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AMENDMENTS

16 - 127

Draft report
Giuseppe Gargani
(PE489.618v01-00)

Public procurement

Proposal for a directive
(COM(2011)0896 – C7-0006/2012 – 2011/0438(COD))

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United in diversity

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Amendment 16
Sergio Gaetano Cofferati

Proposal for a directive
Recital 5

Text proposed by the Commission

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

Amendment

(5) Under **Articles 9, 10 and 11** of the Treaty on the Functioning of the European Union, environmental protection requirements, **with the promotion of a high level of employment, the guarantee of suitable social protection, the fight against social exclusion and a high level of education, training and the protection of human health protection** must be integrated into the definition and implementation of the Union policies and activities, with a view to promoting **socially and environmentally** sustainable development. This Directive clarifies how the contracting authorities may **use their discretionary power in the definition and awarding of public contracts, in order to** contribute to the protection of the environment, **social welfare** and the promotion of sustainable development, whilst ensuring that they can obtain the best value for money for their contracts.

Or. it

Amendment 17
Sergio Gaetano Cofferati

Proposal for a directive
Recital 7

Text proposed by the Commission

(7) Illicit conduct by participants in a procurement procedure, such as attempts to unduly influence the decision-making process or to enter into agreements with

Amendment

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other candidates to manipulate the outcome of *the* procedure, can result in violations of the basic principles of Union law and in serious distortions of competition. Economic operators should therefore be required to submit a declaration on honour that they do not engage in such illicit activities and be excluded if this declaration proves to be false.

other candidates to manipulate the outcome of *that* procedure, *as well as failure to respect measures in the field of environmental protection and health, working conditions and social protection, as defined in the international legislation referred to in Annex XI, European and national legislation and/or collective agreements in force where the services, work or supplies are provided*, can result in violations of the basic principles of Union law and in serious distortions of competition. Economic operators should therefore be required to submit a declaration on honour that they do not engage in such illicit activities and be excluded if this declaration proves to be false.

Or. it

Amendment 18
Klaus-Heiner Lehne

Proposal for a directive
Recital 10

Text proposed by the Commission

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

Amendment

(10) The results of the Evaluation on the Impact and Effectiveness of EU Public Procurement Legislation demonstrated that the exclusion of certain services from the full application of the Directive should be reviewed. As a result, the full application of this directive is extended to a number of services.

Or. en

Amendment 19
Rebecca Taylor

Proposal for a directive
Recital 11

Text proposed by the Commission

(11) Other categories of services continue by their very nature to have a limited cross-border dimension, namely what are known as services to the person, such as certain social, health and educational services. 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 public contracts for these services, with a higher threshold of EUR **500 000**. Services to the person with values below this threshold will typically not be of interest to providers from other Member States, unless there are concrete indications to the contrary, such as Union financing for transborder projects. Contracts for services to the person above this threshold should be subject to Union-wide transparency. Given the importance of the cultural context and the sensitivity of these services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this directive take account of that imperative, imposing only observance of basic principles of transparency and equal treatment and making sure that contracting authorities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee. Member States and/or public authorities remain free to provide these services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or

Amendment

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authorisations to all economic operators meeting the conditions established beforehand by the contracting authority, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

authorisations to all economic operators meeting the conditions established beforehand by the contracting authority, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

Or. en

Justification

This amendment follows the Commission Proposal for the Directive on procurement by entities operating in the water, energy, transport and postal services sectors. Consistency between both Directives will bring legal certainty. The higher threshold is particularly justified as this relates to services linked to the person, such as social, health, education, specific to Member States with no or very little cross border elements.

Amendment 20 **Angelika Niebler**

Proposal for a directive **Recital 14**

Text proposed by the Commission

(14) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by public procurement rules. The relevant case-law of the Court of Justice of the European Union is interpreted divergently between Member States and even between contracting authorities. It is therefore necessary to clarify in what cases contracts concluded between contracting authorities are not subject to the application of public procurement rules. Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. The sole fact that both parties to an agreement are themselves contracting authorities does not as such rule out the application of procurement rules. However, the application of public procurement rules

Amendment

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should not interfere with the freedom of public authorities to decide how to organise the way they carry out their public service tasks. Contracts awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities should therefore be exempted from the application of the rules if the conditions set out in this directive are fulfilled. 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.

should not interfere with the freedom of public authorities to decide how to organise the way they carry out their public service tasks. Contracts awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities should therefore be exempted from the application of the rules if the conditions set out in this directive are fulfilled.

Cooperation between public service broadcasters and between public service broadcasters and their subsidiaries should be exempt from these regulations, insofar as they are subject to the specific European competition rules, in order to prevent any distortion of competition. 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.

Or. de

Justification

Competition law must have priority here: according to the regulations for the awarding of contracts for in-house business, the 'controlled legal person' must operate on the basis of the reimbursement of costs, which is not compatible with the principles of European competition law. This requires that subsidiaries of establishments governed by public law should conform to the market. Furthermore, in the case of radio, broadcasters and subsidiaries are required by law to have different objectives in implementing any compromise on aid.

Amendment 21
Sergio Gaetano Cofferati

Proposal for a directive
Recital 18

Text proposed by the Commission

(18) In view of the detrimental effects on competition, negotiated procedures without prior publication of a contract notice should only be used in very exceptional circumstances. This exception should be limited to cases where publication is either not possible, for reasons of force majeure in line with the standing case-law of the Court of Justice of the European Union, or where it is clear from the outset that publication would not trigger more competition, not least because there is objectively only one economic operator that can perform the contract. Only situations of objective exclusivity can justify the use of the negotiated procedure without publication, where the situation of exclusivity has not been created by the contracting authority itself with a view to the future procurement procedure, and where there are no adequate substitutes, the availability of which should be assessed thoroughly.

Amendment

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Or. it

Amendment 22
Rebecca Taylor

Proposal for a directive
Recital 18

Text proposed by the Commission

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prior publication of a contract notice should only be used in very exceptional circumstances ***and under the threshold as set out in Article 4 and with adequate justification***. This exception should be limited to cases where publication is either not possible, for reasons of force majeure in line with the standing case-law of the Court of Justice of the European Union, or where it is clear from the outset that publication would not trigger more competition, not least because there is objectively only one economic operator that can perform the contract. Only situations of objective exclusivity can justify the use of the negotiated procedure without publication, where the situation of exclusivity has not been created by the contracting authority itself with a view to the future procurement procedure, and where there are no adequate substitutes, the availability of which should be assessed thoroughly.

Or. en

Justification

It is important to keep the flexibility provided for in the Commission's text as it is important for local authorities, however this should be limited to cases under the threshold as set out in Article 4.

