concessions* whose value is estimated to be not less than the thresholds laid down in Article 5.

*contracts* whose value is estimated to be not less than the thresholds laid down in Article [5] **and which are awarded to economic operators by one of the following actors:**

**2. This Directive applies to the acquisition of works or services, including supplies which are incidental to the subject matter of a concession, from economic operators chosen by either of the following:**

a) Contracting authorities **whether or not the works or services including the related supplies, are intended for a public purpose;**

b) Contracting entities provided that the works or services **including the related supplies,** are intended for the pursuit of one of the activities referred to in Annex III.

a) Contracting authorities;

b) Contracting entities provided that the works or services are intended for the pursuit of one of the activities referred to in Annex III.

Or. en

#### **Amendment 45**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing AM 42 Juvin, 398 Panzeri, AM 381 Jaakonsaari & AM 396 Pietikäinen, AM 382 Tarabella, 391 Gustafsson, de Jong, 397 Karas, 399 Castex, 385 Kuhn, 390 Verheyen, Collin-Langen, Weisgerber, Mayer

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

##### **Article 1 a (new)**

*Text proposed by the Commission*

*Amendment*

##### **Article 1a**

**Principle of free administration by public authorities**

***This Directive recognises the principle of free administration by public authorities in conformity with the national legislation in force. The latter will be free to decide how best to manage the execution of works or the provision of services, in accordance with the legislative arrangements and the methods which they judge to be the most effective to ensure notably a high level of quality, safety and***

*affordability, equal treatment and the promotion of universal access and of user rights in public services.*

*Contracting authorities and contracting entities can therefore choose to perform their public interest tasks with their own resources or in cooperation with other contracting authorities or to delegate them to economic operators.*

Or. en

**Amendment 46**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing AM 401 Panzeri, 383 Jaakonsaari, 400 Pietikäinen

**Proposal for a directive**

**Article 1 b (new)**

*Text proposed by the Commission*

*Amendment*

**Article 1b**

***Principles of transparency by public authorities***

***The details of concession contracts, including regarding the transfer of the substantial part of the economic risk as defined in Article 2(1), point (2), third subparagraph, and eventual payments from the grantor to the economic operator, shall be made public and open to scrutiny, subject to the provisions on confidentiality as laid down in Article 24.***

***Any subsequent modifications to the contract shall also be made public.***

Or. en

**Amendment 47**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing AM 398 Panzeri, AM 394 Gebhardt, 340 Juvin, AM 253 Karas, 256 Panzeri, AM 302 Gustafsson, De Jong, 395 rühle, 344 Pietikäinen

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

*Text proposed by the Commission*

*Amendment*

**Article 1c**

**Freedom to define SGEI**

***This Directive does not affect the freedom of Member States to define, in conformity with Union law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with the State aid rules, and what specific obligations they should be subject to.***

Or. en

**Amendment 48**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing AM 43, 45, 49 Juvin, 51 Juvin, 52, 59 Juvin AM 402 Rühle, 405 Vergnaud, 403 Juvin, AM 404 Jaakonsaari, 406 Vergnaud, 407 Panzeri, 408 Pietikäinen, AM 417 Castex, 420 Panzeri, 428 Rühle AM 431 Handzlik, Thun, Trzaskowski, AM 437 Verheyen, Collin-Langen, Weisgerber, Mayer, AM 420 Panzeri

**Proposal for a directive**

**Article 2 - paragraph 1 - points 1 and 2**

*Text proposed by the Commission*

*Amendment*

(1) 'concessions' means **public** works **concessions, works concessions** or services concessions.

(1) 'concessions' means works or services concessions.

(2) a '**public** works concession' means a contract for pecuniary interest concluded in writing **between one or more economic operators and one or more contracting authorities and having as their object** the execution of works, **where** the consideration for **the the works to be carried out** consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment.

**(a)** a 'works concession' means a contract for pecuniary interest concluded in writing **by means of which one or more contracting authorities or contracting entities entrust** the execution of works **to one or more economic operator**the consideration for **which** consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment.

**(b)** a '**services concession**' means a

*contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or entities entrust the management of a service to one or more economic operators, the consideration for which consists either solely in the right to exploit the service that is the subject of the contract or in that right together with payment;*

*The award of a works concession or a services concession shall imply the transfer to the concessionaire of the substantial part of the economic risk in exploiting these works or services, defined as the risk of exposure to the vagaries of the market and encompassing both demand and supply risk. The concessionaire shall be deemed to assume the substantial part of the operating risk where, under normal conditions of exploitation and according to the provisions of the contract, it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject of the concession.*

*(2a) "economic operator" means any natural or legal person, or public entity, or a group of such persons and/or entities, including consortia of undertakings, which offers the execution of works and/or a work, supplies or services on the market.*

*(2b) "grantor" means a contracting authority or a contracting entity which awards a concession to an economic operator;*

Or. en

**Amendment 49**

**EPP, S&D, ALDE, Greens, ECR**

**Compromise amendment replacing AM 51 Juvin, 409 Rühle, 410 Weidenholzer**

**Proposal for a directive**

**Article 2 - paragraph 1 - point 4**

*Text proposed by the Commission*

*Amendment*

**(4) 'works concession' means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting entities and having as their object the execution of works, where the consideration for the the works to be carried out consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment;**

**deleted (moved under Article 2, point 2)**

Or. en

**Amendment 50**

**EPP, S&D, ALDE, Greens, ECR**

**Compromise amendment replacing AM 52 Juvin, 413 Panzeri**

**Proposal for a directive**

**Article 2 - paragraph 1 - point 7**

*Text proposed by the Commission*

*Amendment*

**(7) 'services concession' means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities or contracting entities and having as their object the provision of services other than those referred to in points 2 and 4 where the consideration for the services to be provided consists either solely in the right to exploit the services that are subject of the contract or in that right together with payment.**

**deleted (moved under point 2)**

Or. en

**Amendment 51**

**EPP, S&D, ALDE, Greens, ECR**

**Compromise amendment replacing**

**Proposal for a directive**  
**Article 2 - paragraph 1 - point 10**

*Text proposed by the Commission*

***(10) 'economic operator' means any natural or legal person, or public entity, or a group of such persons and/or entities which offers the execution of works and/or a work, supplies or services on the market.***

*Amendment*

***deleted (moved under point 2a)***

Or. en

**Amendment 52**  
**EPP, S&D, ALDE, Greens, ECR**  
Compromise amendment replacing **AM 52 Juvin, 413 Panzeri**

**Proposal for a directive**  
**Article 2 - paragraph 1 - point 12 a (new)**

*Text proposed by the Commission*

***(12a) 'special or exclusive rights' mean rights granted by a competent authority of a Member State by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of an activity to one or more economic operators, and which substantially affects the ability of other economic operators to carry out such activity.***

*Amendment*

Or. en

**Amendment 53**  
**EPP, S&D, ALDE, Greens, ECR**  
Compromise amendment replacing **AM 58 Juvin, 424 Panzeri, 425 Weisgerber, Verheyen, 426 Tarabella**

**Proposal for a directive**  
**Article 2 - paragraph 1 - point 14**

*Text proposed by the Commission*

*Amendment*

***(14) ‘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.***

***deleted***

Or. en

#### **Amendment 54**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing **AM 59 Juvin, 432 Rühle, 433 Schwab, Mayer**

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

#### **Article 2 - paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. The right to exploit the works or services as referred to in points 2, 4 and 7 of the first paragraph shall imply the transfer to the concessionaire of the substantial operating risk. The concessionaire shall be deemed to assume the substantial operating risk where it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession.***

***deleted***

***That economic risk may consist in either of the following:***

***(a) the risk related to the use of the works or the demand for the provision of the service; or***

***(b) the risk related to the availability of the infrastructure provided by the concessionaire or used for the provision of services to users.***

Or. en

## Amendment 55

EPP, S&D, ALDE, ECR, Greens

Compromise amendment replacing AM 65 Juvin, AM 438 Rühle, 440 Rühle

### Proposal for a directive

#### Article 4 – paragraph 1

*Text proposed by the Commission*

1. For the purposes of this Directive, "Contracting entities" are one of the following:

(1) state, regional or local authorities, bodies governed by public law, associations formed by one or more such authorities or one or more such bodies governed by public law as defined in paragraphs 2-4 of Article 3.

(2) public undertakings as defined in paragraph 2 of this Article;

(3) entities which are not contracting authorities or public undertakings, **operating** on the basis of special or exclusive rights granted by a competent authority of a Member State

*when they award a concession for the purpose of pursuing one of the activities as referred to in Annex III.*

*Amendment*

1. For the purposes of this Directive, 'contracting entities' **are entities which award a concession for the pursuit of one of the activities referred to in Annex III and which** are one of the following:

(1) state, regional or local authorities, bodies governed by public law, associations formed by one or more such authorities or one or more such bodies governed by public law as defined in paragraphs 2-4 of Article 3.

(2) public undertakings as defined in paragraph 2 of this Article;

(3) entities which are not contracting authorities or public undertakings **but which operate** on the basis of special or exclusive rights granted by a competent authority of a Member State **for the exercise of one of the activities defined in Annex III.**

Or. en

## Amendment 56

EPP, S&D, ALDE, Greens, ECR,

Compromise amendment replacing AM 65 Juvin, AM 438 Rühle, 440 Rühle

### Proposal for a directive

#### Article 4 – paragraph 3

**3. 'Special or exclusive rights' mean rights granted by a competent authority of a Member State by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of activities defined in Annex III to one or more entities, and which substantially affects the ability of other entities to carry out such activity.**

**deleted**

**Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute "special or exclusive rights" within the meaning of this Directive. Such procedure includes:**

**(a) procurement procedures with a prior call for competition in conformity with Directive [2004/18/EC or 2004/17/EC] or this Directive**

**(b) procedures pursuant to other legislative acts of the Union, listed in Annex XI, ensuring adequate prior transparency for granting authorisations on the basis of objective criteria.**

**The Commission shall be empowered to adopt delegated acts in accordance with Article 46 to modify the list of the Union legislative acts set out in Annex XI where, due to the adoption of new Union legislation or repeal of Union legislation, such modification proves necessary.**

Or. en

**Amendment 57**

**EPP, S&D, ALDE, Greens, ECR**

**Compromise amendment replacing AM 66 Juvin, 441 Rühle, 449 Harbour,**

**Kozusnik Proposal for a directive**

**Article 5**

**Article 5**

**deleted**

**Thresholds**

**1. This Directive shall apply to the following concessions the value of which is equal to or greater than EUR 5 000 000:**

**(a) concessions concluded by contracting entities for the pursuit of one of the activities referred to in Annex III;**

**(b) concessions concluded by contracting authorities.**

**2. Services concessions the value of which is equal to or greater than EUR 2 500 000 but lower than EUR 5 000 000 other than social services and other specific services shall be subject to the obligation to publish a concession award notice in accordance with Articles 27 and 28.**

Or. en

**Amendment 58**

**EPP, S&D, ALDE, Greens, ECR**

**Compromise amendment replacing AM 67 Juvin, 451 Rühle, AM 456 Rühle, 455 Juvin, AM 459 Rühle, AM 461 Rühle AM 462 Rühle, 463 Rühle, 464 Weidenholzer, 465 Schwab, Mayer 469, Rühle, 470 Panzeri, 471 Schwab, Mayer 473 Rühle, 474 Panzeri, 475 Schwab Mayer 476 Rühle, 477 Schwab Mayer, 478 Rühle, 479 Weidenholzer 480 Rühle Proposal for a directive**

**Article 6**

**Article 6**

**Article 6**

Methods for calculating the estimated value of concessions

**Thresholds and** methods for calculating the estimated value of concessions

1. The calculation of the estimated value of a concession shall be based on **the total amount payable**, net of **VAT**, as estimated

**-1. This Directive shall apply to the concessions the value of which is equal to or greater than EUR 8 000 000.**

1. The calculation of the estimated value of a concession shall be based on **its turnover**, net of **taxes**, accumulated over the

*by the contracting authority or the contracting entity, including any form of option and any extension of the duration of the concession.*

2. The estimated value of a concession shall be calculated as the value of an entirety of works *or* services, *even if purchased through different contracts, where the contracts* are part of one single project. *Indications for the existence of one single project consist in overall prior planning and conception by the contracting authority or contracting entity, the fact that the different elements purchased fulfil a single economic and technical function or that they are otherwise logically interlinked.*

*Where the contracting authority or the contracting entity provides for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of the concession.*

3. The *choice of the method used to calculate the estimated* value of a concession shall not be made with the intention of excluding it from the scope of this Directive. *A works project or an entirety of services shall not be subdivided with the effect of preventing it from falling within the scope of this Directive, unless justified by objective reasons.*

*duration of the contract, as estimated by the grantor, to which shall be added any public investment subsidies received by the concessionaire and provided for the purpose of the concession.*

*This estimate shall be valid at the moment at which the concession notice is sent, or, in cases where such notice is not foreseen, at the moment at which the grantor commences the concession award procedure.*

*If the value is changed as a result of negotiations during the award procedure, the valid estimate shall be the estimate indicated at the time of signature of the contract.*

2. The estimated value of a concession shall be calculated as the value of an entirety of works *and/or* services *which* are part of one single *concession* project, *including studies carried out by the economic operator for the purposes of the concession. The unique nature of the project can for instance be demonstrated by the existence of* planning and conception by the *grantor*, the fact that the different elements *of the concession project* fulfil a single economic and technical function or that they are otherwise logically interlinked.

3. The *estimate of the* value of a concession shall not be made with the intention of excluding it from the scope of this Directive.

*3a. The estimated value of the concession*

*shall be calculated according to an objective method.*

*4. This estimate shall be valid at the moment at which the concession notice is sent, or, in cases where such notice is not foreseen, at the moment at which the contracting authority or the contracting entity commences the concession award procedure, in particular by defining the essential characteristics of the intended concession.*

*5. With regard to public works concessions and works concessions, calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies and services that are made available to the contractor by the contracting authorities or entities provided that they are necessary for executing the works.*

*6. Where a proposed work or purchase of services may result in concessions being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots.*

*7. Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 5, this Directive shall apply to the awarding of each lot.*

*8. Contracting authorities or contracting entities may award concessions for individual lots without applying the provisions on the award provided for under this Directive, provided that the estimated value net of VAT of the lot concerned is less than EUR 1 million. 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 or the proposed purchase of services has been divided.*

*9. The value of services concessions shall be the estimated total value of services to be provided by the concessionaire during*

*the whole duration of the concession, calculated in accordance with an objective methodology which shall be specified in the concession notice or in the concession documents.*

*The basis for calculating the estimated concession value shall, where appropriate, be the following:*

*(a) for insurance services: the premium payable and other forms of remuneration;*

*(b) for banking and other financial services: fees, commissions, interest and other forms of remuneration;*

*(c) for design services: fees, commission payable and other forms of remuneration;*

*10. The value of concessions shall include both the estimated revenue to be received from third parties and the amounts to be paid by the contracting authority or the contracting entity.*

Or. en

#### **Amendment 59**

**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing AM 68 Juvin **Proposal for a directive**

#### **Article 7**

*Text proposed by the Commission*

*Amendment*

*Article 7*

*deleted*

#### **General principles**

*Contracting authorities and contracting entities shall treat economic operators equally and shall act in a transparent and proportionate way. The design of the concession award procedure shall not be made with the objective of excluding it from the scope of this Directive or of artificially narrowing competition.*

Or. en

## Amendment 60

EPP, S&D, ALDE, ECR

Compromise amendment replacing AM 69 Juvin, AM 487 Busoi, AM 488 Vergnaud, AM 490 Salvini, Am. 75/510 Juvin; Am 509 Correia de Campos, Bastos, also covers AM 506 de Jong, AM 70 Juvin, AM 493 Rühle, AM 71 Juvin, AM 72 Juvin, AM 494-495-496-497 Rühle, AM 73 Juvin, AM 500 Rühle, AM 501 Schwab, Schnieber-Jastram, Mayer, Chatzimarkakis, Am. 74 Juvin, AM 503 Rühle, AM 504 Tarabella, AM 505 Rochefort, AM 532 Tarabella, Am. 511 Rühle, AM 512 Weisgerber, Schwab, Collin-Langen, Verheyen, Mayer, AM 513 Westphal, AM 514 Simon, AM 527 Gebhardt, AM 507 Simon, AM 519 Rühle, AM 520 Weisgerber, Schwab, Collin-Langen, Verheyen, Mayer, AM 523 Gebhardt, AM 521 Kuhn, AM 77-78-79 Juvin, Am. 80 Juvin, AM 531 Rühle, Am. 75/510 Juvin; Am 509 Correia de Campos, Bastos, AM 506 de Jong, AM 81 Juvin  
Proposal for a directive  
Article 8

*Text proposed by the Commission*

### Article 8

Exclusions applicable to concessions awarded by contracting authorities and contracting entities

1. This Directive shall not apply to services concessions awarded ***by a contracting authority or by a contracting entity*** to an economic operator ***which is a contracting entity or an association of thereof***, on the basis of an exclusive right that ***economic operator*** enjoys pursuant to applicable and published national law, regulation or administrative ***provision***, and which has been granted in accordance with the Treaty and Union sectoral legislation ***concerning the management of networks infrastructure related to the activities set out in annex III***.

