AMENDMENTS
742 - 990

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

Award of concession contracts

Proposal for a directive
(COM(2011)0897 – C7-0004/2011 – 2011/0437(COD))
Proposal for a directive
Article 26 – paragraph 5 – subparagraph 1 – point a

Text proposed by the Commission

(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;

Amendment

Deleted

Or. de

Justification

Deletion for reasons of consistency with the public procurement directive (Article 30).

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

(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

Amendment

Deleted
parameters of the concession award;

Or. de

Justification

Deletion necessitated by the reorganisation of the entire paragraph.

Amendment 744
Andreas Schwab, Hans-Peter Mayer

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

Text proposed by the Commission Amendment

(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;

Or. de

Justification

Deletion for reasons of consistency with the public procurement directive (Article 30).

Amendment 745
Herbert Dorfmann

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

Text proposed by the Commission Amendment

(b) where the works or services can be
supplied only by a particular economic operator due to the absence of competition for technical reasons, the protection of patents, copyrights or other intellectual property rights or the protection of other 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; supplied only by a particular economic operator due to the absence of competition for technical reasons, the protection of patents, copyrights or other intellectual property rights or the protection of other exclusive rights, in order to implement the subject of the concession contract, 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;

Or. it

Justification

The amendment stems from the need to protect the rights in rem, such as the right to property, and the rights in personam, such as rights acquired under rental agreements or leases, which an economic operator might have over given specific land needed in order to execute the works and/or service covered by a concession contract. These rights are classed among the ‘other exclusive rights’ to which the present text relates.

Amendment 746
Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

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

Text proposed by the Commission

(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

Amendment

deleted
awarded.

Justification

Deletion necessitated by the reorganisation of the entire paragraph.

Amendment 747
Andreas Schwab, Hans-Peter Mayer

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

Text proposed by the Commission

(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

Deletion for reasons of consistency with the public procurement directive (Article 30).

Amendment 748
Paolo Bartolozzi, Lara Comi

Proposal for a directive
Article 26 – paragraph 5 – subparagraph 1 – point c a (new)
(ca) where the public property under concession has been assigned for the provision of seaside tourism services on the initiative and at the request of an economic operator and become a prerequisite for the operator’s business to the extent that, were the operator to lose the concession, it would forfeit the right of ownership of the business.

Or. it

Amendment 749
Matteo Salvini, Claudio Morganti, Lorenzo Fontana

Proposal for a directive
Article 26 – paragraph 5 – subparagraph 1 – point c a (new)

Text proposed by the Commission

(ca) for concessions concerning public property assigned for the provision of services at the request of the economic operator to which the same contracting authorities or contracting entities awarded an original concession subject to the obligation set out in paragraph 1, where the loss of the concession would, de facto, entail cessation of business.

Or. it

Justification

This amendment seeks to protect micro-enterprises, often family run, providing, for example, seaside tourism services; if they were to lose their concession, they would cease to exist.

Amendment 750
Erminia Mazzoni, Roberta Angelilli
Proposal for a directive
Article 26 – paragraph 5 – subparagraph 1 – point c a (new)

Text proposed by the Commission

(ca) where the public property under concession has been assigned for the provision of seaside tourism services on the initiative and at the request of an economic operator and become a prerequisite for the operator’s business to the extent that, were the operator to lose the concession, it would forfeit the right of ownership of the business.

Or. it

Amendment 751
Heide Rühle

Proposal for a directive
Article 26 – paragraph 5 – subparagraph 2

Text proposed by the Commission

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

deleted

Or. en

Amendment 752
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Article 26 – paragraph 5 – subparagraph 2

Text proposed by the Commission

As soon as the first project is put up for tender the total estimated cost of

deleted
subsequent works or services shall be taken into consideration by the contracting authorities or contracting entities when they apply the provisions of Article 5

Justification

Deletion for reasons of consistency with the public procurement directive (Article 30).

Amendment 753
Heide Rühle

Proposal for a directive
Article 26 – paragraph 6

Text proposed by the Commission

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

– it is irregular or unacceptable, and

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

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

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

(a) where they have been received late;

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

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

(d) they have been found to be abnormally low

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 754
Philippe Juvin

Proposal for a directive
Article 26 – paragraph 6 – subparagraph 1 – introductory part

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>For the purposes of point (a) of the first subparagraph, a tender shall be considered not to be suitable where:</td>
<td>For the purposes of paragraph 5(a), a tender shall be considered not to be suitable where it is completely irrelevant to the concession, being incapable of meeting the grantor's needs as specified in the concession documents.</td>
</tr>
</tbody>
</table>

Justification

This is to clarify and limit the cases where the grantor does not need to publish a new concession notice (provided for in Article 26(5a) / Rapporteur’s amendment 145). This is only possible in the case where the tenders are irrelevant to the concession. There is therefore no need to specify in more detail the irregular or unacceptable nature of the tender.

Amendment 755
Philippe Juvin

Proposal for a directive
Article 26 – paragraph 6 – subparagraph 1 – indent 1
Text proposed by the Commission

– it is irregular or unacceptable, and deleted

Amendment

Justification

This is to clarify and limit the cases where the grantor does not need to publish a new concession notice (provided for in Article 26(5a) / Rapporteur’s amendment 145). This is only possible in the case where the tenders are irrelevant to the concession. There is therefore no need to specify in more detail the irregular or unacceptable nature of the tender. See the amendment tabled to Article 26(6) subparagraph 1.

Amendment 756
Philippe Juvin

Proposal for a directive
Article 26 – paragraph 6 – subparagraph 1 – indent 2

Text proposed by the Commission

– it is completely irrelevant to the deleted
concession, being incapable of meeting
the contracting authority or contracting
entity’s needs as specified in the
concession documents.

Amendment

Justification

This is to clarify and limit the cases where the grantor does not need to publish a new concession notice (provided for in Article 26(5a) / Rapporteur’s amendment 145). This is only possible in the case where the tenders are irrelevant to the concession. There is therefore no need to specify in more detail the irregular or unacceptable nature of the tender. See the amendment tabled to Article 26(6) subparagraph 1.

Amendment 757
Philippe Juvin

Proposal for a directive
Article 26 – paragraph 6 – subparagraph 2
Text proposed by the Commission  

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

Amendment

deleted

Or. fr

Justification

This is to clarify and limit the cases where the grantor does not need to publish a new concession notice (provided for in Article 26(5a) / Rapporteur’s amendment 145). This is only possible in the case where the tenders are irrelevant to the concession. There is therefore no need to specify in more detail the irregular or unacceptable nature of the tender. See the amendment tabled to Article 26(6) subparagraph 1.

Amendment 758
Philippe Juvin

Proposal for a directive
Article 26 – paragraph 6 – subparagraph 3

Text proposed by the Commission  

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

(a) where they have been received late;
(b) they have been submitted by tenderers who do not have the requisite qualifications;
(c) their price exceeds the contracting authority or contracting entity’s budget as determined prior to the launching of the concession award procedure and documented in writing;
(d) they have been found to be abnormally low

Amendment

deleted

Or. fr
Justification

This is to clarify and limit the cases where the grantor does not need to publish a new concession notice (provided for in Article 26(5a) / Rapporteur’s amendment 145). This is only possible in the case where the tenders are irrelevant to the concession. There is therefore no need to specify in more detail the irregular or unacceptable nature of the tender. See the amendment tabled to Article 26(6) subparagraph 1.

Amendment 759
Pier Antonio Panzeri

Proposal for a directive
Article 26 a (new)

Text proposed by the Commission

Amendment

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 award documents;

(b) the tender comes from a tender 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

(iii) meets the applicable terms and conditions of employment, including environmental, health and safety, social and labour law, rules and standards, defined by Union and national legislation and collective agreements, which apply where the provision of works, services and supplies takes place
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 and European union 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 760
Heide Rühle

Proposal for a directive
Article 27 – paragraph 2

Text proposed by the Commission

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

Amendment
specific services as referred to in Article 17.

Amendment 761
Heide Rühle

Proposal for a directive
Article 27 – paragraph 3

Text proposed by the Commission Amendment

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

Amendment 762
Heide Rühle

Proposal for a directive
Article 28

Text proposed by the Commission Amendment

Article 28 deleted

[...]

Amendment 763
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Article 28
Text proposed by the Commission

Amendment 764
Heide Rühle

Proposal for a directive
Article 29

Justification

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

Amendment

Article 28 deleted

[...]

Publication at national level

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

2. Notices published at national level shall not contain information other than that contained in the notices dispatched to the Commission but shall indicate the date of dispatch of the notice to the Commission.

Amendment 765
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Article 29
Text proposed by the Commission

Article 29

Publication at national level

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

2. Notices published at national level shall not contain information other than that contained in the notices dispatched to the Commission but shall indicate the date of dispatch of the notice to the Commission.

Amendment 766
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Article 30

Text proposed by the Commission

Article 30

Electronic availability of concession documents

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

Justification

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

Justification

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

Amendment 767
Mikael Gustafsson, Cornelis de Jong

Proposal for a directive
Article 30a (new)

Text proposed by the Commission

Article 30a

Protection of whistleblowers

Contracting authorities and contracting entities shall have in place internal whistleblowing procedures for staff to ensure that:

(a) any staff member (including temporary and contract workers, interns and consultants) who makes a good-faith disclosure regarding any type of material wrongdoing is protected from any and all forms of retaliation, harassment or deleterious actions;

(b) the confidentiality of whistleblowers is maintained unless explicitly waived by them;

(c) adequate mechanisms are made available for disclosures to be made, such as helplines and online forms;

(d) a whistleblower who has been retaliated against has the right to a fair
hearing before an impartial forum and shall be fully compensated; those who commit retaliation shall be duly sanctioned;

(e) disclosures are properly investigated and corrective action taken (if appropriate), and that whistleblowers have the option to participate in these procedures;

(f) managers must prove that any actions taken against a whistleblower were motivated by reasons other than the whistleblowing;

(g) inaccurate disclosures, if made in good faith, are protected; disclosures shown to be made in bad faith are not protected;

(h) management and staff should be adequately trained in whistleblower rights, policies and procedures;

(i) whistleblower policies should be monitored and evaluated at regular intervals by independent bodies;

(j) external whistleblowing to elected officials, NGOs, the media and other appropriate parties is protected if internal channels do not function or do not exist;

Amendment 768
Pier Antonio Panzeri
Proposal for a directive
Article 30 a (new)

Text proposed by the Commission

Amendment

Article 30a
Combating corruption and preventing conflicts of interest

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

The measures adopted shall establish and apply a comprehensive, actionable indicator and monitoring systems to prevent, detect and eliminate report instances of concessions fraud, corruption, conflict of interest, and other serious irregularities. With regard to conflicts of interest, they shall allow for the exclusion of a tenderer or candidate from the procedure only where the conflict of interests cannot be effectively remedied by other means.

Amendment 769
Heide Rühle

Proposal for a directive
Article 31

Text proposed by the Commission

Amendment

Article 31 deleted

[...]
Article 31  

[...]  

Amendment 771  
Malcolm Harbour, Edvard Kožušník  
Proposal for a directive  
Article 32 – paragraph 1 – subparagraph 1  

Text proposed by the Commission

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

Amendment

Technical specifications and/or functional requirement shall be set out in the concession documents and shall comply with the principle of equal access of economic operators to the concession award procedure and shall not have the effect of creating unjustified obstacles to the opening up of concessions to competition. 

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

Or. en
Justification

The original draft proposal simply replicates the technical specifications provisions in the main directive, which is not really wholly appropriate to concessions. The rapporteur suggests a lighter reference to technical specifications in a new Article 38b, but this would probably better remain in Art 32. It would not be advisable to remove all references to technical specifications, as this could encourage protectionist approaches. This builds on the rapporteur’s own proposal.

Amendment 772
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 32 – paragraph 1 – subparagraph 2

Text proposed by the Commission

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (14) of Article 2.

Amendment

deleted

Or. en

Justification

Deletion to be read in conjunction with the Amendment replacing the text of Article 32.

Amendment 773
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 32 – paragraph 1 – subparagraph 3

Text proposed by the Commission

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

Amendment

deleted

Or. en
Amendment 774
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 32 – paragraph 1 – subparagraph 4

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

Amendment
deleted

Or. en

Justification
Deletion to be read in conjunction with the Amendment replacing the text of Article 32.

