



EUROPEAN PARLIAMENT

2009 - 2014

Committee on International Trade

2012/0060(COD)

03.10.2013

AMENDMENTS

43 - 273

Draft report
Daniel Caspary
(PE516.711v02-00)

on the access of third-country goods and services to the Union's internal market in public procurement

Proposal for a regulation
(COM(2012)0124 – C7-0084/2012 – 2012/0060(COD))

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PE519.588v01-00

EN

United in diversity

EN

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Amendment 43
Emma McClarkin

Proposal for a regulation

—

Proposal for a rejection

The European Parliament rejects [].

Or. en

Justification

This proposal is founded upon negligible evidence that third country markets are more closed than EU markets. International trade relationships with third countries could be seriously damaged by adopting this proposal and in turn European businesses could suffer as a result of being excluded completely from third country markets as a result of retaliatory action. The action could also increase costs for contracts within the EU. This action should not be taken in the current economic climate.

Amendment 44
Yannick Jadot
on behalf of the Greens/EFA Group

Proposal for a regulation

—

Proposal for a rejection

The European Parliament rejects [the Commission proposal].

Or. en

Amendment 45
Christofer Fjellner, María Auxiliadora Correa Zamora, Pablo Zalba Bidegain,
Elisabeth Köstinger

Proposal for a regulation

—

Proposal for a rejection

The European Parliament rejects [the Commission proposal].

Or. en

Amendment 46
Helmut Scholz

Draft legislative resolution
Paragraph 2

Draft legislative resolution

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text,

Amendment

2. Rejects the Commission proposal;

Or. en

Amendment 47
Daniel Caspary

Proposal for a regulation
Title 1

Text proposed by the Commission

Proposal for a
REGULATION OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on the access of third-country goods and
services to the Union's internal market in
public procurement and procedures
supporting negotiations on access of Union
goods and services to the public
procurement markets of third countries

(Text with EEA relevance)

Amendment

Proposal for a
REGULATION OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on the access of third-country goods and
services to the Union's internal market in
public procurement and ***concessions and***
procedures supporting negotiations on
access of Union goods and services to the
public procurement markets ***and to the***
concessions of third countries

(Text with EEA relevance)

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 48
Helmut Scholz

Proposal for a regulation
Citation 3 a (new)

Text proposed by the Commission

Amendment

- Having regard to the revised public procurement directive

Or. en

Amendment 49
Helmut Scholz

Proposal for a regulation
Citation 3 b (new)

Text proposed by the Commission

Amendment

- Having regard to the revised Plurilateral Agreement on Government Procurement (GPA);

Or. en

Amendment 50
Helmut Scholz

Proposal for a regulation
Recital 1

Text proposed by the Commission

Amendment

(1) Article 21 of the Treaty on European Union provides that the Union *is to* define and pursue common policies and actions,

(1) Article 21 of the Treaty on European Union provides that the Union *shall seek to develop relations and build partnerships*

and work for a high degree of cooperation in all fields in international relations in order, inter alia, to encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade.

with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph, and that the Union shall define and pursue common policies and actions, and work for a high degree of cooperation in all fields in international relations in order, inter alia, to help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development, to encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade, and to promote an international system based on stronger multilateral cooperation and good global governance.

Or. en

Amendment 51

Marielle de Sarnez

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) Pursuant to Article 206 of the Treaty on the Functioning of the European Union (TFEU) the Union, by establishing a customs union, is to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers.

Amendment

(2) Pursuant to Article 206 of the Treaty on the Functioning of the European Union (TFEU) the Union, by establishing a customs union, is to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers; ***it should therefore promote global trade that is underpinned by the principles of reciprocity and fair competition.***

Or. fr

Amendment 52
Marielle de Sarnez
Proposal for a regulation
Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) The purpose of EU trade policy should be to defend the interests of the Union and the European public and thus to promote a regulated and balanced vision of trade relations;

Or. fr

Amendment 53
Daniel Caspary

Proposal for a regulation
Recital 5

Text proposed by the Commission

Amendment

(5) Within the context of the World Trade Organisation and through its bilateral relations the Union advocates an ambitious opening of international public procurement markets of the Union and its trading partners, in a spirit of reciprocity and mutual benefit.

(5) Within the context of the World Trade Organisation and through its bilateral relations the Union advocates an ambitious opening of international public procurement ***and concessions*** markets of the Union and its trading partners, in a spirit of reciprocity and mutual benefit.

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 54
Bernd Lange

Proposal for a regulation
Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) Public Procurement forms an important part of the EU's GDP and must therefore be used to strengthen the EU's potential for innovation and industrial production. In view of a sustainable industry policy strategy in the European Union, unfair tenders comprising goods and/or services originating outside the European Union must therefore be excluded. At the same time, reciprocity and fair conditions for the market access of EU industries have to be ensured.

Or. en

Amendment 55
Helmut Scholz

Proposal for a regulation
Recital 6

Text proposed by the Commission

Amendment

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

(6) Many third countries are reluctant to open their public procurement markets to international competition, or to open those markets further than what they have already done, ***because they consider public procurement as an important instrument to address development needs of their population, in particular in rural areas.*** As a result, Union economic operators face restrictive procurement practices in many of the trading partner of the Union.

Or. en

Amendment 56
Daniel Caspary

Proposal for a regulation

Recital 6

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 57

Helmut Scholz

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) Directives 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors¹⁰ and 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts¹¹ contain only a few provisions concerning the external dimension of the public procurement policy of the Union, in

Amendment

(7) Directives 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors¹⁰ and 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts¹¹ contain only a few provisions concerning the external dimension of the public procurement policy of the Union, in

particular Articles 58 and 59 of Directive 2004/17/EC. These provisions *however only* have a limited scope *and due to a lack of guidance* they are not much applied by contracting entities.

¹⁰ OJ L 134, 30.4.2004, p. 1

¹¹ OJ L 134, 30.4.2004, p. 114.

particular Articles 58 and 59 of Directive 2004/17/EC. These provisions have a limited scope. They are not much applied by contracting entities.

¹⁰ OJ L 134, 30.4.2004, p. 1

¹¹ OJ L 134, 30.4.2004, p. 114.

Or. en

Amendment 58
Daniel Caspary

Proposal for a regulation
Recital 8

Text proposed by the Commission

(8) In accordance with Article 207 TFEU the common commercial policy in the field of public procurement is to be based on uniform principles.

Amendment

(8) In accordance with Article 207 TFEU the common commercial policy in the field of public procurement *and concessions* is to be based on uniform principles.

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 59
Yannick Jadot
on behalf of the Greens/EFA Group

Proposal for a regulation
Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) Without prejudice to EU's international obligations in the area of

public procurement, the basic underlying principle underpinning the regulation of access to EU's public procurement should be closure by default, whereas openness to third countries goods and services should be the exception in order for procurement to be used as an appropriate tool for industrial policy;

Or. en

Amendment 60
Daniel Caspary

Proposal for a regulation
Recital 9

Text proposed by the Commission

(9) In the interest of legal certainty for Union and third-country economic operators and contracting authorities/entities, the international market access commitments undertaken by the Union vis-à-vis third countries in the field of public procurement should be reflected in the legal order of the EU, thereby ensuring effective application thereof. The Commission should issue guidance on the application of the existing international market access commitments of the European Union. This guidance should be updated on a regular basis and provide easy to use information.

Amendment

(9) In the interest of legal certainty for Union and third-country economic operators and contracting authorities/entities, the international market access commitments undertaken by the Union vis-à-vis third countries in the field of public procurement **and concessions** should be reflected in the legal order of the EU, thereby ensuring effective application thereof. The Commission should issue guidance on the application of the existing international market access commitments of the European Union. This guidance should be updated on a regular basis and provide easy to use information.

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 61
Henri Weber, Marc Tarabella
Proposal for a regulation
Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) Public contracts cannot be awarded to economic operators that:

-do not meet the requirements laid down by Union legislation or international provisions in the areas of social, labour and environmental law, in accordance with the public procurement directives;

-are involved or have been involved in a criminal organisation or in human trafficking or child labour.

Or. fr

Amendment 62
Henri Weber, Marc Tarabella
Proposal for a regulation
Recital 9 b (new)

Text proposed by the Commission

Amendment

(9b) The Commission should ensure that it does not fund programmes for which international public contracts are awarded or implemented in a manner inconsistent with the principles laid down in the public procurement directive.

Or. fr

Amendment 63
Helmut Scholz

Proposal for a regulation
Recital 10

Text proposed by the Commission

Amendment

(10) The objectives of improving the access of EU economic operators to the public procurement markets of certain third countries protected by restrictive procurement measures and preserving equal conditions of competition within the European Single Market require that the treatment of third-country goods and services not covered by the international commitments of the Union be harmonised throughout the European Union.

deleted

Or. en

Amendment 64
Daniel Caspary

Proposal for a regulation
Recital 10

Text proposed by the Commission

Amendment

(10) The objectives of improving the access of EU economic operators to the public procurement markets of certain third countries protected by restrictive procurement measures and preserving equal conditions of competition within the European Single Market require that the treatment of third-country goods and services not covered by the international commitments of the Union be harmonised throughout the European Union.

(10) The objectives of improving the access of EU economic operators to the public procurement ***and concessions*** markets of certain third countries protected by restrictive procurement measures and preserving equal conditions of competition within the European Single Market require that the treatment of third-country goods and services not covered by the international commitments of the Union be harmonised throughout the European Union.

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 65
Daniel Caspary

Proposal for a regulation
Recital 12

Text proposed by the Commission

(12) The Commission should assess whether to approve that contracting authorities/entities within the meaning of Directives [2004/17/EC, 2004/18/EC and Directive [...] of the European Parliament and the Council of [...]....on the award of concession contracts¹³] exclude, for contracts with an estimated value equal or above EUR 5.000.000 from procedures for the award of contracts goods and services not covered by the international commitments undertaken by the European Union.

¹³ OJ L....

Amendment

(12) The Commission should assess whether to approve that contracting authorities/entities within the meaning of Directives [2004/17/EC, 2004/18/EC and Directive [...] of the European Parliament and the Council of [...]....on the award of concession contracts¹³] exclude, for ***procedures for the award of contracts or concessions*** with an estimated value equal or above EUR 5.000.000 from procedures for the award of contracts goods and services not covered by the international commitments undertaken by the European Union.

¹³ OJ L....

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 66
Daniel Caspary

Proposal for a regulation
Recital 13

Text proposed by the Commission

(13) For the sake of transparency, contracting authorities/entities intending to make use of their power in accordance with

Amendment

(13) For the sake of transparency, contracting authorities/entities intending to make use of their power in accordance with

this Regulation to exclude tenders comprising goods and/or services originating outside the European Union, in which the value of the non-covered goods or services exceeds 50 % of the total value of these goods or services from procedures for the award of contracts should inform economic operators thereof in the contract notice published in the Official Journal of the European Union.

this Regulation to exclude tenders comprising goods and/or services originating outside the European Union, in which the value of the non-covered goods or services exceeds 50 % of the total value of these goods or services from procedures for the award of contracts *or concessions* should inform economic operators thereof in the contract notice published in the Official Journal of the European Union.

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 67

Yannick Jadot

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 15

Text proposed by the Commission

(15) For contracts with an estimated value equal or above EUR 5.000.000 the Commission should approve the intended exclusion if the international agreement concerning market access in the field of public procurement between the Union and the country where the 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. Where such an agreement does not exist, the Commission should approve the exclusion where the third country maintains restrictive procurement measures leading to a lack of substantial reciprocity in market opening between the Union and the third country concerned. A lack of

Amendment

(15) For contracts with an estimated value equal or above EUR 5.000.000 the Commission should approve the intended exclusion if the international agreement concerning market access in the field of public procurement between the Union and the country where the 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. Where such an agreement does not exist, the Commission should approve the exclusion where the third country maintains restrictive procurement measures leading to a lack of substantial reciprocity in market opening between the Union and the third country concerned. A lack of

substantial reciprocity should be presumed where restrictive procurement measures result in serious and recurring discriminations of EU economic operators, goods and services.

substantial reciprocity should be presumed where restrictive procurement measures result in serious and recurring discriminations of EU economic operators, goods and services, ***except when any local content requirements as provided in third countries' public procurement legislation pursue public policy and development goals. A lack of substantial reciprocity should also be presumed where the third country concerned violates applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements and by the international environmental, social and labour law provisions listed in Annex XI of EU procurement directives, included ILO 94, and of Multilateral Environmental Agreements (MEAs) the EU is a party to. Moreover, the Commission should approve the exclusion if this is consistent with the strategic industrial interests and priorities of the EU - including defensive interests - as outlined in EU's cyclical industrial policy plans;***

Or. en

Amendment 68
Helmut Scholz

Proposal for a regulation
Recital 15

Text proposed by the Commission

(15) For contracts with an estimated value equal or above EUR 5.000.000 the Commission should approve the intended exclusion if the international agreement concerning market access in the field of public procurement between the Union and the country where the goods and/or services originate contains, for the goods and/or services for which the exclusion is

Amendment

(15) For contracts with an estimated value equal or above EUR 5.000.000 the Commission should approve the intended exclusion if the international agreement concerning market access in the field of public procurement between the Union and the country where the 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. Where such an agreement does not exist, the Commission should approve the exclusion where the third country maintains ***restrictive procurement measures leading to a lack of substantial reciprocity in market opening between the Union and the third country concerned. A lack of substantial reciprocity should be presumed where*** restrictive procurement measures ***result in serious and recurring discriminations of EU economic operators, goods and services.***

proposed, explicit market access reservations taken by the Union. Where such an agreement does not exist, the Commission should approve the exclusion where the third country maintains ***illegitimate*** restrictive procurement measures.

Or. en

Amendment 69
Daniel Caspary

Proposal for a regulation
Recital 15

Text proposed by the Commission

(15) For contracts with an estimated value equal or above EUR 5.000.000 the Commission should approve the intended exclusion if the international agreement concerning market access in the field of public procurement between the Union and the country where the 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. Where such an agreement does not exist, the Commission should approve the exclusion where the third country maintains restrictive procurement measures leading to a lack of substantial reciprocity in market opening between the Union and the third country concerned. A lack of substantial reciprocity should be presumed where restrictive procurement measures result in serious and recurring

Amendment

(15) For contracts ***and concessions*** with an estimated value equal or above EUR 5.000.000 the Commission should approve the intended exclusion if the international agreement concerning market access in the field of public procurement ***and concessions*** 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. Where such an agreement does not exist, the Commission should approve the exclusion where the third country maintains restrictive procurement measures ***in the field of procurement or the award of*** leading to a lack of substantial reciprocity in market opening between the Union and the third country concerned. A lack of substantial reciprocity should be presumed

discriminations of EU economic operators, goods and services.

where restrictive procurement measures **in the field of procurement or the award of** result in serious and recurring discriminations of EU economic operators, goods and services.

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 70

Yannick Jadot

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) When assessing whether a lack of substantial reciprocity exists, the Commission should examine 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. ***In addition***, it should examine to what degree public authorities and/or individual procuring entities maintain or adopt discriminatory practices against Union goods, services and economic operators.

Amendment

(16) When assessing whether a lack of substantial reciprocity exists, the Commission should examine 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. It should examine to what degree public authorities and/or individual procuring entities maintain or adopt discriminatory practices against Union goods, services and economic operators, ***without however taking account of any local content requirements that may be included in the third country's public procurement legislation in order to pursue public policy and development goals. In addition, the Commission should examine whether the third country concerned violates applicable obligations in the fields of environmental, social and labour law***

established by Union law, national law, collective agreements and by the international environmental, social and labour law provisions listed in Annex XI of EU procurement directives, included ILO 94, and of Multilateral Environmental Agreements (MEAs) the EU is a party to.

Or. en

Amendment 71
Helmut Scholz

Proposal for a regulation
Recital 16

Text proposed by the Commission

(16) When assessing *whether a lack of substantial reciprocity exists*, the Commission should examine 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. In addition, it should examine to what degree public *authorities and/or individual* procuring entities maintain or adopt discriminatory practices against Union goods, services and economic operators.

Amendment

(16) When assessing *the legitimacy of applied public procurement restrictions*, the Commission should examine 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 *particularly* against Union goods, services and economic operators. In addition, it should examine to what degree public procuring entities maintain or adopt discriminatory practices *considered illegitimate* against Union goods, services and economic operators.

