AMENDMENTS
473 - 741

Draft report
Philippe Juvin
(PE492.669v01-00)

Award of concession contracts

Proposal for a directive
(COM(2011)0897 – C7-0004/2011 – 2011/0437(COD))
Amendment 473
Heide Rühle

Proposal for a directive
Article 6 – paragraph 7

Text proposed by the Commission Amendment

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

Or. en

Amendment 474
Pier Antonio Panzeri

Proposal for a directive
Article 6 – paragraph 7

Text proposed by the Commission Amendment

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

Or. it

Amendment 475
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Article 6 – paragraph 7

Text proposed by the Commission Amendment

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

Or. de
Justification

This amendment seeks to simplify the rules on the award of concession contracts.

Amendment 476
Heide Rühle

Proposal for a directive
Article 6 – paragraph 8

Text proposed by the Commission Amendment

8. Contracting authorities or contracting entities may award concessions for individual lots without applying the provisions on the award provided for under this Directive, provided that the estimated value net of VAT of the lot concerned is less than EUR 1 million. However, the aggregate value of the lots thus awarded without applying this Directive shall not exceed 20% of the aggregate value of all the lots into which the proposed work or the proposed purchase of services has been divided.

Or. en

Amendment 477
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Article 6 – paragraph 8

Text proposed by the Commission Amendment

8. Contracting authorities or contracting entities may award concessions for individual lots without applying the provisions on the award provided for under this Directive, provided that the estimated value net of VAT of the lot concerned is less than EUR 1 million. However, the aggregate value of the lots thus awarded without applying this
Directive shall not exceed 20% of the aggregate value of all the lots into which the proposed work or the proposed purchase of services has been divided.

Justification

This amendment seeks to simplify the rules on the award of concession contracts.

Amendment 478
Heide Rühle

Proposal for a directive
Article 6 – paragraph 9

Text proposed by the Commission

9. The value of services concessions shall be the estimated total value of services to be provided by the concessionaire during the whole duration of the concession, calculated in accordance with an objective methodology which shall be specified in the concession notice or in the concession documents.

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

(a) for insurance services: the premium payable and other forms of remuneration;
(b) for banking and other financial services: fees, commissions, interest and other forms of remuneration;
(c) for design services: fees, commission payable and other forms of remuneration;

Amendment 479
Josef Weidenholzer
Proposal for a directive
Article 6 – paragraph 9

Text proposed by the Commission

9. The value of services concessions shall be the estimated total value of services to be provided by the concessionaire during the whole duration of the concession, calculated in accordance with an objective methodology which shall be specified in the concession notice or in the concession documents.

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

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

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

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

Amendment 480
Heide Rühle

Proposal for a directive
Article 6 – paragraph 10

Text proposed by the Commission

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

Or. en
Amendment 481  
Barbara Weiler  

Proposal for a directive  
Article 7 – paragraph 1  

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

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

*Furthermore, it shall not be designed to circumvent the award procedures laid down in the proposals for directives contained in COM (2011)896 and COM (2011)895.*

Or. de

Amendment 482  
Mikael Gustafsson  

Proposal for a directive  
Article 7 – paragraph 1  

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

*Amendment*  
Contracting authorities and contracting entities shall treat economic operators equally and shall act in a transparent and proportionate way.

Or. en

Amendment 483  
Heide Rühle
Proposal for a directive
Article 8 – paragraph 1

Text proposed by the Commission

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

Amendment

1. This Directive shall not apply to services concessions concerning the management of networks infrastructure related to the activities set out in Annex III, where such concessions are:

Amendment 484
Anja Weisgerber, Birgit Collin-Langen, Sabine Verheyen, Hans-Peter Mayer

Proposal for a directive
Article 8 – paragraph 1

Text proposed by the Commission

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

Amendment

1. This Directive shall not apply to services concessions concerning networks infrastructure related to the activities set out in Annex III, if

(a) the services concession is awarded to an economic operator on the basis of an
exclusive right that economic operator enjoys pursuant to applicable and published law, regulation or administrative provision, or

(b) the services concession relates to an activity which, when this Directive enters into force, is the subject of a nationally regulated tariff laid down in law or regulation, or

(c) the services concession is awarded to an economic operator on the basis of an exclusive right that economic operator enjoys pursuant to applicable and published law, regulation or administrative provision, or in respect of services to which regulated, non-discriminatory access is available when this Directive enters into force.

Or. de

Justification

The amendment seeks to keep in place the exception which the existing procurement directives apply to service concessions awarded on the basis of an exclusive right. This exception should be extended, as proposed by the rapporteur, to include concessions for activities to which a nationally regulated tariff applies.

Amendment 485
Lara Comi

Proposal for a directive
Article 8 – paragraph 1

Text proposed by the Commission

1. This Directive shall not apply to services concessions awarded by a contracting authority or by a contracting entity to an economic operator which is a contracting entity or an association of thereof, on the basis of an exclusive right that economic operator enjoys pursuant to applicable and published national law, regulation or administrative provision, and which has

Amendment

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

and which has been granted in accordance with the Treaty and Union sectoral legislation concerning the management of network infrastructure related to the activities set out in Annex III. This Directive shall not apply where the service under concession has already been made subject to sector-specific legislation.

Amendment 486
Philippe Juvin

Proposal for a directive
Article 8 – paragraph 1

Text proposed by the Commission

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

Amendment

1. This Directive shall not apply to services concessions concerning the management of network infrastructure related to the activities set out in Annex III or to services concessions for an activity set out in Annex III which, when this Directive is adopted, are the subject of a nationally regulated tariff laid down in law or regulation where such concessions are awarded to an economic operator, on the basis of an exclusive right that the latter enjoys pursuant to applicable and published national law, regulation or administrative provision, and which has been granted in accordance with the Treaty and in application of Union sectoral legislation.

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

Or. fr
Justification

Clarification of Amendment 69 of the Rapporteur: reference to concessions in force when the Directive is adopted, rather than at its entry in force with a view to avoiding potential abuses; clarification of legal terms used ('in application of').

Amendment 487
Cristian Silviu Bușoi

Proposal for a directive
Article 8 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Justification

The operator managing the infrastructure referred to in this paragraph is not a contracting entity. The text should therefore eliminate this misleading provision.

Amendment 488
Bernadette Vergnaud

Proposal for a directive
Article 8 – paragraph 1

Text proposed by the Commission

1. This Directive shall not apply to services concessions awarded by a contracting

Amendment

1. This Directive shall not apply to services concessions concerning the management

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authority or by a contracting entity to an economic operator which is a contracting entity or an association of thereof, on the basis of an exclusive right that economic operator enjoys pursuant to applicable and published national law, regulation or administrative provision, and which has been granted in accordance with the Treaty and Union sectoral legislation concerning the management of networks infrastructure related to the activities set out in annex III.

of network infrastructure related to the activities set out in Annex III or to services concessions for an activity set out in Annex III which, when this Directive enters into force, are the subject of a nationally regulated tariff for vulnerable groups of customers laid down in law or regulation where such concessions are awarded to an economic operator on the basis of an exclusive right that the latter enjoys pursuant to applicable and published national law, regulation or administrative provision, and which has been granted in accordance with the Treaty and Union sectoral legislation.

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

Or. fr

Justification

Clarification of the derogation for concessions awarded on the basis of an exclusive right concerning the management of network infrastructure in respect of the activities set out in Annex III. This derogation should also be extended to encompass regulated tariffs for vulnerable groups of customers, as per the provisions of Directive 2009/72/EC.

Amendment 489
Werner Kuhn

Proposal for a directive
Article 8 – paragraph 1

Text proposed by the Commission

1. This Directive shall not apply to services concessions awarded by a contracting authority or by a contracting entity to an economic operator which is a contracting entity or an association of thereof, on the basis of an exclusive right that economic

Amendment

1. This Directive shall not apply to services concessions concerning networks infrastructure related to the activities set out in Annex III, if
operator enjoys pursuant to applicable and published national law, regulation or administrative provision, and which has been granted in accordance with the Treaty and Union sectoral legislation concerning the management of networks infrastructure related to the activities set out in annex III.

(a) the services concession is awarded to an economic operator on the basis of an exclusive right that economic operator enjoys pursuant to applicable and published law, regulation or administrative provision, or

(b) the services concession relates to an activity which, when this Directive enters into force, is the subject of a nationally regulated tariff laid down in law or regulation, or

(c) the services concession is awarded to an economic operator on the basis of an exclusive right that economic operator enjoys pursuant to applicable and published law, regulation or administrative provision, or in respect of services to which regulated, non-discriminatory access is available when this Directive enters into force.

Or. de

Amendment 490
Matteo Salvini

Proposal for a directive
Article 8 – paragraph 1

Text proposed by the Commission

1. This Directive shall not apply to services concessions awarded by a contracting authority or by a contracting entity to an economic operator which is a contracting entity or an association of thereof, on the basis of an exclusive right that economic operator enjoys pursuant to applicable and published national law, regulation or

Amendment

1. This Directive shall not apply to services concessions concerning network infrastructure management related to activities set out in Annex III or to services concessions for activities set out in Annex III or which, as at the entry into force of this Directive, are the subject of a nationally regulated tariff laid down by
administrative provision, and which has been granted in accordance with the Treaty and Union sectoral legislation concerning the management of networks infrastructure related to the activities set out in annex III.

law or regulation where such concessions are awarded to an economic operator on the basis of an exclusive right which that operator enjoys pursuant to applicable and published national law, regulations, or administrative provisions.

Or. it

Justification

The exclusion concerning services concessions awarded on the basis of an exclusive right is widened to encompass activities covered by nationally regulated tariffs as well as the activities listed in Annex III. The requirements should therefore be understood not as applying all together, but as alternatives.

Amendment 491
Heide Rühle

Proposal for a directive
Article 8 – paragraph 1 – point a (new)

Text proposed by the Commission

(a) awarded by a contracting authority or by a contracting entity to an economic operator on the basis of an exclusive right that the latter enjoys pursuant to applicable and published national law, regulation or administrative provision, and which has been granted in accordance with the Treaty and Union sectoral legislation,

Amendment

Or. en

Amendment 492
Heide Rühle

Proposal for a directive
Article 8 – paragraph 1 – point b (new)
(b) or to service concessions for activities which, when this Directive enters into force, are the subject of a nationally regulated tariff laid down in law or regulation.

Amendment 493
Heide Rühle

Proposal for a directive
Article 8 – paragraph 2

Text proposed by the Commission

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

deleted

Or. en

Amendment 494
Heide Rühle

Proposal for a directive
Article 8 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

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

This Directive shall not apply to concessions which the contracting authority or a contracting entity is obliged to award or organise in accordance with procedures for the award of services concessions contracts set out in:

Or. en
Amendment 495
Heide Rühle

Proposal for a directive
Article 8 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission
(a) an international agreement concluded in conformity with the Treaty between a Member State and one or more third countries and covering works, supplies or services intended for the joint implementation or exploitation of a project by the signatory States;

Amendment
(a) an international agreement concluded in conformity with the Treaty between a Member State and one or more third countries and covering works, or services intended for the joint implementation or exploitation of a project by the signatory States;

Or. en

Amendment 496
Heide Rühle

Proposal for a directive
Article 8 – paragraph 3 – subparagraph 2

Text proposed by the Commission
All agreements referred to in point (a) of the first subparagraph shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts referred to in Article 48.

Amendment
deleted

Or. en

Amendment 497
Heide Rühle

Proposal for a directive
Article 8 – paragraph 3 – subparagraph 3

Text proposed by the Commission
For the purposes of point (d) of the first

Amendment
deleted
subparagraph, where a concession is co-financed for a considerable part by an international organisation or international financing institution the parties decide on applicable concession award procedures which shall be in conformity with the provisions of the Treaty on the Functioning of the European Union.

Amendment 498
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 8 – paragraph 4

Text proposed by the Commission

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

Amendment

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

(a) concessions for which the application of the rules of this Directive would oblige a Member State to supply information the disclosure of which it considers contrary to the essential interests of its security,

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

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

(d) concessions awarded in a third country, carried out when forces are deployed outside the territory of the Union.
where operational needs require them to be concluded with economic operators located in the area of operations.

