



EUROPEAN PARLIAMENT

2009 - 2014

---

*Committee on Regional Development*

---

**2011/0438(COD)**

17.10.2012

## **OPINION**

of the Committee on Regional Development

for the Committee on the Internal Market and Consumer Protection

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

Rapporteur: Ramona Nicole Mănescu

PA\_Legam

## SHORT JUSTIFICATION

Transparent and credible public procurement plays a particularly important role in the efficiency of public spending and also in the impact of public investment on the economy, particularly on sustainable growth and innovation.

The public procurement regime is by nature highly complex, in particular for small local authorities and SMEs, and a broader access to clear information and advice concerning EU rules on public procurement for contracting authorities, in particular at regional and local level and SMEs alike should be a must. The objective of further developing EU procurement law must be to make procurement procedures simultaneously simpler, cheaper and more SME- and investment-friendly.

The Commission and the Member States share a great responsibility of ensuring the training and the consultation needed to inform and assist regional and local authorities and SMEs, and also to involve other interested parties, in order to ensure that there is effective informed participation in public procurement, thus reducing the frequency of errors and irregularities and developing the required expertise among the contracting authorities of local and regional authorities in the field of public procurement.

Indeed, SMEs have a huge potential for job creation, growth and innovation, and in order to derive maximum benefit from the economic and innovative potential of SMEs in the context of procurement procedures, these should be encouraged to participate in public procurement procedures organised by local and regional authorities.

As your Rapporteur, with the support of the Committee, has made clear in her opinion on the modernisation of public procurement, public procurement should not follow the lowest price principle but should take into account the sustainable and economically most advantageous tender, including life-cycle cost. This rule should be further strengthened in the

It should be made clear, however, that the effectiveness and efficiency of any rules enacted at European level on public is conditional upon a sound and as much simplified as possible transposition of those rules into the laws of the Member States. Member States, with the assistance and monitoring of the Commission, should therefore ensure that fragmentation of rules across the Union is avoided, and that simplification of regimes is not hampered, due to the quite very complex and detailed nature of the rules contained in the proposed directives.

Legal and practical clarification of the directives in order to avoid further failures in applying the public procurement rules is crucial. In this context, your Rapporteur hopes that the serious failures to comply with public procurement rules repeatedly identified by the Court of Auditors in the implementation of projects under the ERDF and the Cohesion Fund, mainly due to the complexity of public procurement procedures, the lack of consistency between them and those on which the use of the Structural Funds and Cohesion Fund is based and the incorrect implementation of EU legislation into national law, will be finally solved and duly taken into account in the framework of the interpretation and application of future public procurement rules.

## AMENDMENTS

The Committee on Regional Development 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 1

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

(1) The award of public contracts by or on behalf of Member States authorities has to comply with the principles of the ***Treaty on the Functioning*** of the European Union, and in particular the free movement of goods, freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. However, for public contracts above a certain value, provisions should be drawn up coordinating national procurement procedures so as to ensure that these principles are given practical effect and public procurement is opened up to competition.

##### *Amendment*

(1) The award of public contracts by or on behalf of Member States authorities has to comply with the principles of the ***Treaties*** of the European Union, and in particular the free movement of goods, freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency ***and with the distribution of competencies as enshrined in Article 14 (1) TFEU and the Protocol No 26. The European regulation of public procurement should respect the wide discretion of public authorities in carrying out their public service tasks.*** However, for public contracts above a certain value, provisions should be drawn up coordinating national procurement procedures so as to ensure that these principles are given practical effect and public procurement is opened up to competition.

##### *Justification*

*Adaption to the new provisions of the Lisbon Treaty*

## Amendment 2

### Proposal for a directive Recital 2

#### *Text proposed by the Commission*

(2) Public procurement plays a key role in the Europe 2020 strategy as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts have to be revised and modernised in order to increase the efficiency of public spending, *facilitating* in particular the participation of small and medium-sized enterprises *in* public procurement and to enable procurers to make better use of public procurement *in support of common societal goals*. There is also a need to clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

#### *Amendment*

(2) Public procurement plays a key role in the Europe 2020 strategy as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts have to be revised and modernised in order to *enable procurers to make better use of public procurement in support of sustainable development in compliance with social and labour rights and other common societal goals and in order thereby to* increase the efficiency of public spending. *Therefore, it is necessary to facilitate and encourage* in particular the participation of small and medium-sized enterprises, *to simplify their access to* public procurement and to enable procurers to make better use of public procurement, *without prejudice to the latter autonomy of decision on what to procure and to buy*. 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.

### Amendment 3

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

*Text proposed by the Commission*

*Amendment*

***(5a) This Directive ensures the enforcement of Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses in order to ensure the respect of the rules of equal competition and the protection of workers in the context of the transfer of an undertaking. In particular the right to require employees to be taken over by the legal entity that take over the business.***

### Amendment 4

#### Proposal for a directive Recital 6

*Text proposed by the Commission*

*Amendment*

(6) Even if they do not necessarily lead to corrupt conduct, actual, potential or perceived conflicts of interest have a high potential to improperly influence public procurement decisions with the effect of distorting competition ***and*** jeopardising equal treatment of tenderers. Effective mechanisms should therefore be set up to prevent, identify and remedy conflicts of interest.

(6) Even if they do not necessarily lead to corrupt conduct, actual, potential or perceived conflicts of interest have a high potential to improperly influence public procurement decisions with the effect of distorting competition, jeopardising equal treatment of tenderers ***and delaying the implementation of public procurement procedures.*** Effective mechanisms should therefore be set up to prevent, identify and remedy conflicts of interest ***and eliminate obstacles to the implementation thereof.***

### Amendment 5

#### Proposal for a directive Recital 7

*Text proposed by the Commission*

(7) Illicit conduct by participants in a procurement procedure, such as attempts to unduly influence the decision-making process or to enter into agreements with other candidates to manipulate the outcome of the procedure, can result in violations of the basic principles of Union law and in serious distortions of competition. Economic operators should therefore be required to submit a declaration on honour that they do not engage in such illicit activities and be excluded if this declaration proves to be false.

*Amendment*

(7) Illicit conduct by participants in a procurement procedure, such as attempts to unduly influence the decision-making process or to enter into agreements with other candidates to manipulate the outcome of the procedure, can result in violations of the basic principles of Union law and in serious distortions of competition. Economic operators should therefore be required to submit a declaration on honour that they do not engage in such illicit activities and be excluded ***from both this and subsequent procurement procedures within the EU*** if this declaration proves to be false.

