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*Committee on the Environment, Public Health and Food Safety*

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**2011/0438(COD)**

2.8.2012

## **OPINION**

of the Committee on the Environment, Public Health and Food Safety

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council  
on public procurement  
(COM(2011)0896 – C7-0006/2012 – 2011/0438(COD))

Rapporteur: Åsa WestlundPA\_Legam

## SHORT JUSTIFICATION

Public Procurement is an important factor in our common society; economically, socially and environmentally. Public authorities in Europe spend around 18 percent of GDP on goods and services through procurement. Public Procurement can, and should, be used as an instrument for implementing the objectives of the European Union.

Public procurement is an important tool for contracting authorities to make the best use of taxpayers' money. That includes using public procurement to create sustainable development including enhance positive development in the areas of environment, climate, anti-discrimination, animal welfare and youth employment for example. Since sustainable development is an objective in the Lisbon treaty it is important to enable and encourage all public authorities to use public procurement as a tool to reach this goal.

The Committee for Environment, Public Health and Food Safety will give this opinion to the Committee for Internal Market and Consumer Protection. The opinion will focus on issues regarding sustainable public procurement, in the areas of environmental, economic, and social matters.

The Rapporteur welcomes the Commission's proposal for a new directive on public procurement. The proposal focuses on increasing the efficiency of public spending, implies simplification and flexibility of existing rules and stresses the importance of environmental considerations. Further suggestions focus on making public procurement more useful in supporting common societal goals.

The Rapporteur wants to put extra focus on the following important issues:

- There should not be any ambiguity that contracting authorities are allowed to set demands that are stricter or go further than current EU-legislation in specific areas.
- Innovative solutions should be promoted in public procurement. Public purchasers should be encouraged to buy innovative products and services in order to achieve the goals of sustainable development. New innovative solutions and ideas are necessary in the area of environment and public procurement should be used as a tool to meet such needs.
- The criteria of life cycle considerations should be upgraded. The social and environmental effects of the entire production process must be taken into consideration. Therefore contracting authorities should have further possibilities to impose demands on the production process and not only on the specific product. This will lead to a more sustainable procurement.
- Based on public health considerations, the application of collective agreements and international conventions on employment should not be an option but a requirement on assigned contractors. To safeguard workers' health and their work environment it should be possible to exclude and penalize tenderers who do not follow social and labour legislation.

Countries that have ratified ILO Convention 94 should not be hindered in implementing the convention.

- The use of standards should be preferred over of the use of labels. Standards are useful as they are well understood by tenderers in the relevant area and will help avoid making contracting authorities re-invent the wheel. By stressing the use of standards the Directive facilitates for contracting authorities to set environmental and social demands.
- The Directive must not reduce the possibility for municipalities to cooperate in order to provide some services of general interest, as for example waste and water treatment.
- The Directive should increase the possibility to impose demands on the entire contractors chain, i.e. also on sub-contractors. Not only the main contractor/tenderer must follow the rules and regulations set out by the contracting authority but also sub-contractors should be required to do so. There is need for a control system which covers all parts of the contractors' chain.

The Rapporteur is committed to preserve self-determination and autonomy of municipalities, regions and other local contracting authorities. The regulation must be clear in order to avoid interpretation disputes. Simplification of the Directive will also encourage and enable contracting authorities to incorporate clear sustainability objectives into their public procurement policies.

## AMENDMENTS

The Committee on the Environment, Public Health and Food Safety calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

### Amendment 1

#### Proposal for a directive

#### Recital 2

*Text proposed by the Commission*

(2) Public procurement plays a key role in the Europe 2020 strategy ***as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds.*** For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the

*Amendment*

(2) Public procurement, ***as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds,*** plays a key role in the Europe 2020 strategy ***and in fulfilling the objective of sustainable development stated in the Treaty of Lisbon.*** For that purpose, the current public procurement rules adopted pursuant to Directive

procurement procedures of entities operating in the water, energy, transport and postal services sectors and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts have to be revised and modernised in order to increase the efficiency of public spending, facilitating in particular the participation of small and medium-sized enterprises in public procurement and to enable procurers to make better use of public procurement in support of common societal goals. There is also a need to clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts have to be revised and modernised in order to increase the efficiency of public spending, facilitating in particular the participation of small and medium-sized enterprises in public procurement and to enable procurers to make better use of public procurement in support of common societal goals. There is also a need to clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

#### *Justification*

*Text relating to the Treaty of Lisbon is needed to underline the importance of sustainable development.*

### **Amendment 2**

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

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(2) Public procurement plays a key role in the Europe 2020 strategy as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities

operating in the water, energy, transport and postal services sectors and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts have to be revised and modernised in order to *increase* the efficiency of public spending, facilitating in particular the participation of small and medium-sized enterprises in public procurement and *to enable* procurers to make better use of public procurement in support of common societal goals. There is also a need to clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

operating in the water, energy, transport and postal services sectors and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts have to be revised and modernised in order to *enable procurers to make better use of public procurement in support of sustainable development and other common societal goals, thereby increasing* the efficiency of public spending, *ensuring best value for money, and* facilitating in particular the participation of small and medium-sized enterprises in public procurement and *encouraging local procurement as well as enabling* procurers to make better use of public procurement in support of common societal goals. *Contracting authorities are encouraged to set demands that are stricter or go further than current EU-legislation in specific areas, in order to reach these common objectives.* There is also a need to *simplify the Directives and to* clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union. *This Directive provides legislation on how to buy, what to buy is up to the contracting authorities. Contracting authorities are encouraged to set demands that are stricter or go further than current EU legislation in specific areas, in order to reach the common objectives.*

