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AMENDMENTS 469 - 763

Draft report

Marc Tarabella

(PE483.468v01-00)

on the proposal for a directive of the European Parliament and of the Council
on public procurement

Proposal for a directive

(COM(2011)0896 – C7-0006/2012 – 2011/0438(COD))

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United in diversity

EN

Amendment 469
Cristian Silviu Buşoi

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

In order to safeguard competition this exception should be limited to the minimum. It should therefore be provided that all activities, meaning 100% of the activities of the legal person should be carried out for the controlling contracting authority.

Amendment 470
Marian Harkin

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

The background operation of a public authority creates unfair competition when operating directly or indirectly on the market. Exemption of competition should be limited to contracts awarded to public authorities entirely under the control of the awarding authority, and no

private participation in these entities should be admitted. This directive is an opportunity to clarify and simplify rules that guarantee the best use of public resources.

Amendment 471
Riikka Manner

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) **all** 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;

Or. en

Justification

The proposal of the Commission means that the public sector entity can be directly awarded by its controlling public sector entity, and then go to the market by a 10 % portion. This 10 % could of course be millions of euros, which would strongly distort competition in many business areas. There is no level playing field if a public sector entity may sell services and products in the same competitive market with private entities.

Amendment 472
Toine Manders

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) at least **50 %** 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;

Or. nl

Amendment 473
Françoise Castex

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 474
Christel Schaldemose

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

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. ***For waste incineration plants this minimum limit shall be set at 50%.***

Or. da

Amendment 475
Marian Harkin

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

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

Amendment

deleted

Justification

The background operation of a public authority creates unfair competition when operating directly or indirectly on the market. Exemption of competition should be limited to contracts awarded to public authorities entirely under the control of the awarding authority, and no private participation in these entities should be admitted. This directive is an opportunity to clarify and simplify rules that guarantee the best use of public resources.

Amendment 476
Heide Rühle

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

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

Amendment

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

Justification

There has to be a clear distinction between public-public cooperation and public-private partnerships. However in some Member States private participation might be an obligation enforced by law.

Amendment 477
Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

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

Amendment

(c) there is ***only passive*** private participation, ***i.e. participation that does not allow any influence on the operational business of*** the controlled

legal person.

Or. de

Justification

This exclusion should apply only to 'active' private participation in the controlled legal person that may influence operational decisions. This amendment will allow simple capital participation in the legal person, such as silent capital, without affecting the exception for in-house constellations. An opening needs to be left for simple capital participation so that local councils can offer services at an affordable price for citizens.

Amendment 478

Andreas Schwab, Frank Engel, Sirpa Pietikäinen

Proposal for a directive

Article 11 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

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

Amendment

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

Or. de

Justification

Private participation is a legal requirement in some Member States, owing to historical developments and established structures. These forms of cooperation should remain possible, but any other private participation should be excluded in line with the case-law of the Court of Justice.

Amendment 479

Wim van de Camp

Proposal for a directive

Article 11 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) there is no private participation in the

Amendment

(c) there is no ***active*** private participation

controlled legal person.

in the controlled legal person.

Or. nl

Amendment 480
Jürgen Creutzmann

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

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

(c) ***the*** private participation in the controlled legal person ***does not exceed 50% of its voting shares.***

Or. en

Justification

Private investors can only influence management decisions if they hold more than 50% of the voting shares of the controlled legal person. This amendment is to enable pure capital investments without affecting the exemption of in-house procurement and horizontal cooperation.

Amendment 481
Pablo Arias Echeverría

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 1 – point c – point i (new)

Text proposed by the Commission

Amendment

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

Or. es

Amendment 482
Pablo Arias Echeverría

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 1 – point c – point ii (new)

Text proposed by the Commission

Amendment

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

Or. es

Amendment 483
Heide Rühle

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

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.

deleted

Or. en

Justification

Point (a) of subparagraph 1 is clear enough no repetition needed.

Amendment 484
Wim van de Camp

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

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.

deleted

Or. nl

Amendment 485
Philippe Juvin

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

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.

deleted

Or. fr

Justification

Clarification of the article. See the amendment to Article 11(1)(a).

Amendment 486
Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

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.

deleted

Or. de

Justification

With a view to achieving the declared aim of legislative simplification, excessive explanations in a legal text should be avoided and instead be provided in separate guidelines. This section should therefore be deleted. An explanation that goes beyond the relevant case-law of the Court of Justice is inappropriate here.

Amendment 487
Peter Simon

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

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.

deleted

Or. de

Amendment 488
Marian Harkin

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

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.

deleted

Or. en

Justification

The background operation of a public authority creates unfair competition when operating directly or indirectly on the market. Exemption of competition should be limited to contracts awarded to public authorities entirely under the control of the awarding authority, and no private participation in these entities should be admitted. This directive is an opportunity to clarify and simplify rules that guarantee the best use of public resources.

Amendment 489
Andreas Schwab, Jürgen Creutzmann

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

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.

(Does not affect English version.)

Or. de

Justification

(Does not affect English version.)

Amendment 490
Evelyne Gebhardt

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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.

Amendment

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.
The above conditions shall be met where a contracting authority awards a public contract to a legal person which it controls jointly with other contracting authorities.

Or. de

Amendment 491
Cristian Silviu Buşoi

Proposal for a directive
Article 11 – paragraph 2

Text proposed by the Commission

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.

Amendment

deleted

Justification

The extension of the in-house exception should be limited to a minimum. This reverse in-house exception is an undue extension of the ECJ ruling in the Teckal case and should therefore be eliminated.

Amendment 492
Marian Harkin

Proposal for a directive
Article 11 – paragraph 2

Text proposed by the Commission

Amendment

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. ***deleted***

Justification

The background operation of a public authority creates unfair competition when operating directly or indirectly on the market. Exemption of competition should be limited to contracts awarded to public authorities entirely under the control of the awarding authority, and no private participation in these entities should be admitted. This directive is an opportunity to clarify and simplify rules that guarantee the best use of public resources.

Amendment 493
Heide Rühle

Proposal for a directive
Article 11 – paragraph 2

Text proposed by the Commission

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.

Amendment

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

Or. en

Amendment 494
Wim van de Camp

Proposal for a directive
Article 11 – paragraph 2

Text proposed by the Commission

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.

Amendment

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

Or. nl

Amendment 495
Andreas Schwab, Anja Weisgerber

Proposal for a directive
Article 11 – paragraph 2

Text proposed by the Commission

2. Paragraph 1 also applies where a

Amendment

2. *(Does not affect English version.)*

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.

Or. de

Justification

Affects German version only.

Amendment 496

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive

Article 11 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. Paragraph 1 also applies where a controlled entity which is a contracting authority awards a contract to its controlling entity **or controlling entities**, or to another legal person controlled by the same contracting authority, provided that there is **only passive** private participation in the legal person being awarded the public contract, **i.e. participation that does not allow any influence on the operational business of the controlled legal person.**

Or. de

Justification

Provision also needs to be made here for cases where public contracts are fulfilled jointly by several contracting authorities.

Amendment 497
Peter Simon

Proposal for a directive
Article 11 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. Paragraph 1 also applies where a controlled entity which is a contracting authority awards a contract to its controlling entity **or controlling entities**, or to another legal person controlled by the same contracting authority, provided that there is only passive private participation in the legal person being awarded the public contract.

Or. de

Amendment 498
Jürgen Creutzmann

Proposal for a directive
Article 11 – paragraph 2

Text proposed by the Commission

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.

Amendment

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 **the** private participation in the legal person being awarded the public contract **does not exceed 50% of its voting shares**.

Or. en

Justification

Private investors can only influence management decisions if they hold more than 50% of the voting shares of the controlled legal person. This amendment is to enable pure capital investments without affecting the exemption of in-house procurement and horizontal

cooperation.

Amendment 499
Evelyne Gebhardt

Proposal for a directive
Article 11 – paragraph 3

Text proposed by the Commission

Amendment

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:

deleted

(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.

Or. de

Amendment 500

Marian Harkin

Proposal for a directive Article 11 – paragraph 3

Text proposed by the Commission

Amendment

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:

deleted

(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.

Or. en

Justification

The background operation of a public authority creates unfair competition when operating directly or indirectly on the market. Exemption of competition should be limited to contracts awarded to public authorities entirely under the control of the awarding authority, and no private participation in these entities should be admitted. This directive is an opportunity to clarify and simplify rules that guarantee the best use of public resources.

Amendment 501

Heide Rühle

Proposal for a directive

Article 11 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

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:

Amendment

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 **outside the scope of** this Directive to a legal person which it controls jointly with other contracting authorities, where the following conditions are fulfilled:

Or. en

Amendment 502
Wim van de Camp

Proposal for a directive
Article 11 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

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:

Amendment

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 ***outside the scope of*** this Directive to a legal person which it controls jointly with other contracting authorities, where the following conditions are fulfilled:

Or. nl

Amendment 503
Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, Andreas Schwab

Proposal for a directive
Article 11 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

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:

Amendment

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 ***outside the scope of*** this Directive to a legal person which it controls jointly with other contracting authorities, where the following conditions are fulfilled:

Or. de

Justification

The wording suggests that contracting authorities can decide whether or not to apply the Directive. It must be made clear that the cases described do not fall within the scope of the Directive.

Amendment 504

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive

Article 11 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Or. de

Justification

In its resolutions of 10 May 2010 and 5 October 2011, Parliament took the view that public-public cooperation should not be subject to public procurement rules provided that, inter alia, the purpose of the partnership was the provision of a public-service task conferred on all the public authorities concerned.

Amendment 505

Philippe Juvin

Proposal for a directive

Article 11 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

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

Amendment

(a) the contracting authorities exercise jointly over the legal person a control which is **equivalent** to that which they exercise over their own departments, **i.e. they exercise a decisive influence over both strategic objectives and significant decisions of the controlled legal person. With a view to determining whether such control is being exercised, account may also be taken of factors such as the level of representation on administrative, management or supervisory bodies, specifications relating thereto in the articles of association or the ownership**

Amendment 508

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

Proposal for a directive

Article 11 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) at least **80 %** of the activities of that legal person ***which are the subject of the contract*** are carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;

Or. de

Justification

Bringing activities in different sectors together into a common holding structure offers important synergies for municipal enterprises, and these should not be undermined by public procurement law. The turnover deemed relevant to the application of the essentiality criterion should therefore be restricted to the activities that are the subject of the contract.

Amendment 509

Barbara Weiler

Proposal for a directive

Article 11 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) at least **85 %** 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;

Or. de

Amendment 510
Wim van de Camp

Proposal for a directive
Article 11 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) **the majority** 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;

Or. nl

Amendment 511
Andreas Schwab, Frank Engel, Jürgen Creutzmann

Proposal for a directive
Article 11 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) the legal person **essentially carries out activities** for the controlling contracting authorities or **for** other legal persons controlled by the same contracting authorities. ***It is assumed that the legal person essentially carries out activities for the controlling contracting authorities or for other legal persons controlled by the same contracting authorities where it carries out at least 90 % of its activities which are the subject of the contract for that legal person or those legal persons;***

Or. de

Justification

This proposal combines the case-law of the Court of Justice in case C-107/98 with a safe-harbour clause establishing a rebuttable presumption of in-house activity.

Amendment 512
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 11 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(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;

(b) at least **80**% 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;

Or. en

Amendment 513
Philippe Juvin

Proposal for a directive
Article 11 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(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;

(b) at least 90 % of the **average total turnover** of that legal person **is generated by means of activities** carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;

Or. fr

Justification

Clarification of the criteria which are used to define joint ‘in-house’ activities and which justify the exclusion of such contracts from the scope of the directive. The phrase ‘90 % of the activities’ clarifies one of the terms used in the case law (‘most of the activities’) but not the other, hence the proposal to include the phrase ‘90 % of the turnover’.

Amendment 514
Peter Simon

Proposal for a directive

Article 11 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) at least **80 %** of the activities of that legal person ***which are the subject of the contract*** are carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;

Or. de

Amendment 515

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

Proposal for a directive

Article 11 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(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;

Or. en

Justification

This formulation reflects the Court of Justice of the EU rulings.

Amendment 516

Cristian Silviu Buşoi

Proposal for a directive

Article 11 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

(b) ***at least 90 % of*** the activities of that legal person are carried out for the

Amendment

(b) ***all*** the activities of that legal person are carried out for the controlling contracting

controlling contracting authorities or other legal persons controlled by the same contracting authorities;

authorities or other legal persons controlled by the same contracting authorities;

Or. en

Justification

In order to safeguard competition this exception should be limited to the minimum. It should therefore be provided that all activities, meaning 100% of the activities of the legal person should be carried out for the controlling contracting authority.

Amendment 517
Riikka Manner

Proposal for a directive
Article 11 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(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;

(b) **all** 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;

Or. en

Justification

The proposal of the Commission means that the public sector entity can be directly awarded by its controlling public sector entity, and then go to the market by a 10 % portion. This 10 % could of course be millions of Euros, which would strongly distort competition in many business areas. There is no level playing field if a public sector entity may sell services and products in the same competitive market with private entities.

Amendment 518
Toine Manders

Proposal for a directive
Article 11 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) at least **50 %** 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;

Or. nl

Amendment 519
Françoise Castex

Proposal for a directive
Article 11 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 520
Heide Rühle

Proposal for a directive
Article 11 – paragraph 3 – subparagraph 1 – point c

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 521

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive

Article 11 – paragraph 3 – subparagraph 1 – point c

Text proposed by the Commission

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

Amendment

(c) there is **only passive** private participation, ***i.e. participation that does not allow any influence on the operational business of*** the controlled legal person.

Or. de

Justification

Long-established cooperation between contracting authorities and private operators should not be undermined by public procurement law.

Amendment 522

Wim van de Camp

Proposal for a directive

Article 11 – paragraph 3 – subparagraph 1 – point c

Text proposed by the Commission

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

Amendment

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

Or. nl

Amendment 523

Andreas Schwab, Frank Engel

Proposal for a directive

Article 11 – paragraph 3 – subparagraph 1 – point c

Text proposed by the Commission

(c) there is no private participation in the

Amendment

(c) there is no private participation in the controlled legal person, ***unless this is a***

controlled legal person.

legal requirement in the relevant Member States.

Or. de

Justification

Private participation is a legal requirement in some Member States, owing to historical developments and established structures. These forms of cooperation should remain possible, but any other private participation should be excluded in line with the case-law of the Court of Justice.

Amendment 524
Jürgen Creutzmann

Proposal for a directive
Article 11 – paragraph 3 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

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

(c) ***the*** private participation in the controlled legal person ***does not exceed 50% of its voting shares.***

Or. en

Justification

Private investors can only influence management decisions if they hold more than 50% of the voting shares of the controlled legal person. This amendment is to enable pure capital investments without affecting the exemption of in-house procurement and horizontal cooperation.

