



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Industry, Research and Energy

2011/0439(COD)

1.10.2012

OPINION

of the Committee on Industry, Research and Energy

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council
on procurement by entities operating in the water, energy, transport and postal
services sectors
(COM(2011)0895 – C7-0007/2012 – 2011/0439(COD))

Rapporteur: Zigmantas Balčytis

PA_Legam

SHORT JUSTIFICATION

The Europe 2020 strategy for smart, sustainable and inclusive growth [COM(2010) 2020] is based on three interlocking and mutually reinforcing priorities: developing an economy based on knowledge and innovation; promoting a low-carbon, resource-efficient and competitive economy; and fostering a high-employment economy delivering social and territorial cohesion.

Public procurement plays a key role in the Europe 2020 strategy as one of the market-based instruments to be used to achieve those objectives by improving the business environment and conditions for business to innovate and by encouraging wider use of green procurement supporting the shift towards a resource efficient and low-carbon economy. At the same time, the Europe 2020 strategy stresses that public procurement policy must ensure the most efficient use of funds and that procurement markets must be kept open Union-wide.

Public procurement plays an important role in the overall economic performance of the European Union. In Europe, public purchasers spend around 18% of GDP on supplies, works and services. Given the volume of purchases, public procurement can be used as a powerful lever for achieving a Single Market fostering smart, sustainable and inclusive growth.

Together with the proposed new Directive on procurement by public authorities, the proposal will replace Directives 2004/17/EC and 2004/18/EC as the core elements of the European Union public procurement legislative framework. The Directive will be complemented by the further elements of that legislative framework: Directive 2009/81/EC sets specific rules for defence and sensitive security procurement, Directive 92/13/EEC⁴ establishes common standards for national review procedures to ensure that rapid and effective means of redress is available in all EU countries in cases where bidders consider that contracts have been awarded unfairly.

AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Recital 4

Text proposed by the Commission

(4) Public procurement plays a key role in the Europe 2020 strategy¹⁶ as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive

Amendment

(4) Public procurement plays a key role in the Europe 2020 strategy¹⁶ as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive

growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors¹⁷ and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts have to be revised and modernised in order to *increase* the efficiency of public spending, facilitating in particular the participation of small and medium-sized enterprises in public procurement *and to enable procurers to make better use of public procurement in support of common societal goals*. There is also a need to clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors¹⁷ and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts have to be revised and modernised in order to *enable public procurers to make better use of public procurement in support of sustainable development and other common societal goals, thereby increasing* the efficiency of public spending *by ensuring the best possible outcome in cost-benefit ratio terms, by reducing costs for both public authorities and enterprises alike and by* facilitating in particular the participation of small and medium-sized enterprises in public procurement and to enable procurers to make better use of public procurement in support of common societal goals. There is also a need to *simplify the EU rules, particularly with regard to how sustainability objectives can be incorporated into public procurement, and to* clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

Amendment 2

Proposal for a directive Recital 5

Text proposed by the Commission

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

Amendment

(5) Under **Articles 9, 10, and 11** of the Treaty on the Functioning of the European Union, environmental protection requirements and **the concepts underlying 'socially sustainable' production processes** must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development **and, throughout the supply chain, protecting health and public safety and ensuring compliance with social standards and national and European labour laws**. This Directive clarifies how the contracting **authorities** contribute to the protection of the environment and the promotion of sustainable development **and use the discretionary power assigned to them to select the technical specifications and award criteria most likely to achieve socially sustainable public procurement whilst establishing the necessary relation to the subject matter of the contract and** ensuring that they can obtain the best value for money.

Amendment 3

Proposal for a directive Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) It is furthermore appropriate to exclude procurement made for postal services and services other than postal services as that sector has consistently been found to be subject to such competitive pressure that the procurement discipline brought about by the Union procurement rules is no longer needed.