Amendment 23 **Sergio Gaetano Cofferati**

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

Text proposed by the Commission

Amendment

(30a) To facilitate access by SMEs to the public procurement market, groups of economic operators, who could form consortia of companies, should also be allowed to present joint tenders for a

contract. In this case, the contracting authorities should allow the groups of economic operators to combine the individual characteristics of the group members to satisfy the financial, technical and legal requirements as a single entity.

Or. it

Amendment 24
Sergio Gaetano Cofferati

Proposal for a directive
Recital 41

Text proposed by the Commission

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

Amendment

(41) Furthermore, in technical specifications and in award criteria, contracting authorities should be allowed to refer to a specific production process, a ***socially sustainable feature of the life cycle or of the production process, a*** specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the public contract. ***Furthermore***, in order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the ***conditions of execution and award criteria, social characteristics connected with the purpose of the contract. The social characteristics can be related, for example***, to the working conditions of the persons participating in the process of production or provision in question, the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, accessibility for persons with disabilities, ***gender equality, access to professional training in the workplace, user***

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 services¹*** 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. For service contracts and for contracts involving the design of works, contracting authorities should ***also be allowed to*** use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender.

involvement. They should be applied 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. For service contracts and for contracts involving the design of works, contracting authorities should use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender.

Or. it

Amendment 25
Sergio Gaetano Cofferati

Proposal for a directive
Recital 42

Text proposed by the Commission

(42) Tenders that appear abnormally low in relation to the works, supplies or services might be based on technically, economically or legally unsound assumptions or practices. ***In order to prevent possible disadvantages during contract performance,*** contracting authorities should be obliged to ask for an explanation of the price charged where a tender significantly undercuts the prices demanded by other tenderers. Where the

Amendment

(42) Tenders that appear abnormally low in relation to the works, supplies or services might be based on technically, economically or legally unsound assumptions or practices ***or on illegal conduct or a failure to adhere to obligations concerning workers or environmental protection measures.*** Contracting authorities should be obliged to ask for an explanation of the price charged where a tender significantly

¹ OJ L 18, 21.1.1997, p.1.

tenderer cannot provide a sufficient explanation, the contracting authority should ***be entitled to*** reject the tender. Rejection should be mandatory in cases where the contracting authority has established that the abnormally low price charged results from non-compliance with ***mandatory*** Union legislation in the fields of social, ***labour or environmental law or international labour law provisions***.

undercuts the prices demanded by other tenderers ***or in the event that an offer appears unusually low for other reasons***. Where the tenderer cannot provide a sufficient explanation, the contracting authority should reject the tender. ***Furthermore***, rejection should ***also*** be mandatory in cases where the contracting authority has established that the abnormally low price charged results from non-compliance with ***obligations arising from international law, Union or national legislation and/or collective agreements which apply where the work, service or supplies are provided***, in the fields of social ***security, working conditions and environmental protection***.

Or. it

Amendment 26
Sergio Gaetano Cofferati

Proposal for a directive
Recital 43 a (new)

Text proposed by the Commission

Amendment

(43a) In order to ensure the correct functioning of public procurement, the subcontracting instrument must be correctly regulated. The contracting authority must be informed, within the tenders presented, of the parts of the contract which a bidder may intend to subcontract, along with any subcontractors proposed. Every change in the subcontracting chain for the current contract should ensure that the contract is performed in accordance with the bid made and must be agreed by the contracting authority. The contracting authority should make arrangements for the direct payment of the subcontractors, insofar as this is permitted by the nature of the contract itself. Finally, a ‘joint and

several liability' system should be set up in the subcontracting chain and this chain should be limited to a maximum of three consecutive vertical subcontractors.

Or. it

Amendment 27
Sergio Gaetano Cofferati

Proposal for a directive
Recital 44

Text proposed by the Commission

(44) The laws, regulations **and collective agreements**, at both national and Union level, that are in force in the areas of employment conditions and safety at work apply during the performance of a public contract, ***In cross-border situations, where workers from one Member State provide services in another Member State for the purpose of performing a public contract, 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 services¹ lays down the minimum conditions that must be observed by the host country in respect of such posted workers. Where national law contains provisions to this effect,*** non-compliance with those obligations **may** be considered to be grave misconduct on the part of the economic operator concerned, **liable to** lead to the exclusion of that economic operator from the procedure for the award of a public contract.

Amendment

(44) The laws **and** regulations, at both national and Union level, that are in force in the areas of employment conditions and safety at work apply during the performance of a public contract, ***along with collective agreements which apply where the work, service or supply is to be provided.*** Non-compliance with those obligations **should** be considered to be grave misconduct on the part of the economic operator concerned **and** lead to the exclusion of that economic operator from the procedure for the award of a public contract.

Or. it

¹ OJ L 18, 21.1.1997, p. 1.

Amendment 28
Sergio Gaetano Cofferati

Proposal for a directive
Recital 48 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 29
Sergio Gaetano Cofferati

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

Text proposed by the Commission

Amendment

This Directive is without prejudice to the right of public authorities at all levels to decide whether, how and to what extent they want to perform public functions themselves. Public authorities may perform public interest tasks using their own resources, without being obliged to call on outside economic operators. They may do so in cooperation with other public authorities.

Or. en

Amendment 30
Giuseppe Gargani

Proposal for a directive
Article 2 – paragraph 1 – point 6 – introductory part

Text proposed by the Commission

Amendment

(6) ‘**bodies** governed by public law’ means

(6) ‘**a body** governed by public law’ means

bodies that **have** all of the following characteristics:

a body that **has** all of the following characteristics:

Or. it

Amendment 31
Giuseppe Gargani

Proposal for a directive
Article 2 – paragraph 1 – point 6 – point a

Text proposed by the Commission

Amendment

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

(a) **it is** established for the specific purpose of meeting needs in the general interest, not having **a merely** industrial **and** commercial character;

Or. it

Amendment 32
Giuseppe Gargani

Proposal for a directive
Article 2 – paragraph 1 – point 6 – point b

Text proposed by the Commission

Amendment

(b) **they have** legal personality;

(b) **it has** legal personality;

Or. it

Amendment 33
Giuseppe Gargani

Proposal for a directive
Article 2 – paragraph 1 – point 10

Text proposed by the Commission

(10) ‘public supply contracts’ means public contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products. A public supply contract may include, as an incidental matter, siting and installation operations;

Amendment

(10) ‘public supply contracts’ means public contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products. A public supply contract may include ***the provision of supplies broken down into various instalments. A supply contract may include***, as an incidental matter, siting and installation operations;

Or. it

Amendment 34
Sergio Gaetano Cofferati

Proposal for a directive
Article 2 – paragraph 1 – point 22 a (new)