Amendment 775
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 32 – paragraph 1 – subparagraph 5

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

Amendment
deleted

Or. en

Justification
Deletion to be read in conjunction with the Amendment replacing the text of Article 32.
Proposal for a directive
Article 32 – paragraph 2

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

Amendment 776
Malcolm Harbour, Edvard Kožušnik

Proposal for a directive
Article 32 – paragraph 3

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

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

(b) by reference to technical specifications defined in Annex VIII and, in order of preference, to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or - when those do not exist - national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words ‘or equivalent’;

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

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

Or. en

Justification

Deletion to be read in conjunction with the Amendment replacing the text of Article 32.

Amendment 778
Evelyne Gebhardt

Proposal for a directive
Article 32 – paragraph 3 a (new)
3a. Account shall be taken of social considerations relating to the external social costs directly linked to the life cycle, such as the impact of production on the surrounding environment and adjacent communities; social conditions and employment rules governing health and safety at the workplace, social security and working conditions, as laid down in EU and national laws, regulations or administrative provisions, arbitration rulings, collective agreements and contracts and international labour law provisions which apply in the place where the work, service or supply is performed; these obligations shall also apply in cross-border situations, where workers from one Member State provide services in another Member State.

Or. de

Justification

I fully support Mr Juvin’s proposal to delete the provisions on technical specifications. Should that proposal not secure a majority, this amendment might be an alternative.

Amendment 779
Malcolm Harbour, Edvard Kožušník
Proposal for a directive
Article 32 – paragraph 4

Text proposed by the Commission

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

**Justification**

Deletion to be read in conjunction with the Amendment replacing the text of Article 32.

**Amendment 780**
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 32 – paragraph 5

*Text proposed by the Commission*

5. Where a contracting authority or contracting entity uses the option of referring to the specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the grounds that the works, supplies and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in its tender by whatever appropriate means including the means of proof referred to in Article 33 that the solutions it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

**Amendment 781**
Malcolm Harbour, Edvard Kožušník

Deletion to be read in conjunction with the Amendment replacing the text of Article 32.
Proposal for a directive  
Article 32 – paragraph 6 – subparagraph 1

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

Amendment
deleted

Or. en

Justification
Deletion to be read in conjunction with the Amendment replacing the text of Article 32.

Amendment 782
Malcolm Harbour, Edvard Kožušník

Proposal for a directive  
Article 32 – paragraph 6 – subparagraph 2

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

Amendment
deleted
Justification

Deletion to be read in conjunction with the Amendment replacing the text of Article 32.

Amendment 783
Heide Rühle

Proposal for a directive
Article 33

Text proposed by the Commission Amendment

Article 33 deleted

Test reports, certification and other means of proof

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

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

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

3. Recognised bodies, within the meaning of this Article, are test and calibration laboratories and any certification and inspection bodies accredited in accordance with Regulation (EC) No
4. Member States shall make available to other Member States, upon request, any information related to the evidence and documents produced to prove compliance with the technical requirements referred to in Article 32 and this Article. The competent authorities of the Member State of establishment shall provide this information in accordance with provisions on governance as referred to in Article 88 of (Directive replacing Directive 2004/18/EC).

Amendment 784
Heide Rühle

Proposal for a directive
Article 34

Text proposed by the Commission Amendment

Article 34 deleted

General principles

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

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

(b) the tender comes from a tenderer who
(i) is not excluded from participating in the award procedure in accordance with paragraphs 4 to 8 of Article 36 and
(ii) meets the selection criteria set out by the contracting authority or contracting
entity in accordance with paragraphs 1 to 3 of Article 36.

Or. en

Amendment 785
Pier Antonio Panzeri

Proposal for a directive
Article 34 – paragraph 1 – point b – point ii a (new)

Text proposed by the Commission Amendment

(iiia) meets the applicable terms and conditions of employment, including environmental, health and safety, social and labour law, rules and standards, defined by Union and national legislation and collective agreements, which apply where the provision of works, services and supplies takes place.

Or. en

Amendment 786
Heide Rühle

Proposal for a directive
Article 35

Text proposed by the Commission Amendment

Article 35 deleted

[...]

Or. en

Justification

Far too detailed and increases therefore the likelihood of errors in the award of concession contracts, basic rules on equal treatment and non-discrimination, transparency and proportionality are sufficient and already included in Article 7 of the directive.
Proposal for a directive
Article 35 – paragraph 5

Text proposed by the Commission

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

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

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

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

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

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

Amendment 787
Andreas Schwab, Hans-Peter Mayer
traceability of the negotiations.

Or. de

Justification

All procedures should have equal status.

Amendment 788
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Article 35 – paragraph 7

Text proposed by the Commission

Amendment

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

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

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

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

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

Or. de
Justification

This amendment seeks to simplify the rules on the award of concession contracts. What is more, the concession award decision is published anyway, so that there is no need for an additional requirement to inform tenderers.

Amendment 789
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Article 35 – paragraph 8

Text proposed by the Commission

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

Or. de

Justification

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

Amendment 790
Pier Antonio Panzeri

Proposal for a directive
Article 36 – title

Text proposed by the Commission

Selection of and qualitative assessment of candidates

Amendment

Selection of and qualitative assessment of candidates and tenders and grounds for exclusion

Or. en
Amendment 791  
Philippe Juvin

Proposal for a directive  
Article 36 – title

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selection of and qualitative assessment of candidates</td>
<td>Selection and qualitative assessment of candidates and tenderers and grounds for exclusion</td>
</tr>
</tbody>
</table>

Or. fr

Justification

Clarification of Amendment 169 of the Rapporteur.

Amendment 792  
Philippe Juvin

Proposal for a directive  
Article 36 – paragraph -1 (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>-1. The grantor shall provide:</td>
<td></td>
</tr>
<tr>
<td>(a) in the concession notice, a description of the concession and of the conditions of participation;</td>
<td></td>
</tr>
<tr>
<td>(b) in the concession notice, in the invitation to submit a tender or in the concession documents, a description of the award criteria.</td>
<td></td>
</tr>
</tbody>
</table>

Or. fr

Justification

Clarification of Amendment 169 of the Rapporteur. The description of the concession and of the conditions of participation must appear in the concession notice, which is mandatory in order to ensure compliance with the principles of transparency, non-discrimination and equal treatment of candidates and tenderers.
Amendment 793
Heide Rühle

Proposal for a directive
Article 36 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission
Contracting authorities shall specify, in the concession notice the conditions for participation relating to:

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

Or. en

Amendment 794
Josef Weidenholzer

Proposal for a directive
Article 36 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission
Contracting authorities shall specify, in the concession notice the conditions for participation relating to:

Amendment
Contracting authorities shall specify, in the concession notice the conditions for participation in particular relating to:

Or. de

Amendment 795
Heide Rühle

Proposal for a directive
Article 36 – paragraph 1 – subparagraph 1 – point a
(a) suitability to pursue the professional activity; deleted

Amendment 796
Heide Rühle
Proposal for a directive
Article 36 – paragraph 1 – subparagraph 1 – point b

(b) economic and financial standing; deleted

Amendment 797
Heide Rühle
Proposal for a directive
Article 36 – paragraph 1 – subparagraph 1 – point c

(c) technical and professional ability. deleted

Amendment 798
Heide Rühle
Proposal for a directive
Article 36 – paragraph 1 – subparagraph 2

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

Amendment 799
Anja Weisgerber, Sabine Verheyen

Proposal for a directive
Article 36 – paragraph 1 – subparagraph 2

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

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

Justification
The word ‘strictly’ is superfluous here, as in this context the term ‘proportionate’ cannot be qualified in any meaningful way.

Amendment 800
Josef Weidenholzer

Proposal for a directive
Article 36 – paragraph 1 – subparagraph 2
Text proposed by the Commission

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

Amendment

Contracting authorities shall limit any conditions for participation to those that are appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the commercial and technical abilities to perform the concession to be awarded.

Or. de

Amendment 801
Heide Rühle
Proposal for a directive
Article 36 – paragraph 1 – subparagraph 3

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 802
Josef Weidenholzer
Proposal for a directive
Article 36 – paragraph 1 – subparagraph 3
Contracting authorities and contracting entities shall also indicate in the concession notice the reference or references to be submitted as proof of the economic operator's capacities. The requirements in respect of those references shall be non-discriminatory and proportionate to the subject-matter of the concession.

Amendment

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

Amendment 803
Pier Antonio Panzeri

Proposal for a directive
Article 36 – paragraph 1 a (new)

Text proposed by the Commission

1a. The grantor shall include in the concession notice, in the invitation to submit tenders or in the concession documents a description of the concession, the conditions for participation and the award criteria.

The grantor shall verify the conditions for participation relating to:

(a) suitability to pursue the professional activity;

(b) economic and financial standing;

(c) technical and professional ability;

(d) environmental, health and safety, social and labour law, rules and standards, defined by Union and national legislation and collective agreements, which apply where the provision of works, services and supplies takes place.

The professional and technical ability and financial standing of candidates or tenderers and the reference or references to be submitted as proof in accordance
with the requirements specified in the concession notice. Those conditions shall both related to and proportionate to the subject-matter of the contract, shall be non-discriminatory and may be accompanied by minimum requirements, wherever necessary.

Amendment 804
Anja Weisgerber, Sabine Verheyen

Proposal for a directive
Article 36 – paragraph 2

Text proposed by the Commission

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

Amendment

deleted

Justification

Relations between the concessionaire and any subcontractors should be governed by the civil law of the Member State concerned, not by EU law.
Amendment 805
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Article 36 – paragraph 2

Text proposed by the Commission

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

Amendment

deleted

Or. de

Justification

This amendment seeks to simplify the rules on the award of concession contracts. What is more, provisions on liability should be incorporated into civil law, not procurement law.

Amendment 806
Heide Rühle

Proposal for a directive
Article 36 – paragraph 2

Text proposed by the Commission

2. With regard to the criteria referred to in paragraph 1, an economic operator may, where appropriate and for a particular concession, rely on the capacities of other entities, regardless of the legal nature of its

Amendment

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

Or. en

Justification

The proposal of the rapporteur is by far better.

Amendment 807
Josef Weidenholzer

Proposal for a directive
Article 36 – paragraph 2

Text proposed by the Commission

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

Amendment

2. If subcontracting is employed, the economic operator shall prove to the contracting authority or the contracting entity that it will have at its disposal, throughout the period of the concession, the necessary resources, by producing an undertaking by those entities to that effect. The legal requirements laid down in paragraphs 5 to 7 of this article must also be met by the subcontractors. The economic operator shall certify that they are not covered by any of the exclusion criteria. With regard to economic and financial standing, the economic operator shall be liable for all its subcontractors, irrespective of the legal relationship between it and the undertakings concerned.
Amendment 808
Heide Rühle

Proposal for a directive
Article 36 – paragraph 3

Text proposed by the Commission

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

Amendment 809
Philippe Juvin

Proposal for a directive
Article 36 – paragraph 3 a (new)

Text proposed by the Commission

3a. The grantor may limit the number of candidates or tenderers to an appropriate level, on condition that this is done in a transparent manner and on the basis of objective criteria. The number of candidates or tenderers invited must be sufficient to ensure genuine competition.

Justification

Clarification of Amendment 173 of the Rapporteur with a view to ensuring genuine competition.
Proposal for a directive
Article 36 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. In accordance with Article 38a, the grantor may hold negotiations with candidates and tenderers. It shall provide for appropriate recording of the main stages of the procedure using the means it judges appropriate, subject to compliance with Article 24(1) of this Directive.

Or. fr

Justification

In return for giving contracting authorities and entities more flexibility, there must be respect for the principle of transparency. The aim of the grantor recording the main stages in the procedure is to prevent arbitrary decision-making.

Amendment 811
Heide Rühle

Proposal for a directive
Article 36 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 812
Heide Rühle

Proposal for a directive
Article 36 – paragraph 4 – subparagraph 2
Text proposed by the Commission

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

Amendment 813
Heide Rühle

Proposal for a directive
Article 36 – paragraph 5 – subparagraph 1

Text proposed by the Commission

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

(a) participation in a criminal organisation, as defined in Article 2(1) of Council Framework Decision 2008/841/JHA³⁰;

(b) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and Article 2 of Council Framework Decision 2003/568/JHA³¹ as well as corruption as defined in the national law of the contracting authority or the economic operator;

(c) fraud within the meaning of Article 1 of the Convention on the protection of the financial interests of the European
Communities\textsuperscript{32} ;

(d) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Framework Decision 2002/475/JHA\textsuperscript{33} respectively, or inciting, aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;

(e) money laundering, as defined in Article 1 of Council Directive 91/308/EEC\textsuperscript{34}.