*Amendment*

### Article 8

Exclusions applicable to concessions awarded by contracting authorities and contracting entities

1. This Directive shall not apply to services concessions ***for an activity set out in Annex III, including those services concessions concerning the management of network infrastructure related to such an activity, where such concessions are*** awarded to an economic operator on the basis of an exclusive right that ***the latter*** enjoys pursuant to applicable and published national law, regulation or administrative ***provisions***, and which has been granted in accordance with the Treaty and Union sectoral legislation.

***By way of derogation from the first subparagraph, where sectoral legislation referred to in the first subparagraph does not provide for sector specific transparency obligations, the requirements of Article 27(1) and (3) shall apply.***

***Where a Member State grants an exclusive right to an economic operator for the exercise of one of the activities set***

*out in Annex III, it shall inform the Commission thereof within one month after the award of the exclusive right.*

**2. By way of derogation from paragraph 1 of this Article, where sectoral legislation referred to in paragraph 1 of this Article does not provide for sector specific transparency obligations, the requirements of Article 27 (1) and (3) shall apply.**

3. This Directive shall not apply to concessions which ***the contracting authority or a contracting entity*** is obliged to award or organise in accordance with ***procurement*** procedures set out in:

- (a) an international agreement concluded in conformity with the Treaty between a Member State and one or more third countries and covering works, ***supplies*** or services intended for the joint implementation or exploitation of a project by the signatory States;
- (b) a concluded international agreement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;
- (c) the particular procedure of an international organisation.
- (d) where the concessions are fully financed by an international organisation or international financing institution.

***All agreements referred to in point (a) of the first subparagraph shall be communicated to the Commission, which may consult the Advisory Committee for***

***2a. This Directive shall not apply to concessions for air transport services based on the granting of an operating licence within the meaning of Regulation (EC) No 1008/2008 of the European Parliament and of the Council<sup>1</sup> or for public passenger transport services within the meaning of Regulation (EC) No 1370/2007 of the European Parliament and of the Council.***

3. This Directive shall not apply to concessions which ***the grantor*** is obliged to award or organise in accordance with procedures ***for the award of services concession contracts*** set out in:

- (a) an international agreement concluded in conformity with the Treaty between a Member State and one or more third countries and covering works or services intended for the joint implementation or exploitation of a project by the signatory States;
- (b) a concluded international agreement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;
- (c) the particular procedure of an international organisation.
- (d) where the concessions are fully financed by an international organisation or international financing institution.

***Public Contracts referred to in Article 48.***

***For the purposes of point (d) of the first subparagraph, where a concession is co-financed for a considerable part by an international organisation or international financing institution the parties decide on applicable concession award procedures which shall be in conformity with the provisions of the Treaty on the Functioning of the European Union.***

4. Subject to Article 346 of the Treaty, this Directive shall ***not apply to the awarding of concessions in the fields of defence and security to the extent that the protection of the essential security interests of a Member State cannot be guaranteed by the rules provided for in this Directive.***

4. Subject to Article 346 of the Treaty ***on the Functioning of the European Union***, this Directive shall ***apply to the awarding of concessions in the fields of defence and security, with the exception of the following contracts:***

***(a) concessions for which the application of this Directive would oblige a Member State to supply information the disclosure of which it considers contrary to the essential interests of its security, or the procurement and performance of the concession must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in a Member State where the Member State has determined that the essential interests concerned cannot be guaranteed by less intrusive measures, for instance such as referred to in paragraph 4a;***

***(b) concessions awarded in the framework of a cooperative programme referred to in Article 13(c) of Directive 2009/81/EC;***

***(c) contracts awarded by a government to another government relating to works and services directly linked to military equipment or sensitive equipment, or works and services specifically for military purposes, or sensitive works and sensitive services;***

***(d) concessions awarded in a third country, carried out when forces are deployed outside the territory of the Union***

*where operational needs require them to be concluded with economic operators located in the area of operations.*

*4a. This Directive shall not apply to concessions not otherwise exempted under paragraph 4 to the extent that the protection of the essential security interests of a Member State cannot be guaranteed by less intrusive measures, for instance by imposing requirements aimed at protecting the confidential nature of information which the grantor makes available in a concession award procedure as provided for in this Directive.*

5. This Directive shall not apply to service concessions for:

(a) the acquisition *or* rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; ***however financial service concessions awarded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;***

(b) the acquisition, development, production or co-production of programme material ***intended for broadcasting, defined as transmission and distribution using any form of electronic network, that are awarded by broadcasters, nor to concessions for broadcasting time, that are awarded to broadcasters;***

(c) arbitration and conciliation services;

(d) 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, central bank services and ***operations*** conducted with the European Financial Stability Facility

5. This Directive shall not apply to service concessions for:

(a) the acquisition, rental, ***or lease, by a contracting authority or contracting entity,*** by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;

(b) the acquisition, development, production or co-production of programme material ***and related preparatory services for media services that are provided by broadcasters, nor to concessions for broadcasting time that are awarded to broadcasters; media services being defined as including all transmission and distribution using any form of electronic network;***

(c) arbitration and conciliation services;

d) 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, central bank services and ***transactions*** conducted with the European Financial Stability Facility

(EFSF);

*(e) employment contracts;*

*(f) Air transport services based on the grant of an operating licence within the meaning of Regulation (EC) 1008/2008 of the European Parliament and of the Council;*

*(g) Public passenger transport services within the meaning of Regulation (EC) 1370/2007 of the European Parliament and of the Council.*

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

*(EFSF), as well as operations to raise money or capital for the contracting authority;*

*(ga) civil defense, civil protection, and danger prevention.*

*5a. This Directive shall not apply to service concessions for gambling activities involving a financial risk through investing a sum of money in games of chance (lotteries, betting), awarded to one or more bodies by one or more Member States on the basis of exclusive rights granted pursuant to applicable national laws, regulations or administrative provisions in accordance with the Treaties.*

*5b. This Directive shall not apply to concessions awarded by contracting entities for purposes other than the pursuit of their activities as described in Annex III 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.*

Or. en

**Amendment 61**  
**EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing **AM 84 Juvin, AM 538 Rühle Proposal for a directive**  
**Article 10**

*Text proposed by the Commission*

*Amendment*

**Article 10**

*deleted*

**Exclusions applicable to concessions awarded by contracting entities**

**1. This Directive shall not apply to concessions awarded by contracting entities for purposes other than the pursuit of their activities as described in Annex III 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.**

**2. Contracting entities shall notify the Commission or the national oversight body at their request of any activities which they regard as excluded. 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 62**

**EPP, S&D, ECR, ALDE**

Compromise amendment replacing 85-86-87-88-89-90 Juvin, 548 Rühle, 540 Gustafsson, 541-542 Busoi, 543-545 Rühle, 544-546 Verheyen, Collin-Langen, Weisgerber, Mayer, Schwab, 547 Verheyen, Collin-Langen, Weisgerber, Mayer **Proposal for a directive**  
**Article 11**

*Text proposed by the Commission*

*Amendment*

Article 11

Article 11

Concessions awarded to an affiliated undertaking

Concessions awarded to an affiliated undertaking

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

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

- (a) may be, directly or indirectly, subject to a dominant influence by the contracting entity *within the meaning of the second paragraph of Article 4 of this Directive*;
- (b) may exercise a dominant influence over the contracting entity;
- (c) in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.

3. Article 15 notwithstanding and provided that the conditions in *paragraph 4* are met, this Directive shall not apply to the following concessions:

- (a) concessions awarded by a contracting entity to an affiliated undertaking;
- (b) concessions awarded by a joint venture, formed exclusively by *a number of* contracting entities for the purpose of carrying out activities described in Annex III, to an undertaking which is affiliated

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

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

(b) *any undertaking finding itself to be in any of the following situations:*

- (i) *it* may be, directly or indirectly, subject to a dominant influence by the contracting entity
- (ii) *it* may exercise a dominant influence over the contracting entity;
- (iii) in common with the contracting entity, *it* is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.

***The notion of dominant influence is defined in the second subparagraph of Article 4(2).***

2. Article 15 notwithstanding and provided that the conditions *set out* in *paragraphs 1 and 3* are met, this Directive shall not apply to the following concessions:

- (a) concessions awarded by a contracting entity to an affiliated undertaking; *and*
- (b) concessions awarded by a joint venture, formed exclusively by *two or more* contracting entities for the purpose of carrying out activities described in Annex III, to an undertaking which is affiliated

with one of those contracting entities.

4. Paragraph 3 shall apply:

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

(b) works concessions 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***.

5. Where, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it shall be sufficient for that undertaking to show that the turnover referred to in points (a) or (b) of paragraph 4 is credible, particularly by means of business projections.

***6. Where more than one undertaking affiliated with the contracting entity provides the same or similar services, supplies or works, the above percentages referred to in paragraph 4 shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.***

with one of those contracting entities.

3. Paragraph 2 shall apply:

(a) to service concessions provided that at least 80 % of the average total turnover of the affiliated undertaking, ***taking into account all services provided by that undertaking over*** the preceding three years, derives from the provision of services to ***the contracting entity to which the undertaking is affiliated, or to the contracting entity which is itself subject to the dominant influence of another undertaking to which the undertaking granted the concession is affiliated***;

(b) to works concessions provided that at least 80 % of the average total turnover of the affiliated undertaking, ***taking into account all works carried out by that undertaking over*** the preceding three years derives from the provision of works to ***the contracting entity to which the undertaking is affiliated, or to the contracting entity which is itself subject to the dominant influence of another undertaking to which the undertaking granted the concession is affiliated***.

4. Where, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it shall be sufficient for that undertaking to show that the ***proportion of the average total*** turnover referred to in points (a) or (b) of paragraph 4 is credible, particularly by means of business projections.

Or. en

**Amendment 63**

**EPP, S&D, ALDE, ECR**

**Compromise amendment replacing AM 939, 941 Schwab Juvin Proposal for a directive  
Article 11 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 11a***

***Transitional provisions linked to  
Article 11***

***1. Service concessions for the purpose of pursuing the activity referred to in paragraph 3 of Annex III which, when this Directive enters into force, are operated by affiliated undertakings, as defined in Article 11, may be extended without the provisions of this Directive being applicable, provided that 100% of the total turnover of the affiliated undertaking with respect to services being the object of the contract and concerning the activity referred to in paragraph 3 of Annex III for the preceding three years derives from the provision of services to contracting entities with which it is affiliated. Where such concessions cover limited areas of neighbouring municipalities the total turnover of the affiliated undertaking shall be 90 %.***

***2. For the purpose of this Article the notion of affiliated undertaking shall also refer to any undertaking that may be, directly or indirectly subject to a dominant influence by contracting entities within the meaning of the second paragraph of Article 4 of this Directive.***

***3. The extensions of service concessions as referred to in paragraph 1 may take place within 3 years from the date referred to in paragraph 1 of Article 49. The resulting contracts shall be valid as long as the conditions set out paragraph 1 are met, and shall come to end, at the latest, by July 2020.***

**Amendment 64****EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing AM 549-553 RuhleProposal for a directive

**Article 12***Text proposed by the Commission**Amendment*

Article 12

COM proposal is the compromise text

Concessions awarded to a joint venture or to a contracting entity forming part of a joint venture

Article 15 notwithstanding, and provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least three years and that the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part thereof for at least the same period, this Directive shall not apply to concessions awarded by any of the following:

- (a) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Annex III, to one of these contracting entities, or
- (b) by a contracting entity to such a joint venture of which it forms part.

**Amendment 65****EPP, S&D, ALDE, Greens, ECR**

Compromise amendment replacing AM 91-92 Juvin, 555-557 Rühle, AM 556-558

Weisgerber, VerheyenProposal for a directive

**Article 13***Text proposed by the Commission**Amendment*

Article 13

Article 13

Notification of information by contracting entities

Notification of information by contracting entities

**1. The contracting entities shall notify the Commission or the competent national authorities, at their request, of any activities which they regard as excluded pursuant to Article 8(5b). The Commission may periodically publish in the Official Journal of the European Union for information purposes, lists of the categories of activities which it deems 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.**

Contracting entities shall notify to the Commission or the national **oversight body**, at their request, the following information regarding the application of paragraphs **2 and 3** of Article 11 and of Article 12.

- (a) the names of the undertakings or joint ventures concerned,
- (b) the nature and value of the concessions involved,
- (c) proof deemed necessary by the Commission or the national **oversight body** that the relationship between the undertaking or joint venture to which the concessions are awarded and the contracting entity complies with the requirements of Articles 11 or 12.

**2. Contracting entities shall notify to the Commission or the *competent* national authorities at their request, the following information regarding the application of paragraphs *-1 and 1(b)* of Article 11 and of Article 12:**

- (a) the names of the undertakings or joint ventures concerned,
- (b) the nature and value of the concessions involved,
- (c) proof deemed necessary by the Commission or the **competent** national **authorities** that the relationship between the undertaking or joint venture to which the concessions are awarded and the contracting entity complies with the requirements of Articles 11 or 12.

Or. en

## **Amendment 66 EPP, S&D**

Compromise amendment replacing **AM 561 Rühle, AM 562 Tarabella** Proposal for a **directive**  
**Article 15**

*Text proposed by the Commission*

Article 15  
**Relations** between public authorities

*Amendment*

Article 15  
**Cooperation** between public authorities

1. A concession awarded by a contracting authority or a contracting entity as referred to in *paragraph 1 subparagraph 1 of Article 4* to another legal person shall fall outside the scope of this Directive where the following cumulative conditions are fulfilled:

a) such an authority or entity exercises over the legal person concerned a control which is similar to that which it exercises over its own departments

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

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

*A contracting authority or a contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4 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.*

2. Paragraph 1 also applies where a controlled entity which is a contracting authority or contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4 awards a concession 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**

1. A concession awarded by a contracting authority or a contracting entity as referred to in *point 1 of Article 4(1)* to another legal person shall fall outside the scope of this Directive where the following cumulative conditions are fulfilled:

a) such an authority or entity exercises over the legal person concerned a control which is similar to that which it exercises over its own departments; ***i.e. it exerts a decisive influence over both strategic objectives and significant decisions of the controlled legal person;***

b) at least [**80 %**] / [90 %] of the ***average total turnover*** of that legal person ***is*** carried out for the controlling contracting authority or entity or for other legal persons controlled by that contracting authority;

c) there is no private participation in the controlled legal person, ***with the exception of forms of private participation enforced by law, in conformity with the Treaties, which do not exert any influence on the decisions of the controlling contracting authority or entity***

2. Paragraph 1 also applies where a controlled entity, ***or entities***, which is a contracting authority or contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4 awards a concession to its controlling entity ***or entities***, or to another legal person controlled by the same contracting authority ***or contracting entity***, provided that there is no private

concession.