Justification

As a result of the liberalisation process in the postal sector, the introduction of fully-fledged sector-specific regulation and the evolution of the market, it is no longer necessary to regulate purchases by entities operating in the postal sector. Therefore, the time is ripe to exclude postal services and all the more so “other services than postal services”, from the scope of the Directive and allow all entities operating in the sector to base their decisions on purely economic criteria. Since 1997, the postal sector has been increasingly subject to competitive pressure. Three milestones in the EU postal acquis are relevant in this respect: the first and the second Postal Directives (97/67/EC and 2002/39/EC respectively), which followed the 1992 Green Paper, set in motion the process of a controlled liberalisation and gradually opened the postal markets to competition. The third Postal Directive (2008/06/EC) abolished all exclusive rights in the postal sector and set 31st December 2010 as the deadline for full market opening for the majority of Member States (in fact, 95% of the EU postal markets in terms of volumes) and 31st December 2012 for the remaining Member States.

Amendment 4

Proposal for a directive

Recital 14

Text proposed by the Commission

(14) Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the Agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994)²⁵, approved in particular the World Trade Organisation Agreement on Government Procurement, hereinafter referred to as the "Agreement". ***The aim of the Agreement is to establish a*** multilateral framework of balanced rights and obligations relating to public contracts with a view to ***achieving the liberalisation and expansion of world trade.*** For contracts covered by the Agreement, as well as by other relevant international agreements by which the Union is bound, contracting entities fulfil the obligations under those agreements by applying this Directive to economic operators of third countries that are signatories to the agreements.

Amendment

(14) Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the Agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994)²⁵, approved in particular the World Trade Organisation Agreement on Government Procurement, hereinafter referred to as the "Agreement". ***Within this*** multilateral framework of balanced rights and obligations relating to public contracts ***upholding equal opportunities for Union and third country economic operators to compete on equal terms in Union and third country markets*** with a view to ***facilitating the integration of small and medium-sized enterprises (SMEs) and stimulating employment and innovation within the Union.*** For contracts covered by the Agreement, as well as by other relevant international agreements by which the Union is bound, contracting entities

fulfil the obligations under those agreements by applying this Directive to economic operators of third countries that are signatories to the agreements.

Amendment 5

Proposal for a directive Recital 14 a new

Text proposed by the Commission

Amendment

(14a) The Union needs an effective instrument to, on the one hand, encourage compliance with the principle of reciprocity and balance in relation to third countries which do not provide equivalent access to European economic operators, particularly through an assessment of substantial reciprocity to be carried out by the Commission, and, on the other hand, ensure fair competition and a level playing field worldwide.

Amendment 6

Proposal for a directive Recital 14 b (new)

Text proposed by the Commission

Amendment

(14b) In view of the need to encourage participation by the Union's economic operators in cross-border public markets, it is important that the Member States transpose and implement in a timely and adequate manner the provisions of the Services Directive.

Amendment 7

Proposal for a directive Recital 27

Text proposed by the Commission

(27) Electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency and transparency of procurement processes. They should become the standard means of communication and information exchange in procurement procedures. The use of electronic means also leads to time savings. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Union level. Moreover, electronic means of information and communication including adequate functionalities can enable contracting authorities to prevent, detect and correct errors that occur during procurement procedures.

Amendment

(27) Electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency and transparency of procurement processes. They should become the standard means of communication and information exchange in procurement procedures. The use of electronic means also leads to time, ***cost and resource*** savings. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Union level. Moreover, electronic means of information and communication including adequate functionalities can enable contracting authorities to prevent, detect and correct errors that occur during procurement procedures.

Amendment 8

Proposal for a directive Recital 27 a (new)

Text proposed by the Commission

Amendment

(27a) The use of e-procurement shall be encouraged to ensure that at least 50% of both the EU institutions' and the Member States' public procurement operations are carried out electronically, in line with the commitment made by the Member State governments at the ministerial conference on e-government in Manchester in 2005. In the future, e-procurement, which plays a positive role in reducing the cost and increasing the accessibility of

procurement procedures, shall become the main procedure. It is necessary to preserve open standards and technology neutrality in order to ensure the interoperability of different systems and avoid vendor lock-in and to ensure genuine interoperability between the various platforms for e-procurement already in place in Member States.