Amendment 814
Andreas Schwab

Proposal for a directive
Article 36 – paragraph 5 – subparagraph 1 – introductory part

\begin{tabular}{ll}
\textbf{Text proposed by the Commission} & \textbf{Amendment} \\
Any candidate or tenderer that has been the subject of a conviction by a final judgment for one of the reasons listed below shall be excluded from participation in a concession: & Any candidate or tenderer that has been the subject of a conviction by a final judgment for one of the reasons listed \textit{in Article 55(1) of the public procurement directive [previously Directive 2004/18/EC of 31 March 2004], applied mutatis mutandis}, shall be excluded from participation in a concession:
\end{tabular}

Or. de

\textbf{Justification}

This amendment seeks to simplify the rules on the award of concession contracts and establish consistency with the provisions of the public procurement directive.

Amendment 815
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Article 36 – paragraph 5 – subparagraph 1 – point a
Text proposed by the Commission

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

Justification

This amendment seeks to simplify the rules on the award of concession contracts and establish consistency with the provisions of the public procurement directive.

Amendment 816
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Article 36 – paragraph 5 – subparagraph 1 – point b

Text proposed by the Commission

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

Justification

This amendment seeks to simplify the rules on the award of concession contracts and establish consistency with the provisions of the public procurement directive.

Amendment 817
Andreas Schwab, Hans-Peter Mayer
Proposal for a directive  
Article 36 – paragraph 5 – subparagraph 1 – point c

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>c) fraud within the meaning of Article 1 of the Convention on the protection of the financial interests of the European Communities;</td>
<td>deleted</td>
</tr>
</tbody>
</table>

Justification

This amendment seeks to simplify the rules on the award of concession contracts and establish consistency with the provisions of the public procurement directive.

Amendment 818
Josef Weidenholzer

Proposal for a directive  
Article 36 – paragraph 5 – subparagraph 1 – point c

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>c) fraud within the meaning of Article 1 of the Convention on the protection of the financial interests of the European Communities;</td>
<td>c) fraud within the meaning of Article 1 of the Convention on the protection of the financial interests of the European Communities and fraud within the meaning of national law;</td>
</tr>
</tbody>
</table>

Amendment 819
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive  
Article 36 – paragraph 5 – subparagraph 1 – point d

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>d) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Framework Decision 2002/475/JHA respectively, or inciting,</td>
<td>deleted</td>
</tr>
</tbody>
</table>
aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;

Justification

This amendment seeks to simplify the rules on the award of concession contracts and establish consistency with the provisions of the public procurement directive.

Amendment 820
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Article 36 – paragraph 5 – subparagraph 1 – point e

Text proposed by the Commission

\[ e) \text{ money laundering, as defined in Article 1 of Council Directive 91/308/EEC.} \]

Amendment
deleted

Or. de

Justification

This amendment seeks to simplify the rules on the award of concession contracts and establish consistency with the provisions of the public procurement directive.

Amendment 821
Pier Antonio Panzeri

Proposal for a directive
Article 36 – paragraph 5 – subparagraph 1 – point e a (new)

Text proposed by the Commission

\[ (ea) \text{ participation in exploitation of human trafficking and child labour covered by Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings} \]

Amendment

Or. de
and protecting its victims

Amendment 822
Heide Rühle

Proposal for a directive
Article 36 – paragraph 5 – subparagraph 2

Text proposed by the Commission

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

Amendment
deleted

Or. en

Amendment 823
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Article 36 – paragraph 5 – subparagraph 2

Text proposed by the Commission

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

Amendment
deleted

Or. de
Justification

This amendment seeks to simplify the rules on the award of concession contracts and establish consistency with the provisions of the public procurement directive.

Amendment 824
Heide Rühle

Proposal for a directive
Article 36 – paragraph 6

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>6. Any economic operator shall be excluded from participation in a concession where the contracting authority or contracting entity is aware of a decision having the force of res judicata establishing that it has not fulfilled obligations relating to the payment of taxes or social security contributions in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority or entity.</td>
<td>deleted</td>
</tr>
</tbody>
</table>

Amendment 825
Andreas Schwab

Proposal for a directive
Article 36 – paragraph 6

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>6. Any economic operator shall be excluded from participation in a concession where the contracting authority or contracting entity is aware of a decision having the force of res judicata establishing that it has not fulfilled obligations relating to the payment of taxes or social security contributions in accordance with the legal provisions of</td>
<td>6. Any economic operator shall be excluded from participation in a concession on the basis of the application mutatis mutandis of Article 55(2) of the public procurement directive [previously Directive 2004/18/EC of 31 March 2004].</td>
</tr>
</tbody>
</table>
the country in which it is established or with those of the Member State of the contracting authority or entity.

Justification

This amendment seeks to simplify the rules on the award of concession contracts and establish consistency with the provisions of the public procurement directive.

Amendment 826
Anja Weisgerber, Sabine Verheyen

Proposal for a directive
Article 36 – paragraph 6

Text proposed by the Commission  Amendment

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

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

Justification

Linguistic clarification.

Amendment 827
Mikael Gustafsson, Cornelis de Jong

Proposal for a directive
Article 36 – paragraph 6
6. Any economic operator shall be excluded from participation in a concession where the contracting authority or contracting entity is aware of a decision having the force of res judicata establishing that it has not fulfilled obligations relating to the payment of taxes or social security contributions in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority or entity.

Amendment 828
Josef Weidenholzer, Jutta Steinruck, Evelyn Regner

Proposal for a directive
Article 36 – paragraph 6

Text proposed by the Commission  Amendment

6. Any economic operator shall be excluded from participation in a concession where the contracting authority or contracting entity is aware of a decision having the force of res judicata or of a decision by a public authority with legal effect establishing that it has not fulfilled obligations relating to the payment of taxes or social security contributions or any other obligation relating to social and employment conditions, such as health and safety at workplace, social security and working conditions as set out by Union and national laws, regulations or administrative provisions, arbitration award, collective agreement and contracts, and international labour law provisions listed in Annex XI, that apply in the place where the work, service or supply is performed; these obligations shall also apply in cross-border situations, where workers from one Member State provide services in another Member State or where the competent authorities are aware of documented and proven infringements.

Or. en
contributions in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority or entity. of taxes or social security contributions in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority or entity or that it has been found guilty of repeated breaches of labour law. Repeated breaches of labour law shall be taken to mean at least five labour court judgments against the economic operator concerned.

Amendment 829
Cristian Silviu Buşoi

Proposal for a directive
Article 36 – paragraph 6

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

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

Justification
In some Member States such decisions are taken by administrative authorities and can be further subject to judicial review.

Amendment 830
Bernadette Vergnaud
Proposal for a directive
Article 36 – paragraph 6

Text proposed by the Commission

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

Amendment

6. A contracting authority or entity may decide to exclude an economic operator from participation in a concession where it is aware of a decision having the force of res judicata establishing that the economic operator has not fulfilled obligations relating to the payment of taxes or social security contributions or any other obligation relating to social and employment conditions, such as health and safety at work, social security and working conditions, as set out in Union and national legislation, including collective agreements applicable in the place where the work or service is performed.

Or. fr

Justification

Provision should be made for the exclusion of an economic operator for failing to comply not only with tax obligations but also with social obligations, and the grantor must retain the responsibility for deciding on any such exclusion.

Amendment 831
Heide Rühle

Proposal for a directive
Article 36 – paragraph 7 – subparagraph 1

Text proposed by the Commission

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

(a) where it is aware of any other serious violation of provisions of European Union

Amendment

deleted
or of national law aimed at the protection of public interests compatible with the Treaty;

(b) where the economic operator is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it has entered into an arrangement with creditors, where it has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;

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

Amendment 832
Josef Weidenholzer

Proposal for a directive
Article 36 – paragraph 7 – subparagraph 1 – introductory part

Text proposed by the Commission Amendment

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

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

Amendment 833
Mikael Gustafsson, Cornelis de Jong

Proposal for a directive
Article 36 – paragraph 7 – subparagraph 1 – introductory part
Member States may provide that contracting authorities or contracting entities exclude from participation in a concession award any economic operator if one of the following conditions is fulfilled:

### Amendment 834
Cristian Silviu Bușoi

**Proposal for a directive**
**Article 36 – paragraph 7 – subparagraph 1 – point a**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) where it is aware of any other serious violation of provisions of European Union or of national law aimed at the protection of public interests compatible with the Treaty;</td>
<td>(a) where it is aware of any serious violation of provisions of European Union or of national law aimed at the protection of public interests compatible with the Treaty, provided that the violation has been established by a court;</td>
</tr>
</tbody>
</table>

**Justification**

Clarification of the circumstances in which such an exclusion can be made in order to ensure proportionality and free access to concession contracts.

### Amendment 835
Josef Weidenholzer

**Proposal for a directive**
**Article 36 – paragraph 7 – subparagraph 1 – point a**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) where it is aware of any other serious violation of provisions of European Union or of national law aimed at the protection of public interests compatible with the</td>
<td>(a) where it is aware of any other violations of provisions of European Union or of national law aimed at the protection of public interests compatible with the</td>
</tr>
</tbody>
</table>
Treaty; these shall include, in particular, violations of social, labour and environmental law;

Or. de

Amendment 836
Cristian Silviu Buşoi

Proposal for a directive
Article 36 – paragraph 7 – subparagraph 1 – point c

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

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

Or. en

Justification
It should be possible to exclude an operator also where the contracting authority or contracting entity is aware of such persistent deficiencies with another contracting authority or contracting entity.

Amendment 837
Pier Antonio Panzeri

Proposal for a directive
Article 36 – paragraph 7 – subparagraph 1 – point c a (new)

Text proposed by the Commission
(ca) where it is aware of any serious violation of environmental, health and safety, social and labour law, rules and standards, defined by Union and national legislation and collective agreements, which apply where the provision of works,
services and supplies takes place.

Amendment 838
Mikael Gustafsson, Cornelis de Jong

Proposal for a directive
Article 36 – paragraph 7 – subparagraph 1 – point c a (new)

Text proposed by the Commission

Or. en

Amendment

(ca) Breaches of social security provisions, employment, tax or environmental law.

Or. en

Amendment 839
Philippe Juvin

Proposal for a directive
Article 36 – paragraph 7 – subparagraph 1 – point c a (new)

Text proposed by the Commission

Or. fr

Amendment

(ca) the economic operator or its parent company are established in a third country which, in the award of concession contracts, applies restrictive measures against economic operators established in the European Union, where such measures lead to serious and persistent discrimination against economic operators established in the European Union.

Or. fr

Justification

Application of the reciprocity principle in the context of the procedure for awarding concession contracts. An economic operator taking part in a concession award procedure in an EU Member State may be excluded from the procedure if it is established in a third
country which applies measures to keep its market closed to European economic operators as far as the award of concession contracts is concerned.

Amendment 840
Heide Rühle

Proposal for a directive
Article 36 – paragraph 7 – subparagraph 2

Text proposed by the Commission

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

Amendment 841
Heide Rühle

Proposal for a directive
Article 36 – paragraph 8

Text proposed by the Commission

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

Or. en
Amendment 842
Andreas Schwab

Proposal for a directive
Article 36 – paragraph 8

Text proposed by the Commission

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

Amendment

8. Any candidate or tenderer that is in one of the situations referred to in paragraphs 5 to 7 may provide the contracting authority or contracting entity, on the basis of the application mutatis mutandis of the public procurement directive [previously Directive 2004/18/EC of 31 March 2004], with evidence demonstrating its reliability despite the existence of the relevant ground for exclusion.

Or. de

Justification

This amendment seeks to simplify the rules on the award of concession contracts and establish consistency with the provisions of the public procurement directive.

Amendment 843
Josef Weidenholzer

Proposal for a directive
Article 36 – paragraph 8

Text proposed by the Commission

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

Amendment

8. If particularly relevant grounds exist, any candidate, tenderer or subcontractor that is in the situation referred to in paragraph 7 may provide the contracting authority with evidence demonstrating its reliability despite the existence of the relevant ground for exclusion. A particularly relevant ground shall be, for example, a judgment handed down many years previously.
Amendment 844
Robert Rochefort, Bernadette Vergnaud

Proposal for a directive
Article 36 – paragraph 8

Text proposed by the Commission

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

Amendment

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

Amendment 845
Heide Rühlle

Proposal for a directive
Article 36 – paragraph 9

Text proposed by the Commission

9. Member States shall specify the implementing conditions for this article. They shall make available to other Member States, upon request, any information related to the exclusion grounds listed in this Article. The competent authorities of the Member State of establishment shall provide this information in accordance with the provisions of Article 88 of Directive [replacing Directive 2004/18/EC].