Text proposed by the Commission

Amendment

(22 a) 'Life cycle characteristics' means elements relating to any part of the life cycle of a product or works or the provision of a service, as defined in point 22 of this Article. Life cycle characteristics can be invisible characteristics that are embedded in a product as a result of choices made in the production or other non-use phases of the life cycle of the product, even if such characteristics are not apparent in the physical characteristics or functional qualities of the resulting product or service;

Or. en

Amendment 35
Sergio Gaetano Cofferati

Proposal for a directive
Article 2 – paragraph 1 – point 22 b (new)

Text proposed by the Commission

Amendment

(22b) a ‘socially sustainable production process’ means a production process where the provision of work, services and supplies complies with health and safety, social security and employment law provisions, notably concerning the principle of equal treatment in the workplace. The principle of equal treatment in the workplace means adherence to the current regulations governing working and employment conditions, including health and safety, social security and employment law provisions defined by the stipulations of international law listed in Annex XI, in European Union and Member State legislation and in collective agreements which apply where the work, services and supplies are provided;

Or. it

Amendment 36
Rebecca Taylor

Proposal for a directive
Article 4 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) EUR **5 000 000** for public works contracts;

(a) EUR **8 000 000** for public works contracts;

Or. en

Justification

The thresholds need to be revised for two reasons. A rise in the thresholds would bring great benefits in terms of simplification and reduction of administrative costs, currently imposed on

both public authorities and economic agents. Secondly, the figures in the proposal have been fixed in comparison with figures from 1993, however inflation should be taken into account and reflected in updated figures. For example, in Spain, EUR 5 000 000 in 1993 is equivalent to EUR 8 740 000 in 2012. Member States are free to strengthen their national rules or lower thresholds, but this Directive should provide for a strong common European frame.

Amendment 37
Angelika Niebler

Proposal for a directive
Article 4 – paragraph 1 – point b

Text proposed by the Commission

(b) **EUR 130 000** for public supply and service contracts awarded by central government authorities and design contests organised by such authorities; where public supply contracts are awarded by contracting authorities operating in the field of defence, that threshold shall apply only to contracts concerning products covered by *Annex III*;

Amendment

(b) **EUR 200 000** for public supply and service contracts awarded by central government authorities and design contests organised by such authorities; where public supply contracts are awarded by contracting authorities operating in the field of defence, that threshold shall apply only to contracts concerning products covered by *Annex III*;

Or. de

Justification

Raising the thresholds would also take account of increases in values and purchase prices in supply and service contracts in recent years.

Amendment 38
Rebecca Taylor

Proposal for a directive
Article 4 – paragraph 1 – point b

Text proposed by the Commission

(b) EUR **130 000** for public supply and service contracts awarded by central government authorities and design contests organised by such authorities; where public supply contracts are awarded by

Amendment

(b) EUR **200 000** for public supply and service contracts awarded by central government authorities and design contests organised by such authorities; where public supply contracts are awarded by

contracting authorities operating in the field of defence, that threshold shall apply only to contracts concerning products covered by Annex III;

contracting authorities operating in the field of defence, that threshold shall apply only to contracts concerning products covered by Annex III;

Or. en

Justification

The thresholds need to be revised for two reasons. A rise in the thresholds would bring great benefits in terms of simplification and reduction of administrative costs, currently imposed on both public authorities and economic agents. Secondly, the figures in the proposal have been fixed in comparison with figures from 1993, however inflation should be taken into account and reflected in updated figures. For example, in Spain, EUR 5 000 000 in 1993 is equivalent to EUR 8 740 000 in 2012. Member States are free to strengthen their national rules or lower thresholds, but this Directive should provide for a strong common European frame.

Amendment 39 **Angelika Niebler**

Proposal for a directive **Article 4 – paragraph 1 – point c**

Text proposed by the Commission

(c) **EUR 200 000** for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities;

Amendment

(c) **EUR 400 000** for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities;

Or. de

Justification

Purchase markets are mainly regional in character. Raising the thresholds would also take account of increases in values and purchase prices in supply and service contracts in recent years.

Amendment 40 **Rebecca Taylor**

Proposal for a directive **Article 4 – paragraph 1 – point c**

Text proposed by the Commission

Amendment

(c) EUR **200 000** for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities.

(c) EUR **300 000** for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities.

Or. en

Justification

The thresholds need to be revised for two reasons. A rise in the thresholds would bring great benefits in terms of simplification and reduction of administrative costs, currently imposed on both public authorities and economic agents. Secondly, the figures in the proposal have been fixed in comparison with figures from 1993, however inflation should be taken into account and reflected in updated figures. For example, in Spain, EUR 5 000 000 in 1993 is equivalent to EUR 8 740 000 in 2012. Member States are free to strengthen their national rules or lower thresholds, but this Directive should provide for a strong common European frame.

Amendment 41
Rebecca Taylor

Proposal for a directive
Article 4 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) EUR **500 000** for public contracts for social and other specific services listed in Annex XVI.

(d) EUR **800 000** for public contracts for social and other specific services listed in Annex XVI.

Or. en

Justification

The thresholds need to be revised for two reasons. A rise in the thresholds would bring great benefits in terms of simplification and reduction of administrative costs, currently imposed on both public authorities and economic agents. Secondly, the figures in the proposal have been fixed in comparison with figures from 1993, however inflation should be taken into account and reflected in updated figures. For example, in Spain, EUR 5 000 000 in 1993 is equivalent to EUR 8 740 000 in 2012. Member States are free to strengthen their national rules or lower thresholds, but this Directive should provide for a strong common European frame.

Amendment 42
Angelika Niebler

Proposal for a directive
Article 4 – paragraph 1 – point d

Text proposed by the Commission

(d) EUR 500 000 for public contracts **for** social and other specific services listed in **Annex XVI**.

Amendment

(d) EUR 500 000 for public contracts **relating to the awarding of freelance services according to the definition of the European Court of Justice¹ as well as** social and other specific services listed in **Annex XVI**.

¹ **Judgment of 11 October 2001, Adam (C-267/99, [2001], I-7467).**

Or. de

Justification

When tenders are invited for the awarding of freelance services, the benefits and costs of the Europe-wide tendering procedure are significantly disproportionate. The number of foreign bidders is around the 1 % mark, while the costs for public clients and bidders can quickly reach EUR 90 000 per procedure. For this reason, freelance services, like social and other specific services, should come under Article 4(d).

Amendment 43
Angelika Niebler

Proposal for a directive
Article 5 – paragraph 7 – subparagraph 1

Text proposed by the Commission

Where a proposed work or purchase of services may result in contracts 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.

Amendment

Where a proposed work or purchase of services may result in contracts 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.
Where a freelance service to be awarded is divided into several subcontracts involving the same freelance service, the values of the subcontracts shall be added

together to calculate the estimated contract value.