Or. en

Justification

This Amendment is part of a package aiming to ensure there is no overlap between this Directive and the Directive on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security (2009/81/EC), as well as the related relevant Treaty articles.

Amendment 499
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 8 – paragraph 4 a (new)

Text proposed by the Commission

4a. This Directive shall not apply to concession contracts not otherwise exempted under paragraph 4 where:

(a) the protection of the essential security interests of a Member state cannot be guaranteed in a procurement procedure as provided for in this Directive;

(b) the application of this Directive would oblige the Member State to supply information the disclosure of which it considers essential to its security interests; or

(c) the procurement and performance of the concession contract must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned.

Amendment

Or. en
**Justification**

This Amendment is part of a package aiming to ensure there is no overlap between this Directive and the Directive on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security (2009/81/EC), as well as the related relevant Treaty articles.

**Amendment 500**  
Heide Rühle

**Proposal for a directive**  
Article 8 – paragraph 5 – subparagraph 1 – point a

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; however financial service concessions awarded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;</td>
<td>(a) the acquisition, rental or lease, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;</td>
</tr>
</tbody>
</table>

**Or. en**

**Amendment 501**  
Andreas Schwab, Birgit Schnieber-Jastram, Hans-Peter Mayer, Jorgo Chatzimarkakis

**Proposal for a directive**  
Article 8 – paragraph 5 – subparagraph 1 – point a

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
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<tr>
<td>(a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; however financial service concessions awarded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;</td>
<td>(a) the acquisition, rental or leasing by the contracting authority or contracting entity, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; however financial service concessions awarded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;</td>
</tr>
</tbody>
</table>
Justification

To make it clear that only rental by the contracting entity or authority is intended here.

Amendment 502
Peter Simon

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 1 – point a a (new)

Text proposed by the Commission

(aa) services of general economic interest

Amendment

Or. de

Justification

Protocol No 26 of the Treaty of Lisbon explicitly recognises the right of regional and local authorities to administer their own public services and the wide discretion they enjoy in relation to providing, commissioning and organising services of general economic interest in a way that corresponds as closely as possible to the needs of the users. Services of this kind cannot fall within the scope of the Directive, therefore.

Amendment 503
Heide Rühle

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) the acquisition, development, production or co-production of programme material and related preparatory services intended for media services, or contracts for broadcasting or distribution and transmission;

Or. en
Amendment 504
Marc Tarabella

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) the acquisition, development, production or co-production of programme material and preparatory services intended for media services, nor to concessions for broadcasting time or the media, nor to the transmission and distribution of media services;

Or. fr

Amendment 505
Robert Rochefort

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) the acquisition, development, production or co-production of programme material and related preparatory services intended for media services, nor to concessions for broadcasting or distribution and transmission;

Or. fr

Amendment 506
Cornelis de Jong

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 1 – point b a (new)
Text proposed by the Commission  

Amendment

(ba) gambling activities which involve wagering a stake with monetary value in games of chance, including lotteries and betting transactions;

Or. en

Amendment 507
Peter Simon

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 1 – point b a (new)

Text proposed by the Commission  

Amendment

(ba) civil protection, disaster prevention and everyday hazard prevention services;

Or. de

Amendment 508
Peter Simon

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 1 – point c

Text proposed by the Commission  

Amendment

(c) arbitration and conciliation services; (c) arbitration and conciliation services, legal services and notarial services;

Or. de

Amendment 509
António Fernando Correia de Campos, Regina Bastos

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 1 – point c a (new)
(ca) gambling activities involving money being placed on games of chance run by bodies awarded exclusive rights by one or more Member States pursuant to a published law, regulation or administrative provision and authorised in accordance with the Treaties;

Or. pt

Amendment 510
Philippe Juvin

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 1 – point c a (new)

Text proposed by the Commission

(ca) gambling activities involving a financial risk through investing a sum of money in games of chance (lotteries, betting), run at national level by a single body, which, in accordance with the Treaties, has been awarded exclusive rights by one or more Member States pursuant to applicable and published national laws, regulations or administrative provisions;

Or. fr

Justification

Clarification of amendment 75 of the rapporteur.

Amendment 511
Heide Rühle

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 1 – point d
(d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council, central bank services and operations conducted with the European Financial Stability Facility (EFSF);
Amendment 513
Kerstin Westphal

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 1 – point d

Text proposed by the Commission
(d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council, central bank services and operations conducted with the European Financial Stability Facility (EFSF);

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

Justification

At present, local authorities ask at least 20 banks for credit proposals, and this does not involve any complications. If banks are required to maintain their conditions over a relatively long period - whereas hitherto they would have done so for only a few hours - without being able to refinance themselves accordingly, ‘swaptions’ would in future have to be calculated for the time at which credit was to be provided. The costs involved in this exceed the current local government credit conditions and would substantially increase the financing costs of public authorities.

Amendment 514
Peter Simon

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 1 – point d

Text proposed by the Commission
(d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council, central bank services and operations conducted with the

Amendment
(d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council, central bank services and operations conducted with the
European Financial Stability Facility (EFSF); European Financial Stability Facility (EFSF) as well as transactions to raise money or capital for the contracting authority;

Amendment 515
Heide Rühle

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 1 – point e

Text proposed by the Commission
(e) employment contracts;

Amendment
(e) employment contracts and mandatory social protection arrangements;

Or. en

Amendment 516
Herbert Dorfmann, Anja Weisgerber

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 1 – point f a (new)

Text proposed by the Commission
(fa) works or services entailed in the construction and/or management of cableways intended for the business of undertakings managing mobility in mountain areas for tourist, recreational, play, or sporting purposes, with the related services;

Amendment
(fa) works or services entailed in the construction and/or management of cableways intended for the business of undertakings managing mobility in mountain areas for tourist, recreational, play, or sporting purposes, with the related services;

Or. it

Justification

In its ‘communication to the Member States and other interested parties concerning State aid N 376/01 – Aid scheme for cableways’ (2002/C 172/02) the Commission makes a distinction between cableway installations for sports activities, which, rather than meeting basic general public needs, are intended to generate profit through sport and mountain tourism activities,
and cableway installations designed to meet general transport needs.

**Amendment 517**  
Heide Rühle

**Proposal for a directive**  
**Article 8 – paragraph 5 – subparagraph 1 – point g**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(g) Public passenger transport services within the meaning of Regulation (EC) 1370/2007 of the European Parliament and of the Council.</td>
<td>(g) transport services to the extent that they are governed by other Union instruments.</td>
</tr>
</tbody>
</table>

**Amendment 518**  
Mikael Gustafsson, Cornelis de Jong

**Proposal for a directive**  
**Article 8 – paragraph 5 – subparagraph 1 – point g**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(g) Public passenger transport services within the meaning of Regulation (EC) 1370/2007 of the European Parliament and of the Council.</td>
<td>(g) Public transport services.</td>
</tr>
</tbody>
</table>

**Amendment 519**  
Heide Rühle

**Proposal for a directive**  
**Article 8 – paragraph 5 – subparagraph 1 – point g a (new)**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(ga) civil protection, emergency preparedness and response and every day hazard prevention;</td>
<td></td>
</tr>
</tbody>
</table>
Amendment 520
Anja Weisgerber, Andreas Schwab, Birgit Collin-Langen, Sabine Verheyen, Hans-Peter Mayer

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) civil protection, disaster prevention, emergency response and rescue and everyday hazard prevention services.

Justification

In the case of emergency response and rescue services, particularly, economy must not be the overriding criterion. So it is sufficient for the principles of EU primary law to apply to the award of concessions in this field.

Amendment 521
Werner Kuhn

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) civil protection, disaster prevention, emergency response and rescue and everyday hazard prevention services.

Amendment 522
Evelyne Gebhardt

Proposal for a directive
Article 8 – paragraph 5 - point g (new)
Text proposed by the Commission

(ga) services of general economic interest, particularly those relating to the supply or disposal of water, sewage, waste and energy;

Or. de

Amendment 523
Evelyne Gebhardt

Proposal for a directive
Article 8 – paragraph 5 – point g b (new)

Text proposed by the Commission

(gb) civil protection, emergency response and everyday hazard prevention;

Or. de

Amendment 524
Heide Rühle

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 1 – point g b (new)

Text proposed by the Commission

(gb) services relating to abstraction, distribution and supply of drinking water, and waste water management.

Or. en

Amendment 525
Anja Weisgerber, Birgit Collin-Langen, Sabine Verheyen, Hans-Peter Mayer

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 1 – point g b (new)
(gb) drinking water production, distribution and supply services, sewage treatment and disposal services and the construction, maintenance and operation of the infrastructure used for those purposes.

Amendment 526
Werner Kuhn

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 1 – point g b (new)

Text proposed by the Commission

(ge) financial transactions for the purpose of obtaining finance or capital,

Amendment

Given the particular hygiene and environmental requirements, the water sector must also be dealt with individually. Water services should therefore be excluded from the scope of the directive in keeping with Article 17 of Directive 2004/18/EC.

Amendment 527
Evelyne Gebhardt

Proposal for a directive
Article 8 – paragraph 5 – point g c (new)
investment or financing of public procurement projects;

Amendment 528
Heide Rühle

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 1 – point g c (new)

Text proposed by the Commission

Amendment

(gc) social services and health services

Or. en

Amendment 529
Anja Weisgerber, Birgit Collin-Langen, Sabine Verheyen, Hans-Peter Mayer

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 1 – point g c (new)

Text proposed by the Commission

Amendment

(gc) electricity, gas and heat supply services and the construction, maintenance and operation of the infrastructure used for those purposes.

Or. de

Justification

The energy sector is already subject to a multiplicity of sector-specific provisions. It is also characterised by the specificity of the relationships between the various stakeholders. It would not make sense for it to fall within the scope of the generic rules laid down by this Directive.

Amendment 530
Heide Rühle
Proposal for a directive
Article 8 – paragraph 5 – subparagraph 1 – point g d (new)

Text proposed by the Commission

(gd) non-economic services of general interest.

Amendment

Or. en

Amendment 531
Heide Rühle

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 2

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 532
Marc Tarabella

Proposal for a directive
Article 8 – paragraph 5 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 533
Wim van de Camp
Proposal for a directive
Article 8 – paragraph 5 – subparagraph 2 a (new)

Text proposed by the Commission

This Directive shall not apply to contracts for public domain and private land lease contracts whereby the State or contracting authority or entity only establishes general conditions and/or specific binding and legally enforceable obligations that relate to the use of the land, without acquiring specific works or services.

Or. en

Justification

Land-related contracts should be excluded from the Directive. There is no acquisition of works nor services and the obligations imposed on the operator who rents only relate to the use of the land, not to the service itself.

Amendment 534
Mikael Gustafsson, Cornelis de Jong

Proposal for a directive
Article 8 – paragraph 5 a (new)

Text proposed by the Commission

5a. This Directive shall not apply to service concessions relating to services of general economic interest and services of general interest such as:

(a) water services;
(b) wastewater services;
(c) refuse collection services;
(d) energy services;
(e) social services according to the voluntary European quality framework for social services adopted by the Social Protection Committee in the sectors of health and social protection, statutory social insurance, emergency and disaster....
response services.

Amendment 535
Josef Weidenholzer, Evelyn Regner

Proposal for a directive
Article 8 – paragraph 5 a (new)

Text proposed by the Commission
5a. This Directive shall not apply to service concessions in respect of services of general economic interest, particularly in the field of water supply, sewage disposal, social services, health services and employee association services.

Amendment

Or. en

Amendment 536
Cornelis de Jong

Proposal for a directive
Article 8 a (new)

Text proposed by the Commission

Article 8a
This Directive shall not apply to contracts for public domain and private land lease contracts whereby the State or contracting authority or entity only establishes general conditions and/or specific binding and legally enforceable obligations that relate to the use of the land.