Amendment

deleted

Or. de
Or. fr
Or. en
Amendment 846  
Josef Weidenholzer, Evelyn Regner, Jutta Steinruck  
Proposal for a directive  
Article 36 a (new)  

Text proposed by the Commission

Article 36a

Conditions for performance of contracts
1. The contracting authorities or entities shall apply additional social and environmental criteria for the provision of the works and services, which shall be indicated in the notice of the concession.

2. As regards the wages (including bonuses), working hours and other working conditions of the workers involved in performing the concession, the contracting authorities or entities shall lay down requirements which are no less favourable than the conditions which apply in the same area for the same work in the profession or industry concerned on the basis of:

(a) a collective wage agreement or the outcome of another recognised negotiating procedure concluded by associations of workers and employers to which a substantial proportion of the workers and employers in the profession or industry concerned belong, or

(b) an arbitration ruling (when national law makes provision for this), or

(c) national law.

If in the area in which the work is to be performed the relevant working conditions are not governed in one of the ways referred to above, the conditions to be granted by the contracting authorities and entities must guarantee the workers involved wages (including bonuses), working hours and other working conditions which are no less favourable than the conditions granted by employers who are in the nearest comparable area or
belong to the same profession or industry as the party to the contract and who are in the same circumstances.

Or. de

Amendment 847
Mikael Gustafsson, Cornelis de Jong

Proposal for a directive
Article 36 a (new)

Text proposed by the Commission

Amendment

Article 36a

1. Contracting authorities and contracting entities shall lay down special conditions relating to the performance of a service or works concession and concerning in particular social and environmental considerations, provided that these are indicated in the concession notice.

2. As regards wages (including allowances), hours of work and other conditions of labour for the workers concerned the contracting authorities shall include conditions which ensure to the workers concerned a level of protection which is not less favourable than that established for work of the same character in the trade or industry concerned in the district where the work is carried out by:

a) collective agreement or other recognised machinery of negotiation between organisations of employers and workers representative respectively of substantial proportions of the employers and workers in the trade or industry concerned; or

b) arbitration award (if this is provided by the relevant national law); or

c) national laws or regulations.

Where the conditions of labour referred to
in the preceding subparagraph are not regulated in a manner referred to therein in the district where the work or service is carried out, the conditions for the performance of the contract shall be determined according to such instruments in the nearest appropriate district or to the general level observed in the trade or industry in which the concessionaire is engaged by employers whose general circumstances are similar.

Or. en

Amendment 848
Heide Rühle

Proposal for a directive
Article 37

Text proposed by the Commission  Amendment

Article 37  deleted

Setting time limits

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

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

Or. en
Proposal for a directive
Article 37 – paragraph 1

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

Amendment
1. When fixing the time limits for the submission of applications for the concession and submission of tenders, contracting authorities or contracting entities shall take account in particular of the complexity of the concession and the time required for drawing up tenders, without prejudice to the minimum time limits set out in Article 38.

Proposal for a directive
Article 37 – paragraph 2 a (new)

Text proposed by the Commission
2a. The time limit for submission of applications or for submission of tenders shall be not less than 52 days from, respectively, the date on which the concession notice was sent or the date on which candidates were able to access the invitation to submit a tender.

Amendment
2a. The time limit for submission of applications or for submission of tenders shall be not less than 52 days from, respectively, the date on which the concession notice was sent or the date on which candidates were able to access the invitation to submit a tender.
concessions, which, by their nature, are highly complex. A time limit of 52 days would be more appropriate, allowing competition to be maintained and avoiding incumbent candidates being favoured over newcomers.

Amendment 851
Heide Rühle

Proposal for a directive
Article 38 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Where contracting authorities and contracting entities resort to a concession, the time limit for the submission of applications for the concession shall be not less than 30 days from the date on which the concession notice was sent.

Or. en

Amendment 852
Anja Weisgerber, Sabine Verheyen

Proposal for a directive
Article 38 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. de

Justification

The term ‘calendar days’ is more precise.
Amendment 853
Josef Weidenholzer

Proposal for a directive
Article 38 – paragraph 1

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

Amendment
1. Where contracting authorities and contracting entities resort to a concession, the time limit for the submission of applications for the concession shall be not less than 30 days from the date on which the concession notice was sent.

Or. en

Amendment 854
Heide Rühle

Proposal for a directive
Article 38 – paragraph 2

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

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

Or. en

Amendment 855
Josef Weidenholzer

Proposal for a directive
Article 38 – paragraph 2

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

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

Amendment 856
Mikael Gustafsson, Regina Bastos

Proposal for a directive
Article 38 a (new)

_text proposed by the Commission_

Article 38a

_Award Criteria_

1. The grantor may hold negotiations with candidates and tenderers. Concessions shall be awarded by the grantor on the basis of objective award criteria which comply with the principles set out in Article -26a(2).

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

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

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

Amendment 857
Cristian Silviu Buşoi
Proposal for a directive
Article 38 a (new)

Text proposed by the Commission

Amendment

Article 38a

Functional requirements

1. Functional requirements define the objectives expected of the works or services that are the subject matter of the concession. They shall be set out in the concession documents.

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

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

Justification

New article in view of the deletion of Article 32 by the Rapporteur. The obligations placed on concessionaires should refer to the result to be achieved, not the means. The expression ‘technical and/or functional requirements’ does not take sufficient account of the specific nature of concessions.
Amendment 858  
Bernadette Vergnaud

Proposal for a directive  
Article 38 a (new)

Text proposed by the Commission

Amendment

Article 38a

Award criteria

1. The grantor may hold negotiations with candidates and tenderers. Concessions shall be awarded by the grantor on the basis of objective award criteria complying with the principles referred to in Article 26, subparagraph 2.

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

3. The award criteria may include environmental, social, cohesion or innovation-related criteria. The grantor shall verify whether tenders properly meet the award criteria.

Or. fr

Justification

Taken from the Rapporteur’s new Article 38a, removing the link between the subject matter of the concession and social and environmental criteria, as well as the ranking of the criteria, which could be sources of legal insecurity and are disproportionate to the transparency objective pursued.

Amendment 859  
Pier Antonio Panzeri

Proposal for a directive  
Article 38 a (new)
Article 38a

Technical and/or functional requirements

1. Technical and/or functional requirements shall be set out in the concession documents.

They shall define the characteristics required of a works, service or supply.

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (14) of Article 2.

2. Technical and/or functional requirements shall define the characteristics required of the works and/or services that are the subject matter of the concession.

3. Technical and/or functional requirements shall comply with the principle of equal access of economic operators to the concession award procedure and shall not have the effect of creating unjustified obstacles to the opening up of concessions to competition.

Technical and/or functional requirements shall comply with the environmental characteristics, health and safety, social and labour law, rules and standards, defined by Union and national legislation and collective agreements, which apply where the provision of works, services and supplies takes place.

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

Contracting authorities or contracting entities may require that economic operators provide a certificate issued by recognised body as means of proof of conformity with the technical and/or functional requirements set out in the concessions documents.

Or. en

Amendment 860
Heide Rühle

Proposal for a directive
Article 39

Text proposed by the Commission

Amendment

Article 39 deleted

[...]
Text proposed by the Commission

1. Concessions shall be awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non-discrimination and equal treatment and which ensure that tenders are assessed in conditions of effective competition permitting to identify an overall economic advantage for the contracting authority or the contracting entity.

Amendment

1. Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of transparency, non-discrimination and equal treatment.

Or. de

Amendment 862
Andreas Schwab, Hans-Peter Mayer, Jorgo Chatzimarkakis

Proposal for a directive
Article 39 – paragraph 1

Text proposed by the Commission

1. Concessions shall be awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non-discrimination and equal treatment and which ensure that tenders are assessed in conditions of effective competition permitting to identify an overall economic advantage for the contracting authority or the contracting entity.

Amendment

1. Concessions shall be awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non-discrimination, equal treatment and economic efficiency and which ensure that tenders are assessed in conditions of effective competition permitting to identify an overall economic advantage for the contracting authority or the contracting entity.

Or. de

Amendment 863
Josef Weidenholzer

Proposal for a directive
Article 39 – paragraph 2 – subparagraph 1
The award criteria shall be linked to the subject matter of the concession, and shall not confer an unrestricted freedom of choice on the contracting authority or the contracting entity.

The award criteria shall not confer an unrestricted freedom of choice on the contracting authority or the contracting entity.

Amendment 864
Anja Weisgerber, Sabine Verheyen
Proposal for a directive
Article 39 – paragraph 2 – subparagraph 2

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

Those criteria shall ensure effective competition and shall be accompanied by requirements which allow the information provided by the tenderers to be effectively verified. Contracting authorities and contracting entities shall verify in what they regard as an appropriate manner, whether the information provided by the tenderers meets the award criteria. In so doing they shall comply with the principles of transparency and equal treatment of tenderers.

Justification

Incorporation of the principles laid down by the CJEU in the Wienstrom judgment concerning verification of the proper application of the award criteria by contracting entities.

Amendment 865
Andreas Schwab, Hans-Peter Mayer
4. Member States may provide that contracting authorities and contracting entities shall base the award of concessions on the criterion of the most economically advantageous tender, in compliance with paragraph 2. Those criteria may include, in addition to price or costs, any of the following criteria:

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

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

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

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

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

Amendment 866
Lara Comi

Proposal for a directive
Article 39 – paragraph 4 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. it

Amendment 867
Josef Weidenholzer

Proposal for a directive
Article 39 – paragraph 4 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. de
Amendment 868
Josef Weidenholzer

Proposal for a directive
Article 39 – paragraph 4 – point a

Text proposed by the Commission

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

Amendment

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative character; social and employment policy criteria, for example measures to promote gender equality, the integration into the labour market of particularly disadvantaged groups, in particular young people and apprentices, the long-term unemployed, people with a migration background and people with disabilities, and the provision of guarantees by the tenderer, subcontractors and firms in the supply chain that workers will enjoy excellent working conditions.

Or. de

Amendment 869
Josef Weidenholzer

Proposal for a directive
Article 39 – paragraph 4 – point b

Text proposed by the Commission

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

Amendment

(b) the organisation, qualification and experience of the staff assigned to performing the concession in question and the right of the contracting authority or the contracting entity to make the replacement of the staff concerned contingent on its consent.
organisation and quality;

Amendment 870
Pablo Arias Echeverría

Proposal for a directive
Article 39 – paragraph 4 – point b

Text proposed by the Commission

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

Amendment

b) for service concessions and concessions involving the design of works, the organisation, qualification and experience of the staff assigned to performing the concession in question may be taken into consideration, with the consequence that, following the award of the concession, the concessionaire may not replace such staff with other staff having fewer qualifications or skills than those required and, where replacement takes place, the subsequent consent of the contracting authority or the contracting entity shall be required, which must verify that replacements ensure equivalent organisation and quality;

Amendment 871
Josef Weidenholzer

Proposal for a directive
Article 39 – paragraph 4 – point c

Text proposed by the Commission

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

Amendment

(c) after-sales service and technical assistance, delivery date and delivery period or period of completion; and quality criteria for users;
Amendment 872
Josef Weidenholzer

Proposal for a directive
Article 39 – paragraph 4 – point d

*Text proposed by the Commission*

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

*Amendment*

(d) the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point 14 of paragraph 1 of Article 2, the sustainability of the production process and the employment of fair trade criteria.

(e) external costs, such as environmental costs generated by the long road journeys which must be made in order to provide the service and which can be reduced by the use of an environmentally-friendly mode of transport, such as rail.

Or. de

Amendment 873
Lara Comi

Proposal for a directive
Article 39 – paragraph 4 – point d a (new)

*Text proposed by the Commission*

(da) safety and the technical and financial capacity of the bidder.

*Amendment*

(da) safety and the technical and financial capacity of the bidder.

Or. it

Amendment 874
Josef Weidenholzer
Proposal for a directive
Article 39 – paragraph 4 - point d a (new)

Text proposed by the Commission
(da) price and costs.

Amendment

(da) social considerations relating to the external social costs directly linked to the life cycle, such as the impact of production on the surrounding environment and adjacent communities; Social conditions and employment rules governing health and safety at the workplace, social security and working conditions, as laid down in EU and national laws, regulations or administrative provisions, arbitration rulings, collective agreements, contracts and international labour law provisions which apply in the place where the work, service or supply is performed; these obligations shall also apply in cross-border situations, where workers from one Member State provide services in another Member State.