Or. en

Amendment 72
Daniel Caspary

Proposal for a regulation
Recital 16

Text proposed by the Commission

(16) When assessing whether a lack of substantial reciprocity exists, the Commission should examine 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. In addition, it should examine to what degree public authorities and/or individual procuring entities maintain or adopt discriminatory practices against Union goods, services and economic operators.

Amendment

(16) When assessing whether a lack of substantial reciprocity exists, the Commission should examine to what degree **the laws on** public procurement **and concessions** of the country concerned ensure transparency in line with international standards in the field of public procurement and **concessions** preclude any discrimination against Union goods, services and economic operators. In addition, it should examine to what degree public authorities and/or individual procuring entities maintain or adopt discriminatory practices against Union goods, services and economic operators.

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 73

Yannick Jadot

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) When assessing the presence of discriminatory practices in a third country against European operators, the Commission will refrain from tackling local content provisions in the third country's national legislation, when these are used to pursue legitimate public policy and development purposes;

Or. en

Amendment 74
Bernd Lange

Proposal for a regulation
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) When assessing tenders comprising goods and/or services originating outside the European Union, contracting authorities and the European Commission must ensure the compliance with the criteria for fair trade, as well as for the compliance with labour rights and environmental standards as laid down in recital 41a as well as paragraph 2 of Article 15 and Annex 11 of the Directive on public procurement [...] (2013) XXX.

Or. en

Amendment 75
Henri Weber
Proposal for a regulation
Recital 17

Text proposed by the Commission

Amendment

(17) The Commission should be able to prevent the possible negative impact of an intended exclusion on on-going trade negotiations with the country concerned. Therefore, the Commission may, where a country is engaging in substantive negotiations with the Union concerning market access in the field of public procurement and the Commission considers that there is a reasonable prospect of removing the restrictive procurement practices in the near future, it should be able to adopt a implementing act providing that goods and services from that country should not be excluded from

deleted

procedures for the award of contracts for a period of one year.

Or. fr

Amendment 76
Bernd Lange

Proposal for a regulation
Recital 17

Text proposed by the Commission

Amendment

(17) The Commission should be able to prevent the possible negative impact of an intended exclusion on on-going trade negotiations with the country concerned. Therefore, the Commission may, where a country is engaging in substantive negotiations with the Union concerning market access in the field of public procurement and the Commission considers that there is a reasonable prospect of removing the restrictive procurement practices in the near future, it should be able to adopt a implementing act providing that goods and services from that country should not be excluded from procedures for the award of contracts for a period of one year.

deleted

Or. en

Justification

To not apply the instrument with countries with which the EU is engaging in trade negotiations would reduce the effectiveness of the instrument.

Amendment 77
Nora Berra, Franck Proust
Proposal for a regulation
Recital 17

Text proposed by the Commission

Amendment

(17) The Commission should be able to prevent the possible negative impact of an intended exclusion on on-going trade negotiations with the country concerned. Therefore, the Commission may, where a country is engaging in substantive negotiations with the Union concerning market access in the field of public procurement and the Commission considers that there is a reasonable prospect of removing the restrictive procurement practices in the near future, it should be able to adopt a implementing act providing that goods and services from that country should not be excluded from procedures for the award of contracts for a period of one year.

deleted

Or. fr

Justification

The reciprocity requirement cannot be made conditional on the existence of trade negotiations where the outcome and duration of these negotiations, which are often undertaken with partners that are applying measures restricting access to procurement markets, cannot be guaranteed.

**Amendment 78
Helmut Scholz**

**Proposal for a regulation
Recital 17**

Text proposed by the Commission

Amendment

(17) The Commission should be able to prevent the possible negative impact of an intended exclusion on on-going trade negotiations with the country concerned. Therefore, the Commission may, where a country is engaging in substantive negotiations with the Union concerning market access in the field of public

(17) In the assessment, the Commission shall take into consideration, whether a country is engaging in substantive negotiations with the Union or within the GPA concerning market access in the field of public procurement and the Commission considers that there is a reasonable prospect of removing the restrictive

procurement and the Commission considers that there is a reasonable prospect of removing the restrictive procurement practices in *the near future, it should be able to adopt a implementing act providing that goods and services from that country should not be excluded from procedures for the award of contracts for a period of one year.*

procurement practices in *question in the near future.*

Or. en

Amendment 79
Daniel Caspary

Proposal for a regulation
Recital 17

Text proposed by the Commission

(17) The Commission should be able to prevent the possible negative impact of an intended exclusion on on-going trade negotiations with the country concerned. Therefore, the Commission may, where a country is engaging in substantive negotiations with the Union concerning market access in the field of public procurement and the Commission considers that there is a reasonable prospect of removing the restrictive procurement practices in the near future, it should be able to adopt a implementing act providing that goods and services from that country should not be excluded from procedures for the award of contracts for a period of one year.

Amendment

(17) The Commission should be able to prevent the possible negative impact of an intended exclusion on on-going trade negotiations with the country concerned. Therefore, the Commission may, where a country is engaging in substantive negotiations with the Union concerning market access in the field of public procurement *and/or concessions* the Commission considers that there is a reasonable prospect of removing the restrictive procurement *and/or concessions* practices in the near future, it should be able to adopt a implementing act providing that goods and services from that country should not be excluded from procedures for the award of contracts for a period of one year.

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 80

Yannick Jadot

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 18

Text proposed by the Commission

Amendment

(18) In view of the fact that the access of third country goods and services to the public procurement market of the Union falls within the scope of the common commercial policy, Member States or their contracting authorities/entities should not be able to restrict the access of third country goods or services to their tendering procedures by any other measure than the ones provided for in this Regulation.

deleted

Or. en

Amendment 81

Bernd Lange

Proposal for a regulation

Recital 18

Text proposed by the Commission

Amendment

(18) In view of the fact that the access of third country goods and services to the public procurement market of the Union falls within the scope of the common commercial policy, Member States or their contracting authorities/entities should not be able to restrict the access of third country goods or services to their tendering procedures by any other measure than the ones provided for in this Regulation.

deleted

Or. en

Justification

Contracting authorities might have external procurement agreements with other countries. Moreover, Article 79b of the revised EU Directive on procurement by entities operating in the water, energy, transport and postal services sectors [...] (2013) XXX still contains rules on external procurement.

Amendment 82

Nora Berra, Franck Proust

Proposal for a regulation

Recital 18

Text proposed by the Commission

(18) In view of the fact that the access of third country goods and services to the public procurement market of the Union falls within the scope of the common commercial policy, Member States or their contracting authorities/entities should not be able to restrict the access of third country goods or services to their tendering procedures by any other measure than the ones provided for *in this Regulation*.

Amendment

(18) In view of the fact that the access of third country goods and services to the public procurement market of the Union falls within the scope of the common commercial policy, Member States or their contracting authorities/entities should not be able to restrict the access of third country goods or services to their tendering procedures by any other measure than the ones provided for *under EU law*.

Or. fr

Justification

It is not yet possible to say what provisions the future regulation will contain. It is therefore too early to decide that the regulation will constitute the sole legal basis for restricting access for products and services from third countries to the EU procurement market. A broader reference to 'EU law' includes the provisions of Articles 58 and 59 of Directive 2004/17/EC and excludes any national measures that are not consistent with EU legislation.

Amendment 83

Helmut Scholz

Proposal for a regulation

Recital 18

Text proposed by the Commission

(18) In view of the fact that the access of third country goods and services to the

Amendment

(18) In view of the fact that the access of third country goods and services to the

public procurement market of the Union falls within the scope of the common commercial policy, Member States or their contracting authorities/entities should not be able to restrict the access of third country goods or services to their tendering procedures by any other measure than the ones provided for in *this Regulation*.

public procurement market of the Union falls within the scope of the common commercial policy, Member States or their contracting authorities/entities should not be able to restrict the access of third country goods or services to their tendering procedures by any other measure than the ones provided for in *the Union's Directive on Public Procurement and related Directives, or other respective provisions established in accordance with the European Treaties*.

Or. en

Amendment 84
Daniel Caspary

Proposal for a regulation
Recital 18

Text proposed by the Commission

(18) In view of the fact that the access of third country goods and services to the public procurement market of the Union falls within the scope of the common commercial policy, Member States or their contracting authorities/entities should not be able to restrict the access of third country goods or services to their tendering procedures by any other measure than the ones provided for in this Regulation.

Amendment

(18) In view of the fact that the access of third country goods and services to the public procurement market of the Union **and to its concessions** falls within the scope of the common commercial policy, Member States or their contracting authorities/entities should not be able to restrict the access of third country goods or services to their tendering procedures by any other measure than the ones provided for in this Regulation.

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 85
Helmut Scholz

Proposal for a regulation
Recital 19

Text proposed by the Commission

(19) In view of the greater difficulty for contracting authorities/entities to assess, in the context of tenders comprising goods and/or services originating outside the European Union, in which the value of the non-covered goods or services exceeds 50 % of the total value of these goods or services, the explanations of tenderers it is appropriate to provide for an increased transparency in the treatment of abnormally low tenders. In addition to the rules provided by Article 69 of the Directive on public procurement and Article 79 of the Directive on procurement by entities operating in the water, energy, transport and postal services sectors the contracting authority/entity that intends to accept such an abnormally low tender, should inform the other tenderers of this in writing including the reasons for the abnormally low character of the price or costs charged. This allows these tenderers to contribute to a more accurate assessment as to whether the successful tenderer will be able to fully perform the contract under the conditions spelled out in the tender documentation. Therefore, this additional information would achieve a more level playing field on the EU public procurement market.

Amendment

(19) In view of the greater difficulty for contracting authorities/entities to assess, in the context of tenders comprising goods and/or services originating outside the European Union, in which the value of the non-covered goods or services exceeds 50 % of the total value of these goods or services, the explanations of tenderers it is appropriate to provide for an increased transparency in the treatment of abnormally low tenders. In addition to the rules provided by Article 69 of the Directive on public procurement and Article 79 of the Directive on procurement by entities operating in the water, energy, transport and postal services sectors the contracting authority/entity that intends to accept such an abnormally low tender, should inform the other tenderers of this in writing including the reasons for the abnormally low character of the price or costs charged, ***including information regarding environmental, labour and wage conditions involved, in order to prevent social or environmental dumping.*** This allows these tenderers to contribute to a more accurate assessment as to whether the successful tenderer will be able to fully perform the contract under the conditions spelled out in the tender documentation. Therefore, this additional information would achieve a more level playing field on the EU public procurement market.

Or. en

Amendment 86
Helmut Scholz

Proposal for a regulation
Recital 20

Text proposed by the Commission

(20) The Commission should be able, on its own initiative or at the application of interested parties or a Member State, to initiate at any time an external procurement investigation into restrictive procurement practices allegedly maintained by a third country. ***In particular it shall take into account the fact that the Commission has approved a number of intended exclusions concerning a third country pursuant to Article 6(2) of this Regulation.*** Such investigative procedures should be without prejudice to Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization¹⁴.

¹⁴ OJ L 349, 31.12.1994

Amendment

(20) The Commission should be able, on its own initiative or at the application of interested parties or a Member State, to initiate at any time an external procurement investigation into ***illegitimate*** restrictive procurement practices allegedly maintained by a third country. Such investigative procedures should be without prejudice to Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization¹⁴.

¹⁴ OJ L 349, 31.12.1994

Or. en

Amendment 87
Daniel Caspary

Proposal for a regulation
Recital 20

Text proposed by the Commission

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

Amendment

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

procurement practices allegedly maintained by a third country. In particular it shall take into account the fact that the Commission has approved a number of intended exclusions concerning a third country pursuant to Article 6(2) of this Regulation. Such investigative procedures should be without prejudice to Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization¹⁴.

¹⁴ OJ L 349, 31.12.1994

and concessions practices allegedly maintained by a third country. In particular it shall take into account the fact that the Commission has approved a number of intended exclusions concerning a third country pursuant to Article 6(2) of this Regulation. Such investigative procedures should be without prejudice to Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization¹⁴.

¹⁴ OJ L 349, 31.12.1994

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 88

Helmut Scholz

Proposal for a regulation

Recital 21

Text proposed by the Commission

(21) Where the Commission has, on the basis of information available to it, reason to believe that a third country has adopted or maintains **a** restrictive procurement practice, it should be able to start an investigation. If the existence of **a** restrictive procurement practice in a third country is confirmed the Commission should invite the country concerned to enter into consultations with a view to

Amendment

(21) Where the Commission has, on the basis of information available to it, reason to believe that a third country has adopted or maintains **an illegitimate** restrictive procurement practice, it should be able to start an investigation. If the existence of **an illegitimate** restrictive procurement practice in a third country is confirmed the Commission should invite the country concerned to enter into consultations with a

improving the tendering opportunities for economic operators, goods and services in public procurement in that country.

view to improving the tendering opportunities for economic operators, goods and services in public procurement in that country.

Or. en

Amendment 89
Daniel Caspary

Proposal for a regulation
Recital 21

Text proposed by the Commission

(21) Where the Commission has, on the basis of information available to it, reason to believe that a third country has adopted or maintains a restrictive procurement practice, it should be able to start an investigation. If the existence of a restrictive procurement practice in a third country is confirmed the Commission should invite the country concerned to enter into consultations with a view to improving the tendering opportunities for economic operators, goods and services in public procurement in that country.

Amendment

(21) Where the Commission has, on the basis of information available to it, reason to believe that a third country has adopted or maintains a restrictive procurement *and concession* practice, it should be able to start an investigation. If the existence of a restrictive procurement practice in a third country is confirmed the Commission should invite the country concerned to enter into consultations with a view to improving the tendering opportunities for economic operators, goods and services in public procurement in that country.

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 90
Helmut Scholz

Proposal for a regulation
Recital 22

Text proposed by the Commission

(22) If the consultations with the country concerned do not lead to sufficient improvement in the tendering opportunities for EU economic operators, goods and services, the Commission should **take appropriate restrictive measures**.

Amendment

(22) If the consultations with the country concerned do not lead to sufficient improvement in the tendering opportunities for EU economic operators, goods and services, the Commission should **suggest to take appropriate action, including multilateral mechanisms**.

Or. en

Amendment 91

Helmut Scholz

Proposal for a regulation

Recital 23

Text proposed by the Commission

(23) Such measures may entail the mandatory exclusion of certain third-country goods and services from public procurement procedures in the European Union, or may subject tenders made up of goods or services **originating in that country** to a mandatory price penalty. To avoid circumvention of these measures, it may also be necessary to exclude certain foreign-controlled or owned juridical persons established in the European Union, that are not engaged in substantive business operations such that it has a direct and effective link with the economy of a Member State concerned. Appropriate measures should not be disproportionate **to the restrictive procurement practices to which they respond**.

Amendment

(23) **If cases of social or environmental dumping have been established**, such measures may entail the mandatory exclusion of certain third-country **company** goods and services from public procurement procedures in the European Union, or may subject tenders made up of goods or services **of that company** to a mandatory price penalty. To avoid circumvention of these measures, it may also be necessary to exclude certain foreign-controlled or owned juridical persons established in the European Union, that are not engaged in substantive business operations such that it has a direct and effective link with the economy of a Member State concerned. Appropriate measures should not be disproportionate.

Or. en

Amendment 92

Bernd Lange

Proposal for a regulation
Recital 23

Text proposed by the Commission

(23) Such measures may entail the mandatory exclusion of certain third-country goods and services from public procurement procedures in the European Union, or may subject tenders made up of goods or services originating in that country to a mandatory price penalty. To avoid circumvention of these measures, it may also be necessary to exclude certain foreign-controlled or owned juridical persons established in the European Union, that are not engaged in substantive business operations such that it has a direct and effective link with the economy of a Member State concerned. Appropriate measures should not be disproportionate to the restrictive procurement practices to which they respond.