3. A contracting authority or a contracting entity as referred to in *paragraph 1 subparagraph 1 of Article 4*, which does not exercise over a legal person control within the meaning of paragraph 1, may nevertheless award a concession **without applying the provisions of the current Directive** to a legal person which it controls jointly with other such contracting authorities or entities, where the following conditions are fulfilled:

- a) the contracting authorities or entities as referred to in *paragraph 1 subparagraph 1 of Article 4* exercise jointly over the legal person a control which is similar to that which it exercises over its own departments.
- b) at least 90% of **the activities** of that legal person are carried out for the controlling contracting **authorities** or **entities** as referred to in paragraph 1 subparagraph 1 of Article 4 or other legal persons controlled by the same contracting authority or entity;
- c) there is no private participation in the controlled legal person.

For the purposes of point (a), contracting authorities or entities as referred to in *paragraph 1 subparagraph 1 of Article 4* shall be deemed to jointly control a legal person where the following cumulative conditions are fulfilled:

- (a) the decision-making bodies of the

participation in the legal person being awarded the concession **with the exception of legally enforced forms of private participation, in conformity with the Treaties, which do not exert any influence on the decisions of the controlling contracting authority or entity**.

3. A contracting authority or a contracting entity as referred to in *point 1 of Article 4(1)*, which does not exercise over a legal person control within the meaning of **point (a) of paragraph 1 of this Article**, may nevertheless award a concession **outside the scope of this Directive** to a legal person which it controls jointly with other such contracting authorities or entities **within the meaning of point 1 of Article 4(1)**, where the following conditions are fulfilled:

- (a) the contracting authorities or entities as referred to in *point 1 of Article 4(1)* exercise jointly over the legal person a control which is similar to that which it exercises over its own departments;
- (b) at least [80 %] / [90 %] of the **average total turnover** of that legal person **is** carried out for the controlling contracting **authority** or **entity** as referred to in paragraph 1, subparagraph 1 of Article 4 or other legal persons controlled by the same contracting authority;
- (c) there is no private participation in the controlled legal person, **with the exception of forms of private participation enforced by law, in conformity with the Treaties, which do not exert any influence on the decisions of the controlling contracting authority or entity**.

For the purposes of point (a), contracting authorities or entities as referred to in *point 1 of Article 4(1)* shall be deemed to jointly control a legal person where the following cumulative conditions are fulfilled:

- (a) the decision-making bodies of the

controlled legal person are composed of representatives of **all** participating contracting authorities or contracting entities as referred to in *paragraph 1 subparagraph 1* of *Article 4*;

(b) those contracting authorities or contracting entities as referred to in *paragraph 1 subparagraph 1* of *Article 4* 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.**

4. An agreement concluded between two or more contracting authorities or contracting entities as referred to in *paragraph 1 subparagraph 1* of *Article 4* shall **not be deemed to be a concession within the meaning of point 1 of paragraph 1 of Article 2** of this Directive, where the following cumulative conditions are fulfilled:

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

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

(c) the participating contracting authorities or entities shall do not perform on the open market more than 10% in terms of turnover of the activities which

controlled legal person are composed of representatives of **the** participating contracting authorities or contracting entities as referred to in *point 1* of *Article 4(1)*; **while one representative may represent one or many participating contracting authorities;**

(b) those contracting authorities or contracting entities as referred to in *point 1* of *Article 4(1)* 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 **in conflict with** that of the public authorities affiliated to it;

4. An agreement concluded between two or more contracting authorities or contracting entities as referred to in *point 1* of *Article 4(1)* shall **fall outside the scope** of this Directive, where the following cumulative conditions are fulfilled:

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

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

(c) the participating contracting authorities or entities shall do not perform on the open market more than [10 %] / **[20 %]** in terms of turnover of the activities

are relevant in the context of the agreement;

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

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

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

***The exceptions provided for in this Article shall cease to apply from the moment any private participation takes place, with the effect that ongoing concessions need to be opened to competition through regular concession award procedures.***

which are relevant in the context of the agreement;

(e) there is no private participation in any of the contracting authorities or entities involved, ***with the exception of forms of private participation enforced by law, in conformity with the Treaties, which do not exert any influence on the decisions of the controlling contracting authority or entity.***

***4a. This Directive shall not apply to agreements, decisions or other legal instruments, concluded between several contracting authorities or contracting entities as defined in Article 4(1)(1), or groupings of contracting authorities or contracting entities as defined in Article 4(1)(1) which provide, in the context of the internal institutional and administrative organisation of a Member State and pursuant to applicable national law or regulation, for the transfer of powers between the parties with a view to the performance of a public service task.***

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

Or. en

**Amendment 67**  
**S&D, ALDE, EPP, Greens, ECR**

Compromise amendment replacing AM 106, 684 Juvin, Le Grip682 Busoi, AM 680 Rühle, 681 Comi

**Proposal for a directive**  
**Article 16**

*Text proposed by the Commission*

Article 16

Duration of the concession

The duration of *the concession* shall be limited *to the time estimated to be necessary for the concessionaire to recoup the investments made in operating the works or services together with a reasonable return on invested capital.*

*Amendment*

Article 16

Duration of the concession

*1. The duration of concessions shall be limited. The grantor shall estimate the duration on the basis of the works or services requested.*

*When the cost of investments must be met by the concessionaire, the duration of a concession shall reflect the nature and amount of the investments involved, both initial and further investments during the life of a concession, and may not, under these circumstances, exceed the normal amortisation period.*

*The duration of the concession, whether or not the concessionaire is required to make investments, shall also reflect the amount of time deemed necessary to meet the objectives set in the contract, in particular as regards the provision of the service in question.*

*2. The normal amortisation period shall correspond to the time that concessionaires could reasonably be expected to take to recoup their investment costs and secure a reasonable return on invested capital.*

Or. en

**Amendment 68**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing AM 107 Juvin, AM 688 Rühle, AM 689 Weiler, AM 690 Harbour, Kožušnik

**Proposal for a directive**  
**Article 17**

*Text proposed by the Commission*

Article 17

Social and other specific services

Concessions for social and other specific services listed in Annex X ***falling within the scope*** of this Directive shall be subject to the ***obligation of paragraph 3 of Art. 26 and of paragraph 1 of Article 27.***

*Amendment*

Article 17

Social and other specific services

Concessions for social and other specific services listed in Annex X of this Directive shall be subject ***only*** to the ***obligations of Article 27(1) and (3).***

Or. en

**Amendment 69**  
**EPP, S&D, ALDE, ECR, Greens**

**Proposal for a directive**  
**Article 21**

*Text proposed by the Commission*

Article 21

Research and development services

1. This Directive shall apply to service concessions for research and development services with CPV reference numbers 73000000-2 to 73436000-7, except 73200000-4, 73210000-7 or 73220000-0, provided that the following conditions are both fulfilled:

- (a) the benefits accrue exclusively to the contracting authority or contracting entity for use in the conduct of its own affairs,
- (b) the service provided is wholly remunerated by the contracting authority or contracting entity

2. This Directive shall not apply to public service concessions for research and development services with CPV reference numbers 73000000-2 to 73436000-7,

*Amendment*

Compromise is the COM text

except 73200000-4, 73210000-7 or 73220000-0 where one of the above conditions is not met.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 46 concerning the reference numbers of this Article, whenever changes in the CPV nomenclature must be reflected in this Directive and they do not imply a modification of the scope of this Directive.

Or. en

#### **Amendment 70**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing **Am. 119 Juvin, Am. 120 Juvin, AM 716 Gustafsson, AM 717 Weidenholzer Am. 122 Juvin, AM 719 Panzeri Am. 121 Juvin Am. 123 Juvin Am. 720 Rühle, 721 Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer, Andreas Schwab Am. 124 Juvin**

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

#### **Article 22**

*Text proposed by the Commission*

*Amendment*

Article 22

Article 22

Economic operators

Economic operators

***1. The legal personality of the economic operators shall not constitute a valid ground for rejection in the framework of a concession contract award procedure.***

***1. Economic operators that, under the law of the Member State in which they are established, are entitled to provide the relevant service, shall not be rejected solely on the ground that, under the law of the Member State in which the concession is awarded, they would be required to be either natural or legal persons.***

2. However, legal persons may be required to indicate in the ***tender or the application***, the names and relevant professional qualifications of the staff to be responsible for the performance of the concession in

However, legal persons may be required to indicate in the ***application or the tender***, the names and relevant professional qualifications of the staff to be responsible for the performance of the concession in

question.

3. Groups of economic operators may **submit tenders or** put themselves forward as candidates.

**4. Contracting authorities and contracting entities shall not establish specific conditions for participation of such groups in concession award procedures which are not imposed on individual candidates. In order to submit an application or a tender, these groups shall not be required by the contracting authorities or contracting entities to assume a specific legal form.**

**Contracting authorities and contracting entities may establish specific conditions for the performance of the concession by a group, provided that those conditions are justified by objective reasons and proportionate. Those conditions may require a group to assume a specific legal form once it has been awarded the contract, to the extent that this change is necessary for the satisfactory performance of the concession.**

question.

2. Groups of economic operators, **including consortia of undertakings**, may put themselves forward as candidates **or submit tenders. Their participation in a concession award procedure may not be subject to additional conditions that are not imposed on individual candidates.**

**3. Grantors may establish specific conditions for the performance of the concession by a group of economic operators, provided that those conditions are justified by objective reasons and proportionate.**

Or. en

#### **Amendment 71**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing AM 125, 126 Juvin, AM 722 Panzeri, AM 723 Weiler, AM 724 Gustafsson de Jong, AM 726 Panzeri

#### **Proposal for a directive Article 24**

*Text proposed by the Commission*

Article 24

Confidentiality

1. Unless otherwise provided in this Directive or in the national law concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 27 and 35 of this Directive, the **contracting authority** shall not disclose information forwarded to it by economic operators which they have designated as confidential, **including, but not limited to**, technical or trade secrets **and the confidential aspects of tenders**.

2. **Contracting authorities or contracting entities** may impose on economic operators requirements aimed at protecting the confidential nature of information which **the contracting authorities or contracting entities make** available throughout the concession award procedure.

*Amendment*

Article 24

Confidentiality

1. Unless otherwise provided in this Directive or in the national law concerning access to information, and without prejudice to the obligations relating to the advertising of awarded **concession** contracts and to the information to candidates and tenderers set out in Articles 27 and 35 of this Directive, the **grantor** shall not disclose information forwarded to it by economic operators which they have designated as confidential, **in particular** technical or trade secrets.

***This Article shall not prevent public disclosure of non-confidential parts of concluded contracts, including any subsequent changes.***

2. **The grantor** may impose on economic operators requirements aimed at protecting the confidential nature of information which **it makes** available throughout the concession award procedure.

Or. en

**Amendment 72**

**EPP, S&D, ALDE, ECR, Greens**

**Compromise amendment replacing AM 127 Juvin, Am. 128 Juvin, Am. 129 Juvin, Am. 130 Juvin, Am. 131 Juvin, Am. 132 Juvin, 728 Weidenholzer Am. 133 Juvin, 729 Weidenholzer 730 Weidenholzer Am. 134 Juvin, Am. 135 Juvin, Am. 136 Juvin, Am. 137 Juvin, 727 Rühle**

**Proposal for a directive**

**Article 25**

*Text proposed by the Commission*

Article 25

*Amendment*

Article 25

## Rules applicable to communication

1. Except where use of electronic means is mandatory pursuant to Articles 28 (2) and 30 of this Directive ***contracting authorities and contracting entities*** may choose between the following means of communication for all communication and information exchange:

- (a) electronic means ***in accordance with paragraphs 3, 4 and 5;***
- (b) post or fax;
- (c) telephone ***in the cases and circumstances referred to in paragraph 6, or***

(d) a combination of those means.

Member States may make mandatory the use of electronic means of communication for concessions, going beyond the obligations established in Articles 28 (2) and 30 of this Directive.

2. The means of communication chosen must be generally available and not restrict economic operators' access to the concession award procedure.

In all communication, exchange and storage of information, ***contracting authorities and contracting entities*** shall ensure that the integrity of data and the confidentiality of applications are preserved. They shall examine the content of ***tenders and*** applications only after the time limit set for submitting them has expired.

***3. The tools to be used for communicating by electronic means, as well as their technical characteristics, shall be non-discriminatory, generally available and interoperable with the information and***

## Rules applicable to communication

1. Except where use of electronic means is mandatory pursuant to Articles 28 (2) and 30 of this Directive ***the grantor*** may choose between the following means of communication for all communication and information exchange:

- (a) electronic means;
- (b) post or fax;
- (c) telephone, ***subject to transmission of written confirmation;***

***(ca) hand delivery certified by an acknowledgement of receipt;***

(d) a combination of those means.

Member States may make mandatory the use of electronic means of communication for concessions, going beyond the obligations established in Articles 28 (2) and 30 of this Directive.

The means of communication chosen must be generally available ***and non-discriminatory***, and not restrict economic operators' access to the concession award procedure. ***In the case of electronic means, they must also be interoperable with the information and communication technology products in general use.***

In all communication, exchange and storage of information, ***the grantor*** shall ensure that the integrity of data and the confidentiality of applications ***and tenders*** are preserved. They shall examine the content of applications ***and tenders*** only after the time limit set for submitting them has expired.

*communication technology products in general use and shall not restrict economic operators' access to the concession award procedure. The technical details and characteristics of the devices for the electronic receipts to be deemed in compliance with the first subparagraph of this paragraph are set out in Annex XII*

*The Commission shall be empowered to adopt delegated acts in accordance with Article 46 to amend the technical details and characteristics set out in Annex XII due to technical developments or administrative reasons.*

*To ensure the interoperability of technical formats as well as of process and messaging standards, especially in a cross-border context, the Commission shall be empowered to adopt delegated acts in accordance with Article 46 to establish the mandatory use of specific technical standards, at least with regard to the use of e-submission, electronic catalogues and means for electronic authentication.*

*Contracting authorities and contracting entities may, where necessary, require the use of tools which are not generally available, provided that they offer alternative means of access.*

*Contracting authorities and contracting entities shall be deemed to offer suitable alternative means of access in any of the following situations:*

*(a) They offer unrestricted and full direct access by electronic means to these tools from the date of publication of the notice in accordance with Annex IX or from the date when the invitation to confirm interest is sent; the text of the notice or the invitation to confirm interest shall specify the internet address at which these tools are accessible;*

*(b) ensure that tenderers established in other Member States than the contracting*

*authority's may access the concession award procedure through the use of provisional tokens made available online at no extra cost;*

*(c) support an alternative channel for electronic submission of tenders.*

*5. The following rules shall apply to devices for the electronic transmission and receipt of tenders and for the electronic transmission and receipt of applications:*

*(a) information on specifications for the electronic submission of tenders and requests to participate, including encryption and time-stamping, shall be available to interested parties;*

*(b) devices, methods for authentication and electronic signatures shall comply with the requirements of Annex XII;*

*(c) contracting authorities and contracting entities shall specify the level of security required for the electronic means of communication in the various stages of the concession award procedure followed. The level shall be proportionate to the risks attached.*

*(d) where advanced Electronic Signatures as defined by Directive 1999/93/EC<sup>1</sup> of the European Parliament and of the Council are required, contracting authorities and contracting entities shall accept signatures supported by a qualified electronic certificate referred to in the Trusted List provided for in the European Commission Decision 2009/767/EC<sup>2</sup>, created with or without a secure signature creation device, subject to compliance with the following conditions:*

*(i) they must establish the required advanced signature format on the basis of formats established in Commission Decision 2011/130/EU<sup>3</sup> and put in place*

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<sup>1</sup> OJ L 13, 19.1.2000, p. 12.