Or. de

Justification

I fully support Mr Juvin’s proposal to delete the provisions on technical specifications. Should that proposal not secure a majority, this amendment might be an alternative.
Amendment 876
Heide Rühle

Proposal for a directive
Article 40 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 877
Heide Rühle

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

Text proposed by the Commission

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

Amendment

Where contracting authorities assess the costs using a life-cycle costing approach, they shall indicate in the concession award documents the data to be provided by the tenderers and the method which the contracting authority or entity will use to determine the life-cycle costs. The method used for the assessment of those life-cycle costs must fulfil all of the following conditions:

Or. en

Amendment 878
Heide Rühle

Proposal for a directive
Article 40 – paragraph 2 – subparagraph 1 – point a
Text proposed by the Commission

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

Amendment

(a) It is based on objectively verifiable and non-discriminatory criteria;

Or. en

Amendment 879
Heide Rühle

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

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 880
Heide Rühle

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

Text proposed by the Commission

(c) It is accessible to all interested parties.

Amendment

(c) the data required can be provided with reasonable effort by normally diligent economic operators, including operators from third countries.

Or. en

Amendment 881
Heide Rühle

Proposal for a directive
Article 40 – paragraph 2 – subparagraph 2
Contracting authorities and contracting entities shall allow economic operators to apply a different methodology for establishing the life-cycle costs of their offer, provided that they prove that this methodology complies with the requirements set out in points a, b and c and is equivalent to the methodology indicated by the contracting authority or contracting entity.

However in order not to discriminate those tenderers who invest time and money to comply with the methodology indicated by the contracting authority, contracting authorities may ask for a third party certified document as proof for the fulfilment of the equivalence.

Amendment 882
Heide Rühle
Proposal for a directive
Article 40 – paragraph 3

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

A list of such legislative and delegated acts is set out in Annex II. The Commission shall be empowered to adopt delegated acts in accordance with Article 46 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove...
Amendment 883
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Article 40 – paragraph 3

Text proposed by the Commission

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

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

Justification

Provisions which encourage contracting authorities to use life-cycle costs as an award criterion are welcome. However, the legal requirement refers to a future calculation method which has still to be specified and should be rejected at this point, on grounds of unforeseeability.

Amendment 884
Heide Rühle

Proposal for a directive
Article 41
Article 41

Subcontracting

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

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

The relationship between the tenderer and any subcontractors is governed by national contract law, which this directive should not affect. The provision would also give rise to an unclear legal situation, since a subcontractor would become a contractor. The provision could also deprive the contracting authority of the option of withholding a payment in the expectation that the contract will not be properly performed.

Amendment 886
Pier Antonio Panzeri

Proposal for a directive
Article 41 – paragraph 1

Text proposed by the Commission

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

Amendment

1. In the concession documents, the grantor may ask or may be required by a Member State to ask the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors. Member States shall limit the possibility for a tenderer to subcontract out any parts of the works or services to be performed or goods to be delivered to no more than three successive levels of sub-contracting.

Amendment 887
Lara Comi

Proposal for a directive
Article 41 – paragraph 1

Text proposed by the Commission

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

Amendment

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

The list of subcontractors shall be updated during the life of the concession contract to take account of substitutions or changes.

Or. it

Amendment 888
Josef Weidenholzer

Proposal for a directive
Article 41 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Contracting authorities or contracting entities shall call on the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.

Or. de

Amendment 889
Mikael Gustafsson, Cornelis de Jong

Proposal for a directive
Article 41 – paragraph 1

Text proposed by the Commission

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

Amendment

1. In the concession documents, the grantor may ask or may be required by a Member State to ask the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors. The grantor may indicate which parts of the works or services may not be subcontracted. When parts of the works or services are subcontracted, the tenderer shall inform the grantor.
Member States shall limit the possibility for a tenderer to sub-contract out any parts of the works or services to be performed to no more than three successive levels of sub-contracting. Subcontracting may not lead to lower work conditions or environmental standards.

Amendment 890
Marc Tarabella
Proposal for a directive
Article 41 – paragraph 1

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

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

Amendment 891
Pier Antonio Panzeri
Proposal for a directive
Article 41 – paragraph 2

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

Amendment
2. Paragraph 1 shall be without prejudice to the question of the principal economic operator's liability. Member States shall provide for a system of joint and several liability down the sub-contracting chain. They shall ensure that the main contractor and any intermediate...
subcontractor which have violated fundamental rights, health and safety requirements or social and labour rules and standards as laid down in Union and national legislation and in collective agreements which apply in the place where the work, service or supply is performed, may be liable to make the payments due in relation to such violations, such as outstanding remuneration, taxes or social contributions, in addition to or in place of the employing subcontractor or the contractor of which the employer is a direct subcontractor.

Amendment 892
Marc Tarabella

Proposal for a directive
Article 41 – paragraph 2

*Text proposed by the Commission*

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

*Amendment*

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

Member States shall provide for a system of joint and several liability down the subcontracting chain. They shall ensure that the main contractor and any intermediate subcontractors which have violated fundamental rights, health and safety requirements or social and labour rules and standards as laid down in Union and national legislation and in collective agreements which apply in the place where the work, service or supply is performed may be liable to make the payments due in relation to such violations, in addition to or in place of the employing subcontractor or the contractor of which the employer is a direct subcontractor.
Member States may provide for more stringent liability rules under national law.

Amendment 893
Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafal Trzaskowski

Proposal for a directive
Article 41 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States may provide for the grantor to reject a subcontractor proposed by an economic operator in the event of:
(i) the subcontractor failing to meet the conditions for participation in the procedure envisaged for the economic operator performing the contract;
(ii) the subcontractor not having the capacities to perform part of the contract properly.

The conditions for participation in the procedure and the capacities of the subcontractor to perform the contract shall be assessed in proportion to the part of the contract performed, on the basis of the selection criteria laid down in Article 36.

Amendment 894
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Article 42

Text proposed by the Commission

Amendment

Article 42 deleted

[...]

PE497.783v03-00 92/149 AM\916835EN.doc
The directives currently in force contain adequate provisions laying down rules on the conduct of concession award procedures. The provisions of this article impose an unnecessary administrative burden on contracting authorities and serve to make concession award procedures less flexible.

Amendment 895
Lara Comi

Proposal for a directive
Article 42 – title

Text proposed by the Commission  Amendment
Modification of concessions during their term  Modification of concessions awarded after the entry into force of this Directive

Amendment 896
Heide Rühle

Proposal for a directive
Article 42 – paragraph 1

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

Amendment 897
Lara Comi
Proposal for a directive
Article 42 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. it

Amendment 898
Cristian Silviu Buşoi

Proposal for a directive
Article 42 – paragraph 1

Text proposed by the Commission

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

Amendment

1. A concession may be modified during its term by means of a supplementary agreement unless the modifications are substantial. A substantial modification of the terms of a concession during its term shall require a new award procedure in accordance with this Directive, subject to the provisions of paragraph 6.

Or. fr

Justification

The provisions on the modification of a concession by means of a supplementary agreement need to be clarified to allow greater flexibility, in order to take account of the nature of concessions, which are long-term contracts.

Amendment 899
Heide Rühle
Proposal for a directive
Article 42 – paragraph 2

Text proposed by the Commission

2. A modification of a concession during its term shall be considered substantial within the meaning of paragraph 1, where it renders the concession substantially different from the one initially concluded.

Amendment

2. A modification of a concession during its term shall be considered substantial where one of the following conditions is met:

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

(b) the modification changes the economic balance of the concession in favour of the concessionaire or

(c) the modification extends the scope of the concession considerably to encompass supplies, services or works not initially covered.

Or. en

Amendment 900
Cristian Silviu Bușoi

Proposal for a directive
Article 42 – paragraph 2 – introductory part

Text proposed by the Commission

2. A modification of a concession during its term shall be considered substantial within the meaning of paragraph 1, where it renders the concession substantially different from the one initially concluded.

In any case, without prejudice to

Amendment

2. A modification of a concession during its term shall be considered substantial where one of the following conditions is met:
paragraph 3 and 4, a modification shall be considered substantial where one of the following conditions is met:

(-a) the modification changes the nature of the concession;
(-aa) the modification entails the replacement of the concessionaire;

This provision shall not apply in the event of the universal or partial succession into the position of the initial contractor following:

(i) corporate restructuring operations,
(ii) the transfer of capital or assets between undertakings,
(iii) the takeover of the concessionaire following insolvency or pursuant to a contractual clause by another economic operator which fulfils the qualitative selection criteria initially laid down, provided that this does not entail other substantial modifications to the concession and is not aimed at circumventing the application of this Directive.

Justification

Clarification of the notion of ‘substantial modification’.

Amendment 901
Cristian Silviu Buşoi

Proposal for a directive
Article 42 – paragraph 2 – point b

Text proposed by the Commission
(b) the modification changes the economic balance of the concession in favour of the concessionaire or

Amendment
(b) the modification substantially changes the economic balance of the concession, or
Amendment 902
Cristian Silviu Bușoi

Proposal for a directive
Article 42 – paragraph 2 a (new)

Text proposed by the Commission

2a. Provided the overall nature of the concession remains the same, any modification to it shall not be considered substantial where:

(a) the modification has been provided for in the original concession contract in clear, precise and unequivocal review clauses or options which state the scope and nature of possible modifications as well as the conditions under which they may be used;

(b) the value thereof does not exceed the threshold laid down in Article 6 and is below 15% of the updated value of the concession as at the deadline for transposing this Directive.

For the purposes of applying the preceding subparagraph:

(i) where several successive modifications are made, the value shall be assessed on the basis of the updated cumulative value of the successive modifications. For concessions in progress on the final date for transposition of this Directive, the value in question shall be the updated cumulative value of the successive modifications since the final date for transposition of this Directive;

(ii) the value shall be calculated in accordance with the method laid down in Article 6;

(iii) the value shall be expressed in constant money as at the final date for transposition of this Directive or the date of the planned modification, as
This amendment introduces greater flexibility for the modification of concessions.

Amendment 903
Robert Rochefort
Proposal for a directive
Article 42 – paragraph 2 a (new)

Text proposed by the Commission

2a. Provided the overall nature of the concession remains the same, modification of the concession shall not be considered substantial where:

(a) the modification has been provided for in the original concession contract in clear, precise and unequivocal review clauses or options which state the scope and nature of possible modifications as well as the conditions under which they may be used;

(b) the value thereof does not exceed the threshold laid down in Article 6 and is below 10% of the updated value of the original contract.

Where several successive modifications are made, the value shall be assessed on the basis of the updated cumulative value of the successive modifications.

Amendment

Or. fr

Justification

Takes over the Rapporteur’s idea (Amendment 191) with a change to the threshold from 5% to 10% to allow greater flexibility.
Amendment 904
Philippe Juvin, Constance Le Grip

Proposal for a directive
Article 42 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Provided the overall nature of the concession remains the same, modification of the concession shall not be considered substantial where:

(a) the modification has been provided for in the original concession contract in clear, precise and unequivocal review clauses or options which state the scope and nature of possible modifications as well as the conditions under which they may be used; or

(b) the value thereof does not exceed the threshold laid down in Article 6 and is below 5% of the updated value of the original contract.

Where several successive modifications are made, the value shall be assessed on the basis of the updated cumulative value of the successive modifications.

Or. fr

Justification

Clarification of Amendment 191 of the Rapporteur: the conditions laid down in this new paragraph are not cumulative (the word 'or' is added.).

Amendment 905
Heide Rühle

Proposal for a directive
Article 42 – paragraph 3

Text proposed by the Commission

Amendment

3. The replacement of the concessionaire shall be considered a substantial deleted
modification within the meaning of paragraph 1.

However, the first subparagraph shall not apply in the event of universal or partial succession into the position of the initial contractor, following corporate restructuring operations, insolvency or on the basis of a contractual clause of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the concession and is not aimed at circumventing the application of this Directive.

Or. en

Amendment 906
Cristian Silviu Bușoi

Proposal for a directive
Article 42 – paragraph 3

Text proposed by the Commission Amendment

3. The replacement of the concessionaire shall be considered a substantial modification within the meaning of paragraph 1.

However, the first subparagraph shall not apply in the event of universal or partial succession into the position of the initial contractor, following corporate restructuring operations, insolvency or on the basis of a contractual clause of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the concession and is not aimed at circumventing the application of this Directive.

Or. fr
Justification

Text incorporated into paragraph 2.

Amendment 907
Heide Rühle

Proposal for a directive
Article 42 – paragraph 4

Text proposed by the Commission

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 5 and where it is below 5 % of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Amendment

deleted

Or. en

Amendment 908
Philippe Juvin

Proposal for a directive
Article 42 – paragraph 4

Text proposed by the Commission

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 5 and where it is below 5 % of the price of the initial contract, provided that the
modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Justification

Technical amendment (to be read in conjunction with Amendment 191 of the Rapporteur: paragraph 4 of Article 42 incorporated into the new paragraph 2a of Article 42).