Or. de

Justification

To enable SMEs to participate in tendering procedures and to simplify the process, it should only be mandatory for freelance services to be added together in order to calculate the contract value if these subcontracts relate to the same freelance service.

Amendment 44
Angelika Niebler

Proposal for a directive
Article 10 – paragraph 1 – point b

Text proposed by the Commission

(b) the acquisition, development, production or co-production of programme material intended for audiovisual media services, that are awarded by broadcasters, **or** contracts for broadcasting **time that are awarded to audiovisual media service providers**;

Amendment

(b) the acquisition, development, production or co-production of programme material intended for **audio and** audiovisual media services, that are awarded by broadcasters, **as well as associated preparatory services, and** contracts for **the** broadcasting **or distribution and transmission of** media services;

Or. de

Justification

In order to ensure technological neutrality, the exemption should also include radio and Internet services.

Amendment 45
Angelika Niebler

Proposal for a directive
Article 10 – paragraph 1 – point d

Text proposed by the Commission

(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;

Amendment

(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, **in particular transactions to enable contracting authorities to raise money or capital, as well as** central bank services and operations conducted with the European Financial Stability Facility;

Or. de

Justification

Borrowing by local government should not come under the scope of the Directive. There is no need for regulatory action by the EU in relation to awarding procedures for local government borrowing, as national local government budgetary laws contain clear guidelines for the admissibility of borrowing.

Amendment 46
Angelika Niebler

Proposal for a directive
Article 10 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. de

Justification

In order to ensure technological neutrality, both audio and audiovisual media services should be mentioned in this paragraph

Amendment 47
Sergio Gaetano Cofferati

Proposal for a directive
Article 15 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

Economic operators shall comply with obligations relating to social and employment protection and the working conditions which apply in the place where the work, service or supply is to be performed as set out by Union and national legislation and/or collective agreements or international labour law provisions listed in Annex XI.

Or. en

Amendment 48
Sergio Gaetano Cofferati

Proposal for a directive
Article 15 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

Contracting authorities shall aim for "best value" in procurement policy. This is achieved through the awarding of the public contract to the most economically advantageous tender.

Or. en

Amendment 49
Sergio Gaetano Cofferati

Proposal for a directive
Article 15 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

The details of public contracts shall be made public.

Or. en

Amendment 50
Sergio Gaetano Cofferati

Proposal for a directive
Article 16 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 51
Sergio Gaetano Cofferati

Proposal for a directive
Article 16 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Contracting authorities shall give the

possibility to a group of economic operators to fulfil all technical, legal and financial requirements as a single entity, summing up the individual characteristics of the components of the group.

Or. en

Amendment 52
Sergio Gaetano Cofferati

Proposal for a directive
Article 18 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Article 18 (1) and (2) shall not prevent the public disclosure of contracts once concluded including any subsequent changes.

Or. en

Amendment 53
Sergio Gaetano Cofferati

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

Text proposed by the Commission

Amendment

For the purposes of this Article, ‘private interests’ means any family, *emotional life*, economic, *political* or other shared interests with the candidates or the tenderers, including conflicting professional interests.

For the purposes of this Article, ‘private interests’ means any family, economic or other shared interests with the candidates or the tenderers *or any subcontractor proposed in the tender in accordance with the provisions of Article 71*, including conflicting professional interests.

Or. en

Amendment 54
Sergio Gaetano Cofferati

Proposal for a directive
Article 30 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not **substantially altered and that a report is sent to the Commission or the national oversight body designated according to Article 84 where they so request.**

Amendment

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not altered.

Or. it

Amendment 55
Sergio Gaetano Cofferati

Proposal for a directive
Article 30 – paragraph 2 – subparagraph 1 – point c – point i

Text proposed by the Commission

i) the absence of competition for technical reasons;

Amendment

deleted

Or. it

Amendment 56
Sergio Gaetano Cofferati

Proposal for a directive
Article 30 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. If a contracting authority decides, pursuant to paragraphs 1, 2, 3, 4 and 5 of this Article, to use a negotiated procedure

without prior publication, it shall provide to the oversight body referred to in Article 84 a detailed report justifying this choice and containing the procurement documents and related information, together with the procurement documents for the previous call for tenders if it wishes to use the negotiated procedure without prior publication on the basis of paragraph 2(a).

Or. it

Amendment 57
Giuseppe Gargani

Proposal for a directive
Article 31 – paragraph 1 – subparagraph 3

Text proposed by the Commission

The term of a framework agreement shall not exceed **four** years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

Amendment

The term of a framework agreement shall not exceed **six** years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

Or. it

Amendment 58
Sergio Gaetano Cofferati

Proposal for a directive
Article 40 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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** (22) of Article 2.

Amendment

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 **and socially sustainable production process** as referred to in **points** (22), (22a) and (22b) of Article 2.

Amendment 59
Sergio Gaetano Cofferati

Proposal for a directive
Article 40 – paragraph 1 – subparagraph 5 a (new)

Text proposed by the Commission

Amendment

Technical specifications may also include, as appropriate, requirements relating to:

- (a) performance, including levels of environmental and climate performance and performance in terms of socially sustainable production process;*
- (b) life cycle characteristics;*
- (c) socially sustainable production process;*
- (d) the organisation, qualification and experience of the staff assigned to performing the contract in question;*
- (e) safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions;*
- (f) 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 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;*
- (g) social characteristics, including social inclusion, gender balance, access to on-site vocational training.*

Or. en

Amendment 60
Sergio Gaetano Cofferati

Proposal for a directive
Article 40 – paragraph 3 – point a

Text proposed by the Commission

(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 to award the contract;

Amendment

(a) in terms of performance or functional requirements, including ***social and*** 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 to award the contract. ***In accordance with paragraph 1, technical specifications may be formulated in terms of performance or functional requirements relating to life cycle or socially sustainable production process characteristics of the requested works, supplies or services, and not only to the performance or functional requirements of the works, supplies, or services in use;***

Or. en

Amendment 61
Giuseppe Gargani

Proposal for a directive
Article 49 – paragraph 3

Text proposed by the Commission

3. Notices referred to in Article 46(2) and Article 47 shall be published in full in an official language of the Union as chosen by the contracting authority. 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.***

Amendment

3. Notices referred to in Article 46(2) and Article 47 shall be published in full in an official language of the Union as chosen by the contracting authority. That language version shall constitute the sole authentic text.

Or. it

Amendment 62
Giuseppe Gargani

Proposal for a directive
Article 53 – paragraph 2 – point d

Text proposed by the Commission

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

Amendment

deleted

Or. it

Amendment 63
Sergio Gaetano Cofferati

Proposal for a directive
Article 54 – paragraph 1 – point b

Text proposed by the Commission

(b) the tender comes from a tenderer that is not excluded in accordance with Articles 21 and 55 and that meets the selection criteria set out by the contracting authority in accordance with Article 56 and, where appropriate, the non-discriminatory rules and criteria referred to in Article 64.