Amendment 9

Proposal for a directive

Recital 33

Text proposed by the Commission

(33) Electronic means of communication are particularly well suited to support centralised purchasing practices and tools because of the possibility they offer to re-use and automatically process data and to minimise information and transaction costs. The use of such electronic means of communication should therefore, as a first step, be rendered compulsory for central purchasing bodies, while also facilitating converging practices across the Union. This should be followed by a general obligation to use electronic means of communication in all procurement procedures after a transition period of two years.

Amendment

(33) Electronic means of communication are particularly well suited to support centralised purchasing practices and tools because of the possibility they offer to re-use and automatically process data, to minimise information and transaction costs ***and to ensure transparency.*** The use of such electronic means of communication should therefore, as a first step, be rendered compulsory for central purchasing bodies, while also facilitating converging practices across the Union. This should be followed by a general obligation to use electronic means of communication in all procurement procedures after a transition period of two years.

Amendment 10

Proposal for a directive

Recital 38

Text proposed by the Commission

(38) In order to encourage the involvement of small and medium-sized enterprises (SMEs) in the procurement market, it should be provided explicitly that contracts may be divided into lots, whether

Amendment

(38) In order to encourage the involvement of small and medium-sized enterprises (SMEs) in the procurement market, ***the "think small first" principle must apply and Member States should fully***

homogenous or heterogeneous. Where contracts are divided into lots, contracting entities may, for instance in order to preserve competition or to ensure security of supply, limit the number of lots for which an economic operator may tender; they may also limit the number of lots that may be awarded to any one tenderer.

implement the European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts.

Furthermore, it should be provided explicitly that contracts may be divided into lots, whether homogenous or heterogeneous. Where contracts are divided into lots, contracting entities may, for instance in order to preserve competition or to ensure security of supply, limit the number of lots for which an economic operator may tender; they may also limit the number of lots that may be awarded to any one tenderer.

Amendment 11

Proposal for a directive Recital 43

Text proposed by the Commission

(43) Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of transparency, non-discrimination and equal treatment. Those criteria should guarantee that tenders are assessed in conditions of effective competition, ***also where*** contracting entities require high-quality works, supplies and services that are optimally suited to their needs. As a result, contracting entities should be allowed to adopt as award criteria either ‘the most economically advantageous tender’ or ‘the lowest cost’, taking into account that in the latter case they ***are free to set*** adequate quality standards by using technical specifications or contract performance conditions.

Amendment

(43) Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of transparency, non-discrimination and equal treatment. Those criteria should guarantee that tenders are assessed in conditions of effective competition, ***at the same time ensuring that*** contracting entities require high-quality works, supplies and services that are optimally suited to their needs ***and which include factors linked to socially-sustainable production process criteria.*** As a result, contracting entities should be allowed to adopt as award criteria either ‘the most economically advantageous tender’ or ‘the lowest cost’, taking into account that in the latter case they ***should refer*** to set adequate quality standards by using technical specifications or contract performance conditions.

Amendment 12

Proposal for a directive
Recital 45

Text proposed by the Commission

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

Amendment 13

Proposal for a directive
Article 2 – paragraph 1 – point 22

Amendment

(45) ***An effort should be made*** to exploit the potential of public procurement to achieve the objectives of the Europe 2020 Strategy for sustainable growth, ***without encroaching upon the powers of the contracting entities***. In view of the important differences between individual sectors and markets, it would however not be appropriate to set general mandatory requirements for environmental, social and innovation procurement. The Union legislature has already set mandatory procurement requirements for obtaining specific goals in the sectors of road transport vehicles (Directive 2009/33/EC of the European Parliament and the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles) and office equipment (Regulation (EC) No 106/2008 of the European Parliament and the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment). In addition, the definition of common methodologies for life cycle costing has significantly advanced. It therefore appears appropriate to continue on that path, leaving it to sector-specific legislation to set mandatory objectives and targets in function of the particular policies and conditions prevailing in the relevant sector and to promote the development and use of European approaches to life-cycle costing as a further underpinning for the use of public procurement in support of sustainable growth.