Amendment 525
Heide Rühle

Proposal for a directive
Article 11 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

For the purposes of point (a), contracting authorities shall be deemed to jointly

deleted

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.

Or. en

Justification

This far-reaching interpretation of the ECJ ruling is unnecessary and does not contribute to make the text short and precise.

Amendment 526

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive

Article 11 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

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

(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.

Or. de

Justification

Follows on from the same authors' amendment to Article 11(3)(a).

Amendment 527
Wim van de Camp

Proposal for a directive
Article 11 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

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

(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.

Or. nl

Amendment 528

Peter Simon

Proposal for a directive

Article 11 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

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

deleted

(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.

Or. de

Amendment 529
Andreas Schwab, Jürgen Creutzmann

Proposal for a directive
Article 11 – paragraph 3 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

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

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

Or. de

Amendment 530
Sari Essayah

Proposal for a directive
Article 11 – paragraph 3 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

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

(a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities, **while one representative may represent one or many participating contracting authorities;**

Or. en

Amendment 531
Marc Tarabella

Proposal for a directive
Article 11 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

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

deleted

Amendment 532
Françoise Castex

Proposal for a directive
Article 11 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

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

Amendment 533
Frank Engel, Philippe Juvin, Anna Maria Corazza Bildt, Sirpa Pietikäinen

Proposal for a directive
Article 11 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

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

Amendment 534
Jürgen Creutzmann

Proposal for a directive
Article 11 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

*(c) the controlled legal person does not pursue any interests which are **distinct*** *(c) the controlled legal person does not pursue any interests which are **contrary to***

from that of the public authorities affiliated
to it;

that of the public authorities affiliated to it;

Or. en

Justification

Subsidiaries are often founded in order to pursue interests which go beyond that of the controlling entity. It should therefore be sufficient if interests are not contradictory.

Amendment 535

Sari Essayah

Proposal for a directive

Article 11 – paragraph 3 – subparagraph 2 – point d

Text proposed by the Commission

Amendment

(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. *deleted*

Or. en

Amendment 536

Françoise Castex

Proposal for a directive

Article 11 – paragraph 3 – subparagraph 2 – point d

Text proposed by the Commission

Amendment

(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. *deleted*

Or. fr

Amendment 537
Sirpa Pietikäinen

Proposal for a directive
Article 11 – paragraph 3 – subparagraph 2 – point d

Text proposed by the Commission

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

Amendment

(d) the controlled legal person gains **only** the reimbursement of actual costs, **and what is necessary for investing in development of further quality services**, from the public contracts with the contracting authorities.

Or. en

Amendment 538
Heide Rühle

Proposal for a directive
Article 11 – paragraph 4 – introductory part

Text proposed by the Commission

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:

Amendment

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(7) of this Directive **and thus fall outside the scope of this Directive** where the following cumulative conditions are fulfilled:

Or. en

Amendment 539
Peter Simon

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

Text proposed by the Commission

(a) the agreement establishes a genuine

Amendment

deleted

cooperation between the participating contracting authorities aimed at carrying out jointly their public service tasks and involving mutual rights and obligations of the parties;

Or. de

Amendment 540

Heide Rühle

Proposal for a directive

Article 11 – paragraph 4 – point a

Text proposed by the Commission

(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;*

Amendment

(a) the *purpose of the partnership is the provision of a public-service task conferred on all participating public authorities, or the provision of an ancillary task necessary to deliver the public service task conferred on all the public authorities;*

Or. en

Amendment 541

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive

Article 11 – paragraph 4 – point a

Text proposed by the Commission

(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;*

Amendment

(a) the *purpose of the partnership is the provision of a public service task in the public interest conferred on public authorities, or the carrying-out of ancillary purchasing activities within the meaning of Article 2(17), which is necessary in order to perform the public service task in the public interest.*

A pooling of tasks shall also be considered to exist where a municipality is merely

obliged to make payment, provided that cooperation enables the municipality to carry out its own obligations more economically or more effectively;

Or. de

Justification

The Commission proposal does not clarify the question of what is to be understood by 'genuine cooperation'. It should nevertheless be made clear that this must involve a public service task conferred on contracting authorities. This must also cover ancillary purchasing activities (IT, infrastructure, etc.) that are necessary to enable the contracting authorities to carry out their tasks.

Amendment 542

Andreas Schwab, Jürgen Creutzmann

Proposal for a directive

Article 11 – paragraph 4 – point a

Text proposed by the Commission

(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*;

Amendment

(a) the agreement establishes a genuine cooperation between the participating contracting authorities aimed at carrying out jointly their public service tasks;

Or. de

Amendment 543

Philippe Juvin

Proposal for a directive

Article 11 – paragraph 4 – point a

Text proposed by the Commission

(a) the agreement establishes a genuine cooperation between the participating contracting authorities aimed at carrying

Amendment

Does not apply to English text.

out jointly their public service tasks and involving mutual rights and obligations of the parties;

Or. fr

Amendment 544
Evelyne Gebhardt

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

Text proposed by the Commission

(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*;

Amendment

(a) the agreement establishes a genuine cooperation between the participating contracting authorities aimed at carrying out their public service tasks *jointly or for each other*;

Or. de

Amendment 545
Cristian Silviu Buşoi

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

Text proposed by the Commission

(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*;

Amendment

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

Or. en

Justification

Clarification of the horizontal cooperation definition.

Amendment 546
Heide Rühle

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 547
Wim van de Camp

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

Text proposed by the Commission

Amendment

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

deleted

Or. nl

Amendment 548
Evelyne Gebhardt

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

Text proposed by the Commission

Amendment

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

deleted

Or. de

Amendment 549

Andreas Schwab, Jürgen Creutzmann

Proposal for a directive

Article 11 – paragraph 4 – point b

Text proposed by the Commission

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

Amendment

(b) the agreement is governed only by public interest ***considerations; this includes subordinate ancillary services which are necessary in order to perform the services in the public interest;***

Or. de

Justification

The restriction to services in the public interest in accordance with the case-law of the Court of Justice in case C-480/06 should also cover internal ancillary services used by a contracting authority in order to guarantee the efficiency of its services and its own administrative structures and to organise the performance of the legally required tasks, and that are not performed for third parties.

Amendment 550

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive

Article 11 – paragraph 4 – point b

Text proposed by the Commission

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

Amendment

(b) the ***task is carried out solely by the public authorities concerned without the involvement of active private capital;***

Or. de

Justification

The public interest naturally stands at the centre of the agreement. A reference to the ban on active private capital is nevertheless more specific.

Amendment 551
Peter Simon

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

Text proposed by the Commission

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

Amendment

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

Or. de

Amendment 552
Cristian Silviu Buşoi

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

Text proposed by the Commission

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

Amendment

(b) the agreement is governed only by considerations relating to the public interest ***and has no market orientation;***

Or. en

Justification

Such agreements should be excluded from the scope of the directive only if they have no market orientation. Otherwise competition would be restricted.

Amendment 553
Wim van de Camp

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

Text proposed by the Commission

Amendment

(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;

deleted

Or. nl

**Amendment 554
Marc Tarabella**

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

Text proposed by the Commission

Amendment

(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;

deleted

Or. fr

**Amendment 555
Malcolm Harbour, Edvard Kožušník**

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

Text proposed by the Commission

Amendment

(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;

deleted

Or. en

Justification

Many such entities created by public bodies operate trading subsidiaries to undertake a range of services, both to local authorities and associated entities, and other organisations where there is market failure to provide.

Amendment 556

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive

Article 11 – paragraph 4 – point c

Text proposed by the Commission

Amendment

(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; ***deleted***

Or. de

Justification

This criterion goes beyond the conditions laid down in the case-law of the Court of Justice in the 'Stadtreinigung Hamburg' case (C-480/06). Adopting the 10% essentiality criterion (90%) establishes an inadmissible analogy with in-house case-law which the Court of Justice did not make. Wording borrowed from state aid legislation is inappropriate here.

Amendment 557

Peter Simon

Proposal for a directive

Article 11 – paragraph 4 – point c

Text proposed by the Commission

Amendment

(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; ***deleted***

Or. de

Amendment 558
Heide Rühle

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

Text proposed by the Commission

(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**;

Amendment

(c) the participating **public** authorities do not perform on the open market more than **20 %** in terms of turnover of the activities, **subject to the contract**;

Or. en

Justification

This clarification is necessary in order not to create legal disputes.

Amendment 559
Barbara Weiler

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

Text proposed by the Commission

(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;

Amendment

(c) the participating contracting authorities do not perform on the open market more than **15 %** in terms of turnover of the activities which are relevant in the context of the agreement;

Or. de

Amendment 560
Cristian Silviu Buşoi

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

Text proposed by the Commission

Amendment

(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**;

(c) the participating contracting authorities do not perform on the open market;

Or. en

Justification

In line with amendments on paragraphs 1 and 3.

Amendment 561

Riikka Manner

Proposal for a directive

Article 11 – paragraph 4 – point c

Text proposed by the Commission

Amendment

(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;

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

Or. en

Justification

The propositions means that the public sector entity can be directly awarded by another public authority, and then go to the market by a 10 % portion. This 10 % could of course be millions of Euros, which would strongly distort competition in many business areas. There is no level playing field if a public sector entity may sell services and products in the same competitive market with private entities.

Amendment 562

Heide Rühle

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

Text proposed by the Commission

Amendment

(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; **deleted**

Or. en

Amendment 563
Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

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

Text proposed by the Commission

Amendment

(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; **deleted**

Or. de

Justification

This criterion goes beyond the conditions laid down in the case-law of the Court of Justice in the 'Stadtreinigung Hamburg' case (C-480/06). Cooperation between municipalities does not focus merely on the reimbursement of costs. The ban on financial transfers bears little relation to actual practice and goes beyond the relevant case-law of the Court of Justice; it should therefore be deleted.

Amendment 564
Wim van de Camp

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

Text proposed by the Commission

Amendment

(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;

deleted

Or. nl

Amendment 565
Peter Simon

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

Text proposed by the Commission

Amendment

(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;

deleted

Or. de

Amendment 566
Evelyne Gebhardt

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

Text proposed by the Commission

Amendment

(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

deleted

works, services or supplies;

Or. de

Amendment 567

Andreas Schwab, Jürgen Creutzmann

Proposal for a directive

Article 11 – paragraph 4 – point d

Text proposed by the Commission

Amendment

(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;

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

Or. de

Amendment 568

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive

Article 11 – paragraph 4 – point e

Text proposed by the Commission

Amendment

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

deleted

Or. de

Justification

This criterion goes beyond the conditions laid down in the case-law of the Court of Justice in the 'Stadtreinigung Hamburg' case (C-480/06). An inadmissible analogy with in-house case-law is established which is not appropriate to cooperation between municipalities.

Amendment 569
Heide Rühle

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

Text proposed by the Commission

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

Amendment

(e) *the task* is *carried out solely by the public authorities concerned, with* no participation of *a private party with the exception of* contracting authorities *participating in the cooperation as a public law body in the sense of Article 2(6) of this Directive*.

Or. en

Amendment 570
Andreas Schwab, Frank Engel

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

Text proposed by the Commission

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

Amendment

(e) there is no private participation in any of the contracting authorities involved, *unless this is a legal requirement in the relevant Member States*.

Or. de

Justification

Private participation is a legal requirement in some Member States, owing to historical developments and established structures. These forms of cooperation should remain possible, but any other private participation should be excluded in line with the case-law of the Court of Justice.

Amendment 571
Jürgen Creutzmann

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

Text proposed by the Commission

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

Amendment

(e) ***the*** private participation in any of the contracting authorities ***does not exceed 50% of its voting shares***.

Or. en

Justification

Private investors can only influence management decisions if they hold more than 50% of the voting shares of the controlled legal person. This amendment is to enable pure capital investments without affecting the exemption of in-house procurement and horizontal cooperation.

Amendment 572
Philippe Juvin

Proposal for a directive
Article 11 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. This Directive shall not apply to agreements concluded between several contracting authorities or groupings of contracting authorities which make provision, in the context of the internal organisation of a Member State, for the transfer of powers between the parties with a view to the performance of a public service task.

There shall be no private participation in any of the contracting authorities involved.

Or. fr

Justification

The explicit exclusion of horizontal cooperation (Article 11(4)) raises doubts as to the status

under the directive of arrangements for the transfer of powers between public authorities ('intercommunality' under French law), which are not explicitly excluded. Accordingly, a new paragraph is being proposed which would exclude such arrangements.

Amendment 573

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive

Article 11 – paragraph 5

Text proposed by the Commission

Amendment

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. ***deleted***

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.

Or. de

Justification

Follows on from the same authors' amendments to Article 11(1)(c) and(3)(c).

Amendment 574

Heide Rühle

Proposal for a directive

Article 11 – paragraph 5 – subparagraph 1

Text proposed by the Commission

Amendment

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 ***deleted***

agreement.

Or. en

Amendment 575
Cristian Silviu Buşoi

Proposal for a directive
Article 11 – paragraph 5 – subparagraph 1

Text proposed by the Commission

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

Amendment

The absence of ***any form of*** private participation ***and all the other conditions*** 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.

Or. en

Justification

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

Amendment 576
Heide Rühle

Proposal for a directive
Article 11 – paragraph 5 – subparagraph 2

Text proposed by the Commission

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.

Amendment

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, ***unless the private participation is legally enforced and/or the private participation was not foreseeable at the time of the initial contracting.***

Amendment 577
Andreas Schwab

Proposal for a directive
Article 11 – paragraph 5 – subparagraph 2

Text proposed by the Commission

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.

Amendment

Following the entry into force of the Directive, 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.

Or. de

Amendment 578
Cristian Silviu Buşoi

Proposal for a directive
Article 11 – paragraph 5 – subparagraph 2

Text proposed by the Commission

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.

Amendment

The exclusions provided for in paragraphs 1 to 4 shall cease to apply from the moment any ***of the cumulative conditions listed therein is no longer fulfilled***, with the effect that ongoing contracts need to be opened to competition through regular procurement procedures.

Or. en

Amendment 579
Pablo Arias Echeverría

Proposal for a directive
Article 11 – paragraph 5 – subparagraph 2

Text proposed by the Commission

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.

Amendment

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, ***unless the private participation in the legal person that converts it into an associated undertaking is acquired through any of the procedures laid down in this Directive or in the Directives (replacing Directive 2004/17/EC).***

Or. es

Amendment 580
Jens Rohde, Morten Løkkegaard

Proposal for a directive
Article 11 – paragraph 5 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

When the contract concerns waste incineration, the percentages in article 11, paragraph 1, point b, paragraph 3, point b and paragraph 4, point c, are 50 %.