#### *Justification*

*There should not be any ambiguity about that contracting authorities are allowed to set demands that are stricter or go further than current EU-legislation in specific areas. An early declaration of the directive's role in achieving climate, environmental and social cohesion will account for articles relating to these issues later.*

### **Amendment 3**

**Proposal for a directive**  
**Recital 3**

*Text proposed by the Commission*

(3) The increasingly diverse forms of public action have made it necessary to define more clearly the notion of procurement itself. The Union rules on public procurement are not intended to cover all forms of disbursement of public money, but only those aimed at the acquisition of works, supplies or services for consideration. The notion of acquisition should be understood broadly in the sense of obtaining the benefits of the works, supplies or services in question, not necessarily requiring a transfer of ownership to the contracting authorities. Furthermore, the mere financing of an activity, which is frequently linked to the obligation to reimburse the amounts received where they are not used for the purposes intended, does not *usually* fall under the public procurement rules.

*Amendment*

(3) The increasingly diverse forms of public action have made it necessary to define more clearly the notion of procurement itself. The Union rules on public procurement are not intended to cover all forms of disbursement of public money, but only those aimed at the acquisition of works, supplies or services for consideration. The notion of acquisition should be understood broadly in the sense of obtaining the benefits of the works, supplies or services in question, not necessarily requiring a transfer of ownership to the contracting authorities. Furthermore, the mere financing of an activity, which is frequently linked to the obligation to reimburse the amounts received where they are not used for the purposes intended, does not fall under the public procurement rules. ***Contracts awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities are not subject of the public procurement rules if the conditions set out in this Directive are fulfilled.***

**Amendment 4**

**Proposal for a directive**  
**Recital 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***(4a) Under Article 9 of the Treaty on the Functioning of the European Union, the Union must, in defining and implementing its policies and activities, take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate***

*social protection, the fight against social exclusion, and a high level of education, training and protection of human health. This Directive contributes to attaining these objectives by encouraging socially sustainable public procurement, ensuring that social criteria are employed at all stages of the procurement procedure, and reinforcing all existing obligations at Union, national and international level relating to working conditions, social protection and public health.*

#### *Justification*

*Recital 5 already refers to Article 11 TFEU, which ensures environmental protection requirements are integrated into all Union policies. This new Recital seeks to do the same with Article 9 TFEU, which ensures social and health goals are taken into account in all Union policies.*

#### **Amendment 5**

##### **Proposal for a directive Recital 4 b (new)**

*Text proposed by the Commission*

*Amendment*

*(4b) A key principle of the 2008-2013 Health Strategy is 'Health in All Policies' (HIAP), or the integration of health concerns into all policies at Union, national and regional level, an approach endorsed by Member States in the 2007 Declaration on 'Health in All Policies' (HIAP). This Directive contributes to the HIAP approach by ensuring that procurement rules can help contracting authorities to achieve public health objectives, and that criteria relating to public health and to health and safety in the workplace may be employed at all stages of the procurement procedure.*

#### **Amendment 6**

**Proposal for a directive**  
**Recital 5**

*Text proposed by the Commission*

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

*Amendment*

(5) Under *Articles 9, 10 and 11* of the Treaty on the Functioning of the European Union, environmental protection requirements ***and social considerations*** must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development. This Directive clarifies how the contracting authorities may contribute to the protection of the environment and the promotion of sustainable development ***and how they can use their discretionary power to select technical specifications and award criteria with the aim of achieving sustainable public procurement***, whilst ensuring the ***link to the subject matter of the contract and obtaining the*** best value for money for their contracts.

**Amendment 7**

**Proposal for a directive**  
**Recital 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***(5a) Public procurement accounts for approximately 19% of global GDP, or almost 40 times the amount provided by EU Member States as Official Development Assistance (ODA). As such it has huge potential to be a tool for living up to the EU's obligations towards Policy Coherence for development as enshrined in Article 208 TFEU and for implementing sustainable government policies both in the Union and in developing countries.***

**Amendment 8**



**Proposal for a directive  
Recital 5 b (new)**

*Text proposed by the Commission*

*Amendment*

***(5b) Contracting authorities have broad discretion to choose the technical specifications that define the supplies, services, or works they seek to procure. Further, they have broad discretion to use both technical specifications and award criteria to achieve a contracting authority's objectives, including specifications and criteria designed to achieve more sustainable public procurement. Technical specifications and award criteria, including those relating to sustainability objectives, must be linked to the subject matter of the procurement contract. Provided that the link to the subject matter rule is satisfied, this Directive is not intended to further constrain the types of concerns that a contracting authority can address through technical specifications or award criteria.***

**Amendment 9**

**Proposal for a directive  
Recital 5 c (new)**

*Text proposed by the Commission*

*Amendment*

***(5c) Technical specifications, award criteria, and conditions for contract performance are distinguished by the role they play in the procurement process, and not by the content of the specifications or criteria. Through technical specifications, the contracting authority defines absolute requirements for the procurement; ability to meet the technical specifications is a prerequisite for being considered a candidate for the contract and only products or services meeting the specifications can be considered. In contrast, award criteria enable the***

*contracting authority to compare the relative advantages of different combinations of criteria. The award criteria are weighted and each tender is scored on the extent of its satisfaction of each criterion, but ability to satisfy all the award criteria is not a prerequisite. Finally, contract performance clauses may be included in the contract to indicate how the contract must be performed. A contracting authority has broad discretion to incorporate its sustainability objectives into any stage of the procurement process – through technical specifications, award criteria, and contract performance conditions.*

## **Amendment 10**

### **Proposal for a directive Recital 17**

#### *Text proposed by the Commission*

(17) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. Public authorities should make the best strategic use of public procurement to spur innovation. Buying innovative goods and services plays a key role in improving the efficiency and quality of public services while addressing major societal challenges. It contributes to achieving best value for public money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative products and services and thus promoting sustainable economic growth. This directive should contribute to facilitating public procurement of innovation and help Member States in achieving the Innovation Union targets. A specific procurement procedure should therefore be provided for

#### *Amendment*

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which allows contracting authorities to establish a long-term innovation partnership for the development and subsequent purchase of a new, innovative product, service or works provided it can be delivered to agreed performance levels and costs. The partnership should be structured in such a way that it can provide the necessary ‘market-pull’, incentivising the development of an innovative solution without foreclosing the market.

which allows contracting authorities to establish a long-term innovation partnership for the development and subsequent purchase of a new, innovative product, service or works provided it can be delivered to agreed performance levels and costs. The partnership should be structured in such a way that it can provide the necessary ‘market-pull’, incentivising the development of an innovative solution without foreclosing the market. ***In addition, when setting public procurement conditions, public authorities should be given a choice between awarding a contract on the basis of the most economically advantageous tender and on the basis of the most innovative and sustainable (and, where relevant, the technologically most advanced) tender, and should make it clear when publishing the invitation to tender which of these will apply.***

## Amendment 11

### Proposal for a directive Recital 28

#### *Text proposed by the Commission*

(28) Contracting authorities that wish to purchase works, supplies or services with specific environmental, social or other characteristics should be able to refer to particular labels, such as the European Eco-label, (multi-)national eco-labels or any other label provided that the requirements for the label are linked to the subject-matter of the contract, such as the description of the product and its presentation, including packaging requirements. It is furthermore essential that these requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure in which stakeholders, such as government bodies, consumers, manufacturers,

#### *Amendment*

(28) Contracting authorities that wish to purchase works, supplies or services with specific environmental, ***energy efficiency***, social, ***animal welfare*** or other characteristics should be able to refer to particular labels, such as the European Eco-label, (multi-)national eco-labels or any other label provided that the requirements for the label are linked to the subject-matter of the contract, such as the description of the product and its presentation, including packaging requirements. It is furthermore essential that these requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure in which stakeholders, such as government

distributors and environmental organisations, can participate, and that the label is accessible and available to all interested parties.

bodies, consumers, manufacturers, distributors and environmental organisations, can participate, and that the label is accessible and available to all interested parties.

#### *Justification*

*Energy efficiency and energy savings reference is essential taking into account the Eco design directive and its provisions for products.*

### **Amendment 12**

#### **Proposal for a directive Recital 34**

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

(34) Public contracts should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Furthermore, contracting authorities should be given the possibility to exclude candidates or tenderers for violations of environmental or *social* obligations, including rules on accessibility for disabled persons or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights.

##### *Amendment*

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### **Amendment**

#### **Proposal for a directive Recital 37**

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

(37) Contracts should be awarded on the basis of objective criteria that ensure

##### *Amendment*

(37) Contracts should be awarded on the basis of objective criteria that ensure

compliance with the principles of transparency, non-discrimination and equal treatment. These criteria should guarantee that tenders are assessed in conditions of effective competition, also where contracting authorities require high-quality works, supplies and services that are optimally suited to their needs, for instance where the chosen award criteria include factors linked to the production process. As a result, contracting authorities should *be allowed to* adopt as award criteria *either* ‘the most economically advantageous tender’ *or* ‘the lowest cost’, *taking into account that in the latter case they are free to set adequate quality standards by using technical specifications or contract performance conditions.*

#### Amendment 14

##### Proposal for a directive Recital 38

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

(38) *Where contracting authorities choose to award a contract to the most economically advantageous tender, they must determine the award criteria on the basis of which they will assess tenders in order to identify which one offers the best value for money. The determination of these criteria depends on the subject-matter of the contract since they must allow the level of performance offered by each tender to be assessed in the light of the subject-matter of the contract, as defined in the technical specifications, and the value for money of each tender to be measured. Furthermore, the chosen award criteria should not confer an unrestricted freedom of choice on the contracting authority and they should ensure the possibility of effective competition and be accompanied by requirements that allow the information*

compliance with the principles of transparency, non-discrimination and equal treatment. These criteria should guarantee that tenders are assessed in conditions of effective competition, also where contracting authorities require high-quality works, supplies and services that are optimally suited to their needs, for instance where the chosen award criteria include factors linked to the production process. As a result, contracting authorities should adopt as award criteria ‘the most economically advantageous tender’.

###### *Amendment*

(38) *Contracting* authorities must determine award criteria on the basis of which they will assess tenders in order to identify which one offers the best value for money. *To identify the tender representing best value, contracting authorities should use objective criteria that are linked to the subject matter of the contract. The* chosen award criteria should not confer an unrestricted freedom of choice on the contracting authority, *however. Rather, the award procedure should guarantee effective competition through strict compliance with the principles of transparency, non-discrimination and equal treatment. These principles require, among other things, that the information provided by the tenderers be effectively and transparently verified.*

provided by the tenderers *to* be effectively verified.

## Amendment 15

### Proposal for a directive

#### Recital 39

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

(39) It is of utmost importance to fully exploit the potential of public procurement to achieve the objectives of the Europe 2020 Strategy for sustainable growth. In view of the important differences between individual sectors and markets, it would however not be appropriate to set general mandatory requirements for environmental, social and innovation procurement. The Union legislature has already set mandatory procurement requirements for obtaining specific goals in the sectors of road transport vehicles (Directive 2009/33/EC of the European Parliament and the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles) and office equipment (Regulation (EC) No 106/2008 of the European Parliament and the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment). In addition, the definition of common methodologies for life cycle costing *has* significantly *advanced*. It therefore appears appropriate to continue *on that path, leaving it* to sector-specific legislation to set mandatory objectives and targets in *function* of the particular policies and conditions prevailing in the relevant sector *and to promote the development and use of European approaches to life-cycle costing as a further underpinning for* the use of public procurement in support of sustainable growth.

##### *Amendment*

(39) It is of utmost importance to fully exploit the potential of public procurement to achieve the objectives of the Europe 2020 Strategy for sustainable growth. In view of the important differences between individual sectors and markets, it would however not be appropriate to set general mandatory requirements for environmental, social and innovation procurement. The Union legislature has already set mandatory procurement requirements for obtaining specific goals in the sectors of road transport vehicles (Directive 2009/33/EC of the European Parliament and the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles) and office equipment (Regulation (EC) No 106/2008 of the European Parliament and the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment). In addition, the definition of common methodologies for life cycle costing *continues to advance* significantly, *and sector-specific applications of life-cycle costing continue to be developed, tested, and refined*. It therefore appears appropriate to continue to *use* sector-specific legislation to set mandatory objectives and targets in *the context* of the particular policies and conditions prevailing in the relevant sector to further the use of public procurement in support of sustainable growth. *These efforts should incorporate sector-appropriate applications of sound methodologies for*

*life cycle costing. In accordance with other provisions of this Directive, mandatory procurement criteria adopted through sector-specific legislation may also include technical specifications and award criteria that incorporate sustainability considerations relating to generalised social and environmental benefits or harms, even where these have not been or cannot be monetised, provided that they are linked with the subject matter of the contract and strictly adhere to the principles of transparency, non-discrimination, and equal protection.*

## Amendment 16

### Proposal for a directive Recital 41

#### *Text proposed by the Commission*

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

#### *Amendment*

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

include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members *in their working environment*. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender.

## **Amendment 17**

### **Proposal for a directive Recital 43**

#### *Text proposed by the Commission*

(43) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked to the subject-matter of the contract and are indicated in the contract notice, the prior information notice used as a means of calling for competition or the procurement documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment, protection of the environment or animal welfare. For

include those characteristics should in any event remain limited to characteristics that have immediate consequences on *the working conditions of* staff members. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender.

#### *Amendment*

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instance, mention may be made, amongst other things, of the requirements — applicable during performance of the contract — to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, even where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation.

or animal welfare. For instance, mention may be made, amongst other things, of the requirements – applicable during performance of the contract – to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, *in particular ILO Convention 94*, even where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation.

#### *Justification*

*This amendment stresses the importance of ILO Convention 94 on Labour Clauses (Public Contracts) which specifically regulates public procurement. The EU must commit itself to ILO standards.*

### **Amendment 18**

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

#### **Article 1 – paragraph 2 – subparagraph 1**

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

2. Procurement within the meaning of this Directive is the purchase *or other forms of acquisition* of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities, *whether or not the works, supplies or services are intended for a public purpose.*

##### *Amendment*

2. Procurement within the meaning of this Directive is the purchase of works, supplies or services *via public contracts* by one or more contracting authorities from economic operators chosen by those contracting authorities.

#### *Justification*

*This change is necessary to allow for municipalities to cooperate in an effective way in order to provide certain services of general interest, as for example in waste and water treatment.*

## **Amendment 19**

### **Proposal for a directive**

#### **Article 1 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*An entirety of works, supplies and/or services, even if purchased through different contracts, constitutes a single procurement within the meaning of this Directive, if the contracts are part of one single project.*

*deleted*

#### *Justification*

*This change is necessary to allow for municipalities to cooperate in an effective way in order to provide certain services of general interest, as for example waste and water treatment.*

## **Amendment 20**

### **Proposal for a directive**

#### **Article 1 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. A contract awarded by a contracting authority to another legal person shall fall outside the scope of this Directive where the following cumulative conditions are fulfilled:***

***a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments.***

***b) the essential part of the activities of that legal person are carried out for the controlling contracting authority or for other legal persons controlled by that contracting authority;***

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

*(Text from Article 11, para 1 of Commission proposal - with modifications)*

### *Justification*

*This change is necessary to allow for municipalities to cooperate in an effective way in order to provide certain services of general interest, as for example waste and water treatment. This is a matter of scope and, therefore, Article 11 of the Commission proposal is moved to Article 1 with amendments.*

### **Amendment 21**

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

#### **Article 1 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. Paragraph 2 a (new) also applies where a controlled entity or entities which are a contracting authority award a contract to its controlling entity, or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract.***

*(Text from Article 11, para 2 of Commission proposal - with modifications)*

### *Justification*

*cf. to amendment to Article 1, para 2 a (new).*

### **Amendment 22**

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

#### **Article 1 – paragraph 2 c (new)**

*Text proposed by the Commission*

*Amendment*

***2c. A contracting authority, which does not exercise over a legal person control within the meaning of paragraph 3, may nevertheless award a public contract outside the scope of this Directive to a legal person which it controls jointly with other contracting authorities, where the following conditions are fulfilled:***  
***a) the contracting authorities exercise***

*jointly over the legal person a control which is similar to that which they exercise over their own departments;*

*b) the essential part of the activities of that legal person are carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;*

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

*(Text from Article 11, para 3 of Commission proposal - with modifications)*

*Justification*

*cf. to amendment to Article 1, para 2 a (new).*

### **Amendment 23**

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

#### **Article 1 – paragraph 2 d (new)**

*Text proposed by the Commission*

*Amendment*

*2d. An agreement concluded between two or more contracting authorities shall not be deemed to be a public contract within the meaning of Article 2(7) of this Directive, and thus fall out of the scope of the Directive, where the following cumulative conditions are fulfilled:*

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

*b) the task is carried out solely by the public authorities concerned i.e. without the involvement of active private capital.*

*(Text from Article 11, para 4 of Commission proposal - with modifications)*

*Justification*

*cf. to amendment to Article 1, para 2 a (new)*

### **Amendment 24**

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

*Text proposed by the Commission*

*Amendment*

***2e. However transferring tasks between public sector organisations is a matter for the Member States' internal administrative organisation and is not subject to procurement rules.***

**Amendment 25**

**Proposal for a directive**  
**Article 2 - point 22 a (new)**

*Text proposed by the Commission*

*Amendment*

***22a. 'socially sustainable production process' means the production process in which the provision of works, services and supplies, respects health and safety, social and labour law, rules and standards, in particular with regard to the principle of equal treatment at the workplace as defined by Union and national legislation and collective agreements, which apply where the provision of works, services and supplies takes place;***

**Amendment 26**

**Proposal for a directive**  
**Article 11**

*Text proposed by the Commission*

*Amendment*

***Article 11***

***deleted***

***Relations between public authorities***

***1. A contract awarded by a contracting authority to another legal person shall fall outside the scope of this Directive where the following cumulative conditions are fulfilled:***

*(a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments.*

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

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

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

*2. Paragraph 1 also applies where a controlled entity which is a contracting authority awards a contract to its controlling entity, or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract.*

*3. A contracting authority, which does not exercise over a legal person control within the meaning of paragraph 1, may nevertheless award a public contract without applying this Directive to a legal person which it controls jointly with other contracting authorities, where the following conditions are fulfilled:*

*(a) the contracting authorities exercise jointly over the legal person a control which is similar to that which they exercise over their own departments;*

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

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

*For the purposes of point (a), contracting authorities shall be deemed to jointly control a legal person where the following cumulative conditions are fulfilled:*

*(a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities;*

*(b) those contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person;*

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

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

*4. An agreement concluded between two or more contracting authorities shall not be deemed to be a public contract within the meaning of Article 2(6) of this Directive where the following cumulative conditions are fulfilled:*

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

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

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

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

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

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

*The exclusions provided for in paragraphs 1 to 4 shall cease to apply from the moment any private participation takes place, with the effect that ongoing contracts need to be opened to competition through regular procurement procedures.*

*(Text from Article 11 partly moved to Article 1 - see amendments on Article 1, para 2a-d (new))*

#### *Justification*

*The content of Article 11 of the Commission proposal is important for the scope of the Directive and is thus moved, with modifications, to Article 1. Correspondingly, Article 11 of the Commission proposal is deleted.*

#### **Amendment 27**

##### **Proposal for a directive Article 11 a (new)**

*Text proposed by the Commission*

*Amendment*

##### *Article 11 a*

*Service contracts awarded on the basis of exclusive right.*

*This Directive shall not apply to public service contracts awarded by a contracting authority to another contracting authority or to an association of contracting authorities on the basis of*



*an exclusive right which they enjoy pursuant to a published law, regulation or administrative provision which is compatible with the treaty.*

*Justification*

*Reintroducing Article 18 from the current Directive 2004/18/EC. This Article is important for operations of general interest, for example gaming (state-authorized lotteries) and waste disposal. The Article makes it possible for authorities to reserve some operations for specific in-house companies. The European Court has applied this provision in C-360/96.*

**Amendment 28**

**Proposal for a directive**

**Article 24 – paragraph 1 – subparagraph 4 – introductory part**

*Text proposed by the Commission*

*Amendment*

*They may also* provide that contracting authorities may *use* a competitive procedure with negotiation or a competitive dialogue in any of the following cases:

*Member States shall* provide that contracting authorities may *apply* a competitive procedure with negotiation or a competitive dialogue *as regulated in this Directive* in any of the following cases:

*Justification*

*In certain cases a competitive procedure with negotiation represents the only feasible way of awarding complex contracts. Contracting authorities should therefore be able to opt for this type of procedure in such cases.*

**Amendment 29**

**Proposal for a directive**

**Article 24 – paragraph 1 – subparagraph 5**

*Text proposed by the Commission*

*Amendment*

*Member States may decide not to transpose into their national law the competitive procedure with negotiation, the competitive dialogue and the innovation partnership procedures.*

*deleted*

## *Justification*

*In certain cases a competitive procedure with negotiation represents the only feasible way of awarding complex contracts. Contracting authorities should therefore be able to opt for this type of procedure in such cases.*

### **Amendment 30**

#### **Proposal for a directive Article 34 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 34 a**

##### ***Central website for electronic tendering***

***In the interests of transparency, public authorities may publish information about the works which have been carried out, etc., on a central, European website established for the purpose, specifying amounts, quantities and the like, so that other public authorities can compare what has been paid for comparable works, etc., and base their invitations to tender on this information, which could cut costs and show up major discrepancies in the prices of contracts.***

### **Amendment 31**

#### **Proposal for a directive Article 40 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

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

1. The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply ***in order to achieve the use, sustainability and animal welfare objectives of the contracting authority.***

## Amendment 32

### Proposal for a directive Article 41 – title

*Text proposed by the Commission*

*Amendment*

Labels

Labels *and certificates of a third party verified standard*

#### *Justification*

*The use of labels should be deleted in favour of the use of standards. Standards are useful as they are well understood by tenderers in the relevant area and also to avoid contracting authorities needing to re-invent the wheel. By stressing the use of standards the Directive facilitates for contracting authorities to set environmental and social demands.*

## Amendment 33

### Proposal for a directive Article 41 – paragraph 1 – subparagraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

1. Where contracting authorities lay down environmental, social or other characteristics of a works, service or supply in terms of performance or functional requirements as referred to in point (a) of Article 40(3) they may require that these works, services or supplies bear a specific label, provided that all of the following conditions are fulfilled:

1. Where contracting authorities lay down environmental, social or other characteristics of a works, service or supply in terms of performance or functional requirements as referred to in point (a) of Article 40(3) they may require that these works, services or supplies bear a specific label *and/or a certificate of a third party verified standard*, provided that all of the following conditions are fulfilled:

## Amendment 34

### Proposal for a directive Article 41 – paragraph 1 – subparagraph 1 – point a

*Text proposed by the Commission*

*Amendment*

(a) the requirements for the label *only* concern characteristics which are linked to the subject-matter of the contract and are appropriate to define characteristics of the

(a) the requirements for the label *and/or the certificate of a third party verified standard* concern characteristics which are linked to the subject-matter of the contract

works, supplies or services that are the subject-matter of the contract;

and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

### **Amendment 35**

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

#### **Article 41 – paragraph 1 – subparagraph 1 – point b**

*Text proposed by the Commission*

(b) the requirements for the label are drawn up on the basis of scientific information or based on other objectively verifiable and non-discriminatory criteria;

*Amendment*

(b) the requirements for the label ***and/or the certificate of a third party verified standard*** are drawn up on the basis of scientific information or based on other objectively verifiable and non-discriminatory criteria ***and data***;

### **Amendment 36**

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

#### **Article 41 – paragraph 1 – subparagraph 1 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) the rules governing selection are reasonably proportionate to the nature of the contract;***

### **Amendment 37**

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

#### **Article 41 – paragraph 1 – subparagraph 1 – point c**

*Text proposed by the Commission*

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations, may participate,

*Amendment*

(c) the labels ***and/or certificates of a third party verified standard*** are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations, may participate;

## Amendment 38

### Proposal for a directive

#### Article 41 – paragraph 1 – subparagraph 1 – point d

*Text proposed by the Commission*

(d) the labels are accessible to all interested parties;

*Amendment*

(d) the labels ***and/or certificates of a third party verified standard*** are accessible to all interested parties;

## Amendment 39

### Proposal for a directive

#### Article 41 – paragraph 1 – subparagraph 1 – point e

*Text proposed by the Commission*

(e) the criteria of the label are set by a third party which is independent from the economic operator applying for the label.

*Amendment*

(e) the criteria of the label ***and/or certificate of a third party verified standard*** are set by a third party which is independent from the economic operator applying for the label. ***The third party may be a specific national or governmental body or organisation.***

## Amendment 40

### Proposal for a directive

#### Article 41 – paragraph 2

*Text proposed by the Commission*

2. Where a ***label fulfils the conditions provided in points (b), (c), (d) and (e) of paragraph 1 but also*** sets out requirements not linked to the subject-matter of the contract, contracting authorities may define the technical specification by reference to ***those*** of the detailed specifications of that ***label***, or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

*Amendment*

2. Where a ***third party verified standard does not meet the definition in point 6 of Annex VIII because its criteria*** sets out requirements not linked to the subject-matter of the contract, contracting authorities may define the technical specification by reference to of the detailed specifications of that, ***standard*** or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this

subject-matter.

*Justification*

*This amendment aims to highlight the use of third party standards in public procurement. By using third party verified standards contracting authorities and tenderers have a clear, eligible and useful tool. The fact that a product or service meets a third party verified standard serves as evidence that the contracting authority's criteria are met.*

**Amendment 41**

**Proposal for a directive**

**Article 41 – paragraph 2 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*The contracting authority may state in its technical specifications that works, supplies or services that comply with such a standard shall be deemed to satisfy the technical specifications. Contracting authorities shall also accept all equivalent standards that fulfil the specifications indicated by the contracting authorities. For works, supplies or services that have not been verified by a third party to comply with such a standard, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof such as certificates and declarations.*

*Justification*

*The use of labels should be deleted in favour of the use of standards. Standards are useful as they are well understood by tenderers in the relevant area and also to avoid contracting authorities needing to re-invent the wheel. By stressing the use of standards the Directive facilitates for contracting authorities to set environmental and social demands.*

**Amendment 42**

**Proposal for a directive**

**Article 55 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

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

4. **If any** candidate or tenderer that is in one of the situations referred to in paragraphs 1, 2 and 3 **provides** the contracting authority with evidence demonstrating its reliability despite the existence of the relevant ground for exclusion, **the contracting authority may reconsider the exclusion of the tender.**

*Justification*

*In order to ensure clearly and unambiguously that Union, national and regional law and other binding provisions must be upheld by any tenderer, and that contracting authorities have a clear right to exclude tenderers who are in breach of them.*

**Amendment 43**

**Proposal for a directive**

**Article 56 – paragraph 1 – point (c a) (new)**

*Text proposed by the Commission*

*Amendment*

**(ca) respect of standards in the field of health and safety, social and labour and environmental law defined by EU and national legislation as well by collective agreements.**

*Justification*

*The use of labels should be deleted in favour of the use of standards. Standards are useful as they are well understood by tenderers in the relevant area and also to avoid contracting authorities needing to re-invent the wheel. By stressing the use of standards the Directive facilitates for contracting authorities to set environmental and social demands.*

**Amendment 44**

**Proposal for a directive**

**Article 56 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

4. With regard to technical and

4. With regard to technical and

professional ability, contracting authorities may require that economic operators possess the necessary human and technical resources and experience to **perform** the contract to an appropriate quality standard. Contracting authorities may conclude that economic operators will not **perform** the **contract to an appropriate quality standard** where the contracting authority established that they have conflicting interests which may negatively affect the performance of the contract.

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

#### *Justification*

*The use of labels should be deleted in favour of the use of standards. Standards are useful as they are well understood by tenderers in the relevant area and also to avoid contracting authorities needing to re-invent the wheel. By stressing the use of standards the Directive facilitates for contracting authorities to set environmental and social demands.*

#### **Amendment 45**

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

##### **Article 56 – paragraph 5 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Provisions set in paragraphs 1, 2, 3, 4 and 5 apply to subcontracting procedures and subcontracting operators.***

#### *Justification*

*The aim is to give contracting authorities better possibilities to take subcontracting into account.*

#### **Amendment 46**

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

##### **Article 57 – paragraph 3 – subparagraph 2 a (new)**



*Text proposed by the Commission*

*Amendment*

***National authorities shall create secure online certificate repositories where enterprises can submit all relevant documentation once every two years. That documentation shall be accessible to all contracting authorities at all levels, through the provision of a personal identification number.***

#### **Amendment 47**

##### **Proposal for a directive Article 60 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

2. Proof of the economic operator's economic and financial standing may, as a general rule, be provided by one or more of the references listed in Annex XIV, **part 1**.

2. Proof of the economic operator's economic and financial standing ***as well as compliance with rules and standards in the field of health and safety, social and labour law defined by Union and national legislation and by collective agreements which apply in the place where the work, service or supply is performed,*** may, as a general rule, be provided by one or more of the references listed in Annex XIV.

#### **Amendment 48**

##### **Proposal for a directive Article 61 – title**

*Text proposed by the Commission*

*Amendment*

Quality assurance standards and environmental management standards

Quality assurance standards, and environmental ***and animal welfare*** management standards

#### **Amendment 49**

##### **Proposal for a directive Article 61 – paragraph 3**

*Text proposed by the Commission*

3. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information relating to the documents produced as evidence of compliance with quality and environmental standards referred to in paragraphs 1 and 2 of this Article.

*Amendment*

3. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information relating to the documents produced as evidence of compliance with quality and environmental ***and animal welfare*** standards referred to in paragraphs 1 and 2 of this Article.

**Amendment 50**

**Proposal for a directive  
Article 66 – paragraph 1**

*Text proposed by the Commission*

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

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

***(b) the lowest cost.***

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

*Amendment*

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

**Amendment 51**

**Proposal for a directive  
Article 66 – paragraph 2**

*Text proposed by the Commission*

2. The most economically advantageous tender referred to in point (a) of paragraph

*Amendment*

2. The most economically advantageous tender referred to in point (a) of paragraph

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

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

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

*(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 (22) of Article 2, to the extent that those criteria are specified in accordance with paragraph 4 and they concern factors directly involved in these processes and characterise the specific process of production or provision of the requested works, supplies or services.*

1 from the point of view of the contracting authority shall be identified on the basis of criteria linked to the subject-matter of the public contract in question. Those criteria shall include, in addition to the price or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter of the public contract in question.

## **Amendment 52**

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

***2a. The criteria referred to in paragraph 2 may include:***

***(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users;***

***(b) innovative characteristics including best available techniques;***

***(c) environmental and sustainability criteria including life-cycle costing as defined in Article 67 and Green Public Procurement criteria;***

***(d) socially sustainable production process criteria, which may also involve the employment of disadvantaged individuals or members of vulnerable groups;***

***(e) for service contracts and contracts involving the design of works, the organisation, qualification and experience of the staff assigned to performing the contract in question as well as the capacities, abilities and professional conduct of any subcontractor may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced and further subcontracting will only be permitted with the consent of the contracting authority, which must verify that replacements or further subcontracting ensure equivalent organisation and quality;***

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

***(g) the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article***

*2, to the extent that those criteria are specified in accordance with paragraph 4 and they concern factors directly involved in these processes and characterise the specific process of production or provision of the requested works, supplies or services.*

## **Amendment 53**

### **Proposal for a directive Article 66 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

## **Amendment 54**

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

*Text proposed by the Commission*

*Amendment*

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

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

## **Amendment 55**

### **Proposal for a directive Article 67 – 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 has been drawn up ***in close consultation with stakeholders, is based*** on scientific information or is based on other objectively verifiable and non-discriminatory criteria;

**Amendment 56**

**Proposal for a directive**

**Article 67 – paragraph 2 – subparagraph 1 – point b**

*Text proposed by the Commission*

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

*Amendment*

(b) it has been ***tested and verified with suppliers and*** established for repeated or continuous application;

**Amendment 57**

**Proposal for a directive**

**Article 67 – paragraph 2 – subparagraph 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

***(ca) it is formulated so as to ensure that market surveillance authorities can verify the conformity of the product with the declared life-cycle costs.***

**Amendment 58**

**Proposal for a directive**

**Article 67 – paragraph 3 – subparagraph 1**

*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

*Amendment*

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, ***such legislative acts*** shall be ***adopted in close***

included in the award criteria referred to in Article 66(1).

***consultation with stakeholders. Such common methodologies shall be*** applied where life-cycle costing is included in the award criteria referred to in Article 66(1).

## **Amendment 59**

### **Proposal for a directive Article 69 – paragraph 4 – subparagraph 2**

#### *Text proposed by the Commission*

Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with obligations established by Union legislation in the field of social and labour law **or** environmental law or by the international social and environmental law provisions listed in Annex XI.

#### *Amendment*

Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with obligations established by Union legislation **or national laws, regulations and other binding provisions** in the field of social and labour law, environmental law or **public health law or** by the international social and environmental law provisions listed in Annex XI.

#### *Justification*

*Contracting authorities should have the right to refuse giving a contract to a tender that does not comply with laws and regulations. The reference to regulations in this article should not be limited to Union legislation in specific regulatory fields. The article should be extended to include national legislation and systems for regulating the labour market.*

## **Amendment 60**

### **Proposal for a directive Article 70 – subparagraph 1 a (new)**

#### *Text proposed by the Commission*

#### *Amendment*

***A contracting authority may state in the contract documents, or be obliged by a Member State so to state, the body or bodies from which a candidate or tenderer may obtain the appropriate information on the obligations relating to taxes, to environmental protection, to the employment protection provisions and to***

*the working conditions which are normally applied in the place where the works are to be carried out or services are to be provided and which shall be applicable to the works carried out on site or to the services provided during the performance of the contract.*

*Justification*

*This amendment reintroduces, with some minor changes, Article 27, paragraph 1, from the present Directive 2004/18/EC. from the present directive on public procurement (EC 2004/18). This Article should not be deleted because of its importance in supporting tenderers from other countries to participate in procurement and to endorse cross-border trade.*

**Amendment 61**

**Proposal for a directive  
Article 70 – subparagraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

*A contracting authority which supplies the information referred to in paragraph 1 shall request the tenderers or candidates in the contract award procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to environment and employment protection provisions and the working conditions which are normally applied in the place where the works are to be carried out or the service is to be provided.*

*Justification*

*This amendment reintroduces, with some minor changes, Article 27, paragraph 2, from the present Directive 2004/18/EC. This Article should not be deleted because of its importance in supporting tenderers from other countries to participate in procurement and to endorse cross-border trade.*



## Amendment 62

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

*Text proposed by the Commission*

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

*Amendment*

3. Paragraphs 1 and 2 shall be without prejudice to the question of the principal economic operator's liability. ***A system of joint and several liability shall stipulate that the whole subcontracting chain is jointly held liable as regards respect of fundamental rights, environmental, health and safety, social and labour rules (as defined in Articles 2, 22 a (new), 40, 54, 55 and 56).***

*Justification*

*The aim is to give contracting authorities better possibilities to take subcontracting into account.*

## Amendment 63

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

*Text proposed by the Commission*

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

*Amendment*

1. Member States shall appoint a single independent body responsible for the oversight and coordination of implementation activities (hereinafter 'the oversight body') ***in cases in which no such independent body yet exists***. Member States shall inform the Commission of their designation.

## **Amendment 64**

### **Proposal for a directive Annex VIII – point 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***(5a) “Third party verified standard” means a specification established in relation to environmental, social or other characteristics of a works, service or supply (including life cycle and social sustainable production process characteristics) that is accessible to all interested parties and requires compliance to be verified by a third party which is independent from the tenders and where the criteria for the specification:***

***(a) only concern characteristics which are linked to the subject-matter of the contract;***

***(b) are drawn up on the basis of scientific information or based on other objectively verifiable and non-discriminatory criteria;***

***(c) are established in an open and transparent procedure in which all stakeholders, including government bodies, trade unions, consumers, manufacturers, distributors and environmental organisations, may participate;***

***(d) are set by a third party which is independent from any economic operator applying for the verification of compliance.***

*Justification*

*Modification due to changes regarding standards.*

## **Amendment 65**

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

*Text proposed by the Commission*

*Amendment*

**- Convention 94 on Labour Clauses  
(Public Contracts)**

*Justification*

*Ensuring minimum standards of health, safety and welfare for workers employed by contractors.*

## **Amendment 66**

**Proposal for a directive  
Annex XVI – row 2 – column 2**

*Text proposed by the Commission*

*Amendment*

Health and social services

Health and social services, ***including  
ambulance services***

## PROCEDURE

<b>Title</b>	Public procurement
<b>References</b>	COM(2011)0896 – C7-0006/2012 – 2011/0438(COD)
<b>Committee responsible</b> Date announced in plenary	IMCO 17.1.2012
<b>Opinion by</b> Date announced in plenary	ENVI 17.1.2012
<b>Rapporteur</b> Date appointed	Åsa Westlund 7.2.2012
<b>Discussed in committee</b>	29.5.2012
<b>Date adopted</b>	10.7.2012
<b>Result of final vote</b>	+: 54 –: 4 0: 3
<b>Members present for the final vote</b>	Elena Oana Antonescu, Kriton Arsenis, Sophie Auconie, Pilar Ayuso, Sandrine Bélier, Sergio Berlato, Martin Callanan, Yves Cochet, Tadeusz Cymański, Chris Davies, Esther de Lange, Anne Delvaux, Bas Eickhout, Jill Evans, Karl-Heinz Florenz, Elisabetta Gardini, Gerben-Jan Gerbrandy, Matthias Groote, Françoise Grossetête, Cristina Gutiérrez-Cortines, Satu Hassi, Jolanta Emilia Hibner, Dan Jørgensen, Christa Kläß, Eija-Riitta Korhola, Holger Kraemer, Jo Leinen, Corinne Lepage, Zofija Mazej Kukovič, Linda McAvan, Radvilė Morkūnaitė-Mikulėnienė, Miroslav Ouzký, Vladko Todorov Panayotov, Gilles Pargneaux, Andres Perello Rodriguez, Mario Pirillo, Pavel Poc, Frédérique Ries, Oreste Rossi, Dagmar Roth-Behrendt, Kārlis Šadurskis, Horst Schnellhardt, Richard Seeber, Theodoros Skylakakis, Bogusław Sonik, Claudiu Ciprian Tănăsescu, Anja Weisgerber, Åsa Westlund, Glenis Willmott, Sabine Wils, Marina Yannakoudakis
<b>Substitute(s) present for the final vote</b>	Margrete Auken, Erik Bánki, Christofer Fjellner, Gaston Franco, Julie Girling, Toine Manders, Miroslav Mikolášik, Vittorio Prodi, Alda Sousa, Marita Ulvskog