Amendment

(b) the tender comes from a tenderer that is not excluded in accordance with Articles 21 and 55 and that meets the selection criteria set out by the contracting authority in accordance with Article 56 and, where appropriate, the non-discriminatory rules and criteria referred to in Article 64 **and 71**.

Or. en

Amendment 64
Sergio Gaetano Cofferati

Proposal for a directive
Article 54 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Contracting authorities **shall not** award a contract to the tenderer submitting the best tender where they have established that the tender does not comply with obligations in the field of social and **employment protection, working conditions and environmental legislation, as set out by Union and national legislation and/or collective agreements that apply in the place where the work, service or supply is to be performed or by the** international law provisions listed in Annex XI.

Or. en

Amendment 65
Sergio Gaetano Cofferati

Proposal for a directive
Article 54 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Where such laws do not apply, not compliance of the tender with other laws which ensure an equivalent level of protection and apply in the place where the work, service or supply is to be performed shall also provide a basis for exclusion.

Or. en

Amendment 66
Sergio Gaetano Cofferati

Proposal for a directive
Article 54 – paragraph 4

Text proposed by the Commission

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to **amend** the list in Annex XI, where necessary due to the conclusion of new international agreements or modification of existing international agreements.

Amendment

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to **complement** the list in Annex XI, where necessary due to the conclusion of new international agreements or modification of existing international agreements.

Or. en

Amendment 67
Sergio Gaetano Cofferati

Proposal for a directive
Article 55 – paragraph 1 – subparagraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(e a) 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.

Or. en

Amendment 68
Francesco Enrico Speroni

Proposal for a directive
Article 55 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Should the managing director, and/or chairman, and/or legal representative, and/or chief executive officer, and/or one or more members of the board of directors of an economic operator possess

consanguinity up to the fourth degree with managers, elected members and/or participants of whatever kind in the drafting and decision-making process of the contract within the context of the contracting authority, said operator shall be excluded from participation in the contract.

Or. it

Justification

The drafting and decision-making process must be, as far as possible, free from suspicions of nepotism and non-transparent conduct which damage the public authority and its contributors.

Amendment 69
Sergio Gaetano Cofferati

Proposal for a directive
Article 55 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

A contracting authority **may** exclude from participation in a public contract any economic operator if one of the following conditions is fulfilled:

Amendment

A contracting authority **shall** exclude from participation in a public contract any economic operator if one of the following conditions is fulfilled:

Or. en

Amendment 70
Sergio Gaetano Cofferati

Proposal for a directive
Article 55 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

(a) where it is aware of any violation of obligations **established by Union legislation** in the field of social and **labour**

Amendment

(a) where it is aware of any violation of obligations in the field of social and **employment protection, working**

law or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

conditions and environmental legislation, as set out by Union and national legislation and/or collective agreements that apply in the place where the work is performed or the service is provided, or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

Or. en

Amendment 71
Sergio Gaetano Cofferati

Proposal for a directive
Article 55 – paragraph 3 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

A contracting authority shall exclude from participation in a public contract any economic operator if one of the conditions set out in paragraphs 1, 2 or 3 is fulfilled in respect of a subcontractor proposed by the economic operator in accordance with Article 71.

Or. en

Amendment 72
Sergio Gaetano Cofferati

Proposal for a directive
Article 55 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

Any candidate or tenderer that is in one of the situations referred to in paragraphs 1, 2 and 3 may provide the contracting authority with evidence demonstrating its reliability despite the existence of the

Any candidate or tenderer that is in one of the situations referred to in paragraphs 1, 2, 3 and 3a may provide the contracting authority with evidence demonstrating its reliability *or, if appropriate, the reliability*

relevant ground for exclusion.

of its subcontractor, despite the existence of the relevant ground for exclusion.

Or. en

Amendment 73
Sergio Gaetano Cofferati

Proposal for a directive
Article 55 – paragraph 4 – subparagraph 2

Text proposed by the Commission

For this purpose, the candidate or tenderer shall prove that it has compensated any damage caused by the criminal offence or misconduct, clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities and taken concrete technical, organisational and personal measures that are appropriate to prevent further criminal offences or misconduct. Contracting authorities *shall evaluate* the measures taken by the candidates and tenderers taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the contracting authority *considers the measures to be insufficient*, it shall state the reasons for its decision.

Amendment

For this purpose, the candidate or tenderer shall prove that it has compensated any damage caused by the criminal offence or misconduct, clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities and taken concrete technical, organisational and personal measures that are appropriate to prevent further criminal offences or misconduct, *including reporting and control systems and internal audit structures to monitor compliance. Evidence provided by the candidate or tenderer to this effect shall be sufficient to satisfy the* contracting authorities *that* the measures taken by the candidates and tenderers, *or, as appropriate, the reliability of its subcontractor, are sufficient to prevent further criminal offences or misconduct*, taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the contracting authority *is not satisfied*, it shall state the reasons for its decision.

Or. en

Amendment 74
Sergio Gaetano Cofferati

Proposal for a directive
Article 55 – paragraph 5

Text proposed by the Commission

5. Member States shall ensure that contracting authorities and economic operators can easily obtain information and assistance with regard to the application of this Article through the *liaison point provided for in Article 88*.

Amendment

5. Member States shall ensure that contracting authorities and economic operators can easily obtain information and assistance with regard to the application of this Article through the *single body, several bodies or administrative structures established or appointed to that effect in accordance with Articles 84 and 87*.

Or. en

Amendment 75
Sergio Gaetano Cofferati

Proposal for a directive
Article 56 – paragraph 1 – subparagraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(c a) compliance with obligations in the field of social and employment protection, working conditions and environmental legislation, as set out by Union and national legislation and/or by collective agreements that apply where the the work, the service or the supply is performed and with the international social and environmental law provisions listed in Annex XI.

Or. en

Amendment 76
Sergio Gaetano Cofferati

Proposal for a directive
Article 56 – paragraph 1 – subparagraph 2

Text proposed by the Commission

They are not obliged to impose all the conditions listed in paragraphs 2, 3 and 4, **but** they **shall not** provide requirements other than those listed.

Amendment

They are not obliged to impose all the conditions listed in paragraphs 2, 3 and 4 **and** they **may** provide requirements other than those listed.

Or. en

Amendment 77

Sergio Gaetano Cofferati

Proposal for a directive

Article 56 – paragraph 1 – subparagraph 3

Text proposed by the Commission

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 contract 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.

Amendment

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 contract to be awarded. All requirements shall be **linked** to the subject-matter of the contract, taking into account the need to ensure genuine competition.