Or. en

Justification

There is a specific concern that the new wording could have damaging effects on waste incineration which is otherwise seen as an environmentally desirable manner to manage waste. As in some Member States local authorities are obliged by law to handle municipal waste, they have invested significant amounts in incinerations plants; investments which would not have been commercially viable and with the 90 % threshold they would have to tender out waste incineration even though there are no genuine commercial alternatives considering the low private capacity.

Amendment 581
Heide Rühle

Proposal for a directive
Article 11 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. However transferring tasks between public sector organisations is a matter for the Member States' internal administrative organisation and is not subject to procurement rules.

Or. en

Amendment 582
Anna Hedh

Proposal for a directive
Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11a

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 treaties.

Or. en

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 583

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 12 – paragraph 1 – point a – introductory part

Text proposed by the Commission

(a) works contracts which are subsidised directly by contracting authorities by more than 50 % and the estimated value of which, net of VAT, is equal to or greater than EUR **5 000 000**, where those contracts involve one of the following activities:

Amendment

(a) works contracts which are subsidised directly by contracting authorities by more than 50 % and the estimated value of which, net of VAT, is equal to or greater than EUR **8 000 000**, where those contracts involve one of the following activities:

Or. en

Amendment 584

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 12 – paragraph 1 – point b

Text proposed by the Commission

(b) service contracts which are subsidised directly by contracting authorities by more than 50 % and the estimated value of which, net of VAT, is equal to or greater than EUR **200 000** and which are connected to a works contract within the meaning of point (a).

Amendment

(b) service contracts which are subsidised directly by contracting authorities by more than 50 % and the estimated value of which, net of VAT, is equal to or greater than EUR **400 000** and which are connected to a works contract within the meaning of point (a).

Or. en

Amendment 585

Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 14 – paragraph 1 – introductory part

Text proposed by the Commission

1. Subject to Article **346 of the Treaty on the Functioning of the European Union**, this Directive shall apply to the awarding of public contracts and to design contests organised in the fields of defence and security, with the exception of the following contracts:

Amendment

1. Subject to Article **1(3)**, this Directive shall apply to the awarding of public contracts and to design contests organised in the fields of defence and security, with the exception of the following contracts:

Or. en

Justification

This Amendment ensures that there is no overlap between this Directive and applicable rules on defence procurement.

Amendment 586
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 14 – paragraph 2

Text proposed by the Commission

2. This Directive shall not apply to public contracts and design contests ***other than those referred to in*** paragraph 1 ***to the extent that the*** protection of the essential security interests of a Member State cannot be guaranteed in a procurement procedure as provided for in this Directive.

Amendment

2. This Directive shall not apply to public contracts and design contests ***not otherwise exempted under*** paragraph 1 ***where:***

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

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

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

Or. en

Justification

This Amendment ensures that there is no overlap between this Directive and applicable rules on defence procurement.

Amendment 587
Sari Essayah

Proposal for a directive
Article 15 – title

Text proposed by the Commission

Amendment

Principles of procurement

Purpose and principles of procurement

Or. en

Amendment 588
Mitro Repo

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

Text proposed by the Commission

Amendment

Purchasing bodies shall ensure, in connection with the procurement procedure, that staff working in performance of the services or works contracts which are the subject of the procedure are guaranteed decent working conditions and that the procurement procedure does not lead to any ill-treatment.

Amendment 589
Sari Essayah

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

Text proposed by the Commission

Amendment

The purpose of this Directive is to safeguard the efficiency of the use of public funds, promote high-quality procurement, strengthen competition and the functioning of the public procurement markets and safeguard equal opportunities for companies and other providers in offering supply, service and public works contracts under competitive bidding for public procurement.

Or. en

Amendment 590
Marc Tarabella

Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission

Amendment

The design of the procurement shall not be made with the objective of excluding it from the scope of this Directive or of artificially narrowing competition.

deleted

Or. fr

Amendment 591
Pablo Arias Echeverría

Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission

The design of the procurement shall not be made with the objective of excluding it from the scope of this Directive or of artificially narrowing competition.

Amendment

The design of the procurement shall not be made with the objective of excluding it from the scope of this Directive or of artificially narrowing competition. ***The procedures should always be accompanied by adequate safeguards ensuring observance of the principles of equal treatment and transparency, free competition, advertising and efficient management of public resources.***

Or. es

Amendment 592
Sirpa Pietikäinen

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

Text proposed by the Commission

Amendment

Economic operators shall comply with the social and labour legislation and rules on working conditions that apply in the country in which the work, service or product that is the subject of the tender is provided, as is laid down in national legislation and/or in the international labour law conventions on working conditions listed in Annex XI.

Or. fi

Amendment 593
Cornelis de Jong

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

Text proposed by the Commission

Amendment

Contracting authorities shall respect the delay of payment as established in Directive 2011/7/EU.

Or. en

Amendment 594

Sergio Gaetano Cofferati

Proposal for a directive

Article 15 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 595

Sirpa Pietikäinen

Proposal for a directive

Article 15 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

The E-procurement strategy and timeline for mandatory e-procurement by mid-2016 shall be implemented as proposed by the Commission. An easy access Europe-wide single platform with single operating system will be created with services provided in all official EU languages.

Amendment 596
Anna Hedh

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

Text proposed by the Commission

Amendment

Public procurement is to be used to achieve a smart, sustainable and inclusive growth and to support common societal goals and to provide goods and services of high quality. It is the right of public authorities at all levels to decide how they want to provide commissioning and organise their services.

Economic operators shall apply obligations relating to social and employment protection and the working conditions which apply in the place where the work, service or supply is to be performed as set out by national legislation and/or collective agreements or international labour law provisions listed in Annex XI and in particular ILO Convention 94.

Amendment 597
Sergio Gaetano Cofferati

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

Text proposed by the Commission

Amendment

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

advantageous tender.

Or. en

Amendment 598
Sergio Gaetano Cofferati

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

Text proposed by the Commission

Amendment

The details of public contracts shall be made public.

Or. en

Amendment 599
Heide Rühle

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

Text proposed by the Commission

Amendment

However, in the case of public service and public works contracts as well as public supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the ***names and*** relevant professional ***qualifications*** of the staff to be responsible for the performance of the contract in question.

However, in the case of public service and public works contracts as well as public supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the relevant professional ***qualification levels*** of the staff to be responsible for the performance of the contract in question.

Or. en

Amendment 600
Marian Harkin

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

Text proposed by the Commission

However, in the case of public service and public works contracts as well as public supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, *the names and* relevant professional *qualifications* of the staff to be responsible for the performance of the contract in question.

Amendment

However, in the case of public service and public works contracts as well as public supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, relevant professional *qualification levels* of the staff to be responsible for the performance of the contract in question.

Or. en

Justification

The current text seems to indicate that, for the provision of services which in their largest part consist of professional staff (such as engineering consultancy), the project teams may need to be defined by the candidates in the request to participate. It is in practical terms impossible for a tenderer to commit the allocated staff at this stage, taking into consideration the whole duration of the selection and award procedure

Amendment 601
Pablo Arias Echeverría

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

Text proposed by the Commission

However, in the case of public service and public works contracts as well as public supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the *names and* relevant professional qualifications of the staff to be responsible for the performance of the contract in question.

Amendment

However, in the case of public service and public works contracts as well as public supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the relevant professional qualifications of the staff to be responsible for the performance of the contract in question.

Amendment 602
Heide Rühle

Proposal for a directive
Article 17 – paragraph 1

Text proposed by the Commission

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

Amendment

Member States may reserve the right to participate in public procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled and disadvantaged workers or provide for such contracts to be performed in the context of sheltered employment programmes, provided that more than 30% of the employees of those workshops, economic operators or programmes are disabled *and/or* disadvantaged *persons*. *'Disadvantaged persons' includes amongst others: the unemployed, people experiencing particular difficulty in achieving integration, people at risk of exclusion, members of vulnerable groups and members of disadvantaged minorities.*

Or. en

Justification

The term 'disadvantaged persons' needs to be specified as it is much wider than 'handicapped persons' referred to in the current Directives. This definition creates more legal clarity.

Amendment 603
Vicente Miguel Garcés Ramón

Proposal for a directive
Article 17

Text proposed by the Commission

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

The call for competition shall make reference to this provision.

Amendment

Member States may reserve the right to participate in public procurement procedures to:

(a) sheltered workshops whose majority promoters and participants are non-profit-making bodies, or provide for such contracts to be performed in the context of sheltered employment programmes, provided that **the majority of the workers concerned are people with disabilities who, owing to the nature or seriousness of their disabilities, cannot carry on occupations under normal conditions or do not easily find work in the ordinary market;**

(b) social enterprises or programmes whose main aim is the social and professional integration of disadvantaged workers, provided that more than 30% of the employees of those economic operators or programmes are disadvantaged workers.

The call for competition shall make reference to this provision.

In Member States where circumstances justify it, because there is a large number of people with disabilities who can work but are not active, the reserved contracts referred to in point (a) above shall be equal to at least the number or percentage of contracts indicated by the contracting bodies or other competent bodies.

Or. es

Amendment 604
Catherine Stihler

Proposal for a directive
Article 17 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 605
Heide Rühle

Proposal for a directive
Article 18 – paragraph 1

Text proposed by the Commission

1. **Unless otherwise provided** in this Directive or in the national law **concerning access to information**, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 48 and 53 of this Directive, the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

Amendment

1. **Notwithstanding provisions** in this Directive or in the national law , and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 48 and 53 of this Directive, the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

Justification

To clarify that this rule does not apply if the contracting authority is entitled or obliged to pass the relevant information - for example in due process of law

Amendment 606

Frank Engel, Konstantinos Poupakis

Proposal for a directive

Article 18 – paragraph 1

Text proposed by the Commission

1. Unless otherwise provided in this Directive or in the national law concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 48 and 53 of this Directive, the contracting authority shall not disclose information forwarded to it by economic operators *which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.*

Amendment

1. Unless otherwise provided in this Directive or in the national law concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 48 and 53 of this Directive, the contracting authority shall not disclose information *and details of tenders* forwarded to it by economic operators.

Amendment 607

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

Proposal for a directive

Article 18 – paragraph 1

Text proposed by the Commission

1. Unless otherwise provided in this Directive or in *the* national law *concerning access to information*, and without prejudice to the obligations relating to the

Amendment

1. Unless otherwise provided in this Directive or in national law, and without prejudice to the obligations relating to the advertising of awarded contracts and to the

advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 48 and 53 of this Directive, the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

information to candidates and tenderers set out in Articles 48 and 53 of this Directive, the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

Or. de

Justification

Clarification that this provision does not apply where the contracting authority may or must disclose this information in accordance with other differing provisions, e.g. in a review procedure, when required by the legal supervisory authority or in a court case.

Amendment 608 **Philippe Juvin**

Proposal for a directive **Article 18 – paragraph 1**

Text proposed by the Commission

1. Unless otherwise provided in this Directive or in the national law concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 48 and 53 of this Directive, the contracting authority shall not disclose information forwarded to it by economic operators ***which they have designated as confidential, including, but not limited to,*** technical or trade secrets and the confidential aspects of tenders.

Amendment

1. Unless otherwise provided in this Directive or in the national law concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 48 and 53 of this Directive, the contracting authority shall not disclose information forwarded to it by economic operators, ***in particular*** technical or trade secrets and the confidential aspects of tenders.

Non-compliance with this obligation shall render the contracting authority liable.

Or. fr

Justification

Strengthening of the provisions on the confidentiality of the information forwarded by candidates or tenderers to the contracting authority during procurement procedures. The contracting authority must be liable if sensitive information, such as technical or trade secrets, is disclosed.

Amendment 609

Marian Harkin

Proposal for a directive

Article 18 – paragraph 1

Text proposed by the Commission

1. Unless otherwise provided in this Directive or in the national law concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 48 and 53 of this Directive, the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

Amendment

1. Unless otherwise provided in this Directive or in the national law concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 48 and 53 of this Directive, the contracting authority shall ***behave with utmost good faith and shall*** not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

Or. en

Justification

This obligation should be exercised with ‘utmost good faith’ (uberrima fides) as it is already existing in some national legislation.

Amendment 610

Frank Engel, Konstantinos Poupakis

Proposal for a directive

Article 18 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Non-compliance with this obligation shall render the contracting authority or entity liable.

Or. fr

**Amendment 611
Phil Prendergast**

**Proposal for a directive
Article 18 – paragraph 2**

Text proposed by the Commission

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

Amendment

2. Contracting authorities may impose on economic operators requirements aimed at protecting the confidential nature of information which the contracting authorities make available throughout the procurement procedure, ***should the disclosure of such information prejudice fair competition.***

Or. en

**Amendment 612
Cornelis de Jong, Mikael Gustafsson**

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

Text proposed by the Commission

Amendment

2a. This Article shall not prevent public disclosure of concluded contracts, including any subsequent changes.

Or. en

Amendment 613
Sergio Gaetano Cofferati

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 614
Cristian Silviu Buşoi

Proposal for a directive
Article 19 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

(c) telephone in the cases and circumstances referred to in paragraph 6; ***deleted***

Or. en

Justification

Telephone is not really used in such procedures; communication means which are quicker and that ensure traceability are preferred.

Amendment 615
Kerstin Westphal

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

Text proposed by the Commission

Amendment

Member States may make mandatory the use of electronic means of communication in other situations than those provided for in Articles 32, 33, 34, 35(2), 49(2) or 51 of this Directive.

deleted

Or. de

Justification

It should still be possible to submit tenders in writing and by post in the future. Smaller enterprises which take part in a Europe-wide call for tenders no more than once or twice per year cannot realistically be expected to be able to afford and constantly update the necessary technical equipment. Such an obligation could lead to SMEs being pushed out of the market in favour of large companies.

Amendment 616

Catherine Stihler

Proposal for a directive

Article 19 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

The means of communication chosen must be generally available and not restrict economic operators' access to the procurement procedure.

The means of communication chosen must be generally available, ***accessible to persons with disabilities***, and not restrict economic operators' access to the procurement procedure.

Or. en

Amendment 617

Ádám Kósa

Proposal for a directive

Article 19 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

The means of communication chosen must

The means of communication chosen must

be generally available and not restrict economic operators' access to the procurement procedure.

be generally available, ***accessible to persons with disabilities***, and not restrict economic operators' access to the procurement procedure.

Or. en

Amendment 618
Frank Engel, Wim van de Camp

Proposal for a directive
Article 19 – paragraph 3 – subparagraph 3

Text proposed by the Commission

To ensure the interoperability of technical formats as well as of process and messaging standards, especially in a cross-border context, the Commission ***shall be empowered to adopt delegated acts in accordance with Article 89 to establish the mandatory*** use of specific technical standards, at least with regard to the use of e-submission, electronic catalogues and means for electronic authentication.