Amendment

Or. en

Amendment 537
Heide Rühle
Proposal for a directive
Article 9 – paragraph 2

Text proposed by the Commission

For the purposes of this Article:

(a) ‘public communications network’ means an electronic communications network used wholly or mainly for the provision of electronic communications services available to the public which support the transfer of information between network termination points;

(b) 'electronic communications network' means transmission systems and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuits and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed ;

(c) a ‘network termination point’ (NTP) means the physical point at which a subscriber is provided with access to a public communications network; in the case of networks involving switching or routing, the NTP is identified by means of a specific network address, which may be linked to a subscriber number or name;

(d) ‘electronic communications services’ means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks

Amendment

deleted
used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services, as defined in Article 1 of Directive 98/34/EC, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks.

Amendment 538
Heide Rühle

Proposal for a directive
Article 10

Text proposed by the Commission

Article 10

Exclusions applicable to concessions awarded by contracting entities

1. This Directive shall not apply to concessions awarded by contracting entities for purposes other than the pursuit of their activities as described in Annex III or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Union.

2. Contracting entities shall notify the Commission or the national oversight body at their request of any activities which they regard as excluded. The Commission may periodically publish in the Official Journal of the European Union for information purposes, lists of the categories of activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when
Amendment 539
Anja Weisgerber, Sabine Verheyen

Proposal for a directive
Article 10 – paragraph 2

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

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

Justification
The reference to a ‘national oversight body’ should be dropped, as it could be regarded as interfering in internal organisational matters which fall within the purview of the Member States.

Amendment 540
Mikael Gustafsson

Proposal for a directive
Article 11 – paragraph 2 – point c a (new)

Text proposed by the Commission
(ca) may be controlled by public-public

Amendment

cooperation;

Amendment 541
Cristian Silviu Buşoi

Proposal for a directive
Article 11 – paragraph 3 – point a

Text proposed by the Commission
(a) concessions awarded by a contracting entity to an affiliated undertaking;

Amendment
(a) concessions awarded by a contracting entity, as defined in paragraph 1(2) and (3) of Article 4, to an affiliated undertaking;

Justification
This paragraph uses wording drawn from provisions of Directive 2004/17/EC which intended to allow local and national historic providers which were not contracting authorities to carry out an industrial activity while benefiting from intra-group synergies, and thereby make use of the services of subsidiaries created by their parent companies. This possibility should thus be open only to contracting entities which are not contracting authorities.

Amendment 542
Cristian Silviu Buşoi

Proposal for a directive
Article 11 – paragraph 3 – point b

Text proposed by the Commission
(b) concessions awarded by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities described in Annex III, to an undertaking which is affiliated with one of those contracting entities.

Amendment
(b) concessions awarded by a joint venture, formed exclusively by a number of contracting entities, as defined in paragraph 1(2) and (3) of Article 4, for the purpose of carrying out activities described in Annex III, to an undertaking which is affiliated with one of those contracting entities.
Justification

This paragraph uses wording drawn from provisions of Directive 2004/17/EC which intended to allow local and national historic providers which were not contracting authorities to carry out an industrial activity while benefiting from intra-group synergies, and thereby make use of the services of subsidiaries created by their parent companies. This possibility should thus be open only to contracting entities which are not contracting authorities.

Amendment 543
Heide Rühle

Proposal for a directive
Article 11 – paragraph 4 – point a

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

Amendment
(a) to service concessions provided that at least 80 % of the activities of the affiliated undertaking which are subject of the service concession contract derives from the provision of services to undertakings with which it is affiliated;

Amendment 544
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer, Andreas Schwab

Proposal for a directive
Article 11 – paragraph 4 – point a

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

Amendment
(a) to service concessions provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to services that are the subject of service concessions for the preceding three years derives from the provision of services to undertakings with which it is affiliated;
Amendment 545
Heide Rühle

Proposal for a directive
Article 11 – paragraph 4 – point b

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

Amendment
(b) works concessions provided that at least 80 % of the activities of the affiliated undertaking which are subject of the works concession contract derives from the provision of works to undertakings with which it is affiliated.

Or. en

Amendment 546
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer, Andreas Schwab

Proposal for a directive
Article 11 – paragraph 4 – point b

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

Amendment
(b) works concessions provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to works that are the subject of service concessions for the preceding three years derives from the provision of works to undertakings with which it is affiliated.

Justification
Since affiliated undertakings may be active in a number of different markets which are open to varying degrees of competition, only the activity which is the subject of the services or works concession should be taken into account when setting a limit on the extent to which affiliated undertakings may be active on the market on behalf of third parties. There is no
need to take into account all the affiliated undertaking’s activities in order to ensure a level playing field.

Amendment 547
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Article 11 – paragraph 4 – point b

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b) works concessions provided that at least 80 % of the <strong>average total turnover</strong> of the affiliated undertaking with respect to works in general for the preceding three years <strong>derives</strong> from the provision of works to undertakings with which it is affiliated.</td>
<td>(b) works concessions provided that at least 80 % of the <strong>activities</strong> of the affiliated undertaking with respect to works in general for the preceding three years <strong>derive</strong> from the provision of works to undertakings with which it is affiliated.</td>
</tr>
</tbody>
</table>

Or. de

Amendment 548
Heide Rühle

Proposal for a directive
Article 11 – paragraph 6

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>6. Where more than one undertaking affiliated with the contracting entity provides the same or similar services, supplies or works, the above percentages referred to in paragraph 4 shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.</strong></td>
<td><strong>deleted</strong></td>
</tr>
</tbody>
</table>

Or. en

Amendment 549
Heide Rühle
Proposal for a directive
Article 12 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 550
Heide Rühle

Proposal for a directive
Article 12 – paragraph 1 – point a

Text proposed by the Commission

(a) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Annex III, to one of these contracting entities, or

Amendment

(a) by a joint venture or a formal cooperation, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Annex III, to one of these contracting entities, or

Or. en

Amendment 551
Cristian Silviu Bușoi

Proposal for a directive
Article 12 – paragraph 1 – point a
Text proposed by the Commission

(a) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Annex III, to one of these contracting entities, or

Amendment

(a) by a joint venture, formed exclusively by a number of contracting entities, as defined in paragraph 1(2) and (3) of Article 4, for the purpose of carrying out activities within the meaning of Annex III, to one of these contracting entities, or

Amendment 552
Heide Rühle

Proposal for a directive
Article 12 – paragraph 1 – point b

Text proposed by the Commission

(b) by a contracting entity to such a joint venture of which it forms part.

Amendment

(b) by an entity to such a joint venture or formal cooperation of which it forms part.

Amendment 553
Cristian Silviu Buşoi

Proposal for a directive
Article 12 – paragraph 1 – point b

Text proposed by the Commission

(b) by a contracting entity to such a joint venture of which it forms part.

Amendment

(b) by a contracting entity, as defined in paragraph 1(2) and (3) of Article 4, to such a joint venture of which it forms part.

Amendment 554
Josef Weidenholzer
Article 13 - paragraph 1 – introductory part

Text proposed by the Commission

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

(a) the names of the undertakings or joint ventures concerned,

(b) the nature and value of the concessions involved,

(c) proof deemed necessary by the Commission or the national oversight body that the relationship between the undertaking or joint venture to which the concessions are awarded and the contracting entity complies with the requirements of Articles 11 or 12.

Amendment 555
Heide Rühle

Proposal for a directive
Article 13 – paragraph 1 – introductory part

Text proposed by the Commission

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

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

Amendment

Or. en
Amendment 556
Anja Weisgerber, Sabine Verheyen

Proposal for a directive
Article 13 – paragraph 1 – introductory part

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

Amendment
Contracting entities shall notify to the Commission or the national body with responsibility in this field, if there is one, at their request, the following information regarding the application of paragraphs 2 and 3 of Article 11 and of Article 12.

Or. de

Justification
The reference to a ‘national oversight body’ should be dropped, as it could be regarded as interfering in internal organisational matters which fall within the purview of the Member States.

Amendment 557
Heide Rühle

Proposal for a directive
Article 13 – paragraph 1 – point c

Text proposed by the Commission
(c) proof deemed necessary by the Commission or the national oversight body that the relationship between the undertaking or joint venture to which the concessions are awarded and the contracting entity complies with the requirements of Articles 11 or 12.

Amendment
deleted

Or. en

Amendment 558
Anja Weisgerber, Sabine Verheyen

AM/916802EN.doc 45/139 PE497.782v03-00
Proposal for a directive
Article 13 – paragraph 1 – point c

Text proposed by the Commission

(c) proof deemed necessary by the Commission or the national oversight body that the relationship between the undertaking or joint venture to which the concessions are awarded and the contracting entity complies with the requirements of Articles 11 or 12.

Amendment

(c) proof deemed necessary by the Commission or the national body with responsibility in this field, if there is one, that the relationship between the undertaking or joint venture to which the concessions are awarded and the contracting entity complies with the requirements of Articles 11 or 12.

Or. de

Justification

The reference to a ‘national oversight body’ should be dropped, as it could be regarded as interfering in internal organisational matters which fall within the purview of the Member States.

Amendment 559
Cristiana Muscardini

Proposal for a directive
Article 14 – paragraph 1 – subparagraph 1 (new)

Text proposed by the Commission

This Directive shall not apply to the State-owned borderland of Member States, this being a strategic and sensitive area for the purposes of national security.

Amendment

This Directive shall not apply to the State-owned borderland of Member States, this being a strategic and sensitive area for the purposes of national security.

Or. it

Amendment 560
Cristiana Muscardini

Proposal for a directive
Article 14 – paragraph 1 – subparagraph 2 (new)
Concessions for works to be executed on a Member State’s State-owned borderland may not be awarded on the basis of international invitations to tender.

Or. it

Amendment 561
Heide Rühle

Proposal for a directive
Article 15 – title

Relations between public authorities

Cooperation between contracting authorities

Or. en

Amendment 562
Marc Tarabella

Proposal for a directive
Article 15 – title

Relations between public authorities

Cooperation between contracting authorities

Or. fr

Amendment 563
Heide Rühle

Proposal for a directive
Article 15 – paragraph 1 – subparagraph 1 – point a
Proposal for a directive
Article 15 – paragraph 1 – subparagraph 1 – point a

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

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

Or. en

Amendment 564
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

In line with Regulation No 1370/2007 it needs to be clarified that direct award of a concession to a controlled entity is possible provided the contracting authority or entity is able to exercise a decisive influence over its strategic objectives and significant decisions. Accordingly it is not essential for the controlled entity to be in the 100% ownership of the contracting authority or entity.

Amendment 565
Peter Simon

Proposal for a directive
Article 15 – paragraph 1 – subparagraph 1 – point a

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

Amendment
(a) such an authority or entity exercises over the legal person concerned a control which is equivalent to that which it exercises over its own departments; 100 % ownership by the contracting authority or entity is not a mandatory requirement for establishing control within the meaning of this paragraph.

Or. de

Justification

In line with Regulation No 1370/2007 it needs to be clarified that direct award of a concession to a controlled entity is possible provided the contracting authority or entity is able to exercise a decisive influence over its strategic objectives and significant decisions. Accordingly it is not essential for the controlled entity to be in the 100% ownership of the contracting authority or entity.
(a) such an authority or entity exercises over the legal person concerned a control which is similar to that which it exercises over its own departments

(a) such an authority or entity exercises over the legal person concerned a control which is equivalent to that which it exercises over its own departments, i.e. it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person. The Member States shall determine the conditions under which such control can be exercised;

Or. fr
Amendment 567
Marc Tarabella

Proposal for a directive
Article 15 – paragraph 1 – subparagraph 1 – point b

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

Amendment
deleted

Or. fr

Amendment 568
Heide Rühle

Proposal for a directive
Article 15 – paragraph 1 – subparagraph 1 – point b

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

Amendment
b) at least 80% of the activities of that legal person which are the subject of the concession are carried out for the controlling contracting authority or entity or for other legal persons controlled by that contracting authority or entity

Or. en

Amendment 569
Andreas Schwab

Proposal for a directive
Article 15 – paragraph 1 – subparagraph 1 – point b

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

Amendment
(b) that legal person primarily carries out activities for the controlling contracting authority or entity or for other legal persons controlled by that contracting authority or entity

Or. en
contracting authority or entity authority or entity; it is assumed that the legal person primarily carries out activities for the controlling contracting authority or entity, or for other legal persons controlled by that contracting authority or entity, where it carries out at least 90% of its activities which are the subject of the contract for that legal person or those legal persons;

Or. de

Justification

The proposal combines the CJEU’s relevant finding in its judgment in Case C-107/98 with a ‘safe-harbour clause’ which makes it possible to assume, on a falsifiable basis, that an in-house activity is involved.