Amendment 909
Cristian Silviu Buşoi

Proposal for a directive
Article 42 – paragraph 4

Text proposed by the Commission

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 5 and where it is below 5 % of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Justification

Text covered by paragraph 2a.
Amendment 910
Lara Comi

Proposal for a directive
Article 42 – paragraph 4

*Text proposed by the Commission*

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 5 and where it is below 5% of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

*Amendment*

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 5 **and** where it is below 5% of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Or. it

Amendment 911
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 42 – paragraph 4

*Text proposed by the Commission*

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 5 and where it is below 5% of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

*Amendment*

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 5 and where it is below 20% of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications. An increase in the actual
sums received by the concessionaire from third parties compared to the sums estimated by the contracting authority or entity at the commencement of the procurement process shall not comprise a modification to the contract

Justification

Consistent with the ECR approach in the Main Directive. The permissible default value before a change in a concession contract under Art 42.4 is considered “substantial” should be increased from 5% to at least 20%. Furthermore it is worth making explicit that if a concessionaire is to accept the operating risks, he should keep the upside.

Amendment 912
Heide Rühle

Proposal for a directive
Article 42 – paragraph 5

Text proposed by the Commission Amendment

5. Concession modifications shall not be considered substantial within the meaning of paragraph 1, where they have been provided for in the concession documents in clear, precise and unequivocal review clauses or options. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the concession.

Or. en

Amendment 913
Cristian Silviu Bușoi

Proposal for a directive
Article 42 – paragraph 5
5. Concession modifications shall not be considered substantial within the meaning of paragraph 1, where they have been provided for in the concession documents in clear, precise and unequivocal review clauses or options. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the concession.
Amendment 915
Heide Rühle

Proposal for a directive
Article 42 – paragraph 6 – subparagraph 1 – introductory part

Text proposed by the Commission

By way of derogation from paragraph 1, a substantial modification shall not require a new concession award procedure where the following cumulative conditions are fulfilled:

Amendment

A substantial modification shall not require a new concession award procedure where the modification is limited to an extension of the duration of the concession necessary to maintain or improve the efficiency and performance of the activity within the scope of the directive or where the following cumulative conditions are fulfilled:

Or. en

Amendment 916
Bernadette Vergnaud

Proposal for a directive
Article 42 – paragraph 6 – subparagraph 1 – point a

Text proposed by the Commission

(d) the need for modification has been brought about by circumstances which a diligent contracting authority or entity could not foresee

Amendment

(a) the need for modification has been brought about by circumstances which a diligent contracting authority or entity could not anticipate

Or. fr

Justification

Drafting amendment.

Amendment 917
Heide Rühle
Proposal for a directive
Article 42 – paragraph 6 – subparagraph 1 – point a

Text proposed by the Commission
(d) the need for modification has been brought about by circumstances which a diligent contracting authority or entity could not foresee

Amendment
(a) the need for modification has been brought about by circumstances in particular of a technical and/or financial nature which a diligent grantor could not foresee,

Or. en

Amendment 918
Heide Rühle

Proposal for a directive
Article 42 – paragraph 6 – subparagraph 1 – point b

Text proposed by the Commission
(e) the modification does not alter the overall nature of the concession

Amendment
deleted

Or. en

Amendment 919
Cristian Silviu Buşoi

Proposal for a directive
Article 42 – paragraph 6 – subparagraph 1 – point c

Text proposed by the Commission
(f) in case of concessions awarded by contracting authorities where any increase in price is not higher than 50% of the value of the original concession.

Amendment
(c) the value of the intended modification is not higher than 50% of the updated value of the concession. The value shall be updated in accordance with the provisions of Article 2a.

Or. fr
### Amendment 920
Philippe Juvin, Constance Le Grip

**Proposal for a directive**
**Article 42 – paragraph 6 – subparagraph 1 – point c**

<table>
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<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>(f)</em> in case of concessions awarded by contracting authorities where <em>any increase in price is not higher than 50% of the value of the original concession.</em></td>
<td><em>(c)</em> in case of concessions awarded by contracting authorities where the value of the intended modification does not exceed 50% of the updated initial value of the concession;</td>
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</table>

**Justification**

*Technical change to Amendment 194 of the Rapporteur (by mistake, the original version of the amendment was not negative).*

### Amendment 921
Heide Rühle

**Proposal for a directive**
**Article 42 – paragraph 6 – subparagraph 1 – point f**

<table>
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<th>Amendment</th>
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<tbody>
<tr>
<td><em>(f)</em> in case of concessions awarded by contracting authorities where <em>any increase in price is not higher than 50% of the value of the original concession.</em></td>
<td><em>(f)</em> or the value of the intended modification is higher than 50% of the updated initial value of the concession.</td>
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**Justification**

*Or. en*

### Amendment 922
Heide Rühle

**Proposal for a directive**
**Article 42 – paragraph 6 – subparagraph 2**

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<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<td><em>Contracting authorities or contracting</em></td>
<td><em>The grantor</em> shall publish in the Official</td>
</tr>
</tbody>
</table>
entities shall publish in the Official Journal of the European Union a notice on such modifications. Such notices shall contain the information set out in Annex VII and be published in accordance with the provisions of Article 28.

Amendment 923
Heide Rühle

Proposal for a directive
Article 42 – paragraph 7

Text proposed by the Commission

7. Contracting authorities and contracting entities shall not have recourse to modifications of the concession in the following cases:

(a) where the modification would aim at remedying deficiencies in the performance of the concessionaire or the consequences thereof, which can be remedied through the enforcement of contractual obligations;

(b) where the modification would aim at compensating risks of price increases that are the result of price fluctuations that could substantially impact the performance of a contract and that have been hedged by the concessionaire.

Amendment 924
Matteo Salvini, Claudio Morganti, Lorenzo Fontana

Proposal for a directive
Article 42 – paragraph 7 – point b a (new)
Text proposed by the Commission

(ba) where the modification is limited to an extension of the duration of the concession necessary to allow the concessionaire to recoup further investments made in order to maintain or improve efficiency and performance of the activity as established in the scope of the concession. This kind of investments shall not be considered substantial modifications of a concession for the purposes of paragraph 2 above.

Or. en

Justification

Especially for concessions implying the use of facilities for the provision of services, often the concessionaire continues to make investments (not foreseen at the beginning of the concession) to update the facility to the evolution of the market and of the demand of its clients. If these investments were not made, the overall efficiency of the concessionaire would be undermined, against the general interest.

Amendment 925

Lara Comi

Proposal for a directive

Article 43 – paragraph 1 – point c

Text proposed by the Commission

(c) the Court of Justice of the European Union finds, in a procedure pursuant to Article 258 of the Treaty, that a Member State has failed to fulfil its obligations under the Treaties by the fact that a contracting authority or entity belonging to that Member State has awarded the concession in question without complying with its obligations under the Treaties and this Directive.

Amendment

deleted

Or. it
Amendment 926
Matteo Salvini, Claudio Morganti, Lorenzo Fontana

Proposal for a directive
Article 43 – paragraph 1 a (new)

Text proposed by the Commission

Member States shall further ensure that, when a concession expires, and the services carried out by the concessionaire must continue to be supplied, the following conditions are fulfilled:

(a) in any case, the existing concessionaire shall be entitled to take part in the selection procedure for the award of the new concession;

(b) in case the concession is awarded to a new concessionaire, all opportune measures are adopted in order to secure that the service continues without interruption during the period in which the existing concessionaire is replaced by the new one;

(c) the new concessionaire, or the contracting authority, is obliged to indemnify the existing concessionaire for those investments that have not been recouped yet at the time of expiration of the concession. In appropriate cases, and provided that this is done through objective, transparent and foreseeable criteria, Member States may further establish that indemnification can also include reference to the goodwill that the existing concessionaire has developed during the exploitation of the concession and that will be inherited by the newcomer.

Amendment

Or. en

Justification

The proposed directive establishes the principle of selective procedures to tender for the
market of a concession, but says nothing in respect of the potential negative effects of the replacement of a new entrant in lieu of the previous incumbent concessionaire. When the existing concessionaire has actually developed a market which was not existing (e.g. the development of an infrastructure which has attracted many clients), it seems appropriate to consider the possibility to acknowledge an indemnification for intangible goodwill that has been created and would be otherwise inherited for free by the newcomer.

Amendment 927
Heide Rühle

Proposal for a directive
Title 5

Text proposed by the Commission Amendment

Title V deleted

Amendments of Directives 89/665/EEC and 98/13/EEC

[...]

Or. en

Justification

Unfortunately the Commission has not reviewed the Remedies Directives 89/665/EC and 92/13/EC as the European Parliament has asked for. As they stand they will create an unproportional high bureaucratic burden for service concessions who are by nature flexible instruments.

Amendment 928
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Article 44

Text proposed by the Commission Amendment

Article 44 deleted

[...]

Or. de
Application of the Remedies Directives 89/665/EEC and 92/13/EC would not be proportionate for contracts as complex as concessions. The guidelines for the Member States should be based on the case-law of the Court of Justice, which, in its judgment in case C-324/98, obliged the Member States only to allow the impartiality of procurement procedures to be reviewed.

Amendment 929
Peter Simon

Proposal for a directive
Article 44

Text proposed by the Commission

Article 44 deleted

[...]
Proposal for a directive
Article 44 a (new)

Text proposed by the Commission

Amendment

Article 44a

Member States shall ensure that suitable procedures are available to verify the impartiality of the award decision.

Or. de

Justification

In its judgment in Case C-324/98 the CJEU found that the Member States should be required only to allow a review of the impartiality of procurement procedures.

Amendment 932
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Article 45

Text proposed by the Commission

Amendment

Article 45 deleted

[...]

Or. de

Justification

Application of the Remedies Directives 89/665/EEC and 92/13/EC would not be proportionate for contracts as complex as concessions. The guidelines for the Member States should be based on the case-law of the Court of Justice, which, in its judgment in case C-324/98, obliged the Member States only to allow the impartiality of procurement procedures to be reviewed.

Amendment 933
Peter Simon

Proposal for a directive
Article 45
Proposal for a directive
Article 45

Text proposed by the Commission

Article 45  deleted

[...]

Or. de

Amendment 934
Mikael Gustafsson

Proposal for a directive
Article 45

Text proposed by the Commission

Article 45  deleted

[...]

Or. en

Amendment 935
Heide Rühle

Proposal for a directive
Article 46 – paragraph 2

Text proposed by the Commission

2. The delegation of power referred to in
   Articles 4 (3), 21 (3), 23 (2), 25 (3), 40 (3) and 52 (2) shall be conferred on the
   Commission for an indeterminate period of time from the [date of entry into force of
   the present Directive].

2. The power to adopt delegated acts referred to in Article 23 (2) shall be
   conferred on the Commission for an indeterminate period of time from the [date
   of entry into force of the present Directive].

Or. en

Amendment 936
Heide Rühle
Proposal for a directive
Article 46 – paragraph 3

Text proposed by the Commission

3. The delegation of power referred to in Articles 4 (3), 21 (3), 23 (2), 25 (3), 40 (3) and 52 (2), may be revoked at any time by the European Parliament or by the Council. A revocation decision shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment

3. The delegation of power referred to in Articles 23 (2) may be revoked at any time by the European Parliament or the Council. The revocation decision shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Or. en

Amendment 937
Heide Rühle

Proposal for a directive
Article 49 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2014 at the latest. They shall forthwith communicate to the Commission the text of those provisions.

Amendment

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2014 at the latest. They shall forthwith communicate to the Commission the text of those provisions. This Directive shall not affect the award of concessions contracts which have been awarded before [...]1 at the latest.

1 date of transposition deadline

Or. en

Amendment 938
Andreas Schwab, Hans-Peter Mayer
Proposal for a directive
Article 49 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2014 at the latest. They shall forthwith communicate to the Commission the text of those provisions.

Amendment

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2015 at the latest. Member States shall ensure that these provisions do not cover concessions awarded prior to that date. They shall forthwith communicate to the Commission the text of those provisions.

Or. de

Justification

The aim of the amendment is to prevent legal uncertainty in connection with current concession contracts.

Amendment 939
Andreas Schwab, Philippe Juvin

Proposal for a directive
Article 50 – paragraph 1

Text proposed by the Commission

References to paragraph 3(a) and (b) of Article 1 of Directive 2004/17/EC and paragraphs 3 and 4 of Article 1 and Title III of Directive 2004/18/EC Directive shall be construed as references to this Directive.

Amendment

I. References to paragraph 3(a) and (b) of Article 1 of Directive 2004/17/EC and paragraphs 3 and 4 of Article 1 and Title III of Directive 2004/18/EC Directive shall be construed as references to this Directive.