Amendment

To ensure the interoperability of technical formats as well as of process and messaging standards, especially in a cross-border context, the Commission ***should recommend*** use of specific technical standards, at least with regard to the use of e-submission, electronic catalogues and means for electronic authentication.

Or. en

Amendment 619
Cristian Silviu Buşoi

Proposal for a directive
Article 19 – paragraph 6 – subparagraph 1 – point a

Text proposed by the Commission

(a) requests to participate in procedures for the award of public contracts may be made in writing ***or by telephone; in the latter case, a written confirmation must be sent before expiry of the time limit set for their receipt;***

Amendment

(a) requests to participate in procedures for the award of public contracts may be made in writing;

Or. en

Justification

Telephone is not really used in such procedures; communication means which are quicker and that ensure traceability are preferred.

Amendment 620
Heide Rühle

Proposal for a directive
Article 19 – paragraph 7 – subparagraph 1

Text proposed by the Commission

7. Member States shall ensure that, at the latest **2** years after the date provided for in Article 92(1), all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

Amendment

7. Member States shall ensure that, at the latest **4** years after the date provided for in Article 92(1), all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

Or. en

Justification

This timeframe is too tight.

Amendment 621
Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, Hans-Peter Mayer

Proposal for a directive
Article 19 – paragraph 7 – subparagraph 1

Text proposed by the Commission

7. Member States shall ensure that, at the latest **2** years after the date provided for in Article 92(1), all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

Amendment

7. Member States shall ensure that, at the latest **4** years after the date provided for in Article 92(1), all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

Or. de

Justification

Electronic procurement could reduce transaction costs and increase transparency. However, the requirement that electronic communication in procurement procedures must be transposed into national law as early as two years after the adoption of the Directive is too ambitious. The introduction of electronic procurement will lead to high starting costs, and contracting authorities and enterprises will need to adapt to the new electronic systems.

Amendment 622

Malcolm Harbour, Edvard Kožušník, Andreas Schwab, Jürgen Creutzmann

Proposal for a directive

Article 19 – paragraph 7 – subparagraph 1

Text proposed by the Commission

7. Member States shall ensure that, **at the latest 2 years after the date provided for in Article 92(1), all** procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

Amendment

7. Member States shall ensure that, **by the 1st January 2017, at least 70 % of procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this** Article.

Member States shall ensure that, **by the 1st January 2020, 100 % of** procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

In relation to the public procurement of Works contracts, Member States shall furthermore encourage the systematic use of digital three-dimensional representations following the general timescales for the implementation of electronic procurement set out in the first and second sub paragraphs.

Or. en

Justification

This two step approach is considered as a more realistic target than the Commission's proposed target, and allows contracting authorities sufficient planning and implementation

time.

Amendment 623

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 19 – paragraph 7 – subparagraph 1

Text proposed by the Commission

7. Member States shall ***ensure that, at the latest 2 years after the date provided for in Article 92(1), all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission,*** in accordance with the requirements of this Article.

Amendment

7. Member States shall ***take all necessary steps to facilitate the use of electronic means of communication, in particular e-submission,*** for all procurement procedures under this Directive, in accordance with the requirements of this Article.

Or. en

Amendment 624

Peter Simon

Proposal for a directive

Article 19 – paragraph 7 – subparagraph 1

Text proposed by the Commission

7. Member States shall ensure that, at the latest 2 years after the date provided for in Article 92(1), all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

Amendment

7. Member States shall ensure that, at the latest 4 years after the date provided for in Article 92(1), all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

Or. de

Amendment 625

Robert Rochefort

Proposal for a directive
Article 19 – paragraph 7 – subparagraph 1

Text proposed by the Commission

7. Member States shall ensure that, at the latest **2** years after the date provided for in Article 92(1), all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

Amendment

7. Member States shall ensure that, at the latest **3** years after the date provided for in Article 92(1), all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

Or. fr

Amendment 626
Monica Luisa Macovei

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

Text proposed by the Commission

1. Member States shall ***provide for rules*** to effectively prevent, identify and immediately remedy conflicts of interests arising in the conduct of procurement procedures that are subject to this Directive, including the design and preparation of the procedure, the drawing-up of the procurement documents, the selection of candidates and tenderers ***and*** the award of the contract, so as to avoid any distortion of competition and ensure equal treatment of all tenderers.

Amendment

1. Member States shall ***put in place mechanisms*** to effectively prevent, identify and immediately remedy ***actual, potential or perceived*** conflicts of interests arising in the conduct of procurement procedures that are subject to this Directive, including the design and preparation of the procedure, the drawing-up of the procurement documents, the selection of candidates and tenderers, the award of the contract ***and the implementation phase***, so as to avoid any distortion of competition and ensure equal treatment of all tenderers.

Or. en

Amendment 627
Phil Prendergast

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Member States shall provide for rules to effectively prevent, identify and immediately remedy conflicts of interests arising in the conduct of procurement procedures that are subject to this Directive, including the design and preparation of the procedure, the drawing-up of the procurement documents, the selection of candidates and tenderers and the award of the contract, so as to avoid any distortion of competition and ensure equal treatment of all tenderers.

Amendment

1. Member States shall provide for rules to effectively prevent, identify and immediately remedy conflicts of interests arising in the conduct of procurement procedures that are subject to this Directive, including ***preliminary market consultations***, the design and preparation of the procedure, the drawing-up of the procurement documents, the selection of candidates and tenderers and the award of the contract, so as to avoid any distortion of competition and ensure equal treatment of all tenderers.

Or. en

Amendment 628

Frank Engel, Philippe Juvin, Wim van de Camp

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The notion of conflict of interests shall at least cover any situation where the categories of persons referred to in paragraph 2 have, directly or indirectly, a ***private*** interest in the outcome of the procurement procedure, which may be perceived to impair the impartial and objective performance of their duties.

Amendment

The notion of conflict of interests shall at least cover any situation where the categories of persons referred to in paragraph 2 have, directly or indirectly, a ***common*** interest in the outcome of the procurement procedure, which may be perceived to impair the impartial and objective performance of their duties.

Or. en

Amendment 629

Marc Tarabella

Proposal for a directive
Article 21 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The notion of conflict of interests shall **at least** cover any situation where the categories of persons referred to in paragraph 2 have, directly or indirectly, a private interest in the outcome of the procurement procedure, which may be perceived to impair the impartial and objective performance of their duties.

Amendment

The notion of conflict of interests shall cover any situation where the categories of persons referred to in paragraph 2 have, directly or indirectly, a private interest in the outcome of the procurement procedure, which may be perceived to impair the impartial and objective performance of their duties.

Or. fr

Amendment 630
Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 21 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The notion of conflict of interests shall **at least** cover any situation where the categories of persons referred to in paragraph 2 have, directly or indirectly, a private interest in the outcome of the procurement procedure, which may be perceived to impair the impartial and objective performance of their duties.

Amendment

The notion of conflict of interests shall cover any situation where the categories of persons referred to in paragraph 2 have, directly or indirectly, a private interest in the outcome of the procurement procedure, which may be perceived to impair the impartial and objective performance of their duties.

Or. en

Amendment 631
Frank Engel, Philippe Juvin, Wim van de Camp

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

Text proposed by the Commission

For the purposes of this Article, **'private**

Amendment

For the purposes of this Article, **"common**

interests' means any family, *emotional life, economic, political or other* shared *interests* with the candidates or the tenderers, including conflicting professional interests.

interests' means any *economic interest or* family *ties*, shared with the candidates or the tenderers, including conflicting professional interests.

Or. en

Amendment 632
Marc Tarabella

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

Text proposed by the Commission

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

Amendment

'Private interests' *shall be understood to mean* any *property or financial* shared interests with the candidates or the tenderers *or advantages stemming from direct financial payments linked to employment, an employment contract, investments and involvement in activities supported under the contracts.*

Or. fr

Amendment 633
Marc Tarabella

Proposal for a directive
Article 21 – paragraph 2 – point b

Text proposed by the Commission

(b) the chairperson of the contracting authority and members of decision-making bodies of the contracting authority who, without necessarily being involved in the conduct of the procurement procedure, may nevertheless influence the outcome of that procedure.

Amendment

deleted

Or. fr

Amendment 634
Heide Rühle

Proposal for a directive
Article 21 – paragraph 2 – point b

Text proposed by the Commission

(b) the chairperson *of the contracting authority and members of decision-making bodies* of the contracting authority who, without necessarily being involved in the conduct of the procurement procedure, may nevertheless influence the outcome of that procedure.

Amendment

(b) the chairperson of the contracting authority who, without necessarily being involved in the conduct of the procurement procedure, may nevertheless influence the outcome of that procedure.

Or. en

Justification

'Members of the decision making bodies' means local councillors, regional and national deputies - this is a very far reaching definition creating a lot of bureaucracy. There are other instruments in place in most Member States better adapted to the need to fight corruption.

Amendment 635
Heide Rühle

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

Text proposed by the Commission

(b) that candidates and tenderers are required to submit at the beginning of the procurement procedure a declaration on the existence of any privileged links with the persons referred to in paragraph 2(b), which are likely to place those persons in a situation of conflict of interests; the contracting authority shall indicate in the individual report referred to in Article 85 whether any candidate or tenderer has submitted a declaration.

Amendment

(b) that candidates and tenderers, *e.g. company directors or any other person having powers of decision, powers or control in respect of the candidate or tenderer*, are required to submit at the beginning of the procurement procedure a declaration on the existence of any privileged links with the persons referred to in paragraph 2(b), which are likely to place those persons in a situation of conflict of interests; the contracting authority shall indicate in the individual

report referred to in Article 85 whether any candidate or tenderer has submitted a declaration.

Or. en

Amendment 636

Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Amendment

Where privileged links are identified, the contracting authority shall immediately inform the oversight body designated in accordance with Article 84 and take appropriate measures to avoid any undue influence on the award process and ensure equal treatment of candidates and tenderers. Where the conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.

deleted

Or. en

Amendment 637

Heide Rühle

Proposal for a directive

Article 21 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Amendment

Where privileged links are identified, the contracting authority shall immediately ***inform the oversight body designated in accordance with Article 84 and*** take appropriate measures to avoid any undue influence on the award process and ensure equal treatment of candidates and

Where privileged links are identified, the contracting authority shall immediately take appropriate measures to avoid any undue influence on the award process, ***document those measures adequately*** and ensure equal treatment of candidates and tenderers.

tenderers. *Where the conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.*

Or. en

Justification

Far too bureaucratic. The last sentence is not necessary, since the first sentence is clear enough. Transparency is the main priority.

Amendment 638
Jürgen Creutzmann

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

Text proposed by the Commission

Where privileged links are identified, the contracting authority shall immediately ***inform the oversight body designated in accordance with Article 84 and*** take appropriate measures to avoid any undue influence on the award process and ensure equal treatment of candidates and tenderers. Where the conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.

Amendment

Where privileged links are identified, the contracting authority shall immediately take appropriate measures to avoid any undue influence on the award process and ensure equal treatment of candidates and tenderers. Where the conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.

Or. en

(See deletion of Article 84)

Amendment 639
Jürgen Creutzmann

Proposal for a directive
Article 21 – paragraph 3 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

Member States shall ensure that an individual who reports undisclosed conflicts of interest of other staff members referred to in paragraph 2(a) in good faith has the right to be protected against retaliation. Retaliation means any direct or indirect detrimental action recommended, threatened or taken against an individual because of such action.

Or. en

Justification

Member States should implement a well-functioning whistleblowing system to ensure that these provisions have an impact.

Amendment 640

Heide Rühle

Proposal for a directive

Article 21 – paragraph 4

Text proposed by the Commission

Amendment

4. All measures taken pursuant to this Article shall be documented in the individual report referred to in Article 85. ***deleted***

Or. en

Justification

far too bureaucratic, one purpose of this revision was to simplify in order to create more cost-effectiveness.

Amendment 641

Monica Luisa Macovei

Proposal for a directive
Article 21 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States shall ensure that appropriate mechanisms are in place to prevent, detect and remedy conflict of interests situations. Such mechanisms may involve the use of technological solutions.

Or. en

Amendment 642
Anna Hedh

Proposal for a directive
Article 21 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States that have whistleblower protection for public employees to combat corruption and other breaches of civil law and/or crimes (within the public sector) may request that an equivalent protection is given to an employee employed by the economic operator, if the economic operator performs publically funded services.

Or. en

Amendment 643
Monica Luisa Macovei

Proposal for a directive
Article 21 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4b. Member States shall take the necessary measures to ensure effective

and timely redress, as well as the application of effective, dissuasive and proportionate sanctions in case the rules on conflict of interests are breached. The redress and sanctions shall include annulment of public contracts concluded in breach of conflict of interests rules and liability for damages.

Or. en

Amendment 644
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 21 a (new)

Text proposed by the Commission

Amendment

Article 21a

Protection of whistleblowers

Procurement agencies and authorities 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.

Or. en

Amendment 645

Morten Løkkegaard, Jens Rohde

Proposal for a directive

Article 22

Text proposed by the Commission

Amendment

Article 22

deleted

Illicit conduct

Candidates shall be required at the beginning of the procedure to provide a declaration on honour that they have not undertaken and will not undertake to:

(a) unduly influence the decision-making

process of the contracting authority or obtain confidential information that may confer upon them undue advantages in the procurement procedure;

(b) enter into agreements with other candidates and tenderers aimed at distorting competition;

(c) deliberately provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.

Or. en

Justification

In order to simplify the procedures for businesses, article 22 is merged into article 59 - The Procurement Passport. The purpose of the Passport is for all businesses to use it as a single standard document. Therefore it makes sense to reduce the administrative burden by merging the two articles.

Amendment 646 Sari Essayah

Proposal for a directive Article 22

Text proposed by the Commission

Amendment

Article 22

deleted

Illicit conduct

Candidates shall be required at the beginning of the procedure to provide a declaration on honour that they have not undertaken and will not undertake to:

(a) unduly influence the decision-making process of the contracting authority or obtain confidential information that may confer upon them undue advantages in the procurement procedure;

(b) enter into agreements with other candidates and tenderers aimed at

distorting competition;

(c) deliberately provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.

Or. en

Amendment 647
Philippe Juvin

Proposal for a directive
Article 22 – paragraph 1 – point a

Text proposed by the Commission

(a) unduly influence the decision-making process of the contracting authority or obtain confidential information that may confer upon them undue advantages in the procurement procedure;

Amendment

(a) unduly influence the decision-making process of the contracting authority **by illicit means** or obtain confidential information that may confer upon them undue advantages in the procurement procedure;

Or. fr

Justification

Clarification of the provisions on illicit conduct.