Text proposed by the Commission

(22) ‘life cycle’ means all consecutive and/or interlinked stages, including production, transport, use and maintenance, throughout the existence of a product or a works or the provision of a service, from raw material acquisition or generation of resources to disposal, clearance and finalisation;

Amendment

(22) ‘life cycle’ means all consecutive and/or interlinked stages, including production ***and location of production***, transport, use and maintenance, throughout the existence of a product or works or the provision of a service, from raw material acquisition or generation of resources to disposal, clearance and finalisation;

Amendment 14

Proposal for a directive Article 10

Text proposed by the Commission

[...]

Amendment

deleted

Justification

As a result of the liberalisation process in the postal sector, the introduction of fully-fledged sector-specific regulation and the evolution of the market, it is no longer necessary to regulate purchases by entities operating in the postal sector. Therefore, the time is ripe to exclude postal services and all the more so “other services than postal services”, from the scope of the Directive and allow all entities operating in the sector to base their decisions on purely economic criteria. Furthermore, as the experience with the application of Article 30 procedure shows, an increasing number of postal services are already excluded from the scope of application of the Utilities Directive. This was the case for a number of markets in Denmark, Finland, Italy, Sweden, Austria and Hungary.

Amendment 15

Proposal for a directive Article 14 a (new)

Text proposed by the Commission

Amendment

Article 14a

Reciprocity

The practical implementation of the Agreement on Government Procurement (AGP) within the Union legislative

framework for public procurement shall be based on prior assessment to ascertain that the principle of substantial reciprocity is being properly applied for the purposes of market opening between the Union and third country signatories. Assessment of substantial reciprocity shall apply equally to third countries which are not party to the Agreement on Government Procurement but have access to the market.

Amendment 16

Proposal for a directive Article 29 – paragraph 1

Text proposed by the Commission

Contracting entities shall treat economic operators equally and without discrimination and shall act in a transparent *and proportionate* way.

Amendment

Contracting entities shall treat economic operators equally and without discrimination and shall act in a transparent way.

Amendment 17

Proposal for a directive Article 40 – paragraph 3

Text proposed by the Commission

3. Where a state of urgency duly substantiated by the contracting entities 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.

Amendment

3. Where a state of urgency duly substantiated by the contracting entities 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 **25 days** from the date on which the contract notice was sent.

A state of urgency may only result in a shorter time limit being set if it has not been brought about by the contracting entities themselves.

Amendment 18

Proposal for a directive Article 40 – paragraph 4

Text proposed by the Commission

4. The contracting entity 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 33(3), (4) and (5).

Amendment

4. The contracting entity may reduce by **three** 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 33(3), (4) and (5).

Amendment 19

Proposal for a directive Article 45 – paragraph 1 – subparagraph 3

Text proposed by the Commission

The term of a framework agreement shall not exceed **four** years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

Amendment

The term of a framework agreement shall not exceed **eight** years, save in exceptional cases duly justified, in particular, by the subject of the framework agreement.

Justification

The proposed period of four years is too short and reduces the effect and possible savings that can be made from a long-term framework agreement, on the basis of which suppliers generally make better offers. One of the main reasons for these measures is the wish to maximise the cost-effectiveness of contracting entities' procurement expenditure. The timescale proposed therefore runs counter to this objective, since cheaper price terms can be obtained through longer-term contracts.

Amendment 20

Proposal for a directive Article 54 – paragraph 1a (new)

Text proposed by the Commission

Amendment

1a. Technical specifications may also include, as appropriate, requirements relating to:

Amendment 21

Proposal for a directive

Article 54 – paragraph 1a – point a (new)

Text proposed by the Commission

Amendment

(a) performance, including levels of environmental and climate performance and performance in terms of socially sustainable production process;

Amendment 22

Proposal for a directive

Article 54 – paragraph 1a – point b (new)

Text proposed by the Commission

Amendment

(b) life-cycle characteristics;

Amendment 23

Proposal for a directive

Article 54 – paragraph 1a – point c (new)

Text proposed by the Commission

Amendment

(c) socially sustainable production process;

Amendment 24

Proposal for a directive

Article 54 – paragraph 1a – point d (new)

Text proposed by the Commission

Amendment

(d) the organisation, qualification and experience of the staff assigned to performing the contract in question.