Amendment 570
Pier Antonio Panzeri

Proposal for a directive
Article 15 – paragraph 1 – subparagraph 1 – point b

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>b) at least 90% of the activities of that legal person are carried out for the controlling contracting authority or entity or for other legal persons controlled by that contracting authority or entity</td>
<td>b) at least 80% of the activities of that legal person are carried out for the controlling contracting authority or entity or for other legal persons controlled by that contracting authority or entity</td>
</tr>
</tbody>
</table>

Or. en

Amendment 571
Cristian Silviu Bușoi

Proposal for a directive
Article 15 – paragraph 1 – subparagraph 1 – point b

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>b) at least 90% of the activities of that legal person are carried out for the controlling contracting</td>
<td>b) all the activities of that legal person are carried out for the controlling contracting</td>
</tr>
</tbody>
</table>

AM\916802EN.doc 51/139 PE497.782v03-00
controlling contracting authority or entity or for other legal persons controlled by that contracting authority or entity

Authority or entity or for other legal persons controlled by that contracting authority or entity

Or. en

Justification

In order to safeguard fair competition, it is necessary to limit the in-house exception. It would be unfair that in-house operators have also access to the free market and compete with other private operators who are not awarded any contracts without any competitive procedure. Moreover, the remaining 10% of the activities might not necessarily be very marginal.

Amendment 572
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Article 15 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) at least 80% of the activities of that legal person that are the subject of the concession are carried out for the controlling contracting authority or entity or for other legal persons controlled by that contracting authority or entity; activities carried out for the controlling contracting authority or entity or for other legal persons controlled by that contracting authority or entity also include activities carried out for third parties where the service forms part of the contracting authority’s statutory remit;

Or. de

Justification

The municipalities have a statutory mandate to provide services of general interest. This applies regardless of the market relevance of such services. All municipal services are provided for the benefit of citizens – in other words, of third parties. Consequently municipalities, as public authorities or through undertakings owned by them which have no independent legal status, provide services to third parties in the same way as municipal utilities which have shareholders and legal personality.
### Amendment 573

**Peter Simon**

**Proposal for a directive**

**Article 15 – paragraph 1 – subparagraph 1 – point b**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b) at least 90% of the activities of that legal person are carried out for the controlling contracting authority or entity or for other legal persons controlled by that contracting authority or entity</td>
<td>(b) at least 90% of the activities of that legal person which are covered by the contract are carried out for the controlling contracting authority or entity or for other legal persons controlled by that contracting authority or entity;</td>
</tr>
</tbody>
</table>

Or. de

### Amendment 574

**Bernadette Vergnaud**

**Proposal for a directive**

**Article 15 – paragraph 1 – subparagraph 1 – point b**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b) at least 90% of the activities of that legal person are carried out for the controlling contracting authority or entity or for other legal persons controlled by that contracting authority or entity</td>
<td>(b) at least 90% of the average total turnover of that legal person is generated by means of activities carried out for the controlling contracting authority or entity or for other legal persons controlled by that contracting authority or entity</td>
</tr>
</tbody>
</table>

Or. fr

**Justification**

*Text adapted to concessions context.*

### Amendment 575

**Françoise Castex**

**Proposal for a directive**

**Article 15 – paragraph 1 – subparagraph 1 – point b**
(b) at least 90% of the activities of that legal person are carried out for the controlling contracting authority or entity or for other legal persons controlled by that contracting authority or entity

(b) the bulk of the activities of that legal person is carried out for the controlling contracting authority or entity or for other legal persons controlled by that contracting authority or entity

Amendment 576
Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 15 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) the bulk of the activities of that legal person is carried out for the controlling contracting authority or entity or for other legal persons controlled by that contracting authority or entity

Or. fr

Amendment 577
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Article 15 – paragraph 1 – subparagraph 1 – point b a (new)

Text proposed by the Commission

(ba) at least 80% of the average total turnover of the legal person that is the subject of the concession are carried out for the controlling contracting authority or entity or for other legal persons controlled by that contracting authority or entity;

Amendment

(ba) the bulk of the activities of that legal person that is the subject of the concession are carried out for the controlling contracting authority or entity or for other legal persons controlled by that contracting authority or entity;

Or. de
Proposal for a directive
Article 15 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

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

Amendment

deeded

Or. de

Proposal for a directive
Article 15 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

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

Amendment

deeded

Or. de

Proposal for a directive
Article 15 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

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

Amendment

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

Or. en
Amendment 581
Pier Antonio Panzeri

Proposal for a directive
Article 15 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

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

Or. en

Amendment 582
Vicente Miguel Garcés Ramón

Proposal for a directive
Article 15 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

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

Or. en

Amendment 583
Andreas Schwab, Christel Schaldemose, Jorgo Chatzimarkakis

Proposal for a directive
Article 15 – paragraph 1 – subparagraph 1 – point c

PE497.782v03-00

56/139

AM\916802EN.doc
Text proposed by the Commission

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

Amendment

(c) there is no private participation in the controlled legal person, *except where this is a mandatory statutory requirement in the relevant Member States.*

Or. de

**Justification**

*In some Member States, in response to historical developments and arrangements which have grown up organically, the law makes binding provision for private participation. These forms of cooperation should remain possible, but any other private participation should be excluded in line with the case-law of the Court of Justice.*

**Amendment 584**
Marc Tarabella

Proposal for a directive
Article 15 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

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

**Amendment**

(c) there is no private participation in the controlled legal person, *with the exception of the forms of private non-profit-making participation specific to the controlling contracting authority or to the controlled legal person that are to be found in certain social enterprises entrusted with carrying out a public service task that have been specifically established to meet public interest requirements other than those of an industrial or commercial nature and are governed by the applicable laws in the Member States.*

Or. fr

**Amendment 585**
Pablo Arias Echeverría
Proposal for a directive
Article 15 – paragraph 1 – subparagraph 1 – point c a (new)

Text proposed by the Commission

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

Amendment 586
Heide Rühle

Proposal for a directive
Article 15 – paragraph 1 – subparagraph 2

Text proposed by the Commission

A contracting authority or a contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4 shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments within the meaning of point (a) of the first subparagraph where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person.

Amendment 587
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Article 15 – paragraph 1 – subparagraph 2

Text proposed by the Commission

A contracting authority or a contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4 shall be
To meet the stated goals of simplification and streamlining of the law on concessions, complicated explanations should be avoided in the legal text, as they do not increase legal certainty and they go beyond the case law of the EU Court of Justice.

Amendment 588
Peter Simon

Proposal for a directive
Article 15 – paragraph 1 – subparagraph 2

Text proposed by the Commission
A contracting authority or a contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4 shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments within the meaning of point (a) of the first subparagraph where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person.

Amendment 589
Evelyne Gebhardt

Proposal for a directive
Article 15 – paragraph 1 – subparagraph 2
A contracting authority or a contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4 shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments within the meaning of point (a) of the first subparagraph where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person.

Amendment 590
Andreas Schwab, Jorgo Chatzimarkakis
Proposal for a directive
Article 15 – paragraph 1 – subparagraph 2

A contracting authority or a contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4 shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments within the meaning of point (a) of the first subparagraph where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person. The above conditions shall apply mutatis mutandis if a contracting authority awards a public contract to a legal person it controls jointly with other contracting authorities.

Or. de

Justification

(Does not affect English version.)
Amendment 591
Cristian Silviu Bușoi

Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

This provision goes beyond the ECJ case-law (teckal Judgement) and would excessively restrict competition.

Amendment 592
Heide Rühle

Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Paragraph 1 also applies where a controlled entity which is a contracting authority or contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4 awards a concession to its controlling entity, or to another legal person controlled by the same contracting authority or contracting entity, provided that there is no private participation in the legal person being awarded the public concession, with the exception of legally enforced forms of
Amendment 593
Sabine Verheyen, Birgit Collin-Langen, Hans-Peter Mayer, Andreas Schwab, Anja Weisgerber

Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Paragraph 1 also applies where a controlled entity which is a contracting authority or contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4 awards a concession to its controlling unit(s), or to another legal person controlled by the same contracting authority.

Justification

In line with Regulation No 1370/2007 it needs to be clarified that direct award of a concession to a controlled entity is possible provided the contracting authority or entity is able to exercises a decisive influence over its strategic objectives and significant decisions Accordingly it is not essential for the controlled entity to be in the 100% ownership of the contracting authority or entity.

Amendment 594
Pier Antonio Panzeri

Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission

2. Paragraph 1 also applies where a controlled entity which is a contracting authority or contracting entity as referred

Amendment

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

Amendment 595
Vicente Miguel Garcés Ramón

Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Paragraph 1 also applies where a controlled entity, or entities, which is a contracting authority or contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4 awards a concession to its controlling entity, or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public concession, with the exception of forms of non-profit private participations inherent to the controlling awarding authority or to the controlled legal person present in some social enterprises responsible for the execution of a public service task created specifically to fulfil the general interest requirements, which are not industrial and commercial by nature and are governed by the laws in force in Member States.
2. Paragraph 1 also applies where a controlled entity which is a contracting authority or contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4 awards a concession to its controlling entity, or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public concession.

Amendment 597
Marc Tarabella

Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Paragraph 1 also applies where a controlled entity which is a contracting authority or contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4 awards a concession to its controlling entity or entities, or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract, with the exception of the forms of private non-profit-making participation specific to the controlling contracting authority or entity or to the controlled legal person that are to be found in certain social enterprises entrusted with carrying out a public service task that have been specifically established to meet public interest.
requirements other than those of an industrial or commercial nature and are governed by the applicable laws in the Member States.

Amendment 598
Françoise Castex
Proposal for a directive
Article 15 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Not-for-profit legal persons operating in the social economy (associations, mutual associations, cooperatives, etc.) shall be exempt from the provisions of this Article;

Amendment 599
Evelyne Gebhardt
Proposal for a directive
Article 15 – paragraph 3

Text proposed by the Commission

Amendment

3. [...] deleted

Amendment 600
Cristian Silviu Buşoi
Proposal for a directive
Article 15 – paragraph 3

Text proposed by the Commission

Amendment

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

(a) the contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 exercise jointly over the legal person a control which is similar to that which it exercises over its own departments.

(b) at least 90% of the activities of that legal person are carried out for the controlling contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 or other legal persons controlled by the same contracting authority or entity;

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

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

(a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities or contracting entities as referred to in paragraph 1 subparagraph 1 of Article 4;

(b) those contracting authorities or contracting entities as referred to in paragraph 1 subparagraph 1 of Article 4 are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled
legal person;

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

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

Or. en

_Justification_

The in-house exception should be limited to entities which are controlled by the contracting authority. Extending this exception also to legal entities that are jointly controlled by the contracting authority and another contracting authority would excessively restrict competition.