Amendment 648
Malcolm Harbour

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

Text proposed by the Commission

Amendment

Chapter II a
Treatment of non-covered supplies or services
Article 22a

Exclusion of tenders comprising non-covered supplies or services

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

2. Where contracting authorities intend to request the exclusion from procedures for the award of contracts on the basis of paragraph 1, they shall indicate this in the contract notice published in accordance with Article 47.

Contracting authorities shall require tenderers to provide information on the origin of the supplies and/or services contained in the tender, and on their value.

The Commission may adopt implementing acts establishing standard forms for declarations concerning the origin of supplies and services.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91(2).

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

The notification shall be sent by electronic means using a standard form. The Commission shall adopt implementing acts establishing the standard forms. Those implementing acts

shall be adopted in accordance with the advisory procedure referred to in Article 91(2). That standard form shall contain the following information:

(a) the name and contact details of the contracting authority;

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

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

(d) information on the origin of the economic operator, the supplies and/or services and their value;

The Commission may ask the contracting authority for additional information.

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

3. For contracts referred to in paragraph 1, the Commission shall adopt an implementing act concerning the approval of the intended exclusion within a period of two months commencing on the first working day following the date on which it receives the notification. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 91(2a). This period may be extended once by a maximum of two months in duly justified cases, in particular if the information contained in the notification or in the documents annexed thereto is incomplete or inexact or if the facts as reported undergo any substantive changes. If, at the end of this two-month period, or the extended period the Commission has not adopted a decision approving or

disapproving the exclusion, the exclusion shall be deemed to have been disapproved by the Commission.

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

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

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

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

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

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

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

(b) to what degree public authorities

and/or individual procuring authorities maintain or adopt discriminatory practices against Union goods, services and economic operators.

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

7. Contracting authorities which have excluded tenders pursuant to paragraph 1 shall indicate this in the contract award notice they publish pursuant to Article 48 of this Directive.

Article 22b

Rules of origin

1. The origin of a product shall be determined in accordance with Article 22 to 26 of Regulation (EC) No 2913/1992 of the European Parliament and of the Council of 12 October 1992 establishing the Community Customs Code¹.

2. The origin of a service shall be determined on the basis of the origin of the natural or legal person providing it.

3. For the purpose of this Directive, supplies or services originating in the countries of the European Economic Area other than the Member States shall be treated equally to those originating in the Member States.

Article 22c

Implementation of the reciprocity conditions

Contracts concluded with an economic operator in violation of Commission implementing acts adopted pursuant to Article 22a upon intended exclusion notified by contracting authorities shall be declared ineffective within the meaning of Directive 2007/66/EC.

Or. en

Amendment 649
Marc Tarabella

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

Text proposed by the Commission

Amendment

CHAPTER IIa

Rules on reciprocity

Article 22a

Exclusion by contracting authorities of tenders involving products and services which are not covered by an international agreement

1. In keeping with the provisions of this Article, contracting authorities shall assess whether tenders involving works, supplies or services originating in third countries which are not bound by an international agreement should be excluded from public procurement procedures if the value of the non-covered works, supplies or services represents more than 50 % of the overall value of the works, supplies or services making up the tender.

A tender originating in a third country which is not bound by an international agreement shall automatically be rejected if the price is 30 % lower than the average price or cost of the other tenders.

2. Contracting authorities may require tenderers to provide information about the origin of the works, supplies and services contained in the tender and about their value. They shall accept declarations on the tenderer's honour as provisional grounds for not excluding a tender pursuant to paragraph 1. A contracting authority may at any stage of the procedure ask a tenderer to submit all or some of the required documents where this appears necessary to ensure the proper conduct of the procedure. If

contracting authorities receive tenders which they plan to exclude in accordance with the provisions of paragraph 1, they shall notify the Commission. They may continue their assessment of the tenders during the notification procedure. The notification shall be forwarded electronically, using a standard form. The Commission may adopt implementing acts establishing standard forms to be used to submit declarations concerning the origin of works, supplies or services. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91(2). The standard form shall contain the following information:

(a) the name of and contact details for the contracting authority;

(b) a description of the subject-matter of the contract;

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

(d) information concerning the origin of the economic operator, the works, supplies or services and their value.

3. If the Commission rejects the contracting authority's decision to exclude a tender pursuant to the provisions of paragraph 1, it shall inform the contracting authority, giving its reasons, within 15 days from the first working day after the date on which it received the notification of intent to exclude. This period may be extended once for a maximum of 15 days in duly substantiated cases, in particular if the information contained in the notification of intent to exclude or in the documents attached thereto is incomplete or inaccurate or if the facts as reported undergo substantive changes. If, at the end of that 30-day period, the Commission has not adopted a decision approving or rejecting the exclusion of the tender, that

exclusion shall be deemed to have been approved by the Commission.

4. Decisions to exclude tenders may be taken:

(a) if the international agreement concerning access to the market in the area of public procurement concluded between the Union and the country of origin of the products or services sets out, in respect of the products or services whose exclusion is being proposed, explicit market access reservations formulated by the Union;

(b) in the absence of an agreement as referred to in point (a), if the third country concerned implements restrictive measures concerning procurement which give rise to a lack of substantial reciprocity in terms of market access between the Union and the third country concerned.

For the purposes of point (b), substantial reciprocity shall be presumed not to exist if the restrictive measures concerning procurement result in serious and persistent discrimination against Union economic operators, works, supplies and services.

5. The Commission shall hear the contracting authorities concerned before taking a decision pursuant to paragraph 3.

Article 22b

Implementation of the conditions governing reciprocity

Contracts concluded with an economic operator in breach of a decision by the Commission to approve the exclusion of a tender pursuant to Article 22a, following notification by the contracting authority of the intention to exclude, shall be declared null and void within the meaning of Directive 2007/66/EC.

Amendment 650
Riikka Manner

Proposal for a directive
Article 23 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. In arranging public services contracting authorities may use a service voucher system in order to give customers freedom to choose the service provider. A contracting authority defines the value of the service voucher as well as services in which it can be used and the customers who may use it.

A contracting authority may set the requirements which the service provider has to meet in order to be included in the service voucher system. These requirements must be non-discriminatory and proportionate to the subject matter of the service. All service providers that meet the requirements must be included in the system. The list of service providers must be made publicly available.

A contracting authority may also choose the service providers to be included in the service voucher system through a procedure provided in this Directive.

A customer may select any service provider in the service voucher system or choose not to use the system.

Or. en

Justification

In current economic situation there is a need for new effective tools to arrange public services. A service voucher system is one additional way of doing that. It is beneficial to SMEs because it is very easy to get to a service voucher system . It gives a freedom of choice to the citizen who may decide who is the service provider. Obviously a service voucher

system is beneficial to the authority as well.

Amendment 651
Wim van de Camp

Proposal for a directive
Article 24 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Contracting authorities need not publish a call for competition where they include in the competitive procedure with negotiation or competitive dialogue all of, and only, the tenderers which satisfy the criteria of Articles 55 to 65 and which, during the prior open or restricted procedure, have submitted tenders in accordance with the formal requirements of the tendering procedure.

Or. en

Amendment 652
Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann

Proposal for a directive
Article 24 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Amendment

Member States ***may*** provide that contracting authorities may apply innovation partnerships as regulated in this Directive.

Member States ***shall*** provide that contracting authorities may apply innovation partnerships as regulated in this Directive.

Or. en

Justification

The promotion of flexibility in the choice of procedures and the promotion of innovative procurement practice are key priorities in this modernisation exercise. As such, transposition of the most relevant procedures should not be optional and, instead should be uniform across

all Member States to ensure a level playing field.

Amendment 653

Frank Engel, Andreas Schwab, Anna Maria Corazza Bildt

Proposal for a directive

Article 24 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Member States *may* provide that contracting authorities may apply innovation partnerships as regulated in this Directive.

Amendment

Member States *shall* provide that contracting authorities may apply innovation partnerships as regulated in this Directive.

Or. fr

Amendment 654

Evelyne Gebhardt

Proposal for a directive

Article 24 – paragraph 1 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

Member States shall provide that contracting authorities must apply the competitive procedure with negotiation or the competitive dialogue when the public contract might imply a transfer of undertaking.

Or. de

Amendment 655

Christel Schaldemose

Proposal for a directive

Article 24 – paragraph 1 – subparagraph 4 – introductory part

Text proposed by the Commission

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

Amendment

They may also provide that contracting authorities may use a competitive procedure with negotiation or a competitive dialogue (***Articles 27 and 28***) ***provided this does not lead to distortion of competition or discrimination.***

Or. da

Amendment 656

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 24 – paragraph 1 – subparagraph 4

Text proposed by the Commission

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

(a) with regard to works, ***where the works contract has as its object both the design and the execution of works within the meaning of Article 2(8) or where negotiations are needed to establish the legal or financial makeup of the project;***

(b) in respect of public works contracts, for works which are performed solely for purposes of research or innovation, testing or development and not with the aim of ensuring profitability or recovering research and development costs;

(c) with regard to services or supplies, where the technical specifications cannot be established with sufficient precision with reference to any of the standards, European technical approvals, Common technical specifications or technical references within the meaning of points 2

Amendment

Member States shall also provide that contracting authorities may use a competitive procedure with negotiation or a competitive dialogue ***in the following situations:***

a) with regard to works, ***supplies or services fulfilling one of the following criteria:***

i) where the needs of the contracting authority cannot be met without adaptation of readily available solutions;

ii) they include design or innovative solutions;

to 5 of Annex VIII;

(d) in the event of irregular or unacceptable tenders within the meaning of Article 30(2)(a) in response to an open or a restricted procedure;

(e) due to specific circumstances related to the nature or the complexity of the works, supplies or services or the risks attaching thereto, the contract cannot be awarded without prior negotiations.

iii) the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of the risks attaching to them;

iv) the technical specifications of which cannot be established with sufficient precision by the contracting authority with reference to a standard, European Technical Approval, Common Technical Specification or technical reference within the meaning of points 2 to 5 of Annex VIII;

b) with regard to works, supplies or services where, in response to an open or a restricted procedure, only irregular or unacceptable tenders are submitted. In such situations contracting authorities need not publish a contract notice where they include in the negotiated procedure all of, and only, the tenderers which satisfy the criteria set out in Article 55 to 63 and which, during the prior open or restricted procedure, have submitted tenders in accordance with the formal requirements of the procurement procedure.

Or. en

Justification

This Amendment adds flexibility on the use of negotiations. The promotion of flexibility in the choice of procedures and the promotion of innovative procurement practice are key priorities in this modernisation exercise. As such, transposition of the most relevant procedures should not be optional and, instead should be uniform across all Member States to ensure a level playing field.

Amendment 657

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

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:

The Member States *shall* provide that contracting authorities may use a competitive procedure with negotiation or a competitive dialogue in any of the following cases:

Or. de

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 658

Frank Engel, Andreas Schwab, Anna Maria Corazza Bildt

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:

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

Or. fr

Amendment 659

Wim van de Camp

Proposal for a directive

Article 24 – paragraph 1 – subparagraph 4 – introductory part

Text proposed by the Commission

Amendment

They ***may*** also provide that contracting

They ***shall*** also provide that contracting

authorities may use a competitive procedure with negotiation or a competitive dialogue in any of the following cases:

authorities may use a competitive procedure with negotiation or a competitive dialogue in any of the following cases:

Or. nl

Amendment 660
Christel Schaldemose

Proposal for a directive
Article 24 – paragraph 1 – subparagraph 4 – point a

Text proposed by the Commission

Amendment

a) with regard to works, where the works contract has as its object both the design and the execution of works within the meaning of Article 2(8) or where negotiations are needed to establish the legal or financial makeup of the project;

deleted

Or. da

Amendment 661
Marc Tarabella

Proposal for a directive
Article 24 – paragraph 1 – subparagraph 4 – point a

Text proposed by the Commission

Amendment

(a) with regard to works, where the **works contract has as its object both** the design **and the** execution of works within the meaning of Article 2(8) or where negotiations are needed to establish the legal or financial makeup of the project;

(a) with regard to works, where the **contracts have multiple objects, such as** the design, execution, **funding, operation and maintenance** of works within the meaning of Article 2(8) or where negotiations are needed to establish the legal or financial makeup of the project;

Or. fr

Amendment 662
Jürgen Creutzmann

Proposal for a directive
Article 24 – paragraph 1 – subparagraph 4 – point a

Text proposed by the Commission

Amendment

(a) with regard to works, ***where the works contract has as its object both the design and the execution of works within the meaning of Article 2(8) or*** where negotiations are needed to establish the legal or financial makeup of the project;

(a) with regard to works, where negotiations are needed to establish the legal or financial makeup of the project;

Or. en

Justification

This provision could create incentives for contracting authorities to summarise design and execution of works in one big contract, which may not always be the preferable option.

Amendment 663
Christel Schaldemose

Proposal for a directive
Article 24 – paragraph 1 – subparagraph 4 – point b

Text proposed by the Commission

Amendment

b) in respect of public works contracts, for works which are performed solely for purposes of research or innovation, testing or development and not with the aim of ensuring profitability or recovering research and development costs;

deleted

Or. da

Amendment 664
Marc Tarabella

Proposal for a directive

Article 24 – paragraph 1 – subparagraph 4 – point b

Text proposed by the Commission

(b) in respect of public works contracts, for works which are performed solely for purposes of research or innovation, testing or development and not with the aim of ensuring profitability or recovering research and development costs;

Amendment

(b) in respect of public works, **supply and service** contracts, for works which are performed solely for purposes of research or innovation, testing or development and not with the aim of ensuring profitability or recovering research and development costs;

Or. fr

Amendment 665

Christel Schaldemose

Proposal for a directive

Article 24 – paragraph 1 – subparagraph 4 – point c

Text proposed by the Commission

c) with regard to services or supplies, where the technical specifications cannot be established with sufficient precision with reference to any of the standards, European technical approvals, Common technical specifications or technical references within the meaning of points 2 to 5 of Annex VIII;

Amendment

deleted

Or. da

Amendment 666

Marian Harkin

Proposal for a directive

Article 24 – paragraph 1 – subparagraph 4 – point c

Text proposed by the Commission

(c) with regard to services or supplies, where the technical specifications cannot

Amendment

(c) with regard to **knowledge-based** services or supplies, where the technical

be established with sufficient precision with reference to any of the standards, European technical approvals, Common technical specifications or technical references within the meaning of points 2 to 5 of Annex VIII;

specifications cannot be established with sufficient precision with reference to any of the standards, European technical approvals, Common technical specifications or technical references within the meaning of points 2 to 5 of Annex VIII;

Or. en

Justification

The competitive procedure with negotiation is the only possible procedure that is appropriate for creative services because their result cannot be anticipated as the consequence their creative nature. Therefore 'intellectual or knowledge-based services' (see definition proposed in article 1) should be clearly mentioned as such and the transposition of the competitive procedure with negotiation made compulsory.