Or. en

Amendment 78

Sergio Gaetano Cofferati

Proposal for a directive

Article 56 – paragraph 4 – subparagraph 1

Text proposed by the Commission

With regard to technical and professional ability, contracting authorities **may** require that economic operators possess the necessary human and technical resources

Amendment

With regard to technical and professional ability, contracting authorities **shall** require that economic operators possess **or have made provisions to access or acquire** the

and experience to *perform* the contract to an appropriate quality standard. Contracting authorities may conclude that economic operators will not *perform the contract to an appropriate quality standard* where the contracting authority established that they have conflicting interests which may negatively affect the performance of the contract.

necessary human and technical resources and experience to *ensure the performance of the* contract to an appropriate quality standard *and, where so requested by the contracting authority, in accordance with any contract performance clause specified in accordance with Article 70*. Contracting authorities may conclude that economic operators will not *ensure the required performance* where the contracting authority established that they have conflicting interests which may negatively affect the performance of the contract.

Or. en

Amendment 79
Sergio Gaetano Cofferati

Proposal for a directive
Article 56 – paragraph 4 – subparagraph 2

Text proposed by the Commission

In procedures for awarding public contracts having as their object supplies requiring siting or installation work, the provision of services or the execution of works, the ability of economic operators to provide the service or to execute the installation or the work may be evaluated with regard to their skills, efficiency, experience and reliability.

Amendment

deleted

Or. en

Amendment 80
Sergio Gaetano Cofferati

Proposal for a directive
Article 56 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5 a. This Article shall apply also to subcontracting procedures and subcontractors.

Or. en

**Amendment 81
Giuseppe Gargani**

**Proposal for a directive
Article 62 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

1a. The requirements for reliance on the capacities of other entities may not be used contextually by the economic operator or said entities.

Or. it

**Amendment 82
Sergio Gaetano Cofferati, Raffaele Baldassarre**

**Proposal for a directive
Article 66 – paragraph 1 – subparagraph 1 – introductory part**

Text proposed by the Commission

Amendment

Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, the criterion on which contracting authorities shall base the award of public contracts shall be **one** of the **following**:

Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, the criterion on which contracting authorities shall base the award of public contracts shall be **that** of the **most economically advantageous tender**.

Or. it

Amendment 83
Sergio Gaetano Cofferati, Raffaele Baldassarre

Proposal for a directive
Article 66 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) the most economically advantageous tender; *deleted*

Or. it

Amendment 84
Sergio Gaetano Cofferati, Raffaele Baldassarre

Proposal for a directive
Article 66 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the lowest cost. *deleted*

Or. it

Amendment 85
Sergio Gaetano Cofferati, Raffaele Baldassarre

Proposal for a directive
Article 66 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Costs may be assessed, on the choice of the contracting authority, on the basis of the price only or using a cost-effectiveness approach, such as a life-cycle costing approach, under the conditions set out in Article 67. *deleted*

Or. it

Amendment 86
Sergio Gaetano Cofferati, Raffaele Baldassarre

Proposal for a directive
Article 66 – paragraph 2 – introductory part

Text proposed by the Commission

2. The most economically advantageous tender referred to in *point (a) of paragraph 1 from the point of view of the contracting authority shall be identified* on the basis of criteria linked to the subject-matter of the public contract in question. *Those criteria shall include*, in addition to the price *or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter of the public contract in question, such as:*

Amendment

2. The *contracting authority shall assess the* most economically advantageous tender referred to in paragraph 1, on the basis of criteria linked to the subject-matter of the public contract in question. In addition to the price *and costs, assessed solely on the basis of a cost-effectiveness approach, as in the determination of the life-cycle costs in compliance with the stipulations of Article 67, the following examples shall feature among the criteria:*

Or. it

Amendment 87
Sergio Gaetano Cofferati

Proposal for a directive
Article 66 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(a a) life cycle process and life cycle characteristics;

Or. en

Amendment 88
Sergio Gaetano Cofferati

Proposal for a directive
Article 66 – paragraph 2 – point a b (new)

Text proposed by the Commission

Amendment

(ab) the socially sustainable production

process;

Or. it

Amendment 89

Sergio Gaetano Cofferati

Proposal for a directive

Article 66 – paragraph 2 – point b

Text proposed by the Commission

(b) for service contracts and contracts involving the design of works, the organisation, qualification and experience of the staff assigned to performing the contract in question **may** be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced with the consent of the contracting authority, which must verify that replacements ensure equivalent organisation and quality;

Amendment

(b) for service contracts and contracts involving the design of works, the organisation, qualification and experience of the staff assigned to performing the contract in question **shall** be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced with the consent of the contracting authority, which must verify that replacements ensure equivalent organisation and quality;

Or. it

Amendment 90

Sergio Gaetano Cofferati

Proposal for a directive

Article 66 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) social criteria, such as, for example, decent working conditions, health and safety, respect of collective bargaining, gender equality, social inclusion, including employment opportunities for disabled, disadvantaged or vulnerable workers, access to professional training in the workplace, user consultation and participation, economic accessibility, human rights and fair trade;

Or. it

Amendment 91

Sergio Gaetano Cofferati, Raffaele Baldassarre

Proposal for a directive

Article 66 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States may provide that the award of certain types of contracts shall be based on the most economically advantageous tender as referred to in point (a) of paragraph 1 and in paragraph 2.

deleted

Or. it

Amendment 92

Sergio Gaetano Cofferati, Raffaele Baldassarre

Proposal for a directive

Article 66 – paragraph 4

Text proposed by the Commission

Amendment

4. Award criteria shall *not confer an unrestricted freedom of choice on the contracting authority. They shall ensure the possibility of* effective competition and shall be accompanied by requirements that allow the information provided by the tenderers to be effectively verified. Contracting authorities shall verify *effectively*, on the basis of the information and proof provided by the tenderers, whether the tenders meet the award criteria.

4. Award criteria shall ensure effective competition and shall be accompanied by requirements that allow the information provided by the tenderers to be effectively verified. Contracting authorities shall verify, on the basis of the information and proof provided by the tenderers, whether the tenders meet the award criteria.

Or. it

Amendment 93
Sergio Gaetano Cofferati, Raffaele Baldassarre

Proposal for a directive
Article 66 – paragraph 5 – subparagraph 1

Text proposed by the Commission

In the case referred to in point (a) of paragraph 1 the contracting authority shall specify, in the contract notice, in the invitation to confirm interest, in the procurement documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.

Amendment

The contracting authority shall specify, in the contract notice, in the invitation to confirm interest, in the procurement documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.