**Amendment 6**

**Proposal for a directive  
Recital 26**

*Text proposed by the Commission*

(26) Joint awarding of public contracts by contracting authorities from different Member States currently encounters specific legal difficulties, with special reference to conflicts of national laws. Despite the fact that Directive 2004/18/EC implicitly allowed for cross-border joint public procurement, in practice several national legal systems have explicitly or implicitly rendered cross-border joint procurement legally uncertain or impossible. Contracting authorities from different Member States may be interested in cooperating and in jointly awarding public contracts in order to derive maximum benefit from the potential of the internal market in terms of economies of scale and risk-benefit sharing, not least for innovative projects involving a greater amount of risk than reasonably bearable by a single contracting authority. Therefore

*Amendment*

(26) Joint awarding of public contracts by contracting authorities from different Member States currently encounters specific legal difficulties, with special reference to conflicts of national laws. Despite the fact that Directive 2004/18/EC implicitly allowed for cross-border joint public procurement, in practice several national legal systems have explicitly or implicitly rendered cross-border joint procurement legally uncertain or impossible. Contracting authorities from different Member States may be interested in cooperating and in jointly awarding public contracts in order to derive maximum benefit from the potential of the internal market in terms of economies of scale and risk-benefit sharing, not least for innovative projects involving a greater amount of risk than reasonably bearable by a single contracting authority. Therefore

new rules on cross-border joint procurement designating the applicable law should be established in order to facilitate cooperation between contracting authorities across the Single Market. In addition, contracting authorities from different Member States may set up joint legal bodies established under national or Union law. Specific rules should be established for such form of joint procurement.

new rules on cross-border joint procurement designating the applicable law should be established in order to facilitate cooperation between contracting authorities across the Single Market. In addition, contracting authorities from different Member States may set up joint legal bodies established under national or Union law. Specific rules should be established for such form of joint procurement. ***Similarly, for the purposes of cross-border public procurement, it is essential to clarify the aspects relating to intellectual property law.***

## Amendment 7

### Proposal for a directive Recital 30

#### *Text proposed by the Commission*

(30) In order to foster the involvement of small and medium-sized enterprises (SMEs) in the public procurement market, contracting authorities should be encouraged to divide contracts into lots, and be obliged to state the reasons for not doing so. Where contracts are divided into lots, contracting authorities 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*

(30) In order to foster the involvement of small and medium-sized enterprises (SMEs) in the public procurement market, contracting authorities should be encouraged to divide contracts into lots, ***implement measures to encourage SME participation*** and be obliged to state the reasons for not doing so. Where contracts are divided into lots, contracting authorities 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 8

### Proposal for a directive Recital 31



*Text proposed by the Commission*

*Amendment*

**(31) Overly demanding requirements concerning economic and financial capacity frequently constitute an unjustified obstacle to the involvement of SMEs in public procurement. Contracting authorities should therefore not be allowed to require economic operators to have a minimum turnover exceeding three times the estimated contract value. However, in duly justified circumstances, higher requirements may be applied. Such circumstances may relate to the high risks attached to the performance of the contract or the fact that its timely and correct performance is critical, for instance because it constitutes a necessary preliminary for the performance of other contracts.**

***deleted***

## **Amendment 9**

### **Proposal for a directive Recital 32**

*Text proposed by the Commission*

*Amendment*

**(32) Many economic operators, and *not least* SMEs, find that a major obstacle to their participation in public procurement consists in administrative burdens deriving from the need to produce *a substantial* number of certificates or other documents related to exclusion and selection criteria. Limiting such requirements, for example through self-declarations, can result in considerable simplification for the benefit of both contracting authorities and economic operators. The tenderer to which it has been decided to award the contract should, however, be required to provide the relevant evidence and contracting authorities should not conclude contracts with tenderers unable to do so. *Further simplification can be achieved through***

**(32) Many economic operators, and *especially* SMEs, find that a major obstacle to their participation in public procurement consists in administrative burdens deriving from the need to produce *an excessive* number of certificates or other documents related to exclusion and selection criteria. Limiting such requirements, for example through self-declarations, can result in considerable simplification for the benefit of both contracting authorities and economic operators. The tenderer to which it has been decided to award the contract should, however, be required to provide the relevant evidence and contracting authorities should not conclude contracts with tenderers unable to do so. *It is necessary to introduce* standardised**

standardised documents such as the European Procurement Passport, which should be recognized by all contracting authorities and widely promoted among economic operators, in particular SMEs, for whom they can substantially lessen the administrative burden.

documents such as the European Procurement Passport, which should be recognized by all contracting authorities and widely promoted among economic operators, in particular SMEs, for whom they can substantially lessen the administrative burden.

## **Amendment 10**

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

#### *Text proposed by the Commission*

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

#### *Amendment*

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

#### *Justification*

*Public procurement should not follow the lowest price principle but should take into account the sustainable and economically most advantageous tender.*

## **Amendment 11**

### **Proposal for a directive Recital 38**

*Text proposed by the Commission*

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

*Amendment*

(38) Contracting authorities must determine the award criteria on the basis of which they will assess tenders in order to identify which one offers the best value, **including environmental and social responsibility**, for money. The determination of these criteria depends on the subject-matter of the contract **or the subject matter of the production** since they must allow the level of performance offered by each tender to be assessed in the light of the **subject-matters** of the contract **and production**, as defined in the technical specifications, and the value for money of each tender to be measured. Furthermore, the chosen award criteria should not confer an unrestricted freedom of choice on the contracting authority and they should ensure the possibility of effective **and fair** competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified.

*Justification*

*The criteria of life cycle considerations should be upgraded to include the added value of social and environmental responsibility alongside economic value for money.*

**Amendment 12**

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

*Text proposed by the Commission*

(43) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked to the subject-matter of the contract and are indicated in the contract notice, the prior information notice used as a means of calling for competition or the procurement documents.

*Amendment*

(43) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked to the subject-matter of the contract **and/or production**, **and** are indicated in the contract notice, the prior information notice used as a means of calling for competition or the procurement

They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment, protection of the environment or animal welfare. For instance, mention may be made, amongst other things, of the requirements - applicable during performance of the contract - to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, even where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation.

documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment, protection of the environment or animal welfare. For instance, mention may be made, amongst other things, of the requirements - applicable during performance of the contract - to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, *in particular ILO Convention 94*, even where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation.

#### *Justification*

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

### **Amendment 13**

#### **Proposal for a directive Recital 49**

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

(49) The evaluation has shown that Member States do not consistently and systematically monitor the implementation and functioning of public procurement rules. This has a negative impact on the correct implementation of provisions stemming from these directives, which is a major source of cost and uncertainty. Several Member States have appointed a national central body dealing with public procurement issues, but the tasks entrusted to such bodies vary considerably across

##### *Amendment*

(49) The evaluation has shown that Member States ***do not promote and*** do not consistently and systematically monitor the implementation and functioning of public procurement rules. This has a negative impact on the correct implementation of provisions stemming from these directives, which is a major source of cost and uncertainty. Several Member States have appointed a national central body dealing with public procurement issues, but the tasks entrusted to such bodies vary

Member States. Clearer, more consistent and authoritative monitoring and control mechanisms would increase knowledge of the functioning of procurement rules, improve legal certainty for businesses and contracting authorities, and contribute to establishing a level playing field. Such mechanisms could serve as tools for the detection and early resolution of problems, especially with regard to projects cofunded by the Union, and for the identification of structural deficiencies. There is in particular a strong need to coordinate these mechanisms to ensure consistent application, control and monitoring of public procurement policy, as well as systematic assessment of the outcomes of procurement policy across the Union.

considerably across Member States. Clearer, more consistent and authoritative **information**, monitoring and control mechanisms would increase knowledge of the functioning of procurement rules, improve legal certainty for businesses and contracting authorities, and contribute to establishing a level playing field. Such mechanisms could serve as tools for the **prevention**, detection and early resolution of problems, especially with regard to projects cofunded by the Union, and for the identification of structural deficiencies. There is in particular a strong need to coordinate these mechanisms to ensure consistent application, control and monitoring of public procurement policy, as well as systematic assessment of the outcomes of procurement policy across the Union.