Amendment 601
Pier Antonio Panzeri

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 1 – introductory part

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>A contracting authority or a contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4, which does not exercise over a legal person control within the meaning of paragraph 1, may nevertheless award a concession <strong>without applying the provisions</strong> of the current Directive to a legal person which it controls jointly with other such contracting authorities or entities, where the following conditions are fulfilled:</td>
<td>A contracting authority or a contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4, which does not exercise over a legal person control within the meaning of paragraph 1, may nevertheless award a concession <strong>outside the scope</strong> of the current Directive to a legal person which it controls jointly with other such contracting authorities or entities, <strong>and the legal person over which the contracting authority or authorities exercise control may acquire goods and services from those public owners without applying this directive</strong>, where the following conditions are fulfilled:</td>
</tr>
</tbody>
</table>
### Amendment 602

**Heide Rühle**

**Proposal for a directive**

**Article 15 – paragraph 3 – subparagraph 1 – point a**

<table>
<thead>
<tr>
<th><strong>Text proposed by the Commission</strong></th>
<th><strong>Amendment</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>a) the contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 exercise jointly over the legal person a control which is <em>similar</em> to that which it exercises over its own departments.</td>
<td>a) the contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 exercise jointly over the legal person a control which is <em>equivalent</em> to that which it exercises over its own departments.</td>
</tr>
</tbody>
</table>

### Amendment 603

**Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer**

**Proposal for a directive**

**Article 15 – paragraph 3 – subparagraph 1 – point a**

<table>
<thead>
<tr>
<th><strong>Text proposed by the Commission</strong></th>
<th><strong>Amendment</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) the contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 exercise jointly over the legal person a control which is similar to that which it exercises over its own departments.</td>
<td>(a) the contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 exercise jointly over the legal person a control which is similar to that which it exercises over its own departments; <em>100 % ownership by the contracting authority or entity is not a mandatory requirement for establishing control within the meaning of this paragraph.</em></td>
</tr>
</tbody>
</table>

**Justification**

*In line with Regulation No 1370/2007 it needs to be clarified that direct award of a concession to a controlled entity is possible provided the contracting authority or entity is*
able to exercise a decisive influence over its strategic objectives and significant decisions. Accordingly, it is not essential for the controlled entity to be in the 100% ownership of the contracting authority or entity.

Amendment 604
Marc Tarabella

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

| Amendment |
|------------------|--------------------------|
| (a) the contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 exercise jointly over the legal person a control which is similar to that which it exercises over its own departments. |
| (a) the management boards of the legal persons concerned are nominated by most of the participating contracting authorities. |

Or. fr

Amendment 605
Françoise Castex

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

| Amendment |
|------------------|--------------------------|
| (a) the contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 exercise jointly over the legal person a control which is similar to that which it exercises over its own departments. |
| (a) the contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 exercise jointly over the legal person a control which is equivalent to that which it exercises over its own departments, i.e. they exercise a decisive influence over both strategic objectives and significant decisions of the controlled legal person. The Member States shall determine how such control can be exerted. |

Or. fr
Amendment 606
Peter Simon

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission
(a) the contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 exercise jointly over the legal person a control which is similar to that which it exercises over its own departments.

Amendment
(a) the contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 exercise jointly over the legal person a control which is similar to that which it exercises over its own departments; this shall be deemed to be the case where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person; with a view to determining whether such control is being exercised, account may also be taken of factors such as the level of representation on administrative, management or supervisory bodies, the relevant provisions of the articles of association or the ownership arrangements; it is not a mandatory requirement that the controlled legal person be wholly owned by the contracting authority or entity.

Or. de

Amendment 607
Marc Tarabella

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission
(b) at least 90% of the activities of that legal person are carried out for the controlling contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 or other legal persons controlled by the same contracting authority or entity;

Amendment
deleted
Amendment 608
Heide Rühle

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

(b) at least 90% of the activities of that legal person are carried out for the controlling contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 or other legal persons controlled by the same contracting authority or entity;

Amendment

(b) at least 80% of the activities of that legal person which are the subject of the concession are carried out for the controlling contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 or other legal persons controlled by the same contracting authority or entity;

Or. en

Amendment 609
Andreas Schwab

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 1 – point b

(b) at least 90% of the activities of that legal person are carried out for the controlling contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 or other legal persons controlled by the same contracting authority or entity;

(b) that legal person primarily carries out activities for the controlling contracting authority or entity or for other legal persons controlled by the same contracting authority or entity; it is assumed that the legal person primarily carries out activities for the controlling contracting authority or entity, of for other legal persons controlled by the same contracting authority or entity, where it carries out at least 90% of its activities which are the subject of the contract for that legal person or those legal persons;

Or. de
Justification

The proposal combines the CJEU’s relevant finding in its judgment in Case C-107/98 with a ‘safe-harbour clause’ which makes it possible to assume, on a falsifiable basis, that an in-house activity is involved.

Amendment 610
Pier Antonio Panzeri

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 1 – point b

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>b) at least 90% of the activities of that legal person are carried out for the controlling contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 or other legal persons controlled by the same contracting authority or entity;</td>
<td>b) at least 80% of the activities of that legal person are carried out for the controlling contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 or other legal persons controlled by the same contracting authority or entity;</td>
</tr>
</tbody>
</table>

Or. en

Amendment 611
Bernadette Vergnaud

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 1 – point b

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b) at least 90% of the activities of that legal person are carried out for the controlling contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 or other legal persons controlled by the same contracting authority or entity;</td>
<td>(b) at least 90% of the average total turnover of that legal person is carried out for the controlling contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 or other legal persons controlled by the same contracting authority or entity;</td>
</tr>
</tbody>
</table>

Or. fr

Justification

Text adapted to concessions context.
Proposal for a directive
Article 15 – paragraph 3 – subparagraph 1 – point b

**Text proposed by the Commission**

(b) at least 90% of the activities of that legal person are carried out for the controlling contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 or other legal persons controlled by the same contracting authority or entity;

**Amendment**

(b) at least 80% of the activities of that legal person which are the subject of the contract are carried out for the controlling contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 or other legal persons controlled by the same contracting authority or entity; activities carried out for the controlling contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 or other legal persons controlled by the same contracting authority or entity include activities carried out for third parties where the service forms part of the contracting authority’s statutory remit or is performed for other contracting authorities.

**Or. de**

In the interest of internal consistency within the directive it is preferable to specify a figure of 80% rather than 90% of the legal person’s activities (cf. 80% threshold in Article 11(4)(a)). Furthermore 80% offers greater flexibility for local authorities in practice. The reference to the subject of the concession will lead to greater legal certainty in practice.

Amendment 613
Peter Simon

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 1 – point b

**Text proposed by the Commission**

(b) at least 90% of the activities of that legal person are carried out for the controlling contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 or other legal persons controlled by the same contracting authority or entity;

**Amendment**

(b) at least 90% of the activities of that legal person are carried out for the controlling contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 or other legal persons controlled by the same contracting authority or entity.
(b) at least 90% of the activities of that legal person are carried out for the controlling contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 or other legal persons controlled by the same contracting authority or entity;
Amendment 616
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 1 – point b a (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(ba) at least 80 % of the activities of that legal person, subject to the contract, are carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;</td>
<td></td>
</tr>
</tbody>
</table>

Amendment 617
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 1 – point c

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(c) there is no private participation in the controlled legal person.</td>
<td>deleted</td>
</tr>
</tbody>
</table>

Justification

To meet the stated goals of simplification and streamlining of the law on concessions, complicated explanations should be avoided in the legal text, as they do not increase legal certainty and they go beyond the case law of the EU Court of Justice.

Amendment 618
Peter Simon
Proposal for a directive
Article 15 – paragraph 3 – subparagraph 1 – point c

Text proposed by the Commission

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

Amendment

deprecated

Or. de

Amendment 619
Heide Rühle

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 1 – point c

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 620
Pier Antonio Panzeri

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 1 – point c

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 621
Vicente Miguel Garcés Ramón
Proposal for a directive
Article 15 – paragraph 3 – subparagraph 1 – point c

Text proposed by the Commission
(c) there is no private participation in the controlled legal person.

Amendment
(c) there is no private participation in the controlled legal person, with the exception of forms of non-profit private participations inherent to the controlling awarding authority or to the controlled legal person present in some social enterprises responsible for the execution of a public service task created specifically to fulfil the general interest requirements, which are not industrial and commercial by nature and are governed by the laws in force in Member States.

Or. en

Amendment 622
Andreas Schwab, Christel Schaldemose, Jorgo Chatzimarkakis

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 1 – point c

Text proposed by the Commission
(c) there is no private participation in the controlled legal person.

Amendment
(c) there is no private participation in the controlled legal person, except where this is a mandatory statutory requirement in the relevant Member States.

Or. de

Justification
In some Member States, in response to historical developments and arrangements which have grown up organically, the law makes binding provision for private participation. These forms of cooperation should remain possible, but any other private participation should be excluded in line with the case-law of the Court of Justice.
Amendment 623
Marc Tarabella

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 1 – point c

Text proposed by the Commission

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

Amendment

(c) there is no private participation in the controlled legal person, with the exception of the forms of private non-profit-making participation specific to the controlling contracting authority or entity or to the controlled legal person that are to be found in certain social enterprises entrusted with carrying out a public service task that have been specifically established to meet public interest requirements other than those of an industrial or commercial nature and are governed by the applicable laws in the Member States.

Or. fr

Amendment 624
Heide Rühle

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 2

Text proposed by the Commission

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

(a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities or contracting entities as referred to in paragraph 1 subparagraph 1 of Article 4;
(b) those contracting authorities or
contracting entities as referred to in paragraph 1 subparagraph 1 of Article 4 are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person;

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

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

### Amendment 625

Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

**Proposal for a directive**  
**Article 15 – paragraph 3 – subparagraph 2**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>For the purposes of point (a), contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 shall be deemed to jointly control a legal person where the following cumulative conditions are fulfilled:</td>
<td>deleted</td>
</tr>
<tr>
<td>(a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities or contracting entities as referred to in paragraph 1 subparagraph 1 of Article 4;</td>
<td></td>
</tr>
<tr>
<td>(b) those contracting authorities or contracting entities as referred to in paragraph 1 subparagraph 1 of Article 4 are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person;</td>
<td></td>
</tr>
</tbody>
</table>
(c) the controlled legal person does not pursue any interests which are distinct from that of the public authorities affiliated to it;

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

Amendment 626
Peter Simon

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 2

Text proposed by the Commission

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

(a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities or contracting entities as referred to in paragraph 1 subparagraph 1 of Article 4;

(b) those contracting authorities or contracting entities as referred to in paragraph 1 subparagraph 1 of Article 4 are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person;

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

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

Amendment 627
Pier Antonio Panzeri

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 2 – point a

Text proposed by the Commission
(a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities or contracting entities as referred to in paragraph 1 subparagraph 1 of Article 4;

Amendment
(a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities or contracting entities as referred to in paragraph 1 subparagraph 1 of Article 4; while one representative may represent one or many participating contracting authorities;

Or. en

Amendment 628
Andreas Schwab, Hans-Peter Mayer, Jorgo Chatzimarkakis

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 2 – point a

Text proposed by the Commission
(a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities or contracting entities as referred to in paragraph 1 subparagraph 1 of Article 4;

Amendment
(a) the decision-making bodies of the controlled legal person are composed of the participating representatives of the participating contracting authorities or contracting entities as referred to in paragraph 1 subparagraph 1 of Article 4;

Or. de
Amendment 629
Pier Antonio Panzeri

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

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

Amendment

deleed

Or. en

Amendment 630
Marc Tarabella

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 631
Bernadette Vergnaud

Proposal for a directive
Article 15 – paragraph 3 – subparagraph 2 – point d

Text proposed by the Commission

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

Amendment

(d) the controlled legal person does not draw any gains other than the recouping of the operating and investment costs it incurs in performing the concessions with the contracting authorities or contracting entities, as defined in Article 4(1), point 1.
Text adapted to concessions context.