Or. en

Justification

This new provision introduces a transitional period for those affiliated undertakings operating in the water sector and other fields, whose activities cannot be separated in the calculation of the total turn-over regarding the conditions imposed by article 11. This will allow those entities to adapt themselves to the current rules without jeopardizing their global structure.
Amendment 940
Françoise Castex

Proposal for a directive
Article 50 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall put in place in their laws, regulations and administrative provisions a transitional period from 5 to 10 years for the implementation of the provisions of this Directive for any new concession contract.

Or. en

Amendment 941
Andreas Schwab, Philippe Juvin

Proposal for a directive
Article 50 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

2. Services concessions for the purpose of pursuing the activity referred to in paragraph 3 of Annex III which are presently operated by affiliated undertakings, as defined in Article 11, can be extended without the provisions of this Directive being applicable, provided that 100 % of the total turnover of the affiliated undertaking with respect to services concerning the activity referred to in paragraph 3 of Annex III for the preceding three years derives from the provision of services to undertakings with which it is affiliated.

Such extensions may take place within 3 years from the date referred to in paragraph 1 of Article 49. The resulting contracts will be valid as long as the aforementioned conditions are met and will come to end, at the latest, 5 years.
after the date referred to in paragraph 1 of Article 49.

Or. en

Justification

This new provision introduces a transitional period for those affiliated undertakings operating in the water sector and other fields, whose activities cannot be separated in the calculation of the total turnover regarding the conditions imposed by article 11. This will allow those entities to adapt themselves to the current rules without jeopardizing their global structure.

Amendment 942
Anja Weisgerber, Birgit Collin-Langen, Sabine Verheyen, Hans-Peter Mayer

Proposal for a directive
Annex 3 – paragraphs 2, 3 and 4

Text proposed by the Commission

<table>
<thead>
<tr>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. As far as gas and heat are concerned: deleted</td>
</tr>
<tr>
<td>(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat;</td>
</tr>
<tr>
<td>(b) the supply of gas or heat to such networks.</td>
</tr>
</tbody>
</table>

The supply of gas or heat to networks which provide a service to the public by a contracting entity referred to in paragraph 1 subparagraph 2 and subparagraph 3 of Article 4 shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:

<table>
<thead>
<tr>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(c) the production of gas or heat by the entity concerned is the unavoidable consequence of carrying out an activity other than those referred to in this paragraph or in paragraphs 2 to 4 of this Annex;</td>
</tr>
<tr>
<td>(d) the supply to the public network is</td>
</tr>
</tbody>
</table>
aimed only at the economic exploitation of such production and amounts to not more than 20% of the entity's turnover on the basis of the average for the preceding three years, including the current year.

3. As far as electricity is concerned:

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

(b) the supply of electricity to such networks.

For the purposes of this Directive, supply of electricity includes generation (production) and wholesale of electricity.

The supply of electricity to networks which provide a service to the public by a contracting entity referred to in paragraph 1 subparagraph 2 and subparagraph 3 of Article 4 shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:

a) the production of electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in this paragraph or in paragraphs 1, 3 and 4 of this Annex

b) supply to the public network depends only on the entity's own consumption and has not exceeded 30% of the entity's total production of energy, on the basis of the average for the preceding three years, including the current year.

4. As far as water is concerned:

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

(b) the supply of drinking water to such
networks.

This Directive shall also apply to concessions awarded or organised by entities which pursue an activity referred to above and which are connected with one of the following:

(c) hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made available by such projects or irrigation or drainage installations, or

(d) the disposal or treatment of sewage.

The supply of drinking water to networks which provide a service to the public by a contracting entity referred to in paragraph 1 subparagraph 1 and paragraph 2 of Article 4 shall not be considered a relevant activity within the meaning of subparagraph 1 where all of the following conditions are met:

(e) the production of drinking water by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in paragraphs 1 to 4 of this Annex;

(f) the supply to the public network depends only on the entity's own consumption and has not exceeded 30 % of the entity's total production of drinking water, on the basis of the average for the preceding three years, including the current year.

Or. de

Justification

In line with the amendments to Article 8.

Amendment 943
Heide Rühle
Proposal for a directive
Annex 3 – paragraph 1 – point 1

Text proposed by the Commission

1. As far as gas and heat are concerned:
The supply of gas or heat to networks which provide a service to the public by a contracting entity referred to in paragraph 1 subparagraph 2 and subparagraph 3 of Article 4 shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:

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

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

(c) the production of gas or heat by the entity concerned is the unavoidable consequence of carrying out an activity other than those referred to in this paragraph or in paragraphs 2 to 4 of this Annex;

(d) the supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20% of the entity's turnover on the basis of the average for the preceding three years, including the current year.

Amendment

944
Heide Rühle

Proposal for a directive
Annex 3 – paragraph 1 – point 2
Text proposed by the Commission

2. As far as electricity is concerned: deleted

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

(b) the supply of electricity to such networks.

For the purposes of this Directive, supply of electricity includes generation (production) and wholesale of electricity.

The supply of electricity to networks which provide a service to the public by a contracting entity referred to in paragraph 1 subparagraph 2 and subparagraph 3 of Article 4 shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:

(a) the production of electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in this paragraph or in paragraphs 1, 3 and 4 of this Annex

(b) supply to the public network depends only on the entity's own consumption and has not exceeded 30% of the entity's total production of energy, on the basis of the average for the preceding three years, including the current year.

Or. en

Amendment 945
Bernadette Vergnaud

Proposal for a directive
Annex 3 – paragraph 1 – point 2 – paragraph 1
Text proposed by the Commission

For the purposes of this Directive, supply of electricity includes generation (production) and wholesale of electricity. For the purposes of this Directive, supply of electricity includes generation (production) and supply (wholesale as well as retail sale to end consumers).

Amendment

Justification

Consistency with the provisions of the sectoral directive.

Amendment 946
Heide Rühle

Proposal for a directive
Annex 3 – paragraph 1 – point 3

Text proposed by the Commission

3. As far as water is concerned: deleted

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

(b) the supply of drinking water to such networks.

This Directive shall also apply to concessions awarded or organised by entities which pursue an activity referred to above and which are connected with one of the following:

(a) hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made available by such projects or irrigation or drainage installations, or

(b) the disposal or treatment of sewage.

The supply of drinking water to networks which provide a service to the public by a
contracting entity referred to in paragraph 1 subparagraph 1 and paragraph 2 of Article 4 shall not be considered a relevant activity within the meaning of subparagraph 1 where all of the following conditions are met:

(a) the production of drinking water by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in paragraphs 1 to 4 of this Annex;

(b) the supply to the public network depends only on the entity's own consumption and has not exceeded 30 % of the entity's total production of drinking water, on the basis of the average for the preceding three years, including the current year.

Amendment 947
Evelyne Gebhardt

Proposal for a directive
Annex 3 – paragraph 1 – point 4

Text proposed by the Commission
Amendment

4. As far as water is concerned:

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

(b) the supply of drinking water to such networks.

This Directive shall also apply to concessions awarded or organised by entities which pursue an activity referred to above and which are connected with one of the following:

(a) hydraulic engineering projects, irrigation or land drainage, provided that
the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made available by such projects or irrigation or drainage installations, or (b) the disposal or treatment of sewage.

The supply of drinking water to networks which provide a service to the public by a contracting entity referred to in paragraph 1 subparagraph 1 and paragraph 2 of Article 4 shall not be considered a relevant activity within the meaning of subparagraph 1 where all of the following conditions are met:

(a) the production of drinking water by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in paragraphs 1 to 4 of this Annex;

(b) the supply to the public network depends only on the entity's own consumption and has not exceeded 30 % of the entity's total production of drinking water, on the basis of the average for the preceding three years, including the current year.

Or. de

Amendment 948
Peter Simon

Proposal for a directive
Annex 3 – paragraph 1 – point 4

Text proposed by the Commission Amendment

4. As far as water is concerned: deleted

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

(b) the supply of drinking water to such

PE497.783v03-00 126/149 AM\916835EN.doc
networks.

This Directive shall also apply to concessions awarded or organised by entities which pursue an activity referred to above and which are connected with one of the following:

(a) hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made available by such projects or irrigation or drainage installations, or

(b) the disposal or treatment of sewage.

The supply of drinking water to networks which provide a service to the public by a contracting entity referred to in paragraph 1 subparagraph 1 and paragraph 2 of Article 4 shall not be considered a relevant activity within the meaning of subparagraph 1 where all of the following conditions are met:

(a) the production of drinking water by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in paragraphs 1 to 4 of this Annex;

(b) the supply to the public network depends only on the entity's own consumption and has not exceeded 30 % of the entity's total production of drinking water, on the basis of the average for the preceding three years, including the current year.

Or. de

Amendment 949
Heide Rühle

Proposal for a directive
Annex 3 – paragraph 1 – point 4 – introductory part
Text proposed by the Commission

4. Activities relating to the provision or operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

Amendment

4. Activities relating to the provision or operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable to the extent that they are not governed by other Community instruments.

Or. en

Amendment 950
Herbert Dorfmann, Anja Weisgerber

Proposal for a directive
Annex 3 – paragraph 1 – point 4 – introductory part

Text proposed by the Commission

4. Activities relating to the provision or operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

Amendment

4. Activities relating to the provision or operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable and intended to meet general transport needs of the population.

Or. it

Justification

The amendment clearly states that the concept of a public transport service cannot be considered to cover networks used to provide and operate transport services – cable-cars being one example – which are connected merely with the business of companies aiming not to satisfy general transport needs of the population, but to manage tourism, recreational, play, and sports activities and in that way profit from the mountains.

Amendment 951
Heide Rühle

Proposal for a directive
Annex 3 – paragraph 1 – point 4 – paragraph 1
As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of a Member State, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.

This provision shall not, under any circumstances, apply to activities relating to transport systems which, given their structural or functional characteristics, are intended solely to carry on the business of providing tourist, recreational, or sports services the performance of which lies outside the tasks of contracting authorities or the activities of contracting entities.

Justification

The amendment clearly states that the concept of a public transport service cannot be considered to cover networks used to provide and operate transport services – cable-cars.
being one example – which are connected merely with the business of companies aiming not to satisfy general transport needs of the population, but to manage tourism, recreational, play, and sports activities and in that way profit from the mountains.

**Amendment 953**
Matteo Salvini, Claudio Morganti, Lorenzo Fontana

**Proposal for a directive**
Annex 3 – paragraph 1 – point 5

**Text proposed by the Commission**

5. Activities relating to the exploitation of a geographical area for the purpose of the provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.

**Amendment**

5. Activities relating to the exploitation of a geographical area for the purpose of the provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway, or to operators of these terminal facilities to whom their use is granted upon their completion.

**Or. en**

**Justification**

This insertion intends to remove some ambiguities when the economic operator building such a facility does not exploit it directly as a terminal operator and leases it to a third party for a given consideration. In this case, the relationship between the lessor and the lessee (or between the landlord and the tenant) cannot be considered as being a services concession.

**Amendment 954**
Andreas Schwab, Birgit Schnieber-Jastram, Hans-Peter Mayer

**Proposal for a directive**
Annex 3 – paragraph 1 – point 6

**Text proposed by the Commission**

6. Activities relating to the exploitation of a geographical area for the purpose of the provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.

**Amendment**

6. Activities relating to the exploitation of a geographical area for the purpose of the provision of airports and maritime or inland ports or other general infrastructure to carriers by air, sea or inland waterway.
Justification

Terminal facilities are not a type of general infrastructure, which is covered by the activities of contracting authorities, but a type of superstructure, and therefore covered by the activities of private undertakings.

Amendment 955
Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive
Annex 4 – point 2

Text proposed by the Commission

Amendment

2. Type of contracting authority or contracting entity and main activity exercised.

deleted

Justification

This information is irrelevant to the performance of the concession, so that this provision can be deleted. Sufficient information about the contracting entity is requested under point 1.