Amendment 667 **Christel Schaldemose**

Proposal for a directive **Article 24 – paragraph 1 – subparagraph 4 – point d**

Text proposed by the Commission

Amendment

d) in the event of irregular or unacceptable tenders within the meaning of Article 30(2)(a) in response to an open or a restricted procedure;

deleted

Or. da

Amendment 668 **Christel Schaldemose**

Proposal for a directive **Article 24 – paragraph 1 – subparagraph 4 – point e**

Text proposed by the Commission

Amendment

e) due to specific circumstances related to the nature or the complexity of the works,

deleted

supplies or services or the risks attaching thereto, the contract cannot be awarded without prior negotiations.

Or. da

Amendment 669
Wim van de Camp

Proposal for a directive
Article 24 – paragraph 1 – subparagraph 4 – point e

Text proposed by the Commission

Amendment

(e) due to specific circumstances related to the nature or the complexity of the works, supplies or services or the risks attaching thereto, the contract cannot be awarded without prior negotiations.

(e) **where contracting authorities justify in the call for competition that** due to specific circumstances related to the nature, **the legal or financial makeup or** the complexity of the works, supplies or services or the risks attaching thereto, the contract cannot be awarded without prior negotiations.

Or. en

Justification

Making the negotiated procedure also explicitly accessible for the complex contracts, we need a limited broadening of the proposed scope by the Commission proposal.

Amendment 670
Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive
Article 24 – paragraph 1 – subparagraph 4 – point e a (new)

Text proposed by the Commission

Amendment

(ea) where the specific procurement requirements of the contracting authority cannot be met without exclusive recourse to standardised solutions.

Justification

Contracting authorities should be able to choose the competitive procedure with negotiation if they cannot have exclusive recourse to standardised products or services in the procurement procedure.

Amendment 671
Evelyne Gebhardt

Proposal for a directive
Article 24 – paragraph 1 – subparagraph 4 – point e a (new)

Text proposed by the Commission

Amendment

(ea) due to consultation requirements with employees' representatives for works or services where staff are affected.

Amendment 672
Christel Schaldemose

Proposal for a directive
Article 24 – paragraph 1 – subparagraph 4 a (new)

Text proposed by the Commission

Amendment

In the period between the expiry of the time limit for receipt of tenders and the signature of the contract, the contracting authorities may enter into dialogue with the tenderers, either in order to clear up or remedy errors, omissions or misunderstandings in the tenders or to clarify or supplement the content of the tenders, and to the extent that this does not give rise to discrimination.

Amendment 673
Christel Schaldemose

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**

Or. da

Amendment 674
Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann

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**

Or. en

Justification

The promotion of flexibility in the choice of procedures and the promotion of innovative procurement practice are key priorities in this modernisation exercise. As such, transposition of the most relevant procedures should not be optional and, instead should be uniform across all Member States to ensure a level playing field.

Amendment 675
Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, Hans-Peter Mayer, Andreas Schwab

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**

Or. de

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. The procedure with negotiation should be introduced in all the Member States with a view to fostering internal market harmonisation and cross-border trade.

Amendment 676

Frank Engel, András Gyürk, Andreas Schwab, Ildikó Gáll-Pelcz, Anna Maria Corazza Bildt

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**

Or. fr

Amendment 677
Wim van de Camp

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

Or. nl

Justification

The competitive procedure with negotiation, the competitive dialogue and the innovation partnership give contracting authorities good opportunities to make their procurement policies simpler, more flexible and more efficient. Giving Member States the option of not implementing these procedures deprives contracting authorities of this freedom. It is important that all contracting authorities can use these new procedures in future.

Amendment 678

Marc Tarabella

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

Or. fr

Amendment 679

Phil Prendergast

Proposal for a directive

Article 24 – paragraph 1 – subparagraph 5

Text proposed by the Commission

Amendment

Member States ***may decide not to***

Member States ***shall*** transpose into their

transpose into their national law the competitive procedure with negotiation, the competitive dialogue and the innovation partnership procedures.

national law the competitive procedure with negotiation, the competitive dialogue and the innovation partnership procedures.

Or. en

Amendment 680

Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann

Proposal for a directive

Article 24 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

The call for competition *may* be made by *one of the following means*:

The call for competition *shall* be made by *a contract notice pursuant to Article 47*.

Or. en

Justification

This Amendment adds flexibility on the use of negotiations.

Amendment 681

Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann

Proposal for a directive

Article 24 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) a contract notice pursuant to Article 47,

deleted

Or. en

Justification

Moved to the introductory paragraph. This Amendment adds flexibility on the use of negotiations.

Amendment 682

Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann

Proposal for a directive

Article 24 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) where the contract is awarded by restricted or competitive procedure with negotiation by a sub-central contracting authority, by means of a prior information notice pursuant to Article 46(2). ***deleted***

Or. en

Justification

This Amendment adds flexibility on the use of negotiations.

Amendment 683

Cornelis de Jong

Proposal for a directive

Article 24 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) where the contract is awarded by restricted or competitive procedure with negotiation by a ***sub-central*** contracting authority, by means of a prior information notice pursuant to Article 46(2).

(b) where the contract is awarded by restricted or competitive procedure with negotiation by a contracting authority, by means of a prior information notice pursuant to Article 46(2).

Or. en

Amendment 684

Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann

Proposal for a directive

Article 24 – paragraph 2 – subparagraph 2

Text proposed by the Commission

In the case referred to in point (b), economic operators having expressed their interest following the publication of the prior information notice shall subsequently be invited to confirm their interest in writing by means of an ‘invitation to confirm interest’ in conformity with Article 52.

Amendment

Where the contract is awarded by restricted or competitive procedure with negotiation by a sub-central contracting authority, Member States shall provide, notwithstanding the 1st subparagraph, that the call for competition may be made by means of a prior information notice pursuant to Article 46(2). They may also reserve this possibility to specific categories of sub-central contracting authorities.

Where the call for competition is made by means of a prior information notice pursuant to Article 46(2), economic operators, having expressed their interest following the publication of the prior information notice, shall subsequently be invited to confirm their interest in writing by means of an ‘invitation to confirm interest’ in conformity with Article 52.

Or. en

Justification

This Amendment adds flexibility on the use of negotiations. It also ensures harmonised transposition across the EU.

Amendment 685

Malcolm Harbour, Edvard Kožušník

Proposal for a directive Article 24 – paragraph 3

Text proposed by the Commission

3. Member States ***may*** provide that contracting authorities may apply a negotiated procedure without prior publication ***only in the specific cases and circumstances*** referred to ***expressly*** in Article 30.

Amendment

3. ***In the specific cases and circumstances referred to expressly in Article 30,*** Member States ***shall*** provide that contracting authorities may apply a negotiated procedure without prior publication. ***Member States shall not allow***

the *use of this procedure in any other* cases *than those* referred to in Article 30.

Or. en

Justification

This Amendment adds flexibility on the use of negotiations. It also ensures harmonised transposition across the EU.

Amendment 686

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

Proposal for a directive

Article 25 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The minimum time limit for the receipt of tenders shall be **40** days from the date on which the contract notice was sent.

Amendment

The minimum time limit for the receipt of tenders shall be **21** days from the date on which the contract notice was sent. ***That period may be extended to 40 days in particular exceptional cases.***

Or. de

Justification

Shorter deadlines speed up the procedure without necessarily leading to lower-quality tenders. The tender in itself does not involve any commitments for the tenderer. Assuming that no time-consuming certification is required at this stage, the application form can be filled in and sent off relatively quickly.

Amendment 687

António Fernando Correia de Campos

Proposal for a directive

Article 25 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The minimum time limit for the receipt of tenders shall be **40** days from the date on

Amendment

The minimum time limit for the receipt of tenders shall be **45** days from the date on

which the contract notice was sent.

which the contract notice was sent.

Or. pt

Amendment 688
Sari Essayah

Proposal for a directive
Article 25 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

The minimum time limit for the receipt of tenders shall be **40** days from the date on which the contract notice was sent.

The minimum time limit for the receipt of tenders shall be **45** days from the date on which the contract notice was sent.

Or. en

Amendment 689
Marian Harkin

Proposal for a directive
Article 25 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

The minimum time limit for the receipt of tenders shall be **40** days from the date on which the contract notice was sent.

The minimum time limit for the receipt of tenders shall be **52** days from the date on which the contract notice was sent.

Or. en

Justification

New time limits are too short in practical terms and may limit competition

Amendment 690
Jürgen Creutzmann

Proposal for a directive
Article 25 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

The minimum time limit for the receipt of tenders shall be **40** days from the date on which the contract notice was sent.

The minimum time limit for the receipt of tenders shall be **47** days from the date on which the contract notice was sent.

Or. en

Justification

The time limit for receipt of tenders should be extended to 47 days, which gives candidates enough time to prepare their tender and is still shorter than the current time limit (52 days).

Amendment 691

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

**Proposal for a directive
Article 25 – paragraph 2**

Text proposed by the Commission

Amendment

2. Where contracting authorities have published a prior information notice which is not used as a means of calling for competition, the minimum time limit for the receipt of tenders, as laid down in the second subparagraph of paragraph 1 of this Article, may be shortened to 20 days, provided that both of the following conditions are fulfilled:

deleted

(a) the prior information notice has included all the information required for the contract notice in section I of part B of Annex VI, insofar as that information is available at the time the prior information notice is published;

(b) it was sent for publication between 45 days and 12 months before the date on which the contract notice was sent.

Or. de

Justification

The time limit should be cut to 21 days (see the same authors' amendment to Article 25(1) with a possible extension to 40 days in exceptional cases. The cases listed in Article 25(2) can be deleted by reversing the rule-exception relation.

Amendment 692

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 25 – paragraph 2 – introductory part

Text proposed by the Commission

2. Where contracting authorities have published a prior information notice which is not used as a means of calling for competition, the minimum time limit for the receipt of tenders, as laid down in the second subparagraph of paragraph 1 of this Article, may be shortened to **20** days, provided that both of the following conditions are fulfilled:

Amendment

2. Where contracting authorities have published a prior information notice which is not used as a means of calling for competition, the minimum time limit for the receipt of tenders, as laid down in the second subparagraph of paragraph 1 of this Article, may be shortened to **15** days, provided that both of the following conditions are fulfilled:

Or. en

Justification

Streamlining the procurement process.

Amendment 693

Sari Essayah

Proposal for a directive

Article 25 – paragraph 2 – introductory part

Text proposed by the Commission

2. Where contracting authorities have published a prior information notice which is not used as a means of calling for competition, the minimum time limit for the receipt of tenders, as laid down in the second subparagraph of paragraph 1 of this

Amendment

2. Where contracting authorities have published a prior information notice which is not used as a means of calling for competition, the minimum time limit for the receipt of tenders, as laid down in the second subparagraph of paragraph 1 of this

Article, may be shortened to **20** days, provided that both of the following conditions are fulfilled:

Article, may be shortened to **30** days, provided that both of the following conditions are fulfilled:

Or. en

Amendment 694

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

Proposal for a directive

Article 25 – paragraph 3

Text proposed by the Commission

Amendment

3. Where a state of urgency duly substantiated by the contracting authorities renders impracticable the time limit laid down in the second subparagraph of paragraph 1, they may fix a time limit which shall be not less than 20 days from the date on which the contract notice was sent.

deleted

Or. de

Justification

The time limit should be cut to 21 days (see the same authors' amendment to Article 25(1) with a possible extension to 40 days in exceptional cases. The cases listed in Article 25(2) can be deleted by reversing the rule-exception relation.

Amendment 695

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 25 – paragraph 3

Text proposed by the Commission

Amendment

3. Where a state of urgency duly substantiated by the contracting authorities renders impracticable the time limit laid down in the second subparagraph of

3. Where a state of urgency duly substantiated by the contracting authorities renders impracticable the time limit laid down in the second subparagraph of

paragraph 1, they may fix a time limit which shall be not less than **20** days from the date on which the contract notice was sent.

paragraph 1, they may fix a time limit which shall be not less than **15** days from the date on which the contract notice was sent.

Or. en

Justification

Streamlining the procurement process.

Amendment 696

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive

Article 25 – paragraph 4

Text proposed by the Commission

Amendment

4. The contracting authority may reduce by five days the time limit for receipt of tenders set out in the second subparagraph of paragraph 1 where it accepts that tenders may be submitted by electronic means in accordance with Article 19(3), (4) and (5).

deleted

Or. de

Justification

The time limit should be cut to 21 days (see the same authors' amendment to Article 25(1) with a possible extension to 40 days in exceptional cases. The cases listed in Article 25(2) can be deleted by reversing the rule-exception relation.

Amendment 697

Cornelis de Jong

Proposal for a directive

Article 25 – paragraph 4

Text proposed by the Commission

Amendment

4. The contracting authority may reduce by five days the time limit for receipt of tenders set out in the second subparagraph of paragraph 1 where it accepts that tenders may be submitted by electronic means in accordance with Article 19(3), (4) and (5).

deleted

Or. en

Amendment 698

Sari Essayah

Proposal for a directive Article 25 – paragraph 4

Text proposed by the Commission

Amendment

4. The contracting authority may reduce by five days the time limit for receipt of tenders set out in the second subparagraph of paragraph 1 where it accepts that tenders may be submitted by electronic means in accordance with Article 19(3), (4) and (5).

deleted

Or. en

Amendment 699

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

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

Text proposed by the Commission

Amendment

The minimum time limit for receipt of requests to participate shall be **30** days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the

The minimum time limit for receipt of requests to participate shall be **21** days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the

invitation to confirm interest is sent.

invitation to confirm interest is sent.

Or. de

Justification

The time limit proposed by the Commission is too long and could be cut to 21 days, which is a sufficient period from the practical point of view. Shorter deadlines speed up the procedure without necessarily leading to lower-quality tenders. The tender in itself does not involve any commitments for the tenderer, and the application form can be filled in and sent off relatively quickly.

Amendment 700
Sari Essayah

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

Text proposed by the Commission

The minimum time limit for receipt of requests to participate shall be **30** days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent.

Amendment

The minimum time limit for receipt of requests to participate shall be **45** days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent.

Or. en

Amendment 701
Marian Harkin

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

Text proposed by the Commission

The minimum time limit for receipt of requests to participate shall be **30** days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent.

Amendment

The minimum time limit for receipt of requests to participate shall be **37** days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent.

Amendment 702
Jürgen Creutzmann

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

Text proposed by the Commission

The minimum time limit for receipt of requests to participate shall be **30** days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent.

Amendment

The minimum time limit for receipt of requests to participate shall be **35** days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent.

Or. en

Justification

The time limit for receipt of requests to participate should be extended to 35 days, which gives candidates enough time to prepare their tender and is still shorter than the current time limit (37 days).