<sup>2</sup> OJ L 274, 20.10.2009, p. 36.

<sup>3</sup> OJ L 53, 26.2.2011, p. 66.

*necessary measures to be able to process these formats technically;*

*(ii) where a tender is signed with the support of a qualified certificate that is included in the Trusted list, they must not apply additional requirements that may hinder the use of those signatures by tenderers.*

*6. The following rules shall apply to the transmission of applications to participate:*

*(a) applications to participate in a procedure for the award of a concession may be made in writing or by telephone; in the latter case, a written confirmation must be sent before expiry of the time limit set for their receipt;*

*(b) contracting authorities or contracting entities may require that applications for participation made by fax must be confirmed by post or by electronic means, where this is necessary for the purposes of legal proof.*

*For the purposes of point (b), the contracting authority or entity shall indicate in the concession notice or in the invitation to confirm interest that it requires applications to participate made by fax to be confirmed by post or by electronic means and the time limit for sending such confirmation*

*7. Member States shall ensure that, at the latest 5 years after the date provided for in Article 49 (1), all procedures for the award of concessions under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.*

*This obligation shall not apply where the use of electronic means would require specialised tools or file formats that are not generally available in all the Member States within the meaning of paragraph 3. It is the responsibility of the contracting authorities or contracting entities using*

*other means of communication for submission of tenders to demonstrate in the concession documents that the use of electronic means, due to the particular nature of the information to be exchanged with the economic operators, would require specialised tools or file formats that are not generally available in all the Member States.*

*Contracting authorities and contracting entities shall be deemed to have legitimate reasons not to request electronic means of communication in the submission process in the following cases:*

*(a) the description of the technical specifications, due to the specialised nature of the concession award, cannot be rendered using file formats that are generally supported by commonly used applications;*

*(b) the applications supporting file formats that are suitable for the description of the technical specifications are under a proprietary licensing schema and cannot be made available for downloading or remote use by the contracting authority;*

*(c) the applications supporting file formats that are suitable for the description of the technical specifications use file formats that cannot be handled by any other open or downloadable applications.*

*8. Contracting authorities may use the data processed electronically for public procurement procedures in order to prevent, detect and correct errors occurring at each stage by developing appropriate tools.*

Or. en

**Amendment 73**  
**EPP, S&D, ALDE, ECR, Greens**  
Compromise amendment

**Proposal for a directive**  
**Title II – Title**

*Text proposed by the Commission*

*Amendment*

TITLE II  
RULES ON THE AWARD OF  
CONCESSIONS

TITLE II  
RULES ON THE AWARD OF  
CONCESSIONS: **GENERAL  
PRINCIPLES, TRANSPARENCY AND  
PROCEDURAL GUARANTEES**

**Amendment 74**  
**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing AM 68, 139, 166 Juvin, AM 731 Jaakonsaari, AM 732 Vergnaud, 785 Panzeri, AM 386 Panzeri, 394 Gebhardt, 759 Panzeri, 482 Gustafsson, 784 Rühle

**Proposal for a directive**  
**Chapter -I – Articles -26 and -26 a (new)**

*Text proposed by the Commission*

*Amendment*

**CHAPTER -I**

**General principles**

**Article -26**

***Freedom of the grantor to organise the procedure***

***The grantor shall have the freedom to organise the procedure leading to the choice of concessionaire subject to compliance with the provisions of this Directive, the only two mandatory stages being the publication of a concession notice at the beginning of the procedure, except in the cases provided for in Article 17 and Article 26(5), and the publication of an award notice at the end of the procedure.***

***Intermediate stages may be provided for during the award procedure by the grantor, such as the sending of an invitation to submit an offer to the candidates who have responded where appropriate to the concession notice.***

**Article -26a**

## ***General principles***

***1. Concessions shall be awarded on the basis of the criteria set out by the grantor in accordance with Article 38a provided that the following cumulative conditions are fulfilled:***

***(a) the tender complies with the requirements, conditions and criteria set out in the concession notice or in the invitation to submit a tender and in the concession documents;***

***(b) the tender comes from a tenderer who:***

***(i) is not excluded from participating in the award procedure in accordance with Article 36(5) and (7), and subject to Article 36(8), and***

***(ii) meets the selection criteria set out by the grantor in accordance with Article 36(2) and (3);***

***2. During the concession award procedure, the grantor shall treat economic operators equally and shall act in a transparent and proportionate way. In particular, it shall not provide information in a discriminatory manner which may give some candidates or tenderers an advantage over others. The design of the concession award procedure shall not be made with the objective of excluding it from the scope of this Directive or of artificially narrowing competition.***

***3. Member States shall ensure that economic operators comply with the environmental, social and labour law provisions which apply at the place where the works are executed or services provided, as set out in international conventions listed in Annex Xa, Union and national law as well as collective agreements concluded in accordance with national law and practices which respect Union law.***

***4. The grantor shall not award a***

*concession contract to the tenderer submitting the best tender where it has been established, based on clear and sufficient evidence, that the tenderer does not comply with the environmental, social and labour law provisions referred to in paragraph 3 of this Article.*

*5. The Commission shall be empowered to adopt delegated acts in accordance with Article 46 to amend the list in Annex Xa, where necessary due to the conclusion of new international agreements or modification of existing international agreements.*

Or. en

## Amendment 75

EPP, S&D, ALDE, ECR, Greens

Compromise amendment replacing Am. 140 Juvin, Am. 141 Juvin, Am. 142 Juvin, 735 Rühle, Am. 143 Juvin, 737 Rühle, 738 Rühle, Am. 144 Juvin, Am. 145 Juvin Am. 754 Juvin, Am. 755 Juvin, 753 Rühle, Am. 756 Juvin, Am. 757 Juvin, Am. 758 Juvin,

## Proposal for a directive Article 26

*Text proposed by the Commission*

*Amendment*

Article 26

Article 26

Concession notices

Concession notices

1. ***Contracting authorities and contracting entities*** wishing to award a concession shall make known ***their*** intention by means of a concession notice.

1. ***A grantor*** wishing to award a concession shall make known ***its*** intention by means of a concession notice ***in accordance with the procedures laid down in Article 28. The concession notice shall contain the information referred to in Annex IV and, where appropriate, any other information deemed useful by the grantor.***

2. ***Concession notices shall contain the information referred to in part of Annex IV and, where appropriate, any other information deemed useful by the contracting authority or entity, in accordance with the format of standard***

*forms.*

**3. Contracting authorities and contracting entities wishing to award a concession for social and other specific services shall make known their intention of planned concession award through the publication of a prior information notice as soon as possible after the beginning of the budgetary year. Those notices shall contain the information set out in Annex XIII.**

**4. The Commission shall establish those standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 48.**

5. By way of derogation from paragraph 1, the **contracting authorities and entities** shall not be required to publish a concession notice **in any of the following cases:**

**(a) where no tenders or no suitable tenders or no applications have been submitted in response to a concession procedure, provided that the initial conditions of the concession contract are not substantially altered and on condition that a report is sent to the Commission or to the national oversight body designated pursuant to Article 84 of Directive [replacing Directive 2004/18/EC] where they so request;**

**(b) where the works or services can be supplied only by a particular economic operator due to the absence of competition for technical reasons, the protection of patents, copyrights or other intellectual property rights or the protection of other**

5. By way of derogation from paragraph 1, the **grantor** shall not be required to publish a concession notice where the works or services can be supplied only by a particular economic operator, due to **the existence of a special or exclusive right**, the absence of competition for technical reasons, **or** the protection of patents, copyrights or other intellectual property rights and where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the concession award.

*exclusive rights* and where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the concession award;

*(c) for new works or services consisting in the repetition of similar works or services entrusted to the economic operator to which the same contracting authorities or contracting entities awarded an original concession subject to the obligation referred to in paragraph 1, provided that such works or services are in conformity with a basic project for which the original concession was awarded. The basic project shall mention the extent of possible additional works or services and the conditions under which they will be awarded.*

*As soon as the first project is put up for tender the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authorities or contracting entities when they apply the provisions of Article 5*

*5a. By way of derogation from paragraph 1, the grantor shall not be required to publish a new concession notice in any of the following cases:*

*(a) where no applications or no tenders or no suitable tenders have been submitted in response to an initial concession procedure, provided that the initial conditions of the concession contract are not substantially altered and that a report is sent to the Commission or the competent national authorities where they so request;*

*(b) for new works or services consisting in the repetition of similar works or services entrusted to the original concessionaire to which the same grantor awarded an original concession subject to the obligation referred to in paragraph 1, provided that such works or services are in conformity with a basic project for*

*which the original concession was awarded. The basic project shall mention the extent of possible additional works or services and the conditions under which they will be awarded.*

*As soon as the first project is put up for tender the total estimated cost of subsequent works or services shall be taken into consideration by the grantor when it applies the provisions of Article 6.*

6. For the purposes of *point (a) of the first subparagraph*, a tender shall be considered not to be suitable where:

*- it is irregular or unacceptable, and*

*- it is completely irrelevant to the concession, being incapable of meeting the contracting authority or contracting entity's needs as specified in the concession documents.*

*Tenders shall be considered to be irregular, where they do not comply with the concession documents or where the prices offered are sheltered from normal competitive forces.*

*Tenders shall be considered to be unacceptable in any of the following cases:*

*(a) where they have been received late;*

*(b) they have been submitted by tenderers who do not have the requisite qualifications;*

*(c) their price exceeds the contracting authority or contracting entity's budget as determined prior to the launching of the concession award procedure and documented in writing;*

*(d) they have been found to be abnormally low*

6. For the purposes of *paragraph 5a, point (a)*, a tender shall be considered not to be suitable where *it is completely irrelevant to the concession, being incapable of meeting the grantor's needs as specified in the concession documents.*

Or. en

## Amendment 76

EPP, S&D, ALDE, ECR, Greens

Compromise amendment replacing Am. 147 Juvin, Am. 148 Juvin, AM 760 Rühle, Am. 149 Juvin

### Proposal for a directive

#### Article 27

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

#### Article 27

##### Concession award notices

1. Not later than 48 days after the award of a concession, **contracting authorities and contracting entities** shall send a concession award notice on the results of the concession award procedure.

**2. The obligation referred to in paragraph 1 shall also apply to those services concessions the estimated value of which, as calculated according to the method referred to in Article 6 (5), is equal to or higher than 2 500 000 EUR with the sole exception of social services and other specific services as referred to in Article 17.**

3. **Such** notices shall contain the information set out in Annex V or in relation to concessions for social services and other specific services the information set out in VI and be published in accordance with the provisions of Article 28

##### *Amendment*

#### Article 27

##### Concession award notices

1. Not later than 48 days after the award of a concession, **the grantor** shall **in accordance with the procedures laid down in Article 28** send a concession award notice on the results of the concession award procedure.

3.-**Concession award** notices shall contain the information set out in Annex V or in relation to concessions for social services and other specific services the information set out in VI and be published in accordance with the provisions of Article 28.

Or. en

## Amendment 77

EPP, S&D, ALDE, ECR, Greens

Compromise amendment replacing Am. 150, 151, 152, 153, 154 Juvin AM 762 Rühle and 763 Schwab Mayer

### Proposal for a directive

#### Article 28

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Article 28

Form and manner of publication of notices

1. **The** notices referred to in **Articles 26 and 27 and** the second subparagraph of **Article 43(6)** shall include the information set out Annexes IV to VI and in the format of standard forms, including standard forms for corrigenda.

The Commission shall establish those standard forms by implementing acts to be adopted in accordance with the advisory procedure referred to in Article 48.

2. The notices shall be drawn up, transmitted by electronic means to the Commission and published in accordance with Annex IX. Notices shall be published not later than five days after they are sent. The costs of publication of the notices by the Commission shall be borne by the Union.

3. **The** notices **referred to in Article 26** shall be published in full in an official language of the Union as chosen by **the contracting authority or contracting entity**. That language version shall constitute the sole authentic text. A summary of the important elements of each notice shall be published in the other official languages.

Article 28

Form and manner of publication of notices

1. **Concession** notices **and concession award notices and the notice** referred to in the second subparagraph of **Article 42(6)** shall include the information set out Annexes IV to VI and in the format of standard forms, including standard forms for corrigenda.

The Commission shall establish those standard forms by implementing acts to be adopted in accordance with the advisory procedure referred to in Article 48.

2. The notices **referred to in paragraph 1** shall be drawn up, transmitted by electronic means to the Commission and published in accordance with Annex IX. **The Commission shall give the grantor confirmation of the receipt of the notice and of the publication of the information sent, indicating the date of that publication and constituting proof of publication.** Notices shall be published not later than five days after they are sent. The costs of publication of the notices by the Commission shall be borne by the Union.

3. **Concession** notices shall be published in full in an official language of the Union as chosen by the **grantor**. That language version shall constitute the sole authentic text. A summary of the important elements of each notice shall be published in the other official languages.

**3a. Concession notices and concession award notices shall not be sent for publication at national level before the date on which they are dispatched to the Commission. Concession notices and concession award notices published at national level shall not contain information other than that contained in**

*the notices dispatched to the Commission but shall indicate the date of dispatch of the notice to the Commission.*

**4. Contracting authorities and contracting entities shall be able to supply proof of the dates on which notices are dispatched.**

*The Commission shall give the contracting authority or contracting entity confirmation of the receipt of the notice and of the publication of the information sent, indicating the date of that publication. Such confirmation shall constitute proof of publication.*

**5. Contracting authorities and contracting entities may publish notices for concessions that are not subject to the publication requirements laid down in this Directive provided those notices are sent to the Commission by electronic means in accordance with the format and procedures for transmission indicated in Annex IX.**

Or. en

**Amendment 78**  
**EPP, S&D, ALDE, ECR, Greens**  
Compromise amendment replacing AM

**Proposal for a directive**  
**Article 29**

*Text proposed by the Commission*

*Amendment*

**Article 29**

**deleted**

**Publication at national level**

**1. Notices referred to in Articles 26 and 27 and the information contained therein shall not be published at national level before the publication pursuant to Article 28.**

**2. Notices published at national level shall not contain information other than that**

*contained in the notices dispatched to the Commission but shall indicate the date of dispatch of the notice to the Commission.*

Or. en

**Amendment 79**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing AM 157-158 Juvin

**Proposal for a directive**

**Article 30**

*Text proposed by the Commission*

*Amendment*

Article 30

Article 30

Electronic availability of concession documents

Electronic availability of concession documents

1. **Contracting authorities and contracting entities** shall offer unrestricted and full direct access free of charge by electronic means to the concession documents from the date of publication of the notice **in accordance with Article 28** or the date on which the invitation to submit tenders is sent. The text of the notice or of these invitations shall specify the internet address at which this documentation is accessible.

**The grantor** shall offer unrestricted and full direct access free of charge by electronic means to the concession documents from the date of publication of the **concession** notice or the date on which the invitation to submit tenders is sent. The text of the **concession** notice or of these invitations shall specify the internet address at which this documentation is accessible.

2. Provided that it has been requested in good time, the **contracting authorities and contracting entities or competent departments** shall supply additional information relating to the concession documents not later than six days before the deadline fixed for the receipt of tenders.