Amendment

(23) Such measures may entail the mandatory exclusion of certain third-country goods and services from public procurement procedures in the European Union, or may subject tenders made up of goods or services originating in that country to a mandatory price penalty. To avoid circumvention of these measures, it may also be necessary to exclude certain foreign-controlled or owned juridical persons established in the European Union, that are not engaged in substantive business operations such that it has a direct and effective link with the economy of a Member State concerned. Appropriate measures should not be disproportionate to the restrictive procurement practices to which they respond, ***and should apply for a period of five years, which can be extended for another five years.***

Or. en

Amendment 93
Daniel Caspary

Proposal for a regulation
Recital 23

Text proposed by the Commission

(23) Such measures may entail the mandatory exclusion of certain third-country goods and services from public procurement procedures in the European Union, or may subject tenders made up of goods or services originating in that country to a mandatory price penalty. To avoid circumvention of these measures, it may also be necessary to exclude certain

Amendment

(23) Such measures may entail the mandatory exclusion of certain third-country goods and services from public procurement procedures ***or procedures for the award of concessions*** in the European Union, or may subject tenders made up of goods or services originating in that country to a mandatory price penalty. To avoid circumvention of these measures, it

foreign-controlled or owned juridical persons established in the European Union, that are not engaged in substantive business operations such that it has a direct and effective link with the economy of a Member State concerned. Appropriate measures should not be disproportionate to the restrictive procurement practices to which they respond.

may also be necessary to exclude certain foreign-controlled or owned juridical persons established in the European Union, that are not engaged in substantive business operations such that it has a direct and effective link with the economy of a Member State concerned. Appropriate measures should not be disproportionate to the restrictive procurement practices to which they respond.

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 94

Nora Berra, Franck Proust

Proposal for a regulation

Recital 24

Text proposed by the Commission

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

Amendment

(24) It is imperative that contracting authorities/entities have access to a range of high-quality products meeting their purchasing requirements at a competitive price. Therefore contracting authorities/entities should be able to set aside measures limiting access of non-covered goods and services in case there are no Union and/or covered goods or services available which meet the requirements of the contracting authority/entity to safeguard essential public needs for example health and public safety.

Or. fr

Justification

The concept of an excessive increase in prices or in the costs of the contract is not clear enough and should be seen in the context of the concept of ‘abnormally low tenders’.

Amendment 95

Bernd Lange

Proposal for a regulation

Recital 24 a (new)

Text proposed by the Commission

Amendment

(24a) It is also imperative that, in view of an appropriate integration of environmental, social and labour requirements, contracting authorities take relevant measures to ensure compliance with obligations in the fields of environmental, social and labour law that apply at the place where the works are executed and result from international obligations, laws, regulations, decrees and decisions, at both national and Union level, as well as from collective agreements.

Or. en

Amendment 96

Helmut Scholz

Proposal for a regulation

Recital 25

Text proposed by the Commission

Amendment

(25) In case of misapplication by contracting authorities/entities of exceptions to measures limiting access of non-covered goods and services, the Commission should be able to apply the corrective mechanism of Article 3 of Council Directive 89/665/EEC on the coordination of the laws, regulations and

deleted

administrative provisions relating to the application of review procedures to the award of public supply and public works contracts¹⁵ or Article 8 of Council Directive 92/13/EEC coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors¹⁶. For the same purpose, contracts concluded with an economic operator in violation of Commission's decisions on intended exclusions notified by contracting authorities/entities or in violation of measures limiting access of non-covered goods and services should be declared ineffective within the meaning of Directive 2007/66/EC of the European Parliament and Council¹⁷.

¹⁵ OJ L 395, 30.12.1989, p. 33

¹⁶ OJ L 76, 23.3.1992, p. 14

¹⁷ OJ L 335, 20.12.2007, p. 31

Or. en

Amendment 97
Daniel Caspary

Proposal for a regulation
Recital 27

Text proposed by the Commission

(27) In order to reflect in the legal order of the European Union the international market access commitments undertaken in the field of public procurement after the adoption of this Regulation, the Commission should be empowered to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the

Amendment

(27) In order to reflect in the legal order of the European Union the international market access commitments undertaken in the field of public procurement **and concessions** after the adoption of this Regulation, the Commission should be empowered to adopt acts in accordance with Article 290 of the Treaty on the

European Union amendments to the list of international agreements annexed to this Regulation. It is of particular importance that the Commission should carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

Functioning of the European Union amendments to the list of international agreements annexed to this Regulation. It is of particular importance that the Commission should carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 98 **Daniel Caspary**

Proposal for a regulation **Recital 31**

Text proposed by the Commission

(31) In accordance with the principle of proportionality, it is necessary and appropriate for achievement of the basic objective of establishing a common external policy in the field of public procurement to lay down rules on the treatment of goods and services not covered by the international commitments of the European Union. This Regulation on the access of third-country economic operators, goods and services does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with the third paragraph of Article 5 of the Treaty on European Union,

Amendment

(31) In accordance with the principle of proportionality, it is necessary and appropriate for achievement of the basic objective of establishing a common external policy in the field of public procurement **and concessions** to lay down rules on the treatment of goods and services not covered by the international commitments of the European Union. This Regulation on the access of third-country economic operators, goods and services does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with the third paragraph of Article 5 of the Treaty on European Union,

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 99
Bernd Lange

Proposal for a regulation
Article 1 – paragraph 1

Text proposed by the Commission

1. This Regulation lays down rules on the access of third-country goods and services to the award of contracts for the execution of works or a work, the supply of goods and the provision of services by Union contracting authorities/entities, and establishes procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries.

Amendment

1. Member States or their contracting authorities/entities may restrict the access of third country goods and services to their tendering procedures only by measures provided and authorized by EU law.

Or. en

Justification

Contracting authorities might have external procurement agreements with other countries. Moreover, Article 79b in the revised EU Directive on procurement by entities operating in the water, energy, transport and postal services sectors [...] (2013) XXX still contains rules on external procurement.

Amendment 100
Henri Weber
Proposal for a regulation
Article 1 – paragraph 1

Text proposed by the Commission

1. This Regulation lays down rules on the access of third-country goods and services to the award of contracts for the execution of works or a work, the supply of goods

Amendment

1. This Regulation lays down rules on the access of third-country goods and services to the award of contracts for the execution of works or a work, the supply of goods

and the provision of services by Union contracting authorities/entities, and establishes procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries.

and the provision of services by Union contracting authorities/entities, and establishes procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries. ***Member States or their contracting authorities/entities may restrict the access of third-country goods and services to their tendering procedures only by means of measures provided for and authorised under Union law.***

Or. fr

Amendment 101
Franck Proust
Proposal for a regulation
Article 1 – paragraph 1

Text proposed by the Commission

1. This Regulation lays down rules on the access of third-country goods and services to the award of contracts for the execution of works or a work, the supply of goods and the provision of services by Union contracting authorities/entities, and establishes procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries.

Amendment

1. This Regulation lays down rules on the access of third-country goods and services to the award of contracts for the execution of works or a work, the supply of goods and the provision of services by Union contracting authorities/entities, and establishes procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries. ***Member States or their contracting authorities/entities may restrict the access of third-country goods and services to their tendering procedures only by means of measures provided for under Union law.***

Or. fr

Amendment 102
Nora Berra, Franck Proust
Proposal for a regulation
Article 1 – paragraph 1

Text proposed by the Commission

1. This Regulation lays down rules on the access of third-country goods and services to the award of contracts for the execution of works or a work, the supply of goods and the provision of services by Union contracting authorities/entities, and establishes procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries.

Amendment

1. This Regulation lays down rules on the access of third-country goods and services to the award of contracts for the execution of works or a work, the supply of goods and the provision of services by Union contracting authorities/entities, and establishes procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries. ***Member States or their contracting authorities/entities may restrict the access of third-country goods and services to their tendering procedures only by means of measures provided for under Union law.***

Or. fr

Justification

It is not yet possible to say what provisions the future regulation will contain. It is therefore too early to decide that the regulation will constitute the sole legal basis for restricting access for products and services from third countries to the EU procurement market. A broader reference to 'EU law' includes the provisions of Articles 58 and 59 of Directive 2004/17/EC and excludes any national measures that are not consistent with EU legislation.

Amendment 103
Marielle de Sarnez
Proposal for a regulation
Article 1 – paragraph 1

Text proposed by the Commission

1. This Regulation lays down rules on the access of third-country goods and services to the award of contracts for the execution of works or a work, the supply of goods and the provision of services by Union contracting authorities/entities, and establishes procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries.

Amendment

1. This Regulation lays down rules on the access of third-country goods and services to the award of contracts for the execution of works or a work, the supply of goods and the provision of services by Union contracting authorities/entities, and establishes procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries. ***Member States or their***

contracting authorities/entities may restrict the access of third-country goods and services to their tendering procedures only by means of measures provided for under relevant Union law.

Or. fr

Amendment 104
Daniel Caspary

Proposal for a regulation
Article 1 – paragraph 1

Text proposed by the Commission

1. This Regulation lays down rules on the access of third-country goods and services to the award of contracts *for* the execution of works or a work, the supply of goods and the provision of services by Union contracting authorities/entities, and establishes procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries.

Amendment

1. This Regulation lays down rules on the access of third-country goods and services to the award of contracts *and concessions for, depending on the kind of contract in question*, the execution of works or a work, the supply of goods and the provision of services by Union contracting authorities/entities, and establishes procedures supporting negotiations on access of Union goods and services to the public procurement *and concessions* markets of third countries.

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 105
Henri Weber, Marc Tarabella
Proposal for a regulation
Article 1 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) Member States shall ensure that

economic operators performing a public contract comply with applicable obligations in the areas of environmental, social and labour law laid down in Union legislation, national legislation, collective agreements and in the international environmental, social and labour law provisions listed in Annex XI to the public procurement directive, including Convention No 94 of the International Labour Organisation.

Or. fr

Amendment 106
Daniel Caspary

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

Text proposed by the Commission

This Regulation shall apply to the award of contracts where the goods or services are procured for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or in the provision of services for commercial sale.

Amendment

This Regulation shall apply to the award of contracts where the goods or services are procured for governmental purposes and ***to the award of concessions for services provided for governmental purposes and*** not with a view to commercial resale or with a view to use in the production of goods or in the provision of services for commercial sale.

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 107
Daniel Caspary

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

Text proposed by the Commission

(a) **'supplier'** means any natural or legal person which offers on the market **goods**;

Amendment

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

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement Directive.

Amendment 108
Pawel Zalewski

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

Text proposed by the Commission

(d) 'covered goods or services' means a good or service originating in a country with which the Union has concluded an international agreement in the field of public procurement including market access commitments and in respect of which the relevant agreement applies. Annex I to this Regulation contains a list of relevant agreements;

Amendment

(d) 'covered goods or services' means a good or service originating in a country with which the Union has concluded an international agreement in the field of public procurement including market access commitments and in respect of which the relevant agreement applies. Annex I to this Regulation contains a list of relevant agreements **and information on effective scope of procurement covered by them**;

Or. en

Amendment 109
Daniel Caspary

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

Text proposed by the Commission

(d) ‘covered goods or services’ means a good or service originating in a country with which the Union has concluded an international agreement in the field of public procurement including market access commitments and in respect of which the relevant agreement applies. Annex I to this Regulation contains a list of relevant agreements;

Amendment

(d) ‘covered goods or services’ means a good or service originating in a country with which the Union has concluded an international agreement in the field of public procurement **and concessions** including market access commitments and in respect of which the relevant agreement applies. Annex I to this Regulation contains a list of relevant agreements;

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 110
Henri Weber
Proposal for a regulation
Article 2 – paragraph 1 – point e

Text proposed by the Commission

(e) ‘non-covered goods or services’ means a good or service originating in a country with which the Union has not concluded an international agreement in the field of public procurement including market access commitments or a goods or service originating in a country with which the Union has concluded such an agreement, but in respect of which the relevant agreement does not apply;

Amendment

(e) ‘non-covered goods or services’ means a good or service originating in a country with which the Union has not concluded an international agreement in the field of public procurement including market access commitments or a goods or service originating in a country with which the Union has concluded such an agreement, but in respect of which the relevant agreement does not apply; **those goods or services which are subject to the specific market access reservations specified by the EU in an international agreement (Agreement on Government procurement or a bilateral agreement) shall also be considered ‘non-covered goods or**

services’; these specific reservations shall be listed, and regulated updated and published by the Commission, in Annex II to this Regulation.

Or. fr

Amendment 111
Franck Proust
Proposal for a regulation
Article 2 – paragraph 1 – point e

Text proposed by the Commission

(e) ‘non-covered goods or services’ means a good or service originating in a country with which the Union has not concluded an international agreement in the field of public procurement including market access commitments or a goods or service originating in a country with which the Union has concluded such an agreement, but in respect of which the relevant agreement does not apply;

Amendment

(e) ‘non-covered goods or services’ means a good or service originating in a country with which the Union has not concluded an international agreement in the field of public procurement including market access commitments or a goods or service originating in a country with which the Union has concluded such an agreement, but in respect of which the relevant agreement does not apply, ***including the specific market access reservations specified by the EU in an international agreement (Agreement on Government procurement or a bilateral agreement).***

These specific reservations shall be listed in Annex II to this Regulation.

Or. fr

Justification

The Commission proposal does not contain a clear definition of these specific reservations. In order to make the regulation clearer and easier to use, all the EU’s commitments / exceptions with regard to its trade partners should be listed in an annex to the regulation.

Amendment 112
Henri Weber, Marc Tarabella
Proposal for a regulation
Article 2 – paragraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) ‘lack of substantial reciprocity’ means any measure restricting access to public procurement markets or the award of concessions which consists of repeated, serious discrimination against EU goods and services, in particular by means of discriminatory legislative, financial or administrative provisions or the formal or practical lack of guarantees of equal and transparent treatment.

Or. fr

Amendment 113
Nora Berra, Franck Proust
Proposal for a regulation
Article 2 – paragraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) ‘lack of substantial reciprocity’ means the existence of restrictive measures in the field of procurement or the award of concessions resulting in serious and recurring discrimination against EU economic operators, goods and services. This lack of substantial reciprocity may result, for example, in:

(a) a lack of international commitment by the third country, with regard to procurement and concessions, to ensuring transparency and prohibiting any kind of discrimination against EU economic operators, goods or services;

(b) laws or regulations – whether or not concerning public procurement or concessions – adopted by the third country which lead, deliberately or otherwise, to a lack of transparency or to discrimination against EU economic operators, goods or services;

(c) the adoption or implementation of discriminatory practices by public

authorities or individual contracting entities in the third country aimed at EU economic operators, goods or services.

Or. fr

Justification

The regulation should include a definition of 'lack of substantial reciprocity', given that the concept is central to the regulation.

Amendment 114
Daniel Caspary

Proposal for a regulation
Article 2 – paragraph 2 – point e

Text proposed by the Commission

(e) a 'mandatory price penalty' shall refer to an obligation for contracting entities to increase, subject to certain exceptions, the price of services and/or goods originating in certain third countries that have been offered in contract award procedures.

Amendment

(e) a 'mandatory price penalty' shall refer to an obligation for contracting entities to increase, subject to certain exceptions, the price of services and/or goods originating in certain third countries that have been offered in contract award procedures **or concession award procedures**.

(This amendment applies to the whole of the legislative text (addition of the reference to 'concession award procedures' whenever there is mention of 'contract award procedures', in the singular or the plural); adoption of the regulation will entail technical changes throughout the text.)

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 115
Nora Berra, Franck Proust
Proposal for a regulation
Article 2 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) ‘specific market access reservation’ means any exception to or derogation from an international agreement in the field of public procurement, including market access commitments.

Or. fr

Amendment 116
Pawel Zalewski
Proposal for a regulation
Article 4 – paragraph 1

Text proposed by the Commission

Amendment

When awarding contracts for the execution of works and/or a work, the supply of goods or the provision of services, contracting authorities/entities shall treat **covered goods and services** equally to **goods and services** originating in the **European Union**.

Without prejudice to Articles 10 and 11, when awarding contracts for the supply of **covered** goods or the provision of **covered** services, contracting authorities/entities shall treat **economic operators from third countries** equally to **economic operators** originating in the **EU to the extent, in which offered by them services and goods are covered according to Annex I**.

Or. en

Amendment 117
Daniel Caspary
Proposal for a regulation
Article 4 – paragraph 1

Text proposed by the Commission

Amendment

When awarding contracts for the execution of works and/or a work, the supply of

When awarding contracts for the execution of works and/or a work, the supply of

goods or the provision of services, contracting authorities/entities shall treat covered goods and services equally to goods and services originating in the European Union.

goods or the provision of services, *or when awarding concessions for the execution of work or the provision of services*, contracting authorities/entities shall treat covered goods and services equally to goods and services originating in the European Union.