Or. it

Amendment 94
Sergio Gaetano Cofferati, Raffaele Baldassarre

Proposal for a directive
Article 66 – paragraph 5 – subparagraph 2

Text proposed by the Commission

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

Amendment

deleted

Or. it

Amendment 95
Sergio Gaetano Cofferati, Raffaele Baldassarre

Proposal for a directive
Article 67 – paragraph 3 – subparagraph 1

Text proposed by the Commission

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 66(1).

Amendment

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 in ***accordance with*** the award ***criterion*** referred to in Article 66(1).

Or. it

Amendment 96

Sergio Gaetano Cofferati, Raffaele Baldassarre

Proposal for a directive

Article 69 – paragraph 1 – introductory part

Text proposed by the Commission

1. Contracting authorities shall require economic operators to explain the price or costs charged, where ***all*** of the ***following conditions are fulfilled***:

Amendment

1. Contracting authorities shall require economic operators to explain the price or costs charged, where ***the price or costs charged are more than 25 % lower than the average price or average costs*** of the ***remaining tenders***.

Or. it

Amendment 97

Sergio Gaetano Cofferati, Raffaele Baldassarre

Proposal for a directive

Article 69 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

deleted

Or. it

Amendment 98
Sergio Gaetano Cofferati, Raffaele Baldassarre

Proposal for a directive
Article 69 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

Or. it

Amendment 99
Sergio Gaetano Cofferati, Raffaele Baldassarre

Proposal for a directive
Article 69 – paragraph 1 – point c

Text proposed by the Commission

Amendment

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

Or. it

Amendment 100
Giuseppe Gargani

Proposal for a directive
Article 69 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1. The contracting authority states in the invitation to tender that the maximum possible discount cannot exceed 25 % of the base tender price.

Or. it

Amendment 101
Sergio Gaetano Cofferati, Raffaele Baldassarre

Proposal for a directive
Article 69 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. it

Amendment 102
Sergio Gaetano Cofferati, Raffaele Baldassarre

Proposal for a directive
Article 69 – paragraph 3 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. it

Amendment 103
Sergio Gaetano Cofferati, Raffaele Baldassarre

Proposal for a directive
Article 69 – paragraph 3 – point d

Text proposed by the Commission

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

Amendment

(d) compliance with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in *Annex XI* or,

provisions listed in *Annex XI* or, where not applicable, with other provisions ensuring an equivalent level of protection;

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

Or. it

Amendment 104
Sergio Gaetano Cofferati

Proposal for a directive
Article 69 a (new)

Text proposed by the Commission

Amendment

Article 69 a

Tenders comprising products originating in third countries

- 1. This Article shall apply to tenders covering products originating in third countries with which the Union has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for Community undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Union or its Member States in respect of third countries.***
- 2. Contracting authorities may require tenderers to provide information on the origin of the goods and services contained in the tender, and their value. Any tender submitted for the award of a supply contract where the value of the products originating in third countries, as determined in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code¹, exceeds 50 % of the total value of the products or services constituting the tender may be rejected under the following conditions.***
- 3. Upon request of contracting authorities, the Commission shall assess***

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

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

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

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

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

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

Union economic operators, goods and services.

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

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

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

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

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

Or. en

Amendment 105
Sergio Gaetano Cofferati

Proposal for a directive
Article 71 – paragraph 1

Text proposed by the Commission

1. In the procurement documents, the contracting authority *may ask or may be required by a Member State to ask* the

Amendment

1. In the procurement documents, the contracting authority *shall* ask the tenderer to indicate in its tender any share of the

tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.

contract it may intend to subcontract to third parties and any proposed subcontractors, ***providing information regarding the subcontractor including names, contact details and legal representatives.***

Any changes in the subcontracting chain shall be proposed by the economic operator and agreed by the contracting authority. In the case the proposed change regards also the involvement of a new subcontractor, the main contractor shall indicate its name, contact details and legal representatives

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

Or. en

Amendment 106
Sergio Gaetano Cofferati

Proposal for a directive
Article 71 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

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

contracts shall be subcontracted to third parties.

Or. en

Amendment 107
Rebecca Taylor

Proposal for a directive
Article 71 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Direct payment should first only be considered at the request of the subcontractor and not in all cases where the nature of the contract so allows. Requesting that contracting authorities put in place direct payment for all subcontractors where the nature of the contract so allows is an administrative burden that not all authorities can manage.

Amendment 108
Sergio Gaetano Cofferati

Proposal for a directive
Article 71 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 109

Sergio Gaetano Cofferati, Raffaele Baldassarre

**Proposal for a directive
Article 71 – paragraph 3**

Text proposed by the Commission

Amendment

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

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

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

The principal economic operator and any subcontractor involved in doing work on a public contract shall be jointly and severally liable for any liability which arises from the failure by a subcontractor to comply with provisions relating to fundamental rights, health and safety requirements, social rules and standards, employment and working conditions, health and safety at workplace and social security, as set out by EU and national laws, regulations or administrative provisions, collective agreement and contracts, and international labour law provisions listed in Annex XI, that apply in the place where the work, service or supply is performed.

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

Or. en

Amendment 110
Sergio Gaetano Cofferati

Proposal for a directive
Article 71 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. The main contractor and any intermediate subcontractor in their contracts with their subcontractors, shall stipulate that in the event that they have reason to believe that their immediate subcontractor is violating the rules referred to in Paragraph 3, the immediate subcontractor shall take immediate action to remedy the situation, and that, failing this, the contract concerned shall be terminated.

Or. en

Amendment 111
Francesco Enrico Speroni

Proposal for a directive
Article 73 a (new)

Text proposed by the Commission

Amendment

Article 73a.

Appeals and execution of the work
Any appeal or complaint made to judicial and/or administrative protection entities against the decision made by the public contracting authority and/or against any legal aspect concerning the contract

drafting and award process shall not interrupt the execution procedure thereof. In the event that the claimant's arguments are upheld definitively, the contracting authority shall pay to the original winner of the contract only the costs incurred for the execution thereof and to the administrative claimant only the earnings lost from the inability to carry out the work. Nothing shall be owed to operators whose dishonest behaviour contributes to the contract awarding decision.

Or. it

Justification

The citizen's right to swift and certain execution of work in the public interest must be steadfastly protected and taken into consideration even when recognising the individual rights of the economic operators.

Amendment 112
Klaus-Heiner Lehne

Proposal for a directive
Article 75 – paragraph 1

Text proposed by the Commission

Amendment

1. Contracting authorities intending to award a public contract for the services referred to in Article 74 shall make known their intention by means of a contract notice.

deleted

Or. en

Amendment 113
Klaus-Heiner Lehne

Proposal for a directive
Article 75 – paragraph 3 – subparagraph 1

Text proposed by the Commission

The notices referred to in **paragraphs 1 and 2** shall contain the information referred to in Annexes VI Part **H and I**, **in accordance with the standard forms**.

Amendment

The notices referred to in **paragraph 2** shall contain the information referred to in Annexes VI Part **I**.

Or. en

Amendment 114
Klaus-Heiner Lehne

Proposal for a directive
Article 75 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The Commission shall establish the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.

Amendment

deleted

Or. en

Amendment 115
Klaus-Heiner Lehne

Proposal for a directive
Article 75 – paragraph 4

Text proposed by the Commission

4. The notices referred to in **paragraphs 1 and 2** shall be published in accordance with Article 49.

Amendment

4. The notices referred to in **paragraph 2** shall be published in accordance with Article 49.

Or. en

Amendment 116
Sergio Gaetano Cofferati

Proposal for a directive
Article 76 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Member States shall ensure that contracting authorities 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, ***as well as consumer protection and social inclusion.***

Or. it

Amendment 117
Francesco Enrico Speroni

Proposal for a directive
Article 76 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall ensure that the contracting authorities are fully solvent in their dealings with the economic operators and shall ensure that the said authorities put in place beforehand a suitable instrument for securing the credit of the operator.

Or. it

Justification

The continuing insolvency of public authorities in dealings with private businesses for work and services provided can no longer be tolerated. The putting in place of a suitable instrument to secure the credit which the economic operator would possess following the completion of the work could represent an indispensable tool to ensure effective

remuneration.

Amendment 118
Sergio Gaetano Cofferati

Proposal for a directive
Article 76 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The general principles referred to in Article 54, the exclusion grounds referred to in Article 55 and the rules governing subcontracting referred to in Article 71, shall also apply to the contracts defined in Article 74.

Or. it

Amendment 119
Angelika Niebler

Proposal for a directive
Article 84 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

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

1. **In accordance with their national or federal structure**, Member States shall appoint independent **bodies** responsible for the oversight and coordination of implementation activities (hereinafter 'the oversight **bodies**'). Member States shall inform the Commission of their designation.

(This amendment applies to the entire legislative text; if the amendment is adopted, technical amendments will be required throughout the text.)

Or. de

Justification

The proposal for the establishment of a single oversight body does not reflect the national structures in many Member States and therefore interferes with constitutional organisational structures. Furthermore, it is unrealistic to expect a single oversight body to be able to monitor the awarding of contracts at local government level in tripartite state structures.

Amendment 120
Rebecca Taylor

Proposal for a directive
Article 84 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Member States that have particular constitutional arrangements which would prevent them from establishing a single independent body, and already have in place a structure of several administrative bodies can retain these arrangements, as long as the bodies concerned fulfill all responsibilities as stated below.

Or. en

Justification

More flexibility needs to be provided in this Article, in the same way as it is in Article 87. It is necessary to take into account the constitutional structures of some Member States (such as the United Kingdom) who could not put in place a single independent oversight body without going against national constitutional principles (such as the principle of devolution in the United Kingdom). If these Member States already have in place a functioning system, then this should remain as long as the responsibilities as stated in Article 84 are fulfilled.

Amendment 121
Sergio Gaetano Cofferati

Proposal for a directive
Article 84 – paragraph 3 – subparagraph 1 – point d

Text proposed by the Commission

Amendment

(d) establishing and applying

(d) establishing and applying

comprehensive, actionable ‘red flag’ indicator systems to prevent, detect and adequately report instances of procurement fraud, corruption, conflict of interest and other serious irregularities;

comprehensive, actionable ‘red flag’ indicator **and monitoring** systems to prevent, detect and adequately report instances of procurement fraud, corruption, conflict of interest and other serious irregularities **as well as specific breaches of provisions contained in Articles 54, 55 and 71;**

Or. en

Amendment 122
Sergio Gaetano Cofferati

Proposal for a directive
Article 84 – paragraph 3 – subparagraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) examining the reports sent to them by contracting authorities intending to use a negotiated procedure without publication;

Or. it

Amendment 123
Sergio Gaetano Cofferati

Proposal for a directive
Article 84 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Amendment

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

Member States shall empower the oversight body to seize the jurisdiction competent according to national law for the review of contracting authorities' decisions where it has detected a violation in the course of its monitoring and legal advising activity **or when examining reports provided by the contracting authorities on the basis of Article 30.**

Or. it

Amendment 124
Sergio Gaetano Cofferati

Proposal for a directive
Article 87 – paragraph 1

Text proposed by the Commission

1. Member States shall make available technical support structures in order to provide legal and economic advice, guidance and assistance to contracting authorities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting authority can obtain competent assistance and advice on individual questions.

Amendment

1. Member States shall make available technical support structures in order to provide legal and economic advice, guidance and assistance to contracting authorities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting authority can obtain competent assistance and advice on individual questions, *in particular in relation to provisions contained in Articles 54, 55 and 71.*

Or. en

Amendment 125
Klaus-Heiner Lehne

Proposal for a directive
Article 87 – paragraph 1

Text proposed by the Commission

1. Member States shall make available technical support structures in order to provide legal and economic *advice*, guidance and assistance to contracting authorities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting authority can obtain competent assistance and *advice* on individual questions.

Amendment

1. Member States shall make available technical support structures in order to provide legal and economic *information*, guidance and assistance to contracting authorities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting authority can obtain competent assistance and *information* on individual questions.

Or. en

Amendment 126
Sergio Gaetano Cofferati

Proposal for a directive
Annex XI – indent 1 a (new)

Text proposed by the Commission

Amendment

**- Convention 94 on Labour Clauses in
Public Contracts;**

Or. en

Amendment 127
Klaus-Heiner Lehne

Proposal for a directive
Annex XVI– row 1a (new))

Text proposed by the Commission

CPV Code	Description
79611000-0 and from 85000000-9 to 85323000-9(except 85321000-5 and 85322000-2)	Health and social services
75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80100000-5 to 80660000-8 (except 80533000-9, 80533100-0, 80533200-1); from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9, 92232000-6)	Administrative educational, healthcare and cultural services
75300000-9	Compulsory social security services
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	Benefit services
98000000-3	Other community, social and personal services
98120000-0	Services furnished by trade unions
98131000-0	Religious services

Amendment

CPV Code	Description
79611000-0 and from 85000000-9 to 85323000-9(except 85321000-5 and 85322000-2)	Health and social services
<i>From 74110000-3 to 74114000-1</i>	<i>Legal services</i>
75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80100000-5 to 80660000-8 (except 80533000-9, 80533100-0, 80533200-1); from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9, 92232000-6)	Administrative educational, healthcare and cultural services
75300000-9	Compulsory social security services
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	Benefit services
98000000-3	Other community, social and personal services
98120000-0	Services furnished by trade unions
98131000-0	Religious services

Or. en