2. Provided that it has been requested in good time, the **grantor** shall supply additional information relating to the concession documents not later than six days before the deadline fixed for the receipt of tenders.

Or. en

**Amendment 80**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing AM 159 Juvin, AM 768 Panzeri. (Also linked to 811 and 812 Rühle)

**Proposal for a directive**  
**Article 30 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 30a**

***Combating corruption and preventing conflicts of interest***

***Member States shall adopt rules combating fraud, favouritism and corruption and preventing conflicts of interest, aimed at ensuring the transparency of the award procedure and the equal treatment of all candidates and tenderers.***

***With regard to conflicts of interest the measures adopted shall not go beyond what is strictly necessary to prevent a potential conflict of interest or eliminate a conflict of interest that has been identified. In particular, they shall allow for the exclusion of a tenderer or candidate from the procedure only where the conflict of interests cannot be effectively remedied by other means.***

Or. en

**Amendment 81**  
**EPP, S&D, ALDE, ECR, Greens**  
**Compromise amendment replacing AM 160-161 Juvin**

**Proposal for a directive**  
**Title II – Chapter II – Section I**

*Text proposed by the Commission*

*Amendment*

**CHAPTER II**

***Conduct of the procedure***

***Section I***

***Joint concessions, time limits and technical specifications***

**CHAPTER II**

***Procedural guarantees***

Or. en

**Amendment 82**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing **Am. 162 Juvin, AM 769 Rühle**

**Proposal for a directive**

**Article 31**

*Text proposed by the Commission*

*Amendment*

*Article 31*

*deleted*

***Joint concessions between contracting authorities or contracting entities from different Member States***

***1. Without prejudice to Article 15, contracting authorities or contracting entities from different Member States may jointly award public concessions by using one of the means described in this Article.***

***2. Several contracting authorities or contracting entities from different Member States may jointly award a concession. In that case, the participating contracting authorities or contracting entities shall conclude an agreement that determines***

***(a) which national provisions shall apply to the concession award procedure.***

***(b) the internal organisation of the concession award procedure, including the management of the procedure, the sharing of responsibilities, the distribution of the works, supplies or services to be procured and the conclusion of concessions.***

***When determining the applicable national law in accordance with point (a), contracting authorities or contracting entities may choose the national provisions of any Member State in which at least one of the participating authorities is located.***

***3. Where several contracting authorities or contracting entities from different Member States have set up a joint legal***

*entity, including European Groupings of territorial cooperation under Regulation (EC) N° 1082/2006 of the European Parliament and of the Council, the participating contracting authorities or participating contracting entities shall, by a decision of the competent body of the joint legal entity, agree on the applicable national concession award rules of one of the following Member States:*

*(a) the national provisions of the Member State where the legal body has its registered office;*

*(b) the national provisions of the Member State where the legal body is carrying out its activities.*

*This agreement may either apply for an undetermined period, when fixed in the constitutive act of the joint legal body, or may be limited to a certain period of time, certain types of concessions or to one or more individual concession awards.*

*4. In the absence of an agreement determining the applicable concession rules, the national legislation governing the concession award shall be determined following the rules set out below:*

*(a) where the procedure is conducted or managed by one participating contracting authority or participating contracting entity on behalf of the others, the national provisions of the Member State of that contracting authority or entity shall apply;*

*(b) where the procedure is not conducted or managed by one participating contracting authority or participating contracting entity on behalf of the others, and*

*(i) concerns a public works or works concession, contracting authorities or entities shall apply the national provisions of the Member State where most of the works are located;*

*(ii) concerns a service concession,*

*contracting authorities or entities shall apply the national provisions of the Member State where the major part of the services is provided.;*

*(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b), contracting authorities or entities shall apply the national provisions of the Member State of the contracting authority which bears the biggest share of the costs.*

*5. In the absence of an agreement determining the applicable concession award law under paragraph 3, the national legislation governing concession award procedures conducted by joint legal bodies set up by several contracting authorities or contracting entities from different Member States shall be determined following the following rules:*

*(a) where the procedure is conducted or managed by the competent organ of the joint legal body, the national provisions of the Member State where the legal body has its registered office shall apply.*

*(b) where the procedure is conducted or managed by a member of the legal body on behalf of that legal body, the rules set out in points (a) and (b) of paragraph 4 shall apply.*

*(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b) of paragraph 4, the contracting authorities or contracting entities shall apply the national provisions of the Member State where the legal body has its registered office.*

*6. One or more contracting authorities or one or more contracting entities may award individual concessions under a framework agreement concluded by or jointly with a contracting authority located in another Member State, provided that the framework agreement contains specific provisions enabling the respective contracting authority or*

*contracting authorities or to award contracting entity or contracting entities the individual concessions.*

*7. Decisions on the award of concessions in cross-border concession award shall be subject to the ordinary review mechanisms available under the national law applicable.*

*8. In order to enable the effective operation of review mechanisms, Member States shall allow the decisions of review bodies within the meaning of Council Directive 89/665/EEC and of Council Directive 92/13/EEC located in other Member States to be fully executed in their domestic legal order, where such decisions involve contracting authorities or contracting entities established on their territory participating in the relevant cross-border concession award procedure.*

#### **Amendment 83**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing AM 772-773-774-775-776-777-778-779-780-781-782 Harbour, Kožušník, 770 Rühle, 163 Juvin

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

##### **Article 32**

*Text proposed by the Commission*

*Amendment*

*Article 32*

*deleted*

##### *Technical specifications*

*1. The technical specifications as defined in point 1 of Annex VIII shall be set out in the concession documents. They shall define the characteristics required of a works, service or supply.*

*These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (14) of Article*

2.

*The technical specifications shall also specify whether the transfer of intellectual property rights will be required.*

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

*Where mandatory accessibility standards are adopted by a legislative act of the Union, technical specifications shall, as far as accessibility criteria are concerned, be defined by reference thereto.*

*2. Technical specifications shall guarantee equal access of economic operators to the concession award procedure and not have the effect of creating unjustified obstacles to the opening up of concession award to competition.*

*3. Without prejudice to mandatory national technical rules, to the extent that they are compatible with Union law, the technical specifications shall be formulated in one of the following ways:*

*(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities or contracting entities to award the contract;*

*(b) by reference to technical specifications defined in Annex VIII and, in order of preference, to national standards transposing European standards, European technical approvals,*

*common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or — when those do not exist — national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words ‘or equivalent’;*

*(c) in terms of performance or functional requirements as referred to in point (a), with reference to the technical specifications referred to in point (b) as a means of presuming conformity with such performance or functional requirements;*

*(d) by reference to the technical specifications referred to in point (b) for certain characteristics, and by reference to the performance or functional requirements referred to in point (a) for other characteristics.*

*4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible; such reference shall be accompanied by the words "or equivalent".*

*5. Where a contracting authority or contracting entity uses the option of referring to the specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the grounds that the works, supplies and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in its tender by whatever*

*appropriate means including the means of proof referred to in Article 33 that the solutions it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.*

*6. Where a contracting authority or contracting entity uses the option laid down in point (a) of paragraph 3 to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for works, supplies or services which comply with a national standard transposing a European standard, a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardisation body, where these specifications address the performance or functional requirements which it has laid down.*

*In its tender, the tenderer must prove by any appropriate means including the means of proof referred to in Article 33 that the work, supply or service in compliance with the standard meets the performance or functional requirements of the contracting authority or contracting entity.*

Or. en

#### **Amendment 84**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing **Am. 164 Juvin, AM 783 Rühle**

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

#### **Article 33**

*Text proposed by the Commission*

*Amendment*

*Article 33*

*deleted*

*Test reports, certification and other means of proof*

***1. Contracting authorities or contracting entities may require that economic operators provide a test report from a recognised body or a certificate issued by such a body as means of proof of conformity with the technical specifications.***

***Where contracting authorities require the production of certificates drawn up by recognised bodies attesting conformity with a particular technical specification, certificates from equivalent other recognised bodies shall also be accepted by the contracting authorities.***

***2. Contracting authorities or contracting entities shall also accept other appropriate means of proof such as a technical dossier of the manufacturer where the economic operator concerned has no access to the certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits.***

***3. Recognised bodies, within the meaning of this Article, are test and calibration laboratories and any certification and inspection bodies accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council<sup>1</sup>.***

***4. Member States shall make available to other Member States, upon request, any information related to the evidence and documents produced to prove compliance with the technical requirements referred to in Article 32 and this Article. The competent authorities of the Member State of establishment shall provide this information in accordance with provisions on governance as referred to in Article 88 of (Directive replacing Directive 2004/18/EC).***

Or. en

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<sup>1</sup> OJ L 218, 13.8.2008, p. 30.

**Amendment 85**  
**EPP, S&D, ALDE, ECR, Greens**  
Compromise amendment replacing AM 165 Juvin

**Proposal for a directive**  
**Section II - title**

*Text proposed by the Commission*

*Amendment*

**Section II**

*deleted*

**Choice of participants and award of concessions**

Or. en

**Amendment 86**  
**EPP, S&D, ALDE, ECR, Greens**  
Compromise amendment replacing AM

**Proposal for a directive**  
**Article 34**

*Text proposed by the Commission*

*Amendment*

**Article 34**

*deleted*

**General principles**

***Concessions shall be awarded on the basis of the criteria set out by the contracting authority or contracting entity in accordance with Article 39 provided that the following cumulative conditions are fulfilled:***

- a) the tender complies with the requirements, conditions and criteria set out in the concession notice or in the invitation to confirm interest and in the concession award documents;***
- b) the tender comes from a tenderer who***
  - i) is not excluded from participating in the award procedure in accordance with paragraphs 4 to 8 of Article 36 and***
  - ii) meets the selection criteria set out by the contracting authority or contracting entity in accordance with paragraphs 1 to 3 of Article 36.***

**Amendment 87****EPP, S&D, ALDE, ECR, Greens****Compromise amendment replacing AM AM 787 Schwab, Mayer, AM 788 Schwab, Mayer, Am. 167 Juvin, AM 786 Rühle, AM 789 Schwab, Mayer****Proposal for a directive****Article 35***Text proposed by the Commission**Amendment**Article 35**deleted**Procedural guarantees*

*Contracting authorities and contracting entities shall indicate in the contract notice, in the invitation to submit tenders or in the concession documents a description of the concession, the award criteria and the minimum requirements to be met. This information must allow to identify the nature and scope of the concession, enabling economic operators to decide whether they request to participate in the concession award procedure. The description, award criteria and minimum requirements shall not be changed in the course of the negotiations.*

*2. During the concession award, contracting authorities and contracting entities shall ensure the equal treatment of all tenderers. In particular, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.*

*3. Whenever the contracting authority or contracting entity limits the number of applicants to an appropriate level, this shall be done in a transparent manner and on the basis of objective criteria which are available to all interested economic operators.*

*4. The rules on the organisation of the concession award procedure, including rules on communication, on the stages of*

*the procedure and on timing, shall be established in advance and communicated to all participants*

*5. Where the concession award involves negotiation, contracting authorities or contracting entities shall comply with the following rules:*

*(a) where the negotiation takes place after the submission of tenders they shall negotiate with tenderers the tenders submitted by them in order to adapt them to the criteria and requirements indicated in accordance with paragraph 1.*

*(b) they shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the negotiations without its agreement. This agreement shall not take the form of a general waiver but must be given with reference to the intended communication of specific solutions or other confidential information;*

*(c) they may conduct the negotiation in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria in the contract notice, in the invitation to submit tenders or in the concession documents. In the contract notice, the invitation to submit tenders or the concession documents, the contracting authority shall indicate whether it has had recourse to this option.*

*(d) they shall assess the tenders as negotiated on the basis of the initially indicated award criteria;*

*(e) they shall establish a written record of formal deliberations and any other steps and events relevant for the concession award procedure. In particular, it shall ensure, by all appropriate means, the traceability of the negotiations.*

*6. Contracting authorities and contracting entities shall as soon as possible inform each candidate and tenderer of decisions reached concerning the award of a*

*concession including the grounds for any decision not to award a contract for which there has been publication of a concession notice or to recommence the procedure.*

**7. On request from the party concerned, the contracting authority shall as quickly as possible, and in any case within 15 days from receipt of a written request, inform:**

**(a) any unsuccessful candidates of the reasons for the rejection of their application,**

**(b) any unsuccessful tenderers of the reasons for the rejection of their tender, including, for the cases referred to in Article 32 (5) and (6), the reasons for its decision of non-equivalence or its decision that the works, supplies or services do not meet the performance or functional requirements,**

**(c) any tenderers that have made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework agreement,**

**(d) any tenderers that have made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers.**

**8. However, contracting authorities may decide to withhold certain information referred to in paragraph 6, regarding the contract where the release of such information would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between them.**

Or. en

## Amendment 88

### EPP, S&D, ALDE, ECR, Greens

Compromise amendment replacing Am. 168 Juvin, AM 790 Panzeri, AM 791 Juvin, 792 Juvin, AM 169 withdrawn, Am. 170 Juvin, AM 793 Rühle, AM 799 Weisgerber Verheyen, AM 802 Weidenholzer, AM 803 Panzeri except for point (d), covered by Art -26a, AM 795, 796, 797, 798 Rühle, AM 801 Rühle Am. 171 Juvin, AM 804 Weisgerber Verheyen, AM 805 Schwab Mayer, AM 806 Rühle, **Am. 172 Juvin, AM 808 Rühle, Am. 809 Juvin, AM 173 Juvin Withdrawn, Am. 174 Juvin, AM 811-812 Rühle, AM 821 Panzeri, AM 822 Rühle, AM 823 Schwab Mayer, Am. 175 Juvin, AM 824 Rühle, AM 834-836 Busoi, AM 839 Juvin, AM 837 Panzeri, AM 827 de Jong Gustafsson AM 830 Vergnaud, 838 Gustafsson, de Jong, Am. 176 Juvin, AM 840 Rühle, Am. 177 Juvin, AM 845 Rühle**

## Proposal for a directive

### Article 36

#### *Text proposed by the Commission*

#### Article 36

Selection *of* and qualitative assessment of candidates

1. Contracting authorities shall *specify, in the concession notice* the conditions for participation relating to:

*(a) suitability to pursue the professional activity;*

#### *Amendment*

#### Article 36

Selection and qualitative assessment of candidates *and tenderers and grounds for exclusion*

*-1. The grantor shall provide:*

*(a) in the concession notice, a description of the concession and of the conditions of participation;*

*(b) in the concession notice, in the invitation to submit a tender or in the concession documents, a description of the award criteria.*

1. *The grantor shall verify* the conditions for participation relating to *the professional and technical ability of the candidates or tenderers, the financial standing of the candidates or tenderers and the reference or references to be submitted as proof in accordance with the requirements specified in the concession notice. Those conditions shall be linked to the subject-matter of the contract and non-discriminatory, and may be accompanied by minimum requirements wherever necessary.*

*(b) economic and financial standing;*

*(c) technical and professional ability.*

*Contracting authorities shall limit any conditions for participation to those that are appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the commercial and technical abilities to perform the concession to be awarded. All requirements shall be related and strictly proportionate to the subject-matter of the contract, taking into account the need to ensure genuine competition.*

*Contracting authorities and contracting entities shall also indicate in the concession notice the reference or references to be submitted as proof of the economic operator's capacities. The requirements in respect of those references shall be non-discriminatory and proportionate to the subject-matter of the concession.*

2. With regard to the criteria referred to in paragraph 1, an economic operator may, where appropriate and for a particular concession, rely on the capacities of other entities, regardless of the legal nature of its links with them. It shall, in that case, prove to the **contracting authority or the contracting entity** that it will have at its disposal, throughout the period of the concession, the necessary resources, for example, by producing an undertaking by those entities to that effect. With regard to economic and financial standing, **contracting authorities and contracting entities** may require that the economic operator and those entities are jointly liable for the execution of the contract.