Amendment 703
Marian Harkin

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

Text proposed by the Commission

2. Only those economic operators ***invited*** by the contracting authority following their assessment of the requested information may submit a tender. Contracting authorities may limit the number of suitable candidates to be ***invited*** to participate in the procedure in accordance with Article 64.

Amendment

2. Only those economic operators ***selected*** by the contracting authority following their assessment of the requested information may submit a tender. Contracting authorities may limit the number of suitable candidates to be ***selected*** to participate in the procedure in accordance with Article 64.

Or. en

Amendment 704

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

Proposal for a directive

Article 26 – paragraph 2 – subparagraph 2

Text proposed by the Commission

The minimum time limit for the receipt of tenders shall be **35** days from the date on which the invitation to tender is sent.

Amendment

The minimum time limit for the receipt of tenders shall be **21** days from the date on which the invitation to tender is sent.

Or. de

Justification

The time limit proposed by the Commission is too long and could be cut to 21 days, which is a sufficient period from the practical point of view. Shorter deadlines speed up the procedure without necessarily leading to lower-quality tenders. The tender in itself does not involve any commitments for the tenderer, and the application form can be filled in and sent off relatively quickly.

Amendment 705

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 26 – paragraph 2 – subparagraph 2

Text proposed by the Commission

The minimum time limit for the receipt of tenders shall be **35** days from the date on which the invitation to tender is sent.

Amendment

The minimum time limit for the receipt of tenders shall be **30** days from the date on which the invitation to tender is sent.

Or. en

Justification

Streamlining the procurement process.

Amendment 706
Sari Essayah

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

Text proposed by the Commission

The minimum time limit for the receipt of tenders shall be **35** days from the date on which the invitation to tender is sent.

Amendment

The minimum time limit for the receipt of tenders shall be **45** days from the date on which the invitation to tender is sent.

Or. en

Amendment 707
Marian Harkin

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

Text proposed by the Commission

The minimum time limit for the receipt of tenders shall be **35** days from the date on which the invitation to tender is sent.

Amendment

The minimum time limit for the receipt of tenders shall be **40** days from the date on which the invitation to tender is sent.

Or. en

Amendment 708
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 26 – paragraph 3 – introductory part

Text proposed by the Commission

3. Where contracting authorities have published a prior information notice which is not used as a means of calling for competition, the minimum time limit for the receipt of tenders as laid down in the second subparagraph of paragraph 2 of this Article may be shortened to **15** days, provided that all of the following

Amendment

3. Where contracting authorities have published a prior information notice which is not used as a means of calling for competition, the minimum time limit for the receipt of tenders as laid down in the second subparagraph of paragraph 2 of this Article may be shortened to **10** days, provided that all of the following

conditions are fulfilled:

conditions are fulfilled:

Or. en

Justification

Streamlining the procurement process.

Amendment 709

Marian Harkin

Proposal for a directive

Article 26 – paragraph 3 – introductory part

Text proposed by the Commission

3. Where contracting authorities have published a prior information notice which is not used as a means of calling for competition, the minimum time limit for the receipt of tenders as laid down in the second subparagraph of paragraph 2 of this Article may be shortened to **15** days, provided that all of the following conditions are fulfilled:

Amendment

3. Where contracting authorities have published a prior information notice which is not used as a means of calling for competition, the minimum time limit for the receipt of tenders as laid down in the second subparagraph of paragraph 2 of this Article may, **as a general rule**, be shortened to **36** days, **but under no circumstances to less than 22 days**, provided that all of the following conditions are fulfilled:

Or. en

Amendment 710

Marian Harkin

Proposal for a directive

Article 26 – paragraph 3 – point b

Text proposed by the Commission

(b) it was sent for publication between **45** days and 12 months before the date on which the contract notice was sent.

Amendment

(b) it was sent for publication between **52** days and 12 months before the date on which the contract notice was sent.

Or. en

Amendment 711

Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann

Proposal for a directive

Article 26 – paragraph 4

Text proposed by the Commission

4. **Sub-central** contracting authorities may set the time limit for the receipt of tenders by mutual agreement between the contracting authority and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders. **Where it is not possible to reach** agreement on the time limit for the receipt of tenders, the contracting authority shall fix a time limit which shall be at least 10 days from the date of the invitation to tender.

Amendment

4. **Member States shall provide that all or specific categories of sub-central** contracting authorities may set the time limit for the receipt of tenders by mutual agreement between the contracting authority and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders. **In the absence of an** agreement on the time limit for the receipt of tenders, the contracting authority shall fix a time limit which shall be at least 10 days from the date of the invitation to tender.

Or. en

Justification

Streamlining the procurement process and also ensuring harmonised transposition across the EU.

Amendment 712

Sari Essayah

Proposal for a directive

Article 26 – paragraph 4

Text proposed by the Commission

4. Sub-central contracting authorities may set the time limit for the receipt of tenders by mutual agreement between the contracting authority and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders. Where it is not possible to

Amendment

4. Sub-central contracting authorities may set the time limit for the receipt of tenders by mutual agreement between the contracting authority and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders. Where it is not possible to

reach agreement on the time limit for the receipt of tenders, the contracting authority shall fix a time limit which shall be at least **10** days from the date of the invitation to tender.

reach agreement on the time limit for the receipt of tenders, the contracting authority shall fix a time limit which shall be at least **15** days from the date of the invitation to tender.

Or. en

Amendment 713
Mitro Repo

Proposal for a directive
Article 26 – paragraph 4

Text proposed by the Commission

4. Sub-central contracting authorities may set the time limit for the receipt of tenders by mutual agreement between the contracting authority and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders. Where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting authority shall fix a time limit which shall be at least **10** days from the date of the invitation to tender.

Amendment

4. Sub-central contracting authorities may set the time limit for the receipt of tenders by mutual agreement between the contracting authority and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders. Where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting authority shall fix a time limit which shall be at least **15** days from the date of the invitation to tender.

Or. fi

Amendment 714
Sari Essayah

Proposal for a directive
Article 26 – paragraph 5

Text proposed by the Commission

5. The time limit for receipt of tenders provided for in paragraph 2 may be reduced by five days where the contracting authority accepts that tenders may be submitted by electronic means in

Amendment

deleted

conformity with Article 19(3), (4) and (5).

Or. en

Amendment 715
Sari Essayah

Proposal for a directive
Article 26 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. When the contracting authority makes corrections to the tender documents during the time limits mentioned in paragraphs 1, 2, 3, and 4, there shall be 15 days prolongation of these time limits.

Or. en

Amendment 716
Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann

Proposal for a directive
Article 27 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

1. In competitive procedures with negotiation, any economic operator may submit a request to participate in response to a call for competition by providing the ***requested*** information for qualitative selection.

1. In competitive procedures with negotiation, any economic operator may submit a request to participate in response to a call for competition ***containing the information set out in Annex VI parts B and C*** by providing the information for qualitative selection ***that is requested by the contracting authority.***

Or. en

Justification

Streamlining the procurement process.

Amendment 717
Heide Rühle

Proposal for a directive
Article 27 – paragraph 1 – subparagraph 2

Text proposed by the Commission

In the contract notice or in the invitation to confirm interest contracting authorities shall describe the procurement and the minimum requirements to be met and specify the award criteria so as to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the negotiations. ***In the technical specifications, contracting authorities shall specify which parts thereof define the minimum requirements.***

Amendment

In the contract notice or in the invitation to confirm interest contracting authorities shall describe the procurement and the minimum requirements to be met and specify the ***main award criterion or*** criteria so as to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the negotiations.

Or. en

Justification

This would make the negotiation procedure more restrictive than the open procedure and would decrease the legal certainty.

Amendment 718
Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann

Proposal for a directive
Article 27 – paragraph 1 – subparagraph 2

Text proposed by the Commission

In the ***contract notice or in the invitation to confirm interest*** contracting authorities shall ***describe the procurement and the minimum requirements to be met and specify the award criteria*** so as to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the

Amendment

In the ***procurement documents,*** contracting authorities shall ***indicate which elements define*** the minimum requirements to be met. ***The indications shall be sufficiently precise*** as to enable economic operators to identify the ***precise*** nature and scope of the procurement and decide whether to request to participate in

negotiations. In the technical specifications, contracting authorities shall specify which parts thereof define the minimum requirements.

the *procedure*.

Or. en

Justification

Streamlining the procurement process.

Amendment 719
Peter Simon

Proposal for a directive
Article 27 – paragraph 1 – subparagraph 2

Text proposed by the Commission

In the contract notice or in the invitation to confirm interest contracting authorities shall describe the procurement and the minimum requirements to be met and specify the award criteria so as to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the negotiations. *In the technical specifications, contracting authorities shall specify which parts thereof define the minimum requirements.*

Amendment

In the contract notice or in the invitation to confirm interest contracting authorities shall describe the procurement and the minimum requirements to be met and specify the *main* award criteria so as to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the negotiations.

Or. de

Amendment 720
Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive
Article 27 – paragraph 1 – subparagraph 2

Text proposed by the Commission

In the contract notice or in the invitation to

Amendment

In the contract notice or in the invitation to

confirm interest contracting authorities shall describe the procurement and the minimum requirements to be met and specify the award criteria so as to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the negotiations. ***In the technical specifications, contracting authorities shall specify which parts thereof define the minimum requirements.***

confirm interest contracting authorities shall describe the procurement and the minimum requirements to be met and specify the award criteria so as to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the negotiations.

Or. de

Justification

The new Article 27(1), second subparagraph introduces stricter rules for the negotiation procedure than those currently in force. This will not only lead to a deterioration in procurement practice but also runs counter to the overarching aim of this reform, which is to simplify procedures and make them more flexible. The contracting authorities should not be obliged to specify minimum requirements before the procedure is opened.

Amendment 721 Marian Harkin

Proposal for a directive Article 27 – paragraph 1 – subparagraph 2

Text proposed by the Commission

In the contract notice or in the invitation to confirm interest contracting authorities shall describe the procurement and the minimum requirements to be met and specify the award criteria so as to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the negotiations. In the ***technical*** specifications, contracting authorities shall specify which parts thereof define the minimum requirements.

Amendment

In the contract notice or in the invitation to confirm interest contracting authorities shall describe the procurement and the minimum requirements to be met and specify the award criteria so as to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the negotiations. In the specifications, contracting authorities shall specify which parts thereof define the minimum requirements.

Or. en

Justification

To ensure quality/best value, especially of design (solutions) and engineering consultancy services, negotiation should not become a bargaining: 1 price for original scope should be protected 2 need for clarification of how to conduct the negotiation 3 minimum requirements cannot be changed

Amendment 722 **Sirpa Pietikäinen**

Proposal for a directive **Article 27 – paragraph 1 – subparagraph 2 a (new)**

Text proposed by the Commission

Amendment

In order to promote innovations contracting authorities can call for innovative solutions for problems, instead of defining specific products or services.

Or. en

Amendment 723 **Heide Rühle**

Proposal for a directive **Article 27 – paragraph 1 – subparagraph 3**

Text proposed by the Commission

Amendment

The minimum time limit for receipt of requests to participate shall be **30 days** from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent; the minimum time limit for the receipt of tenders shall be **30 days** from the date on which the invitation is sent. Article 26 (3) to (6) shall apply.

The minimum time limit for receipt of requests to participate shall be **sufficient** from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent; the minimum time limit for the receipt of tenders shall be **sufficient** from the date on which the invitation is sent. Article 26 (3) to (6) shall apply.

Or. en

Amendment 724

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

Proposal for a directive

Article 27 – paragraph 1 – subparagraph 3

Text proposed by the Commission

The minimum time limit for receipt of requests to participate shall be **30 days** from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent; the *minimum* time limit for the receipt of tenders shall be **30 days** from the date on which the invitation is sent. Article 26 (3) to (6) shall apply.

Amendment

A sufficient time limit for receipt of requests to participate shall be **set** from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent; the time limit for the receipt of tenders shall be **calculated** from the date on which the invitation is sent **and shall be sufficiently long**. Article 26 (3) to (6) shall apply.

Or. de

Justification

The newly introduced minimum time limit of 30 days should be replaced by 'a sufficient time limit' in order to offer contracting authorities more flexibility. The time limit for receipt of requests to participate should not be set at a particular number of days but should be left to the discretion of the awarding authority. Past experience has shown that requests to participate are just as complete and correct when time limits are significantly shorter.

Amendment 725

Jürgen Creutzmann

Proposal for a directive

Article 27 – paragraph 1 – subparagraph 3

Text proposed by the Commission

The minimum time limit for receipt of requests to participate shall be **30 days** from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent; the minimum time limit for the receipt of tenders shall be 30 days from the date on

Amendment

The minimum time limit for receipt of requests to participate shall be **35 days** from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent; the minimum time limit for the receipt of tenders shall be 30 days from the date on

which the invitation is sent. Article 26 (3) to (6) shall apply.

which the invitation is sent. Article 26 (3) to (6) shall apply.

Or. en

Justification

The time limit for receipt of requests to participate should be extended to 35 days, which gives candidates enough time to prepare their tender and is still shorter than the current time limit (37 days).

Amendment 726

Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann

Proposal for a directive

Article 27 – paragraph 2

Text proposed by the Commission

2. Only those economic operators invited by the contracting authority following their assessment of the requested information may submit *a written* tender which shall be the basis for the subsequent negotiations. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.

Amendment

2. Only those economic operators invited by the contracting authority following their assessment of the requested information may submit *an initial* tender which shall be the basis for the subsequent negotiations. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.

Or. en

Justification

Technical adjustment to ensure use of Electronic Procurement is allowed. This follows the Council's approach on the choice of procedures.

Amendment 727

Heide Rühle

Proposal for a directive

Article 27 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. Contracting authorities shall negotiate with tenderers the tenders submitted by them to improve the content of the offers in order to better correspond to the award criteria and minimum requirements ***referred to in the second subparagraph of paragraph 1.***

Amendment

3. Contracting authorities shall negotiate with tenderers the tenders submitted by them to improve the content of the offers in order to better correspond to the award criteria and minimum requirements. ***The negotiation may focus on the legal, technical and financial components of the tender as well as on the variants and the correction of material errors.***

Or. en

Amendment 728
Marc Tarabella

Proposal for a directive
Article 27 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. Contracting authorities shall negotiate with tenderers the tenders submitted ***by them*** to improve the content of the offers in order to better correspond to the award criteria and minimum requirements referred to in the second subparagraph of paragraph 1.

Amendment

3. Contracting authorities shall negotiate with tenderers the tenders submitted ***and the procurement documents, subject to the provisions of paragraph 2,*** to improve the content of the offers in order to better correspond to the award criteria and minimum requirements referred to in the second subparagraph of paragraph 1.