**Amendment 632**  
**Pier Antonio Panzeri**

**Proposal for a directive**  
**Article 15 – paragraph 4 – introductory part**

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

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

**Amendment 633**  
**Françoise Castex**

**Proposal for a directive**  
**Article 15 – paragraph 4 a (new)**

*Text proposed by the Commission*  
4a. This Directive shall not apply to agreements concluded between several contracting authorities or contracting entities as defined in Article 4(1)(1), or groupings of contracting authorities or contracting entities as defined in Article 4(1)(1) which make provision, in the context of the internal organisation of a Member State, for the transfer of powers between the parties with a view to
the performance of a public service task. 
Not-for-profit legal persons operating in the social economy (associations, mutual associations, cooperatives, etc.) shall be exempt from the provisions of this Article;

Amendment 634
Heide Rühle

Proposal for a directive
Article 15 – paragraph 4 – point a

Text proposed by the Commission

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

Amendment

deleted

Or. fr

Amendment 635
Peter Simon

Proposal for a directive
Article 15 – paragraph 4 – point a

Text proposed by the Commission

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

Amendment

deleted

Or. de
Amendment 636
Pier Antonio Panzeri

Proposal for a directive
Article 15 – paragraph 4 – point a

Text proposed by the Commission
(a) the agreement establishes a genuine cooperation between the participating contracting authorities or entities aimed at carrying out jointly their public service tasks and involving mutual rights and obligations of the parties;

Amendment
(a) the purpose of the partnership is the provision of a public-service task conferred on all participating public authorities;

Or. en

Amendment 637
Cristian Silviu Buşoi

Proposal for a directive
Article 15 – paragraph 4 – point a

Text proposed by the Commission
(a) the agreement establishes a genuine cooperation between the participating contracting authorities or entities aimed at carrying out jointly their public service tasks and involving mutual rights and obligations of the parties;

Amendment
(a) the agreement establishes a genuine cooperation between the participating contracting authorities or entities acting as a competent authority in order to jointly ensure the organisation of the same public service mission;

Or. en

Justification
Clarification of the horizontal cooperation.

Amendment 638
Marc Tarabella

Proposal for a directive
Article 15 – paragraph 4 – point a
(a) the agreement establishes a genuine co-operation between the participating contracting authorities or entities aimed at carrying out jointly their public service tasks and involving mutual rights and obligations of the parties;

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

Or. fr

Amendment 639
Evelyne Gebhardt

Proposal for a directive
Article 15 – paragraph 4 – point a

Text proposed by the Commission

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

Amendment

(a) the agreement establishes a genuine co-operation between the participating contracting authorities aimed at carrying out jointly or on each other’s behalf their public service tasks;

Or. de

Amendment 640
Andreas Schwab, Jorgo Chatzimarkakis

Proposal for a directive
Article 15 – paragraph 4 – point a

Text proposed by the Commission

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

Amendment

(a) the agreement establishes a genuine co-operation between the participating contracting authorities or entities aimed at carrying out jointly their public service tasks;
Amendment 641
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Article 15 – paragraph 4 – point a

Text proposed by the Commission

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

Amendment

(a) the agreement is governed by considerations relating to the public interest; this principle shall also apply to ancillary services essential to the provision of services in the public interest;

Justification

The restriction to services provided in the public interest is derived from the CJEU judgment in Case C-480/06. It should also cover in-house auxiliary services which a contracting authority draws on for operational and administrative purposes and in organising the performance of its statutory tasks and which are not provided to third parties. These services are also in the public interest.

Amendment 642
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Article 15 – paragraph 4 – point a a (new)

Text proposed by the Commission

(aa) the purpose of the partnership is the provision of a task in the public interest conferred on public authorities, or the performance of an ancillary purchasing activity within the meaning of Article 2(17) of the proposed Public Procurement Directive (COM(2011)896), which is necessary in order to perform the public service task in the public interest.

Amendment

(aa) the purpose of the partnership is the provision of a task in the public interest conferred on public authorities, or the performance of an ancillary purchasing activity within the meaning of Article 2(17) of the proposed Public Procurement Directive (COM(2011)896), which is necessary in order to perform the public service task in the public interest.
A pooling of tasks shall also be considered to exist where a municipality is merely obliged to make payment, provided that cooperation enables the municipality to carry out its own obligations more economically or more effectively;

Or. de

Amendment 643
Evelyne Gebhardt

Proposal for a directive
Article 15 – paragraph 4 – point b

Text proposed by the Commission
Amendment

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

deleted

Or. de

Amendment 644
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Article 15 – paragraph 4 – point b

Text proposed by the Commission
Amendment

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

deleted

Or. de

Amendment 645
Heide Rühle

Proposal for a directive
Article 15 – paragraph 4 – point b
(b) the agreement is governed only by considerations relating to the public interest;

(b) the agreement is governed only by considerations relating to the public interest, this may include as well the provision of an ancillary task necessary to perform the respective service;

Or. en

Amendment 646
Cristian Silviu Buşoi

Proposal for a directive
Article 15 – paragraph 4 – point b

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

(b) the agreement is governed only by public interest considerations; these shall also include auxiliary services essential to the provision of services in the public interest;

Or. en

Justification

Clarification of the horizontal cooperation.

Amendment 647
Andreas Schwab, Jorgo Chatzimarkakis

Proposal for a directive
Article 15 – paragraph 4 – point b

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

(b) the agreement is governed only by public interest considerations; these shall also include auxiliary services essential to the provision of services in the public interest;

Or. de
Justification

The restriction to services provided in the public interest, as derived from the CJEU judgment in Case C-480/06, should also cover in-house auxiliary services which a contracting authority draws on for operational and administrative purposes and in organising the performance of its statutory tasks and which are not provided to third parties.

Amendment 648
Peter Simon

Proposal for a directive
Article 15 – paragraph 4 – point b

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

Amendment
(b) the agreement is governed by considerations relating to the public interest, and the services and requisite ancillary services relate thereto;

Or. de

Amendment 649
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Article 15 – paragraph 4 – point b a (new)

Text proposed by the Commission
(ba) the task is carried out solely by the public authorities concerned without the involvement of active private capital;

Amendment

Or. de

Justification

The public interest is of course the most important feature of the agreement. However, ruling out the involvement of active private capital reinforces this point.

Amendment 650
Heide Rühle
Proposal for a directive
Article 15 – paragraph 4 – point c

Text proposed by the Commission

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

Amendment

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

Amendment 651
Mikael Gustafsson

Proposal for a directive
Article 15 – paragraph 4 – point c

Text proposed by the Commission

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

Amendment

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

Amendment 652
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Article 15 – paragraph 4 – point c

Text proposed by the Commission

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

Amendment 653
Marc Tarabella

Proposal for a directive
Article 15 – paragraph 4 – point c

Text proposed by the Commission

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

Amendment

deleted

Or. de

Amendment 654
Peter Simon

Proposal for a directive
Article 15 – paragraph 4 – point c

Text proposed by the Commission

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

Amendment

deleted

Or. de

Amendment 655
Pier Antonio Panzeri

Proposal for a directive
Article 15 – paragraph 4 – point c
(c) the participating contracting authorities or entities shall do not perform on the open market more than 10% in terms of turnover of the activities which are relevant in the context of the agreement;

(c) the participating contracting authorities or entities shall not perform on the open market more than 20% in terms of turnover of the activities which are relevant in the context of the agreement;

Amendment 656
Cristian Silviu Bușoi

Proposal for a directive
Article 15 – paragraph 4 – point c

Text proposed by the Commission

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

Amendment

(c) the participating contracting authorities or entities shall not perform on the open market;

Amendment 657
Heide Rühle

Proposal for a directive
Article 15 – paragraph 4 – point d

Text proposed by the Commission

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

Amendment

deleted

Or. en
Amendment 658
Evelyne Gebhardt

Proposal for a directive
Article 15 – paragraph 4 – point d

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

Amendment
deleted

Or. de

Amendment 659
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Article 15 – paragraph 4 – point d

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

Amendment
deleted

Or. de

Amendment 660
Peter Simon

Proposal for a directive
Article 15 – paragraph 4 – point d

Text proposed by the Commission
(d) the agreement does not involve financial transfers between the participating contracting authorities or

Amendment
deleted

Or. de
entities, other than those corresponding to the reimbursement of actual costs of the works, services or supplies;

Amendment 661
Andreas Schwab, Jorgo Chatzimarkakis

Proposal for a directive
Article 15 – paragraph 4 – point d

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

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

Amendment 662
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Article 15 – paragraph 4 – point e

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

Amendment
deleted

Amendment 663
Heide Rühle

Proposal for a directive
Article 15 – paragraph 4 – point e
(e) there is no private participation in any of the contracting authorities or entities involved.

Amendment
(e) there is no private participation in any of the contracting authorities or entities involved with the exception of legally enforced forms of private participation.

Amendment 664
Pier Antonio Panzeri
Proposal for a directive
Article 15 – paragraph 4 – point e

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

Amendment
(e) the task is carried out solely by the public authorities concerned and there is no active private participation in any of the contracting authorities or entities involved with the exception of forms of legally enforced private participation.

Amendment 665
Vicente Miguel Garcés Ramón
Proposal for a directive
Article 15 – paragraph 4 – point e

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

Amendment
(e) there is no private participation in any of the contracting authorities or entities involved, with the exception of forms of non-profit private participations inherent to the controlling awarding authority or the controlled legal person present in their capacity as bodies governed by public law under Article 4(1)(1) present in some social enterprises responsible for the execution of a public service task created
specifically to fulfil the general interest requirements, which are not industrial and commercial by nature and are governed by the laws in force in Member States.

Amendment 666
Andreas Schwab, Christel Schaldemose, Jorgo Chatzimarkakis

Proposal for a directive
Article 15 – paragraph 4 – point e

Text proposed by the Commission
(ec) there is no private participation in any of the contracting authorities or entities involved.

Amendment
(ec) there is no private participation in any of the contracting authorities or entities involved except where this is a mandatory statutory requirement in the relevant Member States.

Or. en

Justification
In some Member States, in response to historical developments and arrangements which have grown up organically, the law makes mandatory provision for private participation. These forms of cooperation should still be allowed, but any other private participation should be ruled out in line with the case-law of the Court of Justice.

Amendment 667
Marc Tarabella

Proposal for a directive
Article 15 – paragraph 4 – point e

Text proposed by the Commission
(ec) there is no private participation in any of the contracting authorities or entities involved.

Amendment
(ec) there is no private participation in any of the contracting authorities or entities involved, with the exception of the forms of private non-profit-making participation specific to the controlling contracting
authority or to the controlled legal person in their capacity as bodies governed by public law, as defined in Article 4(1), point 1, that are to be found in certain social enterprises entrusted with carrying out a public service task that have been specifically established to meet public interest requirements other than those of an industrial or commercial nature and are governed by the applicable laws in the Member States.

Or. fr

Amendment 668
Peter Simon

Proposal for a directive
Article 15 – paragraph 5

Text proposed by the Commission

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

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

Amendment 669
Heide Rühle

Proposal for a directive
Article 15 – paragraph 5 – subparagraph 1
The absence of private participation referred to in paragraphs 1 to 4 shall be verified at the time of the award of the concession or of the conclusion of the agreement.

Amendment 670
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Article 15 – paragraph 5 – subparagraph 1

Text proposed by the Commission

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

Or. en

Amendment 671
Vicente Miguel Garcés Ramón

Proposal for a directive
Article 15 – paragraph 5 – subparagraph 1

Text proposed by the Commission

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

Or. en
Amendment 672
Cristian Silviu Buşoi

Proposal for a directive
Article 15 – paragraph 5 – subparagraph 1

Text proposed by the Commission

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

Amendment

All the conditions referred to in paragraphs 1 to 4 shall be verified at the time of the award of the concession or of the conclusion of the agreement.

Or. en

Justification

All conditions should be verified, not only the private participation.

Amendment 673
Heide Rühle

Proposal for a directive
Article 15 – paragraph 5 – subparagraph 2

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 674
Marc Tarabella

Proposal for a directive
Article 15 – paragraph 5 – subparagraph 2
### Text proposed by the Commission

**Article 15 – paragraph 5 – subparagraph 2**

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

### Amendment

**deleted**

**Or. fr**

**Amendment 675**

Pier Antonio Panzeri

Proposal for a directive

<table>
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<th><strong>Article 15 – paragraph 5 – subparagraph 2</strong></th>
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</table>

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

**Or. en**

**Amendment 676**

Cristian Silviu Buşoi

Proposal for a directive

<table>
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<th><strong>Article 15 – paragraph 5 – subparagraph 2</strong></th>
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The exceptions provided for in this Article shall cease to apply from the moment any private participation takes place, with the effect that ongoing concessions need to be opened to competition through regular concession award procedures.