*3. Under the same conditions, a group of economic operators as referred to in Article 22 may rely on the capacities of participants in the group or of other entities.*

2. With a view to meeting the conditions for participation laid down in paragraph 1, an economic operator may, where appropriate and for a particular concession, rely on the capacities of other entities, regardless of the legal nature of its links with them. It shall, in that case, prove to the **grantor** that it will have at its disposal, throughout the period of the concession, the necessary resources, for example, by producing an undertaking by those entities to that effect. With regard to economic and financial standing, **the grantor** may require that the economic operator and those entities are jointly liable for the execution of the contract.

*3a. The grantor may limit the number of candidates or tenderers to an appropriate*

***level, on condition that this is done in a transparent manner and on the basis of objective criteria. The number of candidates or tenderers invited must be sufficient to ensure genuine competition.***

***4. Member States shall adopt rules combating favouritism, corruption and preventing conflicts of interest, aimed at ensuring the transparency of the award procedure and the equal treatment of all tenderers.***

***With regard to conflicts of interest the measures adopted shall not go beyond what is strictly necessary to prevent or eliminate the conflict identified. In particular, they shall allow for the exclusion of a tenderer or candidate from the procedure only where the conflict of interests cannot be effectively remedied by other means.***

5. Any candidate or tenderer that has been the subject of a conviction by a final judgment for one of the reasons listed below shall be excluded from participation in a concession:

(a) participation in a criminal organisation, as defined in Article 2(1) of Council Framework Decision 2008/841/JHA;

(b) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and Article 2 of Council Framework Decision 2003/568/JHA as well as corruption as defined in the national law of the contracting authority or the economic operator;

(c) fraud within the meaning of Article 1 of the Convention on the protection of the financial interests of the European Communities;

(d) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Framework Decision 2002/475/JHA respectively, or inciting,

5. Any candidate or tenderer that has been the subject of a conviction by a final judgment for one of the reasons listed below shall be excluded from participation in a concession:

(a) participation in a criminal organisation, as defined in Article 2(1) of Council Framework Decision 2008/841/JHA;

(b) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and Article 2 of Council Framework Decision 2003/568/JHA as well as corruption as defined in the national law of the contracting authority or the economic operator;

(c) fraud within the meaning of Article 1 of the Convention on the protection of the financial interests of the European Communities;

(d) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Framework Decision 2002/475/JHA respectively, or inciting,

aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;

(e) money laundering, as defined in Article 1 of Council Directive 91/308/EEC.

***The obligation to exclude a candidate or a tenderer from participation in a concession shall also apply where the conviction by final judgment has condemned company directors or any other any person having powers of representation, decision or control in respect of the candidate or tenderer.***

6. Any economic operator shall be excluded from participation in a concession where the contracting authority or contracting entity is aware of a decision having the force of res judicata establishing that it has not fulfilled obligations relating to the payment of taxes or social security contributions in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority or entity.

7. Member States may provide that contracting authorities or contracting entities exclude from participation in a concession award any economic operator if one of the following conditions is fulfilled:

(a) where it is aware of any other serious violation of provisions of European Union or of national law aimed at the protection of public interests compatible with the Treaty;

(b) where the economic operator is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the

aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;

(e) money laundering, as defined in Article 1 of Council Directive 91/308/EEC.

***(ea) participation in exploitation of human trafficking and child labour covered by Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims;***

6. Any economic operator shall be excluded from participation in a concession where the contracting authority or contracting entity is aware of a decision having the force of res judicata establishing that it has not fulfilled obligations relating to the payment of taxes or social security contributions in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority or entity.

7. Member States may provide that contracting authorities or contracting entities exclude from participation in a concession award any economic operator if one of the following conditions is fulfilled:

(a) where it is aware of any other serious violation of provisions of European Union or of national law aimed at the protection of public interests compatible with the Treaty, ***provided that the violation has been established by a competent body;***

(b) where the economic operator is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the

court, where it has entered into an arrangement with creditors, where it has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;

(c) where the economic operator has shown significant or persistent deficiencies in the performance of any substantive requirement under a prior concession or concessions of a similar nature ***with the same contracting authority or contracting entity***.

***In order to apply the ground for exclusion referred to in point (c) of the first subparagraph, contracting authorities and contracting entities shall provide a method for the assessment of contractual performance that is based on objective and measurable criteria and applied in a systematic, consistent and transparent way. Any performance assessment has to be communicated to the economic operator in question, which must be given the opportunity to object to the findings and to obtain judicial protection.***

8. Any candidate or tenderer that is in one of the situations referred to in paragraphs 5 to 7 may provide the contracting authority or contracting entity with evidence demonstrating its reliability despite the existence of the relevant ground for exclusion.

***9. Member States shall specify the implementing conditions for this article. They shall make available to other Member States, upon request, any information related to the exclusion grounds listed in this Article. The competent authorities of the Member State of establishment shall provide this information in accordance with the***

court, where it has entered into an arrangement with creditors, where it has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;

(c) where the economic operator has shown significant or persistent deficiencies in the performance of any substantive requirement under a prior concession or concessions of a similar nature;

***(ca) where it is aware of any serious or repeated violation of obligations in the field of social, environmental, or labour law provisions as referred to in Article - 26a(3).***

8. Any candidate or tenderer that is in one of the situations referred to in paragraphs 5 to 7 may provide the contracting authority or contracting entity with evidence demonstrating its reliability despite the existence of the relevant ground for exclusion.

## **Amendment 89**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing AM 178-179 Juvin, **AM 848 Rühle, Am. 180 Juvin, AM 850 Busoi, AM 851 Rühle, AM 852 Weisgerber, Verheyen, AM 853 Weidenholzer, 854 Rühle, AM 855 Weidenholzer**

## **Proposal for a directive**

### **Article 37**

#### *Text proposed by the Commission*

#### Article 37

##### Setting time limits

1. When fixing the time limits for the submission of applications ***for the concession and submission*** of tenders, ***contracting authorities or contracting entities*** shall take account in particular of the complexity of the concession and the time required for drawing up tenders, ***without prejudice to the minimum time limits set out in Article 37.***

***2. Where applications or tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the concession award documents, the time limits for the submission of applications for the concession shall be extended so that all economic operators concerned may be aware of all the information needed to produce applications or tenders.***

#### *Amendment*

#### Article 37

##### Setting time limits

1. When fixing the time limits for the submission of applications ***or*** of tenders, ***the grantor*** shall take account in particular of the complexity of the concession and the time required for drawing up tenders ***or applications.***

***2a. The time limit for the submission of applications or for the submission of tenders shall be not less than 30 working days from the date on which the concession notice was sent or the date on which candidates received notification of the invitation to submit a tender, respectively.***

*2b. The time limit for receipt of tenders may be reduced by five working days where the contracting entity accepts that tenders may be submitted by electronic means.*

Or. en

**Amendment 90**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing AM 181 Juvin

**Proposal for a directive**

**Article 38**

*Text proposed by the Commission*

*Amendment*

*Article 38*

*deleted*

*Time limits for submission of applications for the concession*

*1. Where contracting authorities and contracting entities resort to a concession, the time limit for the submission of applications for the concession shall be not less than 52 days from the date on which the concession notice was sent.*

*2. The time limit for receipt of tenders may be reduced by five days where the contracting entity accepts that tenders may be submitted by electronic means in conformity with Article 25.*

Or. en

**Amendment 91**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing Am. 183 Juvin, AM 857 Busoi, AM 859 Panzeri, AM 771 Harbour, Kožušník

**Proposal for a directive**

**Article 38 -a (new)**

**Article 38-a**

**Technical and/or functional requirements**

**1. Technical and/or functional requirements shall define the characteristics required of the works and/or services that are the subject matter of the concession. They shall be set out in the concession documents.**

**2. Those requirements shall comply with the principle of equal access of economic operators to the concession award procedure and shall not have the effect of creating unjustified obstacles to the opening up of concessions to competition.**

**In particular, unless justified by the subject-matter of the contract, technical and/or functional requirements shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted, on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract is not possible; such reference shall be accompanied by the words "or equivalent".**

Or. en

**Amendment 92**

**EPP, S&D, ALDE, ECR, Greens**

**Compromise amendment replacing AM 810 Juvin, AM 858 Vergnaud, Am. 182 Juvin, AM 856 Gustafsson Bastos**

**Proposal for a directive**

**Article 38 a (new)**

**Article 38a**

**Award criteria**

**1. The grantor may hold negotiations with candidates and tenderers. It shall provide for appropriate recording of the main stages of the procedure using the means it judges appropriate, subject to compliance with Article 24(1) of this Directive.**

**Concessions shall be awarded by the grantor on the basis of objective award criteria which comply with the principles set out in Article -26a(2).**

**2. The subject matter of the concession, the award criteria and the minimum requirements shall not be changed in an arbitrary or discriminatory manner during the course of the negotiations. Any changes shall be immediately brought to the notice of the candidates and tenderers concerned.**

**3. The award criteria shall be linked to the subject matter of the concession. They may include, inter alia, environmental, social, gender-equality or innovation-related criteria. The grantor shall verify whether tenders properly meet the award criteria.**

**4. The grantor shall indicate in the concession notice or the invitation to submit a tender his ranking order, if any, for the criteria referred to in paragraph 1.**

Or. en

**Amendment 93**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing AM 184 Juvin

**Proposal for a directive**

**Article 38 c (new)**

**Article 38c**

***Provision of information to candidates and tenderers***

***1. The grantor shall as soon as possible inform each candidate and tenderer of decisions reached concerning the award of a concession, including the grounds for any decision to reject his application or tender and the grounds for any decision not to award a contract for which there has been publication of a concession notice or to recommence the procedure.***

***2. The grantor may decide to withhold certain information referred to in paragraph 1, regarding the contract, where the release of such information would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between them.***

Or. en

**Amendment 94**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing **Am. 185 Juvin, AM 860 Rühle, AM 865 Schwab Mayer, 861 Weidenholzer, 862 Schwab, Mayer, Chatzimarkakis, 863 Weidenholzer, 864 Weisgerber, Verheyen, 866 Comi, 867-868-869 Weidenholzer, 870 Arias Echeverría, 871-872-874 Weidenholzer, 873 Comi, 875 Gebhardt**

**Proposal for a directive**

**Article 39**

*Text proposed by the Commission*

*Amendment*

**Article 39**

***deleted***

***Concession award criteria***

***1. Concessions shall be awarded on the basis of objective criteria which ensure***

*compliance with the principles of transparency, non-discrimination and equal treatment and which ensure that tenders are assessed in conditions of effective competition permitting to identify an overall economic advantage for the contracting authority or the contracting entity.*

*2. The award criteria shall be linked to the subject matter of the concession, and shall not confer an unrestricted freedom of choice on the contracting authority or the contracting entity.*

*Those criteria shall ensure effective competition and shall be accompanied by requirements which allow the information provided by the tenderers to be effectively verified. Contracting authorities and contracting entities shall verify effectively on the basis of the information and proof provided by the tenderers, whether the tenders meet the award criteria.*

*3. The contracting authority or the contracting entity shall indicate in the concession notice or documents the relative weighting which it gives to each of the criteria set out in paragraph 1 or list those criteria in descending order of importance.*

*4. Member States may provide that contracting authorities and contracting entities shall base the award of concessions on the criterion of the most economically advantageous tender, in compliance with paragraph 2. Those criteria may include, in addition to price or costs, any of the following criteria*

*(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative character.*

*(b) for service concessions and concessions involving the design of works, the organisation, qualification and experience of the staff assigned to*

*performing the concession in question may be taken into consideration, with the consequence that, following the award of the concession, such staff may only be replaced with the consent of the contracting authority or the contracting entity, which must verify that replacements ensure equivalent organisation and quality;*

*(c) after-sales service and technical assistance, delivery date and delivery period or period of completion;*

*(d) the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point 14 of paragraph 1 of Article 2, to the extent that those criteria concern factors directly involved in these processes and characterise the specific process of production or provision of the requested works, supplies or services.*

*5. In the case referred to in paragraph 4, the contracting authority or entity shall specify in the contract notice, in the invitation to submit a tender, or in the concession documents, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.*

*Those weightings may be expressed by providing for a range with an appropriate maximum spread.*

*Where weighting is not possible for objective reasons, the contracting authority or entity shall indicate the criteria in decreasing order of importance.*

Or. en

#### **Amendment 95**

**EPP, S&D, ALDE, ECR, Greens**

**Compromise amendment replacing Am. 186 Juvin, AM 882 Rühle, AM 88 Schwab Mayer AM 879 Rühle**

**Proposal for a directive**  
**Article 40**

*Text proposed by the Commission*

*Amendment*

**Article 40**

*deleted*

***Life-cycle costing***

***1. Life-cycle costing shall to the extent relevant cover all of the following costs over the life cycle of a product, service or works as defined in point 14 of paragraph 1 of Article 2:***

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

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

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

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

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

***(c) It is accessible to all interested parties.***

***Contracting authorities and contracting entities shall allow economic operators to apply a different methodology for establishing the life-cycle costs of their offer, provided that they prove that this methodology complies with the requirements set out in points a, b and c***

*and is equivalent to the methodology indicated by the contracting authority or contracting entity.*

*3. Whenever a common methodology for the calculation of life-cycle costs is adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 39 paragraph (4).*

*A list of such legislative and delegated acts is set out in Annex II. The Commission shall be empowered to adopt delegated acts in accordance with Article 46 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary.*

Or. en

## **Amendment 96**

### **EPP, S&D**

Compromise amendment replacing AM 187 Juvin and AM 884 to 893

## **Proposal for a directive**

### **Article 41**

#### *Text proposed by the Commission*

Article 41

Subcontracting

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

#### *Amendment*

Article 41

Subcontracting

1. In the concession documents, the ***grantor shall*** ask the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties.

***1a. After the tenderer has been selected, it shall indicate to the contracting authorities the name, contact details and***

*legal representatives of the subcontractors and any changes related to this information during the course of the contract. This information shall be provided to the tenderer by each subcontractor in the subcontracting chain through the latter's direct contractor. The information shall be updated during the course of the contract.*

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

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

*Member States shall ensure that subcontractors also respect all mandatory legal, regulatory and administrative provisions in force in the Member State of contract performance, which includes the obligations referred to in Article - 26a(3). To this end, Member States may provide for a system of liability throughout the subcontracting chain so that the direct contractor of a subcontractor is liable in the event the subcontractor fails to comply with one of these provisions or is insolvent. When a direct contractor is insolvent, such system should foresee that the next solvent direct contractor up the subcontracting chain, including the main contractor, is liable.*

*2a. Member States may provide for more stringent liability rules under national law.*

Or. en

#### **Amendment 97**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing Am. 188 Juvin, AM 898 Busoi AM 901 Busoi, Am. 189 Juvin, AM 900 Busoi, Am. 190 Juvin, AM 901 Busoi, AM 906 Busoi, AM 905 Rühle, AM 914 Comi, AM 903 Rochefort, AM 902 Busoi, AM 904 Juvin Le Grip, Am. 191 Juvin withdrawn, AM 904 Juvin Le Grip, AM 903 Rochefort, AM 902 Busoi, Rühle 907, Juvin 908, Busoi 909, Am. 192 Juvin, AM 912 Rühle, AM 913 Busoi, Am. 193 Juvin, AM 916 Vergnaud, partly covers 917 Rühle, Am. 194 Juvin withdrawn, AM 919 Busoi, AM 920 Juvin Le Grip, Am. 195 Juvin, AM 922 Rühle, Am. 196 Juvin

**Proposal for a directive**  
**Article 42**

*Text proposed by the Commission*

Article 42

Modification of concessions during their term

1. ***A substantial modification of the provisions of a concession during its term shall be considered as a new award for the purposes of this Directive and shall require a new concession award procedure in accordance with this Directive.***

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

(a) the modification introduces conditions which, had they been part of the initial concession award procedure, would have allowed for the selection of other applicants than those initially selected, or would have allowed for awarding the concession to another applicant or tenderer;

(b) the modification changes the economic balance of the concession ***in favour of the concessionaire*** or

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

***3. The replacement of the concessionaire shall be considered a substantial***

*Amendment*

Article 42

Modification of concessions during their term

1. A concession ***may be modified*** during its term ***by means of a supplementary agreement unless the modifications are substantial.***

2. ***Substantial*** modification of a concession during its term shall ***require a new award procedure in accordance with this Directive. A modification shall*** be considered substantial where one of the following conditions is met:

***(-a) the modification changes the nature of the concession;***

***(-aa) the modification entails replacement of the concessionaire;***

(a) the modification introduces conditions which, had they been part of the initial concession award procedure, would have allowed for the selection of other applicants than those initially selected, or would have allowed for awarding the concession to another applicant or tenderer;

(b) the modification ***substantially*** changes the economic balance of the concession, or

(c) the modification extends the scope of the concession considerably ***in that it encompasses*** supplies, services or works not initially covered.