Or. fr

Amendment 729
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 27 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. ***Contracting*** authorities shall negotiate with tenderers the tenders submitted by

Amendment

3. ***Unless otherwise stipulated in the fourth subparagraph, contracting***

them to improve the content of the offers in order to better *correspond to* the award criteria *and minimum requirements referred to in the second subparagraph of paragraph 1*.

authorities shall negotiate with tenderers the *initial and all subsequent* tenders submitted by them, *except for the final tenders within the meaning of paragraph 6*, to improve the content of the offers in order to *ensure that the tenders* better *fulfil* the award criteria *specified in a procurement document*.

Or. en

Justification

Streamlining the procurement process.

Amendment 730
Marian Harkin

Proposal for a directive
Article 27 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. Contracting authorities shall negotiate with tenderers *the tenders submitted by them to improve* the content of the *offers in order to better correspond* to the *award criteria and* minimum requirements referred to in the second subparagraph of paragraph 1.

Amendment

3. Contracting authorities shall negotiate with *the* tenderers the content of the *tender, subject* to the minimum requirements referred to in the second subparagraph of paragraph 1.

Or. en

Amendment 731
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 27 – paragraph 3 – subparagraph 2 – introductory part

Text proposed by the Commission

The *following* shall not be *changed in the course of the* negotiations:

Amendment

The *minimum requirements and the award criteria* shall not be *subject to*

negotiations.

Or. en

Justification

Streamlining the procurement process.

Amendment 732

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 27 – paragraph 3 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) the description of the procurement; deleted

Or. en

Justification

Streamlining the procurement process.

Amendment 733

Christel Schaldemose

Proposal for a directive

Article 27 – paragraph 3 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

a) the description of the procurement; deleted

Or. da

Amendment 734

Sirpa Pietikäinen

Proposal for a directive

Article 27 – paragraph 3 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) the description of the procurement;

(a) the **general** description of the procurement;

Or. en

Amendment 735

Marc Tarabella

Proposal for a directive

Article 27 – paragraph 3 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) the **description** of the procurement;

(a) the **object** of the procurement;

Or. fr

Amendment 736

Heide Rühle

Proposal for a directive

Article 27 – paragraph 3 – subparagraph 2 – point b

Text proposed by the Commission

Amendment

(b) the part of the technical specifications which define the minimum requirements; *deleted*

Or. en

Amendment 737

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 27 – paragraph 3 – subparagraph 2 – point b

Text proposed by the Commission

Amendment

(b) the part of the technical specifications *deleted*

which define the minimum requirements;

Or. en

Justification

Covered by the new proposal on this subparagraph. Streamlining the procurement process.

Amendment 738

Peter Simon

Proposal for a directive

Article 27 – paragraph 3 – subparagraph 2 – point b

Text proposed by the Commission

Amendment

(b) the part of the technical specifications which define the minimum requirements; *deleted*

Or. de

Amendment 739

Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive

Article 27 – paragraph 3 – subparagraph 2 – point b

Text proposed by the Commission

Amendment

(b) the part of the technical specifications which define the minimum requirements; *deleted*

Or. de

Justification

New administrative burdens should be avoided with the aim of simplifying EU procurement law and making it more flexible. This additional provision should therefore be deleted.

Amendment 740

Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 27 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

(c) the award criteria.

deleted

Or. en

Justification

Covered by the new proposal on this subparagraph. Streamlining the procurement process.

Amendment 741
Heide Rühle

Proposal for a directive
Article 27 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

(c) the award criteria.

(c) the *main* award *criterion or* criteria.

Or. en

Amendment 742
Peter Simon

Proposal for a directive
Article 27 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

(c) the award criteria.

(c) the *main* award criteria.

Or. de

Amendment 743
Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive
Article 27 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

(c) the award criteria.

(c) the **main** award criteria.

Or. de

Justification

It should be possible to make minor adjustments to the procurement documents as part of the dialogue with tenderers.

Amendment 744
Jürgen Creutzmann

Proposal for a directive
Article 27 – paragraph 3 – subparagraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the price, where there is no modification of other elements of the tender.

Or. en

Justification

This is to avoid that negotiations are merely used to lower the price of a product.

Amendment 745
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 27 – paragraph 3 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Once the deadline for submitting tenders has expired, and before proceeding to their examination, contracting authorities

may specify a weighting attached to the subheadings of an award criterion defined in advance in accordance with Article 66(5), provided that:

(a) the contract award criteria set out in the contract documents or the contract notice are unaltered;

(b) this does not include new elements which would have affected the preparation of the tenders;

(c) this does not give rise to discrimination against any one of the tenderers.

Or. en

Justification

Simplification and streamlining the procurement process.

Amendment 746
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 27 – paragraph 3 – subparagraph 2 b (new)

Text proposed by the Commission

Amendment

Contracting authorities may award contracts on the basis of initial tenders without negotiation where they have clearly indicated in the contract notice, the invitation to confirm interest or in any other procurement document, that they reserve the right to do so.

Or. en

Justification

Streamlining the procurement process.

Amendment 747
Marc Tarabella

Proposal for a directive
Article 27 – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. They shall take particular care to ensure that all tenderers, whose tenders have not been eliminated pursuant to paragraph 5, are informed in writing of any changes ***to the technical specifications other than those setting out the minimum requirements***, in adequate time to allow such tenderers to modify and re-submit amended tenders following these changes, as appropriate.

Amendment

4. During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. They shall take particular care to ensure that all tenderers, whose tenders have not been eliminated pursuant to paragraph 5, are informed in writing of any changes ***made during the negotiations***, in adequate time to allow such tenderers to modify and re-submit amended tenders following these changes, as appropriate.

Or. fr

Amendment 748
Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann

Proposal for a directive
Article 27 – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. They shall take particular care to ensure that all tenderers, whose tenders have not been eliminated pursuant to paragraph 5, are informed in writing of any changes to the technical specifications other than those setting out the minimum requirements, ***in adequate***

Amendment

4. During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. They shall take particular care to ensure that all tenderers, whose tenders have not been eliminated pursuant to paragraph 5, are informed in writing of any changes to the technical specifications ***or other procurement documents, other*** than those setting out the

time **to allow** such tenderers to modify and re-submit amended tenders following these changes, **as appropriate**.

minimum requirements, **providing sufficient** time **for** such tenderers to modify and re-submit amended tenders following these changes.

Or. en

Justification

Streamlining the procurement process.

Amendment 749
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 27 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Contracting authorities shall not reveal to the other participants **solutions proposed or other** confidential information communicated by a candidate participating in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific **solutions or other confidential** information.

Amendment

In accordance with Article 18, contracting authorities shall not reveal to the other participants confidential information communicated by a candidate participating in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

Or. en

Justification

Streamlining the procurement process.

Amendment 750
Cornelis de Jong

Proposal for a directive
Article 27 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Contracting authorities **shall not** reveal to the other participants solutions proposed **or other** confidential information communicated by a candidate participating in the negotiations without its agreement. Such agreement shall **not take the form of a general waiver but shall** be given with reference to the intended communication of **specific solutions or other confidential information**.

Amendment

Contracting authorities **have the possibility, by means of an agreement in the form of a general waiver, to** reveal to the other participants solutions proposed **by a candidate participating in the negotiations. Other** confidential information communicated by a candidate participating in the negotiations, **shall not be revealed** without its agreement. Such agreement shall be given with reference to the intended communication of **this** other confidential information.

Or. en

Amendment 751

António Fernando Correia de Campos

Proposal for a directive

Article 27 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Contracting authorities shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the negotiations without its agreement. **Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific solutions or other confidential information.**

Amendment

Contracting authorities shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the negotiations without its agreement.

Or. pt

Amendment 752

Heide Rühle

Proposal for a directive

Article 27 – paragraph 5

Text proposed by the Commission

5. Competitive procedures with negotiation may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the **award** criteria specified in the contract notice, in the invitation to confirm interest or in the procurement documents. In the contract notice, the invitation to confirm interest or the procurement documents, the contracting authority shall indicate whether it will use this option.

Amendment

5. Competitive procedures with negotiation may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the **selection** criteria specified in the contract notice, in the invitation to confirm interest or in the procurement documents. In the contract notice, the invitation to confirm interest or the procurement documents, the contracting authority shall indicate whether it will use this option.

Or. en

Amendment 753

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 27 – paragraph 6

Text proposed by the Commission

6. Where the contracting authority intends to conclude the negotiations, it shall inform the remaining tenderers and set a common deadline to submit any new or revised tenders. They shall assess the tenders **as negotiated** on the basis of the initially indicated award criteria and award the contract in accordance with Articles 66 to 69.

Amendment

6. Where the contracting authority intends to conclude the negotiations, it shall inform the remaining tenderers and set a common deadline to submit any new or revised tenders. They shall assess the **final** tenders on the basis of the initially indicated award criteria and award the contract in accordance with Articles 66 to 69.

Or. en

Justification

Streamlining the procurement process.

Amendment 754

Marc Tarabella

Proposal for a directive
Article 27 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Contracting authorities may not confine negotiations to the prices quoted in tenders.

Or. fr

Amendment 755
Marc Tarabella

Proposal for a directive
Article 28

Text proposed by the Commission

Amendment

Article 28

deleted

Competitive dialogue

1. In competitive dialogues, any economic operator may submit a request to participate in response to a call for competition by providing the requested information for qualitative selection.

The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice is sent.

Only those economic operators invited by the contracting authority following the assessment of the requested information may participate in the dialogue.

Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64. The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1)(a).

2. Contracting authorities shall set out their needs and requirements in the contract notice and they shall define these needs and requirements in the notice and/or in a descriptive document. At the same time and in the same documents, they shall also set out and define the chosen award criteria.

3. Contracting authorities shall open, with the candidates selected in accordance with the relevant provisions of Articles 54 to 65, a dialogue the aim of which shall be to identify and define the means best suited to satisfying their needs. They may discuss all aspects of the contract with the chosen candidates during this dialogue.

During the dialogue, contracting authorities shall ensure equality of treatment among all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.

Contracting authorities shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific solutions or other specific confidential information.

4. Competitive dialogues may take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria defined in the contract notice or in the descriptive document. In the contract notice or the descriptive document, the contracting authority shall indicate whether it will use this option.

5. The contracting authority shall continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.

6. Having declared that the dialogue is concluded and having so informed the participants, contracting authorities shall ask them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. Those tenders shall contain all the elements required and necessary for the performance of the project.

7. Contracting authorities shall assess the tenders received on the basis of the award criteria laid down in the contract notice or in the descriptive document.

Where necessary, in order to finalise financial commitments or other terms of the contract, the contracting authority may negotiate the final terms of the contract with the tenderer identified as having submitted the most economically advantageous tender in accordance with Article 66(1)(a) provided such negotiations do not have the effect of modifying essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document and does not risk distorting competition or causing discrimination.

8. The contracting authorities may specify prizes or payments to the participants in the dialogue.

Or. fr

Amendment 756
Jürgen Creutzmann

Proposal for a directive
Article 28 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The minimum time limit for receipt of requests to participate shall be **30** days from the date on which the contract notice

Amendment

The minimum time limit for receipt of requests to participate shall be **35** days from the date on which the contract notice

is sent.

is sent.

Or. en

Justification

The time limit for receipt of request to participate should be extended to 35 days, which gives candidates enough time to prepare their tender and is still shorter than the current time limit (37 days).

Amendment 757

Frank Engel, Konstantinos Poupakis

Proposal for a directive

Article 28 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Only those economic operators invited by the contracting authority following the assessment of the requested information may participate in the dialogue. Contracting authorities *may limit* the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64. ***The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1)(a).***

Amendment

Only those economic operators invited by the contracting authority following the assessment of the requested information may participate in the dialogue. Contracting authorities ***shall have the option of appointing from among their staff a project leader to guarantee compliance with reasonable deadlines by means of effective coordination at each stage of the dialogue.*** The number of suitable candidates to be invited to participate in the procedure ***may be limited*** in accordance with Article 64.

Or. fr

Amendment 758

Heide Rühle

Proposal for a directive

Article 28 – paragraph 2

Text proposed by the Commission

2. Contracting authorities shall set out their

Amendment

2. Contracting authorities shall set out their

needs and requirements in the contract notice and they shall define these needs and requirements in the notice and/or in a descriptive document. At the same time and in the same documents, they shall also set out and define the chosen award criteria.

needs and requirements in the contract notice and they shall define these needs and requirements in the notice and/or in a descriptive document. At the same time and in the same documents, they shall also set out and define the chosen *main* award *criterion or* criteria.

Or. en

Amendment 759
Peter Simon

Proposal for a directive
Article 28 – paragraph 2

Text proposed by the Commission

2. Contracting authorities shall set out their needs and requirements in the contract notice and they shall define these needs and requirements in the notice and/or in a descriptive document. At the same time and in the same documents, they shall also set out and define the chosen award criteria.

Amendment

2. Contracting authorities shall set out their needs and requirements in the contract notice and they shall define these needs and requirements in the notice and/or in a descriptive document. At the same time and in the same documents, they shall also set out and define the *main* chosen award criteria.

Or. de

Amendment 760
Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive
Article 28 – paragraph 2

Text proposed by the Commission

2. Contracting authorities shall set out their needs and requirements in the contract notice and they shall define these needs and requirements in the notice and/or in a descriptive document. At the same time and in the same documents, they shall also set out and define the chosen award

Amendment

2. Contracting authorities shall set out their needs and requirements in the contract notice and they shall define these needs and requirements in the notice and/or in a descriptive document. At the same time and in the same documents, they shall also set out and define the *main* chosen award

criteria.

criteria.

Or. de

Justification

It should be possible to make minor adjustments to the procurement documents as part of the dialogue with tenderers.

Amendment 761

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 28 – paragraph 2 - subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Once the deadline for submitting tenders has expired, and before proceeding to their examination, contracting authorities may specify a weighting attached to the subheadings of an award criterion defined in advance in accordance with Article 66(5), provided that:

(a) the contract award criteria set out in the contract documents or the contract notice are unaltered;

(b) this does not include new elements which would have affected the preparation of the tenders;

(c) this does not give rise to discrimination against any one of the tenderers.

Or. en

Justification

Streamlining the procurement process.

Amendment 762

Frank Engel, Konstantinos Poupakis

Proposal for a directive
Article 28 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Contracting authorities **shall** not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific solutions or other specific confidential information.

Amendment

Contracting authorities **may not under any circumstances** reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without its agreement, **and such agreement may not be imposed as a condition governing participation in the competitive dialogue**. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific solutions or other specific confidential information.

Or. fr

Amendment 763
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 28 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Contracting authorities shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific **solutions or other specific confidential** information.

Amendment

In accordance with Article 18, contracting authorities shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

Or. en

Justification

Streamlining the procurement process.