Amendment 25

Proposal for a directive
Article 54 – paragraph 3 – point c a (new)

Text proposed by the Commission

Amendment

(ca) in terms of a socially sustainable production process;

Amendment 26

Proposal for a directive
Article 58 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

Contracting entities *may* take account of variants which are submitted by a tenderer and meet the minimum requirements specified by the contracting entities.

Contracting entities *must* take account of variants which are submitted by a tenderer and meet the minimum requirements specified by the contracting entities.

Amendment 27

Proposal for a directive
Article 58 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Contracting entities shall indicate in the specifications whether or not they authorise variants and, if so, the minimum requirements to be met by the variants and any specific requirements for their presentation. Where variants are authorised, they shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

deleted

Amendment 28

Proposal for a directive
Article 58 – paragraph 2

Text proposed by the Commission

2. In procedures for awarding supply or service contracts, contracting entities ***that have authorised variants*** shall not reject a variant on the sole ground that it would, where successful, lead either to a service contract rather than a supply contract or to a supply contract rather than a service contract.

Amendment

2. In procedures for awarding supply or service contracts, contracting entities shall not reject a variant on the sole ground that it would, where successful, lead either to a service contract rather than a supply contract or to a supply contract rather than a service contract.

Amendment 29

**Proposal for a directive
Article 70 – paragraph 5**

Text proposed by the Commission

5. Contracting entities ***may*** decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, ***at least in an equivalent manner***, with obligations ***established by Union legislation*** in the field of social and labour law or environmental law or ***of*** the international social and environmental law provisions listed in ***Annex XIV***.

Amendment

5. Contracting entities ***must*** decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply with obligations established by Union legislation in the field of social and labour law or environmental law ***established by Union or national legislation or by collective agreements applicable to the place where the work, service, or supply is to be performed***, or ***by*** the international social and environmental law provisions listed in ***Annex XI***, or ***with obligations in the field of intellectual property law***.

Amendment 30

**Proposal for a directive
Article 70 – paragraph 5 a (new)**

Text proposed by the Commission

Amendment

5a. Where such laws do not apply, infringements of other laws applicable to the tenderer which provide an equivalent degree of protection shall likewise

constitute grounds for exclusion.

Amendment 31

Proposal for a directive Article 73 – paragraph 3

Text proposed by the Commission

Amendment

3. In the case of works contracts, service contracts and siting and installation operations in the context of a supply contract, contracting entities may require that certain critical tasks be performed directly by the tenderer itself or, where a tender is submitted by a group of economic operators as referred to in Article 30, a participant in the group.

deleted

Amendment 32

Proposal for a directive Article 76 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

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

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

Amendment 33

Proposal for a directive Article 76 – paragraph 2 – subparagraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) a socially sustainable production process;

Amendment 34

Proposal for a directive

Article 79 – paragraph 3 – point d a (new)

Text proposed by the Commission

Amendment

(da) compliance with rules and standards in the field of health and safety, social law, and labour law laid down in Union and national legislation and by collective agreements applying in the place where the work, service, or supply is to be performed;

Amendment 35

Proposal for a directive

Article 79 – paragraph 3 – point d b (new)

Text proposed by the Commission

Amendment

(db) compliance with the subcontracting requirements set out in Article 81.

Amendment 36

Proposal for a directive

Article 79 – paragraph 4 – subparagraph 3

Text proposed by the Commission

Amendment

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

Contracting entities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with obligations established by Union *and national* legislation, and *by collective agreements applying in the place where the work, service, or supply is to be performed*, in the field of social and labour law or environmental law, or by the international social and environmental law provisions listed in Annex XIV.

Amendment 37

Proposal for a directive
Article 81 – paragraph 1

Text proposed by the Commission

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

Amendment 38

Proposal for a directive
Article 81 – paragraph 2

Text proposed by the Commission

2. Member States may provide that, ***at the request of the subcontractor and where the nature of the contract so allows, the contracting entity shall transfer due payments directly*** to the subcontractor for services, supplies or works provided to the main contractor. ***In such case, Member States shall put in place appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment shall be set out in the procurement documents.***

Amendment

1. In the procurement documents, the tenderer ***shall indicate to the contracting authority***, in its tender, any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.