***modification within the meaning of paragraph 1.***

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

***Paragraph 2(-aa)*** shall not apply in the event of universal or partial succession into the position of the initial contractor following:

***(i)*** corporate restructuring operations,

***(ii)*** *the transfer of capital or assets between undertakings,*

***(iii)*** *the takeover of the concessionaire following* insolvency or ***pursuant to*** a contractual clause of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the concession and is not aimed at circumventing the application of this Directive.

***2a.*** ***Provided the overall nature of the concession remains the same, modification of the concession shall not be considered substantial where:***

***(a)*** ***the modification has been provided for in the original concession contract in clear, precise and unequivocal review clauses or options made pursuant to the law which state the scope and nature of possible modifications as well as the conditions under which they may be used;***  
***or***

***(b)*** ***the value thereof is below 10 % of the updated value of the original contract.***

***Where several successive modifications are made, the value of the successive modifications shall be assessed on the basis of the updated cumulative value of***

*the successive modifications.*

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

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

6. By way of derogation from paragraph 1, a substantial modification shall not require a new concession award procedure where the following cumulative conditions are fulfilled:

- (a) the need for modification has been brought about by circumstances which a diligent **contracting authority or entity** could not **foresee**
- (b) the modification does not alter the overall nature of the concession
- (c) in case of concessions awarded by contracting authorities where **any increase in price is not higher than 50%** of the value of the **original** concession.

**Contracting authorities or contracting entities** shall publish in the *Official Journal of the European Union* a notice on such

6. By way of derogation from paragraph 1, a substantial modification shall not require a new concession award procedure where the following cumulative conditions are fulfilled:

- (a) the need for modification has been brought about by circumstances which a diligent **grantor** could not **anticipate**;
- (b) the modification does not alter the overall nature of the concession;
- (c) in case of concessions awarded by contracting authorities where **the value of the intended modification does not exceed 50 %** of the **updated initial** value of the concession.

**The grantor** shall publish in the *Official Journal of the European Union* a notice on such modifications. Such notices shall

modifications. Such notices shall contain the information set out in Annex VII and be published in accordance with the provisions of Article 28.

**7. Contracting authorities and contracting entities shall not have recourse to modifications of the concession** in the following cases:

(a) where the modification would aim at remedying deficiencies in the performance of the concessionaire or the consequences thereof, which can be remedied through the enforcement of contractual obligations;

(b) where the modification would aim at **compensating risks of price increases that are the result of price fluctuations that could substantially impact the performance of a contract and that have been hedged** by the concessionaire.

contain the information set out in Annex VII and be published in accordance with the provisions of Article 28.

**7. The grantor may not invoke this Article** in the following cases:

(a) where the modification would aim at remedying deficiencies in the performance of the concessionaire or the consequences thereof, which can be remedied through the enforcement of contractual obligations;

(b) where the modification would aim at **lessening the operating risks assumed** by the concessionaire.

Or. en

## Amendment 98

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing AM 197, 198, 199 Juvinm AM 925 Comi, 926 Salvini, Morganti, Fontana

### Proposal for a directive Article 43

*Text proposed by the Commission*

Article 43

Termination of concessions

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

(a) the exceptions provided for in Article 15 cease to apply following a private participation in the legal person awarded

*Amendment*

Article 43

Termination of concessions

Member States shall ensure that **the grantor has** the possibility, under the conditions determined by the applicable national law, to terminate a concession during its term, where one of the following conditions is fulfilled:

(a) the exceptions provided for in Article 15 cease to apply following a private participation in the legal person

the contract pursuant to *Article 15 (4)*;

(b) a modification of the concession constitutes a new award within the meaning of Article 42;

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

awarded the contract pursuant to *Article 15*;

(b) a modification of the concession constitutes a new award within the meaning of Article 42;

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

Or. en

**Amendment 99**  
**EPP, S&D, ALDE, ECR, Greens**  
Compromise amendment

**Proposal for a directive**  
**Article 43 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 43a***

***Governance***

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

***2. Member States shall ensure that the application of rules for the award of concessions contracts is monitored including the implementation of projects co-financed by the Union with a view to detecting threats to the financial interests of the Union. Such monitoring shall be used to prevent, detect and adequately***

*report possible instances of procurement fraud, corruption, conflict of interest and other serious irregularities.*

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

*3. At their request, the competent national authorities shall be notified by contracting authorities and entities of any activities which they regard as excluded from this Directive pursuant to Article 8(5b).*

*4. The results of the monitoring activities carried out pursuant to paragraph 2 shall be made available to the public through appropriate means of information. In particular, Member States shall publish, at least once every two years an overview of the most frequent causes of incorrect application of the rules for the award of concessions contracts or of legal uncertainty, including possible structural or recurring problems in the application of the rules, including possible cases of fraud and other illegal behaviour.*

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

Or. en

**Amendment 100**

**EPP, S&D, ALDE, ECR**

Compromise amendment replacing AM 937 Rühle, AM 938 Schwab, Mayer, AM 393

**Comi**

**Proposal for a directive**  
**Article 49 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Member States shall ensure that this Directive does not apply to concessions awarded before its date of entry into force as laid down in Article 52. This Directive shall however apply to modifications and terminations of contracts taking place after the date of entry into force of this Directive.***

Or. en

**Amendment 101**

**EPP, S&D, ALDE, ECR**

Compromise amendment replacing AM 401 Panzeri, 383 Jaakonsaari, 400 Pietikäinen

**Proposal for a directive**  
**Article 51 – paragraphs 1 a and 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***The Commission shall review the functioning of this Directive and shall report to the European Parliament and to the Council by ...\*, and every five years thereafter, based on information that Member States shall provide.***

***The Commission shall make the results of the reviews carried out in accordance with the second paragraph publicly available.***

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***\* OJ Please insert the date: "[five] years after the date of transposition of this Directive set out in Article 49(1), first subparagraph".***

Or. en

**Amendment 102**

**EPP, S&D, ALDE, ECR**

**Proposal for a directive**  
**Annex III – point 1**

*Text proposed by the Commission*

1. As far as gas **and heat** are concerned:

(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**;

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

The supply of gas **or heat** to networks which provide a service to the public by a contracting entity referred to in paragraph 1 subparagraph 2 and subparagraph 3 of Article 4 shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:

(c) 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 this paragraph or in paragraphs 2 to 4 of this Annex;

(d) the supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the entity's turnover on the basis of the average for the preceding three years, including the current year.

*Amendment*

1. As far as gas, **heating and cooling** are concerned:

(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, **heating and cooling**;

(b) the supply of gas, **heating and cooling** to such networks.

The supply of gas, **heating and cooling** to networks which provide a service to the public by a contracting entity referred to in paragraph 1 subparagraph 2 and subparagraph 3 of Article 4 shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:

(c) the production of gas, **heating and cooling** by the entity concerned is the unavoidable consequence of carrying out an activity other than those referred to in this paragraph or in paragraphs 2 to 4 of this Annex;

(d) the supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the entity's turnover on the basis of the average for the preceding three years, including the current year.

Or. en

**Amendment 103**  
**-EPP, S&D, ECR**

Compromise amendment replacing **AM 945 Vergnaud, AM 204 Juvin**

**Proposal for a directive**  
**Annex III – point 2 – subparagraph 2**

*Text proposed by the Commission*

For the purposes of this Directive, supply of electricity includes generation (production) and **wholesale of electricity**.

*Amendment*

For the purposes of this Directive, supply of electricity includes generation (production) and **supply**.

Or. en

**Amendment 104**  
**S&D, EPP, ALDE, Greens, ECR**

Compromise amendment replacing **AM 954 Schwab, Schnieber-Jastram, Mayer**

**Proposal for a directive**  
**Annex III – point 5**

*Text proposed by the Commission*

5. Activities relating to the exploitation of a geographical area for the purpose of the provision of airports and maritime or inland ports or other **terminal facilities** to carriers by air, sea or inland waterway.

*Amendment*

5. Activities relating to the exploitation of a geographical area for the purpose of the provision of airports and maritime or inland ports or other **general infrastructure** to carriers by air, sea or inland waterway.

Or. en

**Amendment 105**  
**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing **Am. 206, 207, 208, 209, 210, 211, 212, 213, 214, 215 Juvin AM 959 Schwab, Mayer 957 Schwab Mayer**

**Proposal for a directive**  
**Annex IV**

*Text proposed by the Commission*

INFORMATION TO BE INCLUDED IN CONCESSION NOTICES

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority or entity and,

*Amendment*

INFORMATION TO BE INCLUDED IN CONCESSION NOTICES

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority or entity and,

where different, of the service from which additional information may be obtained.

2. Type of contracting authority or entity and main activity exercised.

3. If the applications are to contain tenders, email or internet address at which the specifications and any supporting documents will be available for unrestricted and full direct access, free of charge.

4. Description of the **procurement**: nature and extent of works, **nature and quantity or value of supplies**, nature and extent of services. **Where the concession is divided into lots, this information shall be provided for each lot. Where appropriate, description of any options.**

5. CPV Nomenclature reference No(s). **Where the concession is divided into lots, this information shall be provided for each lot.**

6. NUTS code for the main location of works in case of works concessions or NUTS code for the main place of performance service concessions; **where the concession is divided into lots, this information shall be provided for each lot.**

7. Estimated total value of concession(s); **where the concession is divided into lots, this information shall be provided for each lot, together with detailed method of calculation of the estimated total value of the concession, in accordance with Art. 6**

8. **Where the concession is to be subdivided into lots, indication of the possibility of tendering for one, for several or for all of the lots; indication of any possible limitation of the number of lots that may be awarded to any one tenderer.**

9. Time-frame for **delivery or provision of supplies, works or services and, as far as possible**, duration of the concession.

10. Conditions for participation, including:  
(a) where appropriate, indication whether

where different, of the service from which additional information may be obtained.

2. Type of contracting authority or entity and main activity exercised.

3. If the applications are to contain tenders, email or internet address at which the specifications and any supporting documents will be available for unrestricted and full direct access, free of charge.

4. Description of the **contract**: nature and extent of works, nature and extent of services.

5. CPV Nomenclature reference No(s).

6. NUTS code for the main location of works in case of works concessions or NUTS code for the main place of performance service concessions.

7. Estimated total value of concession(s).

9. Time frame for **implementation of the concession**; duration of the concession.

10. Conditions for participation, including:  
(a) where appropriate, indication whether

the concession is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,

***(b) where appropriate, indication whether the provision of the service is reserved by law, regulation or administrative provision to a particular profession; reference to the relevant law, regulation or administrative provision,***

(c) a list and brief description of selection criteria; minimum level(s) of standards possibly required; indication of required information (self-declarations, documentation).

11. Description of award procedure used, ***if the procedure is to be conducted in stages, number of candidates to be admitted to a given stage or to be invited to submit tenders and objective criteria to be used to choose the candidates in question.***

a) Time limit for the submission of applications

b) Address to which they must be sent

c) Language(s) in which they must be written

12. Criteria which will be applied in the award of the concession

13. Date of dispatch of the notice

14. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning the deadline for lodging appeals or, if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

15. Where appropriate, particular conditions to which performance of the concession is subject.

16. Address where applications or tenders shall be transmitted.

***17. In case of one-stage procedures:***

the concession is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,

(c) a list and brief description of selection criteria; minimum level(s) of standards possibly required; indication of required information (self-declarations, documentation).

11. Description of award procedure used:

a) Time limit for the submission of applications ***or receipt of tenders;***

b) Address to which they must be sent

c) Language(s) in which they must be written

12. Criteria which will be applied in the award of the concession

13. Date of dispatch of the notice

14. Name and address of the ***competent national authorities and of the*** body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning the deadline for lodging appeals or, if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

15. Where appropriate, particular conditions to which performance of the concession is subject.

16. Address where applications or tenders shall be transmitted.

*a) Time limit for receipt of tenders, if different from the time limit the submission of applications*

*b) time frame during which the tenderer must maintain its tender,*

*c) date, time and place for the opening of tenders,*

*d) persons authorised to be present at such opening.*

18. Where appropriate, indication of requirements and conditions related to the use of electronic means of communication

19. Information whether the concession is related to a project and /or programme financed by European Union funds.

18. Where appropriate, indication of requirements and conditions related to the use of electronic means of communication

19. Information whether the concession is related to a project and /or programme financed by European Union funds.

Or. en

#### **Amendment 106**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing **Am. 216 Juvin, 964 Rühle Am. 217 Juvin, Am. 218 Juvin, 966 Rühle, Am. 219 Juvin, 967 Schwab Mayer, 968, 969, 970 Rühle, Am. 220 Juvin, 972 Rühle, Am. 221 Juvin, 973 Rühle, Am. 222 Juvin, 975 Rühle, AM 976 Schwab Mayer, 977 Rühle, Am. 223 Juvin, 978 Rühle.**

#### **Proposal for a directive Annex V**

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

INFORMATION TO BE INCLUDED IN CONCESSION AWARD NOTICES

1. INFORMATION TO BE INCLUDED IN CONCESSION AWARD NOTICES PUBLISHED IN ACCORDANCE WITH ARTICLE 27 (1)

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority or entity and, where different, of the service from which additional information may be obtained.

2. Type of contracting authority or entity

##### *Amendment*

INFORMATION TO BE INCLUDED IN CONCESSION AWARD NOTICES

1. INFORMATION TO BE INCLUDED IN CONCESSION AWARD NOTICES PUBLISHED IN ACCORDANCE WITH ARTICLE 27 (1)

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority or entity and, where different, of the service from which additional information may be obtained.

2. Type of contracting authority or entity

and main activity exercised.

3. CPV Nomenclature reference No(s).

4. NUTS code for the main location of works in case of works concessions or NUTS code for the main place of performance in case of service concessions;

5. Description of the **procurement**: nature and extent of works, **nature and quantity or value of supplies**, nature and extent of services. **Where the concession is divided into lots, this information shall be provided for each lot. Where appropriate, description of any options.**

6. Description of award procedure used, in the case of award without prior publication, justification.

7. Criteria referred to in **Article 39** which were used for award of the concession or concessions.

8. Date of concession award decision or decisions;

**9. Number of tenders received with respect of each award, including:**

**(a) number of tenders received from economic operators which are small and medium enterprises,**

**(b) number of tenders received from abroad,**

**(c) number of tenders received electronically.**

10. For each award, name, address including NUTS code, telephone, fax number, email address and internet address of the successful tenderer(s) **including**

**a) information whether the successful tenderer is small and medium enterprise,**

**b) information whether the concession was awarded to a consortium.**

11 Value and main financial terms of the awarded concession, **including fees and prices.**

and main activity exercised.