Amendment 956
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Annex 4 – point 2

Text proposed by the Commission

Amendment

2. Type of contracting authority or contracting entity and main activity exercised.

deleted
Justification

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

Amendment 957
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Annex 4 – point 7

Text proposed by the Commission

7. Estimated total value of concession(s); where the concession is divided into lots, this information shall be provided for each lot, together with detailed method of calculation of the estimated total value of the concession, in accordance with Art. 6

Amendment

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

Amendment 958
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Annex 4 – point 10 – point a

Text proposed by the Commission

a) where appropriate, indication whether the concession is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,

Amendment

This amendment seeks to simplify the rules on the award of concession contracts.
Amendment 959
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Annex 4 – point 10 – point b

_text proposed by the Commission_

**Amendment**

b) where appropriate, indication whether the provision of the service is reserved by law, regulation or administrative provision to a particular profession; reference to the relevant law, regulation or administrative provision,

_Deleted_

Or. de

_Justification_

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

Amendment 960
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Annex 4 – point 15

_text proposed by the Commission_

**Amendment**

15. Where appropriate, particular conditions to which performance of the concession is subject.

_Deleted_

Or. de

_Justification_

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

Amendment 961
Andreas Schwab, Hans-Peter Mayer
Proposal for a directive  
Annex 4 – point 18

**Text proposed by the Commission**

18. Where appropriate, indication of requirements and conditions related to the use of electronic means of communication

**Amendment**

deleted

**Justification**

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

Amendment 962  
Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive  
Annex 4 – point 19

**Text proposed by the Commission**

19. Information whether the concession is related to a project and/or programme financed by European Union funds.

**Amendment**

deleted

**Justification**

Concession announcements should only contain the information interested parties need in order to submit a bid. It is not clear how the information referred to in this provision is relevant.

Amendment 963  
Andreas Schwab, Hans-Peter Mayer
19. Information whether the concession is related to a project and/or programme financed by European Union funds.

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

**Amendment 964**
Heide Rühle

Proposal for a directive
Annex 5 – point 1 – point 5

**Text proposed by the Commission**

5. Description of the procurement: nature and extent of works, nature and quantity or value of supplies, nature and extent of services. Where the concession is divided into lots, this information shall be provided for each lot. Where appropriate, description of any options.

**Amendment**

5. Description of the contract: nature and extent of works, nature and quantity or value of supplies, nature and extent of services.

**Amendment 965**
Heide Rühle

Proposal for a directive
Annex 5 – point 1 – point 7

**Text proposed by the Commission**

7. Criteria referred to in Article 39 which were used for award of the concession or concessions.

**Amendment**

deleted

Or. en
Amendment 966
Heide Rühle

Proposal for a directive
Annex 5 – point I – point 9

Text proposed by the Commission

9. Number of tenders received with respect of each award, including:
   (a) number of tenders received from economic operators which are small and medium enterprises,
   (b) number of tenders received from abroad,
   (c) number of tenders received electronically.

Amendment

deleted

Or. en

Amendment 967
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Annex 5 – point I – point 10

Text proposed by the Commission

10. For each award, name, address including NUTS code, telephone, fax number, email address and internet address of the successful tenderer(s) including
   a) information whether the successful tenderer is small and medium enterprise,
   b) information whether the concession was awarded to a consortium.

Amendment

deleted

Or. de
Justification

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

Amendment 968
Heide Rühle

Proposal for a directive
Annex 5 – point I – point 10 – introductory part

Text proposed by the Commission  
Amendment

10. For each award, name, address including NUTS code, telephone, fax number, email address and internet address of the successful tenderer(s) including

Or. en

Amendment 969
Heide Rühle

Proposal for a directive
Annex 5 – point I – point 10 – point a

Text proposed by the Commission  
Amendment

(a) information whether the successful tenderer is small and medium enterprise, deleted

Or. en

Amendment 970
Heide Rühle

Proposal for a directive
Annex 5 – point I – point 10 – point b

Text proposed by the Commission  
Amendment

(b) information whether the concession was awarded to a consortium, deleted
Amendment 971
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Annex 5 – point I – point 11

Text proposed by the Commission  Amendment

11. Value and main financial terms of the **deleted** award, including fees and prices.

*Justification*

This amendment seeks to simplify the rules on the award of concession contracts. What is more, this provision runs counter to the interests of economic operators.

Amendment 972
Heide Rühle

Proposal for a directive
Annex 5 – point I – point 11

Text proposed by the Commission  Amendment


Amendment 973
Heide Rühle

Proposal for a directive
Annex 5 – point I – point 12
12. Where appropriate, for each award, value and proportion of concession likely to be subcontracted to third parties.

Amendment

Amendment 974
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Annex 5 – point I – point 13

13. Information whether the concession is related to a project and/or programme financed by European Union funds.

Amendment

14. Name and address of the oversight body and the body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

Justification

This amendment seeks to simplify the rules on the award of concession contracts.
Amendment 976
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Annex 5 – point I – point 17

Text proposed by the Commission

17. Detailed method of calculation of the estimated total value of the concession, in accordance with Article 6.

Amendment

deleted

Justification

This amendment seeks to simplify the rules on the award of concession contracts. What is more, this provision could expose small contracting authorities to the risk of legal disputes.

Amendment 977
Heide Rühle

Proposal for a directive
Annex 5 – point I – point 17

Text proposed by the Commission

17. Detailed method of calculation of the estimated total value of the concession, in accordance with Article 6.

Amendment

17. Method of calculation of the estimated total value of the concession, in accordance with Article 6.

Or. en

Amendment 978
Heide Rühle

Proposal for a directive
Annex 5 – point II
II. INFORMATION TO BE INCLUDED IN CONCESSION AWARD NOTICES PUBLISHED IN ACCORDANCE WITH ARTICLE 27(2)

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority or entity and, where different, of the service from which additional information may be obtained.

2. Description of the procurement: nature and extent of works, nature and quantity or value of supplies, nature and extent of services, Where the concession is divided into lots, this information shall be provided for each lot. Where appropriate, description of any options.

3. CPV Nomenclature reference No(s).

4. Type of contracting authority or entity and main activity exercised.

5. Date of concession award decision or decisions;

6. For each award, name, address including NUTS code, telephone, fax number, email address and internet address of the economic operators to which the concession has been awarded.

7. Value and main financial terms of the award, including fees and prices.

8. Detailed method of calculation of the estimated total value of the concession, in accordance with Article 6.

Amendment 979
Andreas Schwab, Hans-Peter Mayer
Proposal for a directive
Annex 6 – point 6

Text proposed by the Commission

6. Value and main financial terms of the award, including fees and prices.

deleted

Or. de

Justification

This amendment seeks to simplify the rules on the award of concession contracts. What is more, this provision is at odds with the principle of commercial confidentiality.

Amendment 980
Heide Rühle

Proposal for a directive
Annex 7

Text proposed by the Commission

Annex VII deleted

[...]

Or. en

Amendment 981
Heide Rühle

Proposal for a directive
Annex 8

Text proposed by the Commission

Annex VIII deleted

[...]

Or. en
Amendment 982
Heide Rühle

Proposal for a directive
Annex 9 – point 1 – paragraph 1 – indent 2

Text proposed by the Commission
The Publications Office of the European Union will give the contracting authority or entity the confirmation referred to in Article 28 (5).

Amendment
The Publications Office of the European Union will give the contracting authority or entity the confirmation referred to in Article 28 (2).

Or. en

Amendment 983
Heide Rühle

Proposal for a directive
Annex 9 – point 2

Text proposed by the Commission
2. Publication of complementary or additional information
Contracting authorities and contracting entities shall publish the specifications and the additional documents in their entirety on the Internet.

Amendment
deleted

Or. en

Amendment 984
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Annex 9 – point 2

Text proposed by the Commission
2. Publication of complementary or additional information
Contracting authorities and contracting entities shall publish the specifications

Amendment
deleted

Or. en
and the additional documents in their entirety on the Internet.

Justification

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

Amendment 985
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Annex 9 – point 3

Text proposed by the Commission  Amendment

3. Format and procedures for sending notices electronically  deleted

The format and procedure for sending notices electronically as established by the Commission are made accessible at the Internet address ‘http://simap.europa.eu’.

Justification

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

Amendment 986
Heide Rühle

Proposal for a directive
Annex 10

Text proposed by the Commission  Amendment

Annex X  deleted

[...]

Or. en
Amendment 987  
Heide Rühle  

Proposal for a directive  
Annex 10 a (new)  

Text proposed by the Commission

<table>
<thead>
<tr>
<th>CPV Code Description</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>79611000-0; 75200000-8; 75231200-6; 75231240-8; from 85000000-9 to 85323000-9; (except 85321000-5 and 85322000-2); 98133100-5 and 98200000-5</td>
<td>Health, social and related services</td>
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<td>75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80100000-5 to 80660000-8 (except 80533000-9, 80533100-0, 80533200-1); from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9, 92232000-6)</td>
<td>Administrative educational, healthcare and cultural services</td>
</tr>
<tr>
<td>75300000-9</td>
<td>Compulsory social security services</td>
</tr>
<tr>
<td>75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1</td>
<td>Benefit services</td>
</tr>
<tr>
<td>98000000-3; 55521100-9</td>
<td>Other community, social and personal services</td>
</tr>
<tr>
<td>98120000-0</td>
<td>Services furnished by trade unions</td>
</tr>
<tr>
<td>98131000-0</td>
<td>Religious services</td>
</tr>
<tr>
<td>from 61000000-5 to 61530000-9; from 63370000-3 to 63372000-7</td>
<td>Transport by water</td>
</tr>
<tr>
<td>62400000-6, 62440000-8, 62441000-5, 62450000-1; from 63000000-9 to 63600000-5 (except 63370000-3, 63371000-0, 63372000-7); 74322000-2, 93610000-7</td>
<td>Supporting and auxiliary</td>
</tr>
</tbody>
</table>
transport services
from 74500000-4 to 74540000-6 (except 74511000-4); from 95000000-2 to 95140000-5/personnel placement and supply services
from 74600000-5 to 74620000-1/Investigation and security services, other than armoured car services
from 74875000-3 to 74875200-5, and from 92000000-1 to 92622000-7 (except 92230000-2)/Recreational, cultural and sporting services

Amendment 988
Heide Rühle

Proposal for a directive
Annex 11

Text proposed by the Commission

Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute 'special or exclusive rights' within the meaning of this Directive. The following lists procedures, ensuring adequate prior transparency, for granting authorisations on the basis of other legislative acts of the European Union which do not constitute 'special or exclusive rights' within the meaning of this Directive:

(a) Granting authorisation to operate natural gas installations in accordance with the procedures laid down in Article 4 of Directive 98/30/EC.
(b) Authorisation or an invitation to tender for the construction of new electricity production installations in accordance with the provisions of Directive 96/92/EC.

(c) The granting in accordance with the procedures laid down in Article 9 of Directive 97/67/EC of authorisations in relation to a postal service which is not or shall not be reserved.

(d) A procedure for granting an authorisation to carry on an activity involving the exploitation of hydrocarbons in accordance with Directive 94/22/EC.

(e) Public service contracts within the meaning of Regulation (EC) No 1370/2007 which have been awarded on the basis of a competitive tendering procedure in accordance with its Article 5(3).

Amendment 989
Heide Rühle

Proposal for a directive
Annex 12

Text proposed by the Commission

Annex XII deleted

REQUIREMENTS RELATING TO DEVICES FOR THE ELECTRONIC RECEIPT OF TENDERS, AND APPLICATIONS

1. Devices for the electronic receipt of tenders and applications must at least guarantee, through technical means and appropriate procedures, that:

(a) the exact time and date of the receipt of tenders and applications can be determined precisely;
(a) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under these requirements;

(b) where that access prohibition is infringed, it may be reasonably ensured that the infringement is clearly detectable;

(c) only authorised persons may set or change the dates for opening data received;

(d) during the different stages of the concession award procedure access to all data submitted, or to part thereof, must be possible only through simultaneous action by authorised persons;

(e) simultaneous action by authorised persons must give access to data transmitted only after the prescribed date;

(f) data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith, and

(g) authentication of tenders must conform to the requirements set out in this Annex.

Or. en

Amendment 990
Heide Rühle

Proposal for a directive
Annex 13

Text proposed by the Commission Amendment

Annex XIII deleted

INFORMATION TO BE INCLUDED IN PRIOR INFORMATION NOTICES CONCERNING CONCESSIONS FOR SOCIAL AND OTHER SPECIFIC SERVICES
(as referred to in Article 26(3))

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority or contracting entity and, where different, of the service from which additional information may be obtained.

2. Where appropriate, email or internet address at which the specifications and any supporting documents will be available.

3. Type of contracting authority or contracting entity and main activity exercised.

4. CPV Nomenclature reference No(s); where the contract is divided into lots, this information shall be provided for each lot.

5. NUTS code for the main place of delivery or performance of service concessions.

6. Description of the services and where applicable, incidental works and supplies to be procured.

7. Estimated total value of concession(s); where the concession is divided into lots, this information shall be provided for each lot.


9. Where applicable, time limit(s) for contacting the contracting authority or contracting entity in view of participation.

10. Where applicable, brief description of the main features of the award procedure to be applied.

11. Any other relevant information.

Or. en