## Amendment 14

### Proposal for a directive Recital 50

#### *Text proposed by the Commission*

(50) Member States should designate a single national authority in charge of monitoring, implementation and control of public procurement. Such a central body should have first-hand and timely information, particularly in relation to different problems affecting the implementation of public procurement law. It should be able to provide immediate feedback on the functioning of the policy and the potential weaknesses in national legislation and practice and contribute to the quick identification of solutions. In view of efficiently fighting corruption and fraud, this central body and the general public should also have the possibility to inspect the texts of concluded contracts. High-value contracts should hence be transmitted to the oversight body with a

#### *Amendment*

(50) Member States should designate a single national authority in charge of monitoring, implementation and control of public procurement. Such a central body should have first-hand and timely information, particularly in relation to different problems affecting the implementation of public procurement law **and should recommend procedures to be followed if tenders for public procurement contracts are contested**. It should be able to provide immediate feedback on the functioning of the policy and the potential weaknesses in national legislation and practice and contribute to the quick identification of solutions. In view of efficiently fighting corruption and fraud, this central body and the general public should also have the possibility to inspect

possibility of interested persons to have access to these documents, to the extent that legitimate public or private interests are not jeopardized.

the texts of concluded contracts. High-value contracts should hence be transmitted to the oversight body with a possibility of interested persons to have access to these documents, to the extent that legitimate public or private interests are not jeopardized.

## Amendment 15

### Proposal for a directive Recital 51

#### *Text proposed by the Commission*

(51) **Not all** contracting authorities **may** have the internal expertise to deal with economically or technically complex contracts. Against this background, appropriate professional support **would be** an effective complement to monitoring and control activities. On the one hand, this objective can be achieved by knowledge sharing tools (knowledge centres) offering technical assistance to contracting authorities; on the other hand, business, **not least** SMEs, should benefit from administrative assistance, in particular when participating in procurement procedures on a cross-border basis.

#### *Amendment*

(51) **Certain** contracting authorities, **particularly at regional level, do not** have the internal expertise to deal with economically or technically complex contracts. Against this background, appropriate professional support **constitutes** an effective complement to monitoring and control activities. On the one hand, this objective can be achieved by knowledge sharing tools (knowledge centres) offering technical assistance to contracting authorities; on the other hand, business, **and in particular** SMEs, should benefit from administrative assistance, in particular when participating in procurement procedures on a cross-border basis.

#### *Justification*

*It is particularly important to enhance the role of SMEs in the field of public procurement.*

## Amendment 16

### Proposal for a directive Recital 53 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

**(53a) The way this Directive is transposed is of utmost importance to the efforts of simplification, as well as to ensure an**

*uniform approach to the interpretation and application of the EU rules on public procurement, thus contributing to the necessary legal certainty required by contracting authorities, in particular at sub-central level, and by SMEs alike. The Commission and the Member States should therefore ensure that transposition of this Directive is done having also in mind the major impact of the public procurement national legislation on the process of accessing the European Union funds. Therefore it is of utmost importance for the Member States to avoid as much as possible any fragmentation in the interpretation and application, while contributing as well to the simplification at national level.*

#### *Justification*

*It is necessary to ensure that transposition does not hamper the efforts of simplification and harmonisation, in order to avoid the fragmentation of rules across the Union, which would affect mostly SMEs and smaller contracting authorities, at regional and local level.*

#### **Amendment 17**

##### **Proposal for a directive Recital 53 b (new)**

*Text proposed by the Commission*

*Amendment*

*(53b) In addition, the Commission and the Member States should periodically conduct training and awareness raising campaigns and engage in consultation targeted at regional and local authorities and SMEs involving also other interested parties, so as to ensure informed participation in public procurement, reduce the frequency of errors and develop the required expertise among the contracting authorities within local and regional administrations in order to implement innovative procurement.*

#### **Amendment 18**

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

*Text proposed by the Commission*

*Amendment*

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

*deleted*

*Justification*

*This notion is too general and too vague.*

**Amendment 19**

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

*Text proposed by the Commission*

*Amendment*

*Contracts for social and other specific services listed in Annex XVI are exclusively regulated by Articles 74 to 76 of this Directive.*

*Justification*

*The form of the proposed directive is such that social and other services are regulated only by articles 74-76. For reasons of clarity this should be stated as early as possible in the text of the proposal.*

**Amendment 20**

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

*Text proposed by the Commission*

*Amendment*

*This Directive is without prejudice to the right of public authorities at all levels to decide whether, how, and to what extent they want to perform public functions themselves. Public authorities may*



*perform public interest tasks using their own resources, without being obliged to call on outside economic operators. They may do so in cooperation with other public authorities.*

## **Amendment 21**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 11**

*Text proposed by the Commission*

(11) ‘public service contracts’ means public contracts having as their object the provision of services other than those referred to in point (8);

*Amendment*

(11) ‘public service contracts’ means public contracts having as their object the provision of services other than those referred to in point (8); *these include "knowledge-based" or intellectual services, i.e. services which do not necessarily produce the same results, as their essence lies in providing a solution to a task by performing intellectual work. For services of this type it may be possible to provide a description of the goal or the task, depending on the type of service, nevertheless providing in advance an unambiguous and complete service description (statement of work with pre-defined parameters) is not possible.*

*Justification*

*Some considerations and provisions of the Directive might be irrelevant/meaningless if used for intellectual services due to the specific/particular nature of such services: the result cannot be specified in detail before they are delivered. Ex: inversed auctions.*

## **Amendment 22**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 22 a (new)**

*Text proposed by the Commission*

*Amendment*

*(22a) 'socially sustainable production process' means the production process in which the provision of works, services and supplies, respects health and safety, social*

*and labour law, rules and standards, in particular with regard to the principle of equal treatment at the workplace. The principle of equal treatment at the workplace refers to the respect of the applicable terms and conditions of employment, including health and safety, social and labour law, rules and standards, defined by Union and national legislation and collective agreements, which apply where the provision of works, services and supplies takes place;*

*Justification*

*It is important to enable contracting authorities to encourage good working conditions and to halt social dumping in order to protect public health. The purpose of this definition is to be able to refer to socially sustainable production process later in the directive.*

**Amendment 23**

**Proposal for a directive**

**Article 4 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) EUR **130 000** for public supply and service contracts awarded by central government authorities and design contests organised by such authorities; where public supply contracts are awarded by contracting authorities operating in the field of defence, that threshold shall apply only to contracts concerning products covered by Annex III;

*Amendment*

(b) EUR **300 000** for public supply and service contracts awarded by central government authorities and design contests organised by such authorities; where public supply contracts are awarded by contracting authorities operating in the field of defence, that threshold shall apply only to contracts concerning products covered by Annex III;

*Justification*

*Adjusted values for the thresholds guarantee for a more efficient balance between administrative burdens and control in the procedures of procurement. The indicated values are more realistic than the EC's estimates.*

## **Amendment 24**

### **Proposal for a directive**

#### **Article 4 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) EUR **200 000** for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities.