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 118

Metin Kazak

Proposal for a regulation

Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

Non-covered goods and services may be subject to restrictive measures taken by the Commission:

Amendment

(1a) Member States or their contracting authorities/entities shall not restrict the access of non-covered goods or services to their tendering procedures by any measure other than those provided for in this Regulation.

2. Non-covered goods and services may be subject to restrictive measures taken by the Commission:

Or. en

Amendment 119

Metin Kazak

Proposal for a regulation

Article 5 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) upon request of individual contracting entities according to the rules set out in Article 6; ***deleted***

Or. en

Amendment 120
Emma McClarkin

Proposal for a regulation
Article 6

Text proposed by the Commission

Amendment

[...] ***deleted***

Or. en

Justification

This Article would allow the exclusion of tenders from third country suppliers, even if a significant stake is held by a company from an EU Member State (up to 49%). EU businesses that are suppliers to third country businesses, or rely on third country businesses in their supply chain, would thus be denied the opportunity to participate in public procurement contracts. This could cause long term harm to these EU businesses.

Amendment 121
Christofer Fjellner

Proposal for a regulation
Article 6 – paragraph 1

Text proposed by the Commission

Amendment

1. Upon request of contracting authorities/entities the Commission shall assess whether to approve, for contracts with an estimated value equal or above EUR 5.000.000 exclusive of value-added tax (VAT) the exclusion from procedures for the award of contracts tenders ***deleted***

comprising goods or services originating outside the Union, if the value of the non-covered goods or services exceeds 50 % of the total value of the goods or services constituting the tender, under the following conditions.

Or. en

Amendment 122

Pawel Zalewski

Proposal for a regulation

Article 6 – paragraph 1

Text proposed by the Commission

1. *Upon request of* contracting authorities/entities *the Commission shall assess whether to approve, for contracts with an estimated value equal or above EUR 5.000.000 exclusive of value-added tax (VAT) the exclusion from procedures for the award of contracts tenders comprising goods or services originating outside the Union, if the value of the non-covered goods or services exceeds 50 % of the total value of the goods or services constituting the tender, under the following conditions.*

Amendment

1. Contracting authorities/entities *are empowered to exclude economic operators originating in third countries from participation in a public procurement procedure, in any case, when particular procurement is not covered by market access commitments, listed in Annex I.*

The Commission shall adopt implementing acts establishing standard forms for contract award notices. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 17 (3).

Or. en

Amendment 123

Yannick Jadot

on behalf of the Greens/EFA Group

Proposal for a regulation
Article 6 – paragraph 1

Text proposed by the Commission

1. *Upon request of* contracting authorities/entities ***the Commission shall assess whether to approve, for contracts with an estimated value equal or above EUR 5.000.000 exclusive of value-added tax (VAT) the exclusion*** from procedures for the award of contracts tenders comprising goods or services originating outside the Union, if the value of the non-covered goods or services exceeds 50 % of the total value of the goods or services constituting the tender, under the following conditions.

Amendment

1. Contracting authorities/entities ***may exclude*** from procedures for the award of contracts tenders comprising goods or services originating outside the Union, if the value of the non-covered goods or services exceeds 50 % of the total value of the goods or services constituting the tender, under the following conditions.

Or. en

Amendment 124
Bernd Lange

Proposal for a regulation
Article 6 – paragraph 1

Text proposed by the Commission

1. Upon request of contracting authorities/entities the Commission shall assess whether to approve, for contracts with an estimated value equal or above EUR 5.000.000 exclusive of value-added tax (VAT) the exclusion from procedures for the award of contracts tenders comprising goods or services originating outside the Union, if the value of the non-covered goods or services exceeds 50 % of the total value of the goods or services constituting the tender, under the following conditions.

Amendment

1. Upon request of contracting authorities/entities the Commission shall assess whether to approve, for contracts with an estimated value equal or above EUR 5.000.000 exclusive of value-added tax (VAT) the exclusion from procedures for the award of contracts tenders comprising goods or services originating outside the Union, if the value of the non-covered goods or services exceeds 50 % of the total value of the goods or services constituting the tender, under the following conditions. ***Where a contracting authority/entity intends to request the exclusion from procedures for the award of contracts, it shall notify its intention to the European Commission.***

Whenever the Commission receives such a notification, it should automatically launch an external procurement investigation as set out in article 8.

Or. en

Justification

This links the decentralized procedure with the centralized procedure.

Amendment 125

Metin Kazak

Proposal for a regulation

Article 6 – paragraph 1

Text proposed by the Commission

1. Upon request of contracting authorities/entities the Commission shall assess whether to approve, for contracts with an estimated value equal or above EUR 5.000.000 exclusive of value-added tax (VAT) the exclusion from procedures for the award of contracts tenders comprising goods or services originating outside the Union, if the value of the non-covered goods or services exceeds ***50 %*** of the total value of the goods or services constituting the tender, under the following conditions.

Amendment

1. Where the Commission takes a decision in accordance with Article 10, contracting authorities/entities shall exclude, for contracts with an estimated value equal or above EUR 5.000.000 exclusive of value-added tax (VAT) the exclusion from procedures for the award of contracts tenders comprising goods or services originating outside the Union, if the value of the non-covered goods or services exceeds ***75%*** of the total value of the goods or services constituting the tender, under the following conditions.

Or. en

Amendment 126

Nora Berra, Franck Proust

Proposal for a regulation

Article 6 – paragraph 1

Text proposed by the Commission

1. Upon request of contracting

Amendment

1. Upon request of contracting

authorities/entities the Commission shall assess whether to approve, for contracts with an estimated value equal or above EUR 5.000.000 exclusive of value-added tax (VAT) the exclusion from procedures for the award of contracts tenders comprising goods or services originating outside the Union, if the value of the non-covered goods or services exceeds 50 % of the total value of the goods or services constituting the tender, under the following conditions.

authorities/entities the Commission shall assess, ***on the basis of the procedure provided for in Article 8***, whether to approve, for contracts with an estimated value equal or above EUR 5.000.000 exclusive of value-added tax (VAT) the exclusion from procedures for the award of contracts tenders comprising goods or services originating outside the Union, if the value of the non-covered goods or services exceeds 50 % of the total value of the goods or services constituting the tender, under the following conditions.

Or. fr

Justification

In the interests of coherence and user-friendliness, the regulation should provide for only one type of investigation. More specifically, the investigation provided for in Article 8 should apply, irrespective of the authority submitting the request.

Amendment 127

Yannick Jadot

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 6 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) For contracts with an estimated value equal or above EUR 5.000.000 exclusive of value-added tax (VAT) the Commission shall assess whether to approve the exclusion from procedures for the award of contracts tenders comprising goods or services originating outside the Union, if the value of the non-covered goods or services exceeds 50% of the total value of the goods or services constituting the tender, under the following conditions.

Or. en

Amendment 128
Bernd Lange

Proposal for a regulation
Article 6 – paragraph 2

Text proposed by the Commission

Amendment

2. [...]

deleted

Or. en

Amendment 129
Christofer Fjellner

Proposal for a regulation
Article 6 – paragraph 2

Text proposed by the Commission

Amendment

2. [...]

deleted

Or. en

Amendment 130
Henri Weber
Proposal for a regulation
Article 6 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

Where contracting authorities/entities intend to request the exclusion from procedures for the award of contracts on the basis of paragraph 1 they shall indicate this in the contract notice they publish pursuant to Article 35 of Directive 2004/18/EC or pursuant to Article 42 of Directive 2004/17/EC or Article 26 of the Directive on the award of concession contracts.

deleted

Or. fr

Amendment 131
Pawel Zalewski

Proposal for a regulation
Article 6 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Where contracting authorities/entities *intend to request the exclusion from procedures for the award of contracts* on the *basis* of paragraph 1 *they* shall indicate *this* in the contract notice they publish pursuant to Article 35 of Directive 2004/18/EC *or pursuant to* Article 42 of Directive 2004/17/EC or Article **26 of the** Directive on *the* award of concession contracts.

Amendment

Contracting authorities/entities, *who excluded economic operators* on the *grounds* of paragraph 1, shall indicate *that fact* in the contract *award* notice they publish pursuant to Article 35 of Directive 2004/18/EC, Article 42 of Directive 2004/17/EC, or Article **27 of** Directive on award of concession contracts.

Or. en

Amendment 132
Metin Kazak

Proposal for a regulation
Article 6 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Where contracting authorities/entities *intend to request the exclusion* from procedures for the award of contracts on the basis of paragraph 1 they shall indicate this in the contract notice they publish pursuant to Article 35 of Directive 2004/18/EC or pursuant to Article 42 of Directive 2004/17/EC or Article 26 of the Directive on the award of concession contracts.

Amendment

Where contracting authorities/entities *are obliged to exclude tenders in accordance with paragraph 1* from procedures for the award of contracts on the basis of paragraph 1 they shall indicate this in the contract notice they publish pursuant to Article 35 of Directive 2004/18/EC or pursuant to Article 42 of Directive 2004/17/EC or Article 26 of the Directive on the award of concession contracts.

Or. en

Amendment 133
Pawel Zalewski

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Proposal for a regulation
Article 6 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Contracting authorities/entities shall require tenderers to provide information on the origin of the goods and/or services contained in the tender, and their value. They shall accept self-declarations as preliminary evidence that **tenders** cannot be excluded pursuant to paragraph 1. A contracting authority may ask **a tenderer** at any moment during the procedure to submit all or parts of the required documentation where this appears necessary to ensure the proper conduct of the procedure. **The Commission may adopt implementing acts establishing standard forms for declarations concerning the origin of goods and services. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 17 (3).**

Amendment

Contracting authorities/entities **intending to apply paragraph 1** shall require tenderers **in a contract notice** to provide information on the origin of the goods and/or services contained in the tender, and their value. They shall accept self-declarations as preliminary evidence that **economic operators** cannot be excluded pursuant to paragraph 1. A contracting authority may ask **an economic operator** at any moment during the procedure to submit all or parts of the required documentation where this appears necessary to ensure the proper conduct of the procedure.

Or. en

Amendment 134
Metin Kazak

Proposal for a regulation
Article 6 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Where contracting authorities/entities receive tenders that meet the conditions of paragraph 1 for which they **intend to request the exclusion** for that reason, they shall notify the Commission. During the notification procedure the contracting authority/entity may continue its analysis of the tenders.

Amendment

Where contracting authorities/entities receive tenders that meet the conditions of paragraph 1 for which they **exclude** for that reason, they shall notify the Commission. During the notification procedure the contracting authority/entity may continue its analysis of the tenders.

Or. en

Amendment 135
Daniel Caspary

Proposal for a regulation
Article 6 – paragraph 2 – subparagraph 4 – point b

Text proposed by the Commission

(b) a description of the object of the contract;

Amendment

(b) a description of the object of the contract **or concession**;

(This amendment applies to the whole of the legislative text (addition of the reference to ‘concession award procedures’ whenever there is mention of ‘contract award procedures’, in the singular or the plural); adoption of the regulation will entail technical changes throughout the text.)

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 136
Metin Kazak

Proposal for a regulation
Article 6 – paragraph 2 – subparagraph 4 – point c

Text proposed by the Commission

(c) the name and contact details of the economic operator whose tender **would be** excluded;

Amendment

(c) the name and contact details of the economic operator whose tender **is** excluded;

Or. en

Amendment 137
Metin Kazak

Proposal for a regulation
Article 6 – paragraph 2 – subparagraph 6

Text proposed by the Commission

That information shall be provided within eight working days, commencing on the first working day following the date on which it receives the request for additional information. ***If the Commission receives no information within this period the period established in paragraph 3 shall be suspended, until the Commission receives the requested information.***

Amendment

That information shall be provided within eight working days, commencing on the first working day following the date on which it receives the request for additional information.

Or. en

Amendment 138
Nora Berra
Proposal for a regulation
Article 6 – paragraph 3

Text proposed by the Commission

3. For contracts referred to in paragraph 1, the Commission shall adopt an implementing act concerning the approval of the intended exclusion within a period of two months commencing on the first working day following the date on which it receives the notification. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2). This period may be extended once by a maximum of two months in duly justified cases, in particular if the information contained in the notification or in the documents annexed thereto is incomplete or inexact or if the facts as reported undergo any substantive changes. If, at the end of this two-month period, or the extended period the Commission has not

Amendment

deleted

adopted a decision approving or disapproving the exclusion, the exclusion shall be deemed to have been disapproved by the Commission.

Or. fr

Justification

Provisions concerning the time frame for the investigation provided for in Article 8 should be covered under the same article.

Amendment 139
Christofer Fjellner

Proposal for a regulation
Article 6 – paragraph 3

Text proposed by the Commission

Amendment

3. For contracts referred to in paragraph 1, the Commission shall adopt an implementing act concerning the approval of the intended exclusion within a period of two months commencing on the first working day following the date on which it receives the notification. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17 (2). This period may be extended once by a maximum of two months in duly justified cases, in particular if the information contained in the notification or in the documents annexed thereto is incomplete or inexact or if the facts as reported undergo any substantive changes. If, at the end of this two-month period, or the extended period the Commission has not adopted a decision approving or disapproving the exclusion, the exclusion shall be deemed to have been disapproved by the Commission. *deleted*

Or. en

Amendment 140
Metin Kazak

Proposal for a regulation
Article 6 – paragraph 3

Text proposed by the Commission

Amendment

3. For contracts referred to in paragraph 1, the Commission shall adopt an implementing act concerning the approval of the intended exclusion within a period of two months commencing on the first working day following the date on which it receives the notification. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17 (2). This period may be extended once by a maximum of two months in duly justified cases, in particular if the information contained in the notification or in the documents annexed thereto is incomplete or inexact or if the facts as reported undergo any substantive changes. If, at the end of this two-month period, or the extended period the Commission has not adopted a decision approving or disapproving the exclusion, the exclusion shall be deemed to have been disapproved by the Commission.

deleted

Or. en

Amendment 141
Pawel Zalewski

Proposal for a regulation
Article 6 – paragraph 3

Text proposed by the Commission

Amendment

3. For contracts referred to in paragraph 1, the Commission shall adopt an

3. Paragraph 1 shall *not apply where the Commission has adopted the*

implementing act concerning the approval of the intended exclusion within a period of two months commencing on the first working day following the date on which it receives the notification. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17 (2). This period may be extended once by a maximum of two months in duly justified cases, in particular if the information contained in the notification or in the documents annexed thereto is incomplete or inexact or if the facts as reported undergo any substantive changes. If, at the end of this two-month period, or the extended period the Commission has not adopted a decision approving or disapproving the exclusion, the exclusion shall be deemed to have been disapproved by the Commission.

implementing act on temporary access of goods and services from a country engaged in substantive negotiations with the Union as set out in Article 9(4).

Or. en

Amendment 142
Bernd Lange

Proposal for a regulation
Article 6 – paragraph 3

Text proposed by the Commission

3. For contracts referred to in paragraph 1, the Commission shall adopt an implementing act concerning the approval of the intended exclusion within a period of two months commencing on the first working day following the date on which it receives the notification. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17 (2). This period may be extended once by a maximum of two months in duly justified cases, in particular if the information contained in the notification or in the

Amendment

3. Where the European Commission assesses a lack of substantial reciprocity, following the procedure set in Article 8, the Commission shall adopt an implementing act allowing contracting entities to reject, according to article 6 (1), the tender(s) concerned by the investigation.

documents annexed thereto is incomplete or inexact or if the facts as reported undergo any substantive changes. If, at the end of this two-month period, or the extended period the Commission has not adopted a decision approving or disapproving the exclusion, the exclusion shall be deemed to have been disapproved by the Commission.

Contracting authorities/entities shall indicate this in the contract notice they publish pursuant to Article 47 of the Directive on public procurement [...] (2013) XXX.

Contracting authorities/entities shall require tenderers to provide information on the origin of the goods and/or services contained in the tender, and their value. They shall accept self-declarations as preliminary evidence that tenders cannot be excluded. A contracting authority may ask a tenderer at any moment during the procedure to submit all or parts of the required documentation where this appears necessary to ensure the proper conduct of the procedure. The Commission may adopt implementing acts establishing standard forms for declarations concerning the origin of goods and services. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 17 (3).