Amendment

2. Member States may provide that payments to the subcontractor for services, supplies or works provided to the main contractor ***shall become due immediately if and insofar as***

(a) the contracting authority has performed its obligations to the main contractor, or parts thereof,

(b) the contracting authority has accepted the services, supplies or works as having been fully completed, or

(c) the contracting authority has, without success, set the main contractor an appropriate time limit within which to provide information about the circumstances referred to at (a) and (b).

Amendment 39

Proposal for a directive Article 82 – paragraph 4

Text proposed by the Commission

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value **does not exceed the thresholds set out in Article 12 and where it** is below 5% of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. **Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.**

Amendment

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value is below **10%** of the price of the initial contract, provided that the modification does not alter the overall nature of the contract.

Amendment 40

Proposal for a directive Article 93 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

Member States shall **ensure that an** independent body responsible for the oversight and coordination of implementation activities (hereinafter ‘the oversight body’) **is in place**. Member States shall inform the Commission of their designation.

Amendment 41

Proposal for a directive Article 93 a (new)

Text proposed by the Commission

Amendment

Article 93a

The Commission shall submit by the end of 2013 a report on the differing practices in awarding contracts below the threshold values laid down in Article 12, particularly in the case of services to which priority has not so far been assigned.

Amendment 42

Proposal for a directive Article 103 – paragraph 1

Text proposed by the Commission

The Commission shall review the economic effects on the internal market resulting from the application of the thresholds set in Article 12 and report thereon to the European Parliament and the Council by **30 June 2017**.

Amendment

The Commission shall review the economic effects on the internal market resulting from the application of the thresholds set in Article 12 and report thereon to the European Parliament and the Council by **30 June 2015**.

Amendment 43

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

Text proposed by the Commission

(a) in the case of service or supply contracts a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, ***production processes and methods at any stage of the life cycle of the supply or service*** and

Amendment

(a) in the case of service or supply contracts a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions and conformity assessment procedures;

conformity assessment procedures;

PROCEDURE

Title	Procurement by entities operating in the water, energy, transport and postal services sectors
References	COM(2011)0895 – C7-0007/2012 – 2011/0439(COD)
Committee responsible Date announced in plenary	IMCO 19.1.2012
Opinion by Date announced in plenary	ITRE 19.1.2012
Rapporteur Date appointed	Zigmantas Balčytis 14.2.2012
Discussed in committee	31.5.2012
Date adopted	24.9.2012
Result of final vote	+: 40 –: 6 0: 2
Members present for the final vote	Amelia Andersdotter, Josefa Andrés Barea, Jean-Pierre Audy, Ivo Belet, Bendt Bendtsen, Reinhard Bütikofer, Maria Da Graça Carvalho, Giles Chichester, Pilar del Castillo Vera, Vicky Ford, Robert Goebbels, Jacky Hénin, Edít Herczog, Kent Johansson, Romana Jordan, Philippe Lamberts, Judith A. Merkies, Angelika Niebler, Jaroslav Paška, Vittorio Prodi, Jens Rohde, Paul Rübig, Amalia Sartori, Salvador Sedó i Alabart, Francisco Sosa Wagner, Evžen Tošenovský, Ioannis A. Tsoukalas, Claude Turmes, Marita Ulvskog, Vladimir Urutchev, Kathleen Van Brempt
Substitute(s) present for the final vote	Daniel Caspary, António Fernando Correia de Campos, Ioan Enciu, Vicente Miguel Garcés Ramón, Elisabetta Gardini, Françoise Grossetête, Andrzej Grzyb, Cristina Gutiérrez-Cortines, Roger Helmer, Jolanta Emilia Hibner, Gunnar Hökmark, Eija-Riitta Korhola, Werner Langen, Pavel Poc, Vladimír Remek
Substitute(s) under Rule 187(2) present for the final vote	Jorgo Chatzimarkakis, Keith Taylor