*Amendment*

(c) EUR **500 000** for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities.

*Justification*

*Adjusted values for the thresholds guarantee for a more efficient balance between administrative burdens and control in the procedures of procurement. The indicated values are more realistic than the EC's estimates.*

## **Amendment 25**

### **Proposal for a directive**

#### **Article 4 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***The value of the thresholds will be adjusted according to changes in the harmonized European Economic Area Index of Consumer Prices on a yearly basis.***

*Justification*

*A fixed value for thresholds does not reflect constant changes in real purchasing power. To link and adjust the thresholds according to a well-established index would be an appropriate action.*

## **Amendment 26**

### **Proposal for a directive**

#### **Article 6 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

Every two years from 30 June 2014, the Commission shall verify that the thresholds set out in points (a), (b) and (c) of Article 4

Every two years from 30 June 2014, the Commission shall verify that the thresholds set out in points (a), (b) and (c) of Article 4

correspond to the thresholds established in the Government Procurement Agreement and shall, where necessary, revise them.

correspond to the thresholds established in the Government Procurement Agreement and shall, where necessary ***and after consulting the Member States on the application of the thresholds to certain sectors and types of contacts***, revise them.

*Justification*

*Member States should be consulted before the revision of the thresholds in certain sectors and types of contracts.*

**Amendment 27**

**Proposal for a directive**

**Article 6 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. When carrying out the revision pursuant to paragraph 1 of this Article, the Commission shall, in addition, revise:

*Amendment*

2. When carrying out the revision pursuant to paragraph 1 of this Article, ***and after consulting the Member States, the*** Commission shall, in addition, revise:

*Justification*

*Member States should be consulted before the revision of the thresholds in certain sectors and types of contracts.*

**Amendment 28**

**Proposal for a directive**

**Article 10 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) arbitration and conciliation services;

*Amendment*

(c) arbitration and conciliation services, ***including dispute adjudication services, legal and notarial services;***

**Amendment 29**

**Proposal for a directive**

**Article 10 – paragraph 1 – point d**

*Text proposed by the Commission*

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

*Amendment*

(d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council , ***financial services necessary for implementation of the financial engineering instruments as defined in Article 44 of Council Regulation (EC) No 1083/2006***, central bank services and operations conducted with the European Financial Stability Facility ***and transactions to enable contracting authorities to raise money or capital***;

**Amendment 30**

**Proposal for a directive  
Article 10 – paragraph 1 – point e**

*Text proposed by the Commission*

(e) employment contracts;

*Amendment*

(e) employment contracts ***or collective agreements which contribute to the improvement of conditions of work and employment***;

*Justification*

*This amendment aims to address the concerns caused by ECJ judgement Commission v. Germany 271/08 ECJ. The proposed text is based on paragraph 59 of the Albany case 67/97/ECJ and aims to exclude collective agreements which contributes to the improvement of conditions of work and employment, inter alia agreements on supplementary pensions schemes and insurances etc.*

## Amendment 31

### 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) 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 with respect to the provision of services of general interest***;

*Justification*

*The provision of Services of general interest (SGI) is not profit-oriented, but aimed to fulfil the citizen's needs. Therefore activities in the field of SGIs have to be taken into account.*

## Amendment 32

### 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 at the time of initial contracting.***

## Amendment 33

### Proposal for a directive

#### Article 15 – title

*Text proposed by the Commission*

Principles of procurement

*Amendment*

***Purpose and*** principles of procurement

*Justification*

*Some Member States indicated that a reference to the purpose of the directive should be*

*included.*

#### **Amendment 34**

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

##### **Article 15 – paragraph 2 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. 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.*

#### **Amendment 35**

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

##### **Article 15 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

*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.*

### *Justification*

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

## **Amendment 36**

### **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.

### *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 tender to commit the allocated staff at this stage, taking into consideration the whole duration of the selection and award procedure.*

## **Amendment 37**

### **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

##### *Amendment*

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



programmes, provided that more than 30% of the employees of those **workshops, economic operators** or programmes are disabled or disadvantaged workers.

*a) sheltered workshops, or provide for such contracts to be performed in the context of sheltered employment programmes, provided that **the majority of the employees concerned are disabled persons who, by reason of the nature of the seriousness of their disabilities, cannot carry on occupations under normal conditions or easily find employment on 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 **enterprises** or programmes are disabled or disadvantaged workers.*

### *Justification*

*The specific situations of disabled people and of disadvantaged workers should be taken into account, in order to ensure equal opportunities and contribute to social cohesion. However, both situations should be separated and treated differently.*

## **Amendment 38**

### **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

#### *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 **any** information forwarded to it by economic operators **either** they have

confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

designated *it* as confidential *or not*, including, but not limited to, technical or trade secrets and the confidential aspects of tenders, *unless it is absolutely necessary for the purpose of this directive or of the applicable national law.*

#### *Justification*

*For businesses, and especially SMEs, it is important that no information at all is disclosed, unless there is a justification to do otherwise.*

### **Amendment 39**

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

#### **Article 19 – paragraph 7 – subparagraph 1**

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

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*

Member States shall ensure that, at the latest *four* 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 40**

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

#### **Article 19 – paragraph 7 – subparagraph 2**

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

This obligation shall not apply where the use of electronic means would require specialised tools or file formats that are not generally available in all the Member States within the meaning of paragraph 3.  
*It is the responsibility of the contracting authorities using other means of communication for submission of tenders to demonstrate in the procurement documents that the use of electronic means, due to the particular nature of the information to be exchanged with the*

##### *Amendment*

This obligation shall not apply where the use of electronic means would require specialised tools or file formats that are not generally available in all the Member States within the meaning of paragraph 3.