3. CPV Nomenclature reference No(s).

4. NUTS code for the main location of works in case of works concessions or NUTS code for the main place of performance in case of service concessions;

5. Description of the **contract**: nature and extent of works, nature and extent of services.

6. Description of award procedure used, in the case of award without prior publication, justification.

7. Criteria referred to in **Article 38a** which were used for award of the concession or concessions.

8. Date of concession award decision or decisions;

10. For each award, name, address including NUTS code, telephone, fax number, email address and internet address of the successful tenderer(s)

11 Value and main financial terms of the awarded concession

**12. Where appropriate, for each award, value and proportion of concession likely to be subcontracted to third parties.**

13. Information whether the concession is related to a project and /or programme financed by European Union funds.

14. Name and address of the **oversight body and the** body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained

15. Date(s) and reference(s) of previous publications in the Official Journal of the European Union relevant to the concession(s) advertised in this notice.

16. Date of dispatch of the notice.

**17. Detailed method of calculation of the estimated total value of the concession, in accordance with Article 6.**

18. Any other relevant information.

## **II. INFORMATION TO BE INCLUDED IN CONCESSION AWARD NOTICES PUBLISHED IN ACCORDANCE WITH ARTICLE 27(2)**

**1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority or entity and, where different, of the service from which additional information may be obtained.**

**2. Description of the procurement: nature and extent of works, nature and quantity or value of supplies, nature and extent of services. Where the concession is divided into lots, this information shall be provided for each lot. Where appropriate, description of any options.**

**3. CPV Nomenclature reference No(s).**

**4. Type of contracting authority or entity**

13. Information whether the concession is related to a project and /or programme financed by European Union funds.

14. Name and address of the **competent national authorities and of the**-body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

15. Date(s) and reference(s) of previous publications in the Official Journal of the European Union relevant to the concession(s) advertised in this notice.

16. Date of dispatch of the notice.

18. Any other relevant information.

*and main activity exercised.*

**5. Date of concession award decision or decisions;**

**6. For each award, name, address including NUTS code, telephone, fax number, email address and internet address of the economic operators to which the concession has been awarded.**

**7. Value and main financial terms of the award, including fees and prices.**

**8. Detailed method of calculation of the estimated total value of the concession, in accordance with Article 6.**

Or. en

#### **Amendment 107**

**EPP, S&D, ALDE, ECR, Greens**

**Compromise amendment replacing Am. 224, 225, 226 Juvin, partly covers 979 Schwab Mayer**

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

#### **Annex VI**

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

Annex VI  
INFORMATION TO BE INCLUDED IN  
CONCESSION AWARD NOTICES  
CONCERNING CONCESSIONS FOR  
SOCIAL AND OTHER SPECIFIC  
SERVICES (ARTICLE 27 (1))

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority or entity and, where different, of the service from which additional information may be obtained.
2. Type of contracting authority or entity and main activity exercised.
3. CPV Nomenclature reference No(s);  
***where the contract is divided into lots, this information shall be provided for each lot.***

##### *Amendment*

Annex VI  
INFORMATION TO BE INCLUDED IN  
CONCESSION AWARD NOTICES  
CONCERNING CONCESSIONS FOR  
SOCIAL AND OTHER SPECIFIC  
SERVICES (ARTICLE 27 (1))

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority or entity and, where different, of the service from which additional information may be obtained.
2. Type of contracting authority or entity and main activity exercised.
3. CPV Nomenclature reference No(s).

4. ***At least a*** summary indication of the ***nature and quantity of the services and if applicable, works and supplies provided.***

5. Number of tenders received.

6. Value and main financial terms of the award, ***including fees and prices.***

7. Name and address including NUTS code, telephone, fax number, email address and internet address of the successful economic operator(s).

8. Any other relevant information.

4. Summary indication of the ***subject of the concession.***

5. Number of tenders received.

6. Value and main financial terms of the award.

7. Name and address including NUTS code, telephone, fax number, email address and internet address of the successful economic operator(s).

8. Any other relevant information.

Or. en

### **Amendment 108**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing **Am. 227, 28, 229, 230 Juvin**

### **Proposal for a directive**

#### **Annex VII**

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

#### Annex VII

INFORMATION TO BE INCLUDED IN NOTICES OF MODIFICATIONS OF A CONCESSION DURING ITS TERM ACCORDING TO ARTICLE 42

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority or entity and, where different, of the service from which additional information may be obtained.

2. CPV Nomenclature reference No(s);.

3. NUTS code for the main location of works in case of ***public works concessions or*** works concessions or NUTS code for the main place of ***delivery or*** performance in service concessions;

4. Description of the concession before and after the modification: nature and extent of

##### *Amendment*

#### Annex VII

INFORMATION TO BE INCLUDED IN NOTICES OF MODIFICATIONS OF A CONCESSION DURING ITS TERM ACCORDING TO ARTICLE 42

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority or entity and, where different, of the service from which additional information may be obtained.

2. CPV Nomenclature reference No(s);.

3. NUTS code for the main location of works in case of works concessions or NUTS code for the main place of performance in service concessions;

4. Description of the concession before and after the modification: nature and extent of

the works, *nature and quantity or value of supplies*, nature and extent of services.

5. Where applicable, modification of financial terms of the concession, *including increase in prices or fees caused by the modification*.
6. Description of the circumstances which have rendered necessary the modification.
7. Date of concession award decision.
8. Where applicable, the name, address including NUTS code, telephone, fax number, email address and internet address of the new economic operator or operators.
9. Information whether the concession is related to a project and /or programme financed by European Union funds.
10. Name and address of the *oversight body* and the body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.
11. Date(s) and reference(s) of previous publications in the Official Journal of the European Union relevant to the contract(s) concerned by this notice.
12. Date of dispatch of the notice.
13. Any other relevant information.

the works, nature and extent of services.

5. Where applicable, modification of financial terms of the concession.
6. Description of the circumstances which have rendered necessary the modification.
7. Date of concession award decision.
8. Where applicable, the name, address including NUTS code, telephone, fax number, email address and internet address of the new economic operator or operators.
9. Information whether the concession is related to a project and /or programme financed by European Union funds.
10. Name and address of the *competent national authorities*-and *of* the body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.
11. Date(s) and reference(s) of previous publications in the Official Journal of the European Union relevant to the contract(s) concerned by this notice.
12. Date of dispatch of the notice.
13. Any other relevant information.

Or. en

#### **Amendment 109**

**EPP, S&D, ALDE, ~~ECR~~, Greens**

Compromise amendment replacing **Am. 231 Juvin, AM 981 Rühle**

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

#### **Annex VIII**

*Text proposed by the Commission*

*Amendment*

**ANNEX VIII  
DEFINITION OF CERTAIN**

***deleted***

## **TECHNICAL SPECIFICATIONS**

*For the purposes of this Directive:*

**1.                *technical specification", "***  
***means one of the following:***

***(a)                in the case of public works concessions or works concessions, the totality of the technical prescriptions contained in particular in the concession award documents, defining the characteristics required of a material, product or supply, so that it fulfils the use for which it is intended by the contracting authority or entity. Those characteristics include levels of environmental and climate performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions and production processes and methods at any stage of the life cycle of the works; those characteristics also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority or entity is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;***

***(b)                in the case of service concessions, a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold,***

*terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods at any stage of the life cycle of the supply or service and conformity assessment procedures;*

2. *"standard" means a technical specification approved by a recognised standardising body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:*

(a) *international standard: a standard adapted by an international standards organisation and made available to the general public,*

(b) *European standard: a standard adopted by a European standards organisation and made available to the general public,*

(c) *national standard: a standard adopted by a national standards organisation and made available to the general public;*

3. *"European technical approval" means a favourable technical assessment of the fitness for use of a product for a particular purpose, based on the fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. European technical approvals are issued by an approval body designated for this purpose by the Member State;*

4. *"Common technical specification" means a technical specification laid down in accordance with a procedure recognised by the Member States which has been published in the Official Journal of the European Union;*

5. *"Technical reference" means any deliverable produced by European standardisation bodies, other than European standards, according to procedures adapted to the development of*

*market needs.*

Or. en

## **Amendment 110**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing **Am. 232 Juvin, AM 982 Rühle**

### **Proposal for a directive**

#### **Annex IX**

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

#### Annex IX FEATURES CONCERNING PUBLICATION

##### 1. Publication of notices

The notices referred to in Articles 26 and 27 must be sent by the contracting authorities or entities to the Publications Office of the European Union and published in accordance with the following rules:

- Notices referred to in Articles 26 and 27 shall be published by the Publications Office of the European Union
- The Publications Office of the European Union will give the contracting authority or entity the confirmation referred to in **Article 28 (5)**.

##### 2. Publication of complementary or additional information

Contracting authorities and contracting entities shall publish the specifications and the additional documents in their entirety on the Internet.

##### 3. Format and procedures for sending notices electronically

The format and procedure for sending notices electronically as established by the Commission are made accessible at the Internet address ‘<http://simap.europa.eu>’.

##### *Amendment*

#### Annex IX FEATURES CONCERNING PUBLICATION

##### 1. Publication of notices

The notices referred to in Articles 26 and 27 must be sent by the contracting authorities or entities to the Publications Office of the European Union and published in accordance with the following rules:

- Notices referred to in Articles 26 and 27 shall be published by the Publications Office of the European Union
- The Publications Office of the European Union will give the contracting authority or entity the confirmation referred to in **Article 28(2)**.

##### 2. Publication of complementary or additional information

Contracting authorities and contracting entities shall publish the specifications and the additional documents in their entirety on the Internet.

##### 3. Format and procedures for sending notices electronically

The format and procedure for sending notices electronically as established by the Commission are made accessible at the Internet address ‘<http://simap.europa.eu>’.

**Amendment 111****EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing **Am. 107 Juvin, 233 Juvin, 687 Gustafsson, Cornelis de Jong, 689 Weiler, 986-987 Rühle, 688 Rühle, 690 Harbour, Kožušník**

**Proposal for a directive****Annex X**

<i>Text proposed by the Commission</i>		<i>Amendment</i>	
CPV Code	Description	CPV Code	Description
7511000-4 and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2) 75121000-0, 75122000-7, 75124000-1	Health and social services	79611000-0 and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2) 75121000-0, 75122000-7, 75124000-1; <b>from 79995000-5 to 79995200-7; from 80100000-5 to 80660000-8 (except 80533000-9, 80533100-0, 80533200-1); from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9 92232000-6)</b>	Health and social services
75300000-9	Administrative educational, healthcare and cultural services	75300000-9	Administrative educational, healthcare and cultural services
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1 98000000-3	Compulsory social security services Benefit services	75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1 98000000-3 ,	Compulsory social security services Benefit services
	Other		Other

98120000-0	community, social and personal services Services furnished by trade unions	98120000-0	community, social and personal services Services furnished by trade unions
98131000-0	Religious services	98131000-0	Religious services

Or. en

## **Amendment 112**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment linked to introduction of Article -26(5)

### **Proposal for a directive**

#### **Annex X a (new)**

*Text proposed by the Commission*

*Amendment*

***ANNEX Xa  
LIST OF INTERNATIONAL SOCIAL  
AND ENVIRONMENTAL  
CONVENTIONS REFERRED TO IN  
ARTICLE -26(3)***

- Convention 87 on Freedom of Association and the Protection of the Right to Organise;***
- Convention 98 on the Right to Organise and Collective Bargaining;***
- Convention 29 on Forced Labour;***
- Convention 105 on the Abolition of Forced Labour;***
- Convention 138 on Minimum Age;***
- Convention 111 on Discrimination (Employment and Occupation);***
- Convention 100 on Equal Remuneration;***
- Convention 182 on Worst Forms of Child Labour;***
- Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;***

*- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);*

*- Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention);*

*- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10/09/1998 and its 3 regional Protocols.*

Or. en

**Amendment 113**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing Am. 235 Juvin, 989 Rühle

**Proposal for a directive**

**Annex XII**

*Text proposed by the Commission*

*Amendment*

**ANNEX XII**

*deleted*

**REQUIREMENTS RELATING TO  
DEVICES FOR THE ELECTRONIC  
RECEIPT OF TENDERS, AND  
APPLICATIONS**

*1. Devices for the electronic receipt of tenders and applications must at least guarantee, through technical means and appropriate procedures, that:*

*(a) the exact time and date of the receipt of tenders and applications can be determined precisely;*

*(b) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under these requirements;*

*(c) where that access prohibition is*

*infringed, it may be reasonably ensured that the infringement is clearly detectable;*

*(d) only authorised persons may set or change the dates for opening data received;*

*(e) during the different stages of the concession award procedure access to all data submitted, or to part thereof, must be possible only through simultaneous action by authorised persons;*

*(f) simultaneous action by authorised persons must give access to data transmitted only after the prescribed date;*

*(g) data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith, and*

*(h) authentication of tenders must conform to the requirements set out in this Annex.*

Or. en

#### **Amendment 114**

**EPP, S&D, ALDE, ECR, Greens**

Compromise amendment replacing **Am. 236 Juvin, AM 990 Rühle**

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

#### **Annex XIII**

*Text proposed by the Commission*

*Amendment*

#### **ANNEX XIII**

*deleted*

#### **INFORMATION TO BE INCLUDED IN PRIOR INFORMATION NOTICES CONCERNING CONCESSIONS FOR SOCIAL AND OTHER SPECIFIC SERVICES**

*(as referred to in Article 26(3))*

**1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of**

*the contracting authority or contracting entity and, where different, of the service from which additional information may be obtained.*

*2. Where appropriate, email or internet address at which the specifications and any supporting documents will be available.*

*3. Type of contracting authority or contracting entity and main activity exercised.*

*4. CPV Nomenclature reference No(s); where the contract is divided into lots, this information shall be provided for each lot.*

*5. NUTS code for the main place of delivery or performance of service concessions*

*6. Description of the services and where applicable, incidental works and supplies to be procured*

*7. Estimated total value of concession(s); where the concession is divided into lots, this information shall be provided for each lot.*

*8. Conditions for participation.*

*9. Where applicable, time limit(s) for contacting the contracting authority or contracting entity in view of participation.*

*10. Where applicable, brief description of the main features of the award procedure to be applied.*

*11. Any other relevant information.*

Or. en

**Amendment 115**  
**EPP, ECR, S&D, ALDE**

***(14a) There may be in the water sector so-called multi-activities affiliated undertakings which operate in other sectors of activity with different market structures (eg, both liberalised and non-liberalised) and which may encounter structural problems in applying the requirements for exemption provided for in this directive. Therefore, in order to enable those affiliated undertakings operating concessions for the purpose of pursuing activities in the water sector to effectively make use of this exemption, a transitional period may apply until 2020. During this period, existing concessions may be extended without this Directive being applied if certain conditions are fulfilled. Indeed, under Article 11, for an affiliated undertaking to be exempted, 80% of its average total turnover has to derive from its activities with its contracting entity or entities. However, for multi-activities affiliated undertakings operating in the water sector, this turnover requirement may be difficult to meet because their turnover encompasses activities both in the liberalised and non-liberalised sectors. The transitional period is intended to give the affiliated undertakings concerned a reasonable period of time to adapt their internal organisation, possibly by separating their accounting on their activities in the water sector from their other activities. In order to limit any potential distortion of competition, the contracts concerned should however end at the latest by 2020. After the end of the transitional period, this adaptation of their internal organisation should enable them to meet the conditions for exemptions for affiliated undertakings provided for in this Directive.***