**Or. en**

**Amendment**

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

The exceptions provided for in this Article shall cease to apply from the moment any of the cumulative conditions listed therein is no longer fulfilled, with the effect that ongoing concessions need to be opened to competition through regular concession award procedures.
The exceptions provided for in this Article shall cease to apply from the moment any private participation takes place, with the effect that ongoing concessions need to be opened to competition through regular concession award procedures.

Following the entry into force of the Directive the exceptions provided for in this Article shall cease to apply from the moment any private participation takes place, with the effect that ongoing concessions need to be opened to competition through regular concession award procedures.
Amendment 679
Pablo Arias Echeverría

Proposal for a directive
Article 15 – paragraph 5 – subparagraph 2

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

Amendment
The exceptions provided for in this Article shall cease to apply from the moment any private participation takes place, with the effect that ongoing concessions need to be opened to competition through regular concession award procedures, except for cases where private participation in the legal person which results in it becoming an affiliated undertaking has taken place through any of the procedures provided for in this Directive or in Directives (replacing 2004/17/EC and 2004/18/EC).

Or. es

Amendment 680
Heide Rühle

Proposal for a directive
Article 16 – paragraph 1

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

Amendment
The duration of concessions shall be limited. The grantor shall estimate the duration on the basis of the works or services requested. When the cost of investments must be met by the concessionaire, the duration of a concession shall reflect the nature and amount of the investments involved, both initial and further investments during the life of the concession, and should take into consideration the normal amortisation period.

Or. en
Amendment 681
Lara Comi

Proposal for a directive
Article 16 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

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

Or. it

Amendment 682
Cristian Silviu Buşoi

Proposal for a directive
Article 16 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

The duration of the concession shall be limited. The duration of the contract shall take account of the time necessary for the concessionaire to recoup operating and investment costs, to provide a reasonable return on investment and to meet the targets set by the grantor, particularly performance of the service in question.

Or. fr

*Justification*

Clarification of the duration of concessions so as to take account of their nature. Criteria concerning performance of the relevant service need to be added. No distinction needs to be made between works and service concessions.
Amendment 683
Mikael Gustafsson, Cornelis de Jong

Proposal for a directive
Article 16 – paragraph 1

Text proposed by the Commission

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

Amendment

The duration of the concession shall be limited to the time estimated, among other factors, to be necessary for the concessionaire to recoup the investments made in operating the works or services taking into account other objective criteria such as the public interest in ongoing high-quality provision or environmentally and socially sustainable performance of the service.

Or. en

Amendment 684
Philippe Juvin, Constance Le Grip

Proposal for a directive
Article 16 – paragraph 1

Text proposed by the Commission

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

Amendment

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

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

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

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

Or. fr

Justification

Modification of Amendment 106 by the rapporteur. The normal amortisation period should correspond to the time concessionaires need to recoup their investment costs, and not their operating costs. The amount of operating costs forms part of the economic risk taken by concessionaires.

Amendment 685
Malcolm Harbour, Edvard Kožušnik

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

Text proposed by the Commission

Amendment

For concessions lasting more than 5 years, the maximum duration of the concession shall not exceed the time estimated to be necessary for the concessionaire to recoup the investments made in operating the works or services together with a return on invested capital. This estimate shall be carried out by the contracting authority or entity, acting reasonably, at the moment at which the concession notice is sent, or, where a call is not foreseen, the duration estimated at the moment the contracting authority or entity commences the concession award procedure, for instance by contacting economic operators in relation to the procurement.

Or. en
Justification

This is intended to make clear that the concession duration is not an exact science and argues that if the concession awardee acts reasonably, the authority’s estimations should be acceptable.

Amendment 686
Matteo Salvini, Claudio Morganti, Lorenzo Fontana

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

Text proposed by the Commission
Amendment

This clause is without prejudice to the provisions of Article 42.

Or. en

Justification

This insertion is relevant for the purposes of the proposed amendments to article 42.

Amendment 687
Mikael Gustafsson, Cornelis de Jong

Proposal for a directive
Article 17

Text proposed by the Commission
Amendment

Article 17 deleted

Social and other specific services

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

Or. en
Amendment 688
Heide Rühle

Proposal for a directive
Article 17 – paragraph 1

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

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

Or. en

Justification
As a sort of fall-back position if the derogation is not accepted.

Amendment 689
Barbara Weiler

Proposal for a directive
Article 17 – paragraph 1

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

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

Or. de

Amendment 690
Malcolm Harbour, Edvard Kožušnik

Proposal for a directive
Article 17 – paragraph 1

Text proposed by the Commission
Concessions for social and other specific

Amendment
Concessions for social and other specific

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services listed in Annex X falling within the scope of this Directive shall be subject to the obligation of paragraph 3 of Art. 26 and of paragraph 1 of Article 27. Only services listed in Annex X falling within the scope of this Directive shall be subject to the obligation of paragraph 3 of Art. 26 and of paragraph 1 of Article 27.

Or. en

Justification

Necessary clarification on requirements.

Amendment 691
Heide Rühle

Proposal for a directive
Article 18 – paragraph 2

Text proposed by the Commission

2. Concessions which have as their object both services within the meaning of Article 17 and other services shall be awarded in accordance with the provisions applicable to the type of service that characterises the main object of the contract in question.

Amendment

deleted

Or. en

Amendment 692
Heide Rühle

Proposal for a directive
Article 18 – paragraph 3

Text proposed by the Commission

3. In the case of mixed contracts referred to in paragraphs 1 and 2, the main object shall be determined by a comparison of the values of the respective services or supplies.

Amendment

deleted

Or. en
Amendment 693
Heide Rühle

Proposal for a directive
Article 18 – paragraph 4

Text proposed by the Commission

4. Where contracts have as their object concessions covered by this Directive as well as procurement or other elements not covered by it nor by Directives [replacing 2004/17/EC and Directive 2004/18] or 2009/81/EC, the part of the contract which constitutes a concession covered by this Directive shall be awarded in accordance with this Directive. However, when the different parts of the contract are objectively not separable, the application of this Directive shall be determined on the basis of the main subject of that contract.

Or. en

Amendment 694
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 18 – paragraph 4

Text proposed by the Commission

4. Subject to subparagraphs 5a(new) and 5b(new), where contracts have as their object concessions covered by this Directive as well as procurement or other elements covered by Directives [replacing 2004/17/EC and Directive 2004/18], the part of the contract which constitutes a concession covered by this Directive shall be awarded in accordance with this Directive. However, when the different parts of the contract are objectively not separable, the application of this Directive shall be determined on the
basis of the main subject of that contract. shall be determined on the basis of the main subject of that contract.

Or. en

Justification

This Amendment is part of a package aiming to ensure there is no overlap between this Directive and the Directive on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security (2009/81/EC), as well as the related relevant Treaty articles.

Amendment 695
Pablo Arias Echeverría

Proposal for a directive
Article 18 – paragraph 4

Text proposed by the Commission

4. Where contracts have as their object concessions covered by this Directive as well as procurement or other elements not covered by it nor by Directives [replacing 2004/17/EC and Directive 2004/18] or 2009/81/EC, the part of the contract which constitutes a concession covered by this Directive shall be awarded in accordance with this Directive. However, when the different parts of the contract are objectively not separable, the application of this Directive shall be determined on the basis of the main subject of that contract.

Amendment

4. Where contracts have as their object concessions covered by this Directive as well as procurement or other elements not covered by it nor by Directives [replacing 2004/17/EC and Directive 2004/18] or 2009/81/EC, the application of this Directive shall be determined on the basis of the main subject of that contract.

Or. es

Amendment 696
Bernadette Vergnaud

Proposal for a directive
Article 18 – paragraph 4
4. Where contracts have as their object concessions covered by this Directive as well as procurement or other elements not covered by it nor by Directives [replacing 2004/17/EC and Directive 2004/18] or 2009/81/EC, the part of the contract which constitutes a concession covered by this Directive shall be awarded in accordance with this Directive. However, when the different parts of the contract are objectively not separable, the application of this Directive shall be determined on the basis of the main subject of that contract.

Justification

The amendment takes account of sectoral legislation.

Amendment 697
Pablo Arias Echeverría

Proposal for a directive
Article 18 – paragraph 5

In the case of concessions subject to this Directive and contracts subject to [Directive 2004/18/EC or 2004/17/EC] or 2009/81/EC, the part of the contract which constitutes a concession covered by this Directive shall be awarded in accordance with the provisions thereof.

Where the different parts of such contracts are not objectively separable, the application of this Directive shall be determined on the basis of the main subject of that contract.
Proposal for a directive
Article 18 – paragraph 5 – subparagraph 1

Text proposed by the Commission

In the case of concessions subject to this Directive and contracts subject to [Directive 2004/18/EC or 2004/17/EC] or 2009/81/EC, the part of the contract which constitutes a concession covered by this Directive shall be awarded in accordance with the provisions thereof.

Amendment

In the case of concessions subject to this Directive and contracts subject to [Directive 2004/18/EC or 2004/17/EC], the part of the contract which constitutes a concession covered by this Directive shall be awarded in accordance with the provisions thereof.

Justification

This Amendment is part of a package aiming to ensure there is no overlap between this Directive and the Directive on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security (2009/81/EC), as well as the related relevant Treaty articles.
Amendment 700
Heide Rühle

Proposal for a directive
Article 18 – paragraph 5 – subparagraph 2

Text proposed by the Commission
Where the different parts of such contracts are not objectively separable, the application of this Directive shall be determined on the basis of the main subject of that contract.

Amendment
deleted

Or. en

Amendment 701
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 18 – paragraph 5 a (new)

Text proposed by the Commission
5a. In the case of contracts which have as their object concessions covered by this Directive and Directive 2009/81/EC as well as concessions or other elements not being subject to either Directive, the contract shall not be subject to this Directive provided that the award of a single contract is justified for objective reasons. The decision to award a single contract may not, however, be taken for the purpose of excluding contracts from the application of this Directive.

Amendment

Or. en

Justification

This Amendment is part of a package aiming to ensure there is no overlap between this Directive and the Directive on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security (2009/81/EC), as well as the related relevant Treaty articles.
Amendment 702
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 18 – paragraph 5 b (new)

Text proposed by the Commission

5b. Where the different parts of such contracts are not objectively separable, the application of this Directive shall be determined on the basis of the main subject of that contract.

Amendment

Justification

This Amendment is part of a package aiming to ensure there is no overlap between this Directive and the Directive on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security (2009/81/EC), as well as the related relevant Treaty articles.

Amendment 703
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 18 – paragraph 5 c (new)

Text proposed by the Commission

5c. In the case of contracts which have as their object concessions covered by this Directive as well as concessions or other elements covered by Directive 2009/81/EC, the contract shall be awarded in accordance with Directive 2009/81/EC provided that the award of a single contract is justified for objective reasons.

Amendment

Or. en
Justification

This Amendment is part of a package aiming to ensure there is no overlap between this Directive and the Directive on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security (2009/81/EC), as well as the related relevant Treaty articles.

Amendment 704
Heide Rühle

Proposal for a directive
Article 19 – paragraph 1 – subparagraph 2

Text proposed by the Commission

However, the choice between awarding a single concession and awarding a number of separate concessions may not be made with the objective of excluding it from the scope of this Directive.

Amendment

Or. en

Amendment 705
Heide Rühle

Proposal for a directive
Article 19 – paragraph 2

Text proposed by the Commission

2. Where one of the activities for which the concession subject to the provisions of this Directive is intended is listed in Annex III and the other is not listed therein and where it is objectively impossible to determine for which activity the concession is principally intended, the concession shall be awarded in accordance with the provisions applicable to concessions awarded by contracting authorities.