*economic operators, would require specialised tools or file formats that are not generally available in all the Member States.*

*Justification*

*The following paragraph ensures sufficiently that contracting authorities only have limited grounds for justification.*

**Amendment 41**

**Proposal for a directive**

**Article 24 – paragraph 1 – subparagraph 4 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

***(c a) with regard to knowledge based services;***

*Justification*

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

**Amendment 42**

**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.

*Justification*

*New time limits are too short in practical terms, and in particular for SMEs, and could limit competition.*

## **Amendment 43**

### **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.

##### *Justification*

*New time limits are too short in practical terms, and in particular for SMEs, and could limit competition.*

## **Amendment 44**

### **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.

##### *Justification*

*New time limits are too short in practical terms, and in particular for SMEs, and could limit competition.*

## **Amendment 45**

### **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

##### *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 **15** days, provided that all of the following conditions are fulfilled:

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:

*Justification*

*New time limits are too short in practical terms, and in particular for SMEs, and could limit competition.*

**Amendment 46**

**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.

*Justification*

*New time limits are too short in practical terms, and in particular for SMEs, and could limit competition.*

**Amendment 47**

**Proposal for a directive**

**Article 27 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

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*

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

*Justification*

*There is a need for clarification of how to conduct the negotiation and for the minimum requirements not to be changed.*

## Amendment 48

### 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 shall ***behave with utmost good faith and shall*** not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without its agreement, ***which cannot be imposed as a condition for participating in the competitive dialogue procedure.***

##### *Justification*

*It is important to ensure sufficient protection of the intellectual property rights on the solutions proposed by a tenderer within the framework of its tender.*

## Amendment 49

### Proposal for a directive

#### Article 28 – paragraph 8 – subparagraph 1 a (new)

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

##### *Amendment*

***The maximum duration of the competitive dialogue procedure shall be 12 months from the call for competition.***

##### *Justification*

*The competitive dialogue procedure was introduced in the 2004 Directive. The experience to date is that due to the risk of cherry-picking in the competitive dialogue, candidates may refrain from bringing in innovative solutions up to the last phase of the dialogue or in the final tender. Consequently, the procedure could require an abnormal long time. The experience to date is that the required engineering input is significant.*

## Amendment 50

### Proposal for a directive

#### Article 30 – paragraph 2 – subparagraph 1 – point c – point i

*Text proposed by the Commission*

i) the absence of competition for technical reasons;

*Amendment*

i) the absence of competition for **legal or** technical reasons;

**Amendment 51**

**Proposal for a directive**

**Article 30 – paragraph 2 – subparagraph 1 – point d**

*Text proposed by the Commission*

(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by **force majeure**, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

*Amendment*

(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by **events which the contracting authority could not have foreseen**, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

**Amendment 52**

**Proposal for a directive**

**Article 30 – paragraph 5 – subparagraph 1**

*Text proposed by the Commission*

The negotiated procedure without prior publication may be foreseen for new works or services consisting in the repetition of similar works or services entrusted to the economic operator to which the same contracting authorities awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded according to a procedure in accordance with Article 24(1). ***The basic project shall indicate the extent of possible additional works or services and the conditions under which they will be***

*Amendment*

The negotiated procedure without prior publication may be foreseen for new works or services consisting in the repetition of similar works or services entrusted to the economic operator to which the same contracting authorities awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded according to a procedure in accordance with Article 24(1).

*awarded.*

*Justification*

*Possible additional works or services to the basic project will be indicated via the instrument of an "Option". Therefore an additional declaration is redundant.*

**Amendment 53**

**Proposal for a directive**

**Article 31 – 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*

*A framework agreement shall not exceed **the term put in place** by **national provisions** of the **individual Member States**.*

*Justification*

*In terms of better regulation it would be an appropriate measure to set the maximum term with respect to the specific needs in the individual Member States.*

**Amendment 54**

**Proposal for a directive**

**Article 33 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.*

*Amendment*

***Only for standardised services and supplies** contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented. **Service contracts and works' contracts having as their subject matter intellectual property, such as the design of works, may not be the objects of electronic auctions.***



## Amendment 55

### Proposal for a directive

#### Article 38 – paragraph 5 – introductory part

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

5. In the absence of an agreement determining the applicable public procurement law, the national legislation governing the contract award shall be determined following the rules set out below:

##### *Amendment*

5. In the absence of an agreement determining the applicable public procurement law ***under paragraph 3***, the national legislation governing the contract award shall be determined following the rules set out below:

##### *Justification*

*Like in paragraph 6, the concrete situation of a lack of agreement to which this paragraph applies should be specified as well.*

## Amendment 56

### Proposal for a directive

#### Article 39 – paragraph 2 – subparagraph 2

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

Such measures shall include the communication to the other candidates and tenderers of any relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

##### *Amendment*

Such measures shall include the communication to the other candidates and tenderers of any relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. The candidate or tenderer concerned shall only be excluded from the procedure where ***the contracting authority proves that*** there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

##### *Justification*

*To the legitimate mean of allowing companies that are involved with regards to a decision of exclusion founded on the risk of competition distortion, to be heard; the last subparagraph of point 2 reverses the burden of proof so that it falls on the company in question. Indeed in order to challenge a decision to exclude, the company must "prove" that its participation does*

*not distort competition. In the absence of relevant proof, the decision to exclude will then be legitimised. In fact, it is up to the contracting authority, upon its intention to announce the exclusion of a company, to supply proof that the participation of such company would distort competition. The company in question should be able to challenge such a decision, provided that the inverted proof, that its participation would not distort competition, cannot fall under its responsibility.*

## **Amendment 57**

### **Proposal for a directive**

#### **Article 40 – paragraph 1 – subparagraph 2**

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

These characteristics **may** also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2.

##### *Amendment*

These characteristics also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle **and socially sustainable production process** as referred to in point (22) **and 22 a (new)** of Article 2.

##### *Justification*

*It is important to enable contracting authorities to encourage social and environmental considerations. A contracting authority can already in the technical specifications set high environmental and social demands.*

## **Amendment 58**

### **Proposal for a directive**

#### **Article 40 – paragraph 1 – subparagraph 3**

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

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

##### *Amendment*

The technical specifications shall also specify whether the transfer of intellectual property rights will be required **and if so, the conditions of remuneration for the acquisition of such rights;**

##### *Justification*

*Promoting the innovation of companies relies on the confidence of the operators towards the internal market, and in particular when it comes to protecting their property rights. In order to ensure a perfect coherence between the European regulation ensuring the protection of intellectual property rights, such as the Directive 2004/48/EC of 29 April 2009 on measures*

*and procedures on the reinforcement of intellectual property rights and the " public procurement" directives, it is important to underline that the acquisition of intellectual property rights must be based on the remuneration of the right holder.*

## **Amendment 59**

### **Proposal for a directive**

#### **Article 40 – paragraph 1 – subparagraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

*Technical specifications may for instance also include requirements relating to: performance, including levels of environmental and climate performance and performance in terms of socially sustainable production process; the organisation, qualification and experience of the staff assigned to performing the contract in question; safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions; life cycle characteristics (as defined in point 22 of Article 2); socially sustainable production process characteristics (as defined in point 22a of Article 2); rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve.*

## **Amendment 60**

### **Proposal for a directive**

#### **Article 40 – paragraph 3 – point a**

*Text proposed by the Commission*

*Amendment*

(a) in terms of performance or functional

(a) in terms of performance or functional

requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

requirements, including *social and* environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract; *in accordance with paragraph 1 above, technical specifications can be formulated in terms of performance or functional requirements relating to life cycle or socially sustainable production process characteristics of the requested works, supplies or services, in addition to technical specifications in terms of the performance or functional requirements of the works, supplies, or services in use;*

## Amendment 61

### Proposal for a directive

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

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

(a) the requirements for the label only concern characteristics which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

##### *Amendment*

(a) the requirements for the label only concern characteristics which are linked to the subject-matter of the contract *or the production of the subject-matter of the contract* and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

##### *Justification*

*When limiting the requirements to the characteristics which are linked to the subject-matter of the contract there is no room for labels concerning for example the working environment.*

## Amendment 62

### Proposal for a directive

#### Article 46 – paragraph 1

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

1. Contracting authorities *may* make

##### *Amendment*

1. Contracting authorities *shall* make

known their intentions of planned procurements through the publication of a prior information notice as soon as possible after the beginning of the budgetary year. Those notices shall contain the information set out in Annex VI part B section I. They shall be published either by the Commission or by the contracting authorities on their buyer profiles in accordance with point 2(b) of Annex IX. Where the notice is published by the contracting authorities on their buyer profile, they shall send a notice of the publication on their buyer profile in accordance with point 3 of Annex IX.

known their intentions of planned procurements through the publication of a prior information notice as soon as possible after the beginning of the budgetary year. Those notices shall contain the information set out in Annex VI part B section I. They shall be published either by the Commission or by the contracting authorities on their buyer profiles in accordance with point 2(b) of Annex IX. Where the notice is published by the contracting authorities on their buyer profile, they shall send a notice of the publication on their buyer profile in accordance with point 3 of Annex IX.

#### *Justification*

*The publication of prior information notices should be mandatory, for the sake of transparency and of full information to businesses, and in particular SMEs, giving them time to prepare tenders well in advance.*

### **Amendment 63**

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

#### **Article 46 – paragraph 2 – subparagraph 1 – introductory part**

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

For restricted and competitive procedures with negotiation, sub-central contracting authorities *may* use a prior information notice as a call for competition pursuant to Article 24(2), provided that the notice fulfils all of the following conditions:

##### *Amendment*

For restricted and competitive procedures with negotiation, sub-central contracting authorities *shall* use a prior information notice as a call for competition pursuant to Article 24(2), provided that the notice fulfils all of the following conditions:

#### *Justification*

*The publication of prior information notices should be mandatory, for the sake of transparency and of full information to businesses, and in particular SMEs, giving them time to prepare tenders well in advance.*

### **Amendment 64**

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

#### **Article 54 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) the tender comes from a tenderer that is not excluded in accordance with Articles 21 and 55 and that meets the selection criteria set out by the contracting authority in accordance with Article 56 and, where appropriate, the non-discriminatory rules and criteria referred to in Article 64.

*Amendment*

(b) the tender comes from a tenderer that is not excluded in accordance with Articles 21 and 55 and that meets the selection criteria set out by the contracting authority in accordance with Article 56 and, where appropriate, the non-discriminatory rules and criteria referred to in Article 64 **and Article 71**.

*Justification*

*Article 71 relates to sub-contracting which also should be taken into consideration.*

**Amendment 65**

**Proposal for a directive  
Article 54 – paragraph 2**

*Text proposed by the Commission*

2. Contracting authorities 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 XI.

*Amendment*

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where the tender does not comply with obligations established by Union **or national** legislation, **regulations and other binding provisions** in the field of social and labour law or environmental law or **collective agreements which apply in the place where the work, service or supply is performed or by the** international social and environmental law provisions listed in Annex XI **and provided they are linked to the subject matter of the contract**.

**Amendment 66**

**Proposal for a directive  
Article 55 – paragraph 3 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

A contracting authority **may** exclude from

*Amendment*

A contracting authority **shall** exclude from

participation in a public contract any economic operator if one of the following conditions is fulfilled:

participation in a public contract any economic operator if one of the following conditions is fulfilled:

*Justification*

*The exclusion on serious grounds must be an obligation across all Member States without exception.*

**Amendment 67**

**Proposal for a directive**

**Article 55 – paragraph 3 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) where it is aware of any violation of 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 XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

*Amendment*

(a) where it is aware of any violation of obligations established by ***national or*** Union legislation in the field of social and labour law or environmental law ***or of collective agreements such as wage agreements, for example,*** or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

**Amendment 68**

**Proposal for a directive**

**Article 55 – paragraph 3 – subparagraph 1 – point d**

*Text proposed by the Commission*

(d) where the economic operator has shown significant or persistent deficiencies in the performance of any substantive requirement under a prior contract or contracts of a similar nature ***with the same contracting authority.***

*Amendment*

(d) where the economic operator has shown significant or persistent deficiencies in the performance of any substantive requirement under a prior contract or contracts of a similar nature.

*Justification*

*The deletion is necessary to avoid repeated cases of abuse in the member state and among local governments that all are a part of the public sector.*

## **Amendment 69**

### **Proposal for a directive**

#### **Article 55 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

## **Amendment 70**

### **Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

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

*Justification*

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

## **Amendment 71**

### **Proposal for a directive**

#### **Article 59 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. At the latest 2 years after the date provided for in Article 92(1), the passport shall be provided exclusively in electronic

2. At the latest 2 years after the date provided for in Article 92(1), the passport shall be provided exclusively in electronic



form.

form, *unless there are technical reasons which justifiedly do not allow contracting authorities to comply with that deadline.*

*Justification*

*Some contracting authorities will possibly need more time to implement this provision, and more time should be given to them.*

**Amendment 72**

**Proposal for a directive**

**Article 64 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

In restricted procedures, competitive procedures with negotiation, competitive dialogue procedures and innovation partnerships, contracting authorities may limit the number of candidates meeting the selection criteria that they will invite to tender or to conduct a dialogue, provided *a sufficient* number of qualified candidates is available.

*Amendment*

In restricted procedures, competitive procedures with negotiation, competitive dialogue procedures and innovation partnerships, contracting authorities may limit the number of candidates meeting the selection criteria that they will invite to tender or to conduct a dialogue, provided *the minimum* number, *according to paragraph 2* of qualified candidates is available.

*Justification*

*In order to avoid misinterpretations of the provisions, the criterion should be clearer and easier to determine.*

**Amendment 73**

**Proposal for a directive**

**Article 66 – paragraph 1 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*The criterion referred to in point (a) shall have precedence over the criterion referred to in point (b), unless there are reasons to deviate from it.*

### *Justification*

*The most economically advantageous tender should be preferred, as it allows to get to the best and most advantageous tender in economic and social terms and to pursue better value for money. However, contracting authorities should be given the opportunity to apply the second one, if there are good reasons to do so.*

#### **Amendment 74**

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

##### **Article 66 – paragraph 2 – introductory part**

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

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

###### *Amendment*

2. The most economically, ***socially and environmentally*** advantageous tender referred to in point (a) of paragraph 1 from the point of view of the contracting authority shall be identified on the basis of criteria linked to the subject-matter of the public contract in question. Those criteria shall include, in addition to the price or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter ***or the production of the subject-matter of the*** public contract in question, such as:

### *Justification*

*It should be made clear that a contracting authority is able to take the entire production process into account in the award criteria.*

#### **Amendment 75**

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

##### **Article 66 – paragraph 2 – point a**

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

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

###### *Amendment*

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental ***and social*** characteristics, ***contributing to sustainable growth and employment, and*** innovative character; ***life-cycle process criteria and socially sustainable production process criteria, which may also involve the employment of***

*disadvantaged individuals or members of vulnerable groups;*

## **Amendment 76**

### **Proposal for a directive**

#### **Article 66 – paragraph 2 – point b**

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

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

##### *Amendment*

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

##### *Justification*

*This amendment aims at giving contracting authorities larger scope to take subcontracting into account.*

## **Amendment 77**

### **Proposal for a directive**

#### **Article 69 – paragraph 1 – point a**

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

(a) the price or cost charged is more than **50 %** lower than the average price or costs of the remaining tenders

##### *Amendment*

(a) the price or cost charged is more than **25 %** lower than the average price or costs of the remaining tenders

## **Amendment 78**

**Proposal for a directive**  
**Article 69 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) the price or cost charged is more than **20** % lower than the price or costs of the second lowest tender;

*Amendment*

(b) the price or cost charged is more than **10** % lower than the price or costs of the second lowest tender;

**Amendment 79**

**Proposal for a directive**  
**Article 69 – paragraph 3 – point b**

*Text proposed by the Commission*

(b) the technical solutions chosen **or** any exceptionally favourable conditions available to the tenderer for the execution of the work or for the supply of the goods or services;

*Amendment*

(b) the technical solutions chosen **and/or** any exceptionally favourable conditions available to the tenderer for the execution of the work or for the supply of the goods or services;

*Justification*

*Reinstatement of the wording of the current directive.*

**Amendment 80**

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

*Text proposed by the Commission*

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

*Amendment*

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

## *Justification*

*This amendment reintroduces Article 55, paragraph 1, point d from the present public procurement Directive (2004/18/EC). Contracting authorities should have the right to refuse giving a contract to a tender that does not comply with laws and regulations. The reference to regulations in this article should not be limited to Union legislation in specific regulatory fields. The article should be extended to include national legislation and systems for regulating the labour market.*

## **Amendment 81**

### **Proposal for a directive**

### **Article 70 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Obligations relating to taxes, environmental protection, employment protection provisions and working conditions:***

***(a) A contracting authority may state in the contract documents, or be obliged by a Member State so to state, the body or bodies from which a candidate or tenderer may obtain the appropriate information on the obligations relating to taxes, to environmental protection, to the employment protection provisions and to the working conditions which are normally applied in the place where the works are to be carried out or services are to be provided and which shall be applicable to the works carried out on site or to the services provided during the performance of the contract.***

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

***(c) Member States that have whistleblower protection for public employees (within the public sector) may request that an equivalent protection is given to employees employed by the economic operator, if the economic operator performs public funded services.***

*Justification*

*Reintroduces, with some minor changes, Article 27 from the present directive on public procurement (EC 2004/18). This important article should not be deleted. The protection for whistleblowers in Member states that have or want to have such rights and regulations need to be respected.*

**Amendment 82**

**Proposal for a directive  
Article 71 – 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 authority 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*

2. Member States may provide that at the request of the subcontractor and where the nature of the contract so allows, the contracting authority 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 ***ex-post and provide for regulation that allow the contracting authority to take over the main contractor's signatory status without re-tendering if necessary, in order to endure legal certainty.*** The arrangements concerning that mode of payment shall be set out in the procurement documents.

*Justification*

*If necessary, (ex: in case of an insolvent main contractor) the contracting authority has to be able to bring the mandate to a termination without losing legal certainty. Therefore national provisions should make it possible to take over the signatory status and renegotiate disputed terms of the contracts. In addition the right to object undue payments for the main contractor should be permitted only after fulfilment of the contract, otherwise sub-contractors would*

*eventually block competition.*

## **Amendment 83**

### **Proposal for a directive**

#### **Article 72 – paragraph 3 – subparagraph 2**

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

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

##### *Amendment*

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

##### *Justification*

*It is perfectly legitimate for the contracting authority to, under the Court's control, oppose a substitution of contractual partner because the new contracting party would not submit the same financial and competence guarantees as that which it is replacing, for the proper performance of the contract - unchanged terms - in progress.*

## **Amendment 84**

### **Proposal for a directive**

#### **Article 75 – paragraph 1**

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

***1. Contracting authorities intending to award a public contract for the services referred to in Article 74 shall make known their intention by means of a contract notice.***

##### *Amendment*

***deleted***

## **Amendment 85**

**Proposal for a directive**  
**Article 75 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

The notices referred to in *paragraphs 1 and 2* shall contain the information referred to in Annexes VI Part *H and I*, *in accordance with the standard forms*.

*Amendment*

The notices referred to in *paragraph 2* shall contain the information referred to in Annexes VI Part I.

**Amendment 86**

**Proposal for a directive**  
**Article 75 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*The Commission shall establish the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.*

*Amendment*

*deleted*

**Amendment 87**

**Proposal for a directive**  
**Article 75 – paragraph 4**

*Text proposed by the Commission*

4. The notices referred to in *paragraphs 1 and 2* shall be published in accordance with Article 49.

*Amendment*

4. The notices referred to in *paragraph 2* shall be published in accordance with Article 49.

*Justification*

*A specific treatment of services is only justified insofar it applies to all services of the same character, legal services – underlying the same principles of confidentiality should not be discriminated.*

**Amendment 88**

**Proposal for a directive**  
**Article 76 – paragraph 1**



*Text proposed by the Commission*

*Amendment*

**1. Member States shall put in place appropriate procedures for the award of contracts subject to this Chapter, ensuring full compliance with the principles of transparency and equal treatment of economic operators and allowing contracting authorities to take into account the specificities of the services in question.**

**deleted**

## **Amendment 89**

### **Proposal for a directive Article 76 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Member States shall ensure that contracting authorities **may** take into account the need to ensure quality, continuity, accessibility, availability and comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment of users and innovation. **Member States may also provide that the choice of the service provider shall not be made solely on the basis of the price for the provision of the service.**

2. Member States shall ensure that contracting authorities take into account the need to ensure **universal access**, quality, continuity, accessibility, **affordability**, availability, **safety** and comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment of users and innovation.

### *Justification*

*These characteristics of SGIs are essential and should be ensured as much as possible in this framework.*

## **Amendment 90**

### **Proposal for a directive Article 76 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. Member States are free to prescribe that social and other specific services listed in Annex XVI are to be undertaken**

*in a specific type of economic operator.*

*Justification*

*To prevent that social services are undertaken in a type of company that only promotes profit and does not promote care for individuals, Member States should be allowed to prescribe that social services are to be undertaken in a specific form of company. The amendment relates to European regions' possibilities to formulate their individual strategies for creating growth and development, to build inclusive societies and to increase their attractiveness as places for people to live and work.*

**Amendment 91**

**Proposal for a directive**

**Article 76 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. In contracts for social and other specific services listed in Annex XVI, contracting authorities may require economic operators to re-invest in the specific operation any profit gained in the same operation or only allow non-profit entities as tenderers.***

*Justification*

*To emphasize that contracting authorities have the right to impose demands that ensure that tax-payers money for social services is used for this purpose, also when they use public procurement and not only in in-house operations. The amendment relates to European regions' possibilities to formulate their individual strategies for creating growth and development, to build inclusive societies and to increase their attractiveness as places for people to live and work.*

**Amendment 92**

**Proposal for a directive**

**Article 84 – paragraph 3 – subparagraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

(b) providing legal advice to contracting authorities on the interpretation ***of public procurement rules and principles and*** on the application of public procurement rules

(b) providing ***general and specific*** legal advice ***and practical guidance*** to contracting authorities on the interpretation and on the application of public

*in specific cases;*

procurement rules *and principles*;

*Justification*

*As a specialised and central body, the independent body should be responsible to provide legal advice and practical guidance in general terms and in specific cases to contracting authorities, both on the interpretation and on the application of rules and principles of public procurement.*

**Amendment 93**

**Proposal for a directive**

**Article 84 – paragraph 3 – subparagraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

(d) establishing and applying comprehensive, actionable ‘red flag’ indicator systems to prevent, detect and adequately report instances of procurement fraud, corruption, conflict of interest *and other serious* irregularities;

(d) establishing and applying comprehensive, actionable ‘red flag’ indicator systems to prevent, detect and adequately report instances of procurement fraud, corruption, conflict of interest *or any* irregularities;

*Justification*

*To further reinforce the regularity of the procedures organised by contracting authorities and with a pedagogical objective, it is important to include here all types of irregularities, irrespective of how serious they are.*

**Amendment 94**

**Proposal for a directive**

**Article 85 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

For every contract or framework agreement, and every time a dynamic purchasing system is established, contracting authorities shall draw up a written report which shall include at least the following:

For every *procurement above threshold, be it a* contract or framework agreement, and every time a dynamic purchasing system is established, contracting authorities shall draw up a written report which shall include at least the following:

*Justification*

*The need to draw up written reports in line with the provisions made in Art. 85 should only be*

*necessary for "above threshold procurement". Doing so for "below threshold procurement" would lead to a lot of bureaucratic procedures. Such burdens have to be in a reasonable proportion to the monetary values at stake.*

## **Amendment 95**

### **Proposal for a directive Article 85 – paragraph 3**

#### *Text proposed by the Commission*

The report, or its main elements, shall be communicated to the Commission or to the national oversight body ***where they so request.***

#### *Amendment*

The report, or its main elements, shall be communicated to the Commission or to the national oversight body.

#### *Justification*

*It doesn't make much sense to impose a reporting obligation of this nature if its is not for the purposes of mandatory submitting of its findings.*

## **Amendment 96**

### **Proposal for a directive Article 87 – paragraph 2**

#### *Text proposed by the Commission*

2. With a view to improving access to public procurement for economic operators, in particular SMEs, and in order to facilitate correct understanding of the provisions of this Directive, Member States shall ensure that appropriate assistance can be obtained, including by electronic means or using existing networks dedicated to business assistance.

#### *Amendment*

2. With a view to improving access to public procurement for economic operators, in particular SMEs, and in order to facilitate correct understanding of the provisions of this Directive, ***the Commission and the*** Member States shall ensure that appropriate ***and timely information and*** assistance can be obtained, including by electronic means or using existing networks dedicated to business assistance.

#### *Justification*

*The Commission should also participate in this effort, given the highly technical nature of the texts. Moreover, it is crucial that SMEs may obtain the information they need in due time.*

## **Amendment 97**

### **Proposal for a directive**

#### **Article 87 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4 a. The notices referred to in Articles 46, 47 and 48 shall include the information on the body or bodies as referred to in paragraph 4 of this Article.***

*Justification*

*There should be widespread and easy to find information on the bodies providing assistance to contracting authorities and businesses.*

## **Amendment 98**

### **Proposal for a directive**

#### **Article 88 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. Member States shall cooperate, with the assistance of the Commission, on the guidance to contracting authorities in assessing the existence or not of a cross-border interest in specific cases, in particular in order to increase spending efficiency in the implementation of programmes funded by cohesion policy instruments or other EU instruments.***

*Justification*

*This is in line with REGI opinion on the modernisation of public procurement, and in particular paragraphs 7 and 15 of that opinion.*

## **Amendment 99**

### **Proposal for a directive**

#### **Annex XVI a (new)**

***The following legal services:***

***79112000-2 Legal representation services***

***79100000-5 Legal services***

***79110000-8 Legal advisory and representation services***

***79111000-5 Legal advisory services***

***79112100-3 Stakeholders representation services***

***79120000-1 Patent and copyright consultancy services***

***79121000-8 Copyright consultancy services***

***79121100-90 Software copyright consultancy services***

***79130000-4 Legal documentation and certification services***

***79131000-1 Documentation services***

***79132000-8 Certification services***

***79140000-7 Legal advisory and information services***

***Justification***

*A specific treatment of services is only justified insofar it applies to all services of the same character, legal services – underlying the same principles of confidentiality should not be discriminated.*

**PROCEDURE**

<b>Title</b>	Public procurement
<b>References</b>	COM(2011)0896 – C7-0006/2012 – 2011/0438(COD)
<b>Committee responsible</b> Date announced in plenary	IMCO 17.1.2012
<b>Opinion by</b> Date announced in plenary	REGI 17.1.2012
<b>Rapporteur</b> Date appointed	Ramona Nicole Mănescu 26.1.2012

<b>Date adopted</b>	10.10.2012
<b>Result of final vote</b>	+: 32 -: 9 0: 3
<b>Members present for the final vote</b>	Luís Paulo Alves, Charalampos Angourakis, Catherine Bearder, Victor Boştinaru, John Bufton, Alain Cadec, Salvatore Caronna, Nikos Chrysogelos, Francesco De Angelis, Tamás Deutsch, Rosa Estaràs Ferragut, Danuta Maria Hübner, Filiz Hakaeva Hyusmenova, Vincenzo Iovine, María Irigoyen Pérez, Seán Kelly, Mojca Kleva, Constanze Angela Krehl, Petru Constantin Luhan, Elżbieta Katarzyna Łukacijewska, Ramona Nicole Mănescu, Vladimír Maňka, Iosif Matula, Erminia Mazzoni, Ana Miranda, Jens Nilsson, Lambert van Nistelrooij, Jan Olbrycht, Younous Omarjee, Markus Pieper, Tomasz Piotr Poręba, Ewald Stadler, Georgios Stavrakakis, Csanád Szegedi, Nuno Teixeira, Oldřich Vlasák, Kerstin Westphal, Hermann Winkler, Joachim Zeller
<b>Substitute(s) present for the final vote</b>	Karima Delli, Jens Geier, Heide Rühle, Czesław Adam Siekierski, Gionnmaria Uggias