Or. en

Justification

The new procedure under article 6 will create a link between article 6 and articles 8-10. Contracting entities will have the possibility to exclude bidders concerned by an investigation of the European Commission, which would have assessed that there is a lack of substantial reciprocity.

Amendment 143
Nora Berra
Proposal for a regulation
Article 6 – paragraph 4

Text proposed by the Commission

Amendment

4. When adopting implementing acts pursuant to paragraph 3, the Commission shall approve the intended exclusion in the following cases:

deleted

(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 should be presumed where restrictive procurement measures result in serious and recurring discriminations of EU economic operators, goods and services.

When adopting implementing acts pursuant to paragraph 3, the Commission shall not approve an intended exclusion where it would violate market access commitments entered into by the Union in its international agreements.

Or. fr

Justification

Provisions on the criteria governing the investigation provided for in Article 8 should be covered under the same article. Lack of reciprocity has already been defined in Article 2(1).

Amendment 144
Christofer Fjellner

Proposal for a regulation
Article 6 – paragraph 4

Text proposed by the Commission

Amendment

4. When adopting implementing acts pursuant to paragraph 3, the Commission shall approve the intended exclusion in the following cases:

deleted

(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 3, the Commission shall not approve an intended exclusion where it would violate market access commitments entered into by the Union in its international agreements.

Or. en

Amendment 145
Metin Kazak

Proposal for a regulation
Article 6 – paragraph 4

Text proposed by the Commission

Amendment

4. When adopting implementing acts pursuant to paragraph 3, the Commission shall approve the intended exclusion in the following cases:

deleted

(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 3, the Commission shall not approve an intended exclusion where it would violate market access commitments entered into by the Union in its international agreements.

Or. en

Amendment 146
Henri Weber, Marc Tarabella
Proposal for a regulation
Article 6 – paragraph 4 – subparagraph 1 – point a (new)

Text proposed by the Commission

Amendment

(aa) where it can demonstrate by any appropriate means that violations of applicable obligations have occurred in the areas of environmental, social and labour law laid down in Union legislation, national legislation, collective agreements and in the international environmental, social and labour law provisions listed in Annex XI to the public procurement directive, including Convention No 94 of the International Labour Organisation;

Or. fr

Amendment 147

Yannick Jadot

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 6 – paragraph 4 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(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.

(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. ***However, special consideration shall be given to local content requirements in third countries' public procurement legislation, when these pursue legitimate public policy and development goals and should not constitute a reason for approving exclusions;***

Or. en

Amendment 148

Bernd Lange

Proposal for a regulation

Article 6 – paragraph 4 – subparagraph 1 – point b

Text proposed by the Commission

(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.

Amendment

(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, ***notably where those restrictive measures are detrimental to the EU's industrial policy.***

Or. en

Amendment 149

Helmut Scholz

Proposal for a regulation

Article 6 – paragraph 4 – subparagraph 1 – point b

Text proposed by the Commission

(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.***

Amendment

(b) where an agreement referred to in point (a) does not exist and the third country maintains ***illegitimate*** restrictive procurement measures.

Or. en

Amendment 150

Daniel Caspary

Proposal for a regulation

Article 6 – paragraph 4 – subparagraph 1 – point b

Text proposed by the Commission

(b) where an agreement referred to in point (a) does not exist and the third country maintains restrictive procurement measures

Amendment

(b) where an agreement referred to in point (a) does not exist and the third country maintains restrictive procurement ***or***

leading to a lack of substantial reciprocity in market opening between the Union and the third country concerned.

concession award measures leading to a lack of substantial reciprocity in market opening between the Union and the third country concerned.

(This amendment applies to the whole of the legislative text (addition of the reference to 'concession award procedures' whenever there is mention of 'contract award procedures', in the singular or the plural); adoption of the regulation will entail technical changes throughout the text.)

Or. en

Justification

Alignment with the European Parliament's position in the trilogue negotiations on the Public Procurement and the Concessions Directive.

Amendment 151

Yannick Jadot

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 6 – paragraph 4 – subparagraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) The Commission will also consider the strategic industrial interests and priorities of the EU - including defensive interests - as outlined in EU's cyclical industrial policy plans.

Or. en

Amendment 152

Helmut Scholz

Proposal for a regulation

Article 6 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Amendment

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.

deleted

Or. en

Amendment 153

Yannick Jadot

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 6 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Amendment

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.

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; ***however, local content requirements in third countries' public procurement legislation shall not be considered as a reason for lack of substantial reciprocity when these requirements pursue public policy and development goals.***

Or. en

Amendment 154

Yannick Jadot

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 6 – paragraph 4 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) A lack of substantial reciprocity is also presumed where the third country concerned violates applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements and by the international environmental, social and labour law provisions listed in Annex XI of procurement directives, included ILO 94, and of Multilateral Environmental Agreements (MEAs) the EU is a party to.

Or. en

Amendment 155
Marielle de Sarnez
Proposal for a regulation
Article 6 – paragraph 4 – subparagraph 3

Text proposed by the Commission

Amendment

When adopting implementing acts pursuant to paragraph 3, the Commission shall not approve an intended exclusion where it would violate market access commitments entered into by the Union in its international agreements.

(Does not affect the English version.)

Or. fr

Amendment 156
Christofer Fjellner

Proposal for a regulation
Article 6 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

(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.

Or. en

Amendment 157

Nora Berra

Proposal for a regulation

Article 6 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

(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.

Or. fr

Justification

This paragraph has been replaced by a new Article 2(1).

Amendment 158
Metin Kazak

Proposal for a regulation
Article 6 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

(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.

Or. en

Amendment 159
Helmut Scholz

Proposal for a regulation
Article 6 – paragraph 5 – introductory part

Text proposed by the Commission

Amendment

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

5. When assessing the legitimacy of applied public procurement restrictions, the Commission shall examine the following:

Or. en

Amendment 160
Metin Kazak

Proposal for a regulation
Article 6 – paragraph 5 – point a

Text proposed by the Commission

Amendment

(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;

deleted

Or. en

Amendment 161
Yannick Jadot
on behalf of the Greens/EFA Group

Proposal for a regulation
Article 6 – paragraph 5 – point a

Text proposed by the Commission

Amendment

(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;

(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. ***However, local content requirements in third countries' public procurement legislation shall not be considered as a reason for lack of substantial reciprocity when these requirements pursue public policy and development goals;***

Or. en

Amendment 162
Helmut Scholz

Proposal for a regulation
Article 6 – paragraph 5 – point a

Text proposed by the Commission

(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;

Amendment

(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 **particularly** Union goods, services and economic operators;

Or. en

Amendment 163
Yannick Jadot
on behalf of the Greens/EFA Group

Proposal for a regulation
Article 6 – paragraph 5 – point a a (new)

Text proposed by the Commission

Amendment

(aa) where it can demonstrate by any appropriate means violations of applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements and by the international environmental, social and labour law provisions listed in Annex XI of procurement directives, included ILO 94, and of MEAs the EU is party to;

Or. en

Amendment 164
Metin Kazak

Proposal for a regulation
Article 6 – paragraph 5 – point b

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 165

Helmut Scholz

Proposal for a regulation

Article 6 – paragraph 5 – point b

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 166

Henri Weber, Marc Tarabella

Proposal for a regulation

Article 6 – paragraph 5 – point b a (new)

Text proposed by the Commission

Amendment

(ba) When assessing whether there is evidence of serious and repeated violations of the fundamental rights of workers or the social or labour law laid down in Union legislation, national legislation, collective agreements and the international environmental, social and labour law provisions listed in Annex XI to the public procurement directive, including Convention No 94 of the

International Labour Organisation (ILO), the Commission shall examine the following:

(i) to what degree laws and practices in the country concerned uphold workers' fundamental rights and social and labour law laid down in Union legislation, national legislation, collective agreements and the international environmental, social and labour law provisions listed in Annex XI to the public procurement directive, including the ILO Convention No 94;

(ii) to what degree public authorities and/or individual contracting entities employ social dumping practices in respect of the goods and services concerned.

Or. fr

Amendment 167
Bernd Lange

Proposal for a regulation
Article 6 – paragraph 5 – point b a (new)

Text proposed by the Commission

Amendment

(ba) to what degree the non-observance of international labour law provisions listed in Annex XI of the Directive on public procurement [...] (2013) XXX and in Annex XIV of the Directive on procurement by entities operating in the water, energy, transport and postal services sectors [...] (2013) XXX by public authorities have led to difficulties encountered and reported by European undertakings when these undertakings have tried to secure the award of contracts in third countries.

Or. en

Justification

Reference to paragraph 4 of Article 79b of the revised EU Directive on procurement by entities operating in the water, energy, transport and postal services sectors [...] (2013) XXX about the respect of social and labour standards in procurement procedures in third countries.

Amendment 168

Nora Berra

Proposal for a regulation

Article 6 – paragraph 6

Text proposed by the Commission

Amendment

6. Before the Commission takes a decision pursuant to paragraph 3 it shall hear the tenderer or tenderers concerned. *deleted*

Or. fr

Amendment 169

Metin Kazak

Proposal for a regulation

Article 6 – paragraph 6

Text proposed by the Commission

Amendment

6. Before the Commission takes a decision pursuant to paragraph 3 it shall hear the tenderer or tenderers concerned. *deleted*

Or. en

Amendment 170

Bernd Lange

Proposal for a regulation

Article 6 – paragraph 7

Text proposed by the Commission

Amendment

7. Contracting authorities/entities which have excluded tenders pursuant to *deleted*

paragraph 1 shall indicate this in the contract award notice they publish pursuant to Article 35 of Directive 2004/18/EC, Article 42 of Directive 2004/17/EC, or Article 27 of the Directive on the award of concession contracts. The Commission shall adopt implementing acts establishing the standard forms for contract award notices. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 17 (3).

Or. en

Justification

To be in line with new procedure set by Article 6.

Amendment 171
Nora Berra
Proposal for a regulation
Article 6 – paragraph 7

Text proposed by the Commission

7. Contracting authorities/entities which have excluded tenders pursuant to **paragraph 1** shall indicate this in the contract award notice they publish pursuant to Article 35 of Directive 2004/18/EC, Article 42 of Directive 2004/17/EC, or Article 27 of the Directive on the award of concession contracts. The Commission shall adopt implementing acts establishing the standard forms for contract award notices. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 17 (3).

Amendment

7. Contracting authorities/entities which have excluded tenders pursuant to **Article 8** shall indicate this in the contract award notice they publish pursuant to Article 35 of Directive 2004/18/EC, Article 42 of Directive 2004/17/EC, or Article 27 of the Directive on the award of concession contracts. The Commission shall adopt implementing acts establishing the standard forms for contract award notices. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 17(3).

Or. fr

Amendment 172
Bernd Lange

Proposal for a regulation
Article 6 – paragraph 8

Text proposed by the Commission

Amendment

8. Paragraph 1 shall not apply where the Commission has adopted the implementing act on temporary access of the goods and services from a country engaged in substantive negotiations with the Union as set out in Article 9(4). *deleted*

Or. en

Justification

To not apply the instrument with countries with which the EU is engaging in trade negotiations would reduce the effectiveness of the instrument.

Amendment 173
Metin Kazak

Proposal for a regulation
Article 6 – paragraph 8

Text proposed by the Commission

Amendment

8. Paragraph 1 shall not apply where the Commission has adopted the implementing act on temporary access of the goods and services from a country engaged in substantive negotiations with the Union as set out in Article 9(4). *deleted*

Or. en

Amendment 174
Emma McClarkin

Proposal for a regulation
Article 7

Article 7

deleted

Abnormally low tenders

Where the contracting authority/entity intends, under Article 69 of the Directive on public procurement or under Article 79 of the Directive on procurement by entities operating in the water, energy, transport and postal services sectors, after verifying the explanations of the tenderer, to accept an abnormally low tender comprising goods and/or services originating outside the Union, in which the value of the non-covered goods or services exceeds 50 % of the total value of the goods or services constituting the tender, it shall inform the other tenderers of this in writing, including the reasons for the abnormally low character of the price or costs charged.

A contracting authority/entity may withhold any information release of it would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between them.

Or. en

Justification

This imposes a disproportionate administrative burden on contracting authorities. They would be obliged to familiarise themselves with complex rules of origin and the current GPA and bilateral coverage in order to ascertain whether a low tender was eligible. There would also be a delay to the tendering process should notification be required.

Amendment 175
Christofer Fjellner

Proposal for a regulation
Article 7

Text proposed by the Commission

Amendment

Article 7

deleted

Abnormally low tenders

Where the contracting authority/entity intends, under Article 69 of the Directive on public procurement or under Article 79 of the Directive on procurement by entities operating in the water, energy, transport and postal services sectors, after verifying the explanations of the tenderer, to accept an abnormally low tender comprising goods and/or services originating outside the Union, in which the value of the non-covered goods or services exceeds 50 % of the total value of the goods or services constituting the tender, it shall inform the other tenderers of this in writing, including the reasons for the abnormally low character of the price or costs charged.

A contracting authority/entity may withhold any information release of it would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between them.

Or. en

Amendment 176
Marc Tarabella, Henri Weber

Proposal for a regulation
Article 7 – paragraph 1

Text proposed by the Commission

Amendment

Where the contracting authority/entity

Contracting authority/entity, under

intends, under Article 69 of the Directive on public procurement or under Article 79 of the Directive on procurement by entities operating in the water, energy, transport and postal services sectors, after verifying the explanations of the tenderer, to accept an abnormally low tender comprising goods and/or services originating outside the Union, in which the value of the non-covered goods or services exceeds 50 % of the total value of the goods or services constituting the tender, it shall inform the other tenderers of this in writing, including the reasons for the abnormally low character of the price or costs charged.

Article 69 of the Directive on public procurement or under Article 79 of the Directive on procurement by entities operating in the water, energy, transport and postal services sectors, shall require economic operators to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services.

2. The explanations referred to in paragraph 1 may in particular relate to:

(a) the economics of the construction method, the manufacturing process or the services provided

(b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the execution of the work or for the supply of the goods or services;

(c) the originality of the work, supplies or services proposed by the tenderer;

(d) compliance with obligations referred to in Article 6. 1 (a) new.

(da) compliance with obligations referred to in Article 71 of Directive on public procurement or under Article 81 of the Directive on procurement by entities operating in the water, energy, transport and postal services sectors.

(e) the possibility of the tenderer obtaining State aid.

After verifying the explanations of the tenderer, to accept an abnormally low tender comprising goods and/or services originating outside the Union, in which the value of the non-covered goods or services exceeds 50 % of the total value of the goods or services constituting the

tender, it shall inform the other tenderers of this in writing, including the reasons for the abnormally low character of the price or costs charged.

3. The contracting authority shall assess the information provided by consulting the tenderer. It may only reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed, taking into account the elements referred to in paragraph 2.

Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with applicable obligations referred to in Article 6. 1 (a) new.

4. Where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was compatible with the internal market within the meaning of Article 107 of the Treaty.

5. Upon request, Member States shall make available to other Member States by way of administrative cooperation any information at its disposal, such as laws, regulations, universally applicable collective agreements or national technical standards, relating to the evidence and documents produced in relation to details listed in paragraph 2.

Or. en

Amendment 177
Helmut Scholz

Proposal for a regulation
Article 7 – paragraph 1

Text proposed by the Commission

Where the contracting authority/entity intends, under Article 69 of the Directive on public procurement or under Article 79 of the Directive on procurement by entities operating in the water, energy, transport and postal services sectors, after verifying the explanations of the tenderer, to accept an abnormally low tender comprising goods and/or services originating outside the Union, in which the value of the non-covered goods or services exceeds 50 % of the total value of the goods or services constituting the tender, it shall inform the other tenderers of this in writing, including the reasons for the abnormally low character of the price or costs charged.

Amendment

Where the contracting authority/entity intends, under Article 69 of the Directive on public procurement or under Article 79 of the Directive on procurement by entities operating in the water, energy, transport and postal services sectors, after verifying the explanations of the tenderer, to accept an abnormally low tender comprising goods and/or services originating outside the Union, in which the value of the non-covered goods or services exceeds 50 % of the total value of the goods or services constituting the tender, it shall inform the other tenderers of this in writing, including the reasons for the abnormally low character of the price or costs charged, ***including information regarding environmental, labour and wage conditions involved, in order to prevent social or environmental dumping.***

Or. en

Amendment 178
Bernd Lange, Barbara Weiler

Proposal for a regulation
Article 7 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) Contracting authorities shall require economic operators to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services.

Or. en

Amendment 179
Bernd Lange, Barbara Weiler

Proposal for a regulation
Article 7 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

(1b) The explanations referred to in paragraph 1 a (new) may in particular relate to:

(a) the economics of the construction method, the manufacturing process or the services provided;

(b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the execution of the work or for the supply of the goods or services;

(c) the originality of the work, supplies or services proposed by the tenderer;

(d) compliance with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex XI of the Directive on public procurement [...] (2013) XXX or, where not applicable, with other provisions ensuring an equivalent level of protection;

(e) compliance of subcontractors with the obligations referred to in paragraph 1 a (new) - letter (d). With the aim of avoiding breaches of these obligations Member States and contracting authorities may take appropriate measures;

(f) the possibility of the tenderer obtaining State aid.

Or. en

Amendment 180
Marc Tarabella, Henri Weber
Proposal for a regulation
Article 7 – paragraph 2

Text proposed by the Commission

Amendment

A contracting authority/entity may withhold any information release of it would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between them.

deleted

Or. fr

Amendment 181
Helmut Scholz

Proposal for a regulation
Article 7 – paragraph 2

Text proposed by the Commission

Amendment

A contracting authority/entity may withhold any information release of it would impede law enforcement, would otherwise be contrary to the public interest, *would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between them.*

A contracting authority/entity may withhold any information release of it would impede law enforcement, *or* would otherwise be contrary to the public interest.

Or. en

Amendment 182
Emma McClarkin

Proposal for a regulation
Article 8

Article 8

deleted

Investigation relating to the access of EU economic operators, goods and services to the public procurement markets of third countries

1.

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

In particular, the Commission shall take into account whether a number of intended exclusions have been approved pursuant to Article 6(3) of this Regulation.

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

2. The investigation referred to in paragraph 1 is conducted on the basis of the criteria laid down in Article 6.

3. The assessment by the Commission of whether restrictive procurement measures are maintained by the third country concerned shall be made on the basis of the information supplied by interested parties and Member States and/or facts collected by the Commission during its investigation, and shall be concluded within a period of nine months after the initiation of the investigation. In duly justified cases this period may be extended by three months.

4. When the Commission concludes as a

result of the external procurement investigation that the alleged restrictive procurement measures are not maintained by the third country concerned, the Commission shall adopt a decision terminating the investigation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17 (2).

Or. en

Justification

This article relates to the investigation required before a centralised closure, covered in article 10, which we are proposing should be deleted. Article 8 is therefore superfluous.

Amendment 183

Henri Weber

Proposal for a regulation

Article 8 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

Where an intended exclusion has been approved in accordance with Article 6(3) of this Regulation, the Commission shall initiate an external investigation into alleged restrictive procurement measures.

The Commission may *also* at any time, on its own initiative or upon application of interested parties, *namely a contracting authority/entity*, or a Member State, initiate an external procurement investigation into alleged restrictive procurement measures.

The Commission shall, in that case, take account in particular of whether it has already been notified of a number of intended exclusions concerning the same restrictive measures.

Should an investigation be initiated, the

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

Should the Commission decline to initiate an investigation requested by a Member State or a contracting authority/entity, it shall justify its decision to the applicants within a period of four weeks.

Or. fr

Amendment 184
Bernd Lange

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

Text proposed by the Commission

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

Amendment

The Commission *may initiate* at any time, on its own initiative or upon application of interested parties or a *contracting authority/entity in accordance with the procedure of article 6, or a Member State*, an external procurement investigation into alleged restrictive procurement measures.

Or. en

Amendment 185
Nora Berra
Proposal for a regulation
Article 8 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Where the Commission considers it to be in the interest of the Union, it may at any time, on its own initiative or upon application of interested parties or a Member State, may initiate an external

Amendment

The Commission *shall, upon application of interested parties, a contracting authority/entity or Member State*, initiate an external investigation into *an alleged lack of substantial reciprocity as regards*

procurement investigation into alleged *restrictive* procurement *measures*.

procurement.

Should the Commission decline to initiate an investigation, it shall justify its decision to the Member State, interested party or the contracting entity that submitted the application.

Or. fr

Amendment 186
Franck Proust
Proposal for a regulation
Article 8 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

1. Where an intended exclusion has been approved in accordance with Article 6(3) of this Regulation, the Commission shall initiate an external investigation into alleged restrictive procurement measures.

2. Furthermore, where the Commission considers it to be in the interest of the Union, it may at any time, on its own initiative or upon application of interested parties, ***a contracting authority/entity*** or a Member State, initiate an external procurement investigation into alleged restrictive procurement measures.

Or. fr

Amendment 187
Marielle de Sarnez
Proposal for a regulation
Article 8 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Where the Commission ***considers it to be in the interest of the Union, it may at any time, on its own initiative or upon***

Amendment

Where the Commission ***approves the request to exclude a tender from the European market in accordance with the***

application of interested parties or a Member State, may initiate an external procurement investigation into alleged restrictive procurement measures.

procedure provided for in Article 6(3), it shall initiate an external procurement investigation into alleged restrictive procurement measures.

Or. fr

Amendment 188
Helmut Scholz

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 189
Henri Weber
Proposal for a regulation
Article 8 – paragraph 1 – subparagraph 2

Text proposed by the Commission

In particular, the Commission shall take into account whether a number of intended exclusions have been approved pursuant to Article 6(3) of this Regulation.

Amendment

deleted

Or. fr

Amendment 190
Christofer Fjellner

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

Text proposed by the Commission

Amendment

In particular, the Commission shall take into account whether a number of intended exclusions have been approved pursuant to Article 6(3) of this Regulation. *deleted*

Or. en

Amendment 191
Nora Berra
Proposal for a regulation
Article 8 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

In particular, the Commission shall take into account whether a number of intended exclusions have been approved pursuant to Article 6(3) of this Regulation. *deleted*

Or. fr

Amendment 192
Bernd Lange
Proposal for a regulation
Article 8 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

In particular, the Commission shall take into account whether a number of intended exclusions have been approved pursuant to Article 6(3) of this Regulation. *deleted*

Or. en

Amendment 193
Helmut Scholz

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

Text proposed by the Commission

Amendment

In particular, the Commission shall take into account whether a number of intended exclusions have been approved pursuant to Article 6(3) of this Regulation.

deleted

Or. en

Amendment 194
Metin Kazak

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

Text proposed by the Commission

Amendment

In particular, the Commission shall take into account whether a number of intended exclusions have been approved pursuant to Article 6(3) of this Regulation.

deleted

Or. en

Amendment 195
Franck Proust
Proposal for a regulation
Article 8 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

In particular, the Commission shall take into account whether a number of intended exclusions *have been approved* pursuant to Article 6(3) of this Regulation.

In particular, the Commission shall, *in that case*, take into account whether *it has been notified of* a number of intended exclusions pursuant to Article 6(3) of this Regulation *in respect of which it has not*

adopted an implementing act.

Or. fr

Amendment 196

Marielle de Sarnez

Proposal for a regulation

Article 8 – paragraph 1 – subparagraph 2

Text proposed by the Commission

In particular, the Commission shall take into account whether a number of intended exclusions have been approved pursuant to Article 6(3) of this Regulation.

Amendment

The Commission shall initiate the investigation on its own initiative or on the request of a contracting authority or entity, interested parties or a Member State, taking account of the fact that it has been notified of a number of intended exclusions pursuant to Article 6(3) of this Regulation.

Or. fr

Amendment 197

Marielle de Sarnez

Proposal for a regulation

Article 8 – paragraph 1 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

(3a) The Commission shall justify any decision not to initiate an investigation to the Member State, contracting power or authority or interested party requesting the exclusion.

Or. fr

Amendment 198

Christofer Fjellner

Proposal for a regulation

Article 8 – paragraph 2

Text proposed by the Commission

Amendment

2. The investigation referred to in paragraph 1 is conducted on the basis of the criteria laid down in Article 6.

deleted

Or. en

Amendment 199
Metin Kazak

Proposal for a regulation
Article 8 – paragraph 2

Text proposed by the Commission

Amendment

2. The investigation referred to in paragraph 1 is conducted on the basis of the criteria laid down in Article 6.

2. When pursuing an investigation under paragraph 1, the Commission shall examine the following:

Or. en

Amendment 200
Metin Kazak

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

Text proposed by the Commission

Amendment

(2a) if the third country has concluded an agreement listed in Annex I, whether 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 where there are explicit market access reservations taken by the Union.

Or. en

Amendment 201
Metin Kazak

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

Text proposed by the Commission

Amendment

(2b) if an agreement referred to in Annex I does not exist, whether 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.

A lack of substantial reciprocity is presumed where restrictive procurement measures result in serious and recurring discriminations of Union economic operators, goods and services.

Or. en

Amendment 202
Henri Weber
Proposal for a regulation
Article 8 – paragraph 3

Text proposed by the Commission

Amendment

3. The assessment by the Commission of whether restrictive procurement measures are maintained by the third country concerned shall be made on the basis of the information supplied by interested parties and Member States and/or facts collected by the Commission during its investigation, and shall be concluded within a period of *nine* months after the initiation of the investigation. In duly justified cases this period may be extended by *three months*.

3. The assessment by the Commission of whether restrictive procurement measures are maintained by the third country concerned shall be made on the basis of the information supplied by interested parties and Member States and/or facts collected by the Commission during its investigation *and its regular monitoring of trade barriers*, and shall be concluded within a period of *three* months *at the most* after the initiation of the investigation. In duly justified cases this period may be extended by *one month*.

Or. fr

Amendment 203
Nora Berra
Proposal for a regulation
Article 8 – paragraph 3

Text proposed by the Commission

3. The assessment by the Commission of whether restrictive procurement measures are maintained by the third country concerned shall be made on the basis of the information supplied by interested parties and Member States and/or facts collected by the Commission during its investigation, and shall be concluded within a period of **nine** months after the initiation of the investigation. In duly justified cases this period may be extended by **three months**.

Amendment

3. The assessment by the Commission of whether restrictive procurement measures are maintained by the third country concerned shall be made on the basis of the information supplied by interested parties and Member States and/or facts collected by the Commission during its investigation **or its regular reports on existing trade barriers in third countries**, and shall be concluded within a period of **three** months after the initiation of the investigation. In duly justified cases this period may be extended by **one month**.

Or. fr

Justification

Investigation deadlines regarding possible restrictive procurement practices should not be based on those applicable to antidumping or anti-subsidy procedures. Given that the Commission is constantly monitoring trade barriers in third countries, shorter deadlines should be feasible.

Amendment 204
Paweł Zalewski
Proposal for a regulation
Article 8 – paragraph 3

Text proposed by the Commission

3. The assessment by the Commission of whether restrictive procurement measures are maintained by the third country concerned shall be made on the basis of the information supplied by interested parties and Member States and/or facts collected by the Commission during its investigation, and shall be concluded

Amendment

3. The assessment by the Commission of whether restrictive procurement measures are maintained by the third country concerned shall be made on the basis of the information supplied by interested parties and Member States and/or facts collected by the Commission during its investigation, and shall be concluded

within a period of **nine** months after the initiation of the investigation. In duly justified cases this period may be extended by three months.

within a period of **three** months after the initiation of the investigation. In duly justified cases this period may be extended by three months.

Or. en

Amendment 205
Metin Kazak

Proposal for a regulation
Article 8 – paragraph 3

Text proposed by the Commission

3. The assessment by the Commission of whether restrictive procurement measures are maintained by the third country concerned shall be made on the basis of the information supplied by interested parties and Member States and/or facts collected by the Commission during its investigation, and shall be concluded within a period of **nine** months after the initiation of the investigation. In duly justified cases this period may be extended by **three** months.

Amendment

3. The assessment by the Commission of whether restrictive procurement measures are maintained by the third country concerned shall be made on the basis of the information supplied by interested parties and Member States and/or facts collected by the Commission during its investigation, and shall be concluded within a period of **six** months after the initiation of the investigation. In duly justified cases this period may be extended by **two** months.

Or. en

Amendment 206
Helmut Scholz

Proposal for a regulation
Article 8 – paragraph 3

Text proposed by the Commission

3. The assessment by the Commission of whether restrictive procurement measures are maintained by the third country concerned shall be made on the basis of the information supplied by interested parties and Member States and/or facts collected

Amendment

3. The assessment by the Commission of whether **illegitimate** restrictive procurement measures are maintained by the third country concerned shall be made on the basis of the information supplied by interested parties and Member States

by the Commission during its investigation, and shall be concluded within a period of nine months after the initiation of the investigation. In duly justified cases this period may be extended by three months.

and/or facts collected by the Commission during its investigation, and shall be concluded within a period of nine months after the initiation of the investigation. In duly justified cases this period may be extended by three months.

Or. en

Amendment 207

Metin Kazak

Proposal for a regulation

Article 8 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(3a) 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.

Or. en

Amendment 208

Nora Berra

Proposal for a regulation

Article 8 – paragraph 4

Text proposed by the Commission

Amendment

4. When the Commission concludes as a

4. When the Commission concludes as a

result of the *external* procurement investigation that the alleged restrictive procurement measures are not maintained by the *third* country concerned, the Commission shall adopt a decision terminating the investigation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

result of *its* procurement investigation that the alleged restrictive procurement measures are not maintained by the country concerned, the Commission shall adopt a decision terminating the investigation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

Regarding the contracts referred to in Article 6(1), where the Commission notes that 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 formulated by the Union, or finds a lack of substantial reciprocity as defined in Article 2(1), it shall adopt an implementing act approving the exclusion of the tenders concerned by the investigation in accordance with the examination procedure referred to in Article 17(2).

This exclusion shall be a temporary measure pending the conclusions of the consultation procedure provided for under Article 9 and, where applicable, the adoption of any measures limiting access of non-covered goods and services to the EU public procurement market under Article 10.

Or. fr

Amendment 209
Helmut Scholz

Proposal for a regulation
Article 8 – paragraph 4

Text proposed by the Commission

Amendment

4. When the Commission concludes as a

4. When the Commission concludes as a

result of the external procurement investigation that the *alleged* restrictive procurement measures are not maintained by the third country concerned, the Commission shall adopt a decision terminating the investigation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17 (2).

result of the external procurement investigation that the *allegedly illegitimate* restrictive procurement measures are not maintained by the third country concerned, the Commission shall adopt a decision terminating the investigation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17 (2).

Or. en

Amendment 210

Yannick Jadot

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 8 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

(4a) For the purpose of investigations referred to in paragraph 1, the Commission shall not consider local content requirements in third countries' public procurement legislation as an element leading to restrictive procurement measures, when these requirements pursue public policy and development goals.

Or. en

Amendment 211

Emma McClarkin

Proposal for a regulation

Article 9

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Justification

This consultation procedure is unnecessary should article 10 be deleted

Amendment 212

Yannick Jadot

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 9 – paragraph 1 – subparagraph 1

Text proposed by the Commission

When it is found as a result of an investigation that restrictive procurement measures are maintained by a third country and the Commission considers it to be justified by the EU interest, the Commission shall invite it to enter into consultations with a view to ensuring that Union economic operators, goods and services can participate in tendering procedures for the award of public procurement contracts in that country on the conditions no less favourable than those accorded to national economic operators, goods and services of that country and also with a view also to ensuring the application of the principles of transparency and equal treatment.

Amendment

When it is found as a result of an investigation that restrictive procurement measures are maintained by a third country and the Commission considers it to be justified by the EU interest, the Commission shall invite it to enter into consultations with a view to ensuring that Union economic operators, goods and services can participate in tendering procedures for the award of public procurement contracts in that country on the conditions no less favourable than those accorded to national economic operators, goods and services of that country and also with a view also to ensuring the application of the principles of transparency and equal treatment. ***The Commission, when carrying out consultations, shall refrain from pursuing the elimination of local content requirements in third countries' public procurement legislation, when these requirements pursue public policy and development goals.***

Or. en

Amendment 213

Helmut Scholz

Proposal for a regulation
Article 9 – paragraph 1 – subparagraph 1

Text proposed by the Commission

When it is found as a result of an investigation that restrictive procurement measures are maintained by a third country and the Commission considers it to be justified by the EU interest, the Commission shall invite it to enter into consultations with a view to ***ensuring that*** Union economic operators, goods and services ***can*** participate in tendering procedures for the award of public procurement contracts in that country ***on the conditions no less favourable than those accorded to national economic operators, goods and services of that country*** and also with a view ***also*** to ensuring the application of the principles of transparency and equal treatment.

Amendment

When it is found as a result of an investigation that ***illegitimate*** restrictive procurement measures are maintained by a third country and the Commission considers it to be justified by the EU interest, the Commission shall invite it to enter into consultations with a view to ***improving*** Union economic operators, goods and services ***opportunities to*** participate in tendering procedures for the award of public procurement contracts in that country, and also with a view to ensuring the application of the principles of transparency and equal treatment.

Or. en

Amendment 214
Christofer Fjellner

Proposal for a regulation
Article 9 – paragraph 1 – subparagraph 2

Text proposed by the Commission

In the event that the country concerned declines the invitation to enter into consultation, the Commission shall, when adopting implementing acts under Article 10 to limit the access of goods and services originating in that third country, decide on the basis of the facts available.

Amendment

deleted

Or. en

Amendment 215
Helmut Scholz

Proposal for a regulation
Article 9 – paragraph 1 – subparagraph 2

Text proposed by the Commission

In the event that the country concerned declines the invitation to enter into consultation, the Commission shall, ***when adopting implementing acts under Article 10 to limit the access of goods and services originating in that third country, decide*** on the basis of the facts available.

Amendment

In the event that the country concerned declines the invitation to enter into consultation, the Commission shall ***suggest to take action*** on the basis of the facts available.

Or. en

Amendment 216
Helmut Scholz

Proposal for a regulation
Article 9 – paragraph 2

Text proposed by the Commission

2. If the country concerned is a Party to the WTO Agreement on Government Procurement or has concluded a trade agreement with the EU that includes provisions on public procurement, the Commission shall follow the consultation mechanisms and/or dispute settlement procedures set out in that agreement when the restrictive practices relate to procurement covered by market access commitments undertaken by the country concerned towards the Union.

Amendment

2. If the country concerned is a Party to the WTO Agreement on Government Procurement or has concluded a trade agreement with the EU that includes provisions on public procurement, the Commission shall follow the consultation mechanisms and/or dispute settlement procedures set out in that agreement when the restrictive practices ***considered illegitimate*** relate to procurement covered by market access commitments undertaken by the country concerned towards the Union.

Or. en

Amendment 217
Henri Weber

Proposal for a regulation
Article 9 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) However, where the country concerned is a party to the World Trade Organisation Agreement on Government Procurement, and/ or has concluded a bilateral trade agreement with the EU containing a 'public procurement' chapter and if the European Union has formulated express reservations concerning market access for that country, the Commission shall without delay adopt implementing measures under Article 10 limiting access for the goods and services concerned.

Or. fr

Amendment 218
Helmut Scholz

Proposal for a regulation
Article 9 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

When, after the initiation of a consultation, the country concerned takes satisfactory remedial/corrective measures, ***but without undertaking new market access commitments***, the Commission ***may*** suspend or terminate the ***consultation***:

When, after the initiation of a consultation, the country concerned takes satisfactory remedial/corrective measures, the Commission ***shall*** suspend or terminate the ***investigation***;

Or. en

Amendment 219
Henri Weber
Proposal for a regulation
Article 9 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

When, after the initiation of a consultation, the country concerned takes satisfactory remedial/corrective measures, but without undertaking new market access commitments, the Commission may suspend or terminate the consultation.

When, after the initiation of a consultation, the country concerned takes satisfactory remedial/corrective measures, but without undertaking new market access commitments, the Commission may suspend or terminate the consultation ***or invite the country concerned to enter into negotiations under Article 9(5).***

Or. fr

Amendment 220

Henri Weber

Proposal for a regulation

Article 9 – paragraph 3 – subparagraph 3 – introductory part

Text proposed by the Commission

Amendment

Where the remedial/corrective measures taken by the third country concerned are rescinded, suspended or improperly implemented, the Commission ***may***:

Where the remedial/corrective measures taken by the third country concerned are rescinded, suspended or improperly implemented, the Commission ***shall proceed to adopt under Article 10 implementing acts to limit the access of goods and services originating in a third country.***

Or. fr

Amendment 221

Nora Berra

Proposal for a regulation

Article 9 – paragraph 3 – subparagraph 3 – introductory part

Text proposed by the Commission

Amendment

Where the remedial/corrective measures taken by the third country concerned are rescinded, suspended or improperly implemented, the Commission ***may***:

Where the remedial/corrective measures taken by the third country concerned are rescinded, suspended or improperly implemented, the Commission ***shall proceed to adopt under Article 10 implementing acts to limit the access of goods and services originating in a third***

country.

Or. fr

Justification

In order to prevent any abuse of the arrangements, it should not be necessary for the Commission to commence further negotiations prior to any decision to limit the access of goods and services if the third country concerned by this measure fails to comply with undertakings given by it in the course of previous negotiations.

Amendment 222

Marielle de Sarnez

Proposal for a regulation

Article 9 – paragraph 3 – subparagraph 3 – introductory part

Text proposed by the Commission

Amendment

Where the remedial/corrective measures taken by the third country concerned are rescinded, suspended or improperly implemented, the Commission *may*:

Where the remedial/corrective measures taken by the third country concerned are rescinded, suspended or improperly implemented, the Commission ***shall adopt under Article 10 implementing acts to limit the access of goods and services originating in a third country.***

Or. fr

Amendment 223

Henri Weber

Proposal for a regulation

Article 9 – paragraph 3 – subparagraph 3 – point i

Text proposed by the Commission

Amendment

i) resume or restart the consultation with the third country concerned, and/or

deleted

Or. fr

Amendment 224

Marielle de Sarnez

Proposal for a regulation

Article 9 – paragraph 3 – subparagraph 3 – point i

Text proposed by the Commission

Amendment

i) resume or restart the consultation with the third country concerned, and/or ***deleted***

Or. fr

Amendment 225
Henri Weber
Proposal for a regulation
Article 9 – paragraph 3 – subparagraph 3 – point ii

Text proposed by the Commission

Amendment

ii) act under Article 10 to adopt implementing acts to limit the access of goods and services originating in a third country ***deleted***

Or. fr

Amendment 226
Christofer Fjellner

Proposal for a regulation
Article 9 – paragraph 3 – subparagraph 3 – point ii

Text proposed by the Commission

Amendment

(ii) act under Article 10 to adopt implementing acts to limit the access of goods and services originating in a third country ***deleted***

Or. en

Amendment 227
Marielle de Sarnez
Proposal for a regulation
Article 9 – paragraph 3 – subparagraph 3 – point ii

Text proposed by the Commission

Amendment

ii) act under Article 10 to adopt implementing acts to limit the access of goods and services originating in a third country.

deleted

Or. fr

Amendment 228
Helmut Scholz

Proposal for a regulation
Article 9 – paragraph 3 – subparagraph 3 – point ii

Text proposed by the Commission

Amendment

(ii) act under Article 10 to adopt implementing acts to limit the access of goods and services originating in a third country

(ii) act under Article 10 to adopt implementing acts to limit the access of goods and services originating in a third country, **or in established cases of social or environmental dumping are offered by a certain company;**

Or. en

Amendment 229
Henri Weber
Proposal for a regulation
Article 9 – paragraph 4

Text proposed by the Commission

Amendment

4. Where, after the initiation of a consultation, it appears that the most appropriate means to end a restrictive procurement practice is the conclusion of an international agreement, negotiations shall be carried out in accordance with the provisions of Articles 207 and 218 of the Treaty on the Functioning of the European Union. ***If a country has engaged in substantive negotiations with the European Union concerning market***

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

access in the field of public procurement, the Commission may adopt an implementing act providing that goods and services from that country cannot be excluded from procedures for the award of contracts pursuant to Article 6.

Or. fr

Amendment 230
Nora Berra, Franck Proust
Proposal for a regulation
Article 9 – paragraph 4

Text proposed by the Commission

4. Where, after the initiation of a consultation, it appears that the most appropriate means to end a restrictive procurement practice is the conclusion of an international agreement, negotiations shall be carried out in accordance with the provisions of Articles 207 and 218 of the Treaty on the Functioning of the European Union. *If a country has engaged in substantive negotiations with the European Union concerning market access in the field of public procurement, the Commission may adopt an implementing act providing that goods and services from that country cannot be excluded from procedures for the award of contracts pursuant to Article 6.*

Amendment

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

Or. fr

Amendment 231
Pawel Zalewski
Proposal for a regulation
Article 9 – paragraph 4

Text proposed by the Commission

4. Where, after the initiation of a consultation, it appears that the most

Amendment

4. Where, after the initiation of a consultation, it appears that the most

appropriate means to end a restrictive procurement practice is the conclusion of an international agreement, negotiations shall be carried out in accordance with the provisions of Articles 207 and 218 of the Treaty on the Functioning of the European Union. If a country has engaged in substantive negotiations with the European Union concerning market access in the field of public procurement, the Commission may adopt an implementing act providing that goods and services from that country cannot be excluded from procedures for the award of contracts pursuant to Article 6.

appropriate means to end a restrictive procurement practice is the conclusion of an international agreement, negotiations shall be carried out in accordance with the provisions of Articles 207 and 218 of the Treaty on the Functioning of the European Union. If a country has engaged in substantive negotiations with the European Union concerning market access in the field of public procurement, the Commission may adopt an implementing act providing that goods and services from that country cannot be excluded from procedures for the award of contracts pursuant to Article 6. ***The examination procedure shall apply.***

Or. en

Amendment 232

Henri Weber

Proposal for a regulation

Article 9 – paragraph 5 – subparagraph 1 – introductory part

Text proposed by the Commission

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

Amendment

The Commission may terminate the consultation if the country concerned ***has undertaken with the Union or at international level the following measures:***

(i) corrective actions by the country concerned and

(ii) international commitments with the European Union by the country concerned with no restrictions/exclusions regarding the goods and services concerned by the investigation.

These international commitments shall be agreed in any of the following frameworks:

Or. fr

Amendment 233
Nora Berra
Proposal for a regulation
Article 9 – paragraph 5 – subparagraph 1 – introductory part

Text proposed by the Commission

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

Amendment

The Commission may terminate the consultation if :

- corrective measures have been adopted by the country concerned

- the country concerned undertakes international commitments agreed with the Union ***with no exclusion or derogation in respect of the areas being investigated under Article 8(1)*** in any of the following frameworks:

Or. fr

Amendment 234
Helmut Scholz

Proposal for a regulation
Article 9 – paragraph 5 – subparagraph 1 – point c

Text proposed by the Commission

(c) Expansion of its market access commitments undertaken under the WTO Agreement on Government or under a bilateral agreement concluded with the Union in that framework,

Amendment

(c) Expansion of its market access commitments undertaken under the WTO Agreement on Government ***Procurement*** or under a bilateral agreement concluded with the Union in that framework,

Or. en

Amendment 235
Henri Weber
Proposal for a regulation
Article 9 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Amendment

The consultation may also be terminated in cases where the restrictive procurement measures are still in place at the time these commitments are undertaken, as long as they include detailed provisions relating to the phasing-out of those practices.

deleted

Or. fr

Amendment 236

Nora Berra

Proposal for a regulation

Article 9 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Amendment

The consultation may also be terminated in cases where the restrictive procurement measures are still in place at the time these commitments are undertaken, as long as they include detailed provisions relating to the phasing-out of those practices.

deleted

Or. fr

Amendment 237

Helmut Scholz

Proposal for a regulation

Article 9 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Amendment

The consultation may also be terminated in cases where the restrictive procurement measures are still in place at the time these commitments are undertaken, as long as they include detailed provisions relating to the phasing-out of those practices.

The consultation may also be terminated in cases where the ***illegitimate*** restrictive procurement measures are still in place at the time these commitments are undertaken, as long as they include detailed provisions relating to the phasing-out of those practices.

Amendment 238
Christofer Fjellner

Proposal for a regulation
Article 9 – paragraph 6

Text proposed by the Commission

Amendment

6. In the event that a consultation with a third country does not lead to satisfactory results within 15 months from the day the consultation with the third country started, the Commission shall terminate the consultation and consider acting under Article 10 to adopt implementing acts to limit the access of goods and services originating in a third country .

deleted

Amendment 239
Henri Weber
Proposal for a regulation
Article 9 – paragraph 6

Text proposed by the Commission

Amendment

6. In the event that a consultation with a third country does not lead to satisfactory results within **15** months from the day the consultation with the third country started, the Commission shall terminate the consultation and consider acting under Article 10 to adopt implementing acts to limit the access of goods and services originating in a third country.

6. In the event that a consultation with a third country does not lead to satisfactory results within **9** months from the day the consultation with the third country started, the Commission shall terminate the consultation and consider acting under Article 10 to adopt implementing acts to limit the access of goods and services originating in a third country.

Amendment 240
Pawel Zalewski

Proposal for a regulation
Article 9 – paragraph 6

Text proposed by the Commission

6. In the event that a consultation with a third country does not lead to satisfactory results within **15** months from the day the consultation with the third country started, the Commission shall terminate the consultation and consider acting under Article 10 to adopt implementing acts to limit the access of goods and services originating in a third country .

Amendment

6. In the event that a consultation with a third country does not lead to satisfactory results within **12** months from the day the consultation with the third country started, the Commission shall terminate the consultation and consider acting under Article 10 to adopt implementing acts to limit the access of goods and services originating in a third country .

Or. en

Amendment 241
Metin Kazak

Proposal for a regulation
Article 9 – paragraph 6

Text proposed by the Commission

6. In the event that a consultation with a third country does not lead to satisfactory results within **15** months from the day the consultation with the third country started, the Commission shall terminate the consultation and consider acting under Article 10 to adopt implementing acts to limit the access of goods and services originating in a third country .

Amendment

6. In the event that a consultation with a third country does not lead to satisfactory results within **12** months from the day the consultation with the third country started, the Commission shall terminate the consultation and consider acting under Article 10 to adopt implementing acts to limit the access of goods and services originating in a third country .

Or. en

Amendment 242
Emma McClarkin

Proposal for a regulation
Article 10

Article 10

deleted

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

1. Where it is found in an investigation pursuant to Article 8, and after following the procedure foreseen in Article 9, that restrictive procurement measures adopted or maintained by that third country leads to an lack of substantial reciprocity in market opening between the Union and the third country as referred to in Article 6, the Commission may adopt implementing acts to temporarily limit the access of non-covered goods and services originating in a third country. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

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

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

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

3. Measures adopted pursuant to paragraph 1 may in particular be limited to:

(a) public procurement by certain defined categories of contracting authorities/entities;

(b) public procurement of certain defined categories of goods or services;

(c) public procurement above or within

certain defined thresholds.

Or. en

Justification

A centralised closure would require Member States to close contracts to third country suppliers, which could result in increased costs to contracting authorities: undermining value for money principles. There is no evidence that these closures would leverage access. There is a real risk that they could in fact lead to retaliatory action. It will also create a significant administrative burden for contracting authorities.

Amendment 243
Christofer Fjellner

Proposal for a regulation
Article 10

Text proposed by the Commission

Amendment

Article 10

deleted

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

1. Where it is found in an investigation pursuant to Article 8, and after following the procedure foreseen in Article 9, that restrictive procurement measures adopted or maintained by that third country leads to an lack of substantial reciprocity in market opening between the Union and the third country as referred to in Article 6, the Commission may adopt implementing acts to temporarily limit the access of non-covered goods and services originating in a third country. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

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

(a) the exclusion of tenders of which more than 50 % of the total value is made up of

non-covered goods or services originating in the country adopting or maintaining a restrictive procurement practice; and/or

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

3. Measures adopted pursuant to paragraph 1 may in particular be limited to:

(a) public procurement by certain defined categories of contracting authorities/entities;

(b) public procurement of certain defined categories of goods or services;

(c) public procurement above or within certain defined thresholds.

Or. en

Amendment 244
Henri Weber
Proposal for a regulation
Article 10 – paragraph 1

Text proposed by the Commission

1. Where it is found in an investigation pursuant to Article 8, and after following the procedure foreseen in Article 9, that ***restrictive procurement measures adopted or maintained by that third country leads to*** a lack of substantial reciprocity in market opening between the Union and the third country as referred to in Article 6, the Commission ***may*** adopt implementing acts to ***temporarily*** limit the access of non-covered goods and services originating in a third country. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

Amendment

1. Where it is found in an investigation pursuant to Article 8, and after following the procedure foreseen in Article 9, that ***there is*** a lack of substantial reciprocity in market opening between the Union and the third country as referred to in Article 2, the Commission ***shall*** adopt implementing acts to limit the access of non-covered goods and services originating in a third country. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

Amendment 245
Franck Proust
Proposal for a regulation
Article 10 – paragraph 1

Text proposed by the Commission

1. Where it is found in an investigation pursuant to Article 8, and after following the procedure foreseen in Article 9, **that restrictive procurement measures adopted or maintained by that third country leads to** a lack of substantial reciprocity in market opening between the Union and the third country as referred to in Article 6, the Commission **may** adopt implementing acts to temporarily limit the access of non-covered goods and services originating in a third country. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

Amendment

1. Where it is found in an investigation pursuant to Article 8, and after following the procedure foreseen in Article 9, that **there is** a lack of substantial reciprocity in market opening between the Union and the third country as referred to in Article 2 the Commission **shall** adopt implementing acts to temporarily limit the access of non-covered goods and services originating in a third country. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

Amendment 246
Bernd Lange
Proposal for a regulation
Article 10 – paragraph 1

Text proposed by the Commission

1. Where it is found in an investigation pursuant to Article 8, and after following the procedure foreseen in Article 9, that restrictive procurement measures adopted or maintained by that third country leads to an lack of substantial reciprocity in market opening between the Union and the third country as referred to in Article 6, the Commission may adopt implementing acts to temporarily limit the access of non-covered goods and services originating in a

Amendment

1. Where it is found in an investigation pursuant to Article 8, and after following the procedure foreseen in Article 9, that restrictive procurement measures adopted or maintained by that third country leads to an lack of substantial reciprocity in market opening between the Union and the third country as referred to in Article 6, the Commission may adopt implementing acts to temporarily limit the access of non-covered goods and services originating in a

third country. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

third country *for five years, which can be extended for another five years*. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

Or. en

Amendment 247
Marielle de Sarnez
Proposal for a regulation
Article 10 – paragraph 1

Text proposed by the Commission

1. Where it is found in an investigation pursuant to Article 8, and after following the procedure foreseen in Article 9, that restrictive procurement measures adopted or maintained by that third country leads to an lack of substantial reciprocity in market opening between the Union and the third country as referred to in **Article 6**, the Commission *may* adopt implementing acts to temporarily limit the access of non-covered goods and services originating in a third country. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

Amendment

1. Where it is found in an investigation pursuant to Article 8, and after following the procedure foreseen in Article 9, that restrictive procurement measures adopted or maintained by that third country leads to an lack of substantial reciprocity in market opening between the Union and the third country as referred to in **Articles 2 and 6 of this Regulation**, the Commission *shall* adopt implementing acts to temporarily limit the access of non-covered goods and services originating in a third country. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

Or. fr

Amendment 248
Helmut Scholz
Proposal for a regulation
Article 10 – paragraph 1

Text proposed by the Commission

1. Where it is found in an investigation pursuant to Article 8, and after following the procedure foreseen in Article 9, that restrictive procurement measures adopted

Amendment

1. Where it is found in an investigation pursuant to Article 8, and after following the procedure foreseen in Article 9, that restrictive procurement measures adopted

or maintained by that third country *leads to an lack of substantial reciprocity in market opening between the Union and the third country as referred to in Article 6*, the Commission may adopt implementing acts to temporarily limit the access of non-covered goods and services originating in a third country. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

or maintained by that third country *are illegitimate*, the Commission may adopt implementing acts to temporarily limit the access of non-covered goods and services originating in a third country. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

Or. en

Amendment 249
Metin Kazak

Proposal for a regulation
Article 10 – paragraph 1

Text proposed by the Commission

1. Where it is found in an investigation pursuant to Article 8, and after following the procedure foreseen in Article 9, that restrictive procurement measures adopted or maintained by that third country leads to an lack of substantial reciprocity in market opening between the Union and the third country as referred to in Article 6, the Commission may adopt implementing acts to temporarily limit the access of non-covered goods and services originating in a third country. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

Amendment

1. Where it is found in an investigation pursuant to Article 8, and after following the procedure foreseen in Article 9, that restrictive procurement measures adopted or maintained by that third country leads to an lack of substantial reciprocity in market opening between the Union and the third country as referred to in Article 8, the Commission may adopt implementing acts to temporarily limit the access of non-covered goods and services originating in a third country *for up to five years*. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

Or. en

Amendment 250
Pawel Zalewski

Proposal for a regulation
Article 10 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 251
Metin Kazak

Proposal for a regulation
Article 10 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) **in accordance with article 6**, the exclusion of tenders of which more than **75** % of the total value is made up of non-covered goods or services originating in the country adopting or maintaining a restrictive procurement practice; and/or

Or. en

Amendment 252
Helmut Scholz

Proposal for a regulation
Article 10 – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

(b) **in established cases of environmental or social dumping**, a mandatory price penalty on that part of the tender consisting of non-covered goods or services **or the respective tenderer.**

Amendment 253
Pawel Zalewski

Proposal for a regulation
Article 10 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(3 a) Measures adopted pursuant to paragraph 1 should be indicated in a publicly available source.

Or. en

Amendment 254
Metin Kazak

Proposal for a regulation
Article 10 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(3 a) The Commission shall not approve an intended exclusion where it would violate market access commitments entered into by the Union in its international agreements.

Or. en

Amendment 255
Helmut Scholz

Proposal for a regulation
Article 13 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) application of the measure would lead to a disproportionate increase in the ***price***

(b) application of the measure would lead to a disproportionate increase in the costs

or costs of the contract.

of the contract.

Or. en

Amendment 256

Helmut Scholz

Proposal for a regulation

Article 13 – paragraph 2 – subparagraph 3 – point d a (new)

Text proposed by the Commission

Amendment

(d a) information regarding environmental, labour and wage conditions involved in the offer, in order to prevent social or environmental dumping,

Or. en

Amendment 257

Pawel Zalewski

Proposal for a regulation

Article 13 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

In the event that a contracting authority/entity conducts, under Article 31 of Directive 2004/18/EC or under Article 40 (3) 2 of Directive 2004/17/EC and decides not to apply a measure adopted pursuant to Article 10 of this Regulation, or reinstated pursuant to Article 11, it shall indicate this use in the contract award notice it publishes pursuant to Article 35 of Directive 2004/18/EC or Article 43 of Directive 2004/17/EC and notify the Commission no later than ten calendar days after the publication of the contract award notice.

In the event that a contracting authority/entity conducts ***a procurement procedure***, under Article 31 of Directive 2004/18/EC or under Article 40 (3) 2 of Directive 2004/17/EC and decides not to apply a measure adopted pursuant to Article 10 of this Regulation, or reinstated pursuant to Article 11, it shall indicate this use in the contract award notice it publishes pursuant to Article 35 of Directive 2004/18/EC or Article 43 of Directive 2004/17/EC and notify the Commission no later than ten calendar days after the publication of the contract award notice.

Amendment 258
Helmut Scholz

Proposal for a regulation
Article 13 – paragraph 3 – subparagraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) information regarding environmental, labour and wage conditions involved, in order to prevent social or environmental dumping,

Or. en

Amendment 259
Henri Weber, Marc Tarabella
Proposal for a regulation
Article 13 a (new)

Text proposed by the Commission

Amendment

Article 13a

This Regulation shall be without prejudice to the freedom of Member States to define, in conformity with Union law, what they consider to be services of general economic interest, how these services should be organised and financed in compliance with the State aid rules and what specific obligations they should be subject to. Equally, this Regulation shall be without prejudice to the right of public authorities to decide whether, how and to what extent they wish to perform public functions themselves pursuant to Protocol (No 26) on Services of General Interest and Article 14 TFEU.

Or. fr

Amendment 260
Henri Weber
Proposal for a regulation
Article 14 – paragraph 1

Text proposed by the Commission

The Commission shall be empowered to adopt delegated acts in accordance with Article 14 concerning amendments to the *Annex* to reflect the conclusion of new international agreements by the Union in the field of public procurement.

Amendment

The Commission shall be empowered to adopt delegated acts in accordance with Article 14 concerning amendments to the *Annexes* to reflect the conclusion of new international agreements by the Union in the field of public procurement.

Or. fr

Amendment 261
Franck Proust
Proposal for a regulation
Article 14 – paragraph 1

Text proposed by the Commission

The Commission shall be empowered to adopt delegated acts in accordance with Article 14 concerning amendments to the *Annex* to reflect the conclusion of new international agreements by the Union in the field of public procurement.

Amendment

The Commission shall be empowered to adopt delegated acts in accordance with Article 14 concerning amendments to the *Annexes* to reflect the conclusion of new international agreements by the Union in the field of public procurement.

Or. fr

Amendment 262
Pawel Zalewski
Proposal for a regulation
Article 16 – paragraph 2

Text proposed by the Commission

2. Contracts concluded with an economic operator in violation of Commission implementing acts adopted pursuant to Article 6 upon intended exclusion notified by contracting authorities/ entities or measures adopted pursuant to Article 10 or

Amendment

2. Contracts concluded with an economic operator in violation of Commission implementing acts adopted pursuant to Article 6 upon intended exclusion notified by contracting authorities/ entities or measures adopted pursuant to Article 10 or

reinstated pursuant to Article 11 shall be declared ineffective within the meaning of Directive 2007/66/EC.

reinstated pursuant to Article 11 shall be declared ineffective within the meaning of Directive 2007/66/EC ***provided this violation impaired the result of the public procurement proceeding.***

Or. en

Amendment 263
Henri Weber, Marc Tarabella
Proposal for a regulation
Article 16 a (new)

Text proposed by the Commission

Amendment

Article 16a

Procurement conditions in connection with Union-funded programmes in third countries.

In connection with public procurements funded by the European Union and its Member States, the Commission shall ensure the introduction of a binding regulatory framework intended to govern the award and performance of public contracts. In this connection, the European Union shall adopt uniform rules to ensure fair conditions of competition between European Union and third country economic operators.

Or. fr

Amendment 264
Henri Weber
Proposal for a regulation
Article 19 – paragraph 1

Text proposed by the Commission

Amendment

By 1 January 2017 and at least every three years after the entry into force of this Regulation, the Commission shall submit a report to the European Parliament and the

At least every three years after the entry into force of this Regulation, the Commission shall submit a report to the European Parliament and the Council on

Council on the application of this Regulation and on progress made in international negotiations regarding access for EU economic operators to public contract award procedures in third countries undertaken under this Regulation. To this effect, Member States shall upon request provide the Commission with appropriate information.

the application of this Regulation and on progress made in international negotiations regarding access for EU economic operators to public contract award procedures in third countries undertaken under this Regulation. To this effect, Member States shall upon request provide the Commission with appropriate information.

On submitting its second report on the application of this Regulation, it may submit to the European Parliament and the Council a legislative proposal for an amended Regulation or else set out the reasons why in its view no changes are needed.

Or. fr

Amendment 265
Tokia Saifi
Proposal for a regulation
Article 19 – paragraph 1

Text proposed by the Commission

By 1 January 2017 and at least every three years after the entry into force of this Regulation, the Commission shall submit a report to the European Parliament and the Council on the application of this Regulation and on progress made in international negotiations regarding access for EU economic operators to public contract award procedures in third countries undertaken under this Regulation. To this effect, Member States shall upon request provide the Commission with appropriate information.

Amendment

At least every three years after the entry into force of this Regulation, the Commission shall submit a report to the European Parliament and the Council on the application of this Regulation and on progress made in international negotiations regarding access for EU economic operators to public contract award procedures in third countries undertaken under this Regulation. To this effect, Member States shall upon request provide the Commission with appropriate information.

On submitting its second report, the Commission shall submit to the European Parliament and the Council a legislative proposal for an amended Regulation or else set out the reasons why in its view no changes are needed.

Amendment 266
Franck Proust
Proposal for a regulation
Article 19 – paragraph 1

Text proposed by the Commission

By 1 January 2017 and at least every three years after the entry into force of this Regulation, the Commission shall submit a report to the European Parliament and the Council on the application of this Regulation and on progress made in international negotiations regarding access for EU economic operators to public contract award procedures in third countries undertaken under this Regulation. To this effect, Member States shall upon request provide the Commission with appropriate information.

Amendment

By 1 January 2017 least every three years after the entry into force of this Regulation, the Commission shall submit a report to the European Parliament and the Council on the application of this Regulation and on progress made in international negotiations regarding access for EU economic operators to public contract award procedures in third countries undertaken under this Regulation. To this effect, Member States shall upon request provide the Commission with appropriate information. ***On submitting its second report, the Commission shall submit to the European Parliament and the Council a legislative proposal for an amended Regulation or else set out the reasons why in its view no changes are needed.***

Amendment 267
Marielle de Sarnez
Proposal for a regulation
Article 19 – paragraph 1

Text proposed by the Commission

By 1 January 2017 and at least every three years after the entry into force of this Regulation, the Commission shall submit a report to the European Parliament and the Council on the application of this Regulation and on progress made in international negotiations regarding access for EU economic operators to public contract award procedures in third

Amendment

At least every three years after the entry into force of this Regulation, the Commission shall submit a report to the European Parliament and the Council on the application of this Regulation and on progress made in international negotiations regarding access for EU economic operators to public contract award procedures in third countries undertaken

countries undertaken under this Regulation. To this effect, Member States shall upon request provide the Commission with appropriate information.

under this Regulation. To this effect, Member States shall upon request provide the Commission with appropriate information. ***On submitting its second report, the Commission shall submit to the European Parliament and the Council a legislative proposal for an amended Regulation or else set out the reasons why in its view no changes are needed.***

Or. fr

Amendment 268
Henri Weber, Marc Tarabella
Proposal for a regulation
Article 20 – paragraph 1

Text proposed by the Commission

Articles 58 and 59 of Directive 2004/17/EC ***shall*** be repealed ***with effect from the entry into force of this Regulation.***

Amendment

On entry into force of this Regulation, the Commission shall, under Article 15 thereof establish whether Articles 58 and 59 of Directive 2004/17/EC ***must*** be repealed.

Or. fr

Amendment 269
Nora Berra
Proposal for a regulation
Article 20 – paragraph 1

Text proposed by the Commission

Articles 58 and 59 of Directive 2004/17/EC ***shall*** be repealed ***with effect from the entry into force of this Regulation.***

Amendment

Following adoption of this Regulation, the Commission shall establish whether Articles 58 and 59 of Directive 2004/17/EC ***must*** be repealed ***or amended accordingly and shall, if necessary submit a legislative proposal repealing or amending the provisions of the Directive.***

Or. fr

Amendment 270
Pawel Zalewski

Proposal for a regulation
Article 20 – paragraph 1

Text proposed by the Commission

Articles 58 and 59 of Directive 2004/17/EC shall be repealed with effect from the entry into force of this Regulation.

Amendment

Articles 58 and 59 of Directive 2004/17/EC shall be repealed with effect from the entry into force of this Regulation. ***The transitional period for the Member States to repeal national provisions related to implementing Articles 58 and 59 of Directive 2004/17/EC shall not exceed 6 months.***

Or. en

Amendment 271
Henri Weber
Proposal for a regulation
Article 20 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) If any provision of this Regulation overlaps with Articles 58 and 59 of Directive 2004/17/EC as regards the award of a given contract, the provision of this Regulation shall prevail and shall apply to the contract in question.

Or. fr

Amendment 272
Henri Weber
Proposal for a regulation
Annex 1 a (new)

Text proposed by the Commission

Amendment

ANNEX II
Explicit market access reservations formulated by the EU in the WTO

Agreement on Government Procurement

Or. fr

Amendment 273
Franck Proust
Proposal for a regulation
Annex 1 a (new)

Text proposed by the Commission

Amendment

ANNEX II

***Explicit market access reservations
formulated by the EU in the WTO
Agreement on Government Procurement***

Or. fr

Justification

Commission update following ratification