Amendment

Or. en
Amendment 706
Bernadette Vergnaud

Proposal for a directive
Article 19 – paragraph 2

Text proposed by the Commission

2. Where one of the activities for which the
concession subject to the provisions of this
Directive is intended is listed in Annex III
and the other is not listed therein and
where it is objectively impossible to
determine for which activity the concession
is principally intended, the concession shall
be awarded in accordance with the
provisions applicable to concessions
awarded by contracting authorities.

Amendment

2. Where one of the activities for which the
concession subject to the provisions of this
Directive is intended is listed in Annex III
and the other is not listed therein and
where it is objectively impossible to
determine for which activity the concession
is principally intended, the concession shall
be awarded in accordance with the
provisions applicable to concessions
awarded by contracting authorities, without
prejudice to the provisions of EU law.

Or. fr

Justification

The amendment takes account of sectoral legislation.

Amendment 707
Heide Rühle

Proposal for a directive
Article 19 – paragraph 3

Text proposed by the Commission

3. If one of the activities for which the
contract or the concession is intended is
subject to this Directive and the other is
not subject to either this Directive or
Directive 2004/18/EC or 2004/17/EC] or
2009/81/EC22 and if it is objectively
impossible to determine for which activity
the contract or the concession is
principally intended, the contract or the
concession shall be awarded in

Amendment

deleted

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Member States may reserve the right to participate in concession award procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled and disadvantaged workers or provide for such concessions to be performed in the context of sheltered employment programmes provided that more than 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.

'Disadvantaged persons' includes amongst others: the unemployed, people experiencing particular difficulty in achieving integration, people at risk of exclusion, members of vulnerable groups and members of disadvantaged minorities.

The concession notice shall make reference to this provision.
to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled and disadvantaged workers or provide for such concessions to be performed in the context of sheltered employment programmes provided that more than 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.

Disadvantaged persons includes amongst others: the unemployed, people with migration background, people at risk of exclusion, members of vulnerable groups, long term sick and members of disadvantaged minorities.

Amendment 710
Heide Rühle
Proposal for a directive
Article 20 – paragraph 2

Text proposed by the Commission
The concession notice shall make reference to this provision.

Amendment
deleted

Or. en

Amendment 711
Heide Rühle
Proposal for a directive
Article 21 – paragraph 1 – introductory part

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

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

Amendment 712
Heide Rühle
Proposal for a directive
Article 21 – paragraph 1 – point a

Text proposed by the Commission
(a) the benefits accrue exclusively to the contracting authority or contracting entity for use in the conduct of its own affairs,

Amendment
deleted

Or. en

Amendment 713
Heide Rühle
Proposal for a directive
Article 21 – paragraph 1 – point b

Text proposed by the Commission
(b) the service provided is wholly remunerated by the contracting authority or contracting entity

Amendment
deleted

Or. en

Amendment 714
Heide Rühle
Proposal for a directive
Article 21 – paragraph 3

Text proposed by the Commission
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 46 concerning the reference

Amendment
deleted

Or. en
numbers of this Article, whenever changes in the CPV nomenclature must be reflected in this Directive and they do not imply a modification of the scope of this Directive.

Amendment 715
Josef Weidenholzer

Proposal for a directive
Article 21 – paragraph 3

Text proposed by the Commission

Amendment

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

Amendment 716
Mikael Gustafsson

Proposal for a directive
Article 22 – paragraph 1

Text proposed by the Commission

Amendment

1. Economic operators that, under the law of the Member State in which they are established, are entitled to provide the relevant service, shall not be rejected solely on the ground that, under the law of the Member State in which the concession is awarded, they would be required to be either natural or legal persons.
Amendment 717
Josef Weidenholzer

Proposal for a directive
Article 22 – paragraph 1

Text proposed by the Commission

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

Amendment

deleted

Amendment 718
Lara Comi

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

Text proposed by the Commission

2a. Concession award procedures must include arrangements for the participation and involvement of small and medium-sized enterprises.

Amendment

Or. it

Amendment 719
Pier Antonio Panzeri

Proposal for a directive
Article 22 – paragraph 3
3. Groups of economic operators may submit tenders or put themselves forward as candidates.

3. Groups of economic operators, including consortia of undertakings, may submit tenders or put themselves forward as candidates.

Amendment 720
Heide Rühle

Proposal for a directive
Article 22 – paragraph 4 – subparagraph 1

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

Amendment 721
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer, Andreas Schwab

Proposal for a directive
Article 22 – paragraph 4 – subparagraph 1

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

Justification

This paragraph unnecessarily restricts the flexibility of the contracting entities, and it is hard to see the added value of such a provision.

Amendment 722
Pier Antonio Panzeri

Proposal for a directive
Article 24 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Failure to comply with this requirement shall render the grantor liable

Amendment 723
Barbara Weiler

Proposal for a directive
Article 24 – paragraph 1
1. Unless otherwise provided in this Directive or in the national law concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 27 and 35 of this Directive, the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

1. Unless otherwise provided in this Directive or in the national law concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 27 and 35 of this Directive, and in accordance with data protection law in the Member States and at EU level, the oversight body shall, on written request, grant, unrestricted and full direct access free of charge to the contracts awarded. Access to certain parts of the contracts may be refused where their disclosure would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

Access to those portions which may be disclosed shall be granted within a reasonable time.

The applicants filing a request for access to a contract shall not need to show any direct or indirect interest related to that particular contract. The recipient of the information shall be permitted to make it public.

Or. de
prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 27 and 35 of this Directive, the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

Failure to comply with this requirement shall render the grantor liable.

This Article shall not prevent public disclosure of concluded contracts, including any subsequent changes.

Amendment 725
Barbara Weiler

Proposal for a directive
Article 24 – paragraph 2

Text proposed by the Commission

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

Amendment

deleted

Or. de

Amendment 726
Pier Antonio Panzeri

Proposal for a directive
Article 24 – paragraph 2
2. Contracting authorities or contracting entities may impose on economic operators requirements aimed at protecting the confidential nature of information which the contracting authorities or contracting entities make available throughout the concession award procedure.

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

Failure to comply with this requirement shall render the economic operator liable

Amendment 727
Heide Rühle

Proposal for a directive
Article 25

Text proposed by the Commission

Article 25

[...]
concession award procedure. The technical details and characteristics of the devices for the electronic receipts to be deemed in compliance with the first subparagraph of this paragraph are set out in Annex XII.

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

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

Amendment 729
Josef Weidenholzer
Proposal for a directive
Article 25 – paragraph 4

Text proposed by the Commission

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

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

(a) They offer unrestricted and full direct access by electronic means to these tools.

Amendment
from the date of publication of the notice in accordance with Annex IX or from the date when the invitation to confirm interest is sent; the text of the notice or the invitation to confirm interest shall specify the internet address at which these tools are accessible;

(b) ensure that tenderers established in other Member States than the contracting authority's may access the concession award procedure through the use of provisional tokens made available online at no extra cost;

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

Or. en

Amendment 730
Josef Weidenholzer

Proposal for a directive
Article 25 – paragraph 5

Text proposed by the Commission Amendment

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

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

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

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

d) where advanced Electronic Signatures as defined by Directive 1999/93/EC\textsuperscript{24} of the European Parliament and of the Council are required, contracting authorities and contracting entities shall accept signatures supported by a qualified electronic certificate referred to in the Trusted List provided for in the European Commission Decision 2009/767/EC\textsuperscript{25}, created with or without a secure signature creation device, subject to compliance with the following conditions:

(i) they must establish the required advanced signature format on the basis of formats established in Commission Decision 2011/130/EU\textsuperscript{26} and put in place necessary measures to be able to process these formats technically;

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

Amendment 731
Liisa Jaakonsaari

Proposal for a directive
Title 2 – chapter - 1 (new)

Text proposed by the Commission

Amendment

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

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

Article - 26 a

General principles

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

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

b) the tender comes from a tenderer who

i) is not excluded from participating in the award procedure in accordance with paragraphs 5 and 7 of Article 36, and subject to paragraph 8 of Article 39, and

ii) meets the selection criteria set out by the grantor in accordance with paragraphs 2 and 3 of Article 36.

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

3. The grantor and the economic operator shall respect obligations relating to social and employment protection and working conditions applying in the place where the concession is performed, as set out by collective agreements, national legislation and international labour law provisions.

The grantor has the full freedom to specify in tender documents social and environmental criteria that go beyond these obligations. This includes compliance with ILO Convention No. 94, even where the Convention has not been implemented in national law.
candidates who have responded where appropriate to the concession notice.

Article - 26a

General principles

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

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

   (b) the tender comes from a tenderer who

   (i) is not excluded from participating in the award procedure in accordance with paragraphs 5 and 7 of Article 36, and subject to paragraph 8 of Article 39, and

   (ii) meets the selection criteria set out by the grantor in accordance with paragraphs 2 and 3 of Article 36.

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

3. The grantor must ensure that the economic operator complies with obligations relating to social protection and working conditions which apply under the laws and collective agreements in force where the concession is performed, and may set further social and environmental criteria.
Justification

Addition of a paragraph ensuring compliance with social rights to Article -26 of the new text proposed by the rapporteur.

Amendment 733
Heide Rühle

Proposal for a directive
Article 26 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 734
Sirpa Pietikäinen

Proposal for a directive
Article 26 – paragraph 2 a (new)

Text proposed by the Commission

2a. The grantor and the economic operator shall respect obligations relating to social and employment protection and working conditions applying in the place where the concession is performed, as set out by collective agreements, national legislation and international labour law provisions.

The grantor has the full freedom to specify in tender documents social and environmental criteria that go beyond these obligations. This includes compliance with ILO Convention No. 94, even where the Convention has not been implemented in national law.
Amendment 735  
Heide Rühle

Proposal for a directive  
Article 26 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 736  
Malcolm Harbour, Edvard Kožušník

Proposal for a directive  
Article 26 – paragraph 3

Text proposed by the Commission

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

Amendment

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

*Missing reference.*

Amendment 737
Heide Rühle

Proposal for a directive
Article 26 – paragraph 4

**Text proposed by the Commission**

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

**Amendment**

deleted

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

(a) where no tenders or no suitable tenders or no applications have been submitted in response to a concession procedure, provided that the initial conditions of the concession contract are not substantially altered and on condition that a report is sent to the Commission or to the national oversight body designated pursuant to Article 84 of Directive [replacing Directive 2004/18/EC] where they so request;
(b) where the works or services can be supplied only by a particular economic operator due to the absence of competition for technical reasons, the protection of patents, copyrights or other intellectual property rights or he protection of other exclusive rights and where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the concession award;

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

Justification

Far too detailed and increases therefore the likelihood of errors in the award of concession contracts. The obligation to issue a concession notice using the appropriate form is sufficient

Amendment 739
Andreas Schwab

Proposal for a directive
Article 26 – paragraph 5 – subparagraph 1 – introductory part

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>By way of derogation from paragraph 1, the contracting authorities and entities shall not be required to publish a concession notice in any of the following cases:</td>
<td>By way of derogation from paragraph 1, the contracting authorities and entities shall not be required to publish a concession notice in any of the cases covered by Article 30 of the Public Procurement</td>
</tr>
</tbody>
</table>
By way of derogation from paragraph 1, the contracting authorities and entities shall not be required to publish a concession notice in any of the following cases:

Justification

A reference to the Public Procurement Directive is inserted here because it makes sense in this case for the same exceptions to apply to concessions as to public procurement contracts.

Amendment 741

Proposal for a directive
Article 26 – paragraph 5 – subparagraph 1 – point a

(a) where no tenders or no suitable tenders or no applications have been submitted in response to a concession procedure, provided that the initial conditions of the concession contract are not substantially altered and on condition that a report is sent to the Commission or to the national oversight body designated

deleted
pursuant to Article 84 of Directive [replacing Directive 2004/18/EC] where they so request;

Justification

Deletion necessitated by the reorganisation of the